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## 1NC TPP

#### TPA will pass – despite Reid’s opposition

Jason **Seher** **2/1**, CNN Senior Congressional Producer Ted Barrett contributed to this report, “Kerry, Hagel rebuke Reid on fast-track trade bill,” http://politicalticker.blogs.cnn.com/2014/02/01/kerry-hagel-rebuke-reid-on-fast-track-track-bill/

(CNN) - Even old friends have occasional disagreements. In a rare joint appearance at the Munich Security Conference, Secretary of State John Kerry and Defense Secretary Chuck Hagel dismissed Senate Majority Leader Harry Reid's opposition to renewing fast-track trade authority and predicted that the bill will ultimately pass in spite of Reid's opposition. "I've heard plenty of statements in the Senate on one day that are categorical, and we've wound up finding accommodations and a way to find our way forward," Kerry told the audience of European allies. "I respect Harry Reid, worked with him for a long time," Kerry said. "I think all of us have learned to interpret a comment on one day in the United States Senate as not necessarily what might be the situation in a matter of months." Reid said Wednesday he is unlikely to consider a bill on the issue anytime soon. "I’m against fast track," said Reid, who controls which bills get to the Senate floor. "I think everyone would be well-advised not to push this right now." With several outstanding trade pacts - including a major deal with the European Union - securing President Barack Obama's "trade promotion authority" remains a priority for the administration. The power would limit Congress' ability to influence American trade policy, only allowing them up or down votes on massive trade deals while leaving negotiations with other nations entirely under the purvey of the President. Proponents of the measure say the TPA prevents crucial trade agreements from getting bogged down in the bureaucratic slog and would help open new markets for U.S. goods. Democrats oppose the measure, arguing past trade deals led companies to ship jobs overseas. Heralding the ability as something that could "have a profound impact" on the American economy, Kerry said the extension of President Obama's authority could pay dividends and help further drive down the unemployment rate. "It's worth millions of jobs," he said. Kerry also was emphatic that Reid's opposition would not stall progress. "I wouldn't let it deter us one iota, not one iota," he said. Hagel echoed his counterpart's tone on the issue, saying that Reid's decision to put the bill on hold was imprudent. "Let's be smart and let's be wise and let's be collaborative and use all of the opportunities and mechanisms that we have to enhance each other - culturally, trade, commerce, exchanges," Hagel said.

**Defending his war power’s derails Obama’s domestic agenda because he is forced to defend himself – that trades off with other priorities**

**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.

#### PC is key – Obama needs to maintain pressure to get TPA through

**WP 2/2** (“The Washington Post: Reid can undermine Obama on TPP,” Feb 02 2014, http://www.sltrib.com/sltrib/opinion/57477685-82/obama-trade-reid-tpp.html.csp)

Mr. Obama’s negotiation team is hard at work on the final details, and the White House needs congressional approval of a special law known as trade promotion authority to strengthen its hand in the talks. In his State of the Union address on Tuesday, Mr. Obama urged Congress to pass that measure, which would expedite a vote on the eventual agreement, as soon as possible. Apparently, Senate Majority Leader Harry Reid, D-Nev., has other ideas. "I’m against ‘fast track,’ " he announced Wednesday, using a colloquial term for trade promotion authority. "I think everyone would be well-advised just not to push this right now." The day after Mr. Obama made his plea, Mr. Reid sounded as if he were rejecting it — thus imperiling the entire TPP project. That might be a stretch: Mr. Reid has never supported trade promotion authority, and he has never been much for free-trade deals, either. He has nevertheless permitted such legislation to move through the Senate in the past, and he stopped short of an explicit threat to block it this time. Still, Mr. Reid’s remarks emboldened free-trade opponents and gave Republican lawmakers, whose support the president will eventually need, a ready-made excuse not to cooperate. This can’t help but sow confusion among the TPP negotiating partners about the United States’ true intentions and about Mr. Obama’s capacity to work his will. Mr. Reid’s language was ham-handed, given that Mr. Obama is counting on other leaders, especially Japanese Prime Minister Shinzo Abe, to stand up to domestic protectionists. Yet the majority leader’s obvious election-year interest in appeasing opponents of trade promotion authority within his party, notably organized labor, makes it that much harder for Mr. Obama to ask Mr. Abe to take political risks. In the wake of Mr. Reid’s comment, White House spokesman Jay Carney called the TPP "a very important opportunity to expand trade" and insisted that "the president will continue to press to get it done." That response was consistent with the administration’s generally low-key lobbying effort with a Congress that hates tough votes on trade. So was Mr. Obama’s brief and mild pitch in the State of the Union. The majority leader’s attitude suggests, however, that the president may need to step up the pressure — and that the Republicans aren’t the only ones on Capitol Hill who can undermine his agenda.

#### TPA key to finalize critical free trade deals

**Hughes, 1/9** (Krista, 1/9/2014, Reuters News, “UPDATE 1-U.S. lawmakers propose fast-track bill for trade agreements,” Factiva))

WASHINGTON, Jan 9 (Reuters) - U.S. lawmakers on Thursday proposed a bill to give the White House power to fast-track international trade agreements as the United States gears up for a hectic year of trade negotiations. The bill would let the administration put trade deals before Congress for an up or down vote without amendments, a move backed by big business and farmers but viewed with caution by others. Without that assurance, trading partners could be less willing to sign deals. The fast-track power would help the United States in negotiations this year with Pacific Rim and European Union countries on two separate pacts that would encompass nearly two-thirds of the global economy and trade flows.

#### A new wave of protectionism would erupt into nuclear conflict

**Spicer 96**, The Challenge from the East and the Rebirth of the West, 1996, p. 121

The choice facing the West today is much the same as that which faced the Soviet bloc after World War II: between meeting head-on the challenge of world trade with the adjustments and the benefits that it will bring, or of attempting to shut out markets that are growing and where a dynamic new pace is being set for innovative production. The problem about the second approach is not simply that it won't hold: satellite technology alone will ensure that he consumers will begin to demand those goods that the East is able to provide most cheaply. More fundamentally, it will guarantee the emergence of a fragmented world in which natural fears will be fanned and inflamed. A world divided into rigid trade blocs will be a deeply troubled and unstable place in which suspicion and ultimately envy will possibly erupt into a major war. I do not say that the converse will necessarily be true, that in a free trading world there will be an absence of all strife. Such a proposition would manifestly be absurd. But to trade is to become interdependent, and that is a good step in the direction of world stability. With nuclear weapons at two a penny, stability will be at a premium in the years ahead.

## 1NC T

#### A. Definition – the Oxford Dictionary in 2013, defines restriction as “a rule or law that limits what you can do or what can happen.”

Oxford Advanced Learner’s Dictionary – 2013, <http://oald8.oxfordlearnersdictionaries.com/dictionary/restriction>

restriction NOUN

1. a rule or law that limits what you can do or what can happen

* import/speed/travel, etc. restrictions
* restriction on something to impose/place a restriction on something
* The government has agreed to lift restrictions on press freedom.
* There are no restrictions on the amount of money you can withdraw.

#### B. Violation: The plan does not substantially increase a restriction on the war powers authority of the President. The aff violates this interpretation because TORT LIABILITY IS NOT A RESTRICTION. Our interpretation requires the aff to place a limit on the war powers authority of the President.

#### The aff compensates victims but not does restrict or limit what the President can do or how he can do it.

#### That is because liability is not a restriction so long as the defendant is willing to pay compensation for every injury – THE AFF IS JUST A TAX ON INJURING PEOPLE.

**Abelkop ’13**

(Adam, Associate Instructor in law and public affairs, JD, PhD candidate in public policy and political science at Indiana University School of Public and Environmental Affairs, “Tort Law as an Environmental Policy Instrument,” 92 Oregon Law Review 381, p. 398)

Under a strict liability standard, a court may find a defendant liable regardless of whether she exercised reasonable care.85 Thus, whereas a negligence rule operates as a type of regulatory standard, strict liability functions more like a judicially imposed Pigouvian tax: the defendant must pay the penalty for every injury she causes.86 Strict liability therefore provides redress for harms caused by activities for which due care cannot mitigate the risk.87

(Note from Adam: strict liability is a type of tort liability that the plan applies—see their authors).

#### C. Standards

1. **Predictable Limits – Allowing new enforcement mechanisms unreasonably unlimits the topic, and civil damages is not even a predictable enforcement mechanism because it doesn’t require any change from the status quo other than that we compensate victims of collateral injury every time we harm them during an illegal targeted killing. Their plan justifies affs that place any kind of tax on violations of the AUMF, law of armed conflict, or any other existing law in any of the areas.**
2. **Core Ground – Disad links comes from the aff requiring legal limits on the President’s use of targeted killing. Debates should not be about new enforcement mechanisms. Their interpretation makes the topic bidirectional because they can claim to make drone use better when “drones good” should be negative ground.**
3. **Here’s an old school brightline test: does the aff absolutely REQUIRE by law that Obama stop or in any way change the way he conducts targeted killing? If not, the aff is not topical. In other words, it’s POSSIBLE for Obama to continue drone strikes and just pay compensation for all of the liability claims brought against the US, then there is no limitation!**
4. **Effects topicality is illegitimate because it justifies unpredictable affirmatives – any aff that has the effect of lowering US drone use becomes topical.**

#### D. Topicality is a voting issue for fairness, education, and jurisdiction.

## 1NC DA

#### Bivens remedy takes CIA field agents out of operation and leaks sensitive data

Carlos M. **VáZquez**, Professor of Law, Georgetown University Law Center, & Stephen I. **Vladeck, 2013** Article State Law, The Westfall Act, And The Nature Of The Bivens Question,

†† Professor of Law and Associate Dean for Scholarship, 10 University of Pennsylvania Law Review [Vol. 161: 509]

In Wilson v. Libby, the D.C. Circuit refused to recognize a Bivens remedy against those respon- sible for the disclosure of a CIA agent’s covert status. See 535 F.3d 697, 710 (D.C. Cir. 2008). It noted that, “if we were to create a Bivens remedy, the litigation of the allegations in the amended complaint would inevitably require judicial intrusion into matters of national security and sensitive intelligence information.” Id. The D.C. Circuit drew an analogy to the litigation bar recognized in Totten v. United States, in which the Supreme Court held that no action could be brought to recover pay allegedly due under an espionage contract between President Lincoln and the claimant, because “[i]f upon contracts of such a [secret] nature an action against the govern- ment could be maintained . . . the whole service in any case, and the manner of its discharge, with the details of dealings with individuals and officers, might be exposed, to the serious detriment of the public.” 92 U.S. 105, 106-07 (1875); see Wilson, 535 F.3d at 710. The Wilson court concluded that “[w]e certainly must hesitate before we allow a judicial inquiry into these allegations that implicate the job risks and responsibilities of covert CIA agents. . . . [T]he concerns justifying the Totten doctrine provide further support for our decision that a Bivens cause of action is not warranted.” 535 F.3d at 710.’¶ cases not raising such concerns.45 Perhaps the most detailed analysis of the justification for declining to recognize a Bivens remedy came from the Fourth Circuit, which held in Lebron v. Rumsfeld that José Padilla could not pursue a Bivens action against the federal officials who ordered his detention and alleged torture.46 As Judge Wilkinson explained,¶ Padilla’s complaint seeks quite candidly to have the judiciary review and disapprove sensitive military decisions made after extensive deliberations within the executive branch as to what the law permitted, what national security required, and how best to reconcile competing values. It takes little enough imagination to understand that a judicially devised damages action would expose past executive deliberations affecting sensitive matters of national security to the prospect of searching judicial scrutiny. It would affect future discussions as well, shadowed as they might be by the thought that those involved would face prolonged civil litigation and potential personal liability.47¶ To similar effect is the D.C. Circuit’s decision in Doe v. Rumsfeld.48 There, a U.S. citizen sued various government officials for his allegedly unlawful detention and treatment arising out of his work as a military contractor in Iraq.49 The district court denied the government’s motion to dismiss in part, concluding both that recognition of a Bivens remedy was appropriate under the unique circumstances of the case50 and that, based on the facts alleged in Doe’s complaint, the defendants were not entitled to qualified immunity at least as to Doe’s substantive due process claim.51 With respect to recognition of a Bivens claim, Judge Gwin’s analysis¶ specifically suggested that the absence of alternative remedies militated in favor of inferring a Bivens cause of action. He explained that “where the Supreme Court has declined to recognize a cause of action under Bivens, that decision has always relied upon the presence of alternative remedies for the alleged constitutional violation or special factors counseling judicial hesitation.”52 For this reason, and because a Bivens remedy would not unduly interfere with military or national security considerations, the district court allowed the case to proceed.53¶ On interlocutory appeal,54 the D.C. Circuit reversed.55 Proceeding from the observation that “[t]he implication of a Bivens action . . . is not some- thing to be undertaken lightly,” Chief Judge Sentelle emphasized that “[t]he Supreme Court has never implied a Bivens remedy in a case involving the military, national security, or intelligence.”56 And in Doe’s case particularly,¶ Doe’s allegations against Secretary Rumsfeld implicate the military chain of command and the discretion Secretary Rumsfeld and other top officials gave to [Navy] agents to detain and question potential enemy com- batants. . . . Litigation of Doe’s case would require testimony from top mili- tary officials as well as forces on the ground, which would detract focus, resources, and personnel from the mission in Iraq. . . . [A]llowing such an action would hinder our troops from acting decisively in our nation’s interest for fear of judicial review of every detention and interrogation.57

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

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

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

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

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

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

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

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

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

## 1NC CP

#### The President of the United States should issue an executive order transferring lead executive authority for non-battlefield targeted killing from the Central Intelligence Agency to the Joint Special Operations Command.

**Transferring authority boosts transparency and intel without restricting strikes – solves the aff**

**Zenko 13**¸ Micah, Douglas Dillon fellow with the Center for Preventive Action at the Council on Foreign Relations, “Clip the Agency's Wings: Why Obama needs to take the drones away from the CIA,” April 16th, http://www.foreignpolicy.com/articles/2013/04/16/clip\_the\_agencys\_wings\_cia\_drones?utm\_source=feedly

Last month, Daniel Klaidman reported that three senior officials had told him that President Obama would gradually transfer targeted killings to the Pentagon during his second term. Other journalists report that this is not a certainty or that "it would most likely leave drone operations in Pakistan under the CIA," making any transition meaningless since over 80 percent of all U.S. targeted killings have occurred in Pakistan. But if Obama is serious about reforming targeted killing policies, as he has stated, then he needs to sign an executive order transferring lead executive authority for non-battlefield targeted killings from the CIA to the Defense Department. Doing this has three significant benefits for U.S. foreign policy. First, it would increase the transparency of targeted killings, including what methods are used to prevent civilian harm. Strikes by the CIA are classified as Title 50 "covert action," which under law are "activities of the United States Government...where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include traditional...military activities." CIA operations purportedly allow for deniability about the U.S. role, though this rationale no longer applies to the highly-publicized drone campaign in Pakistan, which Obama personally acknowledged in January 2012. Beyond adjectives in public speeches ("methodical," "deliberate," "not willy-nilly"), the government does not, and cannot, describe the procedures and rules for CIA targeted killings. JSOC operations in Somalia and Yemen, on the other hand, fall under the Title 10 "armed forces" section of U.S. law, which the White House reports as "direct action" to Congress. The United States has also acknowledged clandestine military operations to the United Nations "against al-Qaida terrorist targets in Somalia in response to on-going threats to the United States." Moreover, JSOC operations are guided by military doctrine, available to the public in Joint Publication 3-60 (JP 3-60): Joint Targeting. (While the complete 2007 edition can be found online, only the executive summary of the most-recent version, released on January 31, is available. If the Joint Staff's J-7 Directorate for Joint Force Development posted this updated edition in its entirety -- or fulfilled my FOIA request [case number 13-F-0514] -- that would be appreciated.) JP 3-60 matters because it details each step in the targeting cycle, including the fundamentals, processes, responsibilities, legal considerations, and methods to reduce civilian casualties. This degree of transparency is impossible for CIA covert actions. Second, it would focus the finite resources and bandwidth of the CIA on its primary responsibilities of intelligence collection, analysis, and early warning. Last year, the President's Intelligence Advisory Board -- a semi-independent executive branch body, the findings of which rarely leak -- reportedly told Obama that "U.S. spy agencies were paying inadequate attention to China, the Middle East and other national security flash points because they had become too focused on military operations and drone strikes." This is not a new charge, since every few years an independent group or congressional report determines that "the CIA has been ignoring its core mission activities." But, as Mark Mazzetti shows in his indispensable CIA history, the agency has evolved from an organization once deeply divided at senior levels about using armed drones, to one that is a fully functioning paramilitary army. As former senior CIA official Ross Newland warns, the agency's armed drones program "ends up hurting the CIA. This just is not an intelligence mission." There is no longer any justification for the CIA to have its own redundant fleet of 30 to 35 armed drones. During White House debates of CIA requests in 2009, Gen. James Cartwright, the vice chairman of the Joint Chiefs of Staff, repeatedly asked: "Can you tell me why we are building a second Air Force?" Obama eventually granted every single request made by then-Director of Central Intelligence Leon Panetta, adding: "The CIA gets what it wants." With this year's proposed National Intelligence Program budget scheduled to fall by 8 percent, an open checkbook for Langley is not sustainable or strategically wise.

## 1NC NATO

### Inevitable

#### EU cooperation is inevitable

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

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

#### SQ solves US-EU dialogue, Europe is too interdependent to dump us

Anthony **Dworkin** 7-3-20**13**; Senior Policy Fellow working on human rights, international justice and international humanitarian law at the European Council on foreign relations “Drones and targeted killing: defining a European position” http://ecfr.eu/publications/summary/drones\_and\_targeted\_killing\_defining\_a\_european\_position211

Torn between an evident reluctance to accuse Obama of breaking international law and an unwillingness to endorse his policies, divided in part among themselves and in some cases bound by close intelligence relationships to the US, European countries have remained essentially disengaged as the era of drone warfare has dawned. Yet, as drones proliferate, such a stance seems increasingly untenable. Moreover, where in the past the difference between US and European conceptions of the fight against al-Qaeda seemed like an insurmountable obstacle to agreement on a common framework on the use of lethal force, the evolution of US policy means that there may now be a greater scope for a productive dialogue with the Obama administration on drones.

#### NATO is irrelevant

**Bandow 4/22** ([Doug Bandow](http://www.forbes.com/sites/dougbandow/), Contributor, a senior fellow at the Cato Institute, specializing in foreign policy and civil liberties. He worked as special assistant to President Reagan and editor of the political magazine Inquiry, “NATO's Lack Of Any Serious Purpose Means It Should Retire,” 4/22/2013, <http://www.forbes.com/sites/dougbandow/2013/04/22/natos-lack-of-any-serious-purpose-means-it-should-retire/2/>) GANGEEZY

NATO’s foreign ministers are meeting this week and have a “busy agenda,” proclaims the alliance. Yet NATO no longer has any serious purpose. European countries want to be military powers, but increasingly are failing to maintain capable forces. America always has been the dominant power in NATO. The U.S. may soon be the only effective power in the alliance. NATO should retire. The North Atlantic Treaty Organization was created more than six decades ago. Having fought to free Western Europe from Nazi domination, Washington was determined to keep Western Europe free from Soviet domination. Yet a Soviet invasion quickly became unlikely, if for no other reason than the potential of escalation to nuclear war. After the collapse of the U.S.S.R. the transatlantic alliance became irrelevant. Its purpose, famously explained Lord Hastings Ismay, was “to keep the Russians out, the Americans in, and the Germans down.” All of these objectives had been met. Today the Soviet Union is gone. Russia may be hostile, but it lacks both the will and ability to threaten Europe. At most Moscow can beat up on weak neighbors like Georgia. Germany remains down militarily, skeptical of international involvement. Ironically, most of Europe wants Berlin to do more. Economically the federal republic is way up—underwriting the entire European Union. The U.S. is in. America and Europe share history, tradition, and values. Economic ties may grow through a transatlantic free trade agreement. Military links are secondary. However, despite the changed international environment institutional survival became NATO’s paramount objective. Proposals were advanced to shift from deterring the Soviets to combating illegal drug use, underwriting student exchanges, and promoting environmental protection. Eventually the alliance decided to operate “out of area.” As common security threats disappeared, members increasingly used the alliance to drag other members into narrow conflicts favored by only a few members. Germany helped trigger the Balkan wars with its speedy recognition of the seceding Yugoslavian territories without any protection for Serbian minorities. While the initial attack on Afghanistan to displace al-Qaeda and oust the Taliban properly responded to 9/11, the years of combat that followed (and which continue) did not. Britain and France pressed for war in Libya even though they were incapable of prosecuting it alone. Mali belongs to Paris, though as yet the rest of the alliance has stayed out of combat there. These unnecessary wars have kept the alliance busy, but they also have accelerated its decline. They demonstrate that NATO is irrelevant to its members’ security. Many Europeans no longer even see any obvious need for national militaries. Observed Christian Moelling with the Stiftung Wissenschaft und Politik: “At a time of significant financial hardship, some … might even begin to question the merit of having armed forces at all.” Europe faces the prospect of having armed forces consisting of little more than gaudily garbed ceremonial soldiers, strutting in front of palaces and parliaments. Oddly, at this moment the old imperial temptation appears to be reasserting itself in some European capitals. Philip Stephens wrote in the Financial Times that “Europeans have caught the interventionist bug just as the U.S. has shaken it off. The French and the British led the war to depose Libya’s Muammar Gaddafi. They are in the vanguard of calls for intervention in Syria.” Paris also acted in Mali. The Europeans seem increasingly determined to reshape conflicts and rebuild nations throughout the Middle East and Africa without possessing the military force to do so. With this backdrop a senior NATO official visited Washington last week. He spoke at a private gathering, quipping that he couldn’t be quoted but he could be fired. The discussion suggested an alliance in terminal decline. He argued that NATO is being transformed by several important events. One is Afghanistan, which has dominated NATO thinking for more than a decade yet has “reduced the aptitude for crisis management,” that is, fighting wars “beyond direct defense.” Another is the diminution of terrorism as a strategic concern. It still exists, witness Boston. But rather than posing “an overarching threat,” it is something that “we will have to live with.” The financial-economic crisis continues, sapping military budgets on both sides of the Atlantic. As a result “there is no chance for budget increases, not even for keeping spending levels as they are.” The energy revolution is reducing the “political relevance of the Persian Gulf and Russia.” The so-called pivot to Asia will further diminish American force levels in Europe. All of these have had an effect. But the elephant in the room is the disappearance of any transatlantic security need. Military alliances are intended to deal with common threats. One existed during the Cold War. But no longer. So what should NATO do as the troops come home from Afghanistan? One of the event’s participants urged Syria as the next mission for the alliance. If not, then what is the use of NATO, he asked? However, the conflict poses no direct threat to any alliance member—a few artillery shells landing on Turkish territory don’t count. Getting involved in a brutal civil war in which one side possesses a sizable army armed with chemical weapons and the other side includes many anti-Western radicals would be madness. Another discussant suggested getting back to the core duty of collective security, including cyber security and missile defense. However, such activities, though useful, do not require a formal military alliance among the western powers. Cyber cooperation should extend well beyond Europe, while anti-missile activity could mix bilateral and regional links. Would not expanding the alliance reinforce the more traditional security mission? One questioner contended that NATO membership would secure the borders of Montenegro from Serbia, from which Montenegro seceded. Another participant proposed adding Georgia, which desires protection from Russia. However, the transatlantic alliance is not a charity. NATO’s purpose is to guard the security of existing members, not to risk their security protecting other countries. Serbia poses no danger to the U.S. and its allies, which dismembered what was left of Yugoslavia not that many years ago. There’s no reason for America to threaten war on behalf of Montenegro, one of the resulting pieces. Adding Tbilisi to NATO would be even more foolish. Georgia was part of the Russian Empire before the Soviet Union. Georgia is entitled to independence, but not to U.S. protection. Washington has nothing at stake which warrants confronting nuclear-armed Moscow over interests the latter views as vital in its own backyard. Doing so would degrade, not enhance, American security. The most plausible continuing NATO role is to train the militaries of friendly nations to empower them to handle military contingencies in their own neighborhoods. But that doesn’t require a formal military alliance constantly looking for new wars to fight. The biggest challenge facing the alliance is shrinking national force structures. The NATO visitor acknowledged that “all Europeans are cutting their militaries, including the big spenders.” Defense Secretaries Robert Gates and Leon Panetta both lamented Europe’s waning efforts. NATO Secretary General Anders Fogh Rasmussen recently admitted: “if European defense spending cuts continue, Europe’s ability to be a stabilizing force even in its neighborhood will rapidly disappear.” There’s no reason to believe the reductions won’t continue. Last year the Brookings Institution published a report reviewing widespread cutbacks across the continent. Explained Clara Marina O’Donnell: “current military spending trends are reducing the ability of most NATO allies to contribute to international security.” Troop numbers are coming down sharply. Moreover, recently reported Stars and Stripes, “Cuts by countries as large as Germany and as small as Latvia have resulted in program cancellations, changed equipment orders and, in the case of Britain, a plan to mothball a new aircraft carrier.” Earlier this year Rasmussen declared that “There is a lower limit on how little we can spend on defense.” Where is it? In 2006 the NATO members promised to spend two percent of GDP on the military. Today the Europeans collectively spend 1.5 percent of GDP on defense, compared to America’s five percent. Americans spend $2333 per person on the military, compared to just $503 by Europeans. Despite the much-maligned budget sequester, Washington continues to account for roughly 40 percent of the entire globe’s military outlays. The visiting official recognized the problem. If we take Secretary Gates’ formulation “that NATO is dead if members don’t spend two percent of GDP, then NATO is dead as they will not spend two percent of GDP.” Thus, he complained that “focusing burden-sharing on finances doesn’t get us anywhere.” Instead, he suggested giving “burden-sharing a different spin.” He argued that despite Europe’s diminishing commitment to the alliance, America still benefited. “The European allies may be useless for many things, but they still provide legitimacy and the continent acts as a worldwide operational hub.” However, that legitimacy is of little account if Washington believes a vital issue to be at stake. The American people don’t care; they will support their government even in the face of widespread international opposition, evident in Vietnam and Iraq, for instance. What turned the U.S. public against these wars were the reality of casualties and the perception of failure. Where legitimacy seems to be important, either the United Nations or a coalition of the willing would prove sufficient. Nor is a formal alliance necessary for base access and logistical backing. Washington could forge replacement arrangements with individual European states as well as any continental European military alliance. Given the deep differences of opinion which emerged over such issues as Iraq, Libya, and Syria, less formal cooperative mechanisms would reduce political tensions. A country could offer operational support without providing combat units or even endorsing a particular conflict. Funding for a nation’s military would not be undercut by participation in an unpopular international conflict. Despite its problems at home, NATO bizarrely is seeking to expand abroad. Rasmussen recently traveled to Japan and South Korea to promote NATO cooperation in Asia. How can a European alliance increasingly incapable of defending Europe play a role in Asia? There are opportunities for non-military cooperation: sharing expertise on civil emergencies, advancing cyber-security, and promoting non-proliferation. However, these relationships could as easily involve the European Union as NATO. Noted Richard Weitz of the Hudson Institute, “while NATO has adopted a global perspective, its main activities beyond Europe and Afghanistan thus far have consisted primarily of dialogue.” Alliances should be based on international circumstance. Rasmussen recently argued that “The need for a strong military alliance between Europe and North America has never been stronger.” That is nonsense. Neither continent faces an existential military threat. Neither faces a significant global competitor. Neither has a compelling interest to meddle in regional conflicts. While there is much about which the U.S. and Europe should cooperate, there is no need for an American-dominated transatlantic military alliance. Thus, what is needed is U.S. burden-shedding rather than allied burden-sharing. Europeans could provide forces sufficient to defend themselves, patrol the Mediterranean, aid the Central Asia states, and protect their interests in North Africa and the Middle East. If they chose not to do so, no worries for America. But they shouldn’t expect Washington to step in. And U.S. officials then could stop their unproductive whining about Europe’s defense choices. America’s Cold War security policy shielded war-torn allies until they could recover and gain the economic means and political stability to defend themselves. That policy was a great success. Now Washington should celebrate by turning NATO over the Europeans.

## 1NC Imminence

### Read Alt Causes to Pak Collapse

#### Pakistan’s stability is on the upswing from Sharif’s election and economic reform – investments prove.

Inman 1/3 (Daniel, Wall Street Journal Reporter that covers markets across Asia, “Daring Investors Brave Pakistan Market,” <http://online.wsj.com/news/articles/SB10001424052702303640604579297743767054958>, 01/03/2013)

The catalyst in Pakistan was the election in May of the Pakistan Muslim League led by Nawaz Sharif , a conservative business-friendly politician. It is the first time in the nation's history an elected government has handed over power to another, raising expectations for improved political stability.¶ Flows from foreign investors into Pakistan reached $283 million from the beginning of May, the month of the election, to the end of 2013, according to the National Clearing Company of Pakistan. Global investors have also snapped up Pakistani government bonds with yields, which move inversely to prices, falling to 7.54% recently from as high as 11.69% in April on the 10-year bond.¶ In a further sign of growing confidence, the government said last month it is also aiming to sell billions of rupee debt aimed at the Pakistani diaspora. A spokesman for the finance ministry said there is currently no specific time frame on the issuance of the bonds.¶ The optimism stems from the government paying off $5 billion in debt that was weighing on the energy sector, freeing up funds at fuel importers and power producers and distributors. The country also agreed to a long-term bailout loan of at least $6.6 billion from the International Monetary Fund to avoid a potential balance of payments crisis. The government has in addition announced a far reaching privatization program which will include the national airline and electricity producers.¶ The energy move was important given the country is plagued by electricity shortages, while the oil and gas sector accounts for nearly a third of the benchmark index in Karachi. The largest company on the index, energy firm Oil & Gas Development Co. rose 43.5% last year.¶ "Given that the general impression of the new government has been corporate friendly that is a very strong factor that made people more optimistic about Pakistan," said Mattias Martinsson, chief investment officer and partner at fund company Tundra Fonder in Stockholm, which runs a $30 million Pakistan fund.¶ For all the gains however, the market is small with the market capitalization of the companies listed in Karachi at around $52 billion, according to securities firm Foundation Securities research. That compares to neighboring India where the companies on the Bombay Stock Exchange are valued at around $1.1 trillion, meaning Pakistan can be overlooked by larger investors.¶ "Pakistan as a market has very many companies that are trading below their fair value, but as it goes you get distracted by other more important markets," said Arnout van Rijn, chief investment officer at Robeco Asia Pacific in Hong Kong, who manages the $1.2 billion Robeco Asia-Pacific Equities fund.¶ The market has been volatile too, the currency and stocks plummeted in 1998 following a test of nuclear weapons that attracted international sanctions when Mr. Sharif was last in power.¶ The market has been up since the end of 2008 however, with shares soaring 329% to the end of 2013—despite the country being hit by a bloody Islamic insurgency, the economy nose-diving and Karachi being torn apart by gang violence during that period.¶ Some investors say that those companies that survive both a weak economy and regular violence throughout the country are well run, resilient and especially appealing. Unilever Pakistan Foods Ltd., a unit of the consumer goods giant, shot up 116% last year.¶ "When you have to deal in this kind of environment, I think you have to be extremely good as management to deal with it and survive," said Thomas Vester, fund manager at Lloyd George Management, who runs the firm's frontier market investments, and manages assets worth $656 million as of Oct. 31.¶ And the relative political stability now is encouraging more investors to focus on the country whose population of around 180 million makes it the sixth most populous country in the world and a potential draw for those betting on rising incomes and more consumer spending. The market remains cheap even after the strong run-up earlier this year—currently trading at over nine times trailing 12 month earnings—a common valuation measure used by stock analysts.

### No Impact to Pak Collapse

**No chance that Pakistan will collapse**

**Bandow 09**- Senior Fellow @ Cato, former special assistant to Reagan (11/31/09, Doug, “Recognizing the Limits of American Power in Afghanistan,” Huffington Post, http://www.cato.org/pub\_display.php?pub\_id=10924)

From Pakistan's perspective, limiting the war on almost any terms would be better than prosecuting it for years, even to "victory," whatever that would mean. In fact, the least likely outcome is a takeover by widely unpopular Pakistani militants. The Pakistan military is the nation's strongest institution; while the army might not be able to rule alone, it can prevent any other force from ruling.

Indeed, Bennett Ramberg made the important point: "Pakistan, Iran and the former Soviet republics to the north have demonstrated a brutal capacity to suppress political violence to ensure survival. This suggests that even were Afghanistan to become a terrorist haven, the neighborhood can adapt and resist." The results might not be pretty, but the region would not descend into chaos. In contrast, warned Bacevich: "To risk the stability of that nuclear-armed state in the vain hope of salvaging Afghanistan would be a terrible mistake."

## 1NC PQD

### Cmr defense

#### No spillover

**Hansen ‘9** – Victor Hansen, Associate Professor of Law, New England Law School, Summer 2009, “Symposium: Law, Ethics, And The War On Terror: Article: Understanding The Role Of Military Lawyers In The War On Terror: A Response To The Perceived Crisis In Civil-Military Relations,” South Texas Law Review, 50 S. Tex. L. Rev. 617, p. lexis

According to Sulmasy and Yoo, these conflicts between the military and the Bush Administration are the latest examples of a [\*624] crisis in civilian-military relations. n32 The authors suggest the principle of civilian control of the military must be measured and is potentially violated whenever the military is able to impose its preferred policy outcomes against the wishes of the civilian leaders. n33 They further assert that it is the attitude of at least some members of the military that civilian leaders are temporary office holders to be outlasted and outmaneuvered. n34 If the examples cited by the authors do in fact suggest efforts by members of the military to undermine civilian control over the military, then civilian-military relations may have indeed reached a crisis. **Before such a conclusion can be reached**, however, a more careful analysis is warranted. **We cannot accept** at face value the authors' broad **assertions that any time a member of the military**, whether on active duty or retired, **disagrees with the views of a civilian member** of the Department of Defense or other member of the executive branch, including the President, that such disagreement or difference of opinion **equates to either a tension** or a crisis **in civil-military relations**. Sulmasy and Yoo claim there is heightened tension or perhaps even a crisis in civil-military relations, yet they fail to define what is meant by the principle of civilian control over the military. Instead, the authors make general and rather vague statements suggesting any policy disagreements between members of the military and officials in the executive branch must equate to a challenge by the military against civilian control. n35 However, until we have a clear understanding of the principle of civilian control of the military, we cannot accurately determine whether a crisis in civil-military relations exists. It is to this question that we now turn.

#### Biden kills CMR

Feaver 12 – Peter D. Feaver received a Ph.D. from Harvard in 1990 and is a professor of political science and public policy and Bass Fellow at Duke University, and director of the Triangle Institute for Security Studies and the Duke Program in American Grand Strategy. Feaver was special advisor for strategic planning and institutional reform on the National Security Council staff at the White House from 2005-2007. From 1993-1994, Feaver served as director for defense policy and arms control on the National Security Council at the White House. (“A civil-military headache from the VP debate that could linger”, Foreign Policy, October 12, 2012, <http://shadow.foreignpolicy.com/posts/2012/10/12/a_civil_military_headache_from_the_vp_debate_that_could_linger>, Callahan)

The Obama administration has a civil-military problem and, I have reason to believe, they know it. Significant portions of the military believe the administration abandoned them on Iraq, sent them unsupported into battle in Afghanistan hampered by a politically driven timeline, and is jeopardizing national security with unsustainably deep cuts in military spending. If Obama wins a second term, he and his national security team will have a lot of remedial work to do to repair relations with the military. I think Vice President Biden made that job even more difficult with his remarkable comments in each of those areas in the VP debate. On Iraq, Biden criticized Romney-Ryan for recommending that we have a 30,000 stay-behind force in Iraq. When Ryan pointed out that the Obama administration had actually been trying to negotiate a stay-behind force, Biden just smiled mockingly at him, as if Ryan were talking nonsense. But Ryan was not talking nonsense. The official position of the Obama administration until late in 2011 was that they were seeking a Status of Forces Agreement (SoFA) to permit a stay-behind force in Iraq. The exact size was in doubt, but the 30,000 figure was what the military wanted and the White House supported the concept, if not the exact number. The Obama administration wanted this for the very same reason the Bush administration wanted it: It was the best way to solidify the gains of the Iraq surge and to build a stable partnership with Iraq. Biden knows all of this because he was leading the effort to negotiate the SOFA. Was Biden's mocking smile saying something else, perhaps that Obama was never seriously committed to negotiating a successful SOFA? Was Obama's decision to delegate this task to Biden a sign of how committed Obama was to it? Or how uncommitted he was? Was Biden's guarantee that he would get the SOFA just idle bragging from someone assigned a trivial task? The U.S. military leadership believed they accomplished something significant in the Iraq surge, and they believed that the Obama administration wanted to get them a SOFA that would help secure those accomplishments. Did Biden tell them otherwise in the debate last night? Or did Biden, as Ryan pointedly asked, simply fail at his SOFA assignment, in which case the mocking laughter is beyond inappropriate? On Afghanistan, Biden's comments were even more troubling. Let's set aside the extraordinary "mission accomplished" boast, a remarkable thing to say when American men and women continue to risk their lives under very dire circumstances in theater. Biden got away with it, and neither Ryan nor the hapless Martha Raddatz called him out on it. Where things really got dicey was when, in response to the charge that the Afghan surge withdrawal timeline was driven by political considerations, Biden tried to hide behind the military. Raddatz pressed him on the complaints she is hearing -- we all are hearing -- but Biden dismissed it as nonsense. He pretended that the withdrawal timeline was proposed by the Joint Chiefs rather than imposed by the White House. That is not true. The Joint Chiefs and the Afghan combatant commander did go along with the White House order, but they proposed a slower, conditions-based timeline and they certainly did not want it announced at the outset. This is a very dangerous game to play. Because of the strong support for the principle of civilian control among our armed forces, civilians can and do make the military salute and obey orders the military think are inadvisable. Canny commanders-in-chief try to minimize those instances, working with the military to cajole and bargain them into supporting positions that they initially opposed (this is exactly what Bush did with the Iraq surge). But when the White House bigfoots a decision, as the Obama White House did multiple times on Afghanistan, it is the president who must shoulder the political load for the decision. Biden knows, or should know, that from the military's perspective President Obama imposed an under-resourced Afghan surge, undercut it by announcing the timeline, and interrupted the last fighting season by accelerating the withdrawal. That was his prerogative as commander-in-chief. But if that policy is criticized, as Ryan did in the debate, the Obama White House must be honest about how it came about. Biden cannot pretend that this was the military's plan all along. Biden tried the same gambit on the defense cuts: "That was the decision of the Joint Chiefs of Staff, recommended to us and agreed to by the president. That is a fact....They made the recommendation first." Yet, as he surely knows, the White House came up with a budget cut number and then asked the defense department to come up with a strategy that fit under that number. The defense department did not come up with the budget cuts first, they came up with the strategy that they thought, barely, could be viable under those cuts. (Defense had come up with defense cuts on their own earlier, in the hopes that those cuts could be reassigned to more pressing defense priorities, but the Obama White House simply pocketed those cuts and then directed more.) It gets worse. When Biden and Obama say "defense spending the military didn't ask for' that is incorrect since the military did ask for all that spending -- in the previous year's budget. Actually, Obama asked for it, since it was his budget request. Yes, the following year Obama changed his mind and he ordered the military to adjust to the lower cuts. I am not sure there are enough Pinocchios in Tuscany to describe how misleading it is to order the military to accept cuts and then pretend that they requested those cuts. And, dissembling aside, when you play political hardball with the military in that fashion it almost always leads to problems down the line. Serious Obama national security professionals understand this, but they don't seem to have any influence on what the candidates are saying. Again, it is fully proper as a matter of civil-military relations for the president to impose cuts on Defense, and he can do it in whatever sequence he chooses. But he should not impose the number, receive the military salute, and then turn around and tell the American people that this was all the military's idea. An administration enjoying strong and healthy relations with the military can probably get away with self-inflicted wounds of the sort that Biden's remarks produced. I am not sure this administration can afford it.

### a/t: solves war

**Heg doesn’t solve war**

Christopher Preble (director of foreign policy studies at the Cato Institute) August 2010 “U.S. Military Power: Preeminence for What Purpose?” http://www.cato-at-liberty.org/u-s-military-power-preeminence-for-what-purpose/

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

### Warming impact defense

**No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args**

**Mendelsohn 9** (Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

# 2nc v. kentucky gr

## Cp

### CP solves PQD

**Plan solves PDQ – mandates civilian oversight over drone strikes – this is what their internal link to CMR is about**

Gilbert, Lieutenant Colonel, 98 (Michael, Lieutenant Colonel Michael H. Gilbert, B.S., USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School. He is a member of the State Bars of Nebraska and California. “ARTICLE: The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle,” 8 USAFA J. Leg. Stud. 197, lexis)

In February 1958, Army Master Sergeant James B. Stanley, who was stationed at Fort Knox, Kentucky, volunteered to participate in a program to test the effectiveness of protective clothing and equipment against chemical warfare. Unknown to Stanley, he was secretly administered four doses of LSD as part of an Army plan to study the effects of the drug on human subjects. Stanley then allegedly began suffering from hallucinations and periods of memory loss and incoherence, which impaired his ability to perform military service and which led to his discharge from the Army and later a divorce from his wife. He discovered what he had undergone when the Army sent him a letter soliciting his cooperation in a study of the long-term effects of LSD on "'volunteers who participated' in the 1958 tests." After exhausting his administrative remedies, Stanley filed suit against the government in federal district court. 81 Stanley argued that in this case, his superiors might not have been superior military officers, as in Chappell, but rather civilians, and further that his injuries were not incident to military service, as in Feres, because his injuries resulted from secret experimentation. The federal district and appellate courts held that Stanley was not preempted by United States v. Chappell in asserting a claim under Bivens by limiting Chappell to bar actions against superior officers for wrongs that involve direct orders in the performance of military duties. In other words, the lower courts limited the reach of Chappell to only matters involving the performance of military duties and the discipline and order necessary to carry out such orders, which did not include surreptitious testing of dangerous drugs on military members. 82 The Supreme Court summarily disregarded the lower courts' attempt to differentiate the instant case from precedent because Stanley was on active duty and was participating in a "bona fide" Army program, therefore, his injuries were incident to service. With regard to the attempt to differentiate his case from Chappell, the Supreme Court conceded that some of the language in Chappell focusing on the officer-subordinate relationship would not apply to Stanley's case, but nevertheless ruled that the basis for Feres also applied and controlled in Bivens actions. Accordingly, the test was not [\*219] so much that an officer-subordinate relationship was involved, but rather an "incident to service" test. 83 The Court thus transplanted the Feres doctrine to govern and limit Bivens actions by military members. In overturning the lower courts' ruling, the Supreme Court again discussed the special factors that mandate hesitation of judicial interference. They also discussed the explicit constitutional assignment of responsibility to Congress of maintaining the armed forces in ruling that even this most egregious misconduct and complete lack of concern of human rights is not a basis upon which the pl–aintiff can seek damages in a court of law. Based upon this case and previous cases, military members are totally extricated from the general population and are subject to a lower standard that is not even contemplated for the remaining citizenry in matters of constitutional import. The Court expressly declined to adopt a test that would determine whether a case is cognizable based upon military discipline and decision making. Believing that such a test would be an intrusion of judicial inquiry into military matters, thereby causing problems by making military officers liable for explaining in court proceedings the details of their military commands and disrupting "the military regime," the Court adopted a virtual blanket of protection for military commanders. Because Congress had not invited judicial review by passing a statute authorizing such a suit by a military member, the Court was not going to intrude into military affairs left to the discretion of Congress. 84 In essence, the Court has constructed a military exception to the Constitution. Had the Court actually reviewed the facts presented by the cases discussed above, applied the tests that are normally applied to the type of cases presented, and then ruled in favor the military, they possibly still could have been criticized, but at least respected for actually conducting a meaningful judicial review of the presented cases. Completely changing constitutional principles in order to provide great deference with little to no inquiry is an abdication of the Court's responsibility and surrenders the rights of military members to the complete subjugation by Congress and the President. The question now presented is whether such an exception is appropriate in terms of civil-military relations. [\*220] The Efficacy of a Military Exception To The Constitution In Civil-Military Relations Does the lack of judicial protection strengthen or erode democratic civilian control at a time when some commentators express concern over the state of civil-military relations? The current hands-off approach by the judiciary in cases concerning or impacting military affairs presents a paradoxical dilemma for civil-military relations. Did the framers of the Constitution intend to establish civilian control over the military by giving plenary authority to two branches of the government to the exclusion of the third branch? 85 Can the military develop its own professionalism, which is essential to an objective civilian control, if the military is totally removed from society's system of judicial protection? Are the Foxes Going To Take Care Of The Hens When The Farmer Is Not Watching? On one hand, the eschewal of becoming involved in military affairs through judicial review of lawsuits concerning the military more completely subordinates the military to the constitutional authority of Congress and the President and, in essence, creates a "split Constitution." 86 The Congress and President thus can control the military virtually without concern about judicial interference, which will occur only under the most egregious circumstances, and can be assured that the military will not attempt to overturn their decisions and orders through judicial review 87 After all, should not the judiciary trust the Congress, a co-equal branch of government sworn, as is the judiciary, to uphold the Constitution? 88 On the other hand, the Constitution establishes certain basic rights for all Americans, regardless of position within society. In fact, the Constitution and laws that support the Constitution serve as the ultimate protector for the weakest of society who have no other means by which to thwart infringement of their rights. By the U.S. Supreme Court stating that the military is a separate society with specialized and complex concerns, and that the Constitution grants plenary authority over the military to the legislative and executive branches, military members are excluded from the protection of a society that depends upon their service. Moreover, they [\*221] are left to the mercy of a power that can act with impunity, notwithstanding Supreme Court prescription that the Congress and the President fulfill their awesome positions of trust in upholding the Constitution and subordinate laws to the greatest extent possible while acting to protect our national security through military affairs. By excluding military members from the same protections that their civilian counterparts enjoy, military members are subject to a much more severe form of government that does not contain the checks and balances that restrict government infringement upon rights. Would it indeed be so bad if the judiciary reviewed and decided lawsuits brought by military members on their merits? Would such oversight be an unreasonable intrusion wreaking havoc in the minds of military leaders? Have any such problems evolved in the federal government in the civilian sector where employees may file suits against the government in court? Empowering Objective Control By Removing Judicial Oversight The increase of the power exercised by the legislative and executive branches of our federal government by the decrease in the power of review by the judicial branch supports Professor Huntington's model of objective civilian control. 89 Rather than making the military a mirror of the state, such as in subjective control, the removal of judicial oversight provides the military with the autonomy to control their profession. At the same time, the total dependence of the military upon their civilian and military leaders as judge and jury creates an independent military sphere. Nevertheless, Huntington completely ignores the role of the judiciary in civil-military relations. Even when he addresses the separation of powers, which traditionally includes the relationship of the judiciary to the other branches, he only examines the role of the executive branch vis-a-vis the legislative branch. 90 The weakening of the influence of the judiciary over matters concerning the military produces an equivalent concomitant strengthening of the two primary branches of government charged with establishing, maintaining, and running the armed forces. More than merely strengthening the control by Congress and the President over the military, 91 the judiciary, in its current position, protects ~~her [\*222] sister~~ branches of government from outside interference of those who want to change or affect the military, such as those who seek judicial overturn of the DoD homosexual conduct policy, and from inside interference of those who seek to challenge the authority of their superiors. 92 In this vein, the judicial self-restraint in becoming an ombudsman for aggrieved military members who seek either damages, redress, or reversal of orders can be argued to produce a correlating increase in the strictness of good order and discipline of the armed forces. 93 Dissension is reduced to the point of a member either accepting the supremacy of those superior or separating from the military service for which they volunteered. The unquestioning loyalty produced squelches dissension within the military ranks and portrays the military as a single unit of uniformity committed to serving without question the national civilian leadership, thereby preserving the delicate balance between freedom and order. 94 In a speech on the Bill of Rights and the military at the New York University Law School in 1962, then-Chief Justice of the Supreme Court, Earl Warren, discussed how our country was created in the midst of deep and serious distrust of standing military forces. He then described the debate on how best to preserve civilian control of the military in the Constitution so that the military could never reverse its subordination to civilian authority. Finally, he declared that the military has embraced this concept as part of our rich tradition that "must be regarded as an essential constituent of the fabric of our political life." 95 Former Chief Justice Warren was correct that the military culture in the United States is completely imbued with the idea of civilian control. Recent events strongly evidence this core understanding of military members. When the Chief of Staff of the Air Force, General Fogelman, resigned from his position and retired because of a disagreement with the civilian Secretary of the Air Force over appropriate action to take in a particular case, he did so because he could do nothing else in protest. There is no doubt that Congress maintains and regulates the armed forces and that the President is Commander-in-Chief. Unfortunately, civilian control of the military has been confused with the non-interference with Presidential and Congressional control of the military, yet the Supreme Court is no less "civilian" than these other branches. Ironically, because of the [\*223] extensive delegation of authority from Congress and the President to the military hierarchy, the military itself has become all powerful in relation to its members. Unless the judiciary branch becomes involved, there is no civilian oversight of the military in the way it treats its members. This important civilian check on the military has been forfeited by the Court. With these realizations, the judiciary is wrong in avoiding inquiry into cases brought by military members. The military is not a complex, separate and distinct society. If it were, the danger of losing control would be greater. By characterizing it as such and giving the military leadership complete reign over subordinates in all matters, the judiciary ignores their responsibility to provide a check to military commanders and balance the rights of those subject to orders, which if not followed may lead to criminal charges. 96 A professional military, as envisioned by our nation's leaders and written about by Professor Huntington, can operate efficiently in a system that allows judicial review of actions brought by military members. Their professionalism will deter wrongs and will accept responsibility when wrongs are committed. Removing the military from the society that they serve by denying them judicial protection alienates the military and frustrates those who have no protection from wrongs other than the independent judiciary. The proper role of the judiciary in civil-military relations is to ensure that neither the legislative branch, the executive branch, nor the military violate their responsibility to care for and treat fairly the sons and daughters of our nation who volunteer for military service. When federal prisoners can file lawsuits for often frivolous reasons, but military members cannot enter a courtroom after being subjected to secret experimentation with dangerous, illegal drugs, something is wrong. When military members cannot seek redress even for discrimination or injury caused by gross negligence, civil-military relations suffer because the judiciary is not ensuring that the balance of power is not being abused.

### Cp solves Pakistan

**CP solves Pakistan – it fiats Congressional oversight of strikes before they occur – that limits what Obama can justify under his definition of imminence.**

**Also, their EU and Pakistan advantage are straight up about unregulated drone usage – the CP remedies that.**

### Cp solves EU

**CP solves accountability – forces US transparency of drone strikes – signals internationally the US is serious about oversight of its drone program**

### a/t: xo = voter

#### The core controversy is restrictions on authority. The resolution explicitly denies the aff this ground. Their theory argument rewrites the topic -- uneducational and unpredictable.

#### And, it matches the academic debate

Sinnar, assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1

These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

#### Interpretation: neg fiat extends only to the resolutional actor.\* This follows from the logic of debating about policies. Any other distinction is arbitrary.

### 2NC 1 Condo

**Condo debate –**

**Our interpretation is that the negative should get one interpretation, which is logical limited conditionality.**

**This is best –**

**a). Neg flex – everyone goes 3-3 in the world of the aff because the neg is constrained from shaping its strategy most effectively – that’s key to fairness**

**b). 2ac strategic thinking – we force the aff to make choices to best defend their advocacy statement.**

**c). Most real world – issues in Congress need to be defended from multiple angles – there is an entire spectrum of ideas.**

**One strategy solves their offense – we can still have a productive discussion because we didn’t read multiple different advocacies and go for the one that was least covered.**

**Education inevitable – pre-round research and other forums means we can always learn about specific issues**

**Strat skew inevitable – the neg could read a bunch of T violations and Das and still pigeon hole the aff**

**Perms are worse and check abuse –they are vague advocacies the aff can make that are conditional worlds as well**

### a/t: public backlash

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

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

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

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

### a/t: circumvention

#### And executive orders have the force of law:

Oxford Dictionary of English 2010

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the force of law.

#### Executive orders are permanent

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

#### CP constrains future Presidents – it creates a legal framework

Brecher, JD University of Michigan, December 2012

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

### a/t: asw

**Greater ASW capability makes US preemptive strike against China more attractive**

**ZHAO 2012** (Tong Zhao, Sam Nunn School of International Affairs, Georgia Tech, “Conventional Counterforce Strike and Damage Limitation,” Date is date last modified, Feb 14, http://igcc.ucsd.edu/assets/001/501602.pdf)

Compared to land-based nuclear forces, China’s nuclear ballistic missile submarines pose a lesser threat to a forward-deployed U.S. military force. China’s single Xia-class nuclear submarine (Type 092) is relatively old and no longer considered fully operational.70 The operational status of the more advanced Jin-class submarines (Type 094) and the JL-2 submarine-launched ballistic missiles has not been confirmed yet, though it is believed that China now has about two Jin-class submarines.71 More importantly, it is uncertain whether the Jin-class is primarily targeted at continental U.S. or it is primarily tasked with a regional role in the Asia-Pacific area. After all, it is ultimately determined by the U.S. whether they perceive China’s nuclear submarines as a security concern during a regional conflict over Taiwan. It is possible that the U.S. might want to target these submarines if they believe these SLBMs might be used against them. Existing foreign analysis on China’s submarine forces indicates that submarine bases are more difficult to conceal and protect than land-based underground facilities. Foreign experts have identified underground facilities with sea entrances at some of China’s submarine bases.72 It looks like Chinese nuclear submarines are usually hidden in underground facilities. They can drive in or out of these submerged tunnels through sea entrances. According to existing analysis, these tunnels may be relatively short in length and may not extend deep into the shore, which means the distance between the top of the tunnel and the ground surface may not exceed tens of meters. Getting back to Table 4, we can see that if the submerged tunnels are built in hard rock, most of the conventional weapons will face some difficulty penetrating the rock and reaching the tunnels. Some of the most powerful weapons such as the MOP, however, have a maximum penetration capability of about thirty meters into hard rock, which might be capable of destroying these underground tunnels. With that said, it is worth noting that it could be difficult, if not completely impossible, for the U.S. to accurately detect the actual operational status of Chinese nuclear submarines. At a time of crisis, the U.S. may not be confident about whether the submarines are in or out of the underground facilities, because the submarines can secretly leave the facility without being detected through the submerged sea entrances. When the submarines are at sea, its survivability may increase substantially, particularly if they are deployed in waters close to China where they are protected by China’s airplanes and surface ships and are not susceptible to attacks by America’s advanced anti-submarine systems.

**US first strike planning causes nuclear escalation**

**ZHAO 2012** (Tong Zhao, Sam Nunn School of International Affairs, Georgia Tech, “Conventional Counterforce Strike and Damage Limitation,” Date is date last modified, Feb 14, http://igcc.ucsd.edu/assets/001/501602.pdf)

For all of these reasons, this paper concludes that it is not beneficial for the U.S. to pursue the strategy of damage limitation through the use of conventional global strike weapons against China’s nuclear forces. Conventional counterforce strike against China is practically unachievable and will most likely accelerate escalation instead of prevent or control escalation. The consequences of including the scenario of using 28 conventional weapons to attack China’s nuclear forces in U.S. military planning will undermine American security interests. As a matter of fact, the possibility of U.S. conventional first strike against China’s nuclear forces has already sparked internal debates in China about the wisdom of sticking to an unconditional No First Use (NFU) policy. Although there is no indication that Chinese government has any intention to change its NFU policy in the foreseeable future, the perceived conventional threats have certainly undermined the existing consensus over NFU within China’s policy-making circles. If the threats loom larger in the future, no one will be sure whether China will continue to stick to NFU policy as firmly as it has been, which definitely would not serve American interests. Furthermore, if China is concerned about U.S. conventional threats, Beijing probably would not be willing to attend and play an active role in nuclear disarmament discussions. As is widely believed, after the U.S. and Russia concluded the START Follow-On Treaty, the international community will have to engage China and get China on-board on the issue of nuclear arms control if any further progress is going to be made. Addressing China’s concern about the U.S. conventional strike by dropping the conventional counterforce option out of U.S. strategic thinking and military planning would obviously contribute to the course of global nuclear disarmament. Recent events in the Asia-Pacific region seem to indicate a complex future for U.S.-China military relationship. Tensions in South and East China Seas continue to grow and U.S. positions on these issues are likely to draw the U.S. closer to potential maritime confrontations with China in these waters. China is believed making efforts developing advanced conventional weapons such as anti-ship ballistic missiles and is building its own aircraft carriers. All these advanced conventional weapons will make future conflicts between the U.S. and China more complicated and unpredictable. Taking the example of aircraft carriers, even if they are used as conventional weapon platforms, they are also important strategic assets of a country. If carriers are involved and attacked in future U.S.-China conventional conflicts, it could be very difficult to control and avoid escalation. Therefore, one of the key issues for maintaining U.S- China strategic stability in the future is to make sure that conventional conflicts will not easily escalate into nuclear wars. As a result, a proper strategy regarding the development and deployment of conventional strategic weapon system is very necessary and important. On the part of the U.S., several measures can be taken in the near term to help solve the problem.

**No credible scenario**

**Quinlan 9**—distinguished frmr British defence strategist and former Permanent Under-Secretary of State. (Michael, Thinking About Nuclear Weapons, 69-70)

One special form of miscalculation appeared sporadically in the speculations of academic commentators, though it was scarcely ever to be encountered—at least so far as my own observation went—in the utterances of practical planners within government. This is the idea that nuclear war might be erroneously triggered, or erroneously widened, through a state under attack misreading either what sort of attack it was being subjected to, or where the attack came from. The postulated misreading of the nature of the attack referred in particular to the hypothesis that if a delivery system—normally a missile—that was known to be capable of carrying either a nuclear or a conventional warhead was launched in a conventional role, the target country might, on detecting the launch through its earlywarning systems, misconstrue the mission as an imminent nuclear strike and immediately unleash a nuclear counter-strike of its own. This conjecture was voiced, for example, as a criticism of the proposals for giving the US Trident SLBM, long associated with nuclear missions, a capability to deliver conventional warheads. Whatever the merit of those proposals (it is not explored here), **it is hard to regard this particular apprehension as having any real-life credibility.** The flight time of a ballistic missile would not exceed about thirty minutes, and that of a cruise missile a few hours, before arrival on target made its character—conventional or nuclear—unmistakable. No government will need, and no nonlunatic government could wish, to take within so short a span of time a step as enormous and irrevocable as the execution of a nuclear strike on the basis of early-warning information alone without knowing the true nature of the incoming attack. **The speculation tends** moreover **to be expressed without** **reference** either **to any realistic political or conflict**-related **context** thought to render the episode plausible, or to the manifest interest of the launching country, should there be any risk of doubt, in ensuring—by explicit communication if necessary—that there was no misinterpretation of its conventionally armed launch.

## T

#### And here’s a more detailed explanation from Logue 2010.

(Wade H. McCree Jr. Collegiate Professor of Law, University of Michigan Law School, “Coordinating Sanctions in Tort,” 31 Cardozo L. Rev. 2313, lexis)

This negative externality is in theory corrected by strict liability. Strict liability, from the perspective of the injurer, can be understood as a type of Pigovian tax that is implemented by a court (rather than by an agency) after an injury occurs and after suit is brought by the injured victim. As with other Pigovian taxes, however, it has the effect of internalizing external harms. Under strict liability, the potential injurer is not only induced to take optimal care, since doing so will reduce the size of her ex post liability, but also is encouraged to engage in the activity only if the benefits exceed the full social costs, including the costs of the tax. This is because the residual risk is shifted from the potential victims to the potential injurers. n21

#### And, here is evidence that tort liability is not an enforcement mechanism for a restriction, but a compensation mechanism injuries

**Clarkson et al.‘6**

(Professor of Law and Economics, Emeritus, University of Miami; PhD Economics, former administrator at OMB, West’s Business Law, 10th ed. p.143)

As already mentioned, the purpose of tort law is not to punish people for tortious acts but to compensate the injured parties for damages suffered. Compensatory damages are intended to compensate, or reimburse, a plaintiff for actual losses—to make the plaintiff whole. Compensatory damages compensate the plaintiff for property damage and physical injury, which may include medical expenses, lost wages and benefits, pain and suffering, and sometimes even emotional distress.

## EU

### No impact to NATO

**NATO irrelevant**

**Prefer our evidence – post-dates theirs – that is important because it assumes recent NATO pitfalls as indicated above – those have eliminated NATO’s relevance from international sphere – they don’t have any evidence to answer this claim**

**NATO is no longer essential – their evidence is stuck in the past – other institutions check the impact**

**Moon 12/29** (Younghoon Moon, Harvard International Review, “The Future of NATO,” December 29, 2012 , <http://hir.harvard.edu/mobile-might/the-future-of-nato?page=0,1>) GANGEEZY

While these facts are beyond dispute, many critics have questioned the purpose of NATO in the post-Cold War era. The “future of NATO” is a topic that looms over all of its summits. Critics argue that NATO has a past to be proud of, but no future to look forward to. If the military alliance has no purpose, then there would seem to be no point in discussing issues like its organizational capacity. Critics will rightly point out that NATO has not strictly been needed to resolve the conflicts in which it has recently intervened (such as Kosovo, Afghanistan, and Libya) and that NATO continues to suffer from a deficit of vision. In these cases, the United States could have taken unilateral action, or several key European states could have led the mission. When the heart of Western Europe was under direct threat, a transatlantic military alliance was exactly what was needed. In contrast, today NATO is often just one of many possible ways to tackle international security challenges. No longer uniquely indispensable, the worth of NATO in the twenty-first century depends on whether the benefits it confers are great enough to justify its use over other comparable solutions. In a world where threats are many and options to neutralize those threats are diverse, NATO’s relevance is a function of its organizational strength. NATO’s recent mission in Libya, Operation Unified Protector, provides a starting point to considering this question.

## Pakistan

### No impact

**No support and the army checks back**

**Mercile 09** – (May 22, “Is Pakistan facing a Taliban takeover?” <http://www.swp.ie/international/pakistan-facing-taliban-takeover/1770> )

But this makes little sense, for at least two reasons.

First, the Taliban have little popular support in Pakistan, where the opposition to Islamic fundamentalism is significant.

For instance, a recent Gallup poll revealed that 47% of Pakistanis believe the Taliban’s presence in some areas of their country has a negative influence, whereas only 14% said it has a positive influence.

Moreover, analysts have noted that the Taliban, mostly located in the Pushtun areas of Pakistan, could not possibly overtake the whole country.

Indeed, 85% of the population is made up of Punjabis and Sindhis, who do not support Talibanism or Islamic radicalism and who mainly voted for political parties which are not fundamentalist in the February 2008 elections, such as the Pakistan People’s Party and the Muslim League.

Second, the Taliban based in Pakistan amount to fewer than 10,000 fighters who have no air force, no armoured vehicles, and no tanks; they stand no chance against the Pakistani army’s 550,000 troops.

Thus, Pakistan’s nuclear weapons are well protected?but in any case, if Washington is so concerned about preventing nuclear catastrophes, it should work to eliminate nuclear weapons worldwide (starting with American nukes), not to protect them.

**India-Pakistan war would not cause extinction–damage would be confined to south asia**

**Lieberman 02 –** Copley news service(Bruce, 6/10 <http://www.globalsecurity.org/org/news/2002/020610-indopak1.htm>)

The horror of a nuclear war between India and Pakistan could decimate South Asia's largest cities, killing up to 12 million people and bringing misery to countless others. But a war, if limited to those two nations and the nuclear arsenals they are thought to possess, poses little danger of radioactive fallout reaching North America, physicists and atmospheric scientists say. There are fundamental reasons. First, India and Pakistan are believed armed with less potent weapons, probably no larger than the equivalent of 15,000 tons of TNT, about the same size as the bombs the United States dropped on Hiroshima and Nagasaki in 1945. In contrast, the typical nuclear weapon in the U.S. stockpile today is 10 to 20 times more powerful than the weapons held by India and Pakistan, according to GlobalSecurity.org. Second, the two countries are thought to have no more than 200 warheads between them - not enough, scientists believe, to endanger populations far beyond South Asia. More than 31,000 nuclear weapons, by contrast, are maintained by eight known nuclear powers, and 95 percent are in the United States and Russia, according to the Bulletin of Atomic Scientists, which monitors nuclear proliferation. Third, the approaching summer in the Northern Hemisphere will mean an absence of fast-moving winter storms that could carry nuclear fallout quickly across the globe. Further, South Asia's monsoon season, which begins this month and extends into October, could wash nuclear fallout back to Earth, confining the worst environmental damage to that part of the world. "Of course, there will be some radiation reaching globally, but the amounts will be small compared to the levels that would produce health effects," said Charles Shapiro, a physicist at San Francisco State University, who co-authored a 1985 study on the environmental effects of nuclear war.

## PQD

### Heg

**Latent power solves**

**Wohlforth 7** (William, Professor of Government – Dartmouth College, “Unipolar Stability”, Harvard International Review, Spring, http://hir.harvard.edu/articles/1611/3/)

US military forces are stretched thin, its budget and trade deficits are high, and the country continues to finance its profligate ways by borrowing from abroad—notably from the Chinese government. These developments have prompted many analysts to warn that the United States suffers from “imperial overstretch.” And if US power is overstretched now, the argument goes, unipolarity can hardly be sustainable for long. The problem with this argument is that it fails to distinguish between actual and latent power. One must be careful to take into account both the level of resources that can be mobilized and the degree to which a government actually tries to mobilize them. And how much a government asks of its public is partly a function of the severity of the challenges that it faces. Indeed, one can never know for sure what a state is capable of until it has been seriously challenged. Yale historian Paul Kennedy coined the term “imperial overstretch” to describe the situation in which a state’s actual and latent capabilities cannot possibly match its foreign policy commitments. This situation should be contrasted with what might be termed “self-inflicted overstretch”—a situation in which a state lacks the sufficient resources to meet its current foreign policy commitments in the short term, but has untapped latent power and readily available policy choices that it can use to draw on this power. This is arguably the situation that the United States is in today. But the US government has not attempted to extract more resources from its population to meet its foreign policy commitments. Instead, it has moved strongly in the opposite direction by slashing personal and corporate tax rates. Although it is fighting wars in Afghanistan and Iraq and claims to be fighting a global “war” on terrorism, the United States is not acting like a country under intense international pressure. Aside from the volunteer servicemen and women and their families, US citizens have not been asked to make sacrifices for the sake of national prosperity and security. The country could clearly devote a greater proportion of its economy to military spending: today it spends only about 4 percent of its GDP on the military, as compared to 7 to 14 percent during the peak years of the Cold War. It could also spend its military budget more efficiently, shifting resources from expensive weapons systems to boots on the ground. Even more radically, it could reinstitute military conscription, shifting resources from pay and benefits to training and equipping more soldiers. On the economic front, it could raise taxes in a number of ways, notably on fossil fuels, to put its fiscal house back in order. No one knows for sure what would happen if a US president undertook such drastic measures, but there is nothing in economics, political science, or history to suggest that such policies would be any less likely to succeed than China is to continue to grow rapidly for decades. Most of those who study US politics would argue that the likelihood and potential success of such power-generating policies depends on public support, which is a function of the public’s perception of a threat. And as unnerving as terrorism is, there is nothing like the threat of another hostile power rising up in opposition to the United States for mobilizing public support. With **latent power** in the picture, it becomes clear that unipolarity might have more built-in **self-reinforcing mechanisms** than many analysts realize. It is often noted that the rise of a peer competitor to the United States might be thwarted by the counterbalancing actions of neighboring powers. For example, China’s rise might push India and Japan closer to the United States—indeed, this has already happened to some extent. There is also the strong possibility that a peer rival that comes to be seen as a threat would create strong incentives for the United States to end its self-inflicted overstretch and **tap** potentially **large wellsprings of** latent **power**.

### No solve warming

**United States not key to solve warming – it’s inevitable and there are no policies that can solve**

**Grose ‘3-15** (Thomas K., National Geographic News Writer, “As U.S. Cleans Its Energy Mix, It Ships Coal Problems Abroad”

Ready for some good news about the environment? Emissions of carbon dioxide in the United States are declining. But don't celebrate just yet. A major side effect of that cleaner air in the U.S. has been the further darkening of skies over Europe and Asia. The United States essentially is exporting a share of its greenhouse gas emissions in the form of coal, data show. If the trend continues, the dramatic changes in energy use in the United States—in particular, the switch from coal to newly abundant natural gas for generating electricity—will have only a modest impact on global warming, observers warn. The Earth's atmosphere will continue to absorb heat-trapping CO2, with a similar contribution from U.S. coal. It will simply be burned overseas instead of at home. "Switching from coal to gas only saves carbon if the coal stays in the ground," said John Broderick, lead author of a study on the issue by the Tyndall Center for Climate Change Research at England's Manchester University. The U.S. Energy Information Administration (EIA) released data this week showing that United States coal exports hit a record 126 million short tons in 2012, a 17 percent increase over the previous year. Overseas shipments surpassed the previous high mark set in 1981 by 12 percent. The United States clearly is using less coal: Domestic consumption fell by about 114 million tons, or 11 percent, largely due to a decline in the use of coal for electricity. But U.S. coal production fell just 7 percent. The United States, with the world's largest coal reserves, continued to churn out the most carbon-intensive fuel, producing 1 billion tons of coal from its mines in 2012. Emissions Sink The EIA estimates that due largely to the drop in coal-fired electricity, U.S. carbon emissions from burning fossil fuel declined 3.4 percent in 2012. If the numbers hold up, it will extend the downward trend that the U.S. Environmental Protection Agency (EPA) outlined last month in its annual greenhouse gas inventory, which found greenhouse gas emissions in 2011 had fallen 8 percent from their 2007 peak to 6,703 million metric tons of CO2 equivalent (a number that includes sources other than energy, like methane emissions from agriculture). In fact, if you don't count the recession year of 2009, U.S. emissions in 2011 dropped to their lowest level since 1995. President Barack Obama counted the trend among his environmental accomplishments in his State of the Union address last month: "Over the last four years, our emissions of the dangerous carbon pollution that threatens our planet have actually fallen." The reason is clear: Coal, which in 2005 generated 50 percent of U.S. electricity, saw its share erode to 37.4 percent in 2012, according to EIA's new short-term energy outlook. An increase in U.S. renewable energy certainly played a role; renewables climbed in those seven years from 8.7 percent to 13 percent of the energy mix, about half of it hydropower. But the big gain came from natural gas, which climbed from 19 percent to 30.4 percent of U.S. electricity during that time frame, primarily because of abundant supply and low prices made possible by hydraulic fracturing, or fracking. The trend appears on track to continue, with U.S. coal-fired plants being retired at a record pace. But U.S. coal producers haven't been standing still as their domestic market has evaporated. They've been shipping their fuel to energy-hungry markets overseas, from the ports of Norfolk, Baltimore, and New Orleans. Although demand is growing rapidly in Asia—U.S. coal exports to China were on track to double last year—Europe was the biggest customer, importing more U.S. coal last year than all other countries combined. The Netherlands, with Europe's largest port, Rotterdam, accepted the most shipments, on pace for a 24 jump in U.S. coal imports in 2012. The United Kingdom, the second largest customer, saw its U.S. coal imports jump more than 70 percent. The hike in European coal consumption would appear to run counter to big government initiatives across the Continent to cut CO2 emissions. But in the European Union, where fracking has made only its initial forays and natural gas is still expensive, American coal is, well, dirt cheap. European utilities are now finding that generating power from coal is a profitable gambit. In the power industry, the profit margin for generating electricity from coal is called the "clean dark spread"; at the end of December in Great Britain, it was going for about $39 per megawatt-hour, according to Argus. By contrast, the profit margin for gas-fired plants—the "clean spark spread"—was about $3. Tomas Wyns, director of the Center for Clean Air Policy-Europe, a nonprofit organization in Brussels, Belgium, said those kinds of spreads are typical across Europe right now. The EU has a cap-and-trade carbon market, the $148 billion, eight-year-old Emissions Trading System (ETS). But it's in the doldrums because of a huge oversupply of permits. That's caused the price of carbon to fall to about 4 euros ($5.23). A plan called "backloading" that would temporarily extract allowances from the market to shore up the price has faltered so far in the European Parliament. "A better carbon price could make a difference" and even out the coal and gas spreads, Wyns said. He estimates a price of between 20 and 40 euros would do the trick. "But a structural change to the Emissions Trading System is not something that will happen very quickly. A solution is years off." The Tyndall Center study estimates that the burning of all that exported coal could erase fully half the gains the United States has made in reducing carbon emissions. For huge reserves of shale gas to help cut CO2 emissions, "displaced fuels must be reduced globally and remain suppressed indefinitely," the report said. Future Emissions It is not clear that the surge in U.S. coal exports will continue. One reason for the uptick in coal-fired generation in Europe has been the looming deadline for the EU's Large Combustion Plant Directive, which will require older coal plants to meet lower emission levels by the end of 2015 or be mothballed. Before that phaseout begins, Wyns says, "there is a bit of a binge going on." Also, economic factors are at work. Tyndall's Broderick said American coal companies have been essentially selling surplus fuel overseas at low profit margins, so there is a likelihood that U.S. coal production will decrease further. The U.S. government forecasters at EIA expect that U.S. coal exports will fall back to about 110 million tons per year over the next two years, due to economic weakness in Europe, falling international prices, and competition from other coal-exporting countries. The Paris-based International Energy Agency (IEA) calls Europe's "coal renaissance" a temporary phenomenon; it forecasts an increasing use of renewables, shuttering of coal plants, and a better balance between gas and coal prices in the coming years. But IEA does not expect that the global appetite for coal will slacken appreciably. The agency projects that, by 2017, coal will rival oil as the world's primary energy source, mainly because of skyrocketing demand in Asia. U.S. coal producers have made clear that they aim to tap into that growing market.

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## War-Fighting DA

### Turns

#### SOF Key to heg

**Serafino 11**, Marissa, studies IR at Anselm College in Manchester, [“U.S. Military: Invest in Special Ops, Not in Drones,” August, <http://www.policymic.com/articles/u-s-military-invest-in-special-ops-not-in-drones>]

As intelligence and defense departments enter a new era with reduced spending, special operations forces provide some stability to the security of the U.S. Special ops forces are a key component of the war in Afghanistan and have a high rate of military success, so **even in an economic recession**, people remain the greatest asset to the military. These forces operate a network of secret prisons across the world and engage in: counter-terrorist activities; assassinations; long-range reconnaissance; intelligence analysis; foreign troop training; and weapons of mass destruction counter-proliferation operations. Critics have continually cried foul about the secrecy of counterterrorism operations and have raised concerns with the influence of the U.S. Special Operations Command (SOCOM). Critics also contend that with a global presence in roughly 60% of the world's nations, counterterrorism strike forces are evidence of a rising clandestine pentagon power elite waging secret wars across the world. The real question here is whether you trust our defense experts to authorize missions they deem necessary, such as the killing of bin Laden. While the lack of transparency of SOCOM is cause for debate, ultimately, secrecy is crucial to protecting the interests of the United States and its citizens. Covert missions were officially established during the Cold War under President Truman, who saw a need for secrecy even then. In order **to continue U.S. hegemony today, special ops forces must be expanded**. They protect U.S. interests while drawing the least amount of attention. Their job is to be inconspicuous. The United States needs discretion, especially in a fragile and nuclear world. While oversight is important for any special operation, broad oversight, such as congressional oversight, will endanger officers and counter the success of missions. Special operations forces have been an invaluable weapon of the past and will be an asset in the future for counterterrorism. America is smart to invest in them. Cuts to the defense budget should be in outdated technology and weaponry. The technological and strategic race for the security of our state depends on special operations, research, and innovations in order to move us forward.

#### Spec ops solve Iranian and North Korean Aggression and Pakistani Coup

**Johnson 6**, Matthew, Professor at Missouri State University [“The Growing Relevance of Special Operations Forces in U.S. Military Strategy,” http://www.citadel.edu/smll/Seminar/Additional%20Resources/Johnson,%20The%20Growing%20Relevance%20of%20Special%20Operations%20Forces%20in%20US%20Military%20Strategy,%202006.pdf]

The current security environment will continue to be dominated by asymmetric threats from nonstate and small lethal groups employing unconventional tactics for at least the next several decades. SOF is likely to play a prominent role in future operations involving terrorism, unconventional threats, and counterproliferation of WMD. SOCOM officials and military experts have expressed their desire to expand the use of SOF as “global scouts” for the GWOT. This use of SOF involves not only clandestine intelligence gathering but other traditional military activities under the broad category of preparation of the battle-space. A large part of the overt mission of “global scouts” falls to Army SF, with their extensive contacts and experience with foreign militaries.87 Such operations would involve cooperating with host nations to identify newor emerging terrorist groups and provide rapid response to any crisis.88 The clandestine aspect of SOF mission as “global scouts” will likely involve intelligence gathering and limited direct action missions with possible operations involving the CIA paramilitary and special mission units. At present, SOF are reportedly operating intelligence-gathering missions from U.S. embassies, an issue that has caused tension between the Defense Department, the State Department, and the CIA.89 Others believe that SOF units, particularly SF units, must have much longer deployments overseas and that there should be permanent assignment of SOCOM assets to “watch the hundred-plus terrorist groups and insurgencies around the world.”90 The SOF units assigned to this task would ideally be in a position, along with CIA assets and resources, to both warn the U.S. national leadership and develop plans for missions that SOCOM would perform alone or in conjunction with other agencies. This approach has the benefit of placing a large emphasis upon cooperation with local allies and forces. The threat of rogue states—particularly Iran and North Korea—and the possibility of a coup in Pakistan makes SOF role in counterproliferation even more urgent. The ambivalent future of U.S.-Chinese relations is an open question and the role of SOF facing a potential Chinese advisory is not yet fully formulated. The prominence of SOF beyond the GWOT is uncertain. Ambiguity surrounding when or even if an end to the GWOT can be declared may ensure continued prestige and new responsibilities. SOF may also transition to address other non-state actor threats such as transnational criminals or significantly increase their current role against drug traffickers. Fortunately, the history of SOF has demonstrated the ability of these units to adapt to new challenges and situations.

### 2NC Judicial Review

#### Judicial review of tactical targeting decisions collapses unit cohesion which is the core of military effectiveness---cohesion depends on military unity of command---i.e., the idea that military orders are final and won’t be subjected to second-guessing after the fact. Judicial review causes risk aversion and fear of legal scrutiny which both destroy the effectiveness of TK missions---that’s Maher.

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

Finally, the VFW’s membership includes many current and former members of the U.S. armed forces’ elite special operations forces—Army Rangers and Special Forces, Navy SEALs, Air Force parajumpers and combat controllers, and Marine Corps Force Reconnaissance personnel, among others. These elite warriors conduct highly dangerous missions today in Iraq, Afghanistan, and other countries around the world. By definition, special operations “are operations conducted in hostile, denied, or politically sensitive environments to achieve military, diplomatic, informational, and/or economic objectives employing military capabilities for which there is no broad conventional force requirement. These operations often require covert, clandestine, or low-visibility capabilities.” U.S. Joint Chiefs of Staff, Joint Pub. 3-05, Doctrine for Joint Special Operations, at I-1 (2003), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_05.pdf.

Special operations are differentiated from conventional operations in many ways, but foremost among these are their “degree of physical and political risk, operational techniques, mode of employment, independence from friendly support, and dependence on detailed operational intelligence and indigenous assets.” Id. “Surprise is often the most important principle in the conduct of successful [special operations] and the survivability of employed [special operations forces],” and the very nature of special operations requires “high levels of security . . . to protect the clandestine/covert nature of missions.” Id. at I-6. More than mission accomplishment is at stake—“[g]iven their operating size, [special operations teams] are more vulnerable to potential hostile reaction to their presence than larger conventional units,” and therefore the protection of sources and methods is essential for the survival of special operations forces. Id. To preserve this element of surprise, special operations forces must broadly conceal their tactics, techniques and procedures, including information about unit locations and movements, targeting decisions, and operational plans for future missions. Disclosure of this information would allow this nation’s adversaries to defend themselves more effectively, potentially inflicting more casualties upon U.S. special operations forces. Such disclosure would also provide information about how the U.S. military gathers information about its adversaries, enabling terrorist groups like Al Qaeda to alter its communications and activities in order to evade future detection and action by the U.S. Government. Such harm would not be limited to just this instance or terrorist group group; these disclosures would also provide future terrorist adversaries and military adversaries with insight into U.S. special operations capabilities which would enable them to counter such capabilities in future conflicts. Cf. Public Declaration of Robert M. Gates, Secretary of Defense, Govt. Exhibit 4, September 23, 2010, at ¶¶ 6-7.

#### Lawsuits distract counterterrorism efforts

NYTimes July 19, 2013, “Judge Challenges White House Claims on Authority in Drone Killings,” <http://www.nytimes.com/2013/07/20/us/politics/judge-challenges-white-house-claims-on-authority-in-drone-killings.html?_r=0> (Hauck = a deputy assistant attorney general)

The government is asking that the lawsuit be dismissed on several grounds. Mr. Hauck said decisions about targeted killing should be reserved to the “political” branches of government, the executive and legislative, not the judiciary. In addition, he said, allowing a lawsuit against top national security officials to proceed would set a dangerous and disruptive precedent.

“We don’t want these counterterrorism officials distracted by the threat of litigation,” he said.

Pardiss Kebriaei of the Center for Constitutional Rights and Hina Shamsi of the American Civil Liberties Union, representing the plaintiffs, argued that the claims had extraordinary importance because they involved the deaths of Americans at the government’s hands. “The entire goal of Bivens is deterrence,” to discourage officials from infringing the rights of Americans, Ms. Shamsi said.

#### Bivens shuts down counterterrorism

George D. Brown, Boston College Law School, 2010 “Counter-Counter Terrorism via Lawsuit" – the Bivens Impasse George D. Brown Boston College Law School, [browngd@bc.edu](mailto:browngd@bc.edu), Boston College Law School Digital Commons @ Boston College Law School Boston College Law School Faculty Papers 1-1-2010

Bivens is indeed at the center of counter-counter-terrorism litigation. The underlying policies of the war on terror and the zeal of those who prosecute it inevitably lead to potential violations of constitutional rights. Those who oppose the war on terror, as well as those who view their rights as having been infringed (and their lawyers), have seized on Bivens as a key to fighting back. Peter Margulies describes damages suits against federal officers as part of a range of initiatives that drive campaigns of what he calls “crossover advocacy.”211 David Zaring has stated that “in these high-profile cases, winning the lawsuit is less precisely the point than is practicing increasingly personal politics while calling attention to a policy and a plight,”212 and that “[t]hese suits are more symbolic than likely to succeed, in that they rely not on the verdict, but on the ability to make a claim against a policy-maker.”213 As Zaring admits, some, perhaps many, of the plaintiffs will have suffered real injuries of the sort at which Bivens was aimed.214 The distinction is not easy to draw and may lead to downgrading the importance of serious lawsuits that are not publicity stunts.215 There is still, as noted, a lot at stake. Bivens suits could derail the war on terror, or at least seriously impede it. Therefore, it is not surprising that the government and individual officials have available a range of defenses to stop the suits short of the merits.

#### Judicial review decks unit cohesion---undermines authority of orders and makes units turn against themselves in litigation

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

B. Adjudication Also Would Adversely Affect Unit Cohesion

Throughout military history, from the Spartan warriors at Thermopylae to today’s American infantrymen in Afghanistan, soldiers have been motivated by comradeship and unit cohesion to sacrifice, persevere, and fight. See generally Richard Holmes, Acts of War (1986) (describing role of unit cohesion in mitigating fear and combat stress in World Wars I and II); James MacPherson, For Cause and Comrades (1997) (chronicling the motivations of American soldiers during the Civil War); Nancy Sherman, The Untold War (2010) (describing the emotional landscape of soldiering in Iraq and Afghanistan) Although war brings many emotions to the surface, unit cohesion matters more than any other motivating factor in the heat of battle. “[Unit] cohesion exists in a unit when the primary day-to-day goals of the individual soldier, of the small group with which he identifies, and of unit leaders, are congruent--with each giving his primary loyalty to the group so that it trains and fights as a unit with all members willing to risk death and achieve a common objective.” William Darryl Henderson, Cohesion: The Human Element in Combat, (1985), available at http://www.au.af.mil/au/awc/awcgate/ndu/cohesion/. Studies of wars throughout the 20th Century have shown unit cohesion to be the critical ingredient for the success or failure of small units. See Edward A. Shils and Morris Janowitz, “Cohesion and Disintegration in the Wehrmacht in World War II,” Public Opinion Quarterly 12 (Summer 1948) 280-315 (finding that unit cohesion translated into higher battlefield effectiveness, survivability and hardiness); Charles C. Moskos, Jr., The American Enlisted Man: The Rank and File in Today’s Military 144-46 (1970) (finding that close bonds between soldiers played a key role in determining unit effectiveness and survival in the Vietnam War); Samuel Rolbant, The Israeli Soldier: Profile of an Army 200-210 (1970) (finding that Israeli soldiers had “a very strong sense of mutual affection and attraction among unit members,” and that this cohesion contributed significantly to their exemplary combat performance); William Darryl Henderson, Why the Vietcong Fought: A Study of Motivation and Control in a Modern Army in Combat 107-118 (1979) (finding that a combination of “very strong cohesion” and simple logistics enabled the North Vietnamese Army to persevere against overwhelming firepower); Leonard Wong, “Combat Motivation in Today’s Soldiers,” 32 Armed Forces & Soc. No. 4, 659- 663 (2006) (concluding that, in Iraq and Afghanistan, American soldiers are primarily motivated by unit cohesion and comradeship, among other factors); Army Field Manual 6-22.5, Combat and Operational Stress Control Manual for Leaders and Soldiers, at ¶ 2-3 (2009) (“Unit cohesion and morale is the best predictor of combat resiliency within a unit or organization. Units with high cohesion tend to experience a lower rate of [combat stress] casualties than units with low cohesion and morale.). “I hold it to be one of the simplest truths of war that the thing which enables an infantry soldier to keep going with his weapons is the near presence or the presumed presence of a comrade.” S.L.A. Marshall, Men Against Fire 42 (1947). In this lawsuit, Plaintiff asks this Court to declare that the U.S. Government is not engaged in an armed conflict in Yemen, and that U.S. personnel may not therefore use lethal force against individuals in Yemen absent “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.” Further, plaintiff seeks disclosure of the allegedly classified criteria used to designate U.S. citizens for targeting. And, in this suit’s most extraordinary request, Plaintiff asks this Court to enjoin the President, his advisers, and his generals, from conducting certain parts of the nation’s war against Al Qaeda. As described above, judicial action of the sort requested by Plaintiff would have a deleterious effect on the chain of command. Judicial action also would, necessarily, affect unit cohesion by undermining both the vertical bonds among leaders and followers, and the horizontal bonds among comrades. These bonds depend on the clarity of orders and authorities which are the sine qua non of the military organizational structure. A judicial order on the lawfulness of the armed conflict in Yemen, or the appropriateness of U.S. military actions there, would cast doubt upon the orders of the President and his subordinate military officers, and introduce uncertainty into the military structure. Further, should this suit be allowed to proceed, it may eventually result in litigation relating to actions taken by military forces in Yemen. Such litigation may require units and soldiers to participate in the production of documents, interrogation of witnesses, and presentation of evidence at trial in an adversarial proceeding. Such litigation would rip apart the military units it touched, by pitting comrades against each other as potential witnesses, and creating the risk that every uttered or written word could eventually be used in a future courtroom, making every battlefield act susceptible to secondguessing and criticism. At its core, unit cohesion reflects a core trust among comrades so powerful that it would motivate a soldier to sacrifice his or her life for another, such that “[c]ombat soldiers describe the bond, hesitantly or openly, as love.” See Army Field Manual 22- 51, Leaders’ Manual for Combat Stress Control, at ¶ 3-7 (1994). Judicial intervention in this matter would erode that bond for the units touched by this process, undermining their effectiveness and our national security.

### 2NC Due Process

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

**Delery Et.al. ’12** - Principal Deputy, Assistant Attorney General, Civil Division, DOJ Principal Deputy, Assistant Attorney General, Civil Division, STUART F. DELERY Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

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