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#### Adv 1- Allied terror cooperation:

#### Domestic and international support for the US drone program is collapsing, threatening to shut it down entirely. Reform is key.

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

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### Lack of legal oversight on targeted killing collapses allied cooperation on terrorism, which is critical to intelligence sharing.

Human Rights First 13 (How to Ensure that the U.S. Drone Program does not Undermine Human Rights BLUEPRINT FOR THE NEXT ADMINISTRATION, Updated April 13, http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\_Targeted\_Killing\_blueprint.pdf)

The Obama Administration has dramatically escalated targeted killing by drones as a central feature of its counterterrorism response. Over the past two years, the administration has begun to reveal more about the targeted killing program, including in a leaked Department of Justice White paper on targeted killing1 and in public remarks by several senior officials.2 While this information is welcome, it does not fully address our concerns. Experts and other governments have continued to raise serious concerns about: The precedent that the U.S. targeted killing policy is setting for the rest of the world, including countries that have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights; The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence-sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries; The impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability and provide economic aid; The number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations; and Whether the legal framework for the program that has been publicly asserted so far by the administration comports with international legal requirements. The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis, and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. government’s strategy for targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences. How the U.S. operates and publicly explains its targeted killing program will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles (UAVs) is an increasingly global industry and drone technology is not prohibitively complicated. Some 70 countries already possess UAVs3 —including Russia, Syria and Libya4 —and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: the United States is "establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians."5 By declaring that it is in an armed conflict with al Qaeda’s “associated forces” (a term it has not defined) without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all “members” of such groups are legally targetable, the United States is establishing exceedingly broad precedent for who can be targeted, even if it is not utilizing the full scope of this claimed authority.6 As an alternative to armed conflict-based targeting, U.S. officials have claimed targeted killings are justified as self-defense responding to an imminent threat, but have referred to a “flexible” or “elongated” concept of imminence,7 without adequately explaining what that means or how that complies with the requirements of international law. In a white paper leaked to NBC news in February 2013, for example, the Department of Justice adopts what it calls a “broader concept of imminence” that has no basis in law. According to the white paper, an imminent threat need be neither immediate nor specific. This is a dangerous, unprecedented and unwarranted expansion of widely-accepted understandings of international law.8 It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al Qaeda have been killed in drone attacks, studies show that the vast majority of victims are not high-level terrorist leaders.9 National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial costs of the targeted killing program, including growing antiAmerican sentiment and recruiting support for al Qaeda. 10 General Stanley McChrystal has said: “What scares me about drone strikes is how they are perceived around the world. The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates.”11 The broad targeted killing program has already strained U.S. relations with its allies and thereby impeded the flow of critical intelligence about terrorist operations.12

#### Drone policy is more important than the spying and data scandal to European partners-threatens allied intelligence cooperation.

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Allied cooperation on intelligence is critical to effective counterterrorism

McGill and Gray 12 (Anna-Katherine Staser McGill, David H. Gray, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

#### Terrorists have means and motive for nuclear attacks, now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Only judicial ex post review provides the accountability necessary to solve confidence in targeting—key to viability of the program

Corey, Army Colonel, 12 (Colonel Ian G. Corey, “Citizens in the Crosshairs: Ready, Aim, Hold Your Fire?,” http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA561582)

Alternatively, targeted killing decisions could be subjected to judicial review. 103 Attorney General Holder rejected ex ante judicial review out of hand, citing the Constitution’s allocation of national security operations to the executive branch and the need for timely action.104 Courts are indeed reluctant to stray into the realm of political questions, as evidenced by the district court’s dismissal of the ACLU and CCR lawsuit. On the other hand, a model for a special court that operates in secret already exists: the Foreign Intelligence Surveillance Court (FISC) that oversees requests for surveillance warrants for suspected foreign agents. While ex ante judicial review would provide the most robust form of oversight, ex post review by a court like the FISC would nonetheless serve as a significant check on executive power.105 Regardless of the type of oversight implemented, some form of independent review is necessary to demonstrate accountability and bolster confidence in the targeted killing process. Conclusion The United States has increasingly relied on targeted killing as an important tactic in its war on terror and will continue to do so for the foreseeable future.106 This is entirely reasonable given current budgetary constraints and the appeal of targeted killing, especially UAS strikes, as an alternative to the use of conventional forces. Moreover, the United States will likely again seek to employ the tactic against U.S. citizens assessed to be operational leaders of AQAM. As demonstrated above, one can make a good faith argument that doing so is entirely permissible under both international and domestic law as the Obama Administration claims, the opinions of some prominent legal scholars notwithstanding. The viability of future lethal targeting of U.S. citizens is questionable, however, if the government fails to address legitimate issues of transparency and accountability. While the administration has recently made progress on the transparency front, much more remains to be done, including the release in some form of the legal analysis contained in OLC’s 2010 opinion. Moreover, the administration must be able to articulate to the American people how it selects U.S. citizens for targeted killing and the safeguards in place to mitigate the risk of error and abuse. Finally, these targeting decisions must be subject to some form of independent review that will both satisfy due process and boost public confidence.

#### Accountability is impossible from executive internal measures- no one trusts Obama on drones—Court action is key.

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

### 2

#### Advantage 2- Imminence:

#### The executive’s current definition of imminence is so vague and broad it makes overuse and abuse of the drone program inevitable.

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

4. Expanding the concept of "imminence" beyond recognition The memo claims that the president's assassination power applies to a senior al-Qaida member who "poses an imminent threat of violent attack against the United States". That is designed to convince citizens to accept this power by leading them to believe it's similar to common and familiar domestic uses of lethal force on US soil: if, for instance, an armed criminal is in the process of robbing a bank or is about to shoot hostages, then the "imminence" of the threat he poses justifies the use of lethal force against him by the police. But this rhetorical tactic is totally misleading. The memo is authorizing assassinations against citizens in circumstances far beyond this understanding of "imminence". Indeed, the memo expressly states that it is inventing "a broader concept of imminence" than is typically used in domestic law. Specifically, the president's assassination power "does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future". The US routinely assassinates its targets not when they are engaged in or plotting attacks but when they are at home, with family members, riding in a car, at work, at funerals, rescuing other drone victims, etc. Many of the early objections to this new memo have focused on this warped and incredibly broad definition of "imminence". The ACLU's Jameel Jaffer told Isikoff that the memo "redefines the word imminence in a way that deprives the word of its ordinary meaning". Law Professor Kevin Jon Heller called Jaffer's objection "an understatement", noting that the memo's understanding of "imminence" is "wildly overbroad" under international law. Crucially, Heller points out what I noted above: once you accept the memo's reasoning - that the US is engaged in a global war, that the world is a battlefield, and the president has the power to assassinate any member of al-Qaida or associated forces - then there is no way coherent way to limit this power to places where capture is infeasible or to persons posing an "imminent" threat. The legal framework adopted by the memo means the president can kill anyone he claims is a member of al-Qaida regardless of where they are found or what they are doing. The only reason to add these limitations of "imminence" and "feasibility of capture" is, as Heller said, purely political: to make the theories more politically palatable. But the definitions for these terms are so vague and broad that they provide no real limits on the president's assassination power. As the ACLU's Jaffer says: "This is a chilling document" because "it argues that the government has the right to carry out the extrajudicial killing of an American citizen" and the purported limits "are elastic and vaguely defined, and it's easy to see how they could be manipulated."

#### 2 Impacts- first, Pakistan

#### This broad definition of imminence has increased the frequency of attacks and the scope of who can be targeted, which decreases the program’s effectiveness because it reduces the ratio of high-value decapitations to accidental kills

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

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

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

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

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

#### Pakistan collapse risks war with India and loose nukes

Twining 13 (Daniel Twining is Senior Fellow for Asia at the German Marshall Fund, Pakistan and the Nuclear Nightmare, Sept 4, http://shadow.foreignpolicy.com/posts/2013/09/04/pakistan\_and\_the\_nuclear\_nightmare)

The Washington Post has revealed the intense concern of the U.S. intelligence community about Pakistan's nuclear weapons program. In addition to gaps in U.S. information about nuclear weapons storage and safeguards, American analysts are worried about the risk of terrorist attacks against nuclear facilities in Pakistan as well as the risk that individual Pakistani nuclear weapons handlers could go rogue in ways that endanger unified national control over these weapons of mass destruction. These concerns raise a wider question for a U.S. national security establishment whose worst nightmares include the collapse of the Pakistani state -- with all its implications for empowerment of terrorists, a regional explosion of violent extremism, war with India, and loss of control over the country's nuclear weapons. That larger question is: Does Pakistan's nuclear arsenal promote the country's unity or its disaggregation? This is a complicated puzzle, in part because nuclear war in South Asia may be more likely as long as nuclear weapons help hold Pakistan together and embolden its military leaders to pursue foreign adventures under the nuclear umbrella. So if we argue that nuclear weapons help maintain Pakistan's integrity as a state -- by empowering and cohering the Pakistani Army -- they may at the same time undermine regional stability and security by making regional war more likely. As South Asia scholar Christine Fair of Georgetown University has argued, the Pakistani military's sponsorship of "jihad under the nuclear umbrella" has gravely undermined the security of Pakistan's neighborhood -- making possible war with India over Kargil in 1999, the terrorist attack on the Indian Parliament in 2001, the terrorist attack on Mumbai in 2008, and Pakistan's ongoing support for the Afghan Taliban, the Haqqani network, Lashkar-e-Taiba, and other violent extremists. Moreover, Pakistan's proliferation of nuclear technologies has seeded extra-regional instability by boosting "rogue state" nuclear weapons programs as far afield as North Korea, Libya, Iran, and Syria. Worryingly, rather than pursuing a policy of minimal deterrence along Indian lines, Pakistan's military leaders are banking on the future benefits of nuclear weapons by overseeing the proportionately biggest nuclear buildup of any power, developing tactical (battlefield) nuclear weapons, and dispersing the nuclear arsenal to ensure its survivability in the event of attack by either the United States or India. (Note that most Pakistanis identify the United States, not India, as their country's primary adversary, despite an alliance dating to 1954 and nearly $30 billion in American assistance since 2001.) The nuclear arsenal sustains Pakistan's unbalanced internal power structure, underwriting Army dominance over elected politicians and neutering civilian control of national security policy; civilian leaders have no practical authority over Pakistan's nuclear weapons program. Whether one believes the arsenal's governance implications generate stability or instability within Pakistan depends on whether one believes that Army domination of the country is a stabilizing or destabilizing factor. A similarly split opinion derives from whether one deems the Pakistan Army the country's most competent institution and therefore the best steward of weapons whose fall into the wrong hands could lead to global crisis -- or whether one views the Army's history of reckless risk-taking, from sponsoring terrorist attacks against the United States and India to launching multiple wars against India that it had no hope of winning, as a flashing "DANGER" sign suggesting that nuclear weapons are far more likely to be used "rationally" by the armed forces in pursuit of Pakistan's traditional policies of keeping its neighbors off balance. There is no question that the seizure of power by a radicalized group of generals with a revolutionary anti-Indian, anti-American, and social-transformation agenda within Pakistan becomes a far more dangerous scenario in the context of nuclear weapons. Similarly, the geographical dispersal of the country's nuclear arsenal and the relatively low level of authority a battlefield commander would require to employ tactical nuclear weapons raise the risk of their use outside the chain of command. This also raises the risk that the Pakistani Taliban, even if it cannot seize the commanding heights of state institutions, could seize either by force or through infiltration a nuclear warhead at an individual installation and use it to hold the country -- and the world -- to ransom. American intelligence analysts covering Pakistan will continue to lose sleep for a long time to come.

#### Miscalculation means this could escalate to nuclear winter and extinction

Hundley 12 (TOM HUNDLEY, Senior Editor-Pulitzer Center, “Pakistan and India: Race to the End,” http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### Scenario 2- Yemen and Somalia:

#### Drone overuse wrecks stability in Yemen—errors and collateral damage are high now.

Greenfield and Kramer 13 (DANYA GREENFIELD & DAVID J KRAMER, Time to curb American drones, April 5,

http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/international/05-Apr-2013/time-to-curb-american-drones)

The US has played a significant role in Yemen’s transition, which ensured the exit of former president Ali Abdullah Saleh, in exchange for immunity, and inaugurated a unity government and consensus president overseeing a national dialogue launched last month. The US has pledged support for the dialogue, which will lead to a constitutional referendum and new elections. To many Yemenis, however, Washington is narrowly focused on the short-term security concerns and the fight against terrorism. The US, they think, cares little about real political change. As Yemen’s transition enters a critical stage, Washington has an opportunity to change this image by redirecting its policy to greater emphasis on stability, prosperity and democracy, which will advance both US and Yemeni interests. Despite considerable US humanitarian aid and development support to their government, most Yemenis associate US engagement with the ongoing drone campaign to destroy Al-Qaeda in the Arabian Peninsula (AQAP) and they see it as having little regard for its effect on civilians. A number of former US military and intelligence officials argue that the drone programme’s costs may exceed its benefits. Retired General Stanley McChrystal has articulated the hazards of overreliance on drones, and General James E Cartwright, former vice-chairman of the Joint Chiefs-of-Staff, cautioned last month against unintended consequences, arguing that no matter how precise drone strikes may be, they breed animosity among targeted communities and threaten US efforts to curb extremism. With drone attacks breeding discontent and anti-American sentiment, the Barack Obama administration must rethink how the US can advance its objectives without letting tactics dictate strategy. Washington seeks to balance multiple priorities in Yemen: Supporting stability in the Arabian Peninsula, disrupting terrorist networks, securing waterways and aiding Yemen’s transition to democracy. By focusing primarily on acute, short-term threats, the US risks the long-term security that benefits both nations and can be achieved only through a sustained investment in the humanitarian, economic and political development of the Yemeni people. Thirty-one foreign policy experts and former diplomats sent a letter to President Obama last week that said the administration’s expansive use of unmanned drones in Yemen is proving counterproductive to US security objectives: As faulty intelligence leads to collateral damage, extremist groups ultimately win more support. The lack of transparency and accountability behind the drone policy set a dangerous global precedent and damage Washington’s ability to influence positive change in Yemen and the region. Drone strikes heighten animosity towards the US and Yemen President Abd Rabbo Mansour Hadi’s government for compromising Yemeni sovereignty. The US, the letter counselled, should reduce its reliance on drone strikes and instead invest in a long-term security agenda. This will include strengthening institutions that enhance the capacity and professionalism of Yemen’s security forces - not only counterterrorism units - to address threats to internal security. Washington already supports the restructuring of Yemen’s military, a step mandated by the transition agreement, but the Defence and State departments should ensure that America’s military assistance does not repeat the mistakes made during Saleh’s tenure - such as ignoring power concentrated in the hands of elites or not prosecuting human rights abuses. And building a capable police force recruited from residents in partnership with local communities is essential to securing this territory. Americans and Yemenis have a strong shared interest in combating extremism, as Al-Qaeda and its local affiliate, Ansar Al Sharia, spread out in the south and pledge acts of terrorism against both Yemeni and US targets. The US should not ignore this threat, but beyond the security portfolio, Yemenis need to feel that Washington is committed to supporting democratic institutions and the prosperity of the Yemeni people. Although the State Department and the US Agency for International Development are engaging Hadi’s government on development and humanitarian issues, most Yemenis feel only the negative effects of US counterterrorism policy. Rather than the steady stream of military delegations, a more robust economic assistance programme and public diplomacy strategy - including a visit by Secretary of State John Kerry and other high-level diplomats - will signal support for Yemen’s transition and its democratic aspirations. Yemen’s national dialogue is an ideal opportunity to break with a legacy of corrupt leaders who sought personal gain at the nation’s expense. The Obama administration can encourage this process by providing international cover for the difficult decisions delegates must make to craft a new political system based on equitable power-sharing, active citizenship and tolerance. This requires the administration to examine its own policies and shift course where the status quo undermines America’s shared interests. Despite negative attitudes towards US policy, Yemenis are eager to have an authentic partnership with the US - built on transparency, accountability and a demonstrated commitment to their future.

#### Executive overreliance causes blowback and instability in Yemen and Somalia- risks violent escalation.

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

It is possible that the exchange of personnel among the military, the intelligence community and the Department of Defense will clear up the confusion over command and targeting, though this is far from given. The more serious forms of blowback stemming directly from the effects of extrajudicial killing, however, do not seem to have been addressed. If the Pakistani campaign spawned purposeful vengeance, like the Khost bombing, and opportunities for recruitment of noncombatants for retaliatory attacks, then the same purposeful and accidental escalation will most likely occur in the Arabian Peninsula and the Horn of Africa, compounding Yemen's and Somalia's volatility. In many ways, Yemen resembles both Afghanistan and Pakistan, and the undeclared drone war there will share the most dysfunctional characteristics of both sides of the Af/Pak theatre. Like Afghanistan, Yemen is a fragmented tribal society ideally suited for harboring pockets of militancy in a de-centered system with strong social ties.33 Like Pakistan, Yemen's military and the other institutions of a failing state may still function well enough to both channel counterterror funds from the United States and apply them according to its own interests and criteria.34 Another whisky-swilling military steeped in hypocrisy and addicted to counterterror as a way to make a living is hardly the ideal local spotter for U.S. attacks from the skies.35 Drone warfare as it has evolved in the Af/Pak theatre is not the answer to Yemen's unrest. The lessons of drone warfare in Pakistan are clear. First, if extrajudicial dispatching of high-value targets is a goal, such targets are best dealt with as Osama bin Laden was — through face-to-face assaults by crack JSOC troops based on reliable intelligence. Second, chronic testing of national sovereignty through an undeclared war of drone attacks puts fragile governing structures in the target country under enormous pressure while exacerbating social volatility, a recipe for unpredictable outcomes.36 Third, the complacency engendered in the American public, which is largely blind to the costs and consequences of, and anesthetized to, the legal and moral issues of drone warfare, precludes recognition, let alone discussion of this new form of warfare. Finally, a trend in increasing "collateral damage" ­— in which thousands of noncombatants may be extrajudicially killed, traumatized and materially damaged — fuels instability and escalates violent retaliation against convenient targets. With Yemen and Somalia as the east-west axis of a maritime system that unites South Asia with the Horn of Africa through one of the world's most sensitive and pirate-infested shipping channels, counterterror measures must be both precise and well-reasoned. The Pakistani model is neither. Drone strikes leave little scope for the civic reform that the Arab Spring in Yemen demands.37

#### Instability in Yemen and Somalia makes maritime terrorism in critical chokepoints around the Horn of Africa inevitable.

Ulrichsen 11 (Kristian Coates, The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula, Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

Multiple fault lines have thus opened up, facilitated by (and accelerating) processes of state weakness and the relative empowerment of non-state actors. The result is more political violence and endemic criminality in and off the coast of Somalia and the Horn. Nevertheless, the new dimension to this nexus of terrorism, piracy, gun-running and people-smuggling is its growing transregional dimension. This defines the core challenge facing the regional and global security agenda, in addition to attempts at diplomatic mediation and conflict resolution throughout the area. Intensifying illicit networks and rent-seeking criminality are part of a broader pressure on fragile state structures. They are already struggling to control and adapt to pressures arising from the accelerated flows of information, communication and migration in a rapidly globalizing environment. The coincidence of these processes in Somalia and Yemen is changing the geopolitics of insecurity in the Horn of Africa and the Arabian Peninsula, as the following sections detail. MARITIME AND ENERGY SECURITY The problem of fragile and collapsed states on both sides of the Bab al-Mandab introduces potent new elements of maritime and energy security into the regional — and global — equation. The incidence of maritime piracy in the Gulf of Aden and the Red Sea more than doubled in 2008-09, and their operational reach steadily increased. Much of the piracy was launched from the semi-autonomous region of Puntland, on Somalia's tip of the Horn, where patterns of rent-seeking and gangsterism converge with the absence of effective state authority and licit sources of income. Moreover, at least one of the seven different groups of pirates operating off the Somali coast is believed to be based in the Socotra archipelago in Yemen, while at least some of the financial proceeds are believed to pass through money-laundering channels in Dubai and Kenya.44 This underlines the growing regional and international risk from both maritime piracy and maritime terrorism. Incidents such as the seizure of the Sirius Star by Somali-based pirates in November 2008 and the attack on the Japanese supertanker M Star in the Strait of Hormuz in July 2010 illustrate both phenomena. Maritime commerce and international shipping that link the oil-exporting Gulf states to Western economies must navigate two regional chokepoints, the Strait of Hormuz and the Bab el-Mandab, in addition to the hazardous waters of the Gulf of Aden and the Red Sea. Pirates' growing aggressiveness has centered on this geostrategically and commercially vital region. It reflects the interlocking dangers stemming from a crisis of governance and spreading conflicts. In 2009, the International Maritime Board recorded a total of 406 actual and attempted attacks, the majority of which occurred in the Gulf of Aden and off the Somali coast.45 However, due to underreporting, often for fear of higher insurance premiums, the figures may be much higher. Numerous factors underlie the rise in maritime piracy off the Somali coast. These include opportunistic motivations, which are among the principal drivers of pirate groups, as well as the ready availability of targets (through high volumes of trade passing by) and means (including inadequate law enforcement and ready access to weaponry). It is contextualized by the impact of conflict, poverty and weak state capacity.46 Indeed, in the Somali case, state collapse is a major determinant of piracy. Piracy declined sharply during the short-lived projection of power and authority by the UIC in 2006 and subsequently resurged following their removal through the reappearance of pirate groups operating under warlord protection.47 With the TFG unable to control its territory, let alone its coastline and territorial waters, increased naval patrolling activity by external actors (including the EU, NATO, China, Russia, India and Iran) may offer a degree of protection to shipping but leaves untouched the root causes of piracy as a symptom of state collapse and lack of legitimate economic opportunities. Maritime terrorism presents the second major threat to international security at sea. It has similar causal facilitators to maritime piracy; the erosion of governance in littoral regions creates security gaps that may be exploited by terrorist organizations. The threat from maritime terrorism is low-level yet potentially high-impact. It encompasses subthreats ranging from maritime criminality to better-organized groupings of insurgents or militants who take advantage of the pressure on littoral states to exploit their maritime resources and the fuzzy margins between domestic and international governance of international waterways and shipping lanes. Although the number of maritime terrorist incidents has been relatively small, it does present a challenge to a global supply chain and logistical system increasingly predicated on "just-in-time" deliveries. It also encompasses the role of non-state actors with access to sophisticated weaponry operating in international waters where jurisdiction is unclear and the "seams of globalization" become vulnerable to exploitation.48

#### These attacks risk global economic collapse

Neubauer 13 (Sigurd, Defense and foreign affairs specialist, member of the International Institute for Strategic Studies, Somalia: A Terrorist-Piracy Nexus?, May 22, http://www.huffingtonpost.com/sigurd-neubauer/somalia-piracy\_b\_3320406.html)

Piracy, like terrorism has been a scourge of mankind for centuries and, though its practitioners, real (Blackbeard, Anne Bonny and Henry Morgan) and mythical (Captain Jack Sparrow in the Pirates of the Caribean movie stories) have achieved heroic stature in popular culture, its contemporary manifestations represent a major threat to the global economy and to national security. Significant strides have been made in recent years towards combating piracy, especially off the coast of Somalia, but a robust international grand strategy is urgently needed in order to forestall an ever more dangerous global threat as pirates develop ever more sophisticated organizational structures, many of which are already linked to criminal gangs and even, in some cases to terrorist groups. Their activities already impose heavy financial and human costs not only on the maritime industry but also on the countries from which they operate. Heretofore, the area around Somalia has been the most dangerous area but significant progress has been made in reducing piracy there. Last year, pirates succeeded in capturing 13 vessels, compared to 49 in 2010 and 28 in 2011, according to the International Maritime Organization (IMO). Part of that success can at least be partially explained by the European Union's heavy naval presence around the Horn of Africa, in the Gulf of Aden while improving intelligence sharing with NATO, the Combined Maritime Forces (CMF), the UK Maritime Trade Operations (UKMTO), and the International Maritime Bureau (IMB) Piracy Reporting Center. Additional measures implemented by shipping companies such as providing more armed security aboard merchant vessels while securing the ship's perimeter with razor or barbed wire have also led to the significant decrease in the number of piracy attacks. Equally important, however, was the 2009 implementation of the Djibouti Code of Conduct, a code concerning the repression of piracy and armed robbery against ships. Under the code, aside from committing themselves to abiding by various counter-piracy United Nations Security Council Resolutions, the signatories also pledged to overhaul their domestic counter-piracy legislation. As a result, a record number of pirates were sentenced by local courts around the world last year. The significance of these developments should not, however, be overstated. First, the cost remains enormous -- in 2011, it is estimated that Somali piracy cost the global economy an estimated 7 billion USD through higher insurance premiums, security enhancements, and business disruption and earned the pirates some 160 million USD in ransoms. These figures do not include the psychological burdens borne by the captives or the costs imposed on Somalia. And, the actual costs are probably even higher due to widespread underreporting. Second, while piracy off the coast of Somalia has decreased, pirates are gradually focusing their efforts where patrols are not available for protection, now operating in the wider Indian Ocean. As pirates are extending their reach from Oman to the Maldives, they have also proven to be excellent entrepreneurs, building large well-financed organizations that are able to execute ever more sophisticated attacks such as hijacking oil tankers off the coast of Nigeria and stealing the valuable cargo. Moreover, pirate groups are becoming increasingly international and are extending their reach from national bases to neighbors -- from Nigeria, for example to Benin and the Ivory Coast, usually in cooperation with powerful local elements. Economically speaking, piracy already presents an enormous challenge and it is conceivable that as pirates face stiffer resistance on the high seas by an increasingly stronger international naval presence, their political and ideological motivations could radicalize over time. Currently, terrorist groups already cooperate with criminal gangs to raise funds and piracy could potentially become a lucrative source of income for radical groups. A second plausible scenario is that as pirates struggle to capture more ships, pirates could resort to attacking shipping directly as criminal motivations could subside to radical ideology propagated by al Qaeda and its splinter groups. Hence, it is easy to envision a nightmare scenario wherein terrorists, supported by a pirate group, hijack an oil tanker not just to steal the oil or collect the ransom but to blow it up in a major port with devastating economic consequences across the globe. A separate threat scenario that should not be underestimated entails terrorists capturing a liqueﬁed natural gas carrier that can be used as a ﬂoating bomb, which can either be detonated at a major port or near a flotilla of ships in the open seas. Piracy and terrorism can also be used as means to exert economic warfare against the United States and the international community as maritime attacks oﬀer terrorists an alternate means of causing mass economic destabilization. After all, terrorists have already attacked ships -- al Qaeda, the USS Cole (2000), Abu Sayyaf a ferryboat in the Philippines (2004) and the Mumbai attacks (2008).

#### Nuclear war

Merlini, Senior Fellow – Brookings, 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

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

#### Nuclear war

Kemp 10 Geoffrey, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, pg. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

#### The plan is key- Ex post review resolves the broad definition of imminence- redress key to check the errors which cause blowback.

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

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

#### The plan would result in a balanced definition of imminence. The court would apply a standard that still allows decapitation of high value targets and out-of-battlefield operations– Hamdi proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Su- preme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that al- lows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### 3

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 4

#### Ex post review makes our drone operations better—incentivizes better intel gathering and it doesn’t chill battlefield ops

Taylor, Senior Fellow-Center for Policy & Research, 13 (Paul, Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, and is veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, “Former DOD Lawyer Frowns on Drone Court,” March, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/)

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

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

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

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

#### Judicial review of targeted killing operations increases the quality of executive decision-making-- electoral bias makes unilateral executive action prone to error

Dragu 13 (Tiberiu Dragu, prof of politics at NYU, and Oliver Board, On Judicial Review in a Separation of Powers System, https://files.nyu.edu/tcd224/public/papers/judicial.pdf)

In this section, we illustrate the applicability of our theory, and its policy implications, in the context of drone strikes and counterterrorism policy more generally. The public debate about the use of unmanned drones to kill suspected terrorists highlights the contending views on the appropriateness of (non-expert) judicial review as a means of checking the contours of (expert) counterterrorism policy.27 Perhaps more than any other counterterrorism pol- icy, targeted killings illustrate the presumed tension between dispensing policy-making to those institutions with superior expertise and the rule-of-law ideal of checking the legality of executive action, or at least one important aspect of it: judicially-enforced due process of law. Since 9/11, the CIA and the military have used unmanned drones to kill individuals sus- pected of terrorist activity in places far from any battlefield, without being charged, without a trial, and without any form of judicial approval. The president makes the determination of who should be targeted and can order the killings of non-citizens and citizens alike without any judicial oversight.28 Lower-level executive officials, working for the intelligence agencies in charge of terrorism prevention, recommend to the president who should be the next to die on the basis of available intelligence. These nominations go to the White House, where the president approves the names on the kill list. The president also decides if (and when) to undertake a drone strike that can result in civilian casualties and makes the final call on "signature strikes," which target suspicious behavior rather than specific terrorist suspects.29 In short, under the current regime, the president is "the prosecutor, the judge, the jury and the executioner, all rolled into one."30 The policy of targeted killings, as implemented, raises important legal questions, even if one accepts that drone strikes are not inherently illegal.31 Because the task of identifying terrorist suspects is inherently riddled with errors, it is impossible to know with certainty whether potential targets are dangerous terrorists or just people with the wrong association. As a result, innocent people can mistakenly be targeted even if lower-level executive officials make their recommendations for the kill list in good faith. And when those targeted to be killed have not been convicted in a court of law, the use of lethal force against non-citizens and citizens might infringe upon their due process rights.32 A drone strike aimed at an American citizen without adequate evidence to show that he or she is a terrorist posing an imminent danger can raise serious constitutional problems.33 Because of the risk of inadvertently killing innocent people by executive fiat and because abuses of power are likely when the executive carries unilaterally such a campaign of deaths, drone policy, some argue, should be subjected to some form of judicial review. A growing number of lawmakers, scholars, and public officials have embraced this idea and proposed an independent court to oversee drone strikes on the account that it would improve the existing status-quo, at least from a legal accountability perspective.31 One of the strongest criticisms against such institutional development is the argument that judicial oversight of drone strikes jeopardizes the effectiveness of the policy because judges lack the necessary expertise to review targeted killing decisions. Former solicitor general, Neal Katyal, has forcefully articulated this expertise rationale against judicial review of drone strikes. Katyal argues that "[t]he drone court idea is a mistake" because "(experts, not generalists" ought to decide on drone strikes.35 In this view, the harm to counterterrorism policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of judicial oversight. Simply put, asymmetric institutional competence makes it desirable, on balance, for the executive to undertake drone strikes without independent judicial oversight. These contending per- spectives on the appropriateness of judicial review are not unique to drone policy but are emblematic of public and scholarly discussions about how to devise counterterrorism policy more generally (Cole 2003, Posner 2006). Our analysis has relevance for existing debates on the scope of judicial review in the con- text of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) govern- mental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below. First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991). Second, the president, like all elected representatives, is a politician making choices un-der the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overre- action (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006: Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be neces- sary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, "it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illus- tration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011). Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insu- lated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive deci-sions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for countert- errorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to de- sign the institutional structure of liberal governments when the social objective is terrorism prevention. This expertise rationale for judicial review does not depend on whether the court approves or not a particular counterterrorism action. Critics of judicial review of drone strikes, for example, point to the record of the FISA court -it approves almost all warrants requests- as evidence that a drone court designed on a similar template would be ineffective. That judicial review can have a positive expertise effect is not predicated upon how intensely the court turns down counterterrorism policies, or upon how the court would assess a specific counterterrorism policy on its legal merits. It is based on analyzing the counterfactual of how much information is available for counterterrorism decision-making by comparing the scenario in which a court reviews counterterrorism policy with a scenario in which that policy- making process is free of judicial oversight. It may very well be unnecessary for the court to reject the choices of executive officials because those choices are adjusted in anticipation that drone strikes need to pass the muster of judicial review. What our theory suggests is that, on average, counterterrorism policy-making can be more rigorous on expertise grounds with judicial oversight that in its absence.

#### Courts often restrict the executive’s terrorism authority- deference and military operations links are hopelessly non-unique

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

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

But the refusal to allow Bivens damages remedies in these national security cases is exceptional in another sense: the Supreme Court has never been more assertive in adjudicating national security and foreign relations issues than it has in recent years. The last decade saw the executive lose (or have its legal arguments offered as amicus curiae rejected) time after time in Supreme Court cases concerning questions judicial power and justiciability in foreign relations and national security.11 In the most high profile of these cases, the ones concerning the post-9/11 war on terror, the Court emphatically asserted its authority and rejected or ignored the notion that deference to the executive was appropriate because of the national security or foreign affairs dimensions of the disputes.12 In these war-on-terror cases as well as in other national security or foreign relations contexts, the Supreme Court has ruled repeatedly against the executive and, in so doing, approved judicial review of the executive’s national security actions, in suits where plaintiffs sought prospective, injunctive-type remedies against the government.13 Remedies of that type are typically thought to involve much more judicial intrusion into executive functioning than would a retrospective award of money damages,14 and in some instances injunctive-type remedies were implied by the courts from a jurisdictional statute or said to be required by the Constitution itself, rather than being expressly created by Congress. In addition, the war-on-terror decisions in Rasul, Hamdi, Hamdan and Boumediene were intended by the Court to have, and did in fact have, enormously significant practical effects—restructuring the worldwide interrogation, detention and military commission policies of the executive branch.15 The many critics who think the judiciary has not done enough to remedy perceived excesses in the war-on-terror are missing the larger picture of unprecedented judicial assertiveness and effectiveness.16

## \*\*\*2AC

### \*\*\*Terrorism

### 2AC A2: NSA

#### Status quo solves and no breakdown in cooperation from NSA spying

Fox News 10/29/13 (“US reportedly weighs ending spying on allied heads of state” <http://www.foxnews.com/politics/2013/10/29/us-reportedly-weighs-ending-spying-on-allied-heads-state/>)

The Obama administration is reportedly considering ending its policy of monitoring communications by friendly heads of state following a series of revelations about the capabilities of the National Security Agency and its work monitoring phone calls in three Western European nations. Citing a senior administration official, the Associated Press reported late Monday that the White House was considering ending the practice. The official told the AP that the move was still under review and a final decision had not been made. Also Monday, the Los Angeles Times reported that the White House and State Department approved the eavesdropping policy, contradicting news reports from over the weekend that President Obama was unaware of the surveillance until this past summer and would have halted the practice if he had known. The Times also reported that staffers at the NSA and other intelligence agencies were angry at the White House's attempt to deny knowledge of the surveillance, believing that the Obama administration was blaming the intelligence community for using surveillance methods authorized and used by the administration.. "People are furious," a senior intelligence official told the paper. "This is officially the White House cutting off the intelligence community." The reports came hours after Sen. Dianne Feinstein, D-Calif., chairwoman of the Senate Intelligence Committee, called for a "total review of all intelligence programs" following allegations made last week that the NSA had monitored the cell phone of current German Chancellor Angela Merkel since 2002, when she was leader of the opposition in the German Reichstag. In a statement, the Feinstein said the White House had informed her that "collection on our allies will not continue." "With respect to NSA collection of intelligence on leaders of U.S. allies — including France, Spain, Mexico and Germany — let me state unequivocally: I am totally opposed," Feinstein said. She added that the U.S. should not be "collecting phone calls or emails of friendly presidents and prime ministers" unless in an emergency with approval of the president. The administration official said that statement was not accurate, but added that some unspecified changes already had been made and more were being considered. The official was not authorized to discuss the review by name and insisted on anonymity. Reports over the weekend based on new leaks from former NSA systems analyst Edward Snowden indicate that the NSA listened to Merkel and 34 other foreign leaders. Last week the French newspaper Le Monde reported that the NSA had monitored over 70 million phone calls made in France over the course of a single month. On Sunday, Spanish newspaper El Mundo reported that the NSA had monitored 60 million calls in Spain in December 2012. In response to the revelations, German officials said Monday that the U.S. could lose access to an important law enforcement tool used to track terrorist money flows. Other longtime allies have also expressed their displeasure about the U.S. spying on their leaders. As possible leverage, German authorities cited last week's non-binding resolution by the European Parliament to suspend a post-9/11 agreement allowing the Americans access to bank transfer data to track the flow of terrorist money. A top German official said Monday she believed the Americans were using the information to gather economic intelligence apart from terrorism and said the agreement, known as the SWIFT agreement, should be suspended. European Union officials who are in Washington to meet with lawmakers ahead of White House talks said U.S. surveillance of their people could affect negotiations over a U.S.-Europe trade agreement. They said European privacy must be better protected. Many officials in Germany and other European governments have made clear, however, that they don't favor suspending the U.S.-EU trade talks which began last summer because both sides stand to gain so much through the proposed deal, especially against competition from China and other emerging markets. As tensions with European allies escalate, the top U.S. intelligence official declassified dozens of pages of top-secret documents in an apparent bid to show the NSA was acting legally when it gathered millions of Americans' phone records. Director of National Intelligence James R. Clapper said he was following the president's direction to make public as much information as possible about how U.S. intelligence agencies spy under the Foreign Intelligence Surveillance Act. Monday's release of documents focused on Section 215 of the Patriot Act, which allows the bulk collection of U.S. phone records. The document release is part of an administration-wide effort to preserve the NSA's ability to collect bulk data, which it says is key to tracking key terror suspects, but which privacy activists say is a breach of the Constitution's ban on unreasonable search and seizure of evidence from innocent Americans. The release of the documents comes ahead of a House Intelligence Committee hearing Tuesday on FISA reform. The documents support administration testimony that the NSA worked to operate within the law and fix errors when they or their systems overreached. One of the documents shows the NSA admitting to the House Intelligence Committee that one of its automated systems picked up too much telephone metadata. The February 2009 document indicates the problem was fixed. Another set of documents shows the judges of the FISA court seemed satisfied with the NSA's cooperation. It says that in September 2009, the NSA advised the Senate Intelligence Committee about its continuing collection of Americans' phone records and described a series of demonstrations and briefings it conducted for three judges on the secretive U.S. spy court. The memorandum said the judges were "engaged throughout and asked questions, which were answered by the briefers and other subject matter experts," and said the judges appreciated the amount and quality of information the NSA provided. It said that two days later, one of the judges, U.S. District Judge Reggie Walton, renewed the court's permission to resume collecting phone records. The documents also included previously classified testimony from 2009 for the House Intelligence Committee by Michael Leiter, then head of the National Counterterrorism Center. He and other officials said collecting Americans' phone records helped indict Najibullah Zazi, who was accused in a previously disclosed 2009 terror plot to bomb the New York City subways. The documents also show the NSA considered tracking targets using cellphone location data, and according to an April 2011 memo consulted the Justice Department first, which said such collection was legal. Only later did the NSA inform the FISA court of the testing. NSA commander Gen. Keith Alexander revealed the testing earlier this month to Congress but said the agency did not use the capability to track Americans' cellphone locations nor deem it necessary right now. Asked Monday whether the NSA intelligence gathering had been used not only to protect national security but American economic interests as well, White House spokesman Jay Carney said: "We do not use our intelligence capabilities for that purpose. We use it for security purposes." National Security Council spokeswoman Caitlin Hayden later clarified that: "We do not use our intelligence capabilities to give U.S. companies an advantage, not ruling out that we are interested in economic information." Still, he acknowledged the tensions with allies over the eavesdropping disclosures and said the White House was "working to allay those concerns ," though he refused to discuss any specific reports or provide details of internal White House discussions.

### \*\*\*Imminance

### 2AC Casualties High

#### Mere perception of unaccountable drones causes blowback regardless of casualties

Emershaw 10/30/13 (Gerald, has earned a Ph.D. in Philosophy from the University of Maryland and a J.D. from St. John’s University School of Law. “U.S. Drone Strikes Are Illegal and More Sinister Than Most Americans Realize” <http://www.policymic.com/articles/70255/u-s-drone-strikes-are-illegal-and-more-sinister-than-most-americans-realize>)

The Amnesty International report provides a field research-based qualitative analysis of nine of the reported 45 drone strikes that occurred in Pakistan's North Waziristan region between January 2012 and August 2013. While the United States government's lack of transparency on its drone program has made research difficult, the report concludes the drone strikes in Pakistan may “amount in some cases to extrajudicial executions or war crimes and other violations of international humanitarian law.” Drone operators are required by international law to take “all feasible precautions” to determine whether a “civilian is directly participating in hostilities,” and when in doubt that person must be protected against direct attack. The fact that the Obama administration has identified low numbers of civilian casualties from drone strikes in Pakistan compared with the estimates made by human rights groups suggests that the United States presumes that unidentified kills are combatants rather than civilians in violation of the procedure mandated by international law. In a debate on the American use of drone strikes conducted at the United Nations on Oct. 25, the United States defended its air strike policies as “necessary, legal and just.” However, a growing number of nations including Brazil, China, and Venezuela, are critical of the United States' drone policy, and rightfully so. Despite President Obama’s claims that few civilians are killed in drone strikes, the Bureau of Investigative Journalism estimates that as many as 926 civilians have been killed in Pakistan and as many as 194 have been killed in Yemen. The 2011 assassination of Osama bin Laden and the recent capture of Al-Qaeda leader Abu Anas al-Libi in commando raids indicate that United States drone strikes are no more necessary than they are legal or just. Even the mere perception that the United States is violating international law and committing war crimes with its drone attacks is likely to create violent blowback against the United States. Nearly every Islamic terrorist who has engaged in high-profile attacks against the United States has cited violent American foreign policy in the Islamic world as the impetus. This includes Osama bin Laden, Ramzi Yousef, Richard Reid, and Faisal Shahzad. According to Human Rights Watch, Yemenis increasingly fear the United States and their own government more than AQAP. According to Amnesty International, many Pakistani residents of North Waziristan live in constant “fear and stress” due to the drone attacks. Such psychological stress combined with the deaths of civilians could spawn the next wave of terrorism, and this will likely lead to increased U.S. drone strikes. Obama's drone program is creating a vicious circle of death.

### \*\*\*Offcase

### 2AC T Authority

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### Their ex-post evidence concludes aff – we’re a restriction and ex-ante is not

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what [Tennessee v. Garner](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

### 2AC Exec/Cong CP

#### --The CP either links to politics and the terror DA or it doesn’t solve- Either the CP opens debate over critical LOAC issues like the definition of imminence, “associated forces,” and “participating in hostilities”—or it doesn’t do anything to increase transparency over the squo—these are the only remaining legal questions for Obama to clarify

Knuckley 10-1-13 (Sarah Knuckey is Director of the Project on Extrajudicial Executions at New York University School of Law, and a Special Advisor to the UN Special Rapporteur on extrajudicial execution, “Transparency on Targeted Killings: Promises Made, but Little Progress,” http://justsecurity.org/2013/10/01/transparency-targeted-killings-promises-made-progress/)

Since President Barack Obama’s May 2013 counter-terrorism speech, attention to and criticism of US targeted killings practice and policy has notably dropped off inside the US. But the secrecy that drove criticism of the program still exists today in key legal, policy, factual, and process areas. This post outlines the focus of criticism in early 2013, the government’s response, and the core areas of continuing secrecy. Early 2013: Growing Pressure for More Transparency Public criticism of the targeted killing program had its peak in February-May this year. The burst of attention followed years of work and advocacy by many actors in the US and abroad, much of which was directed at the program’s excessive secrecy. By early 2013, the US targeted killing program’s lack of transparency had become the central and most widely shared criticism, uniting diverse actors with otherwise conflicting views of the program’s ethics, legality, and strategic effectiveness. Amidst this unprecedented intensive focus on drone strikes by the press, members of Congress, and American public, President Obama pledged in his February 2013 State of the Union address to be “more transparent to the American people and to the world” about the US targeted killings program. Following further NGO pressure for more transparency, the promise was repeated in April by National Security Council spokesperson Caitlin Hayden, who added that while sensitive operational details would not be discussed, explaining drone policies was something to which the Administration was “committed,” and would do “as soon as we can.” More specifically, John Brennan, during his nomination for the position of CIA Director, stated that he believed – “in the interest of transparency” – that the US “should acknowledge” if it kills “the wrong person,” and he stressed the seriousness with which government post-strike assessments of civilian harm were pursued. As public and political pressure continued to build, White House officials announced that President Obama would give a major counter-terrorism speech at the end of May. Many close observers hoped the speech would mark a significant turning point, and that the President would at last lay out the program’s basic facts, legal authorities, and policies. The President’s May 2013 speech did directly address the targeted killings program, arguing in broad terms that it is legal, effective, wise, and moral. Concurrently, the government also took two important concrete transparency steps. First, Attorney General Eric Holder published a letter acknowledging that four US citizens had been killed, and provided some information about why the US believed it was lawful to target one of those citizens, Anwar al-Alwaki. Second, the government published Presidential Policy Guidance on targeted killings, briefly setting out policies (not law) for when the US could target individuals outside areas of “active hostilities.” The Policy Guidance states that strikes are not carried out unless there is a “near-certainty” of no civilian harm, a standard also referred to in the President’s speech (and hinted at in earlier Brennan statements). Shortly afterwards, Secretary of State John Kerry stated that the US simply does “not fire” if it concludes that there would be collateral harm. Some interpreted these efforts and the President’s speech to mark the beginning of improved transparency. But despite transparency promises and expectations, many of the same, core concerns regarding undue secrecy remain. The President’s speech, the Policy Guidance, and Holder’s letter – because of textual ambiguities within each, and combined with events since – have largely failed to address these longstanding concerns, and in some important respects aggravated them.Continuing Secrecy on Core Issues Key areas in which transparency has not yet been forthcoming include: Who can be killed, where, and on what basis. Demands for legal and policy information on who and when the US believes it can kill have long been at the center of calls for more transparency. Senior US officials, before 2013, delivered important speeches outlining the government’s views on the applicable legal frameworks for targeting. But the speeches lacked detail, and left crucial legal questions unanswered. Legal concepts key to understanding the scope of US targeting – like “imminence,” “associated forces,” and “directly participating in hostilities” – remain unclear (see this and this). The relevant legal memos have still not been published, even in redacted form. In addition, although President Obama’s speech and the published Policy Guidance set out strict rules for the use of force – stricter, in numerous respects, than the laws of war – they are not legally binding, and we do not know when they began to apply, or when the strict policy limits on killing may be relaxed (and if we will ever be told when they are). And, crucially, we don’t know where the new guidelines actually apply (original assumptions by many outside government that they applied in Pakistan were later called into question). Since Obama’s May 2013 speech, confusion about who can be targeted has at times increased (e.g. a “senior American official” stated in August that a security threat had “expanded the scope” of who could be targeted in Yemen). Basic program facts, overall casualties, and statistical strike information. The President admitted in his May speech that some civilian casualties have occurred. But the government refuses to release even basic statistical information about the numbers of strikes or of those killed, or to disclose its own civilian casualty estimates, or strike locations. Specific strikes. The US continues to say nothing at all, officially, about the facts of most strikes. When questioned about specific strikes since May 2013, senior officials have generally continued simply to decline to comment, refusing even to acknowledge whether the US was involved. Given that the US publicly acknowledged in 2012 that it uses force in Yemen, it is not clear why the US continues to refuse to provide details on, at least, Yemen strikes. During the July-August 2013 surge in Yemen strikes, public information (limited as it was) came largely from news reports quoting anonymous US and Yemeni officials. Adding to confusion, the accounts in different outlets at times appeared contradictory (compare NYT, NBC, and ABC). Reports of civilian casualties called into question the government’s “near-certainty” standard, but were left unaddressed by officials. And although President Obama stated that the declassified information in Holder’s letter was to “facilitate transparency,” the letter does not explain why US citizens Samir Khan, Abdulrahman al-Awlaki, and Jude Kenen Mohammed were killed, saying only that they were “not specifically targeted.” Civilian harm – investigations, acknowledgment, redress. There has been no public information on any government efforts this year to acknowledge civilian harm and provide redress. I have previously listed just some of the strikes that raise particular concerns, none of which have been publicly acknowledged by the government; nor have the findings of any government investigations been released. And despite assurances about post-strike investigations, I am not aware of US officials seeking testimony from alleged victims, their lawyers, or from NGOs or journalists who have investigated specific strikes. Transfer to DOD. Despite expectations in May 2013 that Administration efforts to promote transparency would include moving the program from the CIA to DOD, one of the last officials to publicly address this said that it may not happen “for years.” The US government’s public statements and limited disclosures to date have been welcome steps towards transparency. But they fall far short of what is necessary, and important core questions remain unanswered.Last week, I posted on some of the targeted killings related advocacy efforts taking place over the next few months. Those include the possible visit of alleged drone strike victims (currently on hold because their lawyer’s visa application to the US has not been approved), and major NGO and UN reports expected in the weeks ahead. As these put the spotlight back on the program, raising specific and credible concerns about individuals strikes, the government should renew its commitment to transparency and outline the tangible steps it will now take to be more transparent to the American people and the world.

#### ---Links to politics-- Congressional oversight causes Obama to backlash

Hirsch 13 (Michael, What’s in the Secret Drone Memos, Feb 22, http://www.nationaljournal.com/nationalsecurity/what-s-in-the-secret-drone-memos-20130222)

In a statement last week, Senate Intelligence Committee Chairwoman Dianne Feinstein, D-Calif., said her staff knew of a total of nine OLC memos but had only seen four of them. She said it was only in recent days that “senators on the committee were finally allowed to review two OLC opinions on the legal authority to strike U.S. citizens.” Feinstein added, “We have reiterated our request for all nine OLC opinions—and any other relevant documents—in order to fully evaluate the executive branch’s legal reasoning, and to broaden access to the opinions to appropriate members of the committee staff.” An Obama administration official who is familiar with the negotiations with Feinstein’s committee indicated that the White House was miffed at efforts by the senator and her staff to obtain all the memos at once, because such efforts play into the Republican strategy of using the dispute to delay the confirmation of John Brennan, Obama’s nominee to head the CIA and the main architect of the drone program, as well as Chuck Hagel as Defense secretary. “These guys don’t even know what the hell they’re asking for,” the official said. “They think they can ‘reverse-engineer’ the [drone] program by asking for more memos, but these are not necessarily things that exist or are relevant.... What they’re asking for is to get more people read into very sensitive programs. That’s not a small decision.” The administration is engaged in a serious internal debate over the release of more information, with Harold Koh, the State Department legal adviser, said to be in favor of doing so and other officials aligned with the CIA still somewhat opposed. Under the CIA, the program has been covert, making the administration’s efforts at transparency all the more difficult—one reason that Brennan is said to want to shift responsibility over to the Pentagon.

#### --And, cherry-picking dooms transparency efforts—no one will believe the CP because the executive continuously cherry picks releasing its legal rationales.

Jaffer 10-7-13 (Jameel, Selective Disclosure About Targeted Killing, Oct 7, http://justsecurity.org/2013/10/07/selective-disclosure-targeted-killing/)

For several years, the ACLU has been pressing the Obama administration to be more transparent about the targeted-killing program. I’m starting to wonder whether it understands what we mean. Last week, I argued a case before the Second Circuit involving the secrecy surrounding the program. The case involves a Freedom of Information Act request filed by the ACLU two years ago for records about the government’s killing of three Americans in Yemen. The CIA initially claimed it couldn’t disclose whether it had records responsive to the request without compromising national security. Later the CIA acknowledged that it had responsive records but argued that national-security concerns precluded it from enumerating or describing them. Earlier this year, the district court observed that the CIA’s so-called “no-number no-list” response was the stuff of Alice in Wonderland—but then ruled for the CIA anyway. In our appeal brief, we point to the many instances in which senior government officials have discussed the targeted killing program publicly. In media interviews and speeches, we write, officials have defended the program’s legality, effectiveness, and necessity. They’ve dismissed concerns about civilian casualties. And through not-for-attribution interviews with reporters, they’ve engaged in what one appeals-court judge called “a pattern of strategic and selective leaks at the highest level of government.” We argue that the administration shouldn’t be permitted to pretend that everything about the program is a secret while its most senior officials conduct a public-relations campaign about it. At oral argument last week, though, the government’s attorney turned our argument on its head. The disclosures cited by the ACLU, she said, were evidence that the government had made a genuine effort to be transparent about the targeted-killing program. By pointing to those disclosures, she said, the ACLU was trying to penalize the government for having been as transparent as it had been. (I’m paraphrasing because I don’t yet have the transcript.) The government’s attorney also warned the court against requiring the government to disclose more. If the court held that the government couldn’t disclose some information about a subject without waiving its right to withhold other information, she argued, the government would hesitate before releasing anything at all. The government fundamentally misunderstands our complaint—or it understands only half of it. Our complaint isn’t just that government officials are keeping too much information secret, though they are. It’s also that the government is releasing information selectively—that it’s cherry-picking its disclosures in a way that misleads the public about the targeted-killing program’s scope and nature and implications. Government officials release information about the killing of suspected terrorists but withhold information about bystander casualties. They tell the public that lethal force is used only when capture is infeasible, but they decline to say how feasibility is assessed. They release a Cliffs Notes version of their legal theory, but not the legal memos—let alone the factual ones—on the basis of which the killings actually take place. They release facts meant to reassure, but they withhold facts that might unsettle. Of course there’s nothing new about this kind of thing. Governments prefer to release information that presents their actions in a flattering light and suppress information that doesn’t. But this is why we have the FOIA. The Obama administration suggests that the FOIA is concerned only with excessive secrecy, but while the Congress that enacted the statute in 1966 was concerned with “transparency” in the narrow sense of that word, it was at least as troubled by selective disclosure. Here is the House Republican Policy Committee’s statement in support of the Act: In this period of selective disclosures, managed news, half-truths, and admitted distortions, the need for this legislation is abundantly clear. High officials have warned that our Government is in grave danger of losing the public’s confidence both at home and abroad. The credibility gap that has affected the Administration’s pronouncements on domestic affairs and Vietnam has spread to other parts of the world. The on-again, off-again, obviously less-than-truthful manner in which the reduction of American forces in Europe has been handled has made this country the subject of ridicule and jokes. “Would you believe?” has now become more than a clever saying. It is a legitimate inquiry. Americans have always taken great pride in their individual and national credibility. We have recognized that men and nations can be no better than their word. This legislation will help to blaze a trail of truthfulness and accurate disclosure in what has become a jungle of falsification, unjustified secrecy, and misstatement by statistic. Representative Donald Rumsfeld of Illinois, a champion of the proposed law, set expectations slightly lower but explained the law’s aims similarly: Certainly it has been the nature of Government to play down mistakes and to promote successes. This has been the case in past administrations. Very likely this will be true in the future. . . . [This bill] will not change this phenomenon. Rather, the bill will make it considerably more difficult for secrecy-minded bureaucrats to decide arbitrarily that the people should be denied access to information on the conduct of Government or how an individual Government official is handling his job. (Citations and a fuller discussion of the legislative history can be found at pages 17-19 of this brief.) The point is obvious: disclosure and transparency can be two very different things. If the government discloses that it doesn’t engage in “torture” but suppresses the memos that redefine the term, the disclosure hasn’t served transparency but undermined it. The same is true if the government discloses (or celebrates) the killing of “militants” but refuses to release information about the killing of innocent bystanders. Perhaps these disclosures shouldn’t be thought of as disclosures at all. If they’re disclosures, they’re disclosures that misinform or mislead rather than enlighten.

#### CP links to Special Ops- releasing target selection processes (just read the blue highlighting)

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

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

### 2AC PQD

#### The PQD is already dead

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising in the context of foreign or military affairs. Rather, lower federal courts should adjudicate these claims on their merits by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine” as a nonjusticiability doctrine in cases involving individual rights – even those arising in a foreign policy context. In fact, a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the so-called “political question doctrine” as a true nonjusticiable doctrine to dismiss individual rights claims (and arguably, not to any claims at all), even those arising in the context of foreign or military affairs. This includes the seminal “political question” case of Marbury v. Madison. Rather, the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, the post-9/11 Supreme Court cases of Hamdi v. Rumsfeld, Rasul v. Bush, and Bush v. Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss individual rights claims as nonjusticiable, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs rather than finding the claim nonjusticiable.

#### **The plan doesn’t link**

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/)

First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it. Another concern raised by Johnson is that the judges would be highly uncomfortable making such decisions because they would be necessarily involve a secret, purely ex parte process. While courts do this on a daily basis, as when they issue search or arrest warrants, the targeted killing context stands apart in that the judge’s decision would be effectively irreversible. Here again, the use of ex post process would free the courts from this problem, and place it in the executive (which includes the military, incidentally, an organization which deals with this issue as a matter of course).

#### No extinction-empirically denied

**Carter et al., James Cook University adjunct research fellow, 2011**

(Robert, “Surviving the Unpreceented Climate Change of the IPCC”, 3-8, <http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html>, ldg)

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos *et al*., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world." In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate.

### 2AC Politics

#### Farm bill won’t pass and no impact-they’ll just do a temporary extension no matter what

**Reuters 11-11-13**

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

The chances of the U.S. Congress passing a five-year farm bill by year's end are a little better than 50/50 given the gridlock over food stamps for the poor, a top farm policy expert said on Monday. "There is a slightly better chance than 50/50 that we will get a bill rolled into a budget at the end of the year. But it's no better than that," Barry Flinchbaugh, a Kansas State University agricultural economist who advises legislators shaping the U.S. farm bill, told Reuters on the sidelines of a farm bankers meeting in Minneapolis. The farm bill, already a year behind schedule, is the master legislation that directs government supports for farmers and food aid programs. The bill is now with a conference committee of 41 members of Congress who are hammering out the difference between the House and Senate bills. The biggest difference: the Senate wants $4 billion cut from food stamps while the House wants to reduce the program by $40 billion. "Food is the only division. The other issues can be settled," said Flinchbaugh, citing variations in how they address crop insurance for farmers along with other subsidies. Historically, the conference committee reconciles differences and brings a compromise to a final vote. That process has been hampered by the deep divisions between the Republican-controlled House and the Senate, where Democrats are in the majority. "There is a way perhaps we can get past this food stamp gridlock. We cut food stamps $6-$8 billion and then we put in all these caveats the far right wants to put in the food stamp program, like work requirements and drug tests," said Flinchbaugh, who has advised on farm policy for over 40 years. The government extended the expired 2008 farm bill last year. Leaders of the House and Senate agricultural committees have a self-imposed deadline of reaching agreement by Thanksgiving and the White House has threatened to veto a bill with large food stamp cuts. If Congress fails to pass a new bill, a second extension is likely, Flinchbaugh said. "There is some talk we will do that for two years because we don't want to be messing with this during an election year," Flinchbaugh said. "Or, we implement the permanent legislation."

#### Obama’s approval ratings at all-time low and he won’t bounce back – kills his political capital

AFP 11/15/13 (“Are Obama’s approval ratings sinking past the point of no return?” <http://www.rawstory.com/rs/2013/11/15/are-obamas-approval-ratings-sinking-past-the-point-of-no-return/>)

Barack Obama’s second term fumbles have pitched him to record low poll ratings and splintered his credibility with the American people. But has his presidency reached the point of no return? History and opinion poll data suggest that when reelected presidents slump in the ratings, it is tough, if not impossible to bounce back. Obama, stung by the amateurish debut of his health care plan, which has sent fellow Democrats into revolt, is beginning to sense the depth of his woes. “I do make apologies for not having executed better over the last several months,” he said at a Thursday press conference, punctuated by uncharacteristic mea culpas. “Am I going to have to do some work to rebuild confidence around some of our initiatives? Yes.” He had better act fast. An NBC/Wall Street Journal survey two weeks ago had the president’s approval rating down to 42 percent. A week later, Pew Research put Obama at 41 percent. By Wednesday, Quinnipiac University had him at 39 percent, a new low. The data suggest Obama can no longer count on the solid floor of support that has sustained his crisis-strewn presidency. “For the first time it appears that 40 percent floor is cracking,” said Tim Malloy, assistant director of the Quinnipiac University Polling Institute. But do polls matter for a man who will never again be on the ballot? Second term presidents enjoy some freedom from the tyranny of their job ratings — and become more obsessed with staving off dreaded lame duck status. But Obama’s deteriorating image threatens to shred his remaining authority on Capitol Hill — where key priorities, including immigration reform are on life support. He is also pleading with sanctions-wielding senators for more time to do a nuclear deal with Iran. And Obama’s unpopularity is spooking Democrats with tough races in next year’s mid-term elections, which may doom his long-shot hopes of seeing his party recapture the House of Representatives. Already, Obama is getting the cold shoulder from vulnerable Democrats, including Louisiana Senator Mary Landrieu who is brandishing her own bill to clean up the Obamacare mess. Charlie Cook, a renowned political analyst, suggests Obama’s presidency is suffering a “classic case of second term fatigue.” Bill Clinton saw his second term consumed by a sex scandal, George W. Bush was brought low by Iraq and Ronald Reagan struggled through the Iran-Contra scandal. Obama’s self-inflicted wound is the jammed Affordable Care Act website and his discredited promise that if Americans liked the health insurance they already had, they could keep it. The damage is obvious: Quinnipiac found that by 52-44 percent, people thought their president was not honest. “Any elected official with an eight point deficit is in serious trouble,” Malloy said. Obama’s spokesman Jay Carney offered the timeworn politician’s trope that his boss did not “spend a lot of time, worrying about ups and downs in polls.” But no president in the last 60 years who has got into deep polling trouble in their second term has been able to bounce back Only Dwight Eisenhower and Clinton bettered their approval ratings after one year of their second term before leaving town — and they were popular to start with. Worryingly for Obama, the president whose polling track he most resembles at this point is George W. Bush, who slunk out of Washington with a pitiful 34 percent approval.

#### National Security link isn’t unique:

NU-Gitmo legislation

Time 11/6/13

http://swampland.time.com/2013/11/06/seeing-new-opportunity-obama-lobbies-on-key-gitmo-vote/

In a quiet new push for its goal of ending detention at Guantanamo Bay, the White House is lobbying swing-state Democrats ahead of votes expected before Thanksgiving. The votes could mark a turning point in President Obama’s long and frustrating push to shut down the controversial prison camp and set up an end-of-the-year showdown with the Republican-led House. In theory, the prospects for action in the Senate are better this year than in the past thanks to a much lower vote threshold needed to legalize the removal of some or all of the remaining 164 detainees at the facility, many of whom have repeatedly been cleared for release. Where sixty votes were required before, Democrats—who hold 53 seats, and can usually rely on two independent allies—now only need a simple majority. The fight is possible thanks to Senate Armed Services Committee chairman Carl Levin, who moved the 2014 defense authorization bill out of committee last June with provisions that would allow Obama a freer hand to transfer prisoners out of Gitmo. The Michigan Democrat’s bill would shift the decision to transfer detainees to a foreign country from the White House to the Pentagon, offering political cover to Obama. The bill also allows Obama to move some detainees to the US for trial or indefinite detention, or temporarily for medical treatment. Because those provisions emerged as part of the larger, must-pass defense bill from Levin’s committee, their backers will only need 50 votes to defend them, rather than the 60 that would be needed on the Senate floor to attach them. Opponents would need to filibuster the whole defense bill to block the provisions. Even so, it’s not clear Obama and his top counterterrorism aide, Lisa Monaco, can clear the lower bar. “The politics remain difficult,” says one Democratic staffer supporting Levin’s provisions, “we’re in the mid-40s or thereabouts, so it’s not impossible.” Last year, an amendment to the Pentagon’s annual spending bill, which blocked detainee transfers from Gitmo, won 54-41 with ten Democratic votes. Three of those Democrats have since retired, however, and their successors—Richard Blumenthal of Connecticut, Tim Kaine of Virginia and Mazie Hirono of Hawaii—may be more amenable. Obama also may gain an independent vote from Angus King of Maine, who replaced Republican Olympia Snowe. The White House would like to flip swing- or red-state Democrats who voted against transfers, especially those not facing reelection next year: the retiring Max Baucus of Montana, Debbie Stabenow of Michigan and Joe Manchin of West Virginia. Harder to convince would be those Democrats who voted against the transfers and are up in 2014, like Mary Landrieu of Louisiana, Kay Hagan of North Carolina and Mark Pryor of Arkansas. The White House also needs to hold vulnerable Democrats Mark Begich of Alaska and Mark Udall of Colorado, who are also up next year. Among the White House’s arguments is that keeping Gitmo open indefinitely is expensive: the Pentagon has asked for an addition $200 million to update the facility to improve conditions for guards and prosecutors. Each detainee costs taxpayers more than $900,000 per year, compared to around $60,000 for a Supermax inmate. The administration also argues that recent domestic trials have successfully brought terrorists to justice, whereas the military tribunals at Guantanamo are slow and plagued by procedural problems. Even if Obama can win on the Senate floor, Levin’s NDAA would have to be reconciled with the House version, which retains the existing limits on Guantanamo transfers. That would further test the political will of the White House in a potential showdown at the end of the year. The White House declined to comment on its progress. The bill is expected to come to the floor as early as the week of Nov. 18.

NU-NSA fights

LA Times 11/11/13

<http://www.latimes.com/nation/la-na-johnson-homeland-20131113,0,5943074.story#axzz2kYnO1DEx>

TOP STORY: SENATE CONFIRMATION OF NSA BOSS WEIGHED — Tony has the story on the front page of today’s POLITICO: “Frustration with the NSA’s spying and the impending departure of its longtime director have fueled a congressional push to put its future leaders through the potentially grueling process of Senate confirmation — a scenario the White House has warned in the past could harm intelligence efforts. Some believe Senate confirmation for the NSA director could bring sweeping change and more accountability to the ultra-secretive NSA. But it also threatens to subject the agency to public, political showdowns and delays — something the Obama administration has said it wants to avoid.” “The confirmation concept is one of several NSA reforms under serious consideration on Capitol Hill. Administration officials also have weighed whether to split leadership of the NSA away from U.S. Cyber Command — both currently led by Gen. Keith Alexander, who’s slated to depart in 2014. Such a change could forge the way for a civilian to head the NSA for the first time.” http://politi.co/19d0wf7 — PLUS: MCCAIN SAYS ALEXANDER SHOULD GO: The NSA leader should either resign or be fired, Sen, John McCain told Germany’s Der Spiegel in an interview published over the weekend: “Now we have a contractor employee, not a government employee, who has access to information which is, when revealed, most damaging to the standing prestige of the United States and our relations with some of our best friends,” the Arizona Republican said. “Why did Edward Snowden have that information? And what are we doing as far as screening people who have access to this information? It's outrageous, and someone ought to be held accountable.”

#### Court links aren’t unique:

NU-Obama is fighting NSA case and proves lower courts don’t link

Politico 10/16/13

http://www.politico.com/blogs/under-the-radar/2013/10/obama-fights-quick-supreme-court-review-of-nsa-program-175217.html

Obama Administration fights quick Supreme Court review of NSA program

The Obama Administration is fighting an effort to have the Supreme Court immediately review the legality of the National Security Agency’s call-tracking program. In a brief filed with the high court, the Justice Department argues that the Electronic Privacy Information Center’s petition asking the justices to weigh in on the issue is premature and that the issue should be allowed to percolate in the lower courts. After former NSA contractor Edward Snowden’s leaks about the telephone metadata program became public in June, EPIC went to the Supreme Court in July, asking for a rare “mandamus” review of one of the Foreign Intelligence Surveillance Court orders authorizing the program. “The petition… does not meet the stringent requirements for mandamus relief, and this Court lacks jurisdiction to issue a writ of certiorari to the FISC in these circumstances. Accordingly, the petition should be denied,” Solicitor General Donald Verrilli Jr. wrote in the brief filed Friday, made public by EPIC this week, and posted here. “The mandamus petition does not establish that it is more than speculative that the NSA has reviewed, or might in the future review, records pertaining to petitioner’s members, particularly given the stringent, FISC-imposed restrictions that limit access to the database to counterterrorism purposes,” Verrilli added. The brief points to three lawsuits pending in district courts over the NSA program: one filed by the American Civil Liberties Union in June in Manhattan, another filed by the Electronic Frontier Foundation in July in San Francisco, and a third filed by conservative legal activist Larry Klayman in Washington in June. “Mandamus relief is unwarranted unless ‘the party seeking issuance of the writ’ has ‘no other adequate means to attain the relief he desires,’” Verrilli wrote. While the Justice Department filing essentially urges EPIC to seek similar review in a district court, government lawyers do not concede that the group would be able to get a ruling in that forum on the legal merits of the program.

NU-DC Court nominations

ABC 11/13/13

http://abcnews.go.com/blogs/politics/2013/11/senate-republicans-block-another-obama-nominee-to-d-c-circuit-court/

Senate Republicans blocked another one of President Obama’s nominees for the D.C. Circuit Court Tuesday, prompting speculation about whether Democrats will try to change the Senate’s filibuster rules. The Senate voted 56-41 in a procedural vote on the nomination of Nina Pillard to be a U.S. Circuit Judge for the D.C. Circuit Court, falling four votes shy of the 60 needed to pass. Today’s vote is the latest in Republican’s attempts to block Obama’s judicial nominees. Pillard joins Caitlin Halligan and Patricia Millett on the list of nominees to the D.C. Circuit Court that Republicans have shot down this year. Last month, Senate Republicans also blocked the confirmation of Rep. Mel Watt, D-N.C., to head the Federal Housing Finance Agency. Senate Democrats were infuriated by the latest block and argued that a rules change should be considered. “I think we’re at the point where there will have to be a rules change,” Sen. Patrick Leahy, D-Vt., chairman of the Senate Judiciary Committee, said in a news conference after the vote. “I think it’s a turning point for this body because I think it will necessarily involve us to re-examine these rules,” Sen. Richard Blumenthal, D-Conn., said. “What the outcome will be, whether we press forward with the rules change or not, the imperative is there.” Senate rules currently require 60 votes in order to close debate on a bill or nominee. Republicans and Democrats brawled over the summer when Senate Majority Leader Harry Reid threatened to employ the “nuclear option,” which would have changed Senate rules with a simple majority of 51 votes rather than the 67 currently needed. The two sides eventually came to an agreement that kept Senate rules intact and avoided the “nuclear option.” But Leahy argued Tuesday that the Republicans who helped avert a major change in the rules this summer are now needlessly filibustering nominees who are completely qualified. “We had a lot of Republicans who said that time there should be only a filibuster in the most extraordinary circumstance. Each one of those Republicans who said that have filibustered this time on this,” Leahy said, slamming his hand on the podium. “Their credibility is shred.”

#### No link – court action shields Obama from controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### Supreme Court Links don’t apply – the plan is the D.C. district court

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

#### Food prices won’t cause instability

**WFP 2012**

(World Food Program, “High Food Prices: Why This Is Different From 2008”, 9-4, <http://www.wfp.org/stories/high-food-prices-why-different-2008>, ldg)

1. Global stocks of rice and wheat are higher than they were in 2008. The price and supplies of rice, a staple food for many millions of people, are relatively stable in Asia. 2. In 2008, several major food-producing countries imposed export bans, which caused shortages on world markets. Meanwhile, in food-deficit countries, there was panic-buying, with governments paying very high prices, especially for rice. So far this time this has not happened. 3. In contrast to 2008, global economic growth is presently weak, so demand is not pushing prices further upwards. 4. Many countries are better prepared to face the current situation. Some have worked on establishing and improving social safety nets such as school meals, and public works programmes. 5. Better tools exist at the international level to coordinate the policy response. For example, in 2011 the G20 set up the Agricultural Market Information System (AMIS), hosted at FAO, which tracks food commodity markets and aims to improve transparency and act as an early warning system.

### 2AC Warfighting

#### Blowback splits US intel and military cohesion

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

Between 2004 and 2009, our research and databases compiled by others document a dramatic spike in deaths by suicide bombings in Afghanistan and Pakistan.18 While it is impossible to prove direct causality from data analysis alone, it is probable that drone strikes provide motivation for retaliation, and that there is a substantive relationship between the increasing number of drone strikes and the increasing number of retaliation attacks.For every high-profile, purposeful attack like the Khost bombing, many more low-profile attacks take place. These types of attacks can be explained by what military strategist David Kilcullen calls the accidental-guerrilla phenomenon, a local rejection of external forces.19 By using drone warfare as the only policy tool in the FATA without any local political engagement, the United States is almost certainly creating accidental guerrillas. These new combatants, unable to retaliate against the United States within FATA, will likely cross the border into Afghanistan, where U.S. troops and NATO and Afghan security forces are concentrated and present easily identifiable targets. Or they may join the ranks of groups like the Pakistani Taliban, whose attacks within Pakistan destabilize the U.S.-Pakistani alliance. The last days of June 2011 illustrated the worst extremes of this phenomenon: a married couple carrying out a suicide attack in Pakistan, and an eight-year-old duped (not recruited) into an Afghan suicide attack.20It should be emphasized that only a small minority of those affected by drone attacks become the kinds of radicals envisioned by Kilcullen. However, with the average frequency of a drone strike every three days in 2010, this would be enough to provide a steady stream of new recruits and destabilize the region through direct violence. The less direct effect of steady drone attacks and militant counterattacks is a smoldering dissatisfaction with dead-end policy. On the U.S. military, intelligence and policy side, this results in division in the ranks, preventing a unified effort.21 In Afghanistan and Pakistan, this cycle results in anti-government agitation and anti-American sentiment, which may force sudden policy adjustments by political and military actors.

#### better targeting and executive decision making- 1ac Taylor and Dragu

#### Deference to the executive encourages whisteblowers, the media, and other countries to backlash – causes volatile restrictions of policy and worse intel leaks

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

#### Government liability remedies the problems with individual liability- transferring removes threat of chilling

Sisk 06 (Gregory, holds the Laghi Distinguished Chair in Law at the University of St. Thomas School of Law, with Michael F. Noone, Litigation with the Federal Government, google books, p 395-6)

A number of commentators have argued that there would be substan-tial advantages in shifting liability for both ordinary and constitutional torts from public employees to the government itself. Professor Peter H. Schuck lists a variety of defects that he sees as flowing from imposition of liability directly upon officials rather than upon the government: "its propensity to chill vigorous decisionmaking; to leave deserving victims uncompensated and losses concentrated; to weaken deterrence; to obscure the morality of the law; and to generate high system costs."189 Professor Richard J. Pierce, Jr. contends that "[e]xposing individual government employees to potential tort liability is particularly likely to produce socially undesirable decision- making incentives."190 Because individuals are most likely to fear substantial personal liability, holding government employees liable for ordinary or con- stitutional torts may discourage them from undertaking new initiatives or reforms. Pierce notes that "many public officials routinely act in areas in which the legal constraints on their actions are both dynamic and murky." Even when the conduct is plainly wrongful, Schuck argues that "the costs of wrongdoing [should be] imposed upon the entity responsible for recruiting, training, guiding, constraining, managing, and disciplining" government em- ployees, rather than visiting liability upon individual officials who may be merely "instrument[s] of impersonal bureaucratic, political, and social pro- cesses over which they have little or no effective control." In addition to the effect on government interests and the injustice to public officials, these commentators argue that focusing liability upon gov- ernment officials, rather than the government, weakens the claims of those who have been wronged by government agents. Pierce states the argument this way: Allowing tort actions against government employees, rather than government, has three other adverse effects. First, sympathy for the plight of the public employee defendant often induces courts to adopt unduly narrow interpretations of constitutional and statutory rights... .Second, sympathy for the plight of the pub- lic servant defendant often induces juries to resolve close factual disputes in favor of the defendant and to award lower damages than would otherwise be warranted. Third, plaintiffs who are seri- ously injured by unlawful government conduct rarely can recover their full damages from a government employee defendant because government employees rarely have unencumbered assets sufficient to satisfy a large judgment.'" Indeed, Professor Cornelia T.L. Pillard argues that the "low rate of success- ful claims indicates that, notwithstanding Bivens, federal constitutional vio- lations are almost never remedied by damages."192 Pierce concludes that "[t]ort law would provide a more appropriate constraint on government ac- tion and a more secure source of compensation for victims of torts commit- ted by government if all potential exposure to tort liability were transferred from public employees to government."

#### 1AC Jaffer says that CIPA checks secrecy concerns and chilling- takes out their Delery and special forces card - Empirics go aff – 120 terrorism cases prove, CIPA solves

Vladeck et al 08 (Steven, A CRITIQUE OF “NATIONAL SECURITY COURTS”, A REPORT BY THE CONSTITUTION PROJECT’S LIBERTY AND SECURITY COMMITTEE & COALITION TO DEFEND CHECKS AND BALANCES, June 23,

http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle these cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brought in the federal courts over the past fifteen years. It finds that established federal courts were able to try these cases without sacrificing either national security or the defendants’ rights to a fair trial.3 The report documents how federal courts have successfully dealt with classified evidence under the Classified Information Procedures Act (CIPA) without creating any security breaches. It further concludes that courts have been able to enforce the government’s Brady obligations to share exculpatory evidence with the accused, deal with Miranda warning issues, and provide means for the government to establish a chain of custody for physical evidence, all without jeopardizing national security.

#### Special ops fail – under-resourced

Robinson 13 (Linda, adjunct senior fellow for U.S. national security and foreign policy at the Council on Foreign Relations (CFR) “The Future of U.S. Special Operations Forces” Council of Foreign Relations Report - Council Special Report No. 66)

OPERATIONAL SHORTFALLS The most glaring and critical operational deficit is the fact that, accord- ing to doctrine, the theater special operations commands are supposed to be the principal node for planning and conducting special operations in a given theater—yet they are the most severely under resourced com- mands. Rather than world-class integrators of direct and indirect capa- bilities, theater special operations commands are egregiously short of sufficient quantity and quality of staff and intelligence, analytical, and planning resoruces. They are also supposed to be the principal advisers on special operations to their respective geographic combatant com- manders, but they rarely have received the respect and support of the four-star command. The latter often redirects resources and staff that are supposed to go to the theater special operations commands, which routinely receive about 20 percent fewer personnel than they have been formally assigned.'2 Furthermore, career promotions from TSOC staff jobs are rare, which makes those assignments unattractive and results in a generally lower-quality workforce. Finally, a high proportion of the personnel are on short-term assignment or are reservists with inade- quate training. Because of this lack of resources, theater special opera- tions commands have been unable to fulfill their role of planning and conducting special operations.

## \*\*\*1AR

## \*\*\*Allies

### Europe

#### Dworkin, don’t want to cooperate with the US because they think the program is illegal, don’t want their courts to rule against them for being an accomplice, w/d their data now Germany is already doing it, yes they are key

Dworkin 13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “DRONES AND TARGETED KILLING: DEFINING A EUROPEAN POSITION” <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>)

Arguments for a European stance There are several ways in which the EU has an interest in the elaboration of a clearer position on drone strikes and targeted killing, and in a broader effort to promulgate more restrictive international standards in this area. The EU is committed to put human rights and the rule of law at the centre of its foreign policy, and many Europeans are likely to consider the widespread use of drones outside battlefield conditions incompatible with these principles. The EU has in the past condemned Israeli targeted killing of Palestinians. For instance, in March 2004, the European Council issued a statement describing the recent Israeli strike against Hamas leader Sheikh Ahmed Yassin as an “extra-judicial killing”. It added: “Not only are extra-judicial killings contrary to international law, they undermine the concept of the rule of law which is a key element in the fight against terrorism.”4 Although there are, of course, differences in the contexts of US and Israeli actions, the EU should continue to use its influence to work against the spread of a practice that it has previously opposed. In addition, there is a significant body of evidence that drone strikes in these regions have a damaging impact on local life and political opinion that can fuel anti-US and anti-Western sentiment. A detailed study of drone strikes in Pakistan found that they deterred humanitarian assistance to victims (because of the alleged practice of “double-tap” targeting in which two missiles are launched successively at the same target), caused financial hardship to victims’ extended families, exerted a psychological toll on communities, and inhibited social gatherings and community meetings.5 A careful study by the International Crisis Group found some evidence that “there is less opposition within FATA [the Federally Administered Tribal Areas] to drone strikes than among activists and commentators in the country’s urban centres”, but concluded that the drone programme was exploited by hardliners in Pakistan to ignite anti-US sentiment and encouraged a harmful dependence of the US on the Pakistani military as its primary counterterrorism partner.6 Some Western diplomats in Yemen argue that drone strikes are not broadly unpopular, but scholars who have studied the issue contend that a more focused and restrained use of strikes against high-level members of armed groups would limit civilian casualties and be more effective in reinforcing US national security.7 A young Yemeni activist who testified before the US Senate Judiciary Committee in April 2013 said that drones had become “the face of America to many Yemenis” and complicated the internal political dynamics in his country.8 US drone strike practices also complicate intelligence co- operation between EU member states and the US, because of the risk that information handed over by Europeans will be used as the basis for lethal strikes that might be considered illegal in the source countries. In December 2012, the British High Court dismissed a case brought by a young Pakistani man whose father was killed by a drone strike, seeking to establish whether information provided by British intelligence services was used by the CIA's drone programme; the case is currently under appeal.\* The German government came under strong domestic criticism after a US drone strike killed a German citizen of Turkish descent in Pakistan in October 2010 amid claims that the German police had provided US intelligence agencies with information about his movements."1 A federal prosecutor is investigating the legality of the killing, and in the meantime the German government has instituted a policy of not passing information to the US that could be used for targeted killing outside battlefield conditions, but activists argue that it is impossible to know whether any piece of information might form part of a mosaic used in targeting decisions.11 In Denmark, a public controversy has blown up over claims by a Danish citizen. Morten Storm, that he acted as a Western agent inside Yemeni jihadist circles and helped the CIA track the radical cleric Anwar al-AwIaki, who was killed by a drone strike in September 2011, with the knowledge of Danish intelligence services.

## \*\*\*Imminence

### Yemen/Pak

#### Drones cause government blowback from Pakistan – recent strikes prove

Santana 11/4/13 (Rebecca, AP Staffwriter, “Backlash feared after Taliban leader’s death” <http://www.montrealgazette.com/news/Backlash+feared+after+Taliban+leader+death/9120102/story.html>)

ISLAMABAD — The Pakistani Taliban leader killed in a recent U.S. drone strike was behind hotel bombings, assaults on political rallies, beheadings of policemen and suicide attacks on soldiers. But his death elicited little joy in the country where he wreaked most of his havoc and instead stirred widespread anger and suspicion. At the time of Friday’s strike targeting Hakimullah Mehsud, the Pakistani government was engaged in efforts to negotiate a peace deal with militants. Frustrated at years of military campaigns that have failed to end the bloodshed, many Pakistanis had high hopes for this latest peace effort and blame the United States for fouling it up. Mehsud “should have been given the chance to negotiate, and now the consequences have to be borne by Pakistan, not the U.S.,” said Syed Ahmed, a small-business owner in the southern port city of Karachi. Also contributing to the anger are fears of a bloody backlash, plus a web of complex conspiracy theories, including the idea that militants such as Mehsud are U.S. or Indian pawns intent on weakening Pakistan. For years, Pakistan has been fighting militants in the tribal areas that border neighbouring Afghanistan, with thousands of civilians and security forces dying in bombings and shootings at the hands of militants. Mehsud, who had a reputation as an especially ruthless warrior, was the leader of the Pakistani Taliban, or the Tehreek-e-Taliban Pakistan, as it calls itself. The TTP is an umbrella group encompassing militant organizations across the tribal areas. It has called for the overthrow of the Pakistani government, the implementation of hardline Islamic law and an end to co-operation with the Americans in Afghanistan. In many ways, people across Pakistan are echoing what they hear from politicians and government officials. During a news conference Saturday, Interior Minister Chaudhry Nisar Ali Khan lashed out repeatedly at the U.S., which he said was trying to scuttle peace talks. Imran Khan, the former cricket star who now leads a key opposition party, threatened to close NATO supply lines in retaliation for the drone attack. The U.S. and Pakistan are wary allies in the war against militancy. Suspicion in Pakistan against the United States runs deep, fuelled by a perception that Pakistan’s militancy problems were foisted on it by the U.S. invasion of Afghanistan, which pushed militants into the tribal areas of northwestern Pakistan. Many Pakistanis question why Pakistan, a predominantly Muslim country, is at war with other Muslims and its own citizens. Amir Sultan, a salesman at a garment business in Islamabad, said whenever Pakistan starts efforts to make peace with the Taliban, the U.S. sabotages it. “It is an American agenda to destroy Pakistan,” he said. “It is in America’s interest to pit Muslim against Muslims.” There is also suspicion that the U.S. and neighbouring India, a longtime enemy, are promoting and funding militants as a way to weaken the country. In the eastern city of Lahore, where that feeling is especially prevalent, lawyer Masood Wattoo blamed the U.S. and India for a recent string of bombings in the northwest, including a suicide attack on a church full of worshippers. In Karachi, Ahmad Jan suspected the U.S. and India were behind at least some of the militant groups operating across Pakistan. “The TTP is a terrorist organization. Whoever challenges the writ of the state can’t be our friends, but obviously they have the support of our enemies,” he said. Commanders from the group have been meeting to choose a successor to Mehsud, but no decision has been officially announced. Mehsud’s death has roused fears of a backlash of. The militant group has already vowed to take revenge as it did after its deputy was killed in May in another drone strike.

#### Pakistan is threatening to cut off drone access.

Bloomberg 10-22 (Pakistan Leader Trumpets Colgate Profit Before Obama Meeting, http://www.bloomberg.com/news/2013-10-22/pakistan-leader-trumpets-colgate-profits-before-obama-meeting.html)

Relations with the U.S. remain delicate after a tumultuous 2011, when an American raid killed al-Qaeda leader Osama bin Laden, who was living in a compound in Abbottabad, Pakistan. The deaths of two dozen Pakistani soldiers by U.S. helicopters soon after compounded the falling out, prompting Pakistan to close supply routes for American forces in Afghanistan for more than six months. Sharif strongly opposed the U.S. drone attacks in Pakistani tribal areas during his election campaign and promised to halt the program run by the Central Intelligence Agency that targets al-Qaeda, Taliban and other militants operating near the Afghanistan border.

#### Even if Pakistan in the past approved of drones, domestic opposition is building making kick out inevitable

Walsh 10-24 (Declan, Drone Issue Hovers More Than Ever, Even as Strikes Ebb, 2013, http://www.nytimes.com/2013/10/25/world/asia/drone-issue-hovers-more-than-ever-even-as-strikes-ebb.html?\_r=0)

Earlier this year, a senior American official told The New York Times that a small number of Pakistani officials had been “read into” the drone program. The strikes resulted in a diplomatic charade of sorts. American diplomats sometimes spoke with weariness about being summoned to dressings-down at the Pakistani Foreign Ministry, close to the United States Embassy in Islamabad. But the drumbeat of revelations about Pakistani knowledge of drone strikes has made that position harder to maintain. And in the United States, this year has seen a vocal debate about the legal transparency and ethical standards of the drone program. That is a change, because for a long time the drone program’s technological abilities outpaced both the law and diplomacy. Cameron Munter, a former ambassador to Pakistan, left his job in 2011 after a series of bruising disagreements with the C.I.A. station chief over drone strikes. And lawyers argued over whether the strikes, which pushed on new boundaries of international law, were legal. Since the beginning of this year, however, a pitched debate has been quietly under way inside the Obama administration, leading to Mr. Obama’s landmark speech on drones in May, in which he promised new limits to the program. Notably, the strike rate has dropped drastically in Pakistan, including during the elections in May. For all that, few believe the drones will derail talks between the two countries on other major issues: the situation in Afghanistan after American troops leave next year, relations with India, and managing Pakistan’s nuclear security — not to mention rescuing the floundering economy and resolving the energy crisis. And there is little doubt that, all things being equal, Mr. Sharif would like to end the drone strikes. The questions is how. On Thursday, the Foreign Ministry rejected suggestions that Mr. Sharif’s government had been complicit in recent drone strikes. But whatever the truth, those protestations are likely to be met with raised eyebrows from an increasingly skeptical Pakistani public. “Pointing to the U.S. and saying there’s nothing we can do about drones is less and less of an option,” said Mr. Najam, the professor. “As more questions are asked, these uncomfortable answers will have to come forth.”

## \*\*\*warfighting

### No impact

Robinson 13 (Linda, adjunct senior fellow for U.S. national security and foreign policy at the Council on Foreign Relations (CFR) “The Future of U.S. Special Operations Forces” Council of Foreign Relations Report - Council Special Report No. 66)

The third operational shortfall is the lack of a mechanism to ensure that sustained special operations activities in a given country are funded consistently. It makes little difference if a coherent special operations plan is devised if its component activities to achieve lasting effect over time lack consistent funding. Most special operations—even those con- ducted in a single country—are funded in piecemeal fashion to support a given activity with a given partner force for a certain mission or time period.11 Additionally, proposals for a given training or advisory activ- ity must compete in a lottery for funding each year, creating a degree of uncertainty that can disrupt operations and partnerships. Some of these authorities require the approval of the Department of State, which can take up to two years to secure. Developing and operating with partners is a long-term endeavor that requires a sustained commitment if it is to produce the desired results, such as those achieved in Colombia and the Philippines.

### Shut Down

#### Court won’t fly off the handle-use exec defintions we suposdly abide by now

Shamsi et al 13 (Hina, Director of the ACLU's National Security Project, PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, filed Feb 5, https://www.aclu.org/files/assets/tk2\_opposition\_filed\_plus\_declaration.pdf)

Defendants “do not suggest that there are no standards” for this Court to apply; rather, they object to the “notion of judicially crafted and managed standards.” Defs. Br. 12–13 (first emphasis added). Again, their concern loses force when Plaintiffs’ question is properly understood as whether Defendants violated the constitutional rights of the deceased, a question squarely committed to the Judiciary. See, e.g., Zivotofsky, 132 S. Ct. at 1428 (stating that concerns about the lack of judicially manageably standards “dissipate . . . when the issue is recognized to be the more focused one” of statutory and constitutional interpretation). After conceding that there are standards according to which this Court can adjudicate Plaintiffs’ claims, Defendants assert—incongruously—that the Court would have to “fashion[] out of whole cloth some standard.” Defs. Br. 15 (citing El-Shifa, 607 F.3d at 845). No such task would be required. There is a well-developed body of judicial standards for evaluating Plaintiffs’ claims that Defendants’ use of lethal force against the decedents violated the Fourth and Fifth Amendments. See infra § IV(A)(2)(b) (discussing judicial tests for reasonableness and deliberate indifference). Defendants’ assertion is further undermined by their own subsequent argument: When they insist that the killings of decedents did not violate the Fourth and Fifth Amendments, they cite some of the relevant case law, Defs. Br. 35–39, 41–44. See Zivotofsky, 132 S. Ct. at 1428 (judicially manageable standards were evidenced by both sides’ detailed legal arguments). Even if this Court were to conclude that the decedents’ killings occurred in the context of armed conflict, there are also “longstanding” law-of-war standards that courts—including this Court in the Guantánamo habeas litigation—regularly use to determine the legality of military force. See Hamdi, 542 U.S. at 521; see infra § IV(B)(1).13 As Defendants note, the Attorney General himself set out the key legal norms that would apply to “targeted killings” in the context of armed conflict. Defs. Br. 13 (citing Eric Holder, Attorney General, Speech at Northwestern University (Mar. 5, 2012) (“Holder Speech”) (“The Constitution guarantees due process, not judicial process.”), available at 1.usa.gov/y8SorL). Those standards are more than “enough to establish that this case does not ‘turn on standards that defy judicial application,’” Zivotofsky, 132 S. Ct. at 1430 (quoting Baker, 369 U.S. at 211).

### No Chilling

#### Over-deterrence is bullshit

Kent 10/14/13 (Andrew, is a Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2330476)

Though Goldsmith lists “civil trials” as part of his detailed description of the post-9/11 accountability, the book barely addresses them, and for good reason. As we have seen, Bivens suits have played a relatively small role in the national security area because the courts of appeals have not allowed them to go forward. Goldsmith’s account of the effectiveness of this new ecology of transparency provides interesting context for thinking about the way the courts have equilibrated doctrine in the national security area. On the one hand, it might be said that his account undermines one of the Supreme Court’s most potent arguments against monetary liability for federal officials—the fear that it will “over-deter,” cause excessive caution that damages the public interest, especially in the national security area where boldness is arguably more necessary.208 It might seem farfetched to think that a civil tort suit will by itself cause significant over-deterrence for, say, a senior CIA official who is also worried about investigations by the inspector general, DOJ prosecutors and an internal accountability board; congressional scrutiny; foreign civil and criminal trials ginned up by NGOs; and public scrutiny and calumny in the press or NGO reports. This is especially the case if, as seems likely,209 the official has personal liability insurance or can request reimbursement of costs and indemnification from his agency, or both. It is likely true, as Goldsmith suggests, that all of these accountability mechanisms put together have caused some over-deterrence. But it does not seem credible that civil torts suits would alone tip the balance from appropriate deterrence to overdeterrence.

### Whistle Blower

#### Whistle blowers call out the program unless there is judicial review, makes collapse of the program inevitable, the CP could be 100% right but leaks will distort facts for media attention magnifies the backlash-finishing the card

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

## \*\*\*CP

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#### CP not sufficient- releasing more information about the program is not sufficient to end backlash

Jaffer 13 (Jameel Jaffer, Deputy Legal Director, ACLU, “What the Government Should Disclose About Its Targeted Killing Program,” https://www.aclu.org/blog/national-security/what-government-should-disclose-about-its-targeted-killing-program)

The government's release of more information will not end the public debate about the killing program. Many people inside and outside the United States have profound concerns about the program, and the release of more information may allay some of these concerns but it will not allay all of them. The public's right to know, however, extends to controversial policies, not just to those that enjoy widespread support, and the government's obligation to disclose and explain its policies is especially important when those policies involve the use of military force to kill in our name. We should not tolerate any longer a program under which the government kills unnamed people in unnamed lands for reasons it refuses to explain.

#### Questions about imminence and due process for citizens are critical legal questions—the CP either limits these and links to the net benefit—or it doesn’t resolve any of the actual remaining legal questions.

Meskill 13 (J. Brian, Law Clerk for Justice Alfred V. Covello, United States District Court, JD Connecticut; “Discounting the Fourth Amendment: Implications at Home with Targeted Killings Abroad,” http://cpilj.files.wordpress.com/2013/09/12-conn-pub-int-l-j-233.pdf)

The crux of the dispute surrounding the drone attack was whether the targeted killing of Awlaki could be justified under the U.S. Constitution.11 The New York Times reported, in anticipation of the controversy, that lawyers in the Department of Justice’s Office of Legal Counsel (OLC) had carefully crafted a secret memorandum of law, rationalizing the targeted killing well ahead of the drone mission. 12 Similar to the George W. Bush Administration’s excoriated “torture memo,”13 the decision to target Awlaki for death was made exclusively within the executive branch.14 The Obama Administration’s justification for not releasing the memo to the public was simply to say that the operation to kill Awlaki technically remains an ongoing covert operation.15 The Freedom of Information Act (FOIA) exempts classified information for national defense or foreign policy.16 Many of the basic principles upon which the OLC memo rests were surmised by those intimate with the case of Awlaki and were largely confirmed by U.S. Attorney General Eric Holder in a speech addressed to Northwestern University School of Law, which briefly addressed the issue. Attorney General Holder set forth a framework in which a U.S. citizen, actively engaged in planning to kill U.S. citizens and a senior operational leader of al-Qaeda or associated forces, can be lawfully targeted for death.19 Holder did not name Awlaki specifically in regards to the three-part test but mentioned him earlier in the speech as being involved in terrorist activities, specifically the 2009 Christmas Day Bombing attempt.20 The case of al-Awlaki introduced several critical questions about targeted killing, many of which were raised by Senator Ron Wyden of Oregon.21 They remain largely unanswered by Holder's speech: how much evidence does the President need to decide that a particular American is part of a terrorist group?; does the President have to provide an individual American the opportunity to surrender before using lethal force against him or her?; is the President's authority to kill Americans based on authorization from Congress or his own authority as Commander-in- Chief?; can the President order intelligence agencies to kill an American who is inside the United States?22 The potential to extend targeted killing beyond the war on terror, and within the borders of the United States, may not be the unfettered speculation of conspiracy theorists. The U.S. Department of Homeland Security has already provided drone surveillance to assist a local police department in North Dakota.23 The Denver Post reported that "Randy McDaniel, chief deputy with the Montgomery County Sheriffs Office, told the Associated Press earlier this year his office had no plans to arm [a] drone, but he left open the possibility the agency might decide to adapt [a] drone to fire tear gas canisters and rubber bullets."24 While limited to only a handful of police departments, there is growing interest within U.S. law enforcement.25 How far will it go? The focus of this Note is less on the test Eric Holder gave in his Northwestern Speech, and more about the road the Attorney General may be prepared to follow. The Attorney General's test is tailored to Awlaki, intra vires, under the broad authority given to the President by Congress to use necessary and appropriate force against al-Qaeda, the Taliban, and associated forces in the largely ambiguous War on Terror.26 The reportage by press insiders asserts that among other issues, the secret memo addressed and discounted the Fourth Amendment protection against unreasonable seizures27 - an argument for a situation in which Awlaki, or another citizen, fell outside the AUMF. The memo reportedly cited Scott v. Harris along with the 1985 Supreme Court case Tennessee v. Gamer, which held that police officers may use force to stop a fleeing suspect if "necessary to prevent...escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."28 If this is true, the OLC memo certainly brings targeted killing to a context that is much closer to home. The "memorandum reportedly argues, the United States could kill Al- Awlaki because his alleged support for terrorism posed an imminent' risk to Americans."29 If drones have a large presence in the future of the United States, the term "imminent risk" will become extremely significant.

### A2: Cong Oversight Statement Plank

#### Their Congress statement of legality plank is NOT oversight—no legal question has been answered

Wheeler 12 (Dianne Feinstein Assures Us Her Review of Targeted Killing Is Adequate, March 7, http://www.emptywheel.net/2012/03/07/dianne-feinstein-assures-us-her-review-of-targeted-killing%C2%A0is-adequate/#sthash.TvonmI4N.dpuf)

Senate Intelligence Committee Chair Dianne Feinstein just sent out a release assuring us all that her committee keeps close watch over counterterrorism programs, including targeted killing. In her statement, she asserted that “our counterterrorism efforts are lawful under the Constitution.” The Attorney General presented the administration’s legal analysis for the use of force against terrorists, including Americans. I believe it is important for the public to understand the legal basis and to make clear that our counterterrorism efforts are lawful under the Constitution, U.S. law and the law of war. We are made safer by strikes against terrorists who continue to lead and carry out attacks on the United States. There are legal limits to this authority and great care is taken to ensure it is exercised carefully and with the absolute minimum of collateral damage. The Senate Intelligence Committee is kept fully informed of counterterrorism operations and keeps close watch to make sure they are effective, responsible and in keeping with U.S. and international law. [my emphasis] It’s all very nice for DiFi, a member of the Gang of Four, to tell us that her committee is keeping close watch on the assassination of American citizens. She can say that, because she has actually seen the government’s legal memo authorizing the killing of Anwar al-Awlaki. Except that as of 6:47PM on Monday, according to Ron Wyden’s Communication Director, the full Senate Intelligence Committee still had not seen the legal justification for the Awlaki killing. Nor had it answered simple questions, like how much evidence the government needs to meet the Executive Branch’s unilateral standards for due process. Or whether the government can kill you in the US. For example, the government should explain exactly how much evidence the President needs in order to decide that a particular American is part of a terrorist group. It is also unclear to me whether individual Americans must be given the opportunity to surrender before lethal force is used against them. And I’m particularly concerned that the geographic boundaries of this authority have not been clearly laid out. Based on what I’ve heard so far, I can’t tell whether or not the Justice Department’s legal arguments would allow the President to order intelligence agencies to kill an American inside the United States. If a member of the Senate Intelligence Committee doesn’t know the answers to those questions, DiFi is simply wrong when she claims her committee has had adequate oversight over the killing of an American citizen. It’s all very nice that DiFi tells us this is constitutional. But right now there’s still been grossly inadequate oversight to test that claim. Hamdi required an impartial adjudicator. But at this point, I’m not convinced we’ve even fulfilled the requirements of the National Security Act.