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#### 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

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#### Debt ceiling will be raised now --- shutdown only consolidates momentum

Ezra Klein 9/28/13, writer @ the Washington Post, “The House GOP’s shutdown plan is great news,” Washington Post, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/28/the-house-gops-shutdown-plan-is-great-news/

House Republicans plan to attach a one-year delay of Obamacare to the continuing resolution. That sharply increases the chances of a government shutdown beginning Monday night.¶ Good.¶ Speaker Boehner's original plan was to pass a clean bill to fund the government and then attach the one-year delay of Obamacare to the debt-ceiling bill. It was a strategy that would minimize the chances of a shutdown but maximize the chances of a default.¶ Boehner wanted that strategy because he thought Republicans had more leverage on the debt limit than they do on the shutdown. A shutdown, after all, is just bad for the economy. A default is catastrophic for it. You'd have to be insanely reckless to permit the federal government to default on its debts. And Boehner believes that House Republicans are insanely reckless and that President Obama isn't.¶ But that strategy failed. Boehner's members refused to wait for the debt ceiling. They want their showdown now. And that's all for the better.¶ Moving the one-year delay of Obamacare to the CR maximizes the chances of a shutdown but makes a default at least somewhat less likely. If a shutdown begins Monday night, Republicans and Democrats will have more than two weeks to resolve it before hitting the debt ceiling.¶ As Alec Phillips put it in a research note for Goldman Sachs, "If a shutdown is avoided, it is likely to be because congressional Republicans have opted to wait and push for policy concessions on the debt limit instead. By contrast, if a shutdown occurs, we would be surprised if congressional Republicans would want to risk another difficult situation only a couple of weeks later. The upshot is that while a shutdown would be unnecessarily disruptive, it might actually ease passage of a debt limit increase."¶ One way a shutdown makes the passage of a debt limit increase easier is that it can persuade outside actors to come off the sidelines and begin pressuring the Republican Party to cut a deal. One problem in the politics of the fiscal fight so far is that business leaders, Wall Street, voters and even many pundits have been assuming that Republicans and Democrats will argue and carp and complain but work all this out before the government closes down or defaults. A shutdown will prove that comforting notion wrong, and those groups will begin exerting real political pressure to force a resolution before a default happens.

#### Plan ends Obama’s credibility with Congress

Seeking Alpha 9/10/13 (“Syria Could Upend Debt Ceiling Fight”, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.¶ I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.¶ While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling.¶ Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.¶ Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.¶ I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.¶ As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.¶ Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.¶ Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.¶ I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.¶ The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.¶ Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

#### Obama’s capital is key

Jonathan Allen 9/19, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law. “I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.” While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened. And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning. The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made. The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

#### That collapses the global economy

Adam Davidson 9/10/13, economy columnist for The New York Times, co-founder of Planet Money, NPR’s team of economics reporters, “Our Debt to Society,” NYT, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=0

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.¶ Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Global nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**

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#### 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

#### Plan would collapse military effectiveness and command structure---causes second-guessing of every 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.

#### Targeted killing’s vital to CT

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

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Plan 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 forces’ effectiveness is key to counter-prolif

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

WMD do not represent new threats to U.S. security interests, but as nascent nuclear powers grow their arsenals and aspirants like Iran continue to pursue nuclear capabilities, the threat of nuclear proliferation, as well as the potential for the actual use of nuclear weapons, will increase. Upheaval in failing or outlaw states like Libya and Syria, which possess chemical weapons and a range of missiles, highlights the possibility that in future instances of state collapse or civil war, such weapons could be used by failing regimes in an act of desperation, fall into the hands of rebel forces, or be seized by parties hostile to the United States or its interests. SOF can contribute across the spectrum of counter-WMD efforts, from stopping the acquisition of WMD by hostile states or terrorist groups to preventing their use. The global CT network SOF have built over the last decade could be repurposed over the next decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. Increasing the reach and density of a global counter-WMD network will require expanding security cooperation activities focused on counter-proliferation. Finally, SOF may offer the most viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise.

#### Special forces are key to disarm rogues’ nuclear programs---the alternative is U.S. counterforce nuclear strikes

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

Finally, if the United States goes to war with a nuclear-armed adversary, SOF may offer the least-worst option for regime change. In 2011, former Secretary of Defense Robert Gates famously said that, “…future defense secretary who advises the president to again send a big American land army into Asia or into the Middle East or Africa should ‘have his head examined,’ as General MacArthur so delicately put it.” 209 While current and future American political leaders may be reluctant to dispatch large-scale forces to conduct regime change operations akin to Operation Iraqi Freedom, SOF offer a viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise. Using UW may represent the best alternative to using nuclear weapons or large ground forces to invade and occupy a country possessing WMD. The traditional downside of UW is that preparations for such campaigns could take years to put in place, if not longer. The United States would do well to begin developing limited UW options in advance - by using SOF and intelligence assets to build relationships with groups that could threaten WMD-armed regimes - so that future presidents have a viable unconventional regime-change option when confronting WMD-armed adversaries.

#### Rogues will locate their WMD in cities---U.S. nuclear strikes cause mass casualties

Gormley 9 – Dennis Gormley, Senior Fellow in the James Martin Center for Nonproliferation Studies at the Monterey Institute for International Studies, Fall 2009, “The Path to Deep Nuclear Reductions: Dealing with American Conventional Superiority,” online: http://www.ifri.org/files/Securite\_defense/PP29\_Gormley.pdf

Attacking strategic underground targets seems superficially to be the role for which nuclear weapons are most indispensable. According to the U.S. Intelligence Community, there are roughly 2,000 of these targets of interest to U.S. military planners. Due to their burial depth, a good number of these facilities are beyond the reach of existing conventional earth-penetrator weapons.24 Many are susceptible to destruction by one or more nuclear earth penetrators, but not without unwanted consequences. Because more than half of these strategic underground targets are located near or in urban areas, a nuclear attack could produce significant civilian casualties (depending on yield, between thousands and more than a million, according to the U.S. National Academy of Sciences); even in more remote areas, casualties could range between a few hundred to hundreds of thousands, depending on yield and wind conditions.25 A new nuclear earthpenetrator weapon, which the Bush administration favored studying and their NPR endorsed but Congress rejected, would effectively capture a few hundred of these strategic underground targets but some uncertain number would presumably remain beyond reach, and such weapons would still produce unwanted collateral effects.26

#### Causes nuclear winter and extinction---only city attacks are sufficient

Stuart Arsmtrong 12, James Martin Research Fellow, Future of Humanity Institute, University of Oxford, 3/16/12, “Old threats never die, they fade away from our minds: nuclear winter,” http://blog.practicalethics.ox.ac.uk/2012/03/old-threats-never-die-they-fade-away-from-our-minds-nuclear-winter/

In 1983, scientists published a paper on nuclear winter. This boosted the death toll of all-out nuclear war from ‘only’ 200-500 million to the very real possibility of the complete extinction of the human race\*. But some argued the report was alarmist, and there did seem to be some issues with the assumptions. So – a military phenomena that might cause megadeaths, possibly true but requiring further study, and a huge research defense budget that could be used to look into this critical phenomena and that was already spending millions on all aspects of nuclear weapons – can you guess what happened next?

Correct – the issue was ignored for decades. For over twenty years, there were but a tiny handful of papers on the most likely way we could end our own existence, and a vague and persistent sense that nuclear winter had been ‘disproved’. But in 2007, we finally had a proper followup - with the help of modern computers, better models and better observations, what can we now say? Well, that nuclear winter is still a major threat; the initial fear was right. Their most likely scenario was:

A global average surface cooling of –7°C to –8°C persists for years, and after a decade the cooling is still –4°C [...]. Considering that the global average cooling at the depth of the last ice age 18,000 yr ago was about –5°C, this would be a climate change unprecedented in speed and amplitude in the history of the human race. The temperature changes are largest over land [...] Cooling of more than –20°C occurs over large areas of North America and of more than –30°C over much of Eurasia, including all agricultural regions.

Also, precipitation would be cut in half and we’d lose most of the ozone layer. But there was a more worrying development: it also seems that a small-scale nuclear war could generate its own mini nuclear winter.

It’s important to understand that nuclear winter would not be a direct consequences of the nuclear explosions, but of the burning of our cities in the wake of the war (given enough heat, even roads and pavements will burn), generating clouds of very black smoke that rise into the stratosphere. The clouds do need to reach these heights: any lower and they’ll get rained out. This is what happened during the burning of the Kuwaiti oil wells in 1991: Carl Sagan, one of the fathers of the theory, predicted a nuclear winter-like scenario. But he wasn’t paying attention to the climate models: as they predicted, the local damage was severe, but the smoke didn’t reach the stratosphere, and global damage was avoided.

FOOTNOTE:

\*Edit: the extinction risks doesn’t come directly from the nuclear winter (some human groups will survive), but from the collapse of human society and fragmentation of the species into small, vulnerable subgroups, with no guarantee that they’d survive setbacks or ever climb back to a technological society.

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#### 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 apply judicial review to Congressional and Executive regulations concerning sexual assault in the United States Armed Forces by allowing a cause of action for damages arising directly out of the constitutional provision allegedly offended.

#### The United States Federal Judiciary should apply judicial review to Congressional and Executive regulations concerning the US compliance with obligations under the Convention against Torture

#### The United States Federal Judiciary should rule that judicial ex post review of United States targeted killing operations is precluded by standards of justiciability, including special factors counseling hesitation arising from such review necessitating judicial evaluation of the execution of Constitutional responsibilities textually committed to the Executive branch in the conduct of war.

#### 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."

#### Judicial review on sexual assault policy doesn’t undermine the military---it’s about protecting the rights of servicemembers---the aff is about protecting the rights of terrorists

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

When it comes to constitutional claims stemming from intra-military sexual assaults, this minimalist approach results in profound injustice. The first of the class actions to be filed, Cioca v. Rumsfeld, was dismissed by the district court in December 2011 n18 and currently is on appeal to the U.S. Court of Appeals for the Fourth Circuit. n19 The dismissal is premised on the commonly accepted ground that precedent leaves no place for the judiciary in the resolution of intra-military claims. Although the vast majority of courts share this interpretation of Feres as barring the plaintiffs' claims for constitutional torts, the blind application of outdated caselaw in these cases is legally and morally unsound.

Over the years, the Court has identified three core principles underlying Feres: (1) respect for supervisory decisions made in the context of intra-military supervision (the "incident to service" exception); (2) presence of an alternative compensation scheme that provides soldiers with a "generous" alternative to recovery in tort; and, (3) perhaps foremost, the belief that, were soldiers permitted to file lawsuits against superior officers in civilian courts, the military disciplinary structure [\*727] would be undermined. n20 None of these justifications suffice to waive the judiciary's obligation to resolve the Klay and Cioca plaintiffs' constitutional claims.

Feres was decided just after World War II, a historical moment that differed dramatically from the one we now inhabit. Congress recently had enacted the Federal Tort Claims Act (FTCA), creating causes of action against federal officials for negligence. n21 While Congress may not have intended to subject itself to tort claims from every soldier injured in the line of duty, n22 when read against the current legal and political environment, the expansion of the doctrine to bar all claims by servicemembers against military officials does not make sense. Further, the judicial branch that advocated deference to military affairs in what have become seminal cases on constitutional separatism - Rostker v. Goldberg, n23 Goldman v. Weinberger, n24 United States v. Shearer n25 - faced a vastly different world than the judiciary faces today.

This is not our grandparents' military, in which nearly 10% of the population volunteered or were drafted into service. n26 We inhabit the era [\*728] of the citizen-soldier. Forty percent of troops deployed to Iraq and Afghanistan are National Guard and Reserve volunteers. n27 Nearly half of these reservists suffer from issues such as post-traumatic stress disorder (PTSD), military sexual trauma (MST), or other psychological trauma and have difficulty accessing adequate treatment for these conditions. n28 The actions of "the troops" are not separate from those of civilians; the troops committing and suffering from sexual assaults are civilians. Unconvicted military perpetrators ultimately are released into the civilian population, are not subjected to sex offender registries, and are free to reoffend. n29 Perpetrators and victims return home to a system ill-equipped to offer redress for their grievances, contributing to concerning rates of divorce, n30 domestic violence, n31 even suicide. n32 Although soldiers comprise the heartland of America, military decisionmaking has been severed from civilian accountability. n33

The biggest hurdle to resolution of the Cioca and Klay plaintiffs' claims is the idea that battle readiness depends on autonomy in military decisionmaking, that civilian intervention will weaken the institution of [\*729] the U.S. military. However, there is a much greater threat of erosion of the military command structure if sexual violence is permitted to continue unabated. n34 The DoD itself admits that the "costs and consequences [of sexual assault] for mission accomplishment are unbearable." n35 As I discuss herein, the selfsame rhetoric of unit cohesion and combat readiness was deployed by the military to discourage judicial review of the discriminatory "Don't Ask, Don't Tell" (DADT) n36 policy. The result of judicial review in those cases? A stronger military. n37 In the case of serious, widespread, and unremedied constitutional violations, the biggest threat to democracy is not judicial intervention but judicial complacency.

Chief Justice Earl Warren famously cautioned that "our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes." n38 However, this is precisely what is happening today in the case of victims of military sexual assault. As Jonathan Turley profoundly observes:

There remains a striking discontinuity in the duty of our servicemembers to defend liberties and rights with which they are only partially vested... . When servicemembers encounter ... dangers, they do so as citizen-soldiers. It is the significance of the first part of the term citizen-soldier that demands greater attention from those of us who are the beneficiaries of the second part. n39

Turley observes, further, that the most essential time for civilians to step in and protect the rights of servicemembers is when they are "engaged in a new struggle against a hidden and dangerous enemy." n40 The "hidden and dangerous" enemy to which Turley refers is international terrorism, but the same can be said of the domestic and endemic issue of sexual assault.

# Case

## CT Advantage

### 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.”

### AT: Blowback

#### There’s no impact to anti-drones backlash

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

This is the crux of the problem. We stand at the beginning of the Drone Age and the genie is not going to climb back into the bottle. The chances that this way of war will, over time, reduce the amount of random violence in the world are essentially nil. Obama’s drone policy has set an ominous precedent, and not only for future residents of the White House. It promises, over the long term, to engender more violence than it prevents because it excites no public backlash. That, for the permanent national security apparatus that has deftly moulded the worldview of a novice president, is its irresistible allure. It doesn’t provoke significant protest even on the part of people who condemn hit-jobs done with sticky bombs, radioactive isotopes or a bullet between the eyes – in the style of Mossad or Putin’s FSB. That America appears to be laidback about drones has made it possible for the CIA to resume the assassination programme it was compelled to shut down in the 1970s without, this time, awakening any politically significant outrage. It has also allowed the Pentagon to wage a war against which antiwar forces are apparently unable to rally even modest public support.

## CMR Advantage

### CMR Crisis Inev

#### Lack of military education about CMR makes the gap inevitable

Noonan 8 – Michael P. Noonan, managing director of the Program on National Security at the Foreign Policy Research Institute and a veteran of Operation Iraqi Freedom, January 2008, “Mind the Gap: Post-Iraq Civil-Military Relations in America,” online: http://www.fpri.org/enotes/200801.noonan.mindthegap.html

Repairing the “rent fabric” of contemporary U.S. civil-military relations will require a sustained and comprehensive effort. One key element will be to address professional military education from pre-commissioning through the war college levels. Civil-military relations are too silent a theme throughout the military educational system. Among the services, for instance, only the Army and Marine Corps have civil-military relations books on their professional reading lists. Another element that is needed is an explicit code for the military profession. The code would define the fundamentals of the professional officer “dedicated to this republic’s values and institutions,” distinguish between the professional military and the National Guard and reserves, denote the rights, privileges, and obligations of retired senior officers, define the expectations for loyalty, obedience, and dissent in clear terms, and clarify for both branches of government the necessity for the institutional integrity of the armed forces of the United States above reproach. Once established, it needs to be taught to the military and civilians alike and enforced. “We all realize that civilians have a right to be wrong in our system, but we devote too little study to minimizing the frequency of its occurrence.” A national commission on the American military ethic, said Hoffman, should also be established to define and complete the ethical codification, with bipartisan political, civilian, and military representation.¶ In conclusion, Hoffman stated, “Unless serious efforts are made to rectify the components that constitute the entire relationship between the nation and its uniformed servants, expectations for improved performance are low, and my expectation for greater volatility between institutions of government is high.” Our leaders failed us in the planning and conduct of the conflict in Iraq, and while this may not comprise a “dereliction of duty,” it is a failure nonetheless. “If we continue to ignore the difficulty inherent to the uneasy dialogue that supports the ultimate decision about going to war, and we fail to educate future leaders about the duty and professional obligation inherent to that decision, we are going to continue to pay a high price,” argued Hoffman.

### No Modeling

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations don’t care either way

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

### AT: LA Prolif

#### 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.

## Bivens Advantage

### No Sexual Assault Spillover

#### 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

### No Heg Impact

#### No impact to heg

Friedman 10 Ben, research fellow in defense and homeland security, Cato. PhD candidate in pol sci, MIT, Military Restraint and Defense Savings, 20 July, http://www.cato.org/testimony/ct-bf-07202010.html

Another argument for high military spending is that U.S. military hegemony underlies global stability. Our forces and alliance commitments dampen conflict between potential rivals like China and Japan, we are told, preventing them from fighting wars that would disrupt trade and cost us more than the military spending that would have prevented war. The theoretical and empirical foundation for this claim is weak. It overestimates both the American military's contribution to international stability and the danger that instability abroad poses to Americans. In Western Europe, U.S. forces now contribute little to peace, at best making the tiny odds of war among states there slightly more so.7 Even in Asia, where there is more tension, the history of international relations suggests that without U.S. military deployments potential rivals, especially those separated by sea like Japan and China, will generally achieve a stable balance of power rather than fight. In other cases, as with our bases in Saudi Arabia between the Iraq wars, U.S. forces probably create more unrestthan they prevent. Our force deployments can also generate instability by prompting states to develop nuclear weapons. Even when wars occur, their economic impact is likely to be limited here.8 By linking markets, globalization provides supply alternatives for the goods we consume, including oil. If political upheaval disrupts supply in one location, suppliers elsewhere will take our orders. Prices may increase, but markets adjust. That makes American consumers less dependent on any particular supply source, undermining the claim that we need to use force to prevent unrest in supplier nations or secure trade routes.9 Part of the confusion about the value of hegemony comes from misunderstanding the Cold War. People tend to assume, falsely, that our activist foreign policy, with troops forward supporting allies, not only caused the Soviet Union's collapse but is obviously a good thing even without such a rival. Forgotten is the sensible notion that alliances are a necessary evil occasionally tolerated to balance a particularly threatening enemy. The main justification for creating our Cold War alliances was the fear that Communist nations could conquer or capture by insurrection the industrial centers in Western Europe and Japan and then harness enough of that wealth to threaten us — either directly or by forcing us to become a garrison state at ruinous cost. We kept troops in South Korea after 1953 for fear that the North would otherwise overrun it. But these alliances outlasted the conditions that caused them. During the Cold War, Japan, Western Europe and South Korea grew wealthy enough to defend themselves. We should let them. These alliances heighten our force requirements and threaten to drag us into wars, while providing no obvious benefit.

### AT: Democracy

#### Obama ended US torture---means no internal link

#### Hearings will be delayed so no compliance---doesn’t solve leadership

#### Demo peace theory’s wrong---Diamond’s outdated

Rosato 3 – PhD PolSci, Chicago; conclusion of a statistical survey of democracies (Sebastian, The Flawed Logic of Democratic Peace Theory, The American Political Science Review 97.4)

The causal logics that underpin democratic peace theory cannot explain why democracies remain at peace with one another because the mechanisms that make up these logics do not operate as stipulated by the theory's proponents. In the case of the normative logic, liberal democracies do not reliably externalize their domestic norms of conflict resolution and do not treat one another with trust and respect when their interests clash. Similarly, in the case of the institutional logic, democratic leaders are not especially accountable to peaceloving publics or pacific interest groups, democracies are not particularly slow to mobilize or incapable of surprise attack, and open political competition offers no guarantee that a democracy will reveal private information about its level of resolve. In view of these findings there are good reasons to doubt that joint democracy causes peace.

### AT: Uighers

#### China won’t model---even if US stops, not reverse causal

#### No lashout – CCP knows it would be suicide and PLA wouldn’t support it

Gilley 4 [Bruce, former contributing editor at the Far Eastern Economic Review, M.A. Oxford, 2004, China’s Democratic Future, p. 114]

Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logis¬tical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use of nuclear weapons against Japan or the U.S.47 At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside countries.48 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

# Block

## China

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## CT

### Intel

#### 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.

## CMR

### Smartness

education collapse inev --- means US CMR will be totally useless bc our coop will spread a bad model --- conceded

<>

Their judiciary key ev is from 98 ---reject

Weeks ev says that countries can argue “given national security concerns, the military should not be held accountable” --- proves McGinnis not reverse causal – justify but no change

Also Weeks evidence says post 9-11 THE US PRESSURES military control over nuclear weapons --- aff can’t reverse that --- the reason is that their Weeks evidence says that “civilian institutions in LA need to get stronger”----if the US thought LA civilian gov’ts weren’t so terrible , we would be trying to help them --- nothing post the plan changes that

Their Finichio impact ev says civilians control nukes now --- no uq ev --- also Sanchez says countries are modeling civilian LA coop now --- crucial arg- -- sanchez is from 11 – most recent uq ev --- their internals about mil control of nuke program is irrel bc CIVIL COOP is high – this just kinda proves how little sense their impact makes

Also 2ac dropped no LA prolif --- 2ac ev says htat no countries want to pursue nukes there --- if model LA on prolif stuff, that just means that they’ll model non-proliferation

### Prlif inev

#### Prolif inev --- coop can’t do anything about it

Jacques E. C. **Hymans**, Assistant Professor in the School of International Relations at the University of Southern California, **2006**, The Psychology of Nuclear Proliferation: Identity, Emotions, and Foreign Policy, p. 1-2

This book is an analysis of why some – but only some – political leaders decide to endow their states with nuclear weapons. It finds that decisions to go or not to go nuclear result not from the international structure, but rather from individual hearts. Simply put, some political leaders hold a conception of their nation’s identity that leads them to desire the bomb; and such leaders can be expected to turn that desire into state policy. The book’s focus on individual leaders is unusual in the social-scientific literature on proliferation and non-proliferation. Indeed, most authors on the subject hardly even bother to ask the question of how leaders come to desire nuclear weapons. Instead, they simply adopt a tragic sensibility, viewing nuclear weapons as a symptom of a fallen humanity’s raw quest for power. More than a few even explicitly and unironically refer to nuclear weapons as “temptations,” to those who succumb to those temptations as “nuclear sinners,” and to the goal of non-proliferation efforts as the construction of an inevitably fragile “nuclear taboo.” This book takes a different tack. It starts its analysis by pointing out the basic fact of the history of nuclear proliferation: the large and fast-growing number of nuclear-weapons capable states, contrasted with the **small and slow-growing number of actual nuclear** weapons **states**. This combination of widespread capability with widespread restraint, which **has persisted despite numerous shocks**, is baffling until one sheds the tragic sensibility. To do so need not mean adopting a blithe, sunny optimism about humankind. Rather, it means seeing political leaders for what they are – flesh-and-blood human beings – and the question of acquiring nuclear weapons for what it is – a revolutionary decision. Facing the unknown and unknowable nuclear future, burdened with the responsibility of protecting their nations from destruction, leaders can hardly do otherwise than look deep inside themselves for guidance. The answers they find via that process of introspection vary widely, but they can be systematically summarized and rigorously explained.

The leaders who have chosen to thrust their nations into the nuclear club include the democratic and the dictatorial, the religious and the secular, the rough and the refined, the Western and the Eastern, the Northern and the Southern. Very little unites them. Yet on the basis of case studies of leaders from France, Australia, Argentina, and India, this book does find something that sets those few leaders with definite nuclear weapons ambitions apart from the many who do not harbor such ambitions. What sets those few leaders apart is a deeply held conception of their nation’s identity that I call “oppositional nationalist.” Oppositional nationalists see their nation as both naturally at odds with an external enemy, and as naturally its equal if not its superior. Such a conception tends to generate the emotions of fear and pride – an explosive psychological cocktail. Driven by fear and pride, oppositional nationalists develop a desire for nuclear weapons that goes beyond calculation, to self-expression. Thus, in spite of the tremendous complexity of the nuclear choice, leaders who decide for the bomb tend not to back into it. For them, unlike the bulk of their peers, the choice for nuclear weapons is neither a close call nor a possible last resort but an absolute necessity.

In the process of making its case about the importance of oppositional nationalism for decisions to go nuclear, the book also develops a more general model of identity-driven foreign policy decisionmaking. In particular, the book carefully outlines the linkages from leaders’ national identity conceptions, through emotions, to their ultimate foreign policy choices. This model holds the potential to improve our understanding not only of decisions on nuclear weapons, but also of other foreign policy decisions of revolutionary significance. The immediate task at hand, however, is to show the model’s applicability to the issue of nuclear proliferation.

## DA

### Drones DA---2NC

#### No turns---reducing targeted killings can’t make al-Qaeda any less likely to attack us

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

What about reciprocity? Former attorney general Reno warned President Clinton that attacking Osama bin Laden would make American officials and leaders targets. In retrospect, those concerns were misplaced and the exercise of restraint did not avert 9/11. If anything, it seems to have encouraged it by convincing al-Qaeda’s leaders that the United States would not meaningfully respond to attacks. The 9/11attacks made clear that all of America—leaders and civilians—were al-Qaeda’s target. It is absurd to believe that if the United States refrains from targeting Osama bin Laden or his commanders, then al-Qaeda would refuse to launch similar attacks. Reciprocity is an important principle at work in law and policy, and underlies the laws of war. The international legal system has no supranational government with a legislature that can make laws on behalf of the world, or an executive branch with an army or police force that can meaningfully enforce those laws. War crimes trials at The Hague will not deter al-Qaeda. Usually, nations at war will restrain their conduct if their opponent will do so as well, and neither gains any corresponding advantage. If a nation violates the laws of war, its enemy will do the same.96 Restraint in an individual instance can be more humanitarian97 and might have the hoped for effect. But it is reciprocity, both positive and negative, that has historically induced the enemy to obey the laws of war. Germany was deterred from using chemical weapons in World War II not out of humanitarian concern for allied suffering, but because the allies were fully prepared to retaliate in kind.98

Al-Qaeda will never follow the rules of war. Al-Qaeda gains its only tactical advantages by systematically flouting them. American restraint in the use of force, the methods of attack, or the treatment of prisoners does not affect the incentives of al-Qaeda members, who seek a goal of salvation in the afterlife. Suicide bombers are not susceptible to deterrence. However, al-Qaeda’s utterly lawless nature does not free the United States from all constraints. Standard principles of reciprocity counsel that the United States follow customary rules on targeting and the use of force. But there is also ample historical and legal precedent for American policymakers to address creatively the unique threat that al-Qaeda poses. There could be some areas in which rules of conduct could be negotiated—terrorist groups in the United Kingdom-IRA and the Israeli-Palestinian conflicts have successfully engaged in prisoner exchanges. But for al-Qaeda to agree to play on a level playing field with the United States would be tantamount to its accepting defeat. Instead, the United States will have to draw on some old concepts, such as those used to confront piracy, and marry them to new ones, such as precision targeting through intelligence and technology. The integration of real-time intelligence with strikes by special forces and drone attacks, under this legal framework, has made possible some of the United States’ most important victories to date.

### Civilians

#### Targeting citizens is key to counter-terror---operational opacity of terror organizations means the U.S. has to define ‘imminent threats’ expansively

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/

To understand why this position must be correct, consider an example from an entirely different context: a domestic hostage situation. In such situations, even law enforcement will use targeted killings, and it will do so without judicial pre-approval when the threat to the lives of the hostages is adequately serious and when there are no available alternatives. What’s more, police officers will not wait until the threat to the hostages is imminent in the sense that the hostage-taker is literally lifting his gun to kill innocents in real time. Rather, they will often act—including with lethal force—within the windows of opportunity that circumstances may offer them. Nobody takes the position that such actions constitute unlawful extra-judicial killings. Rather, we accept that the preservation of the lives of the hostages justifies the use of lethal force based on standards totally different from the standards of proof and evidence that would suffice before a judge or jury. Importantly, the standards ordinarily applied to such uses of lethal force against U.S. citizens do not sound in process but instead in the Fourth Amendment balancing test of Tennessee v. Garner and Scott v. Harris. As the Supreme Court put it in Garner, “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”

I submit that the case that truly meets the administration’s legal test—and only one such case has presented itself—is not profoundly different from this hostage situation. Yes, the action was taken by military or covert operatives, not police and not pursuant to law enforcement authorities. And yes, the imminence of the harm Anwar Al-Aulaqi threatened was, in some temporal sense, less certain. Al-Aulaqi was not, after all, literally holding hostages, and the precise window of time in which he posed a serious threat to American lives was not entirely clear. The nature of terrorist plots, which involve great secrecy and operational security, means that authorities may not know how imminent a threat really is; hostage takers are less subtle. In another sense, however, the problem Al-Aulaqi posed was far less controllable and far more threatening than an ordinary hostage standoff. Remoteness gave him relative security. And critically, the government had no other obvious tool by which to neutralize the threat he posed. Indicting him and seeking his extradition from a country that does not have custody of him, can’t keep track of its prisoners, and lacks full control over its territory was not a promising avenue. A capture operation would have involved much greater risk to U.S. forces and foreign civilians and a much greater affront to the sovereignty of a country that seems to allow unacknowledged American air strikes but is not especially eager to have American boots on the ground. To have declined to act in that situation would have been, perhaps, to decline the last and only opportunity to prevent an attack on American civilians—and the Constitution no more requires that than it requires that police forego the shot at the hostage taker.

### AT Blowback Kills Program

#### 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.

#### Backlash is inevitable even with the plan---critics want to shut the entire program down, but Obama’s not budging

Steven Groves 13, the Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation, 1/25/13, “The U.S. Should Ignore U.N. Inquiry Into Drone Strikes,” http://blog.heritage.org/2013/01/25/the-u-s-should-ignore-u-n-inquiry-into-drone-strikes/

Various international legal academics and human rights activists have regularly made these and other similar allegations ever since the Obama Administration stepped up the drone program in 2009. While drone strikes cannot be viewed alone as an effective counterterrorism strategy, the Administration has repeatedly defended the legality of the program.

Emmerson and his fellow U.N. special rapporteurs Philip Alston and Christof Heyns have repeatedly demanded that the U.S. provide more information on drone strikes—and the U.S. has repeatedly complied, issuing public statement after public statement defending every aspect of the drone program.

Public statements detailing the legality and propriety of the drone program have been made by top Administration officials, including State Department Legal Adviser Harold Koh, Attorney General Eric Holder, Deputy National Security Advisor John Brennan, General Counsel for the Department of Defense Jeh Johnson, and CIA General Counsel Stephen Preston.

Increased transparency will, of course, be deemed by human rights activists as insufficient where their true goal is to stop the U.S. drone program in its entirety. Unless and until the U.S. can somehow promise that no civilian casualties will result from drone strikes, such strikes will be considered violations of international law.

Ignoring the U.N. probe will not make it go away, but the Obama Administration should not be so naive as to expect that its cooperation will substantively alter the investigation’s findings and conclusions.

### Bivens

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

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

Steve’s post arguing that courts should recognize Bivens actions seeking damages from military officials based on wartime operations, including the drone strikes at issue in al-Aulaqi v. Obama, seemed to omit some essential legal and policy points. The post leaves unexplained why any judge might decline to permit a Bivens action to proceed against military officials and policymakers, but a fuller account indicates that barring such Bivens actions is sensible as a matter of national security policy and the better view of the law.

A Bivens action is a damages claim, directed against individual officials personally for an allegedly unconstitutional act, created by the judiciary rather than by Congress. The particular legal issue is whether a suit addressing military operations implicates “special factors” that “counsel hesitation” in recognizing such claims (injunctions and relief provided by statute or the Executive Branch are unaffected by this analysis). In arguing that the answer is ‘no,’ the post (i) bases its Bivens analysis on how the Supreme Court “has routinely relied on the existence of alternative remedial mechanisms” in limiting Bivens relief; (ii) argues that the Bivens Court “originally intended” that there be some remedy for all Constitutional wrongs in the absence of an express statutory bar to relief; (iii) invokes the policy interest in dissuading military officials from acting unlawfully, and (iv) argues that courts should ensure that a remedy exists if an officer has no defenses to liability (such as immunity).

The post’s first point, which underpins the legal analysis, is simply not correct. United States v. Stanley, the Supreme Court’s most recent and important Bivens case in the military context, directly rejected that argument: “it is irrelevant to a ‘special factors’ analysis whether the laws currently on the books afford Stanley, or any other particular serviceman, an ‘adequate’ federal remedy for his injuries. The ‘special factor’ that ‘counsels hesitation’ is … the fact that congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.” Wilkie v. Robbins, too, expressly indicated that consideration of ‘special factors’ is distinct from consideration of alternative remedies and may bar a Bivens claim even where no remedy exists (and that in a Souter opinion for eight Justices).

Similarly, the Bivens Court’s original intention is a poor basis for implying a damages claim in the military context. Justice Brennan in 1971 no doubt would have resisted the separation of powers principles reflected in cases that have since limited Bivens relief, especially for military matters. Instead, the relevant inquiry needs to address either first principles (did Congress intend a remedy and personal liability in this particular context? should judges imply one?) or the line of Supreme Court cases beginning with, but also authoritatively limiting, Bivens. There’s considerable support for denying a Bivens remedy under either of those analyses: for the former, support in the form of the presumptions deeply rooted in precedent and constitutional law that disfavor implied causes of action, as well as the legal and policy reasons that have traditionally shielded military officials from suit or personal liability; for the latter, Stanley, Chappell v. Wallace, Wilkie, the last thirty years of Supreme Court decisions that have all limited and declined to find a Bivens remedy, and various separation of powers cases pointing to a limited judicial role in military affairs.

The post’s policy point regarding incentives that should be created for military officers to do no wrong is hardly as self-evident as the post claims. Congress has never accepted it in the decades since Stanley and has instead generally shielded military officials from personal financial liability for their service. Supreme Court and other cases from Johnson v. Eisentrager to Stanley to Ali v. Rumsfeld have elaborated the strong policy interest in not having military officials weigh the costs and prospects of litigation and thus fail to act decisively in the national interest. Many other Supreme Court cases have emphasized the potential adverse security consequences and limited judicial capabilities when military matters are litigated. The post criticizes Judge Wilkinson’s view of the adverse incentives that Bivens liability would create. That view is, however, supported by decades of Supreme Court and other precedent (and strong national security considerations) and was joined in that particular case, as in certain others, by a liberal jurist — while the post’s view is, well, popular in faculty lounges and among advocacy groups that would relish the opportunities to seek damages against military officers and policymakers.

As for the post’s proposed test, it fails to account for either the Bivens case law addressed above or the separation of powers principles and litigation interests identified in the cases. It would simply require courts to determine facts and defenses, often in conditions of great legal uncertainty and following discovery, which begs the question whether Congress intended such litigation to proceed at all and fails to account for the costs of litigating military issues — to the chain of command, confidentiality, and operational effectiveness. As noted in Stanley, those harms arise whether the officer is eventually found liable or prevails. Those costs and the appropriate limits on the judicial role are recognized, too, in the separation of powers principles that run throughout national security cases – principles that jurists, even jurists sympathetic to the post’s perspective, should and will weigh as they resolve cases brought against military officials and policymakers.

### Immanence

#### Plan collapses drones --- McKelvey says doesn’t meet standard of immanance bc we plan the ops over a period of montsh

#### 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.

### Geography

#### 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.

### Link UQ---Must Read

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

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>

Target vetting is the process by which the government integrates the opinions of subject matter experts from throughout the intelligence community.180 The United States has developed a formal voting process which allows members of agencies from across the government to comment on the validity of the target intelligence and any concerns related to targeting an individual. At a minimum, the vetting considers the following factors: target identification, significance, collateral damage estimates, location issues, impact on the enemy, environmental concerns, and intelligence gain/loss concerns.181 An important part of the analysis also includes assessing the impact of not conducting operations against the target.182 Vetting occurs at multiple points in the kill-list creation process, as targets are progressively refined within particular agencies and at interagency meetings.

A validation step follows the vetting step. It is intended to ensure that all proposed targets meet the objectives and criteria outlined in strategic guidance.183 The term strategic is a reference to national level objectives—the assessment is not just whether the strike will succeed tactically (i.e. will it eliminate the targeted individual) but also whether it advances broader national policy goals.184 Accordingly, at this stage there is also a reassessment of whether the killing will comport with domestic legal authorities such as the AUMF or a particular covert action finding.185 At this stage, participants will also resolve whether the agency that will be tasked with the strike has the authority to do so.186 Individuals participating at this stage analyze the mix of military, political, diplomatic, informational, and economic consequences that flow from killing an individual. Other questions addressed at this stage are whether killing an individual will comply with the law of armed conflict, and rules of engagement (including theater specific rules of engagement). Further bolstering the evidence that these are the key questions that the U.S. government asks is the clearly articulated target validation considerations found in military doctrine (and there is little evidence to suggest they are not considered in current operations). Some of the questions asked are:

• Is attacking the target lawful? What are the law of war and rules of engagement considerations?

• Does the target contribute to the adversary's capability and will to wage war?

• Is the target (still) operational? Is it (still) a viable element of a target system? Where is the target located?

• Will striking the target arouse political or cultural “sensitivities”?

• How will striking the target affect public opinion? (Enemy, friendly, and neutral)?

• What is the relative potential for collateral damage or collateral effects, to include casualties?

• What psychological impact will operations against the target have on the adversary, friendly forces, or multinational partners?

• What would be the impact of not conducting operations against the target?187

As the preceding criteria highlight, many of the concerns that critics say should be weighed in the targeted killing process are considered prior to nominating a target for inclusion on a kill-list.188 For example, bureaucrats in the kill-list development process will weigh whether striking a particular individual will improve world standing and whether the strike is worth it in terms of weakening the adversary's power.189 They will analyze the possibility that a strike will adversely affect diplomatic relations, and they will consider whether there would be an intelligence loss that outweighs the value of the target.190 During this process, the intelligence community may also make an estimate regarding the likely success of achieving objectives (e.g. degraded enemy leadership, diminished capacity to conduct certain types of attacks, etc.) associated with the strike. Importantly, they will also consider the risk of blowback (e.g. creating more terrorists as a result of the killing).191

### AT: Recruiting

#### 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.”

#### Targeted killings destroy operational effectiveness of terror groups---they can’t recruit new operatives fast enough to keep pace with losses

Alex Young 13, Associate Staff, Harvard International Review, 2/25/13, “A Defense of Drones,” Harvard International Review, http://hir.harvard.edu/a-defense-of-drones

Moreover, drone strikes have disrupted al Qaeda’s system for training new recruits. The Times of London reports that in 2009, Al Qaeda leaders decided to abandon their traditional training camps because bringing new members to a central location offered too easy a target for drone strikes. Foreign Policy emphasized this trend on November 2nd, 2012, arguing that, “destroying communication centers, training camps and vehicles undermines the operational effectiveness of al-Qaeda and the Taliban, and quotes from operatives of the Pakistan-based Haqqani Network reveal that drones have forced them into a ‘jungle existence’ where they fear for the lives on a daily basis.” The threat of death from the skies has forced extremist organizations to become more scattered.

More importantly, though, drone strikes do not only kill top leaders; they target their militant followers as well. The New America Foundation, a think tank that maintains a database of statistics on drone strikes, reports that between 2004 and 2012, drones killed between 1,489 and 2,605 enemy combatants in Pakistan. Given that Al Qaeda, the Pakistani Taliban, and the various other organizations operating in the region combined do not possibly have more than 1,500 senior leaders, it follows that many, if not most, of those killed were low-level or mid-level members – in many cases, individuals who would have carried out attacks. The Los Angeles Times explains that, “the Predator campaign has depleted [Al Qaeda’s] operational tier. Many of the dead are longtime loyalists who had worked alongside Bin Laden […] They are being replaced by less experienced recruits.” Drones decimate terrorist organizations at all levels; the idea that these strikes only kill senior officials is a myth.

### Special ops

#### Due process collapses intelligence gathering --- sources dry up --- destroys the heart of counter-terror policy

Delery Et.al. ’12 - Principal Deputy, Assistant Attorney General, Civil Division, DOJ

Principal Deputy, Assistant Attorney General, Civil Division, STUART F. DELERY

Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

Third. Plaintiffs' claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that "the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny" are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, "'even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to close up like a clam."'1 Id. (quoting Tenet v. Doe, 544 U.S. 1,11 (2005)). And where litigation of a plaintiffs allegations "would inevitably require an inquiry into "classified information that may undermine ongoing covert operations,"\* special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at "8 ("When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.11); Lebron, 670 F.3d at 554 (noting that the "chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplomatic initiatives at the heart of counterterrorism policy1' are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the "extraordinary rendition" context).

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## CP

### CP Solves

#### 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.

### Solves---Sexual Assault

#### CP solves sexual assault

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

When it comes to constitutional claims stemming from intra-military sexual assaults, this minimalist approach results in profound injustice. The first of the class actions to be filed, Cioca v. Rumsfeld, was dismissed by the district court in December 2011 n18 and currently is on appeal to the U.S. Court of Appeals for the Fourth Circuit. n19 The dismissal is premised on the commonly accepted ground that precedent leaves no place for the judiciary in the resolution of intra-military claims. Although the vast majority of courts share this interpretation of Feres as barring the plaintiffs' claims for constitutional torts, the blind application of outdated caselaw in these cases is legally and morally unsound.

Over the years, the Court has identified three core principles underlying Feres: (1) respect for supervisory decisions made in the context of intra-military supervision (the "incident to service" exception); (2) presence of an alternative compensation scheme that provides soldiers with a "generous" alternative to recovery in tort; and, (3) perhaps foremost, the belief that, were soldiers permitted to file lawsuits against superior officers in civilian courts, the military disciplinary structure [\*727] would be undermined. n20 None of these justifications suffice to waive the judiciary's obligation to resolve the Klay and Cioca plaintiffs' constitutional claims.

Feres was decided just after World War II, a historical moment that differed dramatically from the one we now inhabit. Congress recently had enacted the Federal Tort Claims Act (FTCA), creating causes of action against federal officials for negligence. n21 While Congress may not have intended to subject itself to tort claims from every soldier injured in the line of duty, n22 when read against the current legal and political environment, the expansion of the doctrine to bar all claims by servicemembers against military officials does not make sense. Further, the judicial branch that advocated deference to military affairs in what have become seminal cases on constitutional separatism - Rostker v. Goldberg, n23 Goldman v. Weinberger, n24 United States v. Shearer n25 - faced a vastly different world than the judiciary faces today.

This is not our grandparents' military, in which nearly 10% of the population volunteered or were drafted into service. n26 We inhabit the era [\*728] of the citizen-soldier. Forty percent of troops deployed to Iraq and Afghanistan are National Guard and Reserve volunteers. n27 Nearly half of these reservists suffer from issues such as post-traumatic stress disorder (PTSD), military sexual trauma (MST), or other psychological trauma and have difficulty accessing adequate treatment for these conditions. n28 The actions of "the troops" are not separate from those of civilians; the troops committing and suffering from sexual assaults are civilians. Unconvicted military perpetrators ultimately are released into the civilian population, are not subjected to sex offender registries, and are free to reoffend. n29 Perpetrators and victims return home to a system ill-equipped to offer redress for their grievances, contributing to concerning rates of divorce, n30 domestic violence, n31 even suicide. n32 Although soldiers comprise the heartland of America, military decisionmaking has been severed from civilian accountability. n33

The biggest hurdle to resolution of the Cioca and Klay plaintiffs' claims is the idea that battle readiness depends on autonomy in military decisionmaking, that civilian intervention will weaken the institution of [\*729] the U.S. military. However, there is a much greater threat of erosion of the military command structure if sexual violence is permitted to continue unabated. n34 The DoD itself admits that the "costs and consequences [of sexual assault] for mission accomplishment are unbearable." n35 As I discuss herein, the selfsame rhetoric of unit cohesion and combat readiness was deployed by the military to discourage judicial review of the discriminatory "Don't Ask, Don't Tell" (DADT) n36 policy. The result of judicial review in those cases? A stronger military. n37 In the case of serious, widespread, and unremedied constitutional violations, the biggest threat to democracy is not judicial intervention but judicial complacency.

Chief Justice Earl Warren famously cautioned that "our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes." n38 However, this is precisely what is happening today in the case of victims of military sexual assault. As Jonathan Turley profoundly observes:

There remains a striking discontinuity in the duty of our servicemembers to defend liberties and rights with which they are only partially vested... . When servicemembers encounter ... dangers, they do so as citizen-soldiers. It is the significance of the first part of the term citizen-soldier that demands greater attention from those of us who are the beneficiaries of the second part. n39

Turley observes, further, that the most essential time for civilians to step in and protect the rights of servicemembers is when they are "engaged in a new struggle against a hidden and dangerous enemy." n40 The "hidden and dangerous" enemy to which Turley refers is international terrorism, but the same can be said of the domestic and endemic issue of sexual assault.

### Solves---Perception---Human Rights/Due Process

#### Publicizing target procedures is the most effective way to resolve the perception of targeted killing as violating human rights and CMR

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

Some advocates in the field of human rights assert that targeted killing denies individuals due process. 134 However, due process does not require that each target be given the opportunity to defend him or herself before a legitimate judicial authority before being eliminated: "[A] state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force."135¶ Still, in non-international armed conflicts such as the situation in Afghanistan, a target is not lawful until it has qualified as such under either CCF or DPH.136 Without public disclosure of the procedures for enforcing compliance with applicable law, it is impossible to determine whether or not the government is adhering to the requirements of law. Making public the procedures for target selection may be the most effective means to confront the human right challenges to targeted killing. In particular, if the U.S. wants to keep the higher moral ground, it should afford the public the process of clear, systematic target selection procedures to minimize the risk of targeting an unlawful target (i.e., a civilian), and thereby invoking guilt for a war crime under the Rome Statute.13 7

### AT: Bernstein

#### Bernstein card is a NEG card – doesn’t assume the CP, just the executive plank and says “Administrative remedial schemes must be authorized through a delegation of congressional power to the Executive and are subject to legislative strictures and specifications.” – proves the CP solves

#### Disclosing the criteria for placement on the kill list provides sufficient due process for U.S. citizens

Mike Dreyfuss 12, J.D., Vanderbilt University Law School, January, 2012, “NOTE: My Fellow Americans, We Are Going to Kill You: The Legality of Targeting and Killing U.S. Citizens Abroad,” Vanderbilt Law Review, 65 Vand. L. Rev. 249

An underlying element of all law is the principle of nullem crimen sine lege, or "no crime without law." One purpose of law is to make people aware of what conduct is permissible and what is not. U.S. citizens have a right to know what conduct will get them killed by their government. Currently, the United States does not publish the criteria it uses to decide who will be killed by targeted killing, beyond statements like that of then Director of the National Counterterrorism Center, Michael Leiter, who stated, "Individuals aren't targeted because they have bad ideas. Individuals aren't targeted because they inspire others to do things. Individuals are targeted because they are involved in operations targeting the United States and our homeland." n142 Nor, for that matter, does the United States publish the list of U.S. citizens who it intends to kill. n143 The result is that the United States can use secret criteria to secretly designate U.S. citizens, secretly kill them, and officially deny any involvement in the action. n144

These unpublished "kill lists" or other means of designating individuals for targeted killing should not be confused with the U.S. Treasury Department's published lists of Specially Designated Global [\*274] Terrorist ("SDGT") individuals, which are available to the public. n145 While Al-Aulaqi was on both an SDGT list n146 and a kill list, the two lists are not necessarily the same. It is not known, for example, whether Aqeel Abdulaziz al-Aqil or Chiheb Ben Mohamed Ben Moktar al-Ayari, the SDGT individuals listed immediately before and after Al-Aulaqi, are also subject to targeted killing. n147 Even after the United States killed Al-Aulaqi, it did not publicly acknowledge his presence on a kill list. n148

Military expedience and security arguments support the practice of nonpublication of the lists. If the targets know that they have been designated, then they will make it more difficult, more expensive, and more dangerous for our armed forces to kill them. Notifying the targets will also make continued intelligence gathering more difficult.

Fundamental justice arguments support publication. All people have rights to life and liberty unless their government deprives them of those rights through the due process of law. Because the U.S. government can freeze the assets of SDGT individuals, they already have serious financial incentives to challenge their designations or otherwise exercise their rights in U.S. courts. Many have opted not to do so. But regardless of whether any individuals on kill lists decide to exercise their rights in court, it is still important to provide notice because it is a fundamental principle of our justice system. n149

### AT: Perm Do Both

#### Links to the terror DA – court involvement wrecks the drone program

#### 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.

### AT: Roach

#### The aff doesn’t solve this unless they abrogate the entire state secrets doctrine since secret evidence would still exist

#### The CP satisfies a key demand of for drone transparency and public debate---it’s clearly sufficient to solve the case

Lesley Wexler 13, Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law, 5/8/13, “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2262412

Critics of the status quo would like greater transparency and accountability in regards to tar-geted killings. In addition to constitutional concerns, some worry the executive branch is violating International Humanitarian Law (IHL). They want the executive branch to reveal its legal understandings of IHL. They also seek greater information regarding review processes for targeted kill-ings as to both prospective listings and retrospective assessments of compliance. These skeptics contend that the lack of judicial oversight and the opacity of the government’s legal position risks the deaths of innocent foreign civilians, violates democratic accountability norms, erodes our com-pliance reputation with allies, and helps recruit a new generation of anti-American insurgents. Even if the current approach is lawful, many worry about future administrations or other governments that may adopt drone strikes without sufficient IHL protections. As this chapter describes, some of these critics have proposed the use of courts to foster either transparency or accountability or both.

## Case

### No Heg Impact

#### Impact’s empirically denied

Preble 10 – Former prof, history, Temple U. PhD, history, Temple (Christopher, U.S. Military Power: Preeminence for What Purpose?, 3 August, http://www.cato-at-liberty.org/u-s-military-power-preeminence-for-what-purpose/)

Goure and the Hadley-Perry commissioners who produced the alternate QDR argue that the purpose of American military power is to provide global public goods, to defend other countries so that they don’t have to defend themselves, and otherwise shape the international order to suit our ends. In other words, the same justifications offered for American military dominance since the end of the Cold War. Most in Washington still embraces the notion that America is, and forever will be, the world’s indispensable nation. Some scholars, however, questioned the logic of hegemonic stability theory from the very beginning. A number continue to do so today. They advance arguments diametrically at odds with the primacist consensus. Trade routes need not be policed by a single dominant power; the international economy is complex and resilient. Supply disruptions are likely to be temporary, and the costs of mitigating their effects should be borne by those who stand to lose --- or gain --- the most. Islamic extremists are scary, but hardly comparable to the threat posed by a globe-straddling Soviet Union armed with thousands of nuclear weapons. It is frankly absurd that we spend more today to fight Osama bin Laden and his tiny band of murderous thugs than we spent to face down Joseph Stalin and Chairman Mao. Many factors have contributed to the dramatic decline in the number of wars between nation-states; it is unrealistic to expect that a new spasm of global conflict would erupt if the United States were to modestly refocus its efforts, draw down its military power, and call on other countries to play a larger role in their own defense, and in the security of their respective regions. But while there are credible alternatives to the United States serving in its current dual role as world policeman / armed social worker, the foreign policy establishment in Washington has no interest in exploring them. The people here have grown accustomed to living at the center of the earth, and indeed, of the universe. The tangible benefits of all this military spending flow disproportionately to this tiny corner of the United States while the schlubs in fly-over country pick up the tab.

#### No escalation

Haas 8 Richard, President of the Council on Foreign Relations, former director of policy planning for the Department of State, former vice president and director of foreign policy studies at the Brookings Institution, the Sol M. Linowitz visiting professor of international studies at Hamilton College, a senior associate at the Carnegie Endowment for International Peace, a lecturer in public policy at Harvard University’s John F. Kennedy School of Government, and a research associate at the International Institute for Strategic Studies, April, “Ask the Expert: What Comes After Unipolarity?” http://www.cfr.org/publication/16063/ask\_the\_expert.html

Does a non polar world increase or reduce the chances of another world war? Will nuclear deterrence continue to prevent a large scale conflict? Sivananda Rajaram, UK Richard Haass: I believe the chance of a world war, i.e., one involving the major powers of the day, is remote and likely to stay that way. This reflects more than anything else the absence of disputes or goals that could lead to such a conflict. Nuclear deterrence might be a contributing factor in the sense that no conceivable dispute among the major powers would justify any use of nuclear weapons, but again, I believe the fundamental reason great power relations are relatively good is that all hold a stake in sustaining an international order that supports trade and financial flows and avoids large-scale conflict. The danger in a nonpolar world is not global conflict as we feared during the Cold War but smaller but still highly costly conflicts involving terrorist groups, militias, rogue states, etc.

### AT: Democracy

#### Demo peace theory’s wrong---Diamond’s outdated – that’s Rosato

Rosato 3 – PhD PolSci, Chicago; conclusion of a statistical survey of democracies (Sebastian, The Flawed Logic of Democratic Peace Theory, The American Political Science Review 97.4)

The causal logics that underpin democratic peace theory cannot explain why democracies remain at peace with one another because the mechanisms that make up these logics do not operate as stipulated by the theory's proponents. In the case of the normative logic, liberal democracies do not reliably externalize their domestic norms of conflict resolution and do not treat one another with trust and respect when their interests clash. Similarly, in the case of the institutional logic, democratic leaders are not especially accountable to peaceloving publics or pacific interest groups, democracies are not particularly slow to mobilize or incapable of surprise attack, and open political competition offers no guarantee that a democracy will reveal private information about its level of resolve. In view of these findings there are good reasons to doubt that joint democracy causes peace.

### AT: Uighers

#### No lashout – CCP knows it would be suicide and PLA wouldn’t support it

Gilley 4 [Bruce, former contributing editor at the Far Eastern Economic Review, M.A. Oxford, 2004, China’s Democratic Future, p. 114]

Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logis¬tical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use of nuclear weapons against Japan or the U.S.47 At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside countries.48 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

# 2NR

#### Pakistan has to act like they’re kicking us out---but if they were going to, they would have already

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>

Granted, “lawyers at the State Department, including top legal adviser Harold Koh, believe this rationale veers near the edge of what can be considered permission” and are concerned because “[c]onducting drone strikes in a country against its will could be seen as an act of war.”62 Nevertheless, the notion of consent is one that is hotly debated by opponents of targeted killings. The Bureau of Investigative Journalism reports that Pakistan “categorically rejects” the claim that it tacitly allows drone strikes in its territory63 and in the same New York

Times article discussed above an official with Pakistani intelligence “said any suggestion of Pakistani cooperation was ‘hogwash.’”64 However, these protests lack credibility as Pakistan has not exercised its rights under international law to prevent strikes by asking the U.S. to stop, intercepting American aircraft, targeting U.S. operators on the ground, or lodging a formal protest with the UN General Assembly or the Security Council. If the strikes are truly without consent, are a violation of Pakistani sovereignty, and are akin to acts of war, one would expect something more from the Pakistani government. With regard to Yemen, the question of consent is far clearer as Yemeni officials have gone on the record specifically noting their approval of U.S. strikes.65

#### Pakistan supports aggressive U.S. drone strikes---they just can’t admit it publicly for domestic political reasons

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

It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program's negative publicity: "In Pakistan, things fall out of the sky all the time," he reportedly remarked. Yemen's former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States' involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that "they pinpoint the target and have zero margin of error, if you know what target you're aiming at."

As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan's army chief, Ashfaq Parvez Kayani, privately asked U.S. military leaders in 2008 for "continuous Predator coverage" over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted "goodwill kills" against Pakistani militants who threatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, "We'll protest [against the drone program] in the National Assembly and then ignore it."

Still, Pakistan is reluctant to make its approval public. First of all, the country's inability to fight terrorists on its own soil is a humiliation for Pakistan's politically powerful armed forces and intelligence service. In addition, although drones kill some of the government's enemies, they have also targeted pro-government groups that are hostile to the United States, such as the Haqqani network and the Taliban, which Pakistan has supported since its birth in the early 1990s. Even more important, the Pakistani public is vehemently opposed to U.S. drone strikes.