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#### 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.

#### Violation:

#### Ex-post review 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

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

### Off

#### The Courts unilaterally establishing a damages remedy for targeted killings would shred the political question doctrine

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>

Plaintiffs Nasser Al-Aulaqi and Sarah Khan, purportedly as representatives of the estates of three U.S. citizens killed in Yemen, ask this Court to impose personal liability on Defendants, including the Secretary of Defense and the former Director of the Central Intelligence Agency, based on the Executive Branch’s alleged conduct of military and counterterrorism operations against an elusive and hostile enemy abroad in the course of an ongoing, congressionally authorized armed conflict with al-Qa’ida and associated forces. Particularly, Plaintiffs seek damages from individual government officials for allegedly authorizing and directing missile strikes that they contend resulted in these citizens’ deaths abroad.

But courts repeatedly have recognized that the political branches, with few exceptions, have both the responsibility for—and the oversight of—the defense of the Nation and the conduct of armed conflict abroad. The Judiciary rarely interferes in such arenas. In this case, Plaintiffs ask this Court to take the extraordinary step of substituting its own judgment for that of the Executive. They further ask this Court to create a novel damages remedy, despite the fact that—based on Plaintiffs’ own complaint—their claims are rife with separation-of-powers, national defense, military, intelligence, and diplomatic concerns. Judicial restraint is particularly appropriate here, where Plaintiffs seek non-statutory damages from the personal resources of some of the highest officials in the U.S. defense and intelligence communities. Under these weighty circumstances, this Court should follow the well-trodden path the Judiciary—and particularly the D.C. Circuit—have taken in the past and should leave the issues raised by this case to the political branches.

#### 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 )

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#### Farm bill will pass but it’s very close --- impact is food price spikes

Reuters 11/11/13, “U.S. Congress has about 50/50 chance of passing farm bill in 2013 –analyst,” http://www.reuters.com/article/2013/11/12/usa-agriculture-farm-bill-idUSL2N0IX01T20131112

Nov 11 (Reuters) - The chances of the U.S. Congress passing a five-year farm bill by year's end are a little better than 50/50 given the gridlock over food stamps for the poor, a top farm policy expert said on Monday.¶ "There is a slightly better chance than 50/50 that we will get a bill rolled into a budget at the end of the year. But it's no better than that," Barry Flinchbaugh, a Kansas State University agricultural economist who advises legislators shaping the U.S. farm bill, told Reuters on the sidelines of a farm bankers meeting in Minneapolis.¶ The farm bill, already a year behind schedule, is the master legislation that directs government supports for farmers and food aid programs.¶ The bill is now with a conference committee of 41 members of Congress who are hammering out the difference between the House and Senate bills. The biggest difference: the Senate wants $4 billion cut from food stamps while the House wants to reduce the program by $40 billion.¶ "Food is the only division. The other issues can be settled," said Flinchbaugh, citing variations in how they address crop insurance for farmers along with other subsidies.¶ Historically, the conference committee reconciles differences and brings a compromise to a final vote. That process has been hampered by the deep divisions between the Republican-controlled House and the Senate, where Democrats are in the majority.¶ "There is a way perhaps we can get past this food stamp gridlock. We cut food stamps $6-$8 billion and then we put in all these caveats the far right wants to put in the food stamp program, like work requirements and drug tests," said Flinchbaugh, who has advised on farm policy for over 40 years.¶ The government extended the expired 2008 farm bill last year. Leaders of the House and Senate agricultural committees have a self-imposed deadline of reaching agreement by Thanksgiving and the White House has threatened to veto a bill with large food stamp cuts.¶ If Congress fails to pass a new bill, a second extension is likely, Flinchbaugh said.¶ "There is some talk we will do that for two years because we don't want to be messing with this during an election year," Flinchbaugh said. "Or, we implement the permanent legislation."¶ Without a new law, U.S. farm policy will be dictated by an underlying 1938 permanent law that would bring back the concept of "price parity" which led to sharply higher guaranteed crop prices, Flinchbaugh said.

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

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

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

#### PC is key --- overcomes partisanship

Josh Lederman 10/18/13, reporter for the Associated Press, and Jim Kuhnhenn, “No safe bets for Obama despite toned-down agenda,” US News and World Report, http://www.usnews.com/news/politics/articles/2013/10/18/no-safe-bets-for-obama-despite-toned-down-agenda

WASHINGTON (AP) — Regrouping after a feud with Congress stalled his agenda, President Barack Obama is laying down a three-item to-do list for Congress that seems meager when compared with the bold, progressive agenda he envisioned at the start of his second term.¶ But given the capital's partisanship, the complexities of the issues and the limited time left, even those items — immigration, farm legislation and a budget — amount to ambitious goals that will take political muscle, skill and ever-elusive compromise to execute.¶ "Those are three specific things that would make a huge difference in our economy right now," Obama said. "And we could get them done by the end of the year if our focus is on what's good for the American people."

#### New farm bill key to prevent a food price spike

Nelson 10/17/13 [Joe Nelson, writer for WEAU news, “Obama, ag industry waiting for new Farm bill,” http://www.weau.com/home/headlines/Obama-ag-industry-waiting-for-new-Farm-Bill-228259521.html]

With the government shutdown over, farmers are still waiting for a deal to be made.¶ President Obama listed the farm bill as one of his top priorities to address, which could protect farmers and low income families.¶ “We should pass a farm bill, one that American farmers and ranchers can depend on, one that protects vulnerable children and adults in times of need, one that gives rural communities opportunities to grow and the long-term certainty that they deserve. Again, the Senate's already passed a solid bipartisan bill. It's got support from democrats and republicans. It's sitting in the House waiting for passage. If House republicans have ideas that they think would improve the farm bill, let's see them. Let's negotiate. What are we waiting for? Let's get this done,” Obama said.¶ Farmers said if they struggle without a farm bill, it could cause food prices to spike, force some out of the industry and damage the economy.¶ “If the milk price falls below a certain level, the Farm bill does help support farmers during a time of an economic crisis when prices drop too low,” Chippewa County U.W. Extension Crops and Soils Educator, Jerry Clark¶ The current, five-year Farm bill was temporarily extended, but both farmers and Clark said with much to lose, a new one is needed.¶ “Any time we can get the new bill passed, it's definitely going to help because there's always new changes in agriculture, as far as commodities or practices that need to be implemented,” Clark said. “So those types of things should be passed to keep up with the current trends in agriculture.¶ Durand corn and soybean farmer and Value Implement dealer TJ Poeschel says not having a new farm bill and reverting to a bill from 1949 could cut down profits or even force some farmers to quit or retire.

#### Extinction

Brown 9 (Lester R, Founder of the Worldwatch Institute and the Earth Policy Institute “Can Food Shortages Bring Down Civilization?” Scientific American, May, http://www.scientificamerican.com/article.cfm?id=civilization-food-shortages)

The biggest threat to global stability is the potential for food crises in poor countries to cause government collapse. Those crises are brought on by ever worsening environmental degradation¶ One of the toughest things for people to do is to anticipate sudden change. Typically we project the future by extrapolating from trends in the past. Much of the time this approach works well. But sometimes it fails spectacularly, and people are simply blindsided by events such as today's economic crisis.¶ For most of us, the idea that civilization itself could disintegrate probably seems preposterous. Who would not find it hard to think seriously about such a complete departure from what we expect of ordinary life? What evidence could make us heed a warning so dire--and how would we go about responding to it? We are so inured to a long list of highly unlikely catastrophes that we are virtually programmed to dismiss them all with a wave of the hand: Sure, our civilization might devolve into chaos--and Earth might collide with an asteroid, too! For many years I have studied global agricultural, population, environmental and economic trends and their interactions. The combined effects of those trends and the political tensions they generate point to the breakdown of governments and societies. Yet I, too, have resisted the idea that food shortages could bring down not only individual governments but also our global civilization.¶ I can no longer ignore that risk. Our continuing failure to deal with the environmental declines that are undermining the world food economy--most important, falling water tables, eroding soils and rising temperatures--forces me to conclude that such a collapse is possible. The Problem of Failed States Even a cursory look at the vital signs of our current world order lends unwelcome support to my conclusion. And those of us in the environmental field are well into our third decade of charting trends of environmental decline without seeing any significant effort to reverse a single one. In six of the past nine years world grain production has fallen short of consumption, forcing a steady drawdown in stocks. When the 2008 harvest began, world carryover stocks of grain (the amount in the bin when the new harvest begins) were at 62 days of consumption, a near record low. In response, world grain prices in the spring and summer of last year climbed to the highest level ever.As demand for food rises faster than supplies are growing, the resulting food-price inflation puts severe stress on the governments of countries already teetering on the edge of chaos. Unable to buy grain or grow their own, hungry people take to the streets. Indeed, even before the steep climb in grain prices in 2008, the number of failing states was expanding [see sidebar at left]. Many of their problem's stem from a failure to slow the growth of their populations. But if the food situation continues to deteriorate, entire nations will break down at an ever increasing rate. We have entered a new era in geopolitics. In the 20th century the main threat to international security was superpower conflict; today it is failing states. It is not the concentration of power but its absence that puts us at risk.States fail when national governments can no longer provide personal security, food security and basic social services such as education and health care. They often lose control of part or all of their territory. When governments lose their monopoly on power, law and order begin to disintegrate. After a point, countries can become so dangerous that food relief workers are no longer safe and their programs are halted; in Somalia and Afghanistan, deteriorating conditions have already put such programs in jeopardy.Failing states are of international concern because they are a source of terrorists, drugs, weapons and refugees, threatening political stability everywhere. Somalia, number one on the 2008 list of failing states, has become a base for piracy. Iraq, number five, is a hotbed for terrorist training. Afghanistan, number seven, is the world's leading supplier of heroin. Following the massive genocide of 1994 in Rwanda, refugees from that troubled state, thousands of armed soldiers among them, helped to destabilize neighboring Democratic Republic of the Congo (number six).Our global civilization depends on a functioning network of politically healthy nation-states to control the spread of infectious disease, to manage the international monetary system, to control international terrorism and to reach scores of other common goals. If the system for controlling infectious diseases--such as polio, SARS or avian flu--breaks down, humanity will be in trouble. Once states fail, no one assumes responsibility for their debt to outside lenders. If enough states disintegrate, their fall will threaten the stability of global civilization itself.

### Off

#### 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

#### Judicial review of targeted killings would destroy unit cohesion, cause risk aversion, undermine mission effectiveness, and disclose key intel sources---all of those destroy effective drone ops

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>

As a member organization comprised of individual veterans who have served this nation in war, and who continue to do so around the world, the VFW has a strong interest in protecting the operations of the U.S. armed forces from unwarranted or inappropriate judicial intrusion, as it believes is the case here. Such judicial interference with the Executive Branch and its constitutional war powers has dangerous implications for national security and our armed forces. Litigation over combat activities would undermine unit cohesion, the core of combat effectiveness at the small unit level. Judicial scrutiny of combat decision making—including strategic, operational and tactical decisions—would induce risk aversion and second-guessing among America’s military leaders, degrading their effectiveness. And, in the sensitive field of special operations, cases such as this may compromise the sources and methods used by America’s elite warriors, potentially threatening both their mission and their safety. Because of the importance of these issues, and the serious threat that this suit and similar litigation pose to national defense, the VFW is submitting this amicus curiae brief in order to share with the Court its perspective on the reasons why this action should be dismissed for lack of subject-matter jurisdiction.

SUMMARY OF ARGUMENT

The VFW agrees with the Government’s arguments regarding why this suit is barred, including by the political question doctrine. Rather than repeating those arguments, this amicus brief seeks to add perspective to the reasons why suits like the present action would threaten national security by interfering with ongoing military operations. Allowing this case to proceed would contravene the core military principle of “unity of command,” and undermine the military’s chain of command, creating uncertainty for subordinate leaders and soldiers. Such litigation also would adversely affect unit cohesion, the glue which binds small units together in the heat of battle, and enables them to survive and accomplish their missions. Further, litigation of cases such as this would undermine battlefield decisionmaking by subjecting tactical, operational and strategic decisions to second-guessing by courts far removed from the battlefield. And, to the extent this case will involve the activities of special operations forces, the VFW urges the Court to tread with particular caution, because of the need to protect the extremely sensitive sources and methods utilized by our nation’s elite forces.

#### 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

### Off

#### 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 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."

## Case

## Allied Cooperation

### No Program Collapse

#### There’s a sustainable consensus on the drone program---won’t collapse

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

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

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

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

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

### Coop Inevitable – Self-Interest

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

Kristin Archick 13, European affairs specialist @ CRS, 9-4, “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.

#### All countries will continue cooperating

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.

### Allies Not Key

#### US anti-terror intel is fine on its own

Barton Gellman and Greg Miller 13, 8-29, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

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

### Alt Cause – NSA

#### NSA scandal wrecks terror coop

Matthew Feeney 10/25, Reason, "EU Leaders: Latest NSA Revelations Could Threaten Fight Against Terrorism", 2013, reason.com/blog/2013/10/25/eu-leaders-latest-nsa-revelations-could

The latest reporting on the documents leaked by Edward Snowden reveals that the NSA has spied on 35 world leaders, who have not been named.¶ From The Guardian:¶ The National Security Agency monitored the phone conversations of 35 world leaders after being given the numbers by an official in another US government department, according to a classified document provided by whistleblower Edward Snowden.¶ The confidential memo reveals that the NSA encourages senior officials in its "customer" departments, such as the White House, State and the Pentagon, to share their "Rolodexes" so the agency can add the phone numbers of leading foreign politicians to their surveillance systems.¶ The document notes that one unnamed US official handed over 200 numbers, including those of the 35 world leaders, none of whom is named. These were immediately "tasked" for monitoring by the NSA.¶ The news comes days after the French newspaper Le Monde reported that the NSA spied on millions of French phone records, the German newspaper Der Spiegel reported that the NSA hacked into the Mexican president’s public email account, and German Chancellor Angela Merkel called President Obama over concerns that her cellphone was targeted by American intelligence.¶ The timing of these revelations is not good for the Obama administration. European Union leaders recently began their latest summit in Brussels, and unsurprisingly both the French and the Germans are pushing for a “no-spying” agreement with the U.S.¶ While the NSA revelations from this week make up only some of the latest embarrassing news facing the Obama administration, it is the only news that could have long-lasting diplomatic and national security implications.¶ Ironically, the behavior of the NSA (which is supposedly tasked with helping keep the U.S. safe) could threaten the fight against terrorism. A statement from the heads of state and government of European Union nations reads in part:¶ "Alongside our foreseen work, we had a discussion tonight about recent developments concerning possible intelligence issues and the deep concerns that these events have raised among European citizens.¶ The Heads of State or government underlined the close relationship between Europe and the USA and the value of that partnership. They expressed their conviction that the partnership must be based on respect and trust, including as concerns the work and cooperation of secret services.¶ They stressed that intelligence gathering is a vital element in the fight against terrorism. This applies to relations between European countries as well as to relations with the USA. A lack of trust could prejudice the necessary cooperation in the field of intelligence gathering.

## Imminence

### UQ

#### Strikes are down because precision is up---solves the case but avoids the DA

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

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

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

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

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

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

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

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

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

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

"Given the clandestine nature of the program, it's impossible to assess the reasons why the number of strikes has decreased over time," said Seth Jones, a political scientist who specializes in counterterrorism studies at the Rand Corp., a research institution with headquarters in California.

"We just don't have access to the information," he said.

Thirst for new intelligence

With U.S. counterterrorism officials eager to pin down fresh and actionable intelligence on what several sources described as a gradually metastasizing and complex network of al Qaeda affiliate groups concentrated in North Africa, most analysts say it would make sense for the Obama administration to begin favoring capture-and-interrogate missions.

"Raids allow you to both potentially capture a high-value target and exploit his knowledge through interrogations," said Daniel R. Green, an al Qaeda and Yemen analyst at the Washington Institute for Near East Policy. When U.S. soldiers are on the ground for a raid, Mr. Green said, it means they can "collect additional materials of intelligence value from the dwelling, further assisting in the planning of follow-on operations."

Others said heavy reliance on drones has only added to America's potentially dangerous deficit of human intelligence on al Qaeda. "If you're not capturing guys to get that intel, then, yeah, you're going to be missing a part of the picture — if not a large part of the picture," said Thomas Joscelyn, a senior fellow focusing on al Qaeda and North Africa at the Foundation for Defense of Democracies.

"You can rely extensively on electronic intelligence, but you still need that [human intelligence]to put the full picture together," said Mr. Joscelyn, who added that recent years have fostered a "fetish within some parts of the intelligence community for drone attacks because they've succeeded in taking out some very high-level targets.

"There are other parts of the American military and intelligence community that understand that drones are not going to win this war," he said. "Drones are a necessary tactic, but they are not a strategy."

Last weekend's raids in Libya and Somalia are "evidence that there's more emphasis now on capture than on kill," said Linda Robinson a senior international policy analyst at the Rand Corp.

"It is an indication of the shift that was alluded to by the president in May," said Mrs. Robinson, referring to a speech President Obama gave at the National Defense University in which he stressed that "as a matter of policy, the preference of the United States is to capture terrorist suspects."

Mrs. Robinson said there is "recognition that, frankly, you get something from raids, which you don't get from drones." Raids allow for capturing a suspect and can lead to an "incredible intelligence dump" from that individual, she said.

Drones still on the table

During the May speech on terrorism, Mr. Obama acknowledged the use of drones as a central tactic within his administration's war strategy and suggested it will continue.

At the time, Mr. Obama said it "not possible for America to simply deploy a team of Special Forces to capture every terrorist."

Citing instances in which doing so "would pose profound risks to our troops and local civilians" and where "putting U.S. boots on the ground may trigger a major international crisis," Mr. Obama said the secret May 2011 Navy SEAL operation that resulted in the killing of al Qaeda leader Osama bin Laden "cannot be the norm."

In the shadow of such remarks from the president, some analysts say, such raids likely would pose challenges in Yemen, where the Obama administration has relied heavily on the use of drones.

A raid such as the one that netted al-Libi in Tripoli would be "much more difficult" in Yemen "in part because potential targets are far more inland, thus complicating an attack from the sea," said Mr. Green, at the Washington Institute for Near East Policy.

"Also, the Yemeni government is much more capable and would likely detect such a raid, as compared to Libya's anarchic conditions, and al Qaeda is a much more developed force in Yemen, which will have already adapted to this new tactic by U.S. forces," he said.

Mrs. Robinson said that "with a raid, of course, you incur more risk for those U.S. forces usually, special operations forces that you're putting on the ground."

"I don't think there's a big appetite to go around launching raids unless there is a clear U.S. national security interest to do so," she said. "The political and diplomatic and atmospheric risks or counterproductive effects have to be very much weighed in the equation."

### CC’s

#### Casualties are way down and drones are far more precise than alternatives---our ev uses the best data

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". ¶ I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. ¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. ¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. ¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. ¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." ¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. ¶ Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. ¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. ¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

### Pakistan---1NC

#### Limiting targeted killings in Pakistan causes a shift to ground assaults---turns the case and collapses the Pakistani government

Richard Weitz 11, Senior Fellow and Director of the Center for Political-Military Analysis at the Hudson Institute, 1/2/11, “WHY UAVS HAVE BECOME THE ANTI-TERROR WEAPON OF CHOICE IN THE AFGHAN-PAK BORDER,” http://www.sldinfo.com/why-uavs-have-become-the-anti-terror-weapon-of-choice-in-the-afghan-pak-border/

Perhaps the most important argument in favor of using UAV strikes in northwest Pakistan and other terrorist havens is that alternative options are typically worse.

The Pakistani military has made clear that it is neither willing nor capable of repressing the terrorists in the tribal regions. Although the controversial ceasefire accords Islamabad earlier negotiated with tribal leaders have formally collapsed, the Pakistani Army has repeatedly postponed announced plans to occupy North Waziristan, which is where the Afghan insurgents and the foreign fighters supporting them and al-Qaeda are concentrated.

Such a move that would meet fierce resistance from the region’s population, which has traditionally enjoyed extensive autonomy. The recent massive floods have also forced the military to divert its assets to humanitarian purposes, especially helping the more than ten million displaced people driven from their homes.

But the main reason for their not attacking the Afghan Taliban or its foreign allies based in Pakistan’s tribal areas is that doing so would result in their joining the Pakistani Taliban in its vicious fight with the Islamabad government.

Yet, sending in U.S. combat troops on recurring raids or a protracted occupation of Pakistani territory would provoke widespread outrage in Pakistan and perhaps in other countries as well since the UN Security Council mandate for the NATO-led International Security Assistance Force (ISAF) in Afghanistan only authorizes military operations in Pakistan.

On the one known occasion when U.S. Special Forces actually conducted a ground assault in the tribal areas in 2008, the Pakistanis reacted furiously. On September 3, 2008, a U.S. Special Forces team attacked a suspected terrorist base in Pakistan’s South Waziristan region, killing over a dozen people. These actions evoked strong Pakistani protests. Army Chief of Staff Gen. Ashfaq Kayani, who before November 2007 had led Pakistan’s Inter-Services Intelligence (ISI), issued a written statement denying that “any agreement or understanding [existed] with the coalition forces” [in Afghanistan] allowing them to strike inside Pakistan.” The general pledged to defend Pakistan’s sovereignty and territorial integrity “at all cost.” Prime Minister Yousaf Raza Gilani and President Asif Ali Zardari also criticized the U.S. ground operation on Pakistani territory. On September 16, 2008, the Pakistani army announced it would shoot any U.S. forces attempting to cross the Afghan-Pakistan border.

On several occasions since then, Pakistani troops and militia have fired at what they believed to be American helicopters flying from Afghanistan to deploy Special Forces on their territory, though there is no conclusive evidence that the U.S. military has ever attempted another large-scale commando raid in Pakistan after the September 2008 incident.

Further large-scale U.S. military operations into Pakistan could easily rally popular support behind the Taliban and al-Qaeda. It might even precipitate the collapse of the Islambad government and its replacement by a regime in nuclear-armed Pakistan that is less friendly to Washington.

Given these alternatives, continuing the drone strikes appears to be the best of the limited options available to deal with a core problem, giving sanctuary to terrorists striking US and coalition forces in Afghanistan and beyond.

### No Pakistan Impact

#### No impact to Pakistan collapse

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

Note – Michael Desch = prof, polsci, Notre Dame

As for Pakistan, it has taken numerous precautions to ensure that its own weapons are insulated from the country’s chaos, installing complicated firing mechanisms to prevent a launch by lone radicals, for example, and instituting special training and screening for its nuclear personnel to ensure they’re not infiltrated by extremists. Even if the Pakistani state did collapse entirely—the nightmare scenario— the chance of a Taliban bomb would still be remote. Desch argues that the idea that terrorists “could use these weapons radically underestimates the difficulty of actually operating a modern nuclear arsenal. These things need constant maintenance and they’re very easy to disable. So the idea that these things could be stuffed into a gunnysack and smuggled across the Rio Grande is preposterous.”

### AT: Maritime Attacks

#### Squo solves piracy threat in Horn of Africa

Emma Welch 13, research associate in the Center for Preventive Action and the International Institutions and Global Governance program at the Council on Foreign Relations, 1/31/13, “Fighting Maritime Piracy: Mission Accomplished?,” http://progressiverealist.org/blogpost/guest-post-fighting-maritime-piracy-mission-accomplished

Hassan may have an ulterior motive for quitting his career in piracy: business just isn’t what it used to be. In November 2008, pirates—reportedly led by Hassan—seized a Saudi tanker carrying over $100 million worth of oil. The tanker was released two months later, but only after the pirates negotiated a ransom of $3 million. Several months later, a Ukranian ship carrying weapons and ammunition was seized by the same group that ultimately claimed another handsome ransom. Oceans Beyond Piracy estimated that Somali piracy cost the global economy roughly $7 billion in 2011.

The twin attacks catalyzed the UN Security Council to action in December 2008. Resolution 1846 called on states and regional organizations to use “all necessary means” to take preemptive act against piracy off the coast of Somalia. A few weeks later, the UN Security Council passed Resolution 1851 to legitimize the use of force on land as well as sea. Ad hoc coalitions of states including the United States, United Kingdom, and the European Union began patrolling the Gulf of Aden as part of Combined Task Force 151, which was established to coordinate the various maritime operations in the region. Other countries ranging from China to Iran also deployed naval vessels to the Gulf of Aden. In May 2012, the European Union naval force took the unprecedented step of attacking a pirate base on the Somali coast, in the first land strike by external actors.

Major shipping companies also worked with such coalitions to develop “best management practices” to prevent attacks by pirates, including traveling at full speed through high risk areas, installing physical barriers like razor wire, and removing ladders. In addition, private security teams have been hired to protect an estimated 40 percent of large commercial vessels in the Gulf of Aden and surrounding waters, at the cost of $45,000 for a four-man team. So far, these teams have a 100 percent success rate: no ship with armed guards aboard has been attacked by pirates.

Thanks to increased international naval patrols in the Gulf of Aden and Indian Ocean, as well as the effective—albeit controversial—implementation of best practices and additional security, pirate attacks fell by over 30 percent from 439 in 2011 to 297 in 2012. The number of hostages also decreased markedly from 802 to 585 over the past year. The success in combating piracy in the Gulf of Aden and Indian Ocean demonstrates that a relatively simple, coordinated policing regime is capable of delivering real results, particularly when it involves cooperation with the private sector. The bottom line for enterprising Somali pirates: risks are higher and rewards are lower.

#### Even if attacks occur, no econ impact

Ray A. Stapf 11, Captain, U.S. Navy "A MATURE MARITIME STRATEGY FOR AFRICA TO MEET NATIONALSECURITY GOALS" 7/23 www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA545430&Location=U2&doc=GetTRDoc.pdf

In contrast, the U.S. shipments through the Suez Canal, including oil and non-oil products, is less than 5 percent of the total cargo transiting the canal annually. Even more telling, U.S. flagged ships transiting through the pirate infested GOA, in route to or from the Suez Canal, are less than one percent of the shipping traffic through the GOA. The 28 million cargo tons of oil and other products the U.S. imported or exported through the Somali Basin in 2009 only represents 1.2 percent of the more than 2.2 billion cargo tons of goods shipped in an out the U.S. sea ports in 2009, clearly demonstrating that U.S. shipping in the Somali Basin is a peripheral to low interest with respect to U.S. economic trade and security.

U.S. commerce and trade in and around the Somali Basin is also negligible, with very little opportunity for improvement near-term. To highlight the insignificance of U.S. trade and commerce in the Somali Basin, one only has to look to Canada and China, where the U.S. traded more each day in 2010 with these two countries than it did over an entire year with all East African nations combined.

The pirate threat in the Somali Basin is mitigated by naval patrol and escort services from the European Union Naval Forces (EUNAVFOR) under Operation ATALANTA. Operation ATALANTA is a coalition effort by multiple EU members and has been conducting piracy suppression and naval escort and protection services in the Somali Basin since December 2008.

Considering that U.S. flagged ships make up less than one percent of the traffic transiting the Gulf of Aden (GOA), the risk to pirate attack is very low, and unlike most nations, the U.S. has mandated that U.S. flagged vessels transiting the GOA or Horn of Africa will employ armed or unarmed security detachments for piracy prevention.

The U.S. policy for non-negotiation with criminals and pirates is a step in the right direction to deter piracy and it needs to be embraced by all shipping owners, operators and flag states. With minimal U.S. commercial shipping in the region, combined with the robust implementation of anti-piracy security measures by U.S. flagged ships, the Somali based piracy poses a minimal risk to the U.S. shipping industry operating in the Somali Basin, and essentially no risk to U.S. economic security and stability.

### No Econ Impact

#### No econ impact

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

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

# Block

## DA

### low level

#### Targeting low-level militants is key to all aspects of counter-terror---in-depth network analysis means the people we target don’t seem important to observers, but they’re actually vital to the effectiveness of terror groups

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>

This becomes obvious when one considers that national security bureaucrats will look beyond criticality and vulnerability, and also engage in network-based analysis. Network-based analysis looks at terrorist groups as nodes connected by links, and assesses how components of that terrorist network operate together and independently of one another.143 Contrary to popular critiques of the targeting process that liken it to a “haphazardly prosecuted assassination program,” in reality modern targeting involves applying pressure to various nodes and links within networks to disrupt and degrade their functionality.144

To effectively pursue a network-based approach, bureaucrats rely in part on what is known as “pattern of life analysis” which involves “connecting the relationships between places and people by tracking their patterns of life.” This analysis draws on the interrelationships among groups “to determine the degree and points of their interdependence,” it assesses how activities are linked and looks to “determine the most effective way to influence or affect the enemy system.”145 While the enemy moves from point to point, reconnaissance or surveillance tracks and notes every location and person visited. Connections between the target, the sites they visit, and the persons they interact with are documented, built into a network diagram, and further analyzed.146 Through this process links and nodes in the enemy's network emerge.147 The analysis charts the “social, economic and political networks that underpin and support clandestine networks,”148 identifying key decision-makers and those who support or influence them indirectly.149 This may mean that analysts will track logistics and money trails, they may identify key facilitators and non-leadership persons of interests, and they will exploit human and signals intelligence combined with computerized knowledge integration that generates and cross-references thousands of data points to construct a comprehensive picture of the enemy network.150 “This analysis has the effect of taking a shadowy foe and revealing his physical infrastructure . . . as a result, the network becomes more visible and vulnerable, thus negating the enemy’s asymmetric advantage of denying a target.”151

Viewing targeting in this way demonstrates how seemingly low-level individuals such as couriers and other “middle-men” in decentralized networks such as al Qaeda are oftentimes critical to the successful functioning of the enemy organization.152 Targeting these individuals can “destabilize clandestine networks by compromising large sections of the organization, distancing operatives from direct guidance, and impeding organizational communication and function.”153 Moreover, because clandestine networks rely on social relationships to manage the trade-off between maintaining secrecy and security, attacking key nodes can have a detrimental impact on the enemy’s ability to conduct their operations.154 Thus, while some individuals may seem insignificant to the outside observer, when considered by a bureaucrat relying on network based analytical techniques, the elimination of a seemingly low level individual might have an important impact on an enemy organization. Moreover, because terrorist networks rely on secrecy in communication, individuals within those networks may forge strong ties that remain dormant for the purposes of operational security.155 This means that social ties that appear inactive or weak to a casual observer such as an NGO, human rights worker, journalist, or even a target’s family members may in fact be strong ties within the network.156 Furthermore, because terrorist networks oftentimes rely on social connections between charismatic leaders to function, disrupting those lines of communication can significantly impact those networks.157

### AT Blash

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

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

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

#### Zero data supports a causal link between drones and anti-Americanism---empirically reducing drone strikes doesn’t reduce resentment

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

Critics argue that drone strikes alienate the population and thus help Al-Qaeda’s recruitment, generating more terrorists than are killed. These statements, which may at ﬁrst seem “obviously true,” are not supported by data. In fact, the resentment of the United States has many sources, and this resentment was high before drones were used and is high in several nations in the Middle East where drones were never used.

For example, a comparison of drone strike frequency in Pakistan and anti-American sentiment in the country reveals little correlation. From 2004 to 2007, there were few drone strikes in that country (only 10 over the four year span).53 However, starting in 2008 the United States carried out a total of 36 drone strikes, with this number increasing in subsequent years to 54 strikes and 122 strikes, respectively.54 From this peak in 2010, the number of drone strikes per year began to decline with 73 strikes in 2011 and 48 in 2012. 55 In the same years, data from the Pew Global Attitudes Project reveals that the percentage of Pakistanis who held an “unfavorable” view of the United States remained relatively steady from 2008 to 2010, beginning to increase only after the United States scaled back the number of drone strikes starting in 2011.56 Moreover anti American sentiments were as high or higher in the same years in Jordan, Egypt, Turkey, and the Palestinian territories.57

Thus, in 2007, 2009, and 2010, the United States’ unfavorability in Pakistan held steady at 68 percent (dropping brieﬂy to 63 percent in 2008), but then began to increase, rising to 73 percent in 2011 and 80 percent in 2012—even as the number of drone strikes was dropping signiﬁcantly.58 At the same time, anti-American sentiment was on the rise in countries where no drone strikes were taking place. In Jordan, for example, U.S. unfavorability rose from 78 percent in 2007 to 86 percent in 2012 while Egypt saw a slight rise from 78 percent to 79 percent over the same period.59 Notably, the percentage of respondents reporting an “unfavorable” view of the United States in these countries is as high, or higher, than in drone-targeted Pakistan.

### Link UQ

#### 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

#### Dear god Mcneal is just so much better than your authors

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.

#### It’s the most comprehensive review of the process possible

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 overcome the lack of empirical evidence which plagues theoretical discourse regarding targeted killings, I conducted field research using proven qualitative research techniques employed by case study researchers.18 The results of that research are contained in Parts II and III of this article, which explain how targeted killings are conducted. Part II addresses how kill-lists are made and Part III addresses how targeted killings are executed. The case study began with a review of hundreds of pages of military policy memoranda, disclosures of government policies through Freedom of Information Act (FOIA) requests by NGOs and filings in court documents, public statements by military and intelligence officials, and descriptive accounts reported by the press and depicted in non-fiction books. I supplemented these findings by observing and reviewing aspects of the official training for individuals involved in targeted killings and by conducting confidential interviews with members of the military, special operations, and intelligence community who are involved in the targeted killing process. An earlier version of this article included citations to the confidential interviews, however every piece of information gathered in an interview has been substantiated by a publicly available source, obviating the need to cite to any individual interview. These research techniques resulted in a richly detailed depiction of the targeted killing process, the first of its kind to appear in any single publication. As such, these sections are quite lengthy, but the description is essential to legal theory as it is impossible to accurately critique on accountability grounds a process for which no empirical account exists.

### AT imminence defense

#### The plan bans them all

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

Civil liberties lawyers have complained loudly of the treatment of captured enemy alien combatants held at Guantánamo Bay, in Afghanistan, or in Iraq.27 But few protested the summary killing of an American citizen by remote control until 2010, when civil liberties groups filed a lawsuit on behalf of al-Awlaki.28 The same civil liberties lawyers now argue that, with few exceptions, drone strikes violate the U.S. Constitution. They reason that the rules that apply to uniformed combatants do not apply to an undefined war with a limitless battlefield. They concede that the United States may use targeted killings against American citizens, but only under the “most extraordinary circumstances,” such as when they join an enemy at war. Otherwise, the United States should try to apprehend these individuals and provide them with judicial due process.29 The lawsuit follows a report by the U.N. Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, which concluded that the use of drones to carry out targeted killings violates the laws of war, a claim echoed by some American legal scholars.30

### Links to Broad Shit

#### Can’t avoid any of our links

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

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

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

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

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

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

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

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

### Judicial Review Link---2NC

Kent says qualified immunity doesn’t apply if they are violating – clearly established federal rights --- ie the constitution --- ie what plan rules on

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

### Chilling

#### Mere threat of lawsuits - > chilling

Jack Goldsmith 12, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March, Power and Constraint, P. 199-201

Clive Stafford Smith, a former CCR attorney who was instrumental in its early GTMO victories and who now leads the British advocacy organization Reprieve, is using this strategy in the targeted killing context. "There are endless ways in which the courts in Britain, the courts in America, the international Pakistani courts can get involved" in scrutinizing U.S. targeting killing practices, he argues. "It's going to be the next 'Guantanamo Bay' issue."' Working in a global network of NGO activists, Stafford Smith has begun a process in Pakistan to seek the arrest of former CIA lawyer John Rizzo in connection with drone strikes in Pakistan, and he is planning more lawsuits in the United States and elsewhere against drone operators." "The crucial court here is the court of public opinion," he said, explaining why the lawsuits are important even if he loses. His efforts are backed by a growing web of proclamations in the United Nations, foreign capitals, the press, and the academy that U.S. drone practices are unlawful. What American University law professor Ken Anderson has described as the "international legal-media-academic-NGO-international organization-global opinion complex" is hard at work to stigmatize drones and those who support and operate them."¶ This strategy is having an impact. The slew of lawsuits in the United States and threatened prosecutions in Europe against Bush administration officials imposes reputational, emotional, and financial costs on them that help to promote the human rights groups' ideological goals, even if courts never actually rule against the officials. By design, these suits also give pause to current officials who are considering controversial actions for fear that the same thing might later happen to them. This effect is starting to be felt with drones. Several Obama administration officials have told me that they worry targeted killings will be seen in the future (as Stafford Smith predicts) as their administration's GTMO. The attempted judicial action against Rizzo, the earlier lawsuits against top CIA officials in Pakistan and elsewhere, and the louder and louder proclamations of illegality around the world all of which have gained momentum after al-Aulaqi's killing—are also having an impact. These actions are rallying cries for protest and political pushback in the countries where the drone strikes take place. And they lead CIA operators to worry about legal exposure before becoming involved in the Agency's drone program." We don't know yet whether these forces have affected actual targeting practices and related tactics. But they induce the officials involved to take more caution. And it is only a matter of time, if it has not happened already, before they lead the U.S. government to forgo lawful targeted killing actions otherwise deemed to be in the interest of U.S. national security.

### Bivens

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

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

First, the D.C. Circuit has repeatedly held that where claims directly implicate matters involving national security and particularly war powers, special factors counsel hesitation. See Doe, 683 F.3d at 394-95 (discussing the “strength of the special factors of military and national security” in refusing to infer remedy for citizen detained by military in Iraq); Ali, 649 F.3d at 773 (explaining that “the danger of obstructing U.S. national security policy” is a special factor in refusing to infer remedy for aliens detained in Iraq and Afghanistan (internal quotation and citation omitted)); Rasul v. Myers, 563 F.3d 527, 532 n.5 (D.C. Cir. 2009) (same for aliens detained at Guantánamo Bay). These cases alone should control Plaintiffs’ claims here. Plaintiffs challenge the alleged targeting of and missile strikes against members of AQAP in Yemen. Few cases more clearly present “the danger of obstructing U.S. national security policy” than this one. Ali, 649 F.3d at 773. Accordingly, national security considerations bar inferring a remedy for Plaintiffs’ claims.19

Second, Plaintiffs’ claims implicate the effectiveness of the military. As with national security, the D.C. Circuit has consistently held that claims threatening to undermine the military’s command structure and effectiveness present special factors. See Doe, 683 F.3d at 396; Ali, 649 F.3d at 773. Allowing a damages suit brought by the estate of a leader of AQAP against officials who allegedly targeted and directed the strike against him would fly in the face of explicit circuit precedent. As the court in Ali explained: “It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.” 649 F.3d at 773 (quoting Eisentrager, 339 U.S. at 779). Moreover, allowing such suits to proceed “would diminish the prestige of our commanders, not only with enemies but with wavering neutrals.” Id.; see also Vance, 2012 WL5416500 at \*5 (“The Supreme Court’s principal point was that civilian courts should not interfere with the military chain of command . . . .”); Lebron, 670 F.3d at 553 (barring on special factors grounds Bivens claims by detained terrorist because suit would “require members of the Armed Services and their civilian superiors to testify in court as to each other’s decisions and actions” (citation and internal quotation omitted)).

Creating a new damages remedy in the context of alleged missile strikes against enemy forces in Yemen would have the same, if not greater, negative outcome on the military as in the military detention context that is now well-trodden territory in this and other circuits. These suits “would disrupt and hinder the ability of our armed forces to act decisively and without hesitation in defense of our liberty and national interests.” Ali, 649 F.3d at 773 (citation and internal quotation omitted). To infuse such hesitation into the real-time, active-war decision-making of military officers absent authorization to do so from Congress would have profound implications on military effectiveness. This too warrants barring this new species of litigation.

#### 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.

### AUMF

#### Judicial review would eliminate targeted killing authority outside of declared war zones and drastically narrow the standard of combatants’ participation in hostilities---it’s unique because the executive hasn’t been forced to litigate the policy in any court

Lisa Hajjar 12, professor of sociology at the University of California -- Santa Barbara, 8/9/12, “Litigating the New Frontier in the War on Terror,” http://www.jadaliyya.com/pages/index/6801/litigating-the-new-frontier-in-the-war-on-terror

Now CCR and the ACLU are pioneering into the new frontier, the US targeted killing policy, which has escalated dramatically since Barack Obama took office in 2009. In July, the two organizations filed a lawsuit against Defense Secretary Leon Panetta, CIA Director David Petraeus, and two commanders of the Joint Special Operations Command (JSOC). Although thousands have been killed by drones and targeted raids, the grease that opens the courtroom door in this case is the American citizenship status of three of the dead: Anwar al-Awlaki, Samir Khan, and Abdulrahman al-Awlaki.

This lawsuit is pioneering because it is the first challenge in a US court to the legality of the consequences of the targeted killing policy. It is not the first case, however. After the Washington Post reported in January 2010 that Anwar al-Awlaki had been put on the Obama administration’s “kill list,” his father Nasser, with the ACLU and CCR, brought a lawsuit challenging the legality of executive authorization for extrajudicial execution of a citizen. That case was dismissed when the court ruled that the senior al-Awlaki lacked standing because the government had no plans to kill him.

Now that Anwar al-Awlaki, his 16-year-old son Abdulrahman and Khan are dead, there is a different kind of case to be made. The plaintiffs are Nasser al-Awlaki and Sarah Khan, mother of Samir. The complaint charges the defendants with violating the Fourth and Fifth Amendments of the Constitution by authorizing attacks that killed three citizens. Everyone in the US, regardless of citizenship status, is covered by the Constitution. But beyond the shores, only citizens have constitutional rights not to be deprived of life without due process of law. Or at least that is a right the lawsuit aims to demonstrate by pursuing consequences for those responsible for its violation.

Of the three dead citizens, only Anwar al-Awlaki was targeted on purpose. Khan had the misfortune of being with him on 30 September 2011 when the jointly operated CIA-JSOC drone struck. Why Abdulrahman was killed in an attack two weeks later remains shrouded in secrecy, like the policy in general.

Anwar al-Awlaki was accused by the government of being a leader of al-Qaeda in the Arabian Peninsula and waging war on the US. The authorization to kill him had been varnished with a legal opinion written in 2010 by lawyers in the Justice Department’s Office of Legal Counsel, the same office that, under the previous administration, had provided legal cover for the use of torture. Although the Obama administration has resolutely refused to declassify that opinion, thus depriving the public of a fuller understanding of the legal rationales for the targeted killing of citizens, its contents were leaked to the New York Times in October of last year. (In a separate case, the ACLU along with the New York Times is suing the government under FOIA to release that document and other information about the targeting of citizens.)

The ACLU and CCR are making a case with broad implications for executive discretion and the legality and limits of the use of lethal force. Citing the killing of Anwar al-Awlaki specifically, the complaint challenges the drone war in Yemen more broadly on the grounds that the US “was not engaged in an armed conflict with or within” that country. That charge has shadowed the targeted killing policy since the first operation—also in Yemen—in 2002, and would have implications for drone warfare in Pakistan, East Africa and other areas where the US is not officially “at war.” But the killing of a citizen on purpose outside a war zone provided the opening to challenge it. The Obama administration, like the Bush administration, relies on the Authorization To Use Military Force, passed by Congress days after the 9/11 terrorist attacks, to assert the prerogative to attack perceived threats wherever they may be. This case would put the powers granted to the president under the AUMF into judicial play in a new way.

The complaint also challenges the government’s interpretation of “direct participation in hostilities.” The blurry and contested meaning of direct participation has gotten a lot of judicial play via habeas challenges to the detention of people in Guantánamo and in the context of charges prosecuted through the military commissions. But this case, in which the allegation of direct participation is coupled with the use of lethal force, elevates the issue to a new level.

The killing of Khan and Abdulrahman, who were not alleged to be participating in hostilities, would bring the issue of “collateral damage” into the courtroom. If the case is goes forward, the government will be forced to answer questions about decision making and operational compliance with international humanitarian law rules on proportionality and distinction. Did the government kill them—and, by implication, other untargeted civilians—by “mistake”? And if so, is the whole clandestine kill process mistake-prone?

So far, the government has not had to answer such questions, at least not in a court of law. To the extent that any answers have been provided about targeted killing in general and the killing of citizens in particular, they have come mostly in the form of leaks from unnamed sources and carefully scripted public remarks by top officials.

The targeted killing policy is the latest incarnation of unfettered executive superpower discretion. The policy has been criticized for violating international law, including from European allies and the UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions. Popular opinion in the US, however, runs strongly in favor of this policy; target killing is one of the very few things the Obama administration does that enjoys strong bipartisan support. For this reason, litigation is so important because it is the only available means of challenging the policy, and the killing of three citizens provided the opportunity to do so.

If this case is not dismissed on state secrets grounds, as the government is likely to argue in its response to the complaint which is due in the fall, it will expose a new horizon for litigating the conduct of war. Even if the case is dismissed, CCR and the ACLU deserve commendation for once again pioneering into the murky landscape of the “war on terror” to press for governmental transparency, accountability and adherence to the law.

### AT CIPA

#### Security measures empirically fail

Andrew C. McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies and Alykhan Velshi, staff attorney at the Center for Law & Counterterrorism, “Outsourcing American Law: We Need A National Security Court”, AEI Working Paper #156, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

It is freely conceded that this trove of government intelligence is routinely surrendered along with appropriate judicial warnings: defendants may use it only in preparing for trial and may not disseminate it for other purposes. To the extent classified information is implicated, it is also theoretically subject to the constraints of the Classified Information Procedures Act. 17 Nevertheless, and palpably, people who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators, and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so. 18 (Footnote 18 Begins Here) A single example here is instructive. In 1995, just before trying the aforementioned seditious conspiracy case against the blind sheik and eleven others, one of the authors duly complied with Second Circuit discovery law by writing a letter to defense counsel listing 200 names of people and entities who might be alleged as unindicted coconspirators—i.e., people who were on the government’s radar screen but against whom there was insufficient evidence to charge. Six years later, that letter became evidence in the trial of those who had bombed our embassies in Africa. Within a short time of its being sent, the letter had found its way to Bin Laden in Sudan. It had been fetched for him by al Qaeda operative Ali Mohammed who, upon obtaining it from one of his associates, forwarded it to al Qaeda operative Wadih El Hage in Kenya for subsequent transmission to bin Laden. Mohammed and El Hage were both convicted in the embassy bombing case.

### AT: Budget Cuts Hurt Special Ops

#### No special forces cuts

Andrei Akulov 13, journalist, “Special Operations Forces,” Before It’s News, 10-21-13, http://beforeitsnews.com/international/2013/10/special-operations-forces-2470642.html

The Special Operations Command (SOCOM) is scheduled for more spending and personnel increases while the rest of the military looks to be making cuts subject to sequester that SOF are exempt from as an elite component. The end strength has grown to almost 70,000 to add countless private support personnel to it. The number of commandos has doubled since 9/11, and their budget tripled — from $3.5 billion to $10.5 billion. The trend will likely continue. Special forces operations have become commonplace during the height of the wars in Afghanistan and Iraq. It’s not short targeted combat raids only – over the last decade the forces have been more frequently assigned long-term missions meant to train and build local security forces around the world – acting as an important foreign policy tool.

## Case

### No i/l w/o CCS

Hafetz, former ACLU National Security Project attorney, 13 (Jonathan Hafetz, former senior attorney at the ACLU’s National Security Project, a litigation director at NYU’s Brennan Center for Justice, and a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons, P.C, Reviewing Drones, March 8, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html)

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes. Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large. For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings. Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat. Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

The Bush administration's increased reliance on the program started in 2008; however, it is with the Obama administration that we see the most rapid proliferation of attacks. The final phase of the drone program is characterized by an even greater increase in attack frequency and an expansion of the target list to include targets of opportunity and unidentified militants of dubious rank — and funerals.12 As of May 2011, the CIA under the Obama administration has conducted nearly 200 drone strikes. This suggests that the drone target list now includes targets of opportunity, likely including some selected in consultation with the Pakistani authorities in order to facilitate the increasingly unpopular program. This development, in turn, has now decreased the effectiveness of the program when assessed in terms of the ratio of high-value to accidental kills. As Figure 2 shows, the steady increase in drone attacks conducted in Pakistan between 2004 and 2010 has resulted in a far higher number of deaths overall, but a lower rate of successful killings of high-value militant leaders who command, control and inspire organizations. If we define a high-value target as an organizational leader known to intelligence sources and the international media prior to attack and not someone whose death is justified with a posthumous militant status, we see fewer and fewer such hits — the alleged killing of al-Qaeda commander Ilyas al-Kashmiri in 2009 and again in June 2011 notwithstanding.13 Data analysis shows that at the beginning of the drone program (2002-04), five or six people were killed for each defined high-value target. As part of that high-value target's immediate entourage, they were much more likely to be militants than civilians. By 2010, one high-value target was killed per 147 total deaths. The increased lethality of each attack is due to larger payloads, broader target sets such as funeral processions, and probable new targeting guidelines (including targets of opportunity).14 Over time, these more deadly drone attacks have failed to effectively decapitate the leadership of anti-U.S. organizations but have killed hundreds of other people subsequently alleged to be militants; many were civilians.15 The rapidly growing population of survivors and witnesses of these brutal attacks have emotional and social needs and incentives to join the ranks of groups that access and attack U.S. targets in Afghanistan across the porous border. Drone attacks themselves deliver a politically satisfying short-term "bang for the buck" for U.S. constituencies ignorant of and indifferent to those affected by drone warfare or the phenomenon of blowback. In the Pakistani and Afghan contexts, they inflame the populations and destabilize the institutions that drive regional development. In addition to taking on an unacceptable and extrajudicial toll in human life, the drone strikes in unintended ways complicate the U.S. strategic mission in Afghanistan, as well as the fragile relationship with Pakistan. As a result, the U.S. military's counterinsurgency project in Afghanistan becomes a victim of the first two forms of blowback.

#### OR NO SOLVE

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

### UQ – Civilian Casualties

#### The best evidence proves civilian casualty rates are way down both in absolute terms and as a percentage of overall casualties from drone strikes---the tech is improving, new rules of engagement are more effective at ensuring discrimination between combatants and civilians, and every alternative would be less precise which guarantees more civilian casualties---that’s Cohen, Brooks and Rushforth.

#### Tech advances and tighter rules of engagement are substantially reducing civilian casualties---alternatives to drones are worse

Rosa Brooks 13, Professor of Law, Georgetown University Law Center and Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, “The Constitutional and Counterterrorism Implications of Targeted Killing,” <http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf>

\*We do not endorse gendered language

First, critics often assert that US drone strikes are morally wrong because the kill innocent civilians. This is undoubtedly both true and tragic -- but it is not really an argument against drone strikes as such. War kills innocent civilians, period. But the best available evidence suggests that US drone strikes kill civilians at no higher a rate, and almost certainly at a lower rate, than most other common means of warfare. ¶ Much of the time, the use of drones actually permits far greater precision in targeting than most traditional manned aircraft. Today's unmanned aerial vehicles (UAVs) can carry very small bombs that do less widespread damage, and UAVs have no human pilot whose fatigue might limit flight time. Their low profile and relative fuel efficiency combines with this to permit them to spend more time on target than any manned aircraft. Equipped with imaging technologies that enable operators even thousands of miles away to see details as fine as individual faces, modern drone technologies allow their operators to distinguish between civilians and combatants far more effectively than most other weapons systems.¶ That does not mean civilians never get killed in drone strikes. Inevitably, they do, although the covert nature of most US strikes and the contested environment in which they occur makes it impossible to get precise data on civilian deaths. This lack of transparency inevitably fuels rumors and misinformation. However, several credible organizations have sought to track and analyze deaths due to US drone strikes. The British Bureau of Investigative Journalism analyzed examined reports by "government, military and intelligence officials, and by credible media, academic and other sources," for instance, and came up with a range, suggesting that the 344 known drone strikes in Pakistan between 2004 and 2012 killed between 2,562 and 3,325 people, of whom between 474 and 881 were likely civilians.1 (The numbers for Yemen and Somalia are more difficult to obtain.) The New America Foundation, with which I am affiliated, came up with slightly lower numbers, estimating that US drone strikes killed somewhere between 1,873 and 3,171 people overall in Pakistan, of whom between 282 and 459 were civilians. 2¶ Whether drones strikes cause "a lot" or "relatively few" civilian casualties depends what we regard as the right point of comparison. Should we compare the civilian deaths caused by drone strikes to the civilian deaths caused by large-scale armed conflicts? One study by the International Committee for the Red Cross found that on average, 10 civilians died for every combatant killed during the armed conflicts of the 20th century.3 For the Iraq War, estimates vary widely; different studies place the ratio of civilian deaths to combatant deaths anywhere between 10 to 1 and 2 to 1.4¶ The most meaningful point of comparison for drones is probably manned aircraft. It's extraordinarily difficult to get solid numbers here, but one analysis published in the Small Wars Journal suggested that in 2007 the ratio of civilian to combatant deaths due to coalition air attacks in Afghanistan may have been as high as 15 to 1.5 More recent UN figures suggest a far lower rate, with as few as one civilian killed for every ten airstrikes in Afghanistan.6 But drone strikes have also gotten far less lethal for civilians in the last few years: the New America Foundation concludes that only three to nine civilians were killed during 72 U.S. drone strikes in Pakistan in 2011, and the 2012 numbers were also low.7 In part, this is due to technological advances over the last decade, but it's also due to far more stringent rules for when drones can release weapons.¶ Few details are known about the precise targeting procedures followed by either US armed forces or the Central Intelligence Agency with regard to drone strikes. The Obama Administration is reportedly finalizing a targeted killing “playbook,”8 outlining in great detail the procedures and substantive criteria to be applied. I believe an unclassified version of this should be should be made public, as it may help to diminish concerns reckless or negligent targeting decisions. Even in the absence of specific details, however, I believe we can have confidence in the commitment of both military and intelligence personnel to avoiding civilian casualties to the greatest extent possible. The Obama Administration has stated that it regards both the military and the CIA as bound by the law of war when force is used for the purpose of targeted killing. 9 (I will discuss the applicable law of war principles in section IV of this statement). What is more, the military is bound by the Uniform Code of Military Justice. ¶ Concern about civilian casualties is appropriate, and our targeting decisions, however thoughtfully made, are only as good as our intelligence—and only as wise as our overall strategy. Nevertheless, there is no evidence supporting the view that drone strikes cause disproportionate civilian casualties relative to other commonly used means or methods of warfare. On the contrary, the evidence suggests that if the number of civilian casualties is our metric, drone strikes do a better job of discriminating between civilians and combatants than close air support or other tactics that receive less attention.

#### Civilian casualties are way down because of tech improvements

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

Third, proponents of drone use also argue that this technology can "ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations." n183 This is by far the most complex argument (made by both critics and proponents of the program) regarding drone efficacy and collateral damage. Because most civilian casualty reports are based on media and informant reports, the difficulty of defining an allegedly lawful target and a civilian becomes paramount. n184 Officials maintain that the drones' ability to linger above a target for days and observe a "pattern of life," means that the pilot or operator can study their target, identify civilians in the area, and, if necessary, change the plan. n185 According to the New America Foundation, whose study is based on media sources, the civilian casualty estimate since 2004 is approximately twenty percent and in 2012, approximately ten percent. n186 The military and CIA share the opinion that though it is highly improbable that no civilians have been killed, "our coverage has improved so much since the beginning of this program, it really defies logic that now we would start missing all these alleged noncombatant casualties." n187

#### Current checks against civilian casualties are so effective that we divert missiles in the air if there’s a risk they’ll kill civilians

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>

In contemporary operations, the government has repeatedly emphasized that their planned target lists are frequently updated and vetted against the most up-to-date intelligence.261 This vetting is likely aimed at ensuring that individuals targeted are still members of an organized armed group.262 Moreover, in targeted killing operations that utilize UAVs, the intelligence supporting the attack will oftentimes come from the same UAV combat platform (Predators or Reapers) that may ultimately serve as the launch vehicle for weapons used in the targeted killing operation.263 Government officials even claim they have diverted missiles off target *after* launching but *before* impact in an effort to avoid harm to collateral persons within the blast radius of a weapon.264¶ To further illustrate the point, prior to the targeting operation that killed al Aulaqi, the government suggested that if Anwar al Aulaqi chose to renounce his membership in al Qaeda he would cease to be on the U.S. target list (likely because he would no longer have the status of a member of an organized armed group and, if he truly renounced his affiliation with al Qaeda, he could not be directly participating in hostilities).265 This statement illustrates the dynamic nature of the positive identification process as practiced by the U.S. military.266 The CIA’s process, extensively reviewed by operational lawyers who are oftentimes forwardly deployed in theaters of conflict and co-located with drone operators, would similarly require positive identification and a reassessment of available intelligence prior to a strike.267 Of course, if al Aulaqi chose to surrender, then he would automatically be rendered hors de combat and could not be targeted—though whether an individual could surrender to an aircraft remains an open question.268¶ Taken together, what this means is that if positive identification of a target fails, and the target is no longer a lawful one, no operation will take place.269 Moreover, when doubt arises as to whether a person is a civilian, there exists a presumption that he is, hence the requirement of positive identification in U.S. operations.270 The military objective requirement of the law of armed conflict as implemented in U.S. practice reflects the fact that the drafters of these standards intended them to be a binding set of rules that could simultaneously guide decision-making in warfare when bright line rules and fixed borderlines between civilian and military objectives may be murky.271 The burden is on military commanders to exercise discretion and caution; however, the standards by which those commanders are judged are reasonableness and honesty in the exercise of those responsibilities.272¶ [Italics in original]

### UQ – Pakistan

#### Pakistan’s stabilizing---drone strikes are declining as precision increases---the status quo resolves their whole advantage

Cameron Munter 9-30, professor of practice in international relations at Pomona College, served as a U.S. Foreign Service Officer for nearly three decades, was Ambassador to Pakistan 2010-2012, 9/30/13, “Guest Post: A New Face in the U.S.-Pakistani Relationship,” http://justsecurity.org/2013/09/30/cameron-munter-pakistan-relations/

In doing so, however, we have made the image of a soldier or a drone the image of America’s strategic vision for Pakistan and the region. As 2014 approaches, and American troops end their combat mission in Afghanistan; as drone strikes in the Pakistani tribal areas appear to be fewer in number and more precise in targeting; as the general trends of the U.S. “pivot toward Asia” become clear, the soldier and the drone will be less common. Even though the President’s commitment to U.S. security does not waver, the reminders of his commitment will be fewer and far between – at least it would seem, seen from the street in Pakistan.

Will that face of America – the M-16 and flak jacket, the film of a predator strike – remain, or can we replace it with something else? A different face of commitment, one that Americans have supported throughout the last decade but which has, in the Pakistani media (fairly or not) been shoved aside by the violence in the tribal areas and unrest throughout the country? That other commitment has been enormous expenditure by the U.S. government in support of economic growth, building schools, replacing crops destroyed by floods, refurbishing power plants, and improving health delivery services, to name just a few achievements. But few Pakistanis believe this aid has made a difference. Instead, they associate us only with the manifestations of the war on terror.

In the coming month this can change. No, it should not just be a PR campaign to convince Pakistanis of our commitment to what they care about (not just what we care about). Certainly, PR is necessary, but lacking a new face, it won’t be sufficient. It will require two things.

First, on the policy level, we must use the changes in 2014 to wrest U.S. policy toward Pakistan from its current status as derivative of the war in Afghanistan. Of course, Pakistan has an enormous role to play in security arrangements of the region in years to come. Its relationship to India, to China, to Iran, and of course to Afghanistan are very important as the international community seeks to find a just and equitable peace in the region. But we should make every effort to consider Pakistan’s needs. Not just the needs of the Pakistani military and intelligence leadership, important as they are. Rather, the needs of a country of nearly 200 million people whose stability and prosperity will be essential to the long-term stability and prosperity of the entire region. Pakistan’s success is not a guarantee of regional peace; but Pakistani failure is certainly a guarantee of regional strife.

Second, on a practical level, we should provide a face of American commitment that we know, through decades of effort, is welcome. Polling shows consistently that while most Pakistanis are angry at America (citing security policies as the reason), most Pakistanis – across the political spectrum, rural and urban, young and old – want a better relationship with us. Why? Because despite all the searing problems of the last decade, they admire us: they admire our educational institutions, our business acumen, our commitment to philanthropy. And here, I believe, they can find the practical partners to renew Pakistani understanding of American commitment to the relationship. Universities, businesses, foundations. Students and teachers, businesspeople and investors, donors and grassroots workers. These are the faces of the relationship in which America can play to its strengths, and in doing so, help build a successful Pakistan that is so necessary for us to achieve our own strategic interests in South Asia and beyond.

Recent press articles highlight just how worried we’ve been about Pakistan’s nuclear arsenal. And we should be worried. We need to know if that arsenal can be misused or fall into the wrong hands. But even a massive surveillance effort, while necessary, will be insufficient. We need to take modest but purposeful measures to help Pakistan remain stable. That’s not the same as focusing so overwhelmingly on immediate security concerns. We also need to engage in Pakistani politics, economics, society, where we have a much stronger hand to play than we perhaps realize.

Certainly, such changes cannot take place overnight. After all, the main reason that we see so few American university professors or businesspeople in Pakistan is that it’s still considered too dangerous. Yes, Pakistan’s government must take on the terrorist challenge, and it is enormous. And when Pakistan’s new Interior Minister propose plans to make the best use of Pakistan’s internal security forces, we should engage with him and take seriously any requests for help. But I believe we have a chance to do so, a chance afforded by the potential change in the face of America in Pakistan: difficult as it is, painful as our experiences in Pakistan have been, let’s listen to them and see if their plans to tackle terrorism have a place for our help. It’s certainly in our interest and theirs. Who knows? If Pakistan’s new leadership is able to make real progress against terrorism, there may be another new face – a face of a Pakistan that is not the negative image so common in recent years, but a Pakistan where people of good will are determined to succeed, and ask the help of an old friend in doing so.

### UQ – Yemen

#### Drone strikes in Yemen don’t drive AQAP recruiting---even hardline Islamists agree

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

Al Qaeda exploits U.S. errors, to be sure. As the Yemen scholar Gregory Johnsen correctly observes, the death of some 40 civilians in the December 2009 cruise missile strike on Majala infuriated ordinary Yemenis and gave AQAP an unexpected propaganda coup. But the fury produced by such tragedies is not systemic, not sustained, and, ultimately, not sufficient. As much as al Qaeda might play up civilian casualties and U.S. intervention in its recruiting videos, the Yemeni tribal leaders I spoke to reported that the factors driving young men into the insurgency are overwhelmingly economic.

From al Hudaydah in the west to Hadhramaut in the east, AQAP is building complex webs of dependency within Yemen's rural population. It gives idle teenagers cars, khat, and rifles -- the symbols of Yemeni manhood. It pays salaries (up to $400 per month) that lift families out of poverty. It supports weak and marginalized sheikhs by digging wells, distributing patronage to tribesmen, and punishing local criminals. As the leader of one Yemeni tribal confederation told me, "Al Qaeda attracts those who can't afford to turn away."

Religious figures echoed these words. Though critical of the U.S. drone campaign, none of the Islamists and Salafists I interviewed believed that drone strikes explain al Qaeda's burgeoning numbers. "The driving issue is development," an Islamist parliamentarian from Hadramout province said. "Some districts are so poor that joining al Qaeda represents the best of several bad options." (Other options include criminality, migration, and even starvation.) A Salafi scholar engaged in hostage negotiations with AQAP agreed. "Those who fight do so because of the injustice in this country," he explained. "A few in the north are driven by ideology, but in the south it is mostly about poverty and corruption."

#### Yemenis don’t backlash against the drone program any more---they know it’s gotten far more discriminate

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

Despite Yemenis' antipathy toward drones, my conversations also revealed a surprising degree of pragmatism. Those living in active conflict zones drew clear distinctions between earlier U.S. operations, such as the Majala bombing, and more recent strikes on senior al Qaeda figures. "Things were very bad in 2009," a tribal militia commander from Abyan province told me, "but now the drones are seen as helping us." He explained that Yemenis could "accept [drones] as long as there are no more civilian casualties." An Islamist member of the separatist al-Harak movement offered a similar assessment. "Ordinary people have become very practical about drones," he said. "If the United States focuses on the leaders and civilians aren't killed, then drone strikes will hurt al Qaeda more than they help them."

Some of the men I interviewed admitted that they had changed their minds about drone strikes. Separatists in Aden who openly derided AQAP as a proxy of Yemen's recently deposed president, Ali Abdullah Saleh, privately acknowledged the utility of the U.S. drone campaign. "Saleh created this crisis in order to steal from America and stay in power," a former official from the now-defunct People's Democratic Republic of Yemen told me. "Now it is our crisis, and we need every tool to solve it."

Yemeni journalists, particularly those with firsthand exposure to AQAP, shared this view: "I opposed the drone campaign until I saw what al Qaeda was doing in Jaar and Zinjibar," an independent reporter in Aden said. "Al Qaeda hates the drones, they're absolutely terrified of the drones ... and that is why we need them."

### Piracy

#### Finishing Stapf

U.S. commerce and trade in and around the Somali Basin is also negligible, with very little opportunity for improvement near-term. To highlight the insignificance of U.S. trade and commerce in the Somali Basin, one only has to look to Canada and China, where the U.S. traded more each day in 2010 with these two countries than it did over an entire year with all East African nations combined.

The pirate threat in the Somali Basin is mitigated by naval patrol and escort services from the European Union Naval Forces (EUNAVFOR) under Operation ATALANTA. Operation ATALANTA is a coalition effort by multiple EU members and has been conducting piracy suppression and naval escort and protection services in the Somali Basin since December 2008.

Considering that U.S. flagged ships make up less than one percent of the traffic transiting the Gulf of Aden (GOA), the risk to pirate attack is very low, and unlike most nations, the U.S. has mandated that U.S. flagged vessels transiting the GOA or Horn of Africa will employ armed or unarmed security detachments for piracy prevention.

The U.S. policy for non-negotiation with criminals and pirates is a step in the right direction to deter piracy and it needs to be embraced by all shipping owners, operators and flag states. With minimal U.S. commercial shipping in the region, combined with the robust implementation of anti-piracy security measures by U.S. flagged ships, the Somali based piracy poses a minimal risk to the U.S. shipping industry operating in the Somali Basin, and essentially no risk to U.S. economic security and stability.

## 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.

### AT: Their Args

#### 1) Zenko recommends the CP---doesn’t mention judicial review in the article

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

Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama administration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.¶ Executive Branch¶ The president of the United States should¶ ■■ limit targeted killings to individuals who U.S. officials claim are being targeted—the leadership of al-Qaeda and affiliated forces or individuals with a direct operational role in past or ongoing terrorist plots against the United States and its allies—and bring drone strike practices in line with stated policies;¶ ■■ either end the practice of signature strikes or provide a public accounting of how it meets the principles of distinction and proportionality that the Obama administration claims;¶ ■■ review its current policy whereby the executive authority for drone strikes is split between the CIA and JSOC, as each has vastly different legal authorities, degrees of permissible transparency, and oversight;¶ ■■ provide information to the public, Congress, and UN special rapporteurs— without disclosing classified information—on what procedures exist to prevent harm to civilians, including collateral damage mitigation, investigations into collateral damage, corrective actions based on those investigations, and amends for civilian losses; and never conduct nonbattlefield targeted killings without an accountable human being authorizing the strike (while retaining the potential necessity of autonomous decisions to use lethal force in warfare in response to ground-based antiaircraft fire or aerial combat).

#### 3) Executive clarification of “imminence” and “zones of hostilities” and transparency on TK policy solves allies and norms---allies’ main anger stems from interpretive disagreements regarding the content of the administration’s policy---Dworkin concludes that clarifying a narrower policy solves even without codifying that policy into law

Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, Actually, drones worry Europe more than spying, ecfr.eu/content/entry/commentary\_actually\_drones\_worry\_europe\_more\_than\_spying

But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely.

For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over.

All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### 5) Greenwald votes for the CP

Glenn Greenwald 13, J.D. from NYU, award-winning journalist, February 5, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo

What has made these actions all the more radical is the absolute secrecy with which Obama has draped all of this. Not only is the entire process carried out solely within the Executive branch - with no checks or oversight of any kind - but there is zero transparency and zero accountability. The president's underlings compile their proposed lists of who should be executed, and the president - at a charming weekly event dubbed by White House aides as "Terror Tuesday" - then chooses from "baseball cards" and decrees in total secrecy who should die. The power of accuser, prosecutor, judge, jury, and executioner are all consolidated in this one man, and those powers are exercised in the dark.

#### 6) Boyle advocates limiting targeted killings to high-value targets, and disclosing the legal rationale for the program

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack.¶ In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156

### AT: Executive Cherrypicking

#### Transparency solves allied perception and blowback while maintaining the CT benefits of targeted killings

Michael Aaronson 13, Professorial Research Fellow and Executive Director of cii – the Centre for International Intervention – at the University of Surrey, and Adrian Johnson, Director of Publications at RUSI, the book reviews editor for the RUSI Journal, and chair of the RUSI Editorial Board, “Conclusion,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

The Obama administration faces some tough dilemmas, and analysts should be careful not to downplay the security challenges it faces. It must balance the principles of justice and accountability with a very real terrorist threat; and reconcile the need to demonstrate a credibly tough security policy with the ending of a long occupation of Afghanistan while Al-Qa’ida still remains active in the region. Nevertheless, more transparency would provide demonstrable oversight and accountability without sacrificing the necessary operational secrecy of counter-terrorism. It might also help assuage the concern of allies and their publics who worry about what use the intelligence they provide might be put to. A wise long-term vision can balance the short-term demands to disrupt and disable terrorist groups with a longer-term focus to resolve the grievances that give rise to radicalism, and also preclude inadvertently developing norms of drone use that sit uneasily with the civilised conduct of war. Drones are but one kinetic element of a solution to terrorism that is, ultimately, political.

## Allies Advantage

### Program Sustainable

### Coop Inev

#### 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.

### Allies Not Key

### NSA Pounder

#### NSA crushes their advantage---EU states will cut us off and directly spills over to vital intel to fight terror – that’s Feeney

#### Dispute is escalating—it collapses relations and overwhelms any increased trust from the plan

EuroNews 10/26, staff writer, 2013, Europe-US trust, shattered by NSA spying, could take decades to rebuild, www.euronews.com/2013/10/26/europe-us-trust-shattered-by-nsa-spying-could-take-decades-to-rebuild/

The document, from 2006, does not give names but says the NSA encourages senior officials of the administration and government to share their contact details with the agency. One unnamed official alone is said to have passed on 200 numbers. It has set another cat among the pigeons, **sparking** a **fresh escalation in the simmering diplomatic crisis between Washington and its allies**. It is becoming increasingly difficult for Barack Obama to limit the consequences of this incessant flow of revelations and counter the lingering Cold War atmosphere it has created. The bugging of Chancellor Angela Merkel’s mobile phone is particularly embarrassing. Friends don’t do this sort of thing, Berlin says, while the US has been desperately emphasising the importance of its friendship with Germany, insisting that a few lines in the press are not going to undermine that. Our Washington correspondent Stefan Grobe asked the head of one of Germany’s largest private non-profit organisations, the Bertelsmann Foundation, to help gauge the potential for worsening relations between that country and the United States. Legal specialist and political analyst Annette Heuser responded on the transatlantic NSA spying scandal. The foundation’s executive director in the US capital, Heuser said: “The question is not only whether the Chancellor’s cell phone has been bugged or whether the German government has been bugged. The general question is whether friends can put up with operations like these. The answer is: definitely not. The Obama administration is not doing itself any favours by downplaying the whole affair and saying: ‘We won’t do it any more’ and that is it. We are witnessing the beginning of a foreign policy tsunami that is going to bother American and European transatlantic policy for quite some time.” And this is the president whom many in Europe wanted for the US; so their feelings were hurt when, swiftly following his 2008 election victory, Obama immediately showed the Europeans that he just was not that into them. He was more attentive to Asia – perhaps taking Europe’s good nature for granted. Our Bertelsmann expert said: “I believe that there is a tendency here in the US and in this administration not to take relations with Europeans seriously, and to believe that scandals and problems can easily be brushed away**. This is a fundamental mistake**. We have also noticed that the Obama administration, like no other US administration in post-war history, has lost the ability to understand the Europeans and to read them accurately. This is a huge problem for transatlantic relations. Until now, there has been a deep-rooted trust between Europeans and Americans – especially between Germans and Americans – but this scandal now contributes to a situation in which this trust is being eroded and is no longer an essential part of these relations.” In 2011, Chancellor Merkel was the first European leader Obama invited to dinner at the White House. It served a double function, to honour her and to somewhat wash away the bitterness in many people’s mouths that the Bush administration had left. According to Annette Heuser: “This scandal will have very important consequences for the future of transatlantic relations. Until now, we have always said that the lowest point in these relations, especially between Germany and the US, was the struggle over the Iraq war in 2003. It was the question of whether to intervene militarily in Iraq. The German government at the time, under Gerhard Schroeder, clearly opted against it. But that was merely a question of military strategy. What we are seeing right now is much more fundamental; we are dealing with trust. This **trust is disappearing from transatlantic relations and will take decades to rebuild.”**

#### Triggers the adv

Ingrid Wuerth 10/25, Vanderbilt Law School Professor, 2013, Dispatch from Berlin on a Diplomatic Disaster, www.lawfareblog.com/2013/10/dispatch-from-berlin-on-a-diplomatic-disaster/

A diplomatic disaster for the United States is currently unfolding in Berlin. The revelation that the NSA may have monitored cell phone conversations and text messages of Chancellor Angela Merkel has led to popular outrage in Germany, as well as unusually pointed language from the Chancellor and other government officials. The U.S. Ambassador was not merely asked but summoned (“einbestellt”) to the German foreign office—a strong verb used until now (if at all) only for the Syrian and Iranian ambassadors. The Chancellor’s phone conversation with President Obama did nothing to ease the tension. Merkel declared such practices totally unacceptable: Between friends and partners such as the United States and Germany, the monitoring of communications by government leaders is a grave breach of trust, her press secretary emphasized. The Obama administration, other than saying the Chancellor’s phone is not now and will not in the future be monitored, has offered nothing: neither apology, nor explanation of what happened in the past, nor any sort of suggestion for future cooperation or discussion of a collective solution.

Maybe all of this will blow over quickly—just a headline-grabbing news story, made even better by the emerging details of the Chancellor’s two very different cellphones (one secure, one not) and questions about German helicopters flown over the U.S. consulate in Frankfurt in September. But it may not. Chancellor Merkel’s tone is sharp and that of minority parties in Parliament is even sharper. Those parties have been critical of Merkel for failing to react more strongly to prior revelations about the NSA. Mostly, however, the two center parties (Merkel’s CDU and the SPD) are united, rather than divided by their criticism of the United States. **The current dispute goes may have deep roots** as well. Roger Cohen has a nice piece up at the New York Times, detailing the German (and European) perception that the Obama administration has been dismissive, including with respect to possible military intervention in Syria.

The Federal Republic of Germany has traditionally been more willing than the United States to sacrifice some civil liberties in order to protect democratic values—their “streitbare” or “aggressive” democracy prohibits, for example, certain political parties that lean extremely far right or left. But totalitarian East Germany—in which spying on and on behalf of the government was very widespread—has left its mark on the popular culture. Listening in on other people’s private phone conversations brings to mind an immediate past of repression and brutality for the Germans. And today the United States is seen as presenting a serious threat to the civil liberties of all Germans, not just Chancellor Merkel. The comparison of Obama to East German state security is explicit. Although U.S.-German relations suffered during the invasion of Iraq, that was widely blamed on the Republican presidency of George W. Bush. With the Democrat Obama at the helm, however, localizing the blame is no longer so easy. U.S.-German relations may be at their lowest point since the end of World War II. Even if the German government wanted to overlook U.S. snooping (to avoid too much scrutiny of their own activities), the domestic political costs of looking the other way now have increased here as they have in France and Brazil.

What are the potential costs for U.S. foreign policy? In the short term, there is discussion in Europe of conditioning further European-U.S. bilateral trade negotiations upon a satisfactory solution to the problem of U.S. government data collection from Europe. Moreover, **data sharing** of various sorts **could be limited**; German or **European laws could substantially ramp up data privacy protection**, at potential cost to U.S. businesses; German prosecutors and the German Parliament may take up the issue. And, finally of course, **there is a cost to U.S. soft power.**

#### Outweighs the aff

Josh Gerstein 10/26, Politico, 2013, NSA disclosures put U.S. on defense, dyn.politico.com/printstory.cfm?uuid=0A829B73-DCF3-4A66-9221-C8EEDDEE02F7

**The NSA spying controversy is quickly transforming from a** domestic **headache** for the Obama administration **into a global public relations fiasco** for the United States government.

After months of public and congressional debate over the National Security Agency’s collection of details on U.S. telephone calls, a series of **reports** about alleged spying on foreign countries and their leaders **has unleashed an** angry global reaction **that appears likely to** swamp the debate about gathering of metadata within American borders.

While prospects for a legislative or judicial curtailment of the U.S. call-tracking program are doubtful, damage from public revelations about NSA’s global surveillance is already evident and seems to be growing.

Citing the snooping disclosed by former NSA contractor Edward Snowden, Brazil’s president canceled a state visit to the U.S. set for this week. Leaders in France and Italy and Germany have lodged heated protests with Washington, with the Germans announcing plans to dispatch a delegation to Washington to discuss the issue. Boeing airplane sales are in jeopardy. And the European Union is threatening to slap restrictions on U.S. technology firms that profit from tens of millions of users on the Continent.

“Europe is talking about this. Some people in Europe are upset and may take steps to block us,” former Rep. Jane Harman (D-Calif.) said in a telephone interview from Rome on Friday. “The reaction of retail politicians is to mirror the upset of the people who elected them.”

“Confidence between countries and confidence between governments are important and sometime decisive and there’s almost no confidence

between the United States of America and Europe” now, former German intelligence chief Hansjörg Geiger said. “I’m quite convinced there will be an impact…. It will be a real impact and not only the [intelligence] services will have some turbulence.”

Some analysts see immediate trouble for U.S.-European arrangements to share information about airline passengers, financial transactions and more.

“The bigger problems are not in Berlin or Paris, but in the future out of Brussels,” said Michael Leiter, former head of the National Counterterrorism Center. “At the EU, I expect them to be very, very resistant to any increase — and to have problems even with maintenance—of some of the information sharing we have now…..All of this complicates those discussions exponentially.”

# 2NR

#### Most recent ev

OWH 10-14 --- Omaha World-Herald, “World-Herald editorial: Bigger role for Special Forces,” 10-14-13, http://www.omaha.com/article/20131014/NEWS08/131019667/1677

At a time when the military is looking to reduce the size of all branches of service, it’s notable that the Pentagon hopes to expand a specialized group: Special Operations Forces.¶ These are the highly trained, elite forces that include Army Green Berets and Rangers, Navy SEALS and other units. These elite personnel carried out the mission that killed Osama bin Laden and were in the news recently for capturing a terrorist leader in Libya and raiding a terrorist camp in Somalia.¶ It’s understandable that the Pentagon is looking to bolster these forces. In Iraq and Afghanistan, Special Forces made up only about 5 percent of the personnel in action but accounted for a significant portion of successful operations, reports StrategyPage.com, a news service covering national security issues.¶ “Most military commanders were well aware of this and were always asking for more SOF [Special Operations Forces], but there was never enough to meet the demand,” StrategyPage notes.¶ The budget for Special Forces has increased from $2.3 billion in 2001 to more than $10 billion now, and the number of personnel in these elite units has doubled to 60,000. Given their intelligence capabilities, intensive cultural and linguistic training and combat nimbleness, these units are especially valuable in combating terrorists and irregular military forces.

#### Pentagon statements prove

Daniel Wasserbly 13, US Special Operations Forces to be spared funding cuts, www.janes.com/article/12971/us-special-operations-forces-to-be-spared-funding-cuts

The capabilities of US Special Operations Forces (SOF) are to be protected and preserved even if Pentagon funding continues to be subjected to sequestration, according to Deputy Secretary of Defense Ashton Carter.

He said that as the Pentagon worked to evolve after an era of steadily increasing budgets and constant deployments for two counterinsurgency operations, continued investment in SOF would be "critical to executing this transition".

Initial results from the Pentagon's Strategic Choices and Management Review (SCMR) - which seeks to align defence strategy, posture, and investments to various future budget scenarios - suggest that investment in the SOF community should remain a top priority, Carter said during a 5 June briefing at a US Special Operations Command (SOCOM) conference in Washington, DC.