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***Restrictions are prohibitions***

**Northglenn 11** (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and ***no*** such use, ***activity***, operation, building, structure or thing shall be **authorized by any permit or license**.

***Voting issue –***

***1) Ground – all DAs and CPs like self-restraint, flexibility, and politics compete based off restrictions on the presidential decision-making process – skews the topic in favor of the aff.***

***2) Limits – they allow infinite modifications to the program—undermines our ability to research and prepare for all debates***

**CP**

***The Executive branch of the United States federal government should establish an internal review board to provide due process to those unlawfully injured by targeted killing operations, their heirs, or their estates in security cleared legal proceedings.***

***Internal review is better than a damages remedy and avoids our DA’s***

Andrew **Kent 10/1**/13\*, \* Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, Are Damages Different?: Bivens and National Security (October 1, 2013). Forthcoming S. Cal. L. Rev. (2014). Available at SSRN: <http://ssrn.com/abstract=2330476>, jj

And finally, the courts seem likely to be aware that, especially in the national security area, there have developed in the last decade an extraordinary range of mechanisms for maintaining the rule of law within the executive branch— everything from independent inspectors general within executive agencies to an aggressive investigative press receiving an ever-growing number of leaks from current and former officials, to the FOIA litigation and public shaming of lawbreaking officials that nonprofit organizations have become adept at. With all of these other accountability mechanisms working more vigorously than ever before, and more vigorously in this area than in many other areas of government operations, a Bivens damages remedy might seem to the courts to be unnecessary and undesirable, especially given the costs of such lawsuits.

**DA 1**

***TPA will pass now—PC is key***

Thomas J. **Spulak** and Bonnie B. Byers, King & Spalding LLP, Expect Trade Promotion Authority Bill To Pass, **2/12/14**, http://www.law360.com/articles/509435/expect-trade-promotion-authority-bill-to-pass

***It is hard to imagine that a TPA bill will not be enacted***, but when it does, it will look different from the one now pending. President **Obama will have to work with Congress to add provisions that make the bill more palatable to Democrats*. There are a number of trade provisions that could attract democratic votes.*** One is legislation that would clarify that currency manipulation by a country can result in a countervailable subsidy under U.S. trade laws. The provision would help U.S. companies address the serious competitive disadvantage they face from Chinese exports that benefit from China’s undervalued currency. The provision has significant bipartisan support and similar versions have passed by wide margins in separate congresses in both the House and Senate. **There is** also **likely to be a push for full renewal of Trade Adjustment Assistance either as part of the TPA bill or as a separate provision.** Portions of TAA, which provides assistance to workers displaced by foreign trade, expired at the end of 2013. Members of the New Democratic Coalition are expected to introduce a TAA bill within the next several weeks. Other trade provisions that could be packaged with TPA include renewal of the Generalized System of Preferences, which expired last year, a Miscellaneous Tariff Bill that would temporarily lower the duties on imported products that are not produced in the United States, and other trade preference programs. **Like everything else in Washington, D.C., today**, ***nothing is easy***. In fact, the safest bet is to say that TPA will not be enacted. But **although there are significant challenges associated with negotiating trade agreements without TPA, it can and is being done.** In the end, Congress could gain more by being in the tent than outside trying to look in. **Thus,** we believe ***TPA will be enacted***. **Democrats will get some concessions** from the administration. **And in the end**, although not favored, side letters could be negotiated to address some issues that may already be concluded in the ongoing negotiations. **With rank and file Republicans on his side**, **Obama will have to work this out with his fellow Democrats**. We believe that ***he will.***

***Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda***

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**While congressional support leaves the president’s reserve of political capital intact, *congressional criticism saps energy from other initiatives* on the home front by *forcing the president to expend energy and effort* defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60

**In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further *imperil his programmatic agenda*, both international and domestic.** Scholars have long noted that President Lyndon **Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking** the requisite funds in a war-depleted treasury and **the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away** as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, **many of** President **Bush’s highest second-term domestic proprieties, such as Social Security and *immigration reform*, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.**61

**When *making their cost-benefit calculations*, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

***TPA is key to US trade leadership and economic diplomacy—rejection signals isolationism and withdrawal***

**Zoellick, 1/12/14** (Robert Zoellick has served as president of the World Bank Group, U.S. trade representative and deputy secretary of state, Jan. 12, 2014, Wall Street Journal, “Leading From the Front on Free Trade” <http://online.wsj.com/news/articles/SB10001424052702303933104579302452830547782>, jj)

**America's commitment to free trade will be tested in 2014**. After years of indifference to trade policy, **the Obama administration now has an agenda**. **Congress must decide whether the U.S. will lead in opening markets and creating fair rules for free enterprise in a new international economy**. Where will Republicans stand? **The starting point will be Congress's consideration of *T*rade *P*romotion *A*uthority, which enables the president to negotiate agreements subject to an up-or-down vote by Congress**. Through TPA, Congress sets goals, procedures for working with the executive branch, and controls the details of the enabling legislation. The Obama administration has been slow to press for negotiating authority. Fortunately, Sens. Max Baucus and Orrin Hatch, the Democratic chairman and ranking Republican on trade in the Senate, respectively, and Rep. Dave Camp, Republican chairman in the House, introduced their bipartisan Trade Promotion Authority bill last Thursday. Chairman Baucus would like to move the bill through the Senate Finance Committee this month before his confirmation as ambassador to China. Successful action would offer a substantive thank you to Congress's Democratic leader on trade. The **Obama** administration **hopes to close a Trans-Pacific Partnership (TPP) deal this year**. Of the 11 other countries in this trade pact, six already have U.S. free-trade agreements, which were negotiated and passed by Republicans. **TPP would add important economies—especially Japan and Vietnam—while modernizing rules and better integrating all 12 economies**. **In addition to the growth benefits, TPP recommits America's strategic economic interests in the Asia-Pacific, complementing the U.S. security presence.** **The U.S. is also combining geoeconomics with geopolitics by negotiating a Trans-Atlantic Trade and Investment Partnership (TTIP) with the European Union**. **Together, TPP and TTIP could forge modern trade and investment rules with major economies of western and eastern Eurasia**. To offer opportunities for global trade liberalization, the U.S. is also negotiating in the World Trade Organization freer trade for services businesses and a Digital Economy compact that would update the successful Information Technology Agreement of the 1990s. These openings would be especially valuable for middle-income economies that want to boost productivity and reach high incomes through more competitive service and information industries. **The economic record of America's *f*ree-*t*rade *a***greement***s* argues for expansion**. **America's free-trade partners account for about 45% of all U.S. exports**, even though their economies amount to only 10% of global GDP. **On average, in the first five years of a new free-trade agreement, U.S. exports grew three to four times as rapidly as U.S. exports to others**. The **U.S. has a trade surplus with its 20 free-trade partners—in manufacturing, agriculture, and services—instead of the large deficit it runs with the world**. **These trade agreements serve principally to bring down the barriers of other countries, because U.S. restrictions are already relatively low**. U.S. free-trade agreements are also comprehensive—covering not only manufacturing and almost all agriculture, but also services, government procurement and transparency, investment and intellectual property, as well as dispute resolution. **These trade agreements encourage others to move toward greater compatibility with the U.S. economy and legal framework**. Republicans have provided most of the votes in Congress for free-trade accords in the past. Here is why: The deals cut taxes on trade. They expand individual freedom, consumer choice and opportunities for innovation. They reduce governmental barriers. They boost the private sector. **They enhance the rule of law and foster civil society**. **An active trade agenda also *signals* America's interest in the rest of the world at a time others are worried about U.S. withdrawal**. **Free trade boosts development and economic reformers around the world, while supporting U.S. growth. For much of the world, *America's commitment to stability seems more credible if built upon an economic foundation***. ***Economic diplomacy can be the basis for hard, soft and smart power***. Nevertheless, some Republicans are hesitant to grant negotiating authority to the president because they fear he will use it to impose stricter labor and environmental standards he couldn't otherwise get through Congress. But such fears can be addressed by circumscribing those provisions to the core labor and environmental standards that both parties agreed to in recent free trade agreements. Moreover, **such concerns should not prevent Republicans from showing they can govern, lead internationally and extend America's economic power globally through a vibrant private sector**. Republicans should also insist, as they did with President Clinton, that a reasonable number of Democrats in Congress back their president. We still have to see whether the Obama team can translate talk into action. It is not clear that this administration knows how to close deals—and take on its protectionist and isolationist constituencies in labor and manufacturing. Republicans should use TPA—and the process it creates—to set objectives that boost economic growth, pointing out that workers in U.S. export industries earn on average 18% more than other Americans because their labor is more productive. Republicans should also set the intellectual agenda for worker adjustment and jobs policies that help Americans adapt to change, whether triggered by trade or technology. The federal government spends about $18 billion a year on nearly 50 separate employment training programs, run by nine different agencies, with few ever evaluated for results. When the administration sends up trade agreements it should also propose options to transform this often inefficient spending. President **Obama** has tiptoed on trade, but he **is moving in the right direction**. He may hesitate when he recognizes that results require actions. Republicans should be pushing the president to deliver—and ***to make 2014 the year the U.S. reclaimed global leadership on trade.***

***US trade leadership solves extinction***

**Garten, 09** – professor at the Yale School of Management (Jeffrey, “The Dangers of Turning Inward”, 3/5, Wall Street Journal, http://www.business.illinois.edu/aguilera/Teaching/WSJ09\_Dangers\_of\_Turning\_Inward.pdf)

Yet if **historians** look back on today's severe downturn, with its crumbling markets, rising unemployment and massive government interventions, they could well be busy analyzing how globalization -- the spread of trade, finance, technology and the movement of people around the world -- went into reverse. They **would likely point to the growth of economic nationalism as the root cause**. Ordinary protectionism such as tariffs and quotas would be one aspect of this problem, but it won't be the worst of it because a web of treaties and the enforcement capabilities of the World Trade Organization will constrain the most egregious behavior. **Economic nationalism is more insidious because it is broader, more subtle and subject to fewer legal constraints**. It is a frame of mind that casts doubt on the very assumption that we live in a single international market, and that relatively open borders are a virtue. **It is based on a calculation that despite all the talk about economic interdependence, nations can go it alone, and could be better off in doing so**. True economic nationalists want above all to protect capital and jobs in their own countries. They see global commerce not as a win-win proposition but as a contest in which there is a victor and a loser. They are thus not focused on international agreements to open the world economy; to the contrary, they are usually figuring out how to avoid international commercial obligations. **The last time we saw sustained economic nationalism was in the 1930s, when capital flows and trade among countries collapsed, and every country went its own way. World growth went into a ditch, political ties among nations deteriorated, nationalism and populism combined to create fascist governments in Europe and Asia, and a world war took place. It took at least a generation for globalization to get back on track**. There have been some bouts of inwardlooking governmental action since then, such as the early 1970s when the U.S. cut the dollar from its gold base and imposed export embargoes on soybeans and steel scrap. However, the economic conditions were not sufficiently bad for the trend to sustain itself. The kind of economic nationalism we are seeing today is not yet extreme. It is also understandable. The political pressures could hardly be worse. Over the last decade, the global economy grew on average about 4% to 5%, and this year it will come to a grinding halt: 0.5% according to the International Monetary Fund, where projections usually err on the optimistic side. World trade, which has grown much faster than global gross domestic product for many years, is projected to decline this year for the first time since 1982. Foreign direct investment last year slumped by 10% from 2007. Most dramatically, capital flows into emerging market nations are projected to drop this year by nearly 80% compared to 2007. The aggregate figures don't tell the story of what is unraveling in individual countries. In the last quarter of 2008, U.S. GDP dropped by 6.2% at an annual rate, the U.K. by 5.9%, Germany by 8.2%, Japan by 12.7% and South Korea by 20.8%. Mexico, Thailand and Singapore and most of Eastern Europe are also in deep trouble. In every case, employment has been plummeting. So far popular demonstrations against government policies have taken place in theU.K., France, Greece, Russia and throughout Eastern Europe. And the governments of Iceland and Latvia have fallen over the crisis. Governments could therefore be forgiven if they are preoccupied above all with the workers and companies within their own borders. Most officials don't know what to do because they haven't seen this level of distress before. They are living from day to day, desperately improvising and trying to hold off political pressure to take severe measures they know could be satisfying right now but cause bigger damage later. Thinking about how their policies might affect other countries is not their main focus, let alone taking the time to try to coordinate them internationally. Besides, whether it's in Washington, Brussels, Paris, Beijing, Brazilia or Tokyo, it is hard to find many top officials who wouldn't say that whatever measures they are taking that may undermine global commerce are strictly temporary. They all profess that when the crisis is over, they will resume their support for globalization. They underestimate, however, how hard it could be to reverse course. Political figures take comfort, too, from the global institutions that were not present in the 1930s -- the IMF, the World Bank and the World Trade Organization, all of which are assumed to be keeping globalization alive. This is a false sense of security, since these institutions are guided by sovereign countries. Government officials often feel that because they are going to endless crisis summit meetings -- the next big one is in London on April 2, when the world's top 20 nations will be assembling -- that some international coordination is actually taking place. This is mostly an illusion. With a few exceptions, such as the so-called Plaza Agreements of 1984 when currencies were realigned, it is difficult to point to a meeting where anything major has been said and subsequently implemented. But as the pressure on politicians mounts, decisions are being made on an incremental and ad hoc basis that amounts to a disturbing trend. **Classic trade protectionism is on the rise**. In the first half of 2008, the number of investigations in the World Trade Organization relating to antidumping cases -- selling below cost -- was up 30% from the year before. Washington has recently expanded sanctions against European food products in retaliation for Europe's boycott against hormonetreated American beef -- an old dispute, to be sure, but one that is escalating. In the last several months, the E.U. reintroduced export subsidies on butter and cheese. India raised tariffs on steel products, as did Russia on imported cars. Indonesia ingenuously designated that just a few of its ports could be used to import toys, creating a trade-blocking bottleneck. Brazil and Argentina have been pressing for a higher external tariff on imports into a South American bloc of countries called Mercosur. Just this week, the E.U. agreed to levy tariffs on American exports of biodiesel fuel, possibly a first shot in what may become a gigantic trade war fought over different environmental policies -- some based on taxes, some on regulation, some on cap and trade -- being embraced by individual countries. Much bigger problems have arisen in more non-traditional areas and derive from recent direct intervention of governments. The much-publicized "Buy America" provision of the U.S. stimulus package restricts purchases of construction-related goods to many U.S. manufacturers, and although it is riddled with exceptions, it does reveal Washington's state of mind. The bailout of GM and Chrysler is a purely national deal. Such exclusion against foreign firms is a violation of so-called "national treatment" clauses in trade agreements, and the E.U. has already put Washington on notice that it will pursue legal trade remedies if the final bailout package is discriminatory. Uncle Sam is not the only economic nationalist. The Japanese government is offering to help a broad array of its corporations -- but certainly not subsidiaries of foreign companies in Japan -- by purchasing the stock of these firms directly, thereby not just saving them but providing an advantage over competition from non-Japanese sources. The French government has created a sovereign wealth fund to make sure that certain "national champions," such as carparts manufacturer Valeo and aeronautics component maker Daher, aren't bought by foreign investors. Government involvement in financial institutions has taken on an anti-globalization tone. British regulators are pushing their global banks to redirect foreign lending to the U.K. when credit is sorely needed and where it can be monitored. Just this past week, the Royal Bank of Scotland announced it was closing shop in 60 foreign countries. Western European banks that were heavily invested in countries such as Hungary, the Czech Republic and the Baltics have pulled back their credits, causing a devastating deflation throughout Eastern Europe. The Swiss are reportedly considering more lenient accounting policies for loans their banks make domestically as opposed to abroad. This de-globalizing trend could well be amplified by Washington's effort to exercise tight oversight of several big financial institutions. Already AIG's prime Asian asset, American International Assurance Company, is on the block. As the feds take an ever bigger stake in Citigroup, they may well force it to divest itself of many of its prized global holdings, such as Banamex in Mexico and Citi Handlowy in Poland. It appears that new legislation under the Troubled Asset Relief Program will also restrict the employment of foreign nationals in hundreds of American banks in which the government has a stake. Whether or not it goes into bankruptcy, General Motors will be pressed to sell many of its foreign subsidiaries, too. Even Chinese multinationals such as Haier and Lenovo are beating a retreat to their own shores where the risks seem lower than operating in an uncertain global economy. The government in Beijing is never far away from such fundamental strategic decisions. Then there is the currency issue. Economic nationalists are mercantilists. They are willing to keep their currency cheap in order to make their exports more competitive. China is doing just that. A big question is whether other Asian exporters that have been badly hurt from the crisis -- Taiwan, South Korea and Thailand, for example -- will follow suit. Competitive devaluations were a major feature of the 1930s. It's no accident that the European Union has called an emergency summit for this Sunday to consider what to do with rising protectionism of all kinds. **There are a number of reasons why economic nationalism could escalate**. The recession could last well beyond this year. It is also worrisome that the forces of economic nationalism were gathering even before the crisis hit, and have deeper roots than most people know. Congress denied President Bush authority to negotiate trade agreements two years ago, fearing that America was not benefiting enough from open trade, and an effort to reform immigration was ~~paralyzed~~ for years. Globally, international trade negotiations called the Doha Round collapsed well before Bear Stearns and Lehman Brothers did. Concerns that trade was worsening income distribution were growing in every major industrial nation since the late 1990s. ***Whenever countries turned inward over the past half-century, Washington was a powerful countervailing force, preaching the gospel of globalization and open markets for goods, services and capital***. As the Obama administration works feverishly to fire up America's growth engines, patch up its financial system and keep its housing market from collapsing further, and as its major long-term objectives center on health, education and reducing energy dependence on foreign sources, the country's preoccupations are more purely domestic than at any time since the 1930s. In the past, American business leaders from companies such as IBM, GE, Goldman Sachs and, yes, Citigroup and Merrill Lynch beat the drum for open global markets. As their share prices collapse, some voices are muted, some silenced. It is not easy to find anyone in America who has the stature and courage to press for a more open global economy in the midst of the current economic and political crosswinds. And given that the global rot started in the U.S. with egregiously irresponsible lending, borrowing and regulation, America's brand of capitalism is in serious disrepute around the world. Even if President Obama had the mental bandwidth to become a cheerleader for globalization, America's do-as-I-say-and-not-as-I-do leadership has been badly compromised. If economic nationalism puts a monkey wrench in the wheels of global commerce, the damage could be severe. The U.S. is a good example. It is inconceivable that Uncle Sam could mount a serious recovery without a massive expansion of exports -- the very activity that was responsible for so much of America's economic growth during the middle of this decade. But that won't be possible if other nations block imports. For generations, the deficits that we have run this past decade and the trillions of dollars we are spending now mean we will be highly dependent on foreign loans from China, Japan and other parts of the world. But these will not be forthcoming at prices we can afford without a global financial system built on deep collaboration between debtors and creditors -- including keeping our market open to foreign goods and services. The Obama administration talks about a super-competitive economy, based on high-quality jobs -- which means knowledge-intensive jobs. This won't happen if we are not able to continue to bring in the brightest people from all over the world to work and live here. Silicon Valley, to take one example, would be a pale shadow of itself without Indian, Chinese and Israeli brain power in its midst. More generally, without an open global economy, worldwide industries such as autos, steel, banking and telecommunications cannot be rationalized and restructured efficiently, and we'll be doomed to have excessive capacity and booms and busts forever. The big emerging markets such as China, India, Brazil, Turkey and South Africa will never be fully integrated into the world economy, depriving them and us of future economic growth. The productivity of billions of men and women entering the global workforce will be stunted to everyone's detriment. Of course, no one would say that globalization is without its problems. Trade surges and products made by low-priced labor can lead to job displacement and increasing income inequality. Proud national cultures can be undermined. But these challenges can be met by reasonable regulation and by domestic policies that provide a strong social safety net and the kind of education that helps people acquire new skills for a competitive world. With the right responses of governments, the benefits should far outweigh the disadvantages. **For thousands of years, globalization has increased global wealth, individual choice and human freedom**. The point is, **economic nationalism**, with its implicit autarchic and save-yourself character, **embodies exactly the wrong spirit and runs in precisely the wrong direction from the global system that will be necessary to create the future we all want**. **As happened in the 1930s, economic nationalism is also sure to poison geopolitics. Governments under economic pressure have far fewer resources to take care of their citizens and to deal with rising anger and social tensions.** **Whether or not they are democracies, their tenure can be threatened by popular resentment. The temptation for governments to whip up enthusiasm for something that distracts citizens from their economic woes -- a war or a jihad against unpopular minorities**, for example -- **is great**. That's not all. **As an economically enfeebled South Korea withdraws foreign aid from North Korea, could we see an even more irrational activity from Pyongyang? As the Pakistani economy goes into the tank, will the government be more likely to compromise with terrorists** to alleviate at least one source of pressure? **As Ukraine strains under the weight of an IMF bailout, is a civil war with Cold War overtones between Europe and Russia be in the cards**? And beyond all that, **how will economically embattled and inward-looking governments be able to deal with the critical issues that need global resolution such as *control of nuclear weapons*, or a treaty to manage *climate change, or* help to the hundreds of millions of people who are now falling back into *poverty?***

**DA 2**

***The plan ensures a massive expansion of litigation which overloads the courts***

Andrew **Kent 10/1/13**\*, \* Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, Are Damages Different?: Bivens and National Security (October 1, 2013). Forthcoming S. Cal. L. Rev. (2014). Available at SSRN: <http://ssrn.com/abstract=2330476>, jj

Viewing law declaration as a system-wide injunctive-type remedy shows how money damages suits can also be vehicles for courts to control government functioning prospectively and system-wide, and so the distinction between injunctions and damages is not as great as might first appear. But still, **the Supreme Court is particularly loath to allow a damages remedy against federal officials in national security and foreign relations cases, and courts of appeals have followed its lead.**

One reason for **the Court’s views of damages remedies is clear**—it has repeatedly stated in many contexts that **it believes that damages liability for officials causes “over-deterrence”— the failure of officials to vigorously and efficiently perform socially-beneficial functions because of the fear of personal damages liability**. The Court has also expressed concerned about the unique burdens of discovery, especially on senior policymakers, imposed by Bivens suits as opposed to other types of litigation against the government. **These concerns seem likely to be particularly pronounced in the national security and foreign affairs areas.**

Other reasons the courts might disfavor damages can be discerned, but they are not explicitly stated by the judiciary. **A much greater pool of potential plaintiffs can bring a suit seeking money damages compared to an injunction or habeas, particularly in the national security and foreign relations areas**. **So allowing Bivens suits will vastly increase the potential for constitutional litigation against the government, raising *docket concerns* as well as increasing the potential for inter-branch conflict and judicial involvement in sensitive areas often thought to be the domain of the President and Congress.**

**Damages suits pose unique risks of inter-branch conflict for another reason: Bivens litigation is outside the control of the executive branch**. When only defensive suits or claims seeking injunctions, habeas corpus or exclusionary rule remedies are allowed, the government can control whether these claims proceed by deciding whether to initiate or discontinue the legal proceedings or government action that gave rise to the suits or claims.31 Bivens suits cannot be headed off in this manner, because people can sue for tort damages whether or not they are still detained or still subject to other government coercion, such as a criminal prosecution.

***This expanded volume of litigation***, outside the control of the executive, **that allowing Bivens in national security and foreign relations contexts would unleash would require the courts to *frequently* make difficult judgments about how and whether to transplant detailed and generally quite rights-protective norms of constitutional law developed in domestic, peacetime contexts into the much different world of extraterritorial national security and foreign relations activities.**

**The Supreme Court and courts of appeals seem cautious in the face of this prospect.**

***High caseloads devastate judicial legitimacy and independence – undermines solvency***

**BASSLER ‘96** (William G.; Federal Judge – United States District Court of New Jersey and Adjunct Professor of Law – Seton Hall, 48 Rutgers L. Rev. 1139, Summer, l/n)

As a result of this growth in criminal proceedings, the civil calendar obviously does not receive the attention it requires. Civil rights cases, among others, must wait an inordinate amount of time before being addressed by the courts. Without the assistance of the magistrates in trying to get cases settled, the entire civil calendar in some districts would collapse. **The pressure to settle cases, however, while helping the court's calendar, may well deprive deserving litigants of their** "**day in court**." **Resolution of cases at any price may breed a cynicism that will, in the long run, be more harmful than delay**. **Providing rights without a real opportunity to vindicate them can only undermine the public's confidence in the legal system**. **The growth of the federal caseload has affected significantly the quality of the federal courts**. The effect of the volume of the federal workload may well be like prolonged and unmitigated stress in an individual's life; **while there may be no single catastrophic event, the effects may be debilitating over an extended period of time**. 86 **The federal judicial system will not collapse, but the accustomed quality of its work** 87 **will surely deteriorate**. There are already enough signs pointing to a negative diagnosis. The first symptom of judicial overload is the abandonment of opinion writing by judges. Recently, the practice of judges, on the Supreme Court and elsewhere, of delegating their opinion writing to law clerks has been criticized. 88 Something more problematic than "turgid language that stumbles along on pedantic footnotes" 89 takes place. The art of judging is at stake: "Clerks ought not to be playing the role of judge--performing the agonizing task of putting together the complex thoughts that become opinions." 90 Because of the "inseparability of writing and thinking," the clerks are not just simply "putting the judge's 'thoughts' into [the first draft]; they substitute their own thoughts for the judge's . . . ." 91 In addition to the delegation of opinion writing to clerks, the delegation of authority in general 92 is a major cost of the [\*1157] caseload explosion. "The caseload per federal judge has risen to the point where very few judges, however able and dedicated, can keep up with the flow without heavy reliance on law clerks, staff attorneys, and sometimes externs too." 93 **This bureaucratization** 94 **of the federal judiciary can only serve to erode its effectiveness, independence, and public respect, as well as the morale of the federal bench itself**. **The sheer volume of cases erodes the ability of the judge to give personal and individual attention to each case**. 95 **In order to stay abreast of his or her docket, a judge may be tempted to resort to forced settlements, excuses to remand to state courts, and aggressive dispositions by summary judgments rather than carefully weigh the arguments of both sides**. The ever-increasing criminal docket with its requirements for early disposition of cases under the Speedy Trial Act 96 prevents careful pretrial management of the civil docket by the judge and mandates reliance on the magistrate. **The ever-increasing docket will, by necessity, invite more court administrator involvement with the inevitable erosion of the traditional independence of the federal judge**. 97 Increased pressure to dispose of ever in- [\*1158] creasing backlogs also invites well-intentioned efforts to find better ways to manage the docket. This in turn requires judges to attend an ever increasing number of committee meetings 98 which naturally takes away from time on the bench. 99 While "the federal courts do not exist for the purpose of clearing their dockets," 100 the current caseload crisis does at least require those advocating the expansion of federal jurisdiction 101 to justify the need for federal action. **Considering the** [\*1159] **public expectations of the federal judiciary, impaired performance and diminished independence are costs the country cannot afford**.

***Weakening the court prevents sustainable development***

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

The Johannesburg Principles state:

“We emphasize that **the *fragile state* of the global environment requires the judiciary, as the *guardian of the Rule of Law*, to** boldly and fearlessly implement and **enforce** applicable international and national **laws**, **which** in the field of environment and sustainable development **will assist in *alleviating poverty*** **and *sustaining an enduring civilization***, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, **while** also **ensuring that the *inherent rights* and interests of succeeding generations are not compromised**.”

There can be no argument that **environmental law, and sustainable development law** in particular, **are vibrant and dynamic areas**, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we **judges, as *custodians of the law*, have a major obligation to contribute to its development**. Much of **sustainable development law is presently making the journey from soft law into hard law. This is** happening internationally but also it is **occurring in many** national legislatures and **courts**.

Fundamental **environmental laws relating to *water, air***, our ***soils and energy* are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge** to narrow that gap **but it is one that is riddled with dangers** and contradictions. **We cannot bridge the gap with materials stolen from future generations**. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized.

A role for judges?

**It is in striking the balance between development and the environment that the courts have a role**. Of course, **this role imposes on judges a significant trust**. **The balancing of the rights** **and needs** of citizens, present and future, **with development, is a delicate one**. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way ***judges are the meat in the sandwich*** but, difficult as it is, we must not shirk our duty. Pg. 53-54

***Extinction of all complex life***

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

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability

**Science needs to do a better job of considering worst-case scenarios regarding** continental- and ***global-scale ecological collapse***. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. **The collapse of the biosphere and** complex life, or eventually even **all life, is a possibility that needs to be** better understood and **mitigated against**. A tentative case has been presented here that terrestrial ***ecosystem loss is at or near a planetary boundary***. It is suggested that **a 66% of Earth's land mass must be maintained** in terrestrial ecosystems, **to maintain critical connectivity necessary for ecosystem services** across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. **There exists a major need for** further research into how much land must be maintained in a natural and agroecological state to meet landscape **and bioregional *sustainable development* goals** while maintaining an operable biosphere.

It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. **Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems**; **44% as natural intact ecosystems** (2/3 of 2/3) **and 22% as agroecological buffer zones**. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities.

Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet.

Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies.

If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. **We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—**extreme cases being desertification and ocean dead zones. **There is no reason to dismiss out of hand that the *Earth System could die if critical thresholds are crossed*.** We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last?

**The risks of global ecosystem collapse and the need for** strong response to achieve **global ecological sustainability have been *understated for decades***. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember **we are speaking of** the potential for **a *period of great dying* in** species, **ecosystems, humans, and** **perhaps all being**. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us.

Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric.

I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000).

Those who deny limits to growth are unaware of biological realities (Vitousek 1986). **There are strong indications humanity may undergo societal collapse and pull down the biosphere with it**. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. **Human survival**—entirely dependent upon the natural world—**depends critically upon** both keeping carbon emissions below 350 ppm and **maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers.** Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats.

The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? **Not speaking of worst-case scenarios**—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—**is *intellectually dishonest*. We must consider the real possibility that we are pulling the biosphere down with us**, setting back or ***eliminating complex life***.

The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative.

Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers.

Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long.   
Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies.

In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever.

**One possible solution** to the critical issues of terrestrial ecosystem loss and abrupt climate change **is a massive and global, natural ecosystem protection and restoration program**—funded by a carbon tax—**to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones** throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries.

In summation, **we are witnessing the collective dismantling of the biosphere** and its constituent ecosystems which can be described as ecocidal. **The loss of a species is tragic, of an ecosystem widely impactful, yet *with the loss of the biosphere all life may be gone***. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. **The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die**.

**Solvency**

***1) The plaintiffs will win exactly ZERO suits:***

***A) The Courts will apply Strict Standing Requirements to litigants***

***B) The Court will defer using the Political Questions Doctrine and Equitable Discretion***

***C) The ACLU and CCR won’t take the cases for fear of losing and locking in the legality of Target Killings***

***D) State Secrets is an insurmountable hurdle***

***They also have no chance of solving any of their modeling / norms advantage because countries like Canada make our Judicial accountability look like a joke***

***You should read all their solvency evidence through the lens of this card – even if ex-post review looks appealing in theory – in practice this is how the Courts will approach the cases***

Philip **Alston 11** \*, \* John Norton Pomeroy Professor of Law, New York University School of Law, 2011, Harvard National Security Journal, ARTICLE: The CIA and Targeted Killings Beyond Borders, 2 Harv. Nat'l Sec. J. 283, Lexis, jj

In June 2009 **the New York Times ran a story headed “Lawsuits force disclosure by C.I.A.”.**380 Although the story dealt specifically with challenges to the CIA’s interrogation program, it suggested more generally that in situations in which the executive and Congress were reluctant to probe the CIA the best prospect of compelling accountability was offered by the courts. If this were the case, the situation would comport with IHRL requirements that, in the words of the ICCPR, any person whose rights “are violated shall have an effective remedy”.381 While additional considerations clearly apply in relation to matters involving national security, the practice of the vast majority of liberal democracies is to provide for a significant role for the judiciary, and sometimes for other specially designed administrative recourse bodies, in situations in which it is alleged that human rights obligations are being breached in the name of national security.382 This does not mean that judicial oversight is either routine or straightforward, but it does mean that there is a firm commitment to ensuring that the power of intelligence agencies is not exercised arbitrarily, thus undermining the rule of law.383 Recall, for example, the Israeli Supreme Court’s direct involvement in ruling on the conditions under which targeted killings can take place within the law and its insistence that there be a retroactive and independent investigation of each instance in which the power has been invoked.384 In the European context, the European Court of Human Rights has established a reasonably extensive jurisprudence relating to the need for judicial review or other effective forms of individualized redress when human rights are violated by security agencies.385 **If these principles were applied to the practice of governmentally *authorized targeted killings*** **the law might be expected to provide legal recourse** to challenge the inclusion of a person’s name on a kill/capture list, **to challenge the legality of such killings** ***ex post facto***, to require the disclosure of information justifying the decision to kill, or to prosecute individuals accused of having killed in circumstances not permitted by the law. **But whatever the theory**, ***in practice such judicial protection is not generally available in United States courts*. Individuals and**, a fortiori, ***interest groups*** **seeking to challenge the legality of intelligence agency actions** **have a range of** largely ***insurmountable obstacles*** **to overcome.** **To begin with**, ***binding international treaties have been rendered non-self-executing and thus unenforceable in United States courts***.386 **In terms of domestic law**, ***military actions are generally excluded from the purview of the Administrative Procedure Act***, **which also exempts rulemaking related to foreign relations from notice and comment requirements**.387 **In order to get to court,** **complainants must satisfy *strict standing requirements,*** ***establish that the action does not fall foul of the political question doctrine,*** ***show that the case can be made without impinging upon the state secrets privilege, and*** must finally ***convince a court not to exercise its “equitable discretion” to decline to rule on sensitive matters.*** **In other words**, ***there is a veritable thicket of procedural and substantive rules designed to uphold a policy of general deference to the executive*** in matters dealing with foreign relations in general, and with foreign intelligence matters in particular.388 **The contrast** with the approach adopted in other comparable jurisdictions **is well illustrated by the case of Maher Arar**.389 In 2002 **Arar,** a Canadian resident and citizen, with joint Syrian citizenship, **was taken into United States custody** at John F. Kennedy Airport in New York, **questioned about suspected involvement with al-Qaeda, and subsequently rendered to Syria where he was allegedly tortured and interrogated for ten months**. In the United States, ***Arar’s civil action against the government was dismissed*** in 2009 by the Second Circuit primarily on the grounds that an appropriate remedy did not exist. More importantly, however, **the majority made clear that** ***this was not the type of situation in which the courts should intervene***. **Chief Judge Jacobs expressed deep concern at the prospect that a court might** ***be involved in “an inquiry into the work of foreign governments and several federal agencies, the nature of certain classified information, and the extent of secret diplomatic relationships.”*** **Such efforts might embarrass the government, through the disclosure of secret information, raise grave concerns about the separation of powers, and involve matters beyond “the decidedly limited experience and knowledge of the federal judiciary”.**390 **The long list of concerns identified by the court** **did not include the obligation of the government or the judiciary to protect human rights or** ***to provide an appropriate remedy*** when they have been violated. **In dramatic contrast**, **the Government of Canada appointed an independent commission of inquiry to investigate Arar’s case**. It questioned over 70 Canadian government officials as witnesses, some in public session and others in camera, and reviewed 21,500 government documents, just under a third of which were formally submitted as exhibits. In deference to foreign relations and national security concerns the Commissioner prepared two versions of his factual report. The first includes a summary of all of the evidence, including that considered confidential for reasons of national security. It was not made public. The second reflects a great deal of the overall evidence and was published in a volume of almost 400 pages. All of the Commissioner’s conclusions and recommendations were published.391 Following publication of the report, the Prime Minister issued a formal apology, wide-ranging recommendations designed to avoid repetitions were endorsed, and compensation of C$10.5 million, plus legal fees, were paid to Arar.392 **But if the Arar case seems to paint a discouraging picture of the prospects for judicial review in relation to national security issues**, ***an even clearer indication of the effective non-justiciability of extraterritorial targeted killings*** in United States courts **came with the 2010 decision in Al-Aulaqi v. Obama.** 393 The case involved the alleged inclusion of Anwar Al-Aulaqi on a CIA/JSOC kill list, a fact neither confirmed nor denied by the government. Al-Aulaqi is a joint United States-Yemeni citizen, residing in Yemen, who is alleged to have been playing “an increasingly operational role” in a designated terrorist group, al-Qaeda in the Arabian Peninsula. As a result of his statements calling for jihad against the West and other activities the U.S. Treasury Department has listed him as a “Specially Designated Global Terrorist”. **The U.S. District Court for the District of Columbia dismissed the case** primarily **on the grounds that there was** ***no convincing basis upon which Al-Aulaqi’s father could establish standing to bring the case on behalf of his son.*** **But perhaps out of concern that some future targeted individual might be able to establish standing in different circumstances**, **Judge Bates also adduced strong arguments as to why the *political question doctrine*** **would in any event prevent the consideration of such cases.** While acknowledging powerful judicial and scholarly critiques of the way in which the doctrine has been interpreted and applied, **Judge Bates nevertheless cited** with approval earlier **findings that the courts are** ***ill-equipped “to assess the nature of battlefield decisions”***394 or “to define the standard for the government’s use of covert operations in conjunction with political turmoil in another country.”395 **In elaborating upon the reasons for the judiciary’s lack of competence in such matters, he noted that judicially manageable standards are absent both in relation to an assessment of “the President's interpretation of military intelligence and his resulting decision – based on that intelligence – whether to use military force against a terrorist target overseas,”** and to a determination of “the nature and magnitude of the national security threat posed by a particular individual.”396 Turning to the case at hand, **the judge asserted that responding to the plaintiff would require the court to decide**: “(1) **the precise nature and extent of Anwar Al-Aulaqi's affiliation with AQAP;** (2) **whether AQAP and al Qaeda are so closely linked that the defendants' targeted killing** of Anwar Al-Aulaqi in Yemen would come within the United States's current armed conflict with al Qaeda; (3) **whether … Al-Aulaqi's alleged terrorist activity renders him a ‘concrete, specific, and imminent threat** to life or physical safety,’ … ; and (4) **whether there are ‘means short of lethal force’** that the United States could ‘reasonably’ employ to address any threat that Anwar Al-Aulaqi poses to U.S. national security interests.”397 But **this already lengthy and intimidating list of issues on which he claimed the court would have to decide was not to be the end of the matter.** Instead, **Judge Bates** ***further ratcheted up the stakes*** **by implicitly endorsing the government’s claim that** ***seeking to answer these questions would, in turn, require the court to understand and assess:*** “**the capabilities of the [alleged] terrorist operative to carry out a threatened attack,** what response would be sufficient to address that threat, possible diplomatic considerations that may bear on such responses, the vulnerability of potential targets that the [alleged] terrorist[] may strike, the availability of military and nonmilitary options, and the risks to military and nonmilitary personnel in attempting application of non-lethal force.”398 But Judge Bates was still not quite finished. He went on to note that, in order to rule on the application, the court would also need “to elucidate the . . . standards that are to guide a President when he evaluates the veracity of military intelligence.”399 **Any claim for judicial relief would** ***surely stumble and collapse under the weight of such wide-ranging and demanding questions.*** **If this case did not encapsulate judicial unmanageability, *whatever could?*** The problem, however, is that the great majority of these questions were not posed by the plaintiff400 and nor would they need to be addressed, let alone resolved, if the court had been at all willing to engage with the core issue stated in the plaintiffs first prayer for relief, seeking a declaration that “outside of armed conflict, the Constitution prohibits Defendants from carrying out the targeted killing of U.S. citizens, … except in circumstances in which they present concrete, specific, and imminent threats to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats.”401 It would have been entirely open to the court to take this question at face value which would, at a minimum, have required the Government to affirm that it considered Al-Aulaqi to be in a situation governed by IHL, thus rendering inapplicable the IHRL standard identified in the question posed to the court. **Unsurprisingly, it seems that the two organizations behind the suit** **– the *C*enter for *C*onstitutional *R*ights and the *A*merican *C*ivil *L*iberties *U*nion** – ***concluded that it would be unwise to appeal the decision* and risk locking in an interpretation that they characterized as affirming “the government’s claim of unreviewable authority to carry out the targeted killing** of any American, anywhere, whom the president deems to be a threat to the nation.”402 **While these cases illustrate the extent to which the standing and political privilege doctrines constitute major barriers to litigation over targeted killings policy**, ***the most watertight defense of all in such cases is likely to be the state secrets privilege***.403 **This privilege, grounded in** federal law through the 1953 Supreme Court decision in United States v. ***Reynolds,*** 404 a case which in which ironically the ‘secrets’ invoked by the government were later shown to have involved neither classified nor national security related information,405 **has been used very extensively in the post 9/11 era**. Critics accused the Bush Administration of making vastly excessive use of the defense,406 although such claims need to be balanced against the absence of any comprehensive database of cases in which the privilege has been invoked.407 While the Obama Administration has sought to institute a policy that requires more rigorous internal justification before the Department of Justice will assert the privilege in litigation,408 this policy has been criticized as soft and “largely hortatory” and, in any event, as providing no externally verifiable assurances that reasonable standards are being enforced.409 **The extent of the state secrets privilege**, ***and of it’s almost certain ability to preclude any suits relating to the CIA and its targeted killings program*** **is well illustrated by the Ninth Circuit’s rejection of a lawsuit filed by five individual victims of the CIA’s secret renditions program.** They alleged that a subsidiary of Boeing, Jeppesen DataPlan, Inc., provided flight planning and logistical support services to the CIA, knowing that they were being used for rendition purposes. The government offered an expansive definition of the scope of the privilege, asserting that it covered “[1] information that would tend to confirm or deny whether Jeppesen or any other private entity assisted the CIA with clandestine intelligence activities; [2] information about whether any foreign government cooperated with the CIA in clandestine intelligence activities; [3] information about the scope or operation of the CIA terrorist detention and interrogation program; [or 4] any other information concerning CIA clandestine intelligence operations that would tend to reveal intelligence activities, sources, or methods.” **Having reviewed much of the secret information the court concluded that** ***the relevant secrets fell within one of more of these four categories, but could not provide more detail because of the secret nature of the information.* The majority concluded that the renditions could not be litigated without risking divulgence of state secrets**.410 One of the most revealing aspects of the majority opinion is its recognition of the unsatisfactory implications of such a restrictive approach. Thus, after noting that “[d]enial of a judicial forum based on the state secrets doctrine poses concerns at both individual and structural levels”, primarily because it ends the possibility of judicial review of the alleged misconduct, the majority made a major effort to identify other possible remedies that might be open to the complainants. They discussed four possibilities: (1) the government, in order to honor “the fundamental principles of justice” could voluntarily provide reparations; (2) Congress could investigate alleged wrongdoing, either through its own means, or by reliance on the CIA Inspector-General; (3) Congress could enact a private bill in order to provide a remedy; and (4) Congress could “enact remedial legislation authorizing appropriate causes of action and procedures to address claims like those presented here.”411 Although **the majority** acknowledged that “each of these options brings with it its own set of concerns and uncertainties”,412 they **were clearly keen to refute concern that they had created a remedial vacuum in which government misconduct would go effectively unchecked.** The minority, however, were scathing about both the utility and propriety of these suggested remedies. Suggesting voluntary reparations, for example, was dismissed as elevating “the impractical to the point of absurdity.” **But the very high barrier to ever getting the CIA into court in a civil suit which was confirmed by Mohamed v. Jeppesen** Dataplan, Inc **should not have come as a surprise.** Even before the Supreme Court denied certiorari review of the judgment,413 **both the critics and supporters of renditions and comparable policies had concluded that judicial remedies** ***for any such actions were highly unlikely ever to succeed in the United States courts***. After a lengthy review of the law and policy, Daniel Pines, a CIA Assistant General Counsel, noted that government officials “face few legal restrictions on rendition operations”, a conclusion that he interpreted as undermining claims that such operations violate U.S. law as well as suggestions that officials responsible should be prosecuted.414 **George Brown**, on the other hand, **argues that civil tort claims brought by those who claim to be victims of the war on terror provide the most likely source of accountability**. **Nonetheless, after a thorough review of the actual results** achieved, ***he concludes that the likely result of such suits is “[d]ismissal at or near the threshold”.***415 He concludes that, instead of looking to Congress or to the courts for accountability the best way forward is to establish a commission of inquiry on a “generalized, non-retributive model.”416 In other words, forget about prosecution or meaningful individual or collective accountability, and focus instead on policy recommendations designed to draw lessons from the past.

***2) There is no legal definition of “Target Killing Operations”***

Philip **Alston 11** \*, \* John Norton Pomeroy Professor of Law, New York University School of Law, 2011, Harvard National Security Journal, ARTICLE: The CIA and Targeted Killings Beyond Borders, 2 Harv. Nat'l Sec. J. 283, Lexis, jj

**As with many terms that have entered the popular consciousness as though they** **had a clear and defined meaning,** ***there is no established or formally agreed legal definition of the term “targeted killings”*** and scholarly definitions vary widely. **Some commentators have sought to ‘call a spade a spade’** and used terms such as “leadership decapitation”, 29 which clearly captures only some of the practices at stake, assassinations,30 or “extrajudicial executions” which has the downside of building per se illegality into the description of the process, or “targeted pre-emptive actions”, which is designed to characterize a killing as a legal exercise of the right of self-defence.31 **But these usages have not caught on and do not seem especially helpful in light of the range of practices generally sought to be covered** ***by the use of the term targeted killing.*** The term was brought into common usage after 2000 to describe Israel’s self-declared policy of “targeted killings” of alleged terrorists in the Occupied Palestinian Territories.32 But influential commentators also sought to promote more positive terminology. The present head of the Israeli Military Intelligence Directorate, for example, argued that they should be termed “preventive killing”, which was consistent with the fact that they were “acts of self-defence and justified on moral, ethical and legal grounds.”33 Others followed suit and adopted definitions designed to reflect Israeli practice.34 Kremnitzer, for example, defined a “preventative (targeted) killing” as “the intended and precise assassination of an individual; in many cases of an activist who holds a command position in a military organization or is a political leader.”35 **For Kober, it is the “selective execution of terror activists by states**”.36 **But such definitions reflects little, if any, recognition of the constraints imposed by international law**, a dimension to which subsequent definitions have, at least in theory, been more attuned. Most recently, **Michael Gross has defined such killing as “an unavoidable, last resort measure to prevent an immediate and grave threat to human life”.** **Although this too remains rather open-ended,** Gross relies on international standards to defend it when he suggests that it tracks “exactly the same rules that guide law enforcement officials.”37 He cites as authority for that proposition the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,38 but these principles contain no such provisions. The quotation he uses is, in fact, a rough summary of the text of Article 2(2) of the European Convention on Human Rights, a standard that was adopted in 1950 and has since been interpreted in a much more restrictive manner than he suggests.39 Gross then goes on to suggest that the approach he proposes is “like that of the Israeli courts”, when in fact the key judgment of the Israeli Supreme Court on the question of targeted killings does not apply international human rights law (hereafter “IHRL”) at all, but instead uses the customary law applicable to international armed conflicts.40 **At the other end of the definitional spectrum is a five part definition proposed by Gary Solis. For there to be a targeted killing there must be**: (i) there must be a**n armed conflict,** either international or non-international in character; (ii) **the victim must be specifically targeted;** (iii) he must be “**beyond a reasonable possibility of arrest**”; (iv) **the killing must be authorized by a senior military commander** or the head of government; (v) **and the target must be either a combatant or someone directly participating in the hostilities**.41 But whereas Gross seeks to use a human rights-based definition, Solis proposes one which is unsuitable outside of international humanitarian law. **A more flexible approach is needed in order to reflect the fact that “targeted killing” has been used to describe a wide range of situations**. They include, for example: the killing of a “rebel warlord” by Russian armed forces, the killing of an alleged al Qaeda leader and five other men in Yemen by a CIA-operated Predator drone using a Hellfire missile; killings by both the Sri Lankan Government and the Liberation Tigers of Tamil Eelam of individuals accused by each side of collaborating with the other; and the killing in Dubai of a Hamas leader in January 2010, allegedly carried out by a team of Israeli Mossad intelligence agents. Targeted killings therefore take place in a variety of contexts and may be committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict. The means and methods of killing vary, and include shooting at close range, sniper fire, firing missiles from helicopters or gunships, firing from UAVs, the use of car bombs, and poison.

***3) No deterrent effect from lawsuits***

**Schwartz, 10** (Joanna C. Schwartz\*, \*Binder Teaching Fellow, UCLA School of Law, J.D., Yale Law School, A.B., Brown University, April, 2010, UCLA Law Review, ARTICLE: Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking, 57 UCLA L. Rev. 1023, Lexis, jj)

**The United States Supreme Court considers it "almost axiomatic"** n1 **that** civil rights **damages actions** n2 **deter government employees and policymakers**. **Being sued and even the threat of suit are expected to cause government officials** [\*1025] **to conform their conduct to the law**. n3 **Courts believe the deterrent power of lawsuits is so strong** that it can ""dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties'" and cause other "able citizens" to avoid public office altogether. n4

**A host of distinguished scholars have offered multiple theories about why civil rights damages actions - and the millions of dollars paid out each year in these cases - will not effectively deter** police department **officials from engaging in future unconstitutional behavior**. n5 An equally accomplished group has defended the deterrent power of civil rights damages actions. n6

More than descriptive accuracy is at stake in this debate. Courts use the expectation of deterrence as a basis to limit remedies: Decisional law immunizes defendants from liability for fear that civil rights damages actions will overly chill government activities. n7 In constitutional criminal procedure, courts have confined the reach of the exclusionary rule on the ground that damages actions adequately deter the police. n8

Scholars, like courts, link practical conclusions to their respective accounts of the deterrent effect of lawsuits. They recommend imposing more direct penalties on government officials, n9 changing liability rules to give Section 1983 [\*1026] greater effect, n10 or using injunctive claims instead of damages actions to influence government behavior. n11

**Courts' and scholars' deep convictions about the deterrent effect** of civil rights damages actions - and, by implication, the prescriptions that follow - **rely heavily on the assumption** n12 **that when a plaintiff prevails** n13 **against a government entity and/or its employee(s), a government policymaker** n14 **will gather information about the lawsuit and weigh the costs and benefits of the alleged activity**. **The policymaker will then decide whether to maintain the status quo and risk being sued again, or make changes that would reduce the likelihood of future suit.**

**There are good reasons, however, to doubt expectations of (1) rational decisionmaking and (2) access to relevant information underlying this assumption of what I call "informed deterrence."** **Modern *cognitive social science* challenges rational choice theory and, in its place, substitutes "bounded rationality**." n15 This "bounded" rival to "rational man" cannot engage in the [\*1027] stylized weighing assumed in current accounts of lawsuits' deterrent effects. n16 **Theories of the deterrent power of** civil rights **damages actions would benefit from a more nuanced view of human cognition and decisionmaking**. n17

This Article, however, focuses on the second assumption underlying accounts of deterrence: that government officials have access to enough useful information about suits that they can make informed decisions about whether and how to act in response. The impact of imperfect information on decisionmaking has received significant scholarly attention. n18 Yet **judicial and scholarly discussions of the deterrent effect of civil rights damages actions overwhelmingly assume that governments gather copious amounts of information about suits and analyze that information in sophisticated ways.** n19

[\*1028] **This Article challenges the assumption of informed decisionmaking by exploring the ways in which information from lawsuits is gathered and analyzed by twenty-six law enforcement agencies across the United States**. **Drawing on *documentary evidence and interviews*, I demonstrate that law enforcement officials only rarely have information about suits brought against their departments and officers**. n20 Over two-thirds of police departments and over 80 percent of sheriffs' departments with more than one thousand sworn officers have no computerized system to track lawsuits brought against them. n21 Even less frequently do law enforcement agencies investigate claims made in lawsuits, review closed litigation files, or consider the dispositions of cases. n22 Finally, the small number of departments with formal policies to gather data from lawsuits characteristically falter in the implementation phase. **Technological kinks, employee error, and deliberate efforts to sabotage data collection combine to undermine departments' limited efforts to gather this information**. n23

**If policymakers do not gather and analyze information from lawsuits, they cannot possibly make informed decisions intended to avoid future** [\*1029] **misconduct**. n24 Yet, my research - and the use of information from lawsuits and other data in different contexts - offers reason to believe that the inverse is also true: When officials actually consider information from lawsuits, they use that information to reduce the likelihood of future misbehavior. n25

In other complex and challenging realms, government entities and private corporations have changed behavior after gathering and analyzing relevant information. CompStat - a system to track and analyze data relevant to criminal behavior - is used by police departments throughout the country to diagnose trends and reduce crime. n26 Rates of litigation against anesthesiologists have declined following trend analyses of closed malpractice claim files. n27 Corporate behavior has improved over the past half century as regulations increasingly require companies to disclose information about the use of chemicals, workplace injuries, and the nutritional value of foods. n28 Across the public and private spheres, organizations have demonstrated the capacity to change behavior after confronting previously ignored data. This Article suggests that more robust and effective information policies and practices may have a similar effect on law enforcement behavior.

Even if we embrace the potential impact of information from suits on law enforcement behavior, however, there remains a gap between where we are now and where we might one day be. Until that gap closes, the information failures revealed in my study should lead us to reconsider certain assumptions in judicial opinions and scholarship. ***No longer should we facilely - and inaccurately - consider it "almost axiomatic" that lawsuits deter.*** n29 Nor can local governments that ignore information from suits insist [\*1030] that the threat of excessive deterrence ought to compel courts to expand immunities or eliminate the exclusionary rule.

***Plan perverse incentive to increase signature strikes – turns every internal link of the aff***

**Ohlin 13** – law professor @ Cornell

Jens David, "Would A Federal District Court for Drones Increase Collateral Damage?" ~http://www.liebercode.org/2013/02/would-federal-district-court-for-drones.html~~ February 13

As some of my colleagues have already explained, it is unlikely and improbable that such a court could authorize specific operational strikes. That would be difficult to implement in real time, and might even be unconstitutional for infringing on the Executive Branch's commander-in-chief power. Rather, such a court would approve the administration's decision to place an individual's name on an approved target list. **A court would review the legitimacy of this decision** with the power to remove the name if the individual does not meet the standard for being a functional member of al-Qaeda. **Although this is more plausible, I still don't think it will work**. In the end, I think **it would just push the administration to avoid targeted killings and would have the opposite effect. *It would increase, not decrease, collateral damage***. Let me explain. Suppose the government has previously used the kill list to govern the selection procedure for targeted killings. The list serves as a clearinghouse for debates and ultimately conclusions about who is a high-value target. If the administration decides that the individual should be pursued, he is placed on the list. If the administration decides that the individual is of marginal or no value, he is removed from the list or never placed on it to begin with. Now imagine that a court is requiring that the list be approved by a judicial process. Why would the administration have any incentive at all to keep adding names to the list? Why not stop using it entirely? ***It could then rely exclusively on signature strikes*** -- an important legal development well documented by Kevin Heller in his forthcoming JICJ article on the subject. **Such strikes would not be banned by the court because the US would not know exactly who it is bombing**. (I'm assuming for the sake of argument that the US is still engaged in an armed conflict with al-Qaeda and that the AUMF or some other statutory authorization for the President's pursuit of the conflict would still be in place.) Essentially, this would be a case of willful blindness -- a concept well known to criminal law scholars. **The real benefit of targeted killings is that the administration knows the exact threat and only targets one individual**. That has changed warfare tremendously. ***But the court system would push the military back towards the old system: target groups of individuals who are known terrorists or enemy combatants -- but you don't know exactly who they are***. You just know they are the enemy. That's the system that reigned in all previous conflicts. And **there would be a disincentive to ever acquire more specific information**. **Why have a drone hover over an area with known terrorists in order to determine, through surveillance, the exact identity of the individual's there? That would only trigger the jurisdiction of the drone court. So ignorance would maintain the legality of the strike.**

**Pre-emption**

***No risk of US/China war---Chinese heg isn’t a threat, economic interdependence checks, miscalc won’t happen and deterrence checks escalation***

**Art ’10** (Robert J, Christian A. Herter Professor of [International Relations](http://en.wikipedia.org/wiki/International_Relations) at Brandeis University and Fellow at [MIT Center for International Studies](http://en.wikipedia.org/wiki/MIT_Center_for_International_Studies) Fall, Political Science Quarterly, Volume 125, #3, “The United States and the Rise of China: Implications for the Long Haul” <http://www.psqonline.org/99_article.php3?byear=2010&bmonth=fall&a=01free>, jj)

**China does not present the type of security threat to the United States that Germany did to Britain, or Britain to Germany**. **Americaʼs nuclear forces make it secure from any Chinese attack on the homeland.** Moreover, China clearly presents a potentially different type of threat to the United States than the Soviet Union did during the Cold War, because the geopolitics of the two situations are different. The Soviet geopolitical (as opposed to the nuclear) threat was two-fold: to conquer and dominate the economic–industrial resources of western Eurasia and to control the oil reserves of the Persian Gulf. Europe and the Persian Gulf constituted two of the five power centers of the world during the Cold War—Japan, the Soviet Union, and the United States being the other three. If the Soviets had succeeded in dominating Europe and the Persian Gulf through either conquest or political–military intimidation, then it would have controlled three of the five power centers of the world. That would have been a significant power transition. **Chinaʼs rise does not constitute the same type of geopolitical threat to the United States that the Soviet Union did.** **If China ends up dominating the Korean peninsula and a significant part of continental Southeast Asia, so what?** As long as Japan remains outside the Chinese sphere of influence and allied with the United States, and as long as the United States retains some naval footholds in Southeast Asia, such as in Singapore, the Philippines, or Indonesia, **Chinaʼs domination of these two areas would not present the same type of geopolitical threat that the Soviet Union did. As long as Europe, the Persian Gulf, Japan, India, and Russia** (once it reconstitutes itself as a serious great power) **remain either as independent power centers or under U.S. influence, Chinese hegemony on land in East and Southeast Asia will not tip the world balance of power**. The vast size and central position of the Soviet Union in Eurasia constituted a geopolitical threat to American influence that China cannot hope to emulate. **If judged by the standards of the last three dominant power-rising power competitions of the last 100 years, then, the U.S.–China competition appears well placed to be much safer**. Certainly, war between the two is not impossible, because either or both governments could make a serious misstep over the Taiwan issue. **War by miscalculation is always possible, but the possession of nuclear weapons by both sides has to have a restraining effect on each by dramatically raising the costs of miscalculation, thereby increasing the incentives not to miscalculate. Nuclear deterrence should work to lower dramatically the possibility of war by either miscalculation or deliberate decision** (**or if somehow such a war broke out, then nuclear deterrence should work against its escalation into a large and fearsome one)**. Apart from the Taiwan issue or some serious incident at sea, **it is hard to figure out how to start a war between the United States and China. There are no other territorial disputes of any significance between the two, and there are no foreseeable economic contingencies that could bring on a war between them. Finally, the high economic interdependence and the lack of intense ideological competition between them help to reinforce the pacific effects induced by the condition of mutual assured destruction. The workings of these three factors should make us** **cautiously optimistic about keeping Sino-American relations on the peaceful rather than the warlike track.** The peaceful track does not, by any means, imply the absence of political and economic conflicts in Sino-American relations, nor does it foreclose coercive diplomatic gambits by each against the other. What it does mean is that the **conditions are in place for war to be a low-probability event,** if policymakers are smart in both states (see below), **and that *an all-out war is* nearly *impossible* to imagine**. By the historical standards of recent dominant-rising state dyads, this is no mean feat. In sum, **there will be some security dilemma dynamics at work in the U.S.–China relationship**, both over Taiwan and over maritime supremacy in East Asia, should China decide eventually to contest Americaʼs maritime hegemony, and there will certainly be political and military conflicts, **but nuclear weapons should work to mute their severity because the security of each stateʼs homeland will never be in doubt as long as each maintains a secondstrike capability vis-à-vis the other.** If two states cannot conquer one another, then the character of their relation and their competition changes dramatically.

***Advantage is empirically denied by years of US assertions of a right to pre-emption---and they can’t restrict non-targeted killing forms of pre-emption***

***Self-defense claims are non-unique and inevitable***

**Corn ‘11**

Geoffrey, Professor of Law, South Texas College of Law, Houston, Texas. Previously Lieutenant Colonel, U.S. Army, and Special Assistant to the U.S. Army Judge Advocate General for Law of War Matters, “Self-defense Targeting: Blurring the Line between the Jus ad Bellum and the Jus in Bello,”

Transnational non-State threats are not going away any time soon. Indeed, it is likely that identifying a rational and credible legal basis for national response to such threats will continue to vex policymakers and legal advisors in the coming years. These threats **will almost certainly** lead States to continue to invoke the inherent right of national and/or collective self-defense to justify extraterritorial responses. This legal basis is not, however, an adequate substitute for defining the legal framework to regulate the operational exercise of this self-defense authority. Nonetheless, the advent of the self-defense targeting theory purports to be just that.

***The doesn’t influence international norms about pre-emption and the plan can’t solve***

**Rivkin, 5** [DAVID B. RIVKIN, JR. \* Partner, Washington, D.C. office of Baker & Hostetler LLP; Visiting Fellow, Nixon Center; Contributing Editor, The National Review and National Interest mag‐ azines; Member, UN Subcommission on the Promotion and Protection of Human Rights; served in a variety of legal and policy positions at the Departments of Justice and Energy and the White House during the Reagan and H.W. Bush Ad‐ ministrations, Harvard Journal of Law & Public Policy, The Virtues of Preemptive Deterrence, <http://www.law.harvard.edu/students/orgs/jlpp/Vol29_No1_Rivkin.pdf>, jj]

Despite these ample justifications, the Bush Administration’s public embrace of preemption has been roundly condemned. To begin, **preemption foes opine**, in an argument eerily remi‐ niscent of Cold War‐era lamentations over deterrence rooted in a viable nuclear war‐fighting posture, **that preemption is dan‐ gerously destabilizing and will result in more, not fewer, con‐ flicts**. **The reasoning here appears to be that allowing states to use force in advance of an actual attack would make them more prone to use force promiscuously—hypothetically, that the U.S. regime change in Baghdad might induce Argentina to invade the Falklands again.**

**Regurgitating this old action‐reaction argument makes even less sense today than it did fifty years ago**.24 **Few foreign policy analysts now believe a country that wishes to go to war with another nation, for whatever domestic ideological or foreign policy reasons, has somehow been “set free” by the Bush Doc‐ trine**. **That some countries may find it expedient to justify their military exploits by referring to the U.S. strategy, as** Vladimir **Putin’s Russia routinely does when trying to justify its brutal conduct in Chechnya, does not mean that they would not have behaved in exactly the same way in the absence of the Bush Doctrine**. **Even fewer maintain that, but for the Bush Doctrine, these conflicts would not occur**. ***This criticism ignores the reali‐ ties of international relations and ascribes to the United States an unrealistic degree of doctrinal influence.***

**Accountability**

***No AQAP risk – prefer our ev which cites local experts***

Abdulrahman **Shamlan, 08.21.13**, Israel News, Experts in Yemen: US overreacted to terror threat, <http://www.ynetnews.com/articles/0,7340,L-4420649,00.html>, jj

In Yemen, all of those embassies have since reopened, although the US Embassy is offering only “limited services” according to the State Department. **Experts here say they believe the international community, especially the US, overreacted to the perceived threat of an attack**. **They say the US has been burned by the terrorist attack on the consulate in Benghazi just under a year ago, when armed gunmen killed four people, including US Ambassador** J. Christopher **Stevens**. "I think **the American administration took such extreme precautionary measures to avert any possibility of a repetition of the Libyan scenario**, for which it came under fierce Republican criticism. It appears it's still haunted by that incident," a senior official from the Yemeni Interior Ministry told The Media Line, speaking on condition of anonymity. The embassies' closure followed a warning of imminent attacks issued by the US after it intercepted communications between al-Qaeda global leader Ayman al-Zawahiri and AQAP leader Nasser Al-Wahishi. That al-Qaeda message reportedly outlined one of the most serious plots against American and Western interests since the September 2001 attacks. It set off an alarm in Washington, prompting the US to close 19 embassies in the Middle East and Africa and issue a global travel warning urging Americans to stay out of targeted states. Yemen was cited as particularly dangerous. **This led many observers and international media correspondents to assume that AQAP is stronger than ever and the threat against Western interests at its highest level ever**. **Yemeni officials and analysts disagree with this view, with some suggesting Washington overreacted to the perceived security threat**. The Yemeni Interior Ministry official said **the security situation in the country has improved and AQAP is not as dangerous as it was in 2011 and early 2012**, during which time the Western embassies remained open. Exploiting the turbulence nationwide as part of the Arab Spring: in 2011, which saw massive protests here demanding the resignation of then President Ali Abdullah Saleh, AQAP launched attacks on army and security posts in southern and southeastern provinces and seized control of key towns. Only with US backing did the Yemeni army recapture them and drive terrorists out of their strongholds. "**AQAP is definitely weaker than it was in 2011**…**If the Americans think it's more dangerous, then they might see what we can't or are more knowledgeable than we are about the Yemeni security situation, which can't be true," the official said**. He admitted, however, that al-Qaeda is still capable of launching terrorist attacks, and therefore "the security threat it poses remains as dangerous as ever." **Yemeni experts and analysts agreed with the official and his claim that the US had overreacted this time**. "Yes, there is a security threat emanating from al-Qaeda in Yemen, but the threat has been there for a long time, not just now," Saeed Obaid, an expert on the terror organization, told The Media Line. "I believe **the American government** had intelligence information that the militant group was plotting to target Western interests here, but it **overreacted and exaggerated the perceived threat**."

***No impact --- not enough members***

Leon T. **Hadar** is a research fellow in foreign policy studies at the Cato Institute, specializing in foreign policy, international trade, the Middle East, and South and East Asia. He is the author of Sandstorm: Policy Failure in the Middle East, 1-6-**10**, CATO Institute,

Good Morning, Yemen? The Mouse That Roared Was Funnier <http://www.cato.org/publications/commentary/good-morning-yemen-mouse-roared-was-funnier>, jj

And all of this is because there is something called ***A*l *Q*aeda in the *A*rabian *P*eninsula**. And according to a report by the BBC, the group **may have less members than the number of the residents in my apartment building**, with "some **experts say there are fewer than 50 fighters, while others believe there may be 200 to 300**." And BTW, most experts also agree that the group was formed after 2003 in response to the U.S. invasion of Iraq. So expect even more use of the Al Qaeda brand following our intervention in Yemen.

***If instability is possible – Syria outweighs the aff***

Daniel **Wagner**, CEO of Country Risk Solutions, a cross-border risk advisory firm, and Giorgio Cafiero, research analyst with CRS based in Washington, D.C., “Syria's Divisive Impact on Yemen”, **10/18**/2013, http://www.huffingtonpost.com/daniel-wagner/syrias-divisive-impact-on\_b\_4122786.html

It appears that **regardless of how the Syrian crisis unfolds, the weak Yemeni state has the potential to become a major loser** as a result of Syria's morass. **If Assad's forces eventually strike a decisive blow against the rebels** and the **al-Qaeda affiliates** are dislodged from northern Syria, they **will certainly seek a new power vacuum in the Middle East to use as a base. In the event that the jihadists around Aleppo defeat the Syrian military** and establish a de facto Islamic Emirate south of the Turkish border, **AQAP will certainly have potential to benefit from a new safe haven** from where they can train and plot further attacks against the government **in Sana'a.** Like other Middle Easterners, the Yemenis view the region's balance of power at stake in Syria. An Assad victory would certainly verify the strength of a Russia-China-Iran-Hezbollah web of alliances, and the comparative weakness of the U.S., Turkey and the Gulf Arab states, in this case. However, if the tide turns against the Assad regime, and Sunni rule is restored in Damascus, Iranian influence throughout the Arab world will suffer a major blow. **Implications of either would not be insignificant for Yemen.** Unfortunately, unless the NDC can bring about national reconciliation, various factions in the country will continue to perceive the Syrian crisis as a zero sum game. As **a continuation of the status quo is the likeliest near term outcome in Syria, the conflict will continue to *be a major source of polarization and sectarian tension in Yemen***, and many other corners of the Arab world.

***Zero risk of Mid East war and it won’t go nuclear***

Judith **Miller 9/23**-‘13 is an award-winning writer and author. She is a Fox News contributor. September 23, 2013, Fox News, Don't expect a new Middle East war between the states, says Israel's Shimon Peres, <http://www.foxnews.com/opinion/2013/09/23/dont-expect-new-middle-east-war-between-states-says-israel-shimon-peres/>, jj

YALTA – **With the nuclear stand-off with Iran and Syrian chemical weapons still threatening the strife-torn Middle East, Israeli President** Shimon **Peres said he did not foresee a war between states erupting in the region any time soon**. Though he was speaking generally, and did not specifically mention either Israel or the United States, both of which have conducted military strikes against states seeking WMD and have threatened to carry out more strikes against Iran, Syria or others suspected of seeking unconventional weapons, Mr. Peres asserted that **military action was both increasingly costly and unlikely to resolve the challenges posed by terrorists or aggressive, authoritarian states.** “**I don’t foresee a war. It’s too expensive**,” he said, **referring to the cost not only in dollars but in human lives**. President Peres, who turned 90 this year, made his remarks at the 10th annual “Yalta European Strategy” conference in the Ukraine, known as “YES,” a political star-studded, two-day event sponsored by Victor Pinchuk, one of the Ukraine’s wealthiest businessmen and philanthropists. The two day meeting of more than 200 officials, former leaders, academics and analysts was held in Yalta this weekend as foreign officials and diplomats headed to New York for the annual meeting of the United Nations General Assembly. Diplomats said that Israel’s prime minister, Benjamin Netanyahu intended to warn the U.S. against signing accord with Teheran that would permit Iran to acquire a nuclear weapon, or improve its atomic weapons infrastructure, as North Korea did in 2005. Mr. Peres, approaching the end of his eventful life and waxing philosophically about the profound changes he has witnessed, said that **war’s soaring costs and decreasing payoff made it less attractive to state leaders, and hence less likely. “*There will not be another war***,” he said, “**because what can you win? Why spend hundreds of millions of dollars and cause thousands of deaths? For what?” Land, or “real estate,”** as he called it, **was becoming less important than science and “wisdom” in the competition among nations**. **The cost of such confrontations was escalating exponentially, with a single fighter jet, for instance, costing hundreds of millions § Marked 11:55 § of dollars, placing unsustainable burdens on national budgets**. “**I don’t foresee a war**,” he said more than once. “**It’s too expensive.” Nor did he see the use of a nuclear or other WMD between states**, he added. **After** the bombing of **Hiroshima**, he said, **a consensus had developed that nuclear, chemical, and biological weapons were too powerful to use.** **This explained why “we were so shocked” when the Syrians used chemical weapons and violated a ban that has become what he called “an accepted norm**.” He also questioned Iran’s assertion that its ambitious nuclear program was for purely peaceful purposes and that its state religion, Islam, forbade the development of nuclear weapons. If that were so, he said, “why build 6,000-kilometer, long-range missiles” capable of delivering them? He urged nations to monitor Iran’s atomic efforts carefully. The Iranians, he said, excelled at both making carpets, which requires attention to minute detail, and playing chess, which demands a firm grasp of strategy. But he declined to say the course he favored to persuade Teheran to comply with requirements of international inspectors and allay American and Western concerns about its nuclear intentions. Exploring other developments in his troubled region, he said he doubted that the upheavals which swept through the Arab Middle East two years ago had met the expectations of the Arab youth who helped foment them. “There is no Arab Spring,” he said. Egypt, the first Arab state to make peace with Israel over 30 years ago, faced particular national peril, he argued. The army had ousted Egypt’s elected Muslim Brotherhood government and its party’s president Mohammed Morsi, he said, because Egypt, whose land had never been divided, faced for the first time in its long history the potential loss of its Sinai Peninsula to terror. “The army took over because Morsi would not defend the integrity of the land,” Peres said. Moreover, the Muslim Brotherhood, which had been a powerful party in opposition, “had no plan to provide food, jobs, and hope” after it narrowly won a heavily contested free election two years ago. In the Midde East, young Arabs face world-wide competition for increasingly scarce jobs, so throughout the world, “young people are in revolt.” Fueled by a powerful mix of testosterone and technology, the Arab Spring protests were aimed at creating jobs, hope, and political space. Some 99 million of the Middle East’s 350 million Arabs were on line at their start, he said, a number that would grow to 200 million in the next few years, he added. More than 60 percent of the region’s inhabitants who are under 26 years old. “It may take them time to get organized, but the future is theirs.” **The winners in an increasingly globalized world would not be those with the most land**, said the president whose own land mass is among the smallest in the region, but the most creative, the best educated, and technologically productive. While terrorism remained a threat to the region’s stability and prosperity, he said, “**I can see the beginnings of a revolt against the terror” that has endangered the leadership and integrity of most Arab states**, he said. Mr. Peres, who often prides himself on his knowledge of and devotion to history, said that given the technological and scientific changes transforming the world, spending a lot of time teaching history was a “waste of time.” “**The future will not be a repetition of the past,**” he said. So “throw away Clausewitz.” **War**, he added, referring to a maxim of Carl von Clausewitz, a father of modern military strategy, **was no longer “an extension of politics by other means.”**

# 2NC

**Solvency**

**2NC Ext #1 – Plaintiffs Lose**

***1) They don’t want to come to America***

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

Two components of justiciability impose virtually insurmountable barriers to lawsuits challenging the nation's policy of targeted killings: standing and the political question doctrine. **Standing is particularly problematic for those who seek to sue on behalf of suspected al Qaeda or Taliban members who might be or have been the targets of U.S. drones**. As a constitutional condition on federal jurisdiction, ***standing requires a plaintiff to demonstrate a concrete and particularized injury resulting from a defendant's allegedly illegal conduct***. **Parties whose putative harm is undifferentiated from all others lack standing, and an interest in a problem or expertise with regard to a particular issue is insufficient to confer standing.' Thus**, ***absent a client who is or was a target of a drone strike***, **those opposed to the nation's targeted-killing policy will be unable to challenge the policy in federal court.** ***Unless al Qaeda or Taliban members are willing personally to seek relief*, which usually means turning themselves in to U.S. authority** (an unlikely event), ***the lawsuit will be dismissed***.

***2) The US would deny them visas***

**RT 10/30-’13** [Victims of drone strike testify before Congress, <http://rt.com/usa/rehman-drone-grayson-hearing-924/>, jj]

Family's Pakistani lawyer denied entry into US The Rehman’s **testimony** to Congress **was originally intended to take place in September, but delays in the visa processing for their lawyer**, Mirza Shahzad Akbar, **pushed that back**. Speaking to RT, Mr. Akbar was straightforward in his belief that **the ongoing denial of his entry into the country with his clients was directly tied to his involvement in pressing against US drone strikes**. “**I think the reason is very obvious, the reason is my criticism of the US drone program in Pakistan, and the legal action I’ve brought since 2010 against CIA officials acting in Pakistan, and against the Pakistani government**.” “The congressional briefing was one occasion where the clients I’m representing would have a voice to speak to American lawmakers, who would also challenge president Obama’s contention that drone strikes are very precise, and they only hit militants, which is not true. Raffiq and his family is a living example of that.” **Mr. Akbar** was meant to travel along with the Rehman family, but has **faced recurring problems entering the US since he began representing civilian victims of drone strikes in 2011**. "**It's not like my name is scratched because there is some sort of confusion. My name is blocked!"** Akbar told the Guardian in September. He later wrote a column for The Hill newspaper, which is widely read on Capitol Hill, trying to bring light to his entry issues. "**Before I started drone investigations I never had an issue with US visas. In fact, I had a US diplomatic visa for two years**," says Akbar.

***Empirics our on our side again***

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

**Even if a plaintiff establishes standing to sue**, ***the political question doctrine will almost certainly block judicial review*** **of the nation's targeted-killing policy**. **The Supreme Court**, in Baker v. Carr,7 **delineated the attributes of political questions, finding that they involve at least one of the following six factors**: [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable or manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of the government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one 28 question. **The quintessential political question case is one challenging a military or foreign policy decision**,9 **which necessarily implicates** ***virtually every Baker factor***, particularly the constitutional commitment of the issues to Congress and the President and the lack of judicially discoverable or manageable standards for deciding the issues."o **Thus, federal courts have refused to review damages claims arising out of cruise missile strikes against a suspected al Qaeda chemical-weapons plant** in the Sudan," **losses suffered because the United States mined a Nicaraguan harbor**, injuries incurred from U.S. actions in connection with the Soviet Union's shoot down of a Korean airliner, damages sustained because of U.S. involvement in the Chilean coup,34 injuries caused by the U.S.-supported Guatemalan army, property lost from the creation of a U.S. naval base on Diego Garcia, **and deaths caused by equipment sold** to Israel under the military-sales program. **Similarly, courts have refused to review the legitimacy of the Government's combat operations** in Cambodia,3 mining of Vietnam's Haiphong Harbor,3" decision to go to war in Iraq,4 placement of cruise 41 42

***State Secrets means no solvency***

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

***V. State Secrets: The Death Knell of Drone Cases* Assuming a complaint survives the jurisdictional, justiciability, immunity, and other hurdles to lawsuits challenging U.S. drone policy, the state secrets doctrine is likely to bring the suit to a *quick end***. n93 **Under the doctrine, the United States may prevent the disclosure of information in judicial proceedings if there is a reasonable danger of revealing military or state secrets**. n94 **Once the privilege is properly invoked** and a court is satisfied that release would pose a reasonable danger to secrets of state, "**even the most compelling necessity cannot overcome the claim of privilege**." n95 ***Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case***, ***n96 it could result in dismissal of the cases themselves***. **Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets,** n97 **or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing** [\*5293] **protected secrets**. n98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation's military tactics and strategy as well as its delicate relations with friendly nations. n99 As such, **lawsuits challenging the policy cannot be tried without access to and** the possible **disclosure of highly classified information relating to the *means, methods, and circumstances* under which drones are employed.** VI. Conclusion **The instinctive reaction of most lawyers to a party's unlawful actions is to turn to the courts for redress**. Although the lawfulness of U.S. policy of attacking al Qaeda and Taliban leaders with drones is contentious, ***the controversy must be resolved through the political process and outside the courts.***

**2NC – Presumption**

1. ***The plan can’t create a norm if we win that the plan results in continuation of “an anything goes standard”-- Plan’s signal isn’t sufficient --- they don’t solve unless the reform is meaningful and checks sovereignty violations --- this card will beat their spin---***

Gretel C. **Kovach**, Military affairs reporter, May 23, 20**13**, UT San Diego, President resets drone wars, <http://www.utsandiego.com/news/2013/may/23/president-drone-wars/all/?print>, jj

**The U.S. drone program is deeply unpopular worldwide because of civilian casualties**, the lack of due process **and violation of sovereignty**, Johnston said.

“**The bearing on U.S. standing in the eyes of the rest of the world depends *on what actually happens* after this and whether or not they feel like this is just old wine in new bottles, whether the U.S. really has enacted *meaningful reforms*, *dramatically reducing civilian casualties* and all of the other criticisms that have come with the rise of these drone wars.”**

***The impact to our solvency argument amounts to a presumption ballot – it’s the affirmative burden to prove how their aff is substantially different than the status quo – “try or die” is silly because at some point the risk of affirmative solvency is so low that it’s equally likely to create the OPPOSITE of the desired effect***

**Epps ’13**, Garrett Epps, a former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore and lives in Washington, D.C. His new book is Wrong and Dangerous: Ten Right Wing Myths About Our Constitution. 2-16-13, The Atlantic, Why a Secret Court Won't Solve the Drone-Strike Problem, <http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/>, jj

**What about after the fact, then? Could there be a secret court that would hear the administration's case for a drone strike and then decide whether that strike had been justified?** Not hardly, I think. A court that meets in secret, hears only one side of a dispute, and issues a final judgment without notifying other parties is not any kind of Article III court I recognize. It is not deciding cases; it is granting absolution. Finally, **some scholars have suggested that the Congress create a new "cause of action**"--a right to sue in an ordinary federal court on a claim that the government improperly unleashed drones on a deceased relative. **The survivors of the late Anwar al-Awlaki tried such a suit, and the Obama administration has so far insisted that it concerns "political questions," not fitted for judicial proceedings**. **Congress could pass a statute specifically granting a right to sue in a federal district court. *Without careful design, that would actually not make things any better. The survivors will file their complaint; the administration will claim state secrets and refuse to provide information***. **A court might reject the secrets claim and order the government to produce discovery. The administration would probably refuse to comply.** **The court's recourse would be to order judgment for the plaintiffs. The dead person's family would get some money, but *we'd be no closer to accountability for the drone-strike decision*.** Professor Stephen I. **Vladeck** of American University **has offered a remedy** to this problem. He proposes a statute in which Congress assigns jurisdiction to a specific judicial district, probably the District Court for the District of Columbia. **Congress in the statute would strip the executive of such defenses as "state secrets" and "political question**." **Survivors of someone killed in a drone attack could bring a wrongful-death suit**. The secret evidence would be reviewed by the judge, government lawyers, and the lawyers for the plaintiff. Those lawyers would have to have security clearance; the evidence would not be shown to the plaintiffs themselves, or to the public. After review of the evidence, the court would rule. If the plaintiffs won, they would receive only symbolic damages--but they'd also get a judgment that the dead person had been killed illegally. It's an elegant plan, and the only one I've seen that would permit us to involve the Article III courts in adjudicating drone attacks. Executive-power hawks would object that courts have no business looking into the president's use of the war power. But Vladeck points out that such after-the-fact review has taken place since at least the Adams administration. "I don't think there's any case that says that how the president uses military force--especially against a U.S. citizen--is not subject to judicial review," he said in an interview. "He may be entitled to some deference and discretion, but not complete immunity." **The real problem with Vladeck's court might be political. I expect that any president would resist such a statute as a dilution of his commander in chief power, and enactment seems unlikely**. **Without such a statute**, then, **systematic review of secret drone killings must come inside the executive branch**. That doesn't mean it will be a lawless whitewash. Congress can prescribe rules for these reviews, decide who will carry them out, and require periodic reports to its committees and to the public. In a recent conversation, David Ignatius of the Washington Post, an old friend and my go-to guy for national-security thinking, suggested the role be assigned to the president's Intelligence Advisory Board, a non-partisan panel of independent experts from outside the executive branch, who serve independently for fixed terms. That is the kind of body we need. ***Bringing in the courts themselves would* be at best tricky, and at worst *as dangerous*, in its way, *as allowing the drone war to continue without supervision.***

***Also – Framing issue - Their plan text is insufficient according to THEIR solvency advocate – that should alleviate any pause you have for voting on presumption***

Steve **Vladeck** is a professor of law and the associate dean for scholarship at American University Washington College of Law., “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…”, Feb 10th 20**13**, <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/#.Uv5UVvldVic>

To be sure, **there are a host of legal doctrines that would get in the way of such suits**–**foremost among them**, ***the present judicial hostility to causes of action*** under Bivens; ***the state secrets privilege***; ***and official immunity doctrine***. **But I am a firm believer that**, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded), each of these concerns can be overcome by statute–**so long as Congress creates** **an express cause of action for nominal damages**, ***and so long as the statute both*** (1) ***expressly* overrides state secrets *and* official immunity doctrine; and** (2) **replaces them with *carefully considered procedures*** for balancing the secrecy concerns that would arise in many–if not most–of these cases, **these legal issues would be overcome.**

***If you are not compelled by presumption – then treat solvency like a disad:***

***Sub-point A: No try or die ballot – Restrictions are inevitable – The plan’s ineffective restriction is more likely to crowd out EFFECTIVE restrictions in the future***

Benjamin **Wittes 9**, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

**The real question is *not whether institutionalization will take place* but *whether it will take place deliberately or haphazardly*, whether the *U***nited ***S***tates **will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of** common law **adjudications to shape them**.

**A2: We Solve – State Secrets / PQD – Our Plan Text says “Limit Immunity”**

***1) State secrets is considered nonjusticiability***

Matthew **Plunkett,** J.D., University of California, Irvine, School of Law, 2012, “The Transformation of the State Secrets Doctrine Through Conflation of Reynolds and Totten: The Problems with Jeppesen and El-Masr”, UC IRVINE LAW REVIEW, 20**12**

The district court in Jeppesen provides an excellent example of how courts, including the court in El-Masri, have failed to distinguish between Totten and Reynolds. 132 **In dismissing the case on** ***nonjusticiability grounds*** **because the** very **subject matter of the case was found to be** ***a state secret,*** **the court relied almost exclusively on** the Ninth Circuit’s 1998 opinion in **Kasza v. Browner**. 133 Kasza was a similar state secrets case that was dismissed at the pleading stage, purportedly under Reynolds, because the very subject matter of the case was a state secret.134

***2) So is the PQD***

Raffaela **Wakeman 13**, project manager at the Brookings Institution and Note Development Editor on the Journal of National Security Law & Policy, and Jane Chong, editor at the Yale Law Journal and Ford Foundation Law School Fellow at Brookings, citing Rosemary Collyer, United States District Judge for the United States District Court for the District of Columbia, July 18 2013, “Oral Argument Preview: Al-Aulaqi v. Panetta”, http://www.lawfareblog.com/2013/07/oral-argument-preview-al-aulaqi-v-panetta-et-al/#.Uv\_xefldVic

***P*olitical *Q*uestion *D*octrine** As expected, **alleged** ***non-justiciability*** **lies at the core of the government’s motion to dismiss**. Specifically, **the government asserts that adjudicating the plaintiffs’ claims would require the court to pass judgment on military and counter-terrorism operations conducted pursuant to “the Executive’s prerogative of national self-defense and in the course of an armed conflict authorized by Congress.”** As the language here suggests, the government carefully aligns the executive branch with Congress throughout its analysis. **Focusing on the first three of the six “special factors” used by the Supreme Court** in Baker v. Carr **to determine whether issues are non-justiciable**, **the government asserts that the claims in this case have a “textually demonstrable constitutional commitment” to the political branches;** lack judicially manageable standards; and require a policy determination that would show a “lack of the respect due” to the political branches.

***3) This is legally distinct from “immunity”***

Matthew **Plunkett,** J.D., University of California, Irvine, School of Law, 2012, “The Transformation of the State Secrets Doctrine Through Conflation of Reynolds and Totten: The Problems with Jeppesen and El-Masr”, UC IRVINE LAW REVIEW, 20**12**

**There are important** similarities and **differences between *nonjusticiability* and *immunity.*** Traditional ***nonjusticiability*** **doctrines direct courts to refrain “from the exercise of judicial power in situations that might overly infringe on the prerogatives of another branch of government**,” or where a case does not constitute a “case or controversy” under Article III of the Constitution due to standing, ripeness or mootness problems. Nat’l Ass’n of Gov’t Emp. v. White, 418 F.2d 1126, 1130 (D.C. Cir. 1969) (regarding separation of powers); Flast v. Cohen, 392 U.S. 83, 94–96 (1968) (regarding “case or controversy” requirements). Consequently, nonjusticiability must be addressed, like jurisdiction, before “a federal court may proceed to any other question.” Galvan v. Fed. Prison Indus., Inc., 199 F.3d 461, 462–63 (D.C. Cir. 1999) (citing Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 94–95 (1998)). ***Immunity,*** while technically a defense, **is similar** to a nonjusticiability doctrine **in that it has also been characterized as “jurisdictional**.” FDIC v. Meyer, 510 U.S. 471, 475 (1994). In fact, some courts have chosen to address immunity defenses before nonjusticiability doctrines. See, e.g., In re Papandreou, 139 F.3d 247, 255 (D.C. Cir. 1998). **However**, ***unlike nonjusticiability***, **immunity does not completely prevent a court from hearing a case**. **Immunity does prevent a court from enjoining the defendant’s conduct or ordering the defendant to compensate the plaintiff**, ***but in some cases a court might still rule on the underlying constitutional claim***. See Pearson v. Callahan, 555 U.S. 223, 236 (2009) (holding that courts may use their discretion to decide constitutional claims before qualified immunity). As a practical matter, Totten’s characterization as one or the other is largely unimportant because both doctrines prevent the plaintiff from recovering. However, as more and more cases are dismissed as nonjusticiable and the trend begins to resemble an immunity doctrine, it sends a strong message to plaintiffs and defendants that government entities will not be held responsible for such conduct.

***5) Immunity and State Secrets are very different things – you should write your plan text with more precision***

Sarah **Topy**, Associate Member, 2010–2011 University of Cincinnati Law Review, “TO DISMISS ON THE PLEADINGS OR NOT TO DISMISS ON THE PLEADINGS: EXTRAORDINARY RENDITION AND THE STATE SECRETS DOCTRINE UNDER THE REYNOLDS FRAMEWORK IN MOHAMED V. JEPPESEN”, University of Cincinnati Law Review Volume 80 | Issue 1 Article 6 5-19-20**12**, http://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1086&context=uclr

The U.S. Supreme Court was clear in Totten that **dismissal of an entire suit at the outset should occur only when the very subject matter of the case is itself a state secret**.89 **If the *subject matter* is not a state secret, then courts are to** use the Reynolds framework, which merely **prohibits the introduction of *privileged evidence***.90 **If the plaintiff cannot establish a** prima facie **case** or the defense is denied critical evidence without the offending information, **then dismissal of the suit may be appropriate**.91 But **Reynolds, by its own assertion**, ***is an evidentiary test and is not an immunity doctrine***.92

**A2: No deference because Congress gives the Courts this Authority**

***1) Deference is inevitable—Courts defer even when Congress gives them a cause of action, because they don’t like wading into national security issues***

Amanda **Frost,** Assistant Professor of Law, American University Washington College of Law, “

ESSAY: THE STATE SECRETS PRIVILEismissGE AND SEPARATION OF POWERS”, 75 Fordham L. Rev. 1931, March 20**07**

Admittedly, **Congress's decision to grant federal courts jurisdiction over cases challenging executive authority *does not require courts to ignore executive claims of privilege*** and hear cases that jeopardize national security. **Congress provides federal jurisdiction over large categories of cases**, such as 28 U.S.C. §1331's broad grant of jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." **When faced with a specific case that would force disclosure** of information vital to national security, and perhaps for little benefit, **Congress might well prefer that courts decline jurisdiction.** (Although its enactment of statutes limiting executive power in the area of national security suggests otherwise.) **Furthermore**, **courts have long asserted that they have some discretion about whether to hear cases that Congress has assigned to them**, ***and have often chosen to abstain or defer*** to some other political institution [\*1956] ***rather than reach out and decide a matter that is technically within their purview***. n112 Thus, ***simply because courts have authority to hear cases challenging executive action does not mean that they are constitutionally required to do so.*** It does suggest, however, that courts should examine more closely the role that the federal judiciary and Congress play in working together to check executive authority before granting executive demands to dismiss these cases.

***2) Here is comparative evidence that says clarifying the law can’t solve because of JUDICIAL MINDSET – This also proves they can’t solve deference***

ANYA **BERNSTEIN**, Bigelow Fellow and Lecturer in Law, University of Chicago Law School. , “CATCH-ALL DOCTRINALISM AND JUDICIAL DESIRE”, 20**13**, http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-221.pdf

**Professor**s Vázquez and **Vladeck make an important contribution to our understanding of Bivens** in both its federal and its federalist contexts. **They challenge courts to follow through on their own statutory interpretations and claimed goals**. If the authors’ aim is to make courts less averse to Bivens claims,42 then I applaud their elucidation of the law and their exhortation to take its implications seriously. At the same time, ***I am not convinced, as a matter of analysis, that elucidating the law addresses what courts are actually doing* when they reject Bivens claims**. **It is difficult to understand these opinions’ doctrinal conflations as simple misreadings of law**. ***They make more sense as expressions of a policy desire***—conscious or not—**to protect the Executive** from the individuals it harms.43 **This motivation may be rooted in a number of convictions**: **the belief that lawsuits excessively disrupt executive efficiency, and that such efficiency should override individual rights; the belief that national security requires an Executive free to act as it thinks it needs to, even if its acts violate individual rights;**44 **the belief that elections provide all the influence an individual ought to have over executive policy choices.** ***But it is impossible to make sense of recent Bivens jurisprudence without, in some way, assuming the goal of executive insulation***. Evaluating the relevant prudential concerns—and their relation to institutional realities—may tell us more about Bivens than the Westfall Act can.

***3) Even if you think plan creates statutory provisions that overcome state secrets – the Courts will STILL defer***

Kristina A. **Kiik**, J.D. Candidate, SMU Dedman School of Law, “Casenote: Damages Against Federal Officers - The Second Circuit Contributes to Executive Interference in National Security Litigation Through Improper Bivens Analysis”, 62 SMU L. Rev. 813, Spring 20**09**

**This makes its consideration as a special factor under Bivens *particularly inappropriate***. Bivens prescribed a framework for the judicial recognition of an implied cause of action against the backdrop of congressional deference to the creation of a damages remedy. **The state-secrets privilege is quintessentially an executive tool, and when considered** as a special factor, **the court defers** ***not to a congressional determination, but to an executive determination of whether a cause of action should exist.*** **In other words**, the Arar court did not give the Executive Branch's view of a case's impact on foreign policy "serious weight" when it considered the state-secrets privilege as a special factor. n55 On the contrary, **the court gave it the unilateral power *to deny the enforcement of a constitutional right.* This is tantamount to *complete executive deference to the creation of a damages remedy***, which defies nearly forty-years of Bivens jurisprudence.

**A2: Obama Won’t circumvent**

***2) Here is more evidence that Obama has invoked State Secrets and Political Questions in similar cases***

Michael **Epstein**, The Editor-in-Chief of the Journal of International Law, “THE CURIOUS CASE OF ANWAR AL–AULAQI: IS TARGETING A TERRORIST FOR EXECUTION BY DRONE STRIKE A DUE PROCESS VIOLATION WHEN THE TERRORIST IS A UNITED STATES CITIZEN?”, 20**11**, http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1062&context=ilr

**The plaintiffs’ complaint alleged that the government’s policy of targeting** U.S. Citizens abroad without articulating a specific crime or threat **violated** said citizens’ “Fourth Amendment right to be free from unreasonable seizures and . . . [their] Fifth Amendment right not to be deprived of life without **due process** of law.”20 The complaint also alleged that “the United States’ refusal to disclose the criteria by which it selects U.S. citizens like plaintiff’s son for targeted killing independently violates the notice requirement of the Fifth Amendment Due Process Clause.”21 In other words, al-Aulaqi’s father was essentially asking the U.S. government to not kill his son without charging him with a crime or without specific evidence that he was about to commit a crime. B. The Justice Department’s Response On September 24, 2010, **the Obama Administration responded with a lengthy motion to dismiss**.22 **The motion confirmed speculation that the Justice Department would seek to quickly have the motion dismissed and avoid having the particulars of its operations against certain terrorists from being litigated in court**; **there appeared to be internal debate within the Administration whether to invoke the “*p*olitical *q*uestion *d*octrine” or the “state secrets” doctrine**.23 The state secrets privilege, first articulated in United States v. Reynolds, essentially allows the Executive branch to prevent the disclosure in litigation of any “military matters which, in the interests of national security, should not be divulged.”24 There was some question as to whether the Obama Administration would invoke the state secrets doctrine in this case,25 especially in light of President Obama’s Inauguration–pledged changes in policy regarding the War on Terror.26 While the Justice Department’s response articulated several arguments as to why the injunction should not be granted,27 **the motion** ***did indeed invoke the state secrets privilege*** to bar further litigation of the complaint.28 **The motion presented several justifications to be considered before the state secrets doctrine; notably**, ***the political question doctrine***.29 The political question doctrine excludes political and policy questions from judicial review when said questions are the exclusive purview of the executive or the legislative branches.30 **The Administration argued that enforcement of such an injunction would insert the Judiciary into an area of decision making where the courts are particularly ill–equipped to venture,** i.e., in assessing whether a particular threat to national security is imminent and whether reasonable alternatives for the defense of the Nation exist to the use of lethal military force. Courts have neither the authority nor expertise to assume these tasks. 31

**Accountability**

**2nc – Not Enough Members**

***Even if they win there are more than 50 members---only a few dozen AQAP members are actually working on attacking the US***

**SHARP 10/6** (Jeremy M.; Specialist in Middle Eastern Affairs – Congressional Research Service, “Yemen: Background and U.S. Relations,” <http://www.fas.org/sgp/crs/mideast/RL34170.pdf>)

As of early October 2011, President Ali Abdullah Saleh remains president of Yemen despite widespread opposition to his rule and to his relatives’ control over most of the country’s security forces. Ironically, Yemen’s intractable political crisis has come at a time of heightened U.S. counter-terrorism operations inside Yemen, culminating in the September 30 U.S. strike against an Al Qaeda in the Arabian Peninsula (AQAP) convoy that killed Anwar al Awlaki, the U.S.-born cleric and mastermind of the foiled Christmas 2009 airline bomb plot, among other operations he either oversaw or personally inspired. Neutralizing Awlaki (despite unresolved legal controversy over the government’s right to target an American citizen) had been a top Administration priority in Yemen. At this time, however, it is unclear how Awlaki’s death will affect AQAP’s capacity to target the U.S. homeland. Most Administration officials have declared that AQAP is the most lethal of the Al Qaeda affiliates, though policymakers also have suggested that **there are only a few dozen AQAP members who are part of the terrorist group’s international operations cell plotting attacks against the United States**.1

***Worst case scenario is a couple hundred members total. That’s still not a threat***

**Haykel 11** (Interviewee: Bernard Haykel, Professor of Near Eastern Studies, Princeton University, June 7, 2011, Yemen's Uncertain Political Future, <http://www.cfr.org/yemen/yemens-uncertain-political-future/p25205>)

The United States government has been myopic, in that it sees only the threat of al-Qaeda. In fact, al-Qaeda exists in Yemen because of the weak nature of the state in Yemen, and President Saleh has not wanted to crush al-Qaeda because they've been a useful tool in garnering American and other outside support. **Al-Qaeda in Yemen consists of two hundred or three hundred individuals. They're not a real threat** to the Yemeni people, and have been allowed to exist because the Yemeni regime sees them as useful for its own policies and politics. **The Americans have fallen victim to the claims of Saleh and his tricks.**

# 1NR

**impact**

**1NR Overview**

***We control global impact uniqueness – Interdependence checks war. Plan undermines this crucial form of restraint.***

Daniel **Griswold**, director of the Center for Trade Policy Studies, 4/20/**’7**, Trade, Democracy and Peace, p. http://www.freetrade.org/node/681

A second and even more potent way that trade has **promote**d **peace is by promoting** more **economic integration.** **As national economies become more intertwined with each other**, those **nations have** more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also **ruptured trade and investment ties that impose lasting damage on the economy.** In short, **globalization** has dramatically raised the economic cost of war.

***We outweigh on magnitude –Their impacts only escalate in a world of protectionism***

Valentin L. **Krustev**, Political Science -- Rice, **'6** (Journal of Peace Research, Vol. 43, No. 3)

According to the opportunity-cost argument, interdependence promotes peace by raising the costs of militarized conflict (Polachek, 1980; Polachek, Robst & Chang, 1999). Conflict becomes more costly, in turn, because the fighting parties, in addition to bearing the costs of waging warfare, forfeit the potential gains from trading, owing to government-imposed restrictions and increased business risks. However, these conflict-inhibiting effects of interdependence are not limited only to the pre-conflict phase of a dispute, and the opportunity-cost argument can explain how the prospect of further trade losses ***provides incentives*** for conflict termination as well. As some scholars have observed, any theory of the effect of interdependence on conflict should be grounded in a solid understanding of the occurrence and dynamic of conflict itself (Morrow, 1999, 2003; Gartzke, 2003b). While traditionally multiple theories of conflict have proliferated in the study of IR, recent scholarship has drawn attention to its informational origins (Fearon, 1995; Gartzke, 1999). As Fearon (1995) argues, if most conflicts end in some negotiated settlement over the disputed issue, rational states should prefer to conclude that settlement prior to incurring the conflict costs, as the bargaining range of mutually acceptable settlements is guaranteed to be non-empty when these costs are positive. A very common reason for states sometimes being unable to reach a rational pre-conflict settlement emerges in the asymmetry of information, combined with states’ incentives to misrepresent their reservation values. Conflict, on the other hand, helps states to credibly communicate these reservation values by demonstrating their willingness to incur its costs or revealing the true magnitude of the costs, as an expanding informational literature on war suggests (e.g. Wagner, 2000; Filson & Werner, 2002; Slantchev, 2003). The opportunity-cost logic implies that interdependence can enter the theoretical framework outlined above through the conflict-cost parameters, as interdependence increases these costs. Following Fearon’s (1995) discussion, higher conflict costs increase the pre-conflict bargaining range and should, therefore, decrease the probability of conflict. In their calculus, states balance the size of their demands against the probability that these demands exceed the opponent’s reservation value and are rejected. Higher conflict costs due to greater interdependence worsen states’ conflict payoffs and push them to lower their demands, which, in turn, results in a reduced probability of conflict onset.8 Signaling arguments, on the other hand, suggest that interdependence allows states to credibly communicate their resolve or reservation values by severing an advantageous economic relationship that an unresolved state would not terminate. The credible communication made possible by interdependence reduces the uncertainty existing over the bargaining range and ***increases the likelihood of a settlement short of war*** (e.g. Gartzke, 2003a,b; Morrow, 2003). Thus, if we adopt Fearon’s (1997) terminology, signaling implies that interdependence allows states to ‘sink costs’, while the opportunitycost logic is more reminiscent of ‘tying hands’; that is, interdependence affects states’ behavior by changing their incentives. The opportunity-cost argument for why interdependence inhibits militarized conflict can be easily extended to account for the effect of interdependence on the duration of conflict.

**\*Turns Mid East**

***Trade shocks fuel Mid East stability***

**Hanelt & Möller, 11** – \*Senior Expert “Europe and the Middle East” in the Programme “Europe’s Future” and a Member of the Management Team at Bertelsmann Stiftung in Gütersloh, Germany, AND \*\*analyst on European Integration and European Foreign and Security Policy in the Middle East (February 2011, Christian-Peter Hanelt and Almut Moller, “How the European Union can Support Change in North Africa,” <http://www.isn.ethz.ch/isn/Digital-Library/Policy-Briefs/Detail/?lng=en&id=127838>)

**The collapse of the regimes and the speed with which it happened came as a surprise to all observers**. It is true, for example, that in its Transformation Index the Bertelsmann Stiftung has been pointing out for years that the democracy rankings for North Africa and the Middle East and the regional average lag far behind those of every other region in the world. And **in the countries concerned the benefits of economic liberalization have not as yet reached the majority of the population**. Since 2002 the Arab Human Development Reports of the United Nations have systematically described the deficiencies. **The regimes were nevertheless deemed to be “stable.”** However, trouble was brewing under the surface. “The deficiencies were known but the regimes were nevertheless deemed to be ‘stable’.” **The countries of North Africa were hit by the global economic crisis, which simply exacerbated the existing problems.** **On the one hand there was economic distress caused by rapidly rising food prices, unemployment and the lack of a future, especially among the rapidly increasing younger segment of the population**; there were the decades in which people were denied political rights; and there were corrupt governments and persistent and (now well documented) human rights abuses. On the other hand, there were new forms of communication and organization through social networks, and better access to the media and information. All **these factors contributed to the civic Arab revolutions which broke out in 2011**.

**\*Turns norms**

***Turns norms***

**Blatt**, Book Reviewer for Futurecast, ‘**2** (Dan, Book Review of Joseph S. Nye’s “The Paradox of American Power”, http://www.futurecasts.com/book%20review%204-02.htm )

**Coalitions against particular U.S. international interests** have occurred and **are made more likely by unilateralist**, arrogant, and parochial U.S. **conduct. Protectionism is undoubtedly the most dangerous and divisive form of such conduct. "The United States must resist protectionism at home and support international economic institutions**" that facilitate international commerce. **Trade disputes must not be permitted to explode into disastrous trade wars (such as the trade war** during the 1920s and 1930s **that played a major role in the Great Depression**). U.S. economic and cultural supremacy may indeed erode as Asian and European markets prosper and grow. They may ultimately "loom larger than the American market." In several particular areas - such as international trade, antitrust regulation, the establishment of technical standards, and protection of intellectual property - Europe already shares predominance with the U.S. **Defining our national interest broadly** to include global interests **will be crucial to** the longevity of our power and **whether others see hegemony as benign or not. The various aspects of soft power must be a part of any effective foreign policy - and multilateralism is essential for the development and maintenance of the attributes of soft power**.

**\*Turns Terror**

***Economic collapse leads to terrorism***

**Bremmer 9**(Ian, - President of the Eurasia Group, sr. fellow @ World Policy Institute, , 3/4/09, *Foreign Policy,* http://eurasia.foreignpolicy.com/posts/2009/03/04/the\_global\_recession\_heightens\_terrorist\_risks)

But there's another reason why the financial crisis heightens the risk of global terrorism. **Militants thrive in places where no one is fully in charge. The global recession threatens to create more such places**. No matter how cohesive and determined a terrorist organization, it needs a supportive environment in which to flourish. That means a location that provides a steady stream of funds and recruits and the support (or at least acceptance) of the local population. Much of the counter-terrorist success we've seen in Iraq's al Anbar province over the past two years is a direct result of an increased willingness of local Iraqis to help the Iraqi army and US troops oust the militants operating there. In part, that's because the area's tribal leaders have their own incentives (including payment in cash and weaponry) for cooperating with occupation forces. But it's also because foreign militants have alienated the locals. The security deterioration of the past year in Pakistan and Afghanistan reflects exactly the opposite phenomenon. In the region along both sides of their shared border, local tribal leaders have yet to express much interest in helping Pakistani and NATO soldiers target local or foreign militants. For those with the power to either protect or betray the senior al-Qaeda leaders believed to be hiding in the region, NATO and Pakistani authorities have yet to find either sweet enough carrots or sharp enough sticks to shift allegiances. The slowdown threatens to slow the progress of a number of developing countries. **Most states don't provide ground as fertile for militancy as places like Afghanistan, Somalia, and Yemen. But as more people lose their jobs,** their homes, and opportunities for prosperity -- in emerging market countries or even within minority communities inside developed states -- it becomes easier for local militants to find volunteers. This is why the growing risk of attack from suicide bombers and well-trained gunmen in Pakistan creates risks that extend beyond South Asia. This is a country that is home to lawless regions where local and international militants thrive, nuclear weapons and material, a history of nuclear smuggling, a cash-starved government, and a deteriorating economy. Pakistan is far from the only country in which terrorism threatens to spill across borders.

**1NR A2: No Protectionism / Trade Resilient**

1. ***Rejection of TPA signals US isolationism and kills alliances—undermines global trade and the economy***

**Kennedy, 2/5/14** (Former Rep. Mark R. Kennedy (R-Minn.), served in the House of Representatives from 2001 to 2007, He leads George Washington University's Graduate School of Political Management and is chairman of the Economic Club of Minnesota. February 05, 2014, The Hill, Opposition to 'fast track' - small thinking with big downside, <http://thehill.com/blogs/congress-blog/foreign-policy/197454-opposition-to-fast-track-small-thinking-with-big-downside>, jj)

Reflexive opposition to President Obama’s push for Trade Promotion Authority (TPA or “fast track”) reflects a desire to prioritize parochial pandering over what is best for American workers, not to mention our closest allies around the world. **Pending economic agreements with European and Pacific nations, which have the potential to jumpstart global growth, need lawmakers to take a broader view.** Statements in opposition to fast track authority less than 24 hours after President Obama made the case for it during his State of the Union address thrilled union bosses and perhaps some vulnerable senators looking to get reelected in November. Unfortunately it also undercut a key bipartisan plank of the president’s economic agenda, while dismaying our negotiating partners in Europe, Japan, Canada, and Mexico. This is yet another sad case of special interest politics trumping the general national interest. **The downsides to this provincial posturing are legion.** Undermines one of the best opportunities to grow jobs and increase incomes. The **Obama** administration **has rightly identified that expanded trade grows jobs**. **Both of the deals in question would boost exports and help create high-value jobs in the manufacturing and service sectors**, though some occupations may be lost in areas where America is less competitive. Puts President Obama in a bind. **The president has made tightening America’s relationship with the fast growing Asian region a key plank of the nation’s economic and foreign policy**. During my recent travels to Asia, I was repeatedly told how damaging it was for America’s standing in the region and the progress of Trans Pacific Partnership trade negotiations for President Obama to miss the Asia-Pacific Economic Cooperation meeting in October 2013 due to the government shutdown. The administration had hoped to make up lost ground and reach agreement by the time President Obama visits the region in April. Tea Party Republicans caused the first self-inflicted wound. Democrats’ attempts to slow-roll TPA could be the next. Short circuits recent baby steps in the direction of bipartisan collaboration. After a fruitless faceoff that resulted in a government shutdown, Budget Committee leaders in both chambers came together to negotiate a compromise that removed the threat of another closure, while replacing some of sequestration’s blunt prescriptions with more targeted savings. That first step, coupled with a Republican desire to work on immigration reform, seemed to be the start of a foray into bipartisan consensus building. Overtly partisan opposition to fast track threatens that progress. **Drives a wedge between America and our most important allies**. If trade agreements represent a welcoming gesture to new suppliers and consumers, ***derailing the negotiations over a procedural matter such as fast track is tantamount to slamming the door in a guest’s face***. **As Europe continues to struggle to lift itself up off the mat, it is placing great hope in the *T*ransatlantic *T*rade and *I*nvestment *P*artnership to spark economic vitality on both sides of the Atlantic. It took great courage for Japan to agree to open up its economy and join with the United States and ten other Pacific Rim nations to pursue closer trade relationships**. Having taken this bold step forward, **Japan and others worry that America is turning inward and leaving them behind**. ***To abort these trade discussions would signal an isolationist turn by America.* Leaves America less competitive. Rejecting expanded trade to avoid competition will make American enterprise worse off in the long run.** As Jason Furman, chairman of the president’s Council of Economic Advisors stated, “If you’re not in an agreement – that trade will be diverted from us to someone else – we will lose out to another country.” **Succumbing to *protectionist* urges** for the sake of union support, defense of uncompetitive companies, or populist appeal **may seem attractive** in the short-term, **but its ultimate aftermath -- an American economy that is smaller, more sheltered, and less competitive -- is disastrous.** **If you seek to sacrifice job growth, hamstring the president**, return to non-stop partisan bickering, **alienate essential allies, and relegate America to being a second rate economy, the choice is clear: oppose TPA** and the pending European and Pacific trade accords. **If you believe that a core strength of America is that its open economy has created an environment that creates businesses able to take on all comers and that the spread of international prosperity through expanded trade makes us more secure, you should support TPA.**

**1NR A2: No Impact / Trade No Solve War**

1. ***Free trade solves great power wars, and protectionism causes them***

**Hillebrand**, Kentucky diplomacy professor, 20**10**(Evan, “Deglobalization Scenarios: Who Wins? Who Loses?”, Global Economy Journal, Volume 10, Issue 2, ebsco)

**A long line of writers** from Cruce (1623) to Kant (1797) to Angell (1907) to Gartzke (2003) **have theorized that economic interdependence can lower the likelihood of war**. Cruce thought that free trade enriched a society in general and so made people more peaceable; Kant thought that trade shifted political power away from the more warlike aristocracy, and Angell thought that **economic interdependence shifted cost/benefit calculations in a peace-promoting direction**. Gartzke contends that **trade relations enhance transparency among nations and thus help avoid bargaining *miscalculations***. ***There has also been a tremendous amount of empirical research* that mostly supports the idea of an inverse relationship between trade and war**. Jack Levy said that, ―While there are extensive debates over the proper research designs for investigating this question, and while some empirical studies find that trade is associated with international conflict, **most studies conclude that trade is associated with peace**, both at the dyadic and systemic levels‖ (2003, p 127). There is another important line of theoretical and empirical work called Power Transition Theory that focuses on the relative power of states and warns that **when rising powers approach the power level of their regional or global leader the chances of war increase** (Tammen, Lemke, et al, 2000). Jacek **Kugler** (2006) **warns that the rising power of China relative to the United States greatly increases the chances of great power war some time in the next few decades**. **The IFs model combines the theoretical and empirical work of the peace-through-trade tradition with the work of the power transition scholars in an attempt to forecast the probability of interstate war**. Hughes (2004) explains how he, after consulting with scholars in both camps, particularly Edward Mansfied and Douglas Lemke, estimated the starting probabilities for each dyad based on the historical record, and then forecast future probabilities for dyadic militarized interstate disputes (MIDs) and wars based on the calibrated relationships he derived from the empirical literature. The probability of a MID, much less a war, between any random dyad in any given year is very low, if not zero. Paraguay and Tanzania, for example, have never fought and are very unlikely to do so. But there have been thousands of MIDs in the past and hundreds of wars and many of the 16,653 dyads have non-zero probabilities. In 2005, the IFs base year—the last year of the data base and the starting year for all simulations—the average probability across the 183 countries represented in the model of a country being involved in at least one war was estimated to be 0.8%, with 104 countries having a probability of at least 1 war approaching zero. A dozen countries8, however have initial probabilities over 3%. **The globalization scenario projects that the probability for war will gradually decrease through 2035 for every country**—but not every dyad--that had a significant (greater than 0.5% chance of war) in 2005. **The decline in prospects for war stems from the scenario’s projections of rising levels of democracy, rising incomes, and rising trade interdependence—all of these factors figure in the algorithm that calculates the probabilities**. Not all dyadic war probabilities decrease, however, because of the power transition mechanism that is also included in the IFs model. **The probability for war between China and the US**, for example **rises as the power**9 **of China rises gradually toward the US level** but in these calculations the probability of a China/US war never gets very high.10 ***Deglobalization raises the risks of war substantially***. **In a world with much lower average incomes, less democracy, and less trade interdependence, the average probability of a country having at least one war in 2035 rises from 0.6% in the globalization scenario to 3.7% in the deglobalization scenario**. **Among the top-20 war-prone countries, the average probability rises from 3.9% in the globalization scenario to 7.1% in the deglobalization scenario. The model estimates that in the deglobalization scenario there will be about 10 wars in 2035, vs. only 2 in the Globalization Scenario**11. **Over the whole period, 2005-2035, the model predicts four great power wars in the deglobalization scenario vs. 2 in the globalization scenario**.12 Winners and Losers Deglobalization in the form of reduced trade interdependence, reduced capital flows, and reduced migration has few positive effects, based on this analysis with the International Futures Model. Economic growth is cut in all but a handful of countries, and is cut more in the non-OECD countries than in the OECD countries. Deglobalization has a mixed impact on equality. In many non-OECD countries, the cut in imports from the rest of the world increases the share of manufacturing and in 61 countries raises the share of income going to the poor. But **since average productivity goes down in almost all countries, this gain in equality comes at the expense of reduced incomes and increased poverty in almost all countries.** The only winners were a small number of countries that were small and poor and not well integrated in the global economy to begin with—and the gains from deglobalization even for them were very small. **Politically, deglobalization makes for less stable domestic politics and a greater likelihood of war.**

***MARKED***

**The likelihood of state failure through internal war, projected to diminish through 2035 with increasing globalization, rises in the deglobalization scenario** particularly among the non-OECD democracies. Similarly, **deglobalization makes for more fractious relations among states and the probability for interstate war rises.**

**UQ**

**1NR Uniqueness**

***They’re evidence is probably right that if the vote were held today, Obama would lose – but that’s not the standard for evaluating the uniqueness – the question is “is it possible for Obama to switch votes with a sustained push” – our uniqueness evidence is infinitely better at answering that question***

**The Japan Times**, **2/9** 20**14**, Lexis

Nevertheless, **the chief U.S. trade negotiator**, Michael Froman, **insists that a deal on the TPA** and the TPP **is possible**. **While securing Congressional passage will not be easy**, **he is convinced that a deal** ***can be negotiated that will protect the interests that Reid is worried about*** and still pass muster with U.S. trade partners. As U.S. Secretary of State John Kerry has noted, many **categorical statements in Congress get muted during the legislative process.** He may be right, but it appears as though Obama has another front on the fight for freer trade.

***TPA will still happen – Tea Party opposition doesn’t matter and a push will lead Wyden and Hatch to work out a compromise.***

DOUG **PALMER, 2/14,2014**, GOP exploits Democrats’ trade dust-up,” Politico, <http://www.politico.com/story/2014/02/gop-democrats-trade-103554_Page2.html>, KEL

“**The White House needs to work to get Democrat support for their top trade initiative**,” said Sarah Swinehart, a spokeswoman for Camp. **Part of the GOP’s concern reflects the unpredictability of the tea party contingent**. Republican leaders can’t guarantee support for a fast-track bill from the upstart group, which has thrown its weight around on everything from debt-limit negotiations to food stamp provisions of the recently passed farm policy bill. “At the end of the day, there are going to be a lot of rank-and-file Republicans who have never had to vote on this and are uncomfortable with the idea of giving this particular president really very broad and flexible authority to negotiate on their behalf,” said Phil English, a former Republican congressman from Pennsylvania. **But that shouldn’t be a problem,** House Republicans argue, **since votes over the past decade show that many Democrats support trade agreements despite opposition from labor groups**. In 2011, 66 Democrats voted for a Panama free trade deal, 59 for a South Korea pact and 31 for a Colombia agreement, the most controversial of the three. Also, **if 25 Democrats could vote in 2002 to give a Republican president *t*rade *p*romotion *a*uthority, more should be able to vote now to give Obama the legislation**, English said. **One way out of the stalemate would be for** new Senate Finance Committee Chairman Ron **Wyden** (D-Ore.) **to broker a new compromise with** the panel’s top Republican, Sen. Orrin **Hatch** (R-Utah), who helped write the Camp-Baucus bill. **If Wyden can attract more Democrats without hemorrhaging Republican support, that would open an opportunity for Obama to press Reid to allow a floor vote on the bill**.

**A2: After midterms**

***1) Obama is going to force a vote now – Strong Obama key***

Edward **Luce**, Financial Times, “Obama’s trade agenda hangs on a thin Reid” **Feb 2nd** 2014, http://www.ft.com/intl/cms/s/0/4f1ed8ca-89e9-11e3-abc4-00144feab7de.html#axzz2saH38doJ

Mr **Obama’s only** other **option would be to try to outmanoeuvre** Mr **Reid** ***and pass TPA in the next few weeks.*** He had originally hoped to get it through before his trip to Asia in April. **To do that he would need to summon the kind of ruthlessness he has hitherto lacked on trade**. Nobody knows how strongly Mr Obama supports his own trade agenda because he has never made the case for it in public. You could say that on trade, Mr Obama is a Prince Hamlet. Mr Reid, on the other hand, is the gunslinger from Vegas. This is not an even contest. In a showdown between Hamlet and the cowboy there can only be one outcome.

***2) This begs the question of political capital – it will pass fast if Obama invests the effort – waiting kills the bill***

Scott **Flaherty**, Law360, “White House's Efforts Key To 'Fast-Track' Trade Bill” Jan 10th 20**14**, <http://www.law360.com/articles/500398/white-house-s-efforts-key-to-fast-track-trade-bill>

**With opposition from some in Congress and upcoming midterm elections raising questions about the prospects of** legislation to give “**fast-track**” trade power to the president, **the Obama administration** ***will have to make a serious lobbying effort*** — and ***soon*** — ***to drum up enough support to get the provision passed***, experts say. Three congressional leaders on Thursday introduced a bill to renew trade promotion authority, often referred to as “fast-track” or TPA, which allows the executive branch to negotiate trade agreements while limiting legislators to a yes-or-no vote on the pacts without amendment. Thursday's bill — put forward by Sen. Max Baucus, D-Mont.; Sen. Orrin Hatch, R-Utah; and Rep. Dave Camp, R-Mich. — also included provisions intended to maintain congressional oversight of trade negotiations by imposing consultation and reporting requirements on the administration. "**The TPA legislation that we are introducing today will make sure that these trade deals get done, and get done right,” said Baucus**, who serves as chairman of the Senate Finance Committee. The other lawmakers who drafted the bill also hold top Congressional posts — Hatch serves as ranking member of the Senate finance panel and Camp chairs the House Ways and Means Committee. **Though many applauded the bill** — including companies such as MetLife Inc. and the Boeing Co. and business groups including the U.S. Chamber of Commerce and the National Association of Manufacturers — **it also drew fire from labor unions**, including the AFL-CIO, which vowed to “actively work to block its passage,” environmental groups like the Sierra Club and consumer advocacy groups like Public Citizen. The bill also elicited a mixed response among those in government. White House press secretary Jay Carney and U.S. Trade Representative Michael Froman both issued statements Thursday applauding the bill's introduction and saying the Obama administration looked forward to working with Congress on trade promotion legislation that could be passed with as much bipartisan support as possible. But **some in Congress**, including Rep. Sander Levin, D-Mich., ranking member of the House Ways and Means committee, **criticized the proposal**. Levin said in a statement that the bill doesn't give Congress enough say in trade negotiations or do enough to help combat foreign currency manipulation through trade agreements, an issue he and other lawmakers have been vocal about. The Michigan Democrat indicated he would not support the bill as it is currently drafted and is likely to submit his own proposal for granting trade promotion authority. **With opposition coming from different quarters of Capitol Hill**, **trade experts said the prospects are uncertain** for the trade promotion bill moving forward in the near term. “I think ***it's going to be quite a heated debate***,” Gilbert Kaplan, a partner at King & Spalding LLP, said. **Given the uncertainties, experts said** if Thursday's bill — or another proposal to grant trade promotion authority to the White House — is to move forward, **it will likely take a strong lobbying effort on the part of the Obama administration to build enough support for the provision**. “***Having strong administration*** support ***is absolutely critical***,” Kaplan said. Welles Orr, a senior international trade adviser with Miller & Chevalier Chtd., also suggested that **the Obama administration has a key role to play in improving the chances that trade promotion authority will be passed** ***this year***. **If the administration “*comes out full force***” to lobby for the bill in the near term — possibly even including remarks about TPA in the 2014 State of the Union address **— it would bolster the prospects that the bill would pass this year**, Orr said. “**We need to see the White House really roll up its sleeves on this**,” he said. “But ***I think they will***.” For the administration, and proponents of new trade agreements more generally, **part of the effort to drum up support for a fast-track bill could simply be educating legislators** on how the current proposal expands on previous TPA legislation, Orr explained. Congress last passed a trade promotion authority bill in 2002, but that expired in 2007 and, in Orr's view, the bill unveiled Thursday significantly enhances Congress' role in overseeing trade negotiations, and would allow legislators to view negotiating texts and serve as advisers on trade issues. “Congress really has a way now to get their nose under the tent,” he said. Josh Kallmer, counsel with Crowell & Moring LLP, said it remains to be seen whether the provisions in the bill introduced on Thursday will pick up “full-throated” support from the White House. But whether it's Thursday's bill or another, he added, it is crucial for the administration to have trade promotion authority as it seeks to wrap up its current trade negotiations, such as the Trans-Pacific Partnership with 11 other Pacific Rim countries, and the Transatlantic Trade and Investment Partnership, under discussion with the European Union. As with other experts, Kallmer said **a strong argument from the White House to Congress, as well as to the public and the business community, would improve the chances that a TPA bill would pass**. “The administration needs to be selling the case for TPA generally very vigorously, and putting it in terms of how these trade agreements will affect companies and affect workers," Kallmer said. **Prospects for a fast-track bill moving forward in 2014 are even further complicated by the congressional elections** in November, experts explained. **The midterm elections**, in turn, ***create an incentive for quick action on trade promotion authority***, something the Obama administration and other supporters of the bill may want to keep in mind as they look to gather support on Capitol Hill, Timothy Keeler, a partner with Mayer Brown LLP, said “***The administration has got to focus on getting … leadership in the Senate to move on it quickly***,” Keeler said. Crowell & Moring's Kallmer also noted that **the midterm elections create pressure to move the legislation forward quickly,** but he said there is some time, given that a bill has already been proposed. “***It's a really important development that it has happened this early in the year***,” said Kallmer, referring to the introduction of a TPA bill. “**Still, there's a long fight to go**.”

**Yes Push**

***All of the cards I read above ---***

***The White House is NOT backing down from TPA***

**Politico, 2/14**/2014, http://www.politico.com/story/2014/02/joe-biden-to-dems-im-optmisitic-103525.html

**During a closed door question-and-answer session with Democrats** after his speech, Biden was asked about U.S.-Asia relations, job growth and extending federal unemployment insurance, according to sources in the room. **Biden** also **assured Pelosi and other Democrats that the White House would move cautiously on the Trans-Pacific Partnership,** which Pelosi and Senate Majority Leader Harry Reid have both opposed. **The White House, howeve**r, ***will not back off seeking “fast-track authority” on trade agreements.***

***Obama is pushing the TPA – PC is key***

**Brander 2/19**

Eric, Reporter, Politico, “Specter of NAFTA haunts Obama’s trade dreams”, http://www.politico.com/story/2014/02/nafta-barack-obama-trade-mexico-103701.html?hp=f3

**Obama is pushing to complete the** 12-country **T**rans-**P**acific **P**artnership, which would link North America with Asian countries like Japan. **But to get his way, the president will have to sell** the American public and the **congressional leaders of his own party** on the notion that the deal is an escape from NAFTA’s mistakes, rather than just an expansion of its reach.¶ What’s his fellow Democrats’ take on the likelihood of that happening?¶ “Nonsense,” said Rep. Louise Slaughter of New York.¶ “In all the time I’ve been in Congress, I have never seen a trade bill that benefited the American producer or the American worker. It’s all been give-away, and we really can’t afford that anymore,” she said. “People are sick and tired of the one-way trade deal.”¶ The **pressure is building as** the administration’s top trade negotiators head to Singapore for meetings this week, where they’ll try to break the remaining impasses and finish the deal, and **the White House lobbies Congress for the authority to “fast-track” the agreement to a vote without amendments.**

**A2: Thumpers / Not Top of the Docket / Not Pushing**

***Framing issues:***

***Only Democrats matter---the GOP will inevitably support free-trade---means generic thumpers and PC arguments don’t matter because of course the GOP is backlashing over everything, the only question is whether Obama can hold his own party together.***

**Southern Maryland News 1/24/14**, ““Year of Action”: Sincere or Just Another Slogan?” <http://smnewsnet.com/archives/91357>, jj

**A *bipartisan* bill** critical to expanding American exports and creating jobs **is ripe for action**. The legislation – called Trade Promotion Authority or **TPA – has the support of most congressional Republicans as well as the president**. And the bill’s economic benefits are clear. **Only one roadblock** to enactment **remains: the president’s Democratic allies** on Capitol Hill. As The Hill newspaper noted, “Getting TPA passed would be a major victory for the administration and one that would please business groups, but **the White House will** first **have to convince Democrats to go along with it.”**

***TPA is the top priority – Obama is pushing***

**Reuters 2/18**

Reporter, “Obama to continue to push for trade deals: White House”, http://www.reuters.com/article/2014/02/18/us-usa-obama-trade-idUSBREA1H1RN20140218

(Reuters) - President Barack **Obama will continue to press for legislation needed to conclude trade agreements because those accords are beneficial to the economy even if they are controversial politically**, White House spokesman Jay Carney said on Tuesday.¶ "**We're going to continue to press for this priority** as we have in the past, **mindful of** course in recognizing that there are **differing views on these issues in both political parties**, not just the Democratic Party," he told reporters at a briefing.

***Obama is full court press on TPA now – it is the only agenda item he is fighting with Democrats on – which means it is a unique instance of his Political Capital that none of their thumpers assume***

MICHAEL C. **BENDER**, Bloomberg, Obama Wines House Democrats, Digs in on Trade, **2/5**/ 20**14**, http://go.bloomberg.com/political-capital/2014-02-05/obama-wines-house-dems-digs-in-on-trade/

President Barack **Obama was** “***adamant” in his push for Congress to speed approval of trade deals*** during a meeting yesterday with House Democrats, Rep. Chellie Pingree, a Maine Democrat, said. **Fast-track authority was** “***brought up quite a bit***” during the discussion, Pingree said. **The meeting ended, for the first time, with the president mingling with lawmakers over cocktails.** “I got the sense that **the president still feels confident he’s got the votes to move forward**,” she said at a Bloomberg Government breakfast today. **Obama’s invitation** to have a drink after the meeting ***signaled he is “very dedicated***” **to working with lawmakers,** according to Pingree. “**This is the first time I’ve ever been to a caucus at the White House where** we had our hour-and-a-half caucus where we discussed all the issues — and kind of re-discussed what happened in the State of the Union — and then **the president said**, ‘You know, **it’s time to get a drink**,’ and he just opened up the doors and there was a huge reception for everybody,” Pingree said. “I had to get somewhere else by 7:00, and he was still milling around talking to people, as was most of his cabinet,” she said. “In some ways ***it signaled a different***, like, ***we’ve-really-got-to-get-down-to-work, whatever the specifics,*** how do you want to work with me, here **I am to talk to you about** ***any possible thing we can do.”***

**A2 minimum wage**

***Minimum wage doesn’t thump—it won’t get a vote and dems like it***

Steve **Benen**, Producer, The Rachel Maddow Show, **2/20/14**, “Minimum wage advances without Congress” <http://www.msnbc.com/rachel-maddow-show/minimum-wage-advances-without-congress>, jj

It’s been over a year since President **Obama began pushing Congress** to act **on** an overdue increase in the **minimum wage, but** **prospects for action are basically nonexistent – despite overwhelming public support, congressional Republicans won’t budge**. But **GOP lawmakers aren’t just out of step with the American mainstream; they’re also sitting idle as much of the country passes them by, unwilling to wait for them to act** (and knowing they won’t).

**A2: Immigration**

***No serious immigration push***

Thomas **Elias, 2/17/14**, The Californian, “Thomas Elias: Don't expect much reform on immigration this year” <http://www.thecalifornian.com/article/20140218/OPINION04/302180014/Thomas-Elias-Don-t-expect-much-reform-immigration-year>, jj

There’s one big reason why, **no matter how much happy talk you hear about “comprehensive immigration reform” from** President Barack **Obama and members of Congress**, **it’s unrealistic to expect much action this year**: This is an election year. All 435 members of the House of Representatives face reelection this year, as they regularly do every other year. Until recently, once someone was elected to the House, he or she could expect never again to have much intra-party opposition during primary elections. But that went out the window with the advent of the highly ideological Tea Party organizations, which have not hesitated to challenge and oust even the longest-term incumbents, including Republican senators like Richard Lugar of Indiana and Robert Bennett of Utah. This has a direct impact on the potential fate of changes to America’s highly flawed immigration system this year. For almost two-thirds of the current Republican majority in the House comes from heavily gerrymandered districts where election of a Democrat is highly unlikely. The majority of GOP voters in those so-called “red” districts tend to lean rightward, and the Tea Party is strongest in those places. That means even if they are inclined to vote for a limited pathway to citizenship for the millions of undocumented immigrants who have been law-abiding residents after arriving here, doing so could amount to political suicide. Republicans generally call any such plan “amnesty.” Things are different, of course, for Republicans like Jeff Denham and David Valadao, two Central California congressmen with heavily Latino districts. The same for Republican Gary Miller of San Bernardino County. All joined the limited-amnesty camp during the latter half of 2013, knowing it would make some of their conservative constituents unhappy. But since the vast bulk of the GOP House majority refused even to hold a vote on whether to allow the issue to come to a vote on the House floor, where Democrats could have joined with a few Republicans to pass significant changes, these men’s stances were never tested by the need to cast an actual vote. Chances are the same will be true this year, unless Republican Speaker John Boehner is willing to risk defying the right wing of his membership, as he at times hinted he might while complaining about the Tea Party in late fall. Despite his complaints about what the far right of his party is doing to the overall GOP, **Boehner still shows no sign of allowing a vote on any comprehensive changes**. In late December, for example, he said, “**We have no intention of going to conference on the Senate bill,”** a reference to the bi-partisan compromise passed by senators last June, which allows for a very arduous path to citizenship. That means **the speaker will not allow the House to vote on any bill similar enough to the Senate’s version that it might merit an effort to hash out House/Senate differences.**

**A2: CIA**

***Their ev is talking about Congress’s decision to block transfer of the drone program to the DoD—that is the opposite of our link—they blocked a restriction***

Matt **Sledge** is a reporter for the Huffington Post based in New York. Prior to joining HuffPost he worked as the Rhode Island director for FairVote. He is a graduate of Brown University. Huffington Post, **1/24/14**, The Toll Of 5 Years Of Drone Strikes: 2,400 Dead, <http://www.huffingtonpost.com/2014/01/23/obama-drone-program-anniversary_n_4654825.html>, jj

**The drone war is under increasing scrutiny in the U.S.** and abroad. A September U.N. report warned that drone warfare has the potential to greatly undermine global stability. And in October, for the first time, Congress heard firsthand accounts from the victims of an apparently botched drone strike. ***But lawmakers do not seem to be listening***: **Earlier this month, an omnibus bill blocked Obama's plans to transfer control for the drone program from the CIA to the Pentagon, which would have been a modest step toward changing the program.**

**1NR: A2: no pass Japan**

***TPA causes successful talks***

**CSM 1/29/14** (Christian Science Monitor, Obama's trade agenda needs backing, <http://www.csmonitor.com/Commentary/the-monitors-view/2014/0129/Obama-s-trade-agenda-needs-backing>, jj)

Presidents since Nixon have been granted such authority in order to do the kind of horse-trading needed to complete today’s complex trade pacts. **Other countries simply won’t negotiate with 535 members of Congress over every item.** The presidential authority lapsed in 2007, but a bill introduced this month in the House and Senate would bring it back. **Obama’s nod to it in his speech should help it pass** – that is, if Congress wants the US to remain the global leader on free trade. Unlike past measures, the bill comes loaded with conditions for the negotiations – insisting on labor rights, environmental rules, curbs on currency manipulation, protection of intellectual property. Most of all, it gives Congress access to the talks in order to keep them transparent. With all that, the bill strikes a strong bipartisan tone. Yet many Democrats still contend free trade has contributed to income inequality in the US. Obama, who is hardly a champion of inequality, will need to convince them that the long-term benefits of trade – which go beyond economics to strategic interests – outweigh any necessary adjustments for the US in further opening its markets. “If we don’t stay in the game, we’ll be left out on the sidelines,” says Sen. Max Baucus, the chief Democratic sponsor of the bill in the Senate. “Our exports will face high tariffs, whereas our competitors will not.” America’s openness to the world – its people, goods, and ideas – remains one of its strengths. The pace of opening markets, and reciprocity in trade with other countries, are important and often difficult. But ever since the US stalled its economy with the Smoot-Hawley Tariff Act in 1930, it has sought more trade, not less**. The talks with the EU and Asian nations are at a crucial stage. *If Obama can get fast-track authority now, deals would be done by year’s end***. Such an achievement could be Obama’s most bipartisan success of his eight years in office. More than that, it would mean greater prosperity for the world.

**Link**

**2NC – Fight to Defend**

***War powers fights kill Obama’s capital – extend Kriner – the plan puts Obama on the defensive – Congress will jump at the opportunity to criticize him – imperils the whole agenda***

***Plan guarantees collapse of TPA—it puts Obama on the defensive and causes democrats to defect***

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(3/2/2007, Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, “Leveraging legitimacy in the crafting of U.S. foreign policy,” pg 35-36, [http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php](http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php))

**Declining political authority encourages defection**. American political analyst Norman **Ornstein writes** of the domestic context,

**In a system where a President has limited formal power, *perception matters*. The reputation for success**—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—**is the *most valuable resource a chief executive can have***. **Conversely, the widespread belief that the Oval Office occupant is *on the defensive, on the wane or without the ability to win under adversity can lead to disaster*, as individual lawmakers calculate who will be on the winning side and negotiate accordingly.** In simple terms, winners win and **losers lose more often than not.**

**Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals.** As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. **Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and *defection by key allies.***

The central point of this review of the presidential literature is that **the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution**. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

This brief review of the literature suggests how **legitimacy norms enhance presidential influence in ways that structural powers cannot explain**. Correspondingly, **increased executive power improves the prospects for policy success**. As a variety of cases indicate—from Woodrow Wilson’s failure to generate domestic support for the League of Nations to public pressure that is changing the current course of U.S. involvement in Iraq—the effective execution of foreign policy depends on public support. Public support turns on perceptions of policy legitimacy. As a result, policymakers—starting with the president—pay close attention to the receptivity that U.S. policy has with the domestic public. In this way, normative influences infiltrate policy-making processes and affect the character of policy decisions.