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#### Restrictions are prohibitions on action --- the aff is oversight

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Vote neg---

#### Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

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#### Court interference in war powers collapses effective military policy and exec flex

Stephen F. Knott 13, professor of National Security Affairs at the United States Naval War College, 8/22/13, War by Lawyer, www.libertylawsite.org/2013/08/22/war-by-lawyer/

Terrorist attacks directed from abroad are acts of war against the United States, requiring a response by the nation’s armed forces under the direction of the commander-in-chief. Unity in the executive is critical to the conduct of war, as Alexander Hamilton noted in The Federalist, and war by committee, especially a committee of lawyers, brings to armed conflict the very qualities that are the antithesis of Publius’s “decision, activity, secrecy, and dispatch.” The American military, with the assistance of the American intelligence community, fulfill the constitutional mandate to provide for the common defense. The nation’s defense establishment is not the Internal Revenue Service or the Department of Health and Human Services; if one dislikes the social welfare policies of the Obama administration or disagrees with President Obama for whatever reason, that is all well and good, but true conservatives should reject the principle that judicial review is applicable to the conduct of national defense. The founders understood that the decision to use force, the most important decision any government can make, were non-judicial in nature and were to be made by the elected representatives of the people.

Nonetheless, for those weaned during an era when “privacy” was elevated to the be-all and end-all of the American experiment, the war power and related national security powers granted by the Constitution to the elected branches are trumped by modern notions of a limitless “right to privacy.” The civil liberties violations of the War on Terror are considered so egregious as to require the intervention of an appointed judiciary lacking any Constitutional mandate, and lacking the wherewithal, including information and staff, to handle sensitive national security matters. This is judicial activism at its worst and further evidence that the “political questions doctrine,” the idea of deferring to the elected branches of government on matters falling under their constitutional purview, is, for all practical purposes, dead (See the case of Totten vs. U.S., 1875, for an example of judicial deference to the elected branches on intelligence matters. This deference persisted until the late 20th century). Simply put, according to the Constitution and to almost 220 years of tradition, Congress and the President are constitutionally empowered, among other things, to set the rules regarding the measures deemed necessary to gather intelligence and conduct a war.

One of the latest demands from advocates of increased judicial oversight is for a “targeted killing court.” In a similar vein, Senator Marco Rubio has called for the creation of a “Red Team” review of any executive targeting of American citizens, which would include a 15 day review process – “decision, activity, secrecy, and dispatch” be damned. A 15 day review process of targeting decisions would horrify Alexander Hamilton and all the framers of the Constitution. No doubt our 16th President would be horrified as well – imagine Abraham Lincoln applying for targeting permits on American citizens suspected of assisting the Confederacy. (“Today, we begin a 15 day review of case #633,721, that of Beauregard Birdwell of Paducah, Kentucky.”) War by lawyer might in the not too distant future include these types of targeting decisions, followed by endless appeals to unelected judges. All of this is a prescription for defeat.

We are, sadly, almost at this point, for a new conception about war and national security has taken root in our increasingly legalistic society. We saw this during the Bush years when the Supreme Court for the first time in its history instructed the executive and legislative branches on the appropriate manner of treating captured enemy combatants. The Courts are now micromanaging the treatment of detainees at Guantanamo, to the point of reviewing standards for groin searches of captured Al Qaeda members. True conservatives understand the pitfalls of this legalism, especially of the ill-defined international variety. Conservatives should be especially alert to the dangers arising from elevating international law over the national interest as the standard by which to measure American conduct.

The legalistic approach to the war on terror now being endorsed by prominent conservatives would cede presidential authority to executive branch lawyers and to their brethren in the judiciary who are playing a role they were never intended to play. Michael Scheuer, the former head of the CIA’s unit charged with tracking down Osama bin Laden, observed that “at the end of the day, the U.S. intelligence community is palsied by lawyers, and everything still depends on whether the lawyers approve it or not.” This is as far removed from conducting war, as Hamilton described it, with decision and dispatch, and with the “exercise of power by a single hand,” as one can get. War conducted by the courts is not only unconstitutional, it is, to borrow a phrase from author Philip K. Howard, part of the ongoing drift toward the death of common sense.

#### That decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

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#### Courts have refused to rule on targeted killing cases because of the political question doctrine---the plan strikes at the core of the PQD

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

Even if a plaintiff establishes standing to sue, the political question doctrine will almost certainly block judicial review of the nation’s targeted-killing policy. The Supreme Court, in Baker v. Carr,27 delineated the attributes of political questions, finding that they involve at least one of the following six factors:

[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable or manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of the government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.28

The quintessential political question case is one challenging a military or foreign policy decision,29 which necessarily implicates virtually every Baker factor, particularly the constitutional commitment of the issues to Congress and the President and the lack of judicially discoverable or manageable standards for deciding the issues.30 Thus, federal courts have refused to review damages claims arising out of cruise missile strikes against a suspected al Qaeda chemical-weapons plant in the Sudan,31 losses suffered because the United States mined a Nicaraguan harbor,32 injuries incurred from U.S. actions in connection with the Soviet Union’s shoot down of a Korean airliner,33 damages sustained because of U.S. involvement in the Chilean coup,34 injuries caused by the U.S.-supported Guatemalan army,35 property lost from the creation of a U.S. naval base on Diego Garcia,36 and deaths caused by equipment sold to Israel under the military-sales program.37 Similarly, courts have refused to review the legitimacy of the Government’s combat operations in Cambodia,38 mining of Vietnam’s Haiphong Harbor,39 decision to go to war in Iraq,40 placement of cruise missiles in Great Britain,41 and testing of nuclear weapons.42

While not all cases implicating foreign or military policies are nonjusticiable,43 a complaint that seeks to preclude the United States from engaging a particular military target or to enjoin the President from employing a particular weapons system is at the core of the political-question doctrine,44 especially because drones are the only effective means of reaching al Qaeda and the Taliban in their Pakistani sanctuaries.45

#### Breaking the political question doctrine on targeted killings triggers a slippery slope

Christopher Ehrfurth 11, 10/10/11, “The Extrajudicial Killing of Anwar al-Awlaki,” http://law.marquette.edu/facultyblog/2011/10/10/the-extrajudicial-killing-of-anwar-al-awlaki/

The legality of the extrajudicial assassination of al-Awlaki was the subject of a civil suit in 2010. After learning that his son had been placed on a CIA/Joint Special Operations Command “kill list”, al-Awlaki’s father brought suit in the U.S. District Court for the District of Columbia against President Obama, Secretary of Defense Robert Gates, and CIA Director Leon Panetta. In an attempt to enjoin the executive branch from killing his son, al-Awlaki introduced several claims based in both constitutional and tort law. The court’s lengthy opinion begins with a compelling recitation of the questions presented:

How is it that judicial approval is required when the United States decides to target a U.S. citizen overseas for electronic surveillance, but that, according to defendants, judicial scrutiny is prohibited when the United States decides to target a U.S. citizen overseas for death? Can a U.S. citizen –himself or through another — use the U.S. judicial system to vindicate his constitutional rights while simultaneously evading U.S. law enforcement authorities, calling for “jihad against the West,” and engaging in operational planning for an organization that has already carried out numerous terrorist attacks against the United States? Can the Executive order the assassination of a U.S. citizen without first affording him any form of judicial process whatsoever, based on the mere assertion that he is a dangerous member of a terrorist organization? How can the courts, as plaintiff proposes, make real-time assessments of the nature and severity of alleged threats to national security, determine the imminence of those threats, weigh the benefits and costs of possible diplomatic and military responses, and ultimately decide whether, and under what circumstances, the use of military force against such threats is justified? When would it ever make sense for the United States to disclose in advance to the “target” of contemplated military action the precise standards under which it will take that military action? And how does the evolving AQAP relate to core al Qaeda for purposes of assessing the legality of targeting AQAP (or its principals) under the September 18, 2001 Authorization for the Use of Military Force?

Al-Aulaqi v. Obama, 727 F.Supp.2d 1, 8-9 (D.D.C. 2010).

Before contemplating the more compelling issues, the court first decided the issue of standing. Al-Awlaki’s father lacked “next-friend” standing because he failed to provide an adequate reason justifying why Anwar could not appear in court on his own behalf. His father claimed that if Anwar presented himself to authorities he would be exposed to attack. The court disagreed, citing public government statements indicating that if al-Awlaki surrendered peacefully he could not be executed without due process.

The court also denied third party standing, holding that Anwar’s father could not show that a parent suffers an injury in fact if his adult child is threatened with a future extrajudicial killing. Anwar’s status as an adult was of particular importance because a parent does not have a constitutionally (or common law) protected liberty interest in maintaining a relationship with his adult child free from government influence.

Prudential standing was denied because, among other reasons, the court refused to “unnecessarily adjudicate rights” that it believed al-Awlaki did not wish to assert himself. The court noted that al-Awlaki made numerous public statements professing his contempt for the U.S. legal system. Al-Awlaki did not believe that he was bound by U.S. laws because, in his view, they are contrary to the teachings of Allah. I personally find it difficult to believe that a person would not want to contest his own assassination, but it also seems unlikely that al-Awlaki would wish to assert legal rights in a court system that he did not recognize as authoritative, especially in a country that he openly despised.

Ultimately, the most compelling issues were not addressed because the court found that judicial review was inappropriate. The court held that separation of powers and the political question doctrine prohibited interfering with the executive branch’s orders with respect to military action abroad. Meaningful review was deemed impossible, because it would require an unmanageable assessment of the quality of the President’s interpretation of military intelligence and his resulting decision (based upon that intelligence) to use military force against terrorist targets overseas:

[T]his Court does not hold that the Executive possesses “unreviewable authority to order the assassination of any American whom he labels an enemy of the state.” (citation omitted), the Court only concludes that it lacks the capacity to determine whether a specific individual in hiding overseas, whom the Director of National Intelligence has stated is an “operational” member of AQAP, (citation omitted), presents such a threat to national security that the United States may authorize the use of lethal force against him. This Court readily acknowledges that it is a “drastic measure” for the United States to employ lethal force against one of its own citizens abroad, even if that citizen is currently playing an operational role in a “terrorist group that has claimed responsibility for numerous attacks against Saudi, Korean, Yemeni, and U.S. targets since January 2009,”(citation omitted) But as the D.C. Circuit explained in Schneider, a determination as to whether “drastic measures should be taken in matters of foreign policy and national security is not the stuff of adjudication, but of policymaking.” (citation omitted) Because decision-making in the realm of military and foreign affairs is textually committed to the political branches, and because courts are functionally ill-equipped to make the types of complex policy judgments that would be required to adjudicate the merits of plaintiff’s claims, the Court finds that the political question doctrine bars judicial resolution of this case.

Al-Aulaqi, 727 F.Supp.2d at 52-53.

It is unfortunate that the Aulaqi case never made it beyond the issue of standing, but perhaps that was the proper outcome. Although Awlaki was a U.S. citizen (and a citizen of Yemen), he was also clearly a member of al-Qaeda. Shortly after 9/11, Congress passed the Authorization for Use of Military Force (“AUMF”). The AUMF provides that:

[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001…in order to prevent any future acts of international terrorism against the United States…

Everyone (except for the guy who leaves “9/11 was inside job” comments beneath every news article on the internet) knows that al-Qaeda is the organization that planned and committed the terrorist attacks that occurred on 9/11. Al-Awlaki was indisputably a member of al-Qaeda. The Executive’s killing of al-Awlaki was certainly aimed at preventing future acts of international terrorism against the United States. If the AUMF can be read as authorizing al-Awlaki’s killing, then it would appear that the President assassinated him with congressional approval. In that scenario, Justice Jackson’s concurrence in Youngstown would indicate that the President was acting at the highest ebb of his authority.

Still, many columnists and politicians like Ron Paul believe that Obama’s decision was illegal on due process grounds. Might Ron Paul be engaging in political grandstanding? I do seem to remember hearing something about an upcoming election. On the other hand, the AUMF only authorizes necessary and appropriate force. In his suit against the Executive, al-Aulaqi suggested that imminence is the key factor in determining whether lethal force is justified. It would have been interesting to find out what legal standard the court would apply to the use of lethal force on foreign soil against a member of al-Qaeda holding U.S. citizenship, but that issue was never addressed.

Was the force used against al-Awlaki necessary and appropriate? It seems difficult to determine without a meaningful presentation of evidence against al-Awlaki. Personally, I don’t think I’ll hold my breath waiting for the day that the general public is offered an explanation as to why al-Awlaki couldn’t be captured and tried in a U.S. courtroom. It is troubling to know that the President can order the extrajudicial execution of a U.S. citizen based upon secret evidence. On the other hand, it has been said that the Constitution is not a suicide pact, and it’s comforting to know that the President is tracking and killing those who are actively trying to kill Americans.

After reading the al-Aulaqi opinion, I was left feeling unsatisfied with the court’s decision to defer to the other branches of government, but I understood why it did so. In many ways, the moral issue of al-Awlaki’s murder leaves me feeling the same way. I think it’s unfortunate that al-Awlaki was not indicted, captured, and tried in Federal court. I also understand that applying traditional due process to a terrorist abroad might create a logistical nightmare and place many innocent lives in danger. Is this a slippery slope? If so, wouldn’t requiring the judicial approval of military strategy abroad be just as slippery? Either way, I respect those who speak out in favor of due process. I also wonder how many of those people, if faced with the same choice as the President, would choose differently.

#### Setting a precedent against the PQD spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD

Laurence H. Tribe 10, the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects.

It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3

The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4

At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5

It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That crushes global coordination necessary to solve climate change

Laurence H. Tribe 10, the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45

Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49

There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle.

CONCLUSION

Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

#### Warming is real, anthropogenic and causes extinction

Flournoy 12 -- Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center. Don Flournoy is a PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University (Don, "Solar Power Satellites," January, Springer Briefs in Space Development, Book, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

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#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

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

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

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

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

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

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

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

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

SUMMARY OF ARGUMENT

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

#### Judicial review would result in all targeted killings being ruled unconstitutional---courts would conclude they don’t satisfy the requirement of imminence for use of force in self-defense

Benjamin McKelvey 11, J.D., Vanderbilt University Law School, November 2011, “NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, 44 Vand. J. Transnat'l L. 1353

In the alternative, and far more broadly, the DOJ argued that executive authority to conduct targeted killings is constitutionally committed power. n101 Under this interpretation, the President has the authority to defend the nation against imminent threats of attack. n102 This argument is not limited by statutory parameters or congressional authorization, such as that under the AUMF. n103 Rather, the duty to defend the nation is inherent in the President's constitutional powers and is not subject to judicial interference or review. n104

The DOJ is correct in arguing that the President is constitutionally empowered to use military force to protect the nation from imminent attack. n105 As the DOJ noted in its brief in response, the Supreme Court has held that the president has the authority to protect the nation from "imminent attack" and to decide the level of necessary force. n106 The same is true in the international context. Even though Yemen is not a warzone and al-Qaeda is not a state actor, international law accepts the position that countries may respond to specific, imminent threats of harm with lethal force. n107 [\*1367] Under these doctrines of domestic and international law, the use of lethal force against Aulaqi was valid if he presented a concrete, specific, and imminent threat of harm to the United States. n108

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the "imminence" standard. n109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority. n110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force. n111 Moreover, the overview of the CIA's targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval. n112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define "imminence" as a legal standard. n113 These [\*1368] are general concepts of law, not political questions, and they are subject to judicial review. n114

Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president's authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. n115 "Imminence" would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process. n116 Similarly, the concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat. n117 Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force. n118

#### Targeted killings are key to Afghan stability post-withdrawal

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

In places where terrorists are actively plotting against the United States, however, drones give Washington the ability to limit its military commitments abroad while keeping Americans safe. Afghanistan, for example, could again become a Taliban-run haven for terrorists after U.S. forces depart next year. Drones can greatly reduce the risk of this happening. Hovering in the skies above, they can keep Taliban leaders on the run and hinder al Qaeda's ability to plot another 9/11.

#### Extinction

James Jay Carafano 10 is a senior research fellow for national security at The Heritage Foundation and directs its Allison Center for Foreign Policy Studies, “Con: Obama must win fast in Afghanistan or risk new wars across the globe,” Jan 2 http://gazettextra.com/news/2010/jan/02/con-obama-must-win-fast-afghanistan-or-risk-new-wa/

We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run. Most forget that throwing South Vietnam to the wolves made the world a far more dangerous place. The Soviets saw it as an unmistakable sign that America was in decline. They abetted military incursions in Africa, the Middle East, southern Asia and Latin America. They went on a conventional- and nuclear-arms spending spree. They stockpiled enough smallpox and anthrax to kill the world several times over. State-sponsorship of terrorism came into fashion. Osama bin Laden called America a “paper tiger.” If we live down to that moniker in Afghanistan, odds are the world will get a lot less safe. Al-Qaida would be back in the game. Regional terrorists would go after both Pakistan and India—potentially triggering a nuclear war between the two countries. Sensing a Washington in retreat, Iran and North Korea could shift their nuclear programs into overdrive, hoping to save their failing economies by selling their nuclear weapons and technologies to all comers. Their nervous neighbors would want nuclear arms of their own. The resulting nuclear arms race could be far more dangerous than the Cold War’s two-bloc standoff. With multiple, independent, nuclear powers cautiously eyeing one another, the world would look a lot more like Europe in 1914, when precarious shifting alliances snowballed into a very big, tragic war. The list goes on. There is no question that countries such as Russia, China and Venezuela would rethink their strategic calculus as well. That could produce all kinds of serious regional challenges for the United States. Our allies might rethink things as well. Australia has already hiked its defense spending because it can’t be sure the United States will remain a responsible security partner. NATO might well fall apart. Europe could be left with only a puny EU military force incapable of defending the interests of its nations.

### 1NC

#### The Executive branch should publicly articulate the legal rationale for its targeted killing policy, including the process and safeguards in place for target selection.

#### The United States Congress should enact a resolution and issue a white paper stating that, in the conduct of its oversight it has reviewed ongoing targeted killing operations and determined that the United States government is conducting such operations in full compliance with relevant laws, including but not limited to the Authorization to Use Military Force of 2001, covert action findings, and the President’s inherent powers under the Constitution.

#### The CP’s the best middle ground---preserves the vital counter-terror role of targeted killings while resolving all their downsides

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

Despite President Barack Obama's recent call to reduce the United States' reliance on drones, they will likely remain his administration's weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused.

Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage.

So drone warfare is here to stay, and it is likely to expand in the years to come as other countries' capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid.

#### The CP’s combination of executive disclosure and Congressional support boosts accountability and legitimacy

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Perhaps the most obvious way to add accountability to the targeted killing process is for someone in government to describe the process the way this article has, and from there, defend the process. The task of describing the government’s policies in detail should not fall to anonymous sources, confidential interviews, and selective leaks. Government’s failure to defend policies is not a phenomenon that is unique to post 9/11 targeted killings. In fact, James Baker once noted

"In my experience, the United States does a better job at incorporating intelligence into its targeting decisions than it does in using intelligence to explain those decisions after the fact. This in part reflects the inherent difficulty in articulating a basis for targets derived from ongoing intelligence sources and methods. Moreover, it is hard to pause during ongoing operations to work through issues of disclosure…But articulation is an important part of the targeting process that must be incorporated into the decision cycle for that subset of targets raising the hardest issues…"519

Publicly defending the process is a natural fit for public accountability mechanisms. It provides information to voters and other external actors who can choose to exercise a degree of control over the process. However, a detailed public defense of the process also bolsters bureaucratic and professional accountability by demonstrating to those within government that they are involved in activities that their government is willing to publicly describe and defend (subject to the limits of necessary national security secrecy). However, the Executive branch, while wanting to reveal information to defend the process, similarly recognizes that by revealing too much information they may face legal accountability mechanisms that they may be unable to control, thus their caution is understandable (albeit self-serving).520

It’s not just the Executive branch that can benefit from a healthier defense of the process. Congress too can bolster the legitimacy of the program by specifying how they have conducted their oversight activities. The best mechanism by which they can do this is through a white paper. That paper could include:

A statement about why the committees believe the U.S. government's use of force is lawful. If the U.S. government is employing armed force it's likely that it is only doing so pursuant to the AUMF, a covert action finding, or relying on the President's inherent powers under the Constitution. Congress could clear up a substantial amount of ambiguity by specifying that in the conduct of its oversight it has reviewed past and ongoing targeted killing operations and is satisfied that in the conduct of its operations the U.S. government is acting consistent with those sources of law. Moreover, Congress could also specify certain legal red lines that if crossed would cause members to cease believing the program was lawful. For example, if members do not believe the President may engage in targeted killings acting only pursuant to his Article II powers, they could say so in this white paper, and also articulate what the consequences of crossing that red line might be. To bolster their credibility, Congress could specifically articulate their powers and how they would exercise them if they believed the program was being conducted in an unlawful manner. Perhaps stating: "The undersigned members affirm that if the President were to conduct operations not authorized by the AUMF or a covert action finding, we would consider that action to be unlawful and would publicly withdraw our support for the program, and terminate funding for it."

A statement detailing the breadth and depth of Congressional oversight activities. When Senator Feinstein released her statement regarding the nature and degree of Senate Intelligence Committee oversight of targeted killing operations it went a long way toward bolstering the argument that the program was being conducted in a responsible and lawful manner. An oversight white paper could add more details about the oversight being conducted by the intelligence and armed services committees, explaining in as much detail as possible the formal and informal activities that have been conducted by the relevant committees. How many briefings have members attended? Have members reviewed targeting criteria? Have members had an opportunity to question the robustness of the internal kill-list creation process and target vetting and validation processes? Have members been briefed on and had an opportunity to question how civilian casualties are counted and how battle damage assessments are conducted? Have members been informed of the internal disciplinary procedures for the DoD and CIA in the event a strike goes awry, and have they been informed of whether any individuals have been disciplined for improper targeting? Are the members satisfied that internal disciplinary procedures are adequate?

3) Congressional assessment of the foreign relations implications of the program. The Constitution divides some foreign policy powers between the President and Congress, and the oversight white paper should articulate whether members have assessed the diplomatic and foreign relations implications of the targeted killing program. While the white paper would likely not be able to address sensitive diplomatic matters such as whether Pakistan has privately consented to the use of force in their territory, the white paper could set forth the red lines that would cause Congress to withdraw support for the program. The white paper could specifically address whether the members have considered potential blow-back, whether the program has jeopardized alliances, whether it is creating more terrorists than it kills, etc. In specifying each of these and other factors, Congress could note the types of developments, that if witnessed would cause them to withdraw support for the program. For example, Congress could state "In the countries where strikes are conducted, we have not seen the types of formal objections to the activities that would normally be associated with a violation of state's sovereignty. Specifically, no nation has formally asked that the issue of strikes in their territory be added to the Security Council's agenda for resolution. No nation has shot down or threatened to shoot down our aircraft, severed diplomatic relations, expelled our personnel from their country, or refused foreign aid. If we were to witness such actions it would cause us to question the wisdom and perhaps even the legality of the program."

### 1NC Imminence Adv

#### No blowback or increased terrorist recruitment from drones---field interviews confirm

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

Critics argue that drone strikes create new adversaries and drive al Qaeda's recruiting. As the Yemeni youth activist Ibrahim Mothana recently wrote in The New York Times, "Drone strikes are causing more and more Yemenis to hate America and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair." The Washington Post concurs. In May, it reported that the "escalating campaign of U.S. drone strikes [in Yemen] is stirring increasing sympathy for al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States." The ranks of al Qaeda in the Arabian Peninsula (AQAP) have tripled to 1,000 in the last three years, and the link between its burgeoning membership, U.S. drone strikes, and local resentment seems obvious.

Last month, I traveled to Yemen to study how AQAP operates and whether the conventional understanding of the relationship between drones and recruitment is correct. While there, I conducted 40 interviews with tribal leaders, Islamist politicians, Salafist clerics, and other sources. These subjects came from 14 of Yemen's 21 provinces, most from rural regions. Many faced insurgent infiltration in their own districts. Some of them were actively fighting AQAP. Two had recently visited terrorist strongholds in Jaar and Zinjibar as guests. I conducted each of these in-depth interviews using structured questions and a skilled interpreter. I have withheld my subjects' names to protect their safety -- a necessity occasioned by the fact that some of them had survived assassination attempts and that others had recently received death threats.

These men had little in common with the Yemeni youth activists who capture headlines and inspire international acclaim. As a group, they were older, more conservative, and more skeptical of U.S. motives. They were less urban, less wealthy, and substantially less secular. But to my astonishment, none of the individuals I interviewed drew a causal relationship between U.S. drone strikes and al Qaeda recruiting. Indeed, of the 40 men in this cohort, only five believed that U.S. drone strikes were helping al Qaeda more than they were hurting it.

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

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

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

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

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

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

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

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

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

#### No Pakistani collapse

Sunil Dasgupta '13 Ph.D. in political science and the director of UMBC's Political Science Program and a senior fellow at Brookings, 2/25/13, "How will India respond to civil war in Pakistan," East Asia Forum, http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/

Bill Keller of the New York Times [has described Pakistani president Asif Ail Zardari](http://www.nytimes.com/2011/12/18/magazine/bill-keller-pakistan.html?pagewanted=all&_r=0) as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But in contrast to predictions of an unravelling nation, British journalist-scholar [Anatol Lieven argues](http://www.anu.edu.au/vision/videos/6291/) that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country.¶ Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. Given the bad choices in Pakistan, they would rather not have anything to do with it. If there is going to be a civil war, why not wait for the two sides to exhaust themselves before thinking about intervening? The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but to break from tradition requires strong, countervailing logic, and those elements do not yet exist. [Given the current conditions](http://www.eastasiaforum.org/2012/12/30/pakistans-bleak-outlook-lightened-by-the-game-changer-with-india/) and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

#### Global economic governance institutions guarantee resiliency

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

Prior to 2008, numerous foreign policy analysts had predicted a looming crisis in global economic governance. Analysts only reinforced this perception since the financial crisis, declaring that we live in a “G-Zero” world. This paper takes a closer look at the global response to the financial crisis. It reveals a more optimistic picture. Despite initial shocks that were actually more severe than the 1929 financial crisis, global economic governance structures responded quickly and robustly. Whether one measures results by economic outcomes, policy outputs, or institutional flexibility, global economic governance has displayed surprising resiliency since 2008. Multilateral economic institutions performed well in crisis situations to reinforce open economic policies, especially in contrast to the 1930s. While there are areas where governance has either faltered or failed, on the whole, the system has worked. Misperceptions about global economic governance persist because the Great Recession has disproportionately affected the core economies – and because the efficiency of past periods of global economic governance has been badly overestimated. Why the system has worked better than expected remains an open question. The rest of this paper explores the possible role that the distribution of power, the robustness of international regimes, and the resilience of economic ideas might have played.

#### No chance of war from economic decline---best and most recent data

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

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder.

The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40

None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

### 1NC Allied Coop Adv

#### There’s a sustainable consensus on the drone program---no chance of judicial, legislative, diplomatic, or domestic political constraints---detention policy empirically proves

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

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

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

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

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

#### Allied terror coop is high now, despite frictions

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

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### PRISM is a massive alt-cause to EU willingness to share anti-terrorism intel with the US

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

Although the United States and the EU both recognize the importance of sharing information in an effort to track and disrupt terrorist activity, data privacy has been and continues to be a key U.S.-EU sticking point. As noted previously, the EU considers the privacy of personal data a basic right; EU data privacy regulations set out common rules for public and private entities in the EU that hold or transmit personal data, and prohibit the transfer of such data to countries where legal protections are not deemed “adequate.” In the negotiation of several U.S.-EU informationsharing agreements, from those related to Europol to SWIFT to airline passenger data, some EU officials have been concerned about whether the United States could guarantee a sufficient level of protection for European citizens’ personal data. In particular, some Members of the European Parliament (MEPs) and many European civil liberty groups have long argued that elements of U.S.-EU information-sharing agreements violate the privacy rights of EU citizens. In light of the public revelations in June 2013 of U.S. National Security Agency (NSA) surveillance programs and news reports alleging that U.S. intelligence agencies have monitored EU diplomatic offices and computer networks, many analysts are worried about the future of U.S.-EU information-sharing arrangements. As discussed in this section, many of these U.S.-EU information-sharing agreements require the approval of the European Parliament, and many MEPs (as well as many officials from the European Commission and the national governments) have been deeply dismayed by the NSA programs and other spying allegations. In response, the Parliament passed a resolution expressing serious concerns about the U.S. surveillance operations and established a special working group to conduct an in-depth investigation into the reported programs.17 In addition, led by the European Commission and the U.S. Department of Justice, the United States and the EU have convened a joint expert group on the NSA’s surveillance operations, particularly the so-called PRISM program (in which the NSA reportedly collected data from leading U.S. Internet companies), to assess the “proportionality” of such programs and their implications for the privacy rights of EU citizens.18 U.S. officials have sought to reassure their EU counterparts that the PRISM program and other U.S. surveillance activities operate within U.S. law and are subject to oversight by all three branches of the U.S. government. Some observers note that the United States has been striving to demonstrate that it takes EU concerns seriously and is open to improving transparency, in part to maintain European support for existing information-sharing accords, such as SWIFT (which will be up for renewal in 2015), and the U.S.-EU Passenger Name Record agreement (up for renewal in 2019). Nevertheless, many experts predict that the revelations of programs such as PRISM will make the negotiation of future U.S.-EU information-sharing arrangements more difficult, and may make the European Parliament even more cautious and skeptical about granting its approval.

#### No risk of nuclear terrorism---too many obstacles

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled.¶ What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.¶ Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

### Solvency

#### The plan specifically and narrowly creates damages for victims of targeted killings---those killings are legally and operationally distinct from “signature strikes”

David Hastings Dunn 13, Reader in International Politics and Head of Department in the Department of Political Science and International Studies at the University of Birmingham, UK, and Stefan Wolff, Professor of International Security at the University of Birmingham in the UK, March 2013, “Drone Use in Counter-Insurgency and Counter-Terrorism: Policy or Policy Component?,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

Yet an important distinction needs to be drawn here between acting on operational intelligence that corroborates existing intelligence and confirms the presence of a specific pre-determined target and its elimination – so-called ‘targeted strikes’ (or less euphemistically, ‘targeted killings’) – and acting on an algorithmic analysis of operational intelligence alone, determining on the spot whether a development on the ground suggests terrorist activity or association and thus fulfils certain (albeit, to date, publicly not disclosed) criteria for triggering an armed response by the remote pilot of a drone – so-called ‘signature strikes’.6

Targeted strikes rely on corroborating pre-existing intelligence: they serve the particular purpose of eliminating specific individuals that are deemed crucial to enemy capabilities and are meant to diminish opponents’ operational, tactical and strategic capabilities, primarily by killing mid- and top-level leadership cadres. To the extent that evidence is available, it suggests that targeted strikes are highly effective in achieving these objectives, while simultaneously generating relatively little blowback, precisely because they target individual (terrorist) leaders and cause few, if any, civilian casualties. This explains, to a significant degree, why the blowback effect in Yemen – where the overwhelming majority of drone strikes have been targeted strikes – has been less pronounced than in Pakistan and Afghanistan.7

Signature strikes, in contrast, can still be effective in diminishing operational, tactical and strategic enemy capabilities, but they do so to a certain degree by chance and also have a much higher probability of causing civilian casualties. Using drones for signature strikes decreases the dependence on pre-existing intelligence about particular leaders and their movements and more fully utilises their potential to carry out effective surveillance and respond to the conclusions drawn from it immediately. Signature strikes have been the predominant approach to drone usage in Pakistan and Afghanistan.8 Such strikes have had the effect of decimating the rank and file of the Taliban and their associates – but they have also caused large numbers of civilian casualties and, at a minimum, weakened the respective host governments’ legitimacy and forced them to condemn publicly, and in no uncertain terms, the infringement of their states’ sovereignty by the US. In turn, this has strained already difficult relations between countries which have more common than divergent interests when it comes to regional stability and the fight against international terrorist networks. That signature strikes have a high probability of going wrong and that such failures prove extremely counterproductive is also illustrated by a widely reported case from Yemen, in which twelve civilians were killed in the proximity of a car identified as belonging to an Al-Qa’ida member.9

The kind of persistent and intimidating presence of a drone policy geared towards signature strikes, and the obvious risks and consequences involved in repeatedly making wrong decisions, are both counterproductive in themselves and corrosive of efforts that seek to undercut the local support enjoyed by insurgent and terrorist networks, as well as the mutual assistance that they can offer each other. Put differently, signature strikes, in contrast to targeted killings, do anything but help to disentangle the links between insurgents and terrorists.

#### Establishing new restrictions that only apply to targeted killings causes a shift to signature strikes

Jeh Johnson 13, former Pentagon General Counsel, 3/18/13, “Keynote address at the Center on National Security at Fordham Law School: A “Drone Court”: Some Pros and Cons,” <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>

Also, beware of creating the wrong set of incentives for those who must conduct these operations. A lawful military objective may include an individual, whether his name or his citizenship are known; it may also include a location (like a terrorist training camp) or an object (like a truck filled with explosives). By creating a separate legal regime with additional requirements for an objective if his name or citizenship becomes known, what disincentives do we create for an operator to know for certain the identity of those likely to be present at a terrorist training camp or behind the wheel of the truck bomb? Or, must the government refrain from an attack on what it knows to be an active and dangerous training camp if an al Qaeda terrorist who might be a U.S. citizen wanders in?

#### Signature strikes are far worse for all of their impacts---this turns the case on a grand scale

David Hastings Dunn 13, Reader in International Politics and Head of Department in the Department of Political Science and International Studies at the University of Birmingham, UK, and Stefan Wolff, Professor of International Security at the University of Birmingham in the UK, March 2013, “Drone Use in Counter-Insurgency and Counter-Terrorism: Policy or Policy Component?,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

Yet an important distinction needs to be drawn here between acting on operational intelligence that corroborates existing intelligence and confirms the presence of a specific pre-determined target and its elimination – so-called ‘targeted strikes’ (or less euphemistically, ‘targeted killings’) – and acting on an algorithmic analysis of operational intelligence alone, determining on the spot whether a development on the ground suggests terrorist activity or association and thus fulfils certain (albeit, to date, publicly not disclosed) criteria for triggering an armed response by the remote pilot of a drone – so-called ‘signature strikes’.6¶ Targeted strikes rely on corroborating pre-existing intelligence: they serve the particular purpose of eliminating specific individuals that are deemed crucial to enemy capabilities and are meant to diminish opponents’ operational, tactical and strategic capabilities, primarily by killing mid- and top-level leadership cadres. To the extent that evidence is available, it suggests that targeted strikes are highly effective in achieving these objectives, while simultaneously generating relatively little blowback, precisely because they target individual (terrorist) leaders and cause few, if any, civilian casualties. This explains, to a significant degree, why the blowback effect in Yemen – where the overwhelming majority of drone strikes have been targeted strikes – has been less pronounced than in Pakistan and Afghanistan.7¶ Signature strikes, in contrast, can still be effective in diminishing operational, tactical and strategic enemy capabilities, but they do so to a certain degree by chance and also have a much higher probability of causing civilian casualties. Using drones for signature strikes decreases the dependence on pre-existing intelligence about particular leaders and their movements and more fully utilises their potential to carry out effective surveillance and respond to the conclusions drawn from it immediately. Signature strikes have been the predominant approach to drone usage in Pakistan and Afghanistan.8 Such strikes have had the effect of decimating the rank and file of the Taliban and their associates – but they have also caused large numbers of civilian casualties and, at a minimum, weakened the respective host governments’ legitimacy and forced them to condemn publicly, and in no uncertain terms, the infringement of their states’ sovereignty by the US. In turn, this has strained already difficult relations between countries which have more common than divergent interests when it comes to regional stability and the fight against international terrorist networks. That signature strikes have a high probability of going wrong and that such failures prove extremely counterproductive is also illustrated by a widely reported case from Yemen, in which twelve civilians were killed in the proximity of a car identified as belonging to an Al-Qa’ida member.9¶ The kind of persistent and intimidating presence of a drone policy geared towards signature strikes, and the obvious risks and consequences involved in repeatedly making wrong decisions, are both counterproductive in themselves and corrosive of efforts that seek to undercut the local support enjoyed by insurgent and terrorist networks, as well as the mutual assistance that they can offer each other. Put differently, signature strikes, in contrast to targeted killings, do anything but help to disentangle the links between insurgents and terrorists.¶ Counter-insurgency as a strategy works best by providing security on the ground (deploying soldiers amongst the community that they are intended to protect) and establishing and sustaining a sufficiently effective local footprint of the state and its institutions providing public goods and services beyond just security (water, food, sanitation, healthcare, education and so forth). This strategy is often encapsulated in the formula ‘clear, hold, build’,10 and it needs to go hand-in-hand with pursuing a viable political settlement that addresses what are the, in many cases, legitimate concerns of those fighting, and supporting, an insurgency. By living among the communities they seek to secure, soldiers can win their trust, stem support for the insurgents, and understand who their enemies are, what their demands and objectives are, and how best to single out those who represent an irreconcilable threat to the community. In other words, in a context in which the objective is to protect innocent civilians, win over reconcilable insurgents and their supporters, and eliminate those who are irreconcilable, drones can deliver specific contributions to an overall counter-insurgency policy. Yet this can only happen if drones target individuals for a reason, rather than being used, and perceived, as a blanket approach against an entire community.

# 2NC

## CP

### 2NC

We get \_\_ advocacies

Conditionality is good—

1. **Neg Flex**—multiple worlds are crucial to test the aff from every angle—it prevents us from being locked in to a strategy
2. **Innovation**—conditionality incentivizes risk taking—vital internal to argument research—prevents stale and repetitive debates
3. **Mixedscanning**—Argument introduction determines what warrants in-depth review—best middle ground between breadth and depth—key to priority-setting and high-pressure decision-making.
4. **Info processing**—more arguments teach students to process information—most portable skill

Now defense—

No skew—condo leads to more critical thinking—without it, being aff would be too easy

Everything is conditional—T and gateway issues make their offensive inev

2NR means we have a stable advocacy

Err neg—the aff speaks first and last and infinite prep—voting on theory leads to substance crowd-out—if we don’t make debate impossible don’t vote us down

If C/I is dispo—dispo is condo—no stable meaning and the neg can add planks to force perms

### Solvency---2NC

#### The counterplan establishes transparency over targeted killing policy from within the executive branch---it discloses the administration’s legal rationale for the policy and the criteria for target selection.

#### This combination of legal justification and transparency solves the case---it prevents overreach in drone operations and builds legitimacy, which solves any international perception or precedent args, while preserving targeted killings as an effective counter-terrorism tool employed by an unconstrained executive---that’s Byman.

#### The CP also has Congress clarify that in the course of its existing review of targeted killings, it’s determined that the administration complies with relevant domestic and international law. Congressional clarification sends a signal of procedural accountability and oversight, which boosts the legitimacy of the overall targeted killing program. It solves their internal links because it demonstrates to the world that Congress exercises effective oversight and the TK program isn’t just run by executive fiat. There’s no reason new restrictions are key---all their internal links are just about the process, which the CP has Congress clarify already exists.

#### Congressional oversight of the program is already effective, it’s just not publicly discussed---the CP publicizes the results of Congress’s already-ongoing oversight

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Congressional oversight of executive branch activities is believed to be a core constitutional duty.443 Arthur Schlesinger wrote that this duty, while not written into the Constitution, existed because “the power to make laws implied the power to see whether they were faithfully executed.”444 Founding-era actions support this view, with Congress conducting in 1792 its first oversight investigation into America’s military campaign against Indians on the frontier.445 In 1885, future president Woodrow Wilson (at the time an academic) wrote in Congressional Government that Congressional oversight was just as important as lawmaking.446 Oversight is a form of accountability, but what exactly is oversight? Moreover, how can we know what “good” oversight is?

Amy Zegart argues that defining good oversight is difficult for three reasons.447 First, “‘good’ oversight is embedded in politics and intertwined with policy advocacy on behalf of constituents and groups and their interests.”448 Second, “many agencies are designed with contradictory missions that naturally pull them in different directions as the power of contending interest groups waxes and wanes.”449 Third, “good oversight is hard to recognize because many important oversight activities are simply invisible or impossible to gauge.”450 In a particularly salient example, Zegart notes:

Telephone calls, e-mails and other informal staff oversight activities happen all the time, but cannot be counted in data sets or measured in other systematic ways. Even more important, the very possibility that an agency’s action might trigger a future congressional hearing (what some intelligence officials refer to as ‘the threat of the green felt table’) or some other sort of congressional response can dissuade the executive branch officials from undertaking the proposed action in the first place. This kind of anticipatory oversight can be potent. But from the outside, it looks like no oversight at all.451

If oversight of targeted killings is a form of political accountability, it may be one that is difficult to see from the outside. This fact is borne out by Senator Diane Feinstein’s release of details regarding congressional oversight of the targeted killing program. Those details were largely unknown and impossible to gauge until political pressure prompted her to issue a statement. In that statement she noted:

The committee has devoted significant time and attention to targeted killings by drones. The committee receives notifications with key details of each strike shortly after it occurs, and the committee holds regular briefings and hearings on these operations—reviewing the strikes, examining their effectiveness as a counterterrorism tool, verifying the care taken to avoid deaths to non-combatants and understanding the intelligence collection and analysis that underpins these operations. In addition, the committee staff has held 35 monthly, in-depth oversight meetings with government officials to review strike records (including video footage) and question every aspect of the program.452

### Solvency---Transparency---2NC

### Solvency---Congress---2NC

#### Zekno---

**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).

#### Goldsmith---

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

#### Disclosing target criteria builds diplomatic credibility, enacts domestic accountability, and doesn’t link to the terror disad

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Related to defending the process, and using performance data is the possibility that the U.S. government could publish the targeting criteria it follows. That criteria need not be comprehensive, but it could be sufficiently detailed as to give outside observers an idea about who the individuals singled out for killing are and what they are alleged to have done to merit their killing. As Bobby Chesney has noted, "Congress could specify a statutory standard which the executive branch could then bring to bear in light of the latest intelligence, with frequent reporting to Congress as to the results of its determinations."521 What might the published standards entail? First, Congress could clarify the meaning of associated forces, described in Part I and II. In the alternative, it could do away with the associated forces criteria altogether, and instead name each organization against which force is being authorized,522 such an approach would be similar to the one followed by the Office of Foreign Assets Control when it designates financial supporters of terrorism for sanctions.523¶ The challenge with such a reporting and designation strategy is that it doesn’t fit neatly into the network based targeting strategy and current practices outlined in Parts I-III. If the U.S. is seeking to disrupt networks, then how can there be reporting that explains the networked based targeting techniques without revealing all of the links and nodes that have been identified by analysts? Furthermore, for side payment targets, the diplomatic secrecy challenges identified in Part I remain --- there simply may be no way the U.S. can publicly reveal that it is targeting networks that are attacking allied governments. These problems are less apparent when identifying the broad networks the U.S. believes are directly attacking American interests, however publication of actual names of targets will be nearly impossible (at least ex ante) under current targeting practices.¶ As was discussed above, the U.S. government and outside observers may simply be using different benchmarks to measure success. Some observers are looking to short term gains from a killing while others look to the long term consequences of the targeted killing policy. Should all of these metrics and criteria be revealed? Hardly. However, the U.S. should articulate what strategic level goals it is hoping to achieve through its targeted killing program. Those goals certainly include disrupting specified networks. Articulating those goals, and the specific networks the U.S. is targeting may place the U.S. on better diplomatic footing, and would certainly engender mechanisms of domestic political accountability.

#### Transparency solves allied perception, blowback, and drone norms while maintaining the counter-terror benefits of targeted killings

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

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

## DA

### Overview

Judicial activism in the context of war powers spills over to constrain the executive’s crisis response flexibility---that’s crucial to prevent conflict escalation and contain aggressive powers by enabling rapid response to crises---that’s Bloomquist

This turns the entire case

#### Judicial reviews prevents quick action during a crisis --- causes failure and WMD use

Robert Knowles 9, Acting Asst. Professor @ NYU School of Law, Spring, “American Hegemony and the Foreign Affairs Constitution,” 41 Ariz. St. L.J. 87, Lexis

Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. n391 It is true that the stable nature of American hegemony will prevent truly destabilizing events from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. n392 Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations, for example, which depend on adjusting positions quickly.¶ The need for speed is particularly acute in crises. Threats from transnational terrorist groups and loose nuclear weapons are among the most serious problems facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," n393 but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs crises without the deliberation and opportunities for review that are essential aspects of their institutional competence. Therefore, courts should grant a higher level of deference to executive branch determinations in deciding whether to grant a temporary restraining order or a preliminary injunction in foreign affairs matters. Under the super-strong Curtiss-Wright deference scheme, the court should accept the executive branch interpretation unless Congress has specifically addressed the matter and the issue does not fall within the President's textually-specified Article I powers.

#### The impact is leadership and every global crisis

Bruce Berkowitz 8, research fellow at the Hoover Institution at Stanford University and a senior analyst at RAND. He is currently a consultant to the Defense Department and the intelligence community, STRATEGIC ADVANTAGE: CHALLENGERS, COMPETITORS, AND THREATS TO AMERICA’S FUTURE, p. 1-4

THIS BOOK is intended to help readers better understand the national security issues facing the United States today and offer the general outline of a strategy for dealing with them. National security policy—both making it and debating it — is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice. Yesterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers. Threats are also more likely to be intertwined—proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers. Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat — the Soviet Union — was brittle, most of the potential adversaries and challengers America now faces are resilient. In at least one dimension where the Soviets were weak (economic efficiency, public morale, or leadership), the new threats are strong. They are going to be with us for a long time. As a result, we need to reconsider how we think about national security. The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events.1 When you hold the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not. As national goals go, “keeping the strategic advantage” may not have the idealistic ring of “making the world safe for democracy” and does not sound as decisively macho as “maintaining American hegemony.” But keeping the strategic advantage is critical, because it is essential for just about everything else America hopes to achieve — promoting freedom, protecting the homeland, defending its values, preserving peace, and so on. The Changing Threat If one needs proof of this new, dynamic environment, consider the recent record. A search of the media during the past fifteen years suggests that there were at least a dozen or so events that were considered at one time or another the most pressing national security problem facing the United States — and thus the organizing concept for U.S. national security. What is most interesting is how varied and different the issues were, and how many different sets of players they involved — and how each was replaced in turn by a different issue and a cast of characters that seemed, at least for the moment, even more pressing. They included, roughly in chronological order, • regional conflicts — like Desert Storm — involving the threat of war between conventional armies; • stabilizing “failed states” like Somalia, where government broke down in toto; • staying economically competitive with Japan; • integrating Russia into the international community after the fall of communism and controlling the nuclear weapons it inherited from the Soviet Union; • dealing with “rogue states,” unruly nations like North Korea that engage in trafficking and proliferation as a matter of national policy; • combating international crime, like the scandal involving the Bank of Credit and Commerce International, or imports of illegal drugs; • strengthening international institutions for trade as countries in Asia, Eastern Europe, and Latin America adopted market economies; • responding to ethnic conflicts and civil wars triggered by the reemergence of culture as a political force in the “clash of civilizations”; • providing relief to millions of people affected by natural catastrophes like earthquakes, tsunamis, typhoons, droughts, and the spread of HIV/AIDS and malaria; • combating terrorism driven by sectarian or religious extremism; • grassroots activism on a global scale, ranging from the campaign to ban land mines to antiglobalization hoodlums and environmentalist crazies; • border security and illegal immigration; • the worldwide ripple effects of currency fluctuations and the collapse of confidence in complex financial securities; and • for at least one fleeting moment, the safety of toys imported from China. There is some overlap in this list, and one might want to group some of the events differently or add others. The important point, however, is that when you look at these problems and how they evolved during the past fifteen years, you do not see a single lesson or organizing principle on which to base U.S. strategy. Another way to see the dynamic nature of today's national security challenges is to consider the annual threat briefing the U.S. intelligence community has given Congress during the past decade. These briefings are essentially a snapshot of what U.S. officials worry most about. If one briefing is a snapshot, then several put together back to back provide a movie, showing how views have evolved.2 Figure 1 summarizes these assessments for every other year between 1996 and 2006. It shows when a particular threat first appeared, its rise and fall in the rankings, and in some cases how it fell off the chart completely. So, in 1995, when the public briefing first became a regular affair, the threat at the very top of the list was North Korea. This likely reflected the crisis that had occurred the preceding year, when Pyongyang seemed determined to develop nuclear weapons, Bill Clinton's administration seemed ready to use military action to prevent this, and the affair was defused by an agreement brokered by Jimmy Carter. Russia and China ranked high as threats in the early years, but by the end of the decade they sometimes did not even make the list. Proliferation has always been high in the listings, although the particular countries of greatest concern have varied. Terrorism made its first appearance in 1998, rose to first place after the September 11, 2001, terrorist attacks, and remains there today. The Balkans appeared and disappeared in the middle to late 1990s. A few of the entries today seem quaint and overstated. Catastrophic threats to information systems like an “electronic Pearl Harbor” and the “Y2K problem” entered the list in 1998 but disappeared after 2001. (Apparently, after people saw an airliner crash into a Manhattan skyscraper, the possible loss of their Quicken files seemed a lot less urgent.) Iraq first appeared in the briefing as a regional threat in 1997 and was still high on the list a decade later—though, of course, the Iraqi problem in the early years (suspected weapons of mass destruction) was very different from the later one (an insurgency and internationalized civil war). All this is why the United States needs agility. It not only must be able to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources.

#### Crises inevitably cause rollback of the plan

Laura Young 13, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These openings create an environment where the president faces little backlash from Congress, the judicial branch, or even the public. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

### UQ

#### We overwhelmingly control uniqueness---all federal courts are either siding with the executive’s terror policies through narrow rulings or declining to even hear the cases---past rulings are being distinguished

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Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds.¶ Consider the Espionage Act cases that arose during World War I. Schenck v. United States, n63 which is best known for Justice Holmes's [\*452] announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out." n64 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." n65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort n66 and of Eugene Debs for a speech denouncing the war. n67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States, n68 but only Justice Brandeis agreed with his position. n69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases. n70¶ Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs. n71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts. n72 In addition, the Court upheld the validity of the Japanese internment program. n73 Of course, the Court did limit the scope of the [\*453] program by holding that it did not apply to "concededly loyal" citizens. n74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated. n75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees. n76¶ The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region. n77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, n78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone. n79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges. n80¶ The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld n81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force n82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. [\*454] citizens. n83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute, n84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus, n85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief. n86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order. n87¶ Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld, n88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees. n89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case. n90¶ Congress responded to that suggestion by enacting the Military Commissions Act of 2006, n91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush, n92 the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of [\*455] habeas corpus. n93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate. n94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism n95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit. n96¶ Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought. n97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene. n98 About a month after this symposium took place, in Hamdan v. United States n99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld. n100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment. n101 It remains to be seen how broadly the decision will apply. [\*456] ¶ Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft, n102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. n103 And in Mohamed v. Jeppesen Dataplan, Inc., n104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen. n105 Unlike Arar, in which the defendants were federal officials, n106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture. n107 Although at least four judges on the en banc courts dissented from both rulings, n108 the Supreme Court declined to review either case. n109

### Precedent

#### Deference stable now---restricting President’s war powers sets the stage for escalating judicial intervention

John O’Connor 7, Former officer in the Marine Corp and Judge Advocate; JD, U Maryland Law School. Statistics and the Military Deference Doctrine: a Response to Professor Lichtman, 66 Md. L. Rev. 668, Lexis

As I have written elsewhere, one of the most important aspects of the military deference doctrine, and one that many commentators misunderstand,176 is that the military deference doctrine is not a venerable doctrine that has existed since the early days of the Republic. 177 Indeed, a review of the Court’s military deference jurisprudence could lead one to the conclusion that the doctrine was more or less the brainchild of Chief Justice Rehnquist, who wrote virtually every important military deference decision that the Court has issued.178 While notions of stare decisis may militate against a retreat from the military deference doctrine by the Court, the fact remains that the doctrine is one of fairly recent vintage, which was developed and perpetuated mainly through judicial opinions written by a Justice who is no longer on the Court. Moreover, while stare decisis is a nice concept in the abstract, that doctrine did not prevent the Court from radically changing its approach to constitutional challenges to military practices twice before. Therefore, **it is not out of the realm of possibility that the military deference doctrine could recede in importance** with personnel changes on the Court. This could occur through an express overruling of the doctrine, through decisions narrowing the doctrine’s application, or through a moresubtle process whereby the Court continues to pay lip service to its need to defer to political branch judgments but nevertheless **accords little or no actual deference to the policy determinations of Congress and the President.**

But early indications from the Roberts Court, with Chief Justice Roberts and Justice Alito replacing Chief Justice Rehnquist and Justice O’Connor, respectively, provide reason to believe that the military deference doctrine will continue to be a robust feature of the Court’s military jurisprudence, at least in the near term. In FAIR, the first “military” case decided by the Roberts Court, the Court upheld the Solomon Amendment against a constitutional challenge and, in so doing, began its constitutional analysis by extolling the virtues of the military deference doctrine when Congress legislates pursuant to its constitutional power to raise and support armies:

The Constitution grants Congress the power to “provide for the common Defence,” “[t]o raise and support Armies,” and “[t]o provide and maintain a Navy.” Congress’ power in this area “is broad and sweeping,” and there is no dispute in this case that it includes the authority to require campus access for military recruiters. That is, of course, unless Congress exceeds constitutional limitations on its power in enacting such legislation. But the fact that legislation that raises armies is subject to First Amendment constraints does not mean that we ignore the purpose of this legislation when determining its constitutionality; as we recognized in Rostker, “judicial deference . . . is at its apogee” when Congress legislates under its authority to raise and support armies.179

While it is always dangerous to draw conclusions from a single case, all participating members of the Court—Justice Alito did not participate—joined Chief Justice Roberts’s opinion, which invoked the military deference doctrine as its first step in constitutional analysis once the Court resolved what the statute in fact provided.180 Moreover, this is a case that could have been decided on a number of grounds, such as a pure Spending Clause or First Amendment basis, 181 without invoking the military deference doctrine, and the Court’s prominent reliance on the military deference doctrine to support its decision suggests that there is no move afoot to eradicate the doctrine, explicitly or through subtle narrowing. For his part, Justice Alito noted prominently in his confirmation hearing that he had joined a conservative Princeton alumni group because, as an alumnus who attended Princeton on an ROTC scholarship, he was unhappy that the school had decided to abolish the campus ROTC program.182 While, again, predicting judicial attitudes based on personal history is always a risky proposition, Justice Alito’s background makes him seem like an unlikely candidate to take up the sword against the military deference doctrine, particularly when every other member of the Court joined an opinion applying it in FAIR.

V. Conclusion

This Article is by no means an attempt to catalogue every military deference case decided by the Court, or to discuss every nuance in its application. n183 It is important, however, that the doctrine be understood, both in terms of the facts surrounding its development and the limited scope of the doctrine as evidenced by the framework in which it is applied. Professor Lichtman's article on the military deference doctrine is thought provoking in that it challenges the orthodoxy by which the military deference doctrine is viewed - through the lens of time rather than through the lens of subject matter irrespective of time. n184 Ultimately, however, I have come to the conclusion that Professor Lichtman's analysis of the military deference doctrine is flawed in several important respects, all of which result in a fundamental misunderstanding [\*706] of the doctrine. In my estimation, the principal flaws in Professor Lichtman's analysis include: focusing on "win-loss" records rather than on the analytical framework in which those wins and losses occurred; failing to perceive that the military deference doctrine should - and does - apply only to a narrow category of "military" cases; incorrectly casting the military deference doctrine as a longstanding and relatively stable doctrine that has only subtly evolved since the early twentieth century; determining that subject matter, rather than timing, is the proper variable around which to organize an analysis of military deference decisions; and concluding that the military deference doctrine does not - and should not - apply to statutes and regulations burdening civilians instead of military personnel.

The military deference doctrine is, at once, both historically immature and limited, yet potent when applicable. After the disruption that occurred in the course of the Court's prior rejection of the doctrine of noninterference, the Court ultimately landed on the military deference doctrine as an appropriate analytical framework, where applicable, in the mid-1970s, and the Court has largely remained in the same place with its military jurisprudence ever since. The Court's rejection of its noninterference policy beginning in the mid-1950s likely came about as a result of what the Court perceived as overreaching by the political branches in subjecting persons - military and civilian - to courts-martial in a willy-nilly fashion. If the military deference doctrine were to recede in importance in the future, it would be a good bet that it happens because some collection of Supreme Court Justices perceives that Congress and the President are overreaching in the exercise of their constitutional powers to raise armies and regulate the armed forces. At present, though, there is no sign that such an upheaval is anywhere on the horizon.

#### The aff sets a dangerous precedent that leads to escalating checks on war powers

Craig Green 9, Associate Professor, Temple Law School; University Fellowship, Princeton History Department; J.D., Yale Law School, “Ending the Korematsu Era: A Modern Approach ,” http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=roger\_craig\_green

Another lesson from sixty years of wartime cases concerns the role of precedent itself in guiding presidential action. Two viewpoints merit special notice, with each having roots in opinions by Justice Jackson. On one hand is his explanation in Korematsu that courts must not approve illegal executive action: A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion . . . show[s] that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image.270 This “loaded weapon” idea is orthodox in analysis of Korematsu as a racist morality play. The passage is cited as evidence that Supreme Court precedents really matter, and that tragically racist errors retain their menacing power throughout the decades.271 Students are reminded that Korematsu has never been directly overruled, thereby inviting imagination that Korematsu itself is a loaded weapon just waiting for a President to grasp and fire.272 This conventional approach is incomplete. As we have seen, the first and decisive precedent supporting World War II’s racist policies was not Korematsu but Hirabayashi; thus, Jackson himself helped to “load” the doctrinal “weapon” over which he worried just a year later.273 Jackson’s willingness to eviscerate Hirabayashi in Korematsu only exemplifies (as if anyone could doubt it) that no Supreme Court decision can fiat a legal principle “for all time.”274 Past cases can be overruled, disfavored, ignored, or reinterpreted if the Court finds reason to do so, and this is effectively what has happened to Korematsu and Hirabayashi themselves in the wake of Brown, the civil rights era, and other modern history.275 Korematsu was a direct “repetition” of Hirabayshi’s racism for “expand[ed]” purposes, yet it only launched these two cases farther toward their current pariah status.276 A second perspective on war-power precedents is Jackson’s Youngstown concurrence, which rejected President Truman’s effort to seize steel mills and maintain output for the Korean War.277 Jackson’s opinion ends with selfreferential pessimism about judicial authority itself: I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. . . . If not good law, there was worldly wisdom in the maxim attributed to Napoleon that “The tools belong to the man who can use them.” We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.278 This “no illusion” realism about presidential authority views judicial limitations on the President as contingent on Congress’s political wisdom and responsiveness — without any bold talk about precedents as “loaded weapons” or stalwart shields. On the contrary, if taken seriously, Jackson’s opinion almost suggests that judicial decisions about presidential wartime activities are epiphenomenal: When Congress asserts its institutional prerogatives and uses them wisely, the executive might be restrained, but the Court cannot do much to swing that political balance of power. Jackson’s hardnosed analysis may seem intellectually bracing, but it understates the real-world power **of judicial precedent to shape what is politically possible**.279 Although Presidents occasionally assert their willingness to disobey Supreme Court rulings, actual disobedience of this sort is vanishingly rare and would carry grave political consequences.280 Even President Bush’s repeated losses in the GWOT did not spur serious consideration of noncompliance, despite strong and obvious support from a Republican Congress.281 Likewise, from the perspective of strengthening presidential power, Korematsu-era precedents clearly emboldened President Bush in his twenty-first-century choices about Guantanamo and military commissions.282 The modern historical record thus shows that judicial precedent can both expand and limit the operative sphere of presidential action. Indeed, the influence of judicial precedent is stronger than a court-focused record might suggest. The past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive government.283 From the White House Counsel, to the Pentagon, to other entities addressing intelligence and national security issues, lawyers have risen to such high levels of governmental administration that almost no significant policy is determined without multiple layers of internal legal review.284 And these executive lawyers are predominantly trained to think — whatever else they may believe — that Supreme Court precedent is authoritative and binding.285 Some middle ground seems therefore necessary between the “loaded weapon” and “no illusion” theories of precedent. Although Supreme Court decisions almost certainly influence the scope of presidential war powers, such practical influence is neither inexorable nor timeless. A more accurate theory of war-power precedents will help explain why it matters that American case law includes a reservoir of Korematsu-era decisions supporting excessive executive war power, and will also suggest how lawyers, judges, and scholars might eviscerate such rulings’ force. Korematsu is the kind of iconic negative precedent that few modern lawyers would cite for its legal holding. Yet even as Korematsu’s negative valence is beyond cavil, the breadth and scope of that negativity are not clear. Everyone knows that Korematsu is wrong, yet like other legal icons — Marbury, Dred Scott, Lochner, Erie, and Brown — its operative meaning is debatable. Just as Korematsu was once an authoritative precedent and is now discredited, this Article has sought to revise Korematsu’s cultural meaning even further, transforming it from an isolated and irrelevant precedent about racial oppression to a broadly illuminating case about how courts supervise presidential war powers.

## Case

### 2NC Intel

#### No intel collapse---

US-allied dialogue and info sharing has only increased since in the last few months---the EU has come out with public declarations about how much

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

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

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

#### Intel sharing inevitable – allies see it in their self interest

William Rosenau 4, PhD, RAND, 2004, “Liaisons Dangereuses? Transatlantic Intelligence Cooperation and the Global War on Terrorism,” http://www2.warwick.ac.uk/fac/soc/pais/people/aldrich/vigilant/04b.rosenau-liaisons-dangereuses.pdf

But international cooperation clearly does occur, and in the case of the United States and Britain, for example, exchanges have been routine since the late 1930s. Simply stated, intelligence services share information because they perceive it to be in their interest to do so. Such collaboration is not an end unto itself. Spies recognize that no state has a monopoly on intelligence.6 The enduring UKUSA agreement—a largely Anglophone signals intelligence (SIGINT) collection club—pools resources and thereby enables SIGINT collection on a global basis.7 But such multilateral sharing is the exception rather than the rule, and is typically done to serve broader, non-intelligence purposes, such as bolstering alliance solidarity.8 Intelligence officers prefer to deal with foreign services on a bilateral basis, which inter alia allows for greater control over how and to whom shared information is disseminated. In the case of human intelligence (HUMINT), developing one’s own “unilateral” capabilities is time consuming; in the case of technical intelligence, it is both time consuming and very expensive. “Piggybacking” on a foreign service through “liaison” relationships can help overcome shortfalls in language skills and cultural awareness, reduce the risks associated with collection activities, and instil habits of cooperation that can improve joint operations.9 However, liaison relationships, even with a close, long-standing ally, can impose risks and costs on one or both parties. Although counterintelligence is typically less of concern between allies, both sides must nonetheless be alert to the possibility that even old friends spy on each other from time to time, as demonstrated in the case of Jonathan Jay Pollard, a US Navy intelligence analyst convicted of spying for Israel.10 Intelligence cooperation with unsavoury regimes with miserable human rights records, if made public, can generate domestic and international political controversy.11 During the mid- 1990s, for example, revelations that the CIA station in Guatemala kept local military and intelligence officials accused of torture and murder on the agency’s payroll emerged as a full-blown Washington scandal. Finally, a country’s heavy reliance on what the CIA terms “liaison reporting” can lead make that nation vulnerable if its partner fails to collect or pass along essential intelligence information. Canada, fearing a dangerous dependency on US intelligence, is reportedly seeing greater unilateral collection capabilities. Liaison relationships are pay-as-you-go propositions, and no nation is given a free ride on anything but a temporary basis. But such collaboration does not always require repayment for information in kind.13 Sometimes real estate useful for collection purposes is bartered for economic subsidies or outright cash payments. From the 1960s until the early 1990s, Fidel Castro allowed the Moscow to operate a major SIGINT installation in Lourdes, Cuba in exchange for cut-rate petroleum and other blandishments.14More recently, the CIA reportedly arranged for the son of Indonesia’s intelligence chief to attend the National War College in Washington to encourage robust Indonesian cooperation in the global war on terror.15 Liaison and the “Long War” Given the transnational character of the jihadi nebula, all states are vulnerable, at least theoretically. This borderless threat has proven to be extremely elusive, opportunistic, and operationally adaptive, as demonstrated by the ability of the network’s autonomous cells to carry out major post-9/11 attacks in London, Madrid, Istanbul, Casablanca, Jakarta, and other major cities. Preventing future attacks, dismantling support structures, and disrupting the terrorist recruitment process require an intelligence-driven approach. As the global war on terror evolves into the “long war”—Washington’s new term of art that is intended to reflect more accurately the protracted nature of the campaign against al-Qa’ida16—intelligence will remain at the forefront of the coalition’s strategy. International cooperation is and will remain an important element of the intelligence component of the campaign. Collaboration on counterterrorism did not begin after 9/11. Most of the successful operations against al-Qa’ida before 9/11 were the result of “joint initiatives” involving US and foreign intelligence services.17 The CIA’s pre-9/11 strategy against al-Qa’ida, known as “The Plan,” relied heavily on liaison services to gather HUMINT and make arrests. As George Tenet, the director of central intelligence, told congressional investigators in 2002, “[w]e worked with numerous European governments, such as the Italians, Germans, French, and British to identify and shatter terrorist groups and plans against American and local interests in Europe.”18 Indeed, Congressional investigators sharply criticized the CIA for its pre- 9/11 reliance on liaison HUMINT reporting and its failure to mount unilateral collection operations.19 Since 9/11, liaison relationships between the United States and foreign services have increased in number and, in the case of pre-existing partnerships, have grown deeper. “Contacts have been increased and there is more cooperation in all areas,” the director of Spain’s National Intelligence Centre, Jorge Dezcallar, told reporters in 2002.20 Actions taken by the Dutch General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst, or AIVD) helped thwart an attack on the US embassy shortly after 9/11.21 German-American intelligence sharing on terrorism, which began during the 1960s, remains robust.22 Cooperation between US and French services is particularly close,23 belying the claim that there is a vast rift between Washington and Paris. A symbol of this cooperation is Alliance Base, a secret counterterrorist intelligence center located in the French capital. According to published reports, Alliance Base, headed by a French general assigned to France’s external intelligence service, the Direction Générale de la Sécurité Extérieure (DGSE), is staffed by intelligence officers from Britain, France, Germany, Canada, Australia, and the United States. The center does more than exchange intelligence—it is a forum for operational collaboration that “analyzes the transnational movement of terrorist suspects and develops operations to catch or spy on them.”24 In counterterrorism cooperation, as with other aspects of intelligence liaison, the services of the countries involved perceive such collaboration to be in their self-interest. Liaison relationships allow each partner to draw on the comparative advantage of the other. America’s liaison partners can draw on the US intelligence community’s incomparable technical intelligence, as well as the US government’s financial wherewithal. For countries with difficult or hostile relations with the United States, “adversarial liaison” offers the opportunity to improve ties with Washington or even, as in the case of Syria after 9/11, reduce the possibility of American coercion.25 What does Washington gain in exchange? Cooperation with the intelligence services of Arab and Muslim countries, such as Egypt, Jordan, Morocco, and Pakistan gives US intelligence agencies (and by extension, their policymaking “customers”) access to human intelligence that it would be difficult or impossible to acquire unilaterally. These countries, as well as former colonial powers such as France, have comparative advantages derived from geography, history, economic ties, and “socio-cultural affinity,” and it makes sense for the United States to rely on others.26

#### EU cooperation on anti-terrorism inevitable – in their self interest

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

Over the last several years, the EU has continued working to strengthen its counterterrorism capabilities and further improve police, judicial, and intelligence cooperation among its member states. In 2008, the EU expanded its common definition of terrorism to include three new offenses: terrorist recruitment, terrorist training, and public provocation to commit terrorism, including via the Internet. Among other recent initiatives, the EU has been seeking to improve the security of explosives and considering the development of an EU-wide system for the exchange of airline passenger data. In 2010, the EU issued its first-ever internal security strategy, which highlights terrorism as a key threat facing the EU and aims to develop a coherent and comprehensive EU strategy to tackle not only terrorism, but also a wide range of organized crimes, cybercrime, money laundering, and natural and man-made disasters. Despite the death of Al Qaeda leader Osama bin Laden in Pakistan in May 2011, many terrorism experts expect that the “Al Qaeda narrative” will likely continue to attract both European and non-European followers. The July 2012 terrorist attack on Israeli tourists in Bulgaria, which Bulgarian authorities have linked to the Lebanese Shiite Hezbollah organization, serves as a stark reminder that Europe remains vulnerable to terrorist activity perpetrated by a number of groups in addition to Al Qaeda. EU policymakers are also increasingly worried about reports of European citizens being recruited to fight with rebels in Syria, especially with Islamist extremist groups, and concerned about the potential danger such trained militants might pose should they eventually return to Europe. Amid these various threats, EU officials assert that continued vigilance and enhanced cooperation against terrorism remains essential.

### 2NC Terror

#### Chance of acquiring one is 1 in 3.5 billion

Schneidmiller 9(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

#### Terrorists don’t have the technical know-how or resources for nuclear weapons

Umana 11 – Felipe Umana is a contributor to Foreign Policy In Focus, from the Institute for Policy Studies. August 17, 2011, "Loose Nukes: Real Threat?" http://www.fpif.org/articles/loose\_nukes\_real\_threat

Actors seeking to acquire an atomic weapon – or the capability to produce one – generally do not have the essential training, knowledge, or materials. Nor do they generally have the necessary resources to achieve nuclear capabilities. In fact, for non-state actors, smuggling already-manufactured weapons or available materials is the only practical way to go nuclear. Terrorist organizations like Aum Shinrikyo (now known as Aleph) and al-Qaeda are typically **composed of men with little scientific training** and ersatz scientific knowledge, if any. Unless they steal blueprints, these actors can't construct a usable fissile weapon. Moreover, it's not easy to move such sensitive materials around. Anatoly Bulochnikov, director of the Center for Export Controls in Moscow, contrasted nuclear materials with mundane goods: “[These items are] not potatoes, not something you can keep anywhere.” Another hindrance is a lack of steady funds and resources. Non-state actors simply don't have the money to purchase bomb-grade nuclear material (in 1991, a kilogram of enriched uranium went for $700,000), the means to enrich uranium, or the storage facilities to contain the material.

### 2NC No Recruiting

#### There’s no instability generated from strikes---

In depth interviews with tribal leaders, politicians, clerics and others show that while they hate drone strikes, none of them have observed effects on recruiting as a result---that’s Swift

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

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

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

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

#### No impact to public opposition---it’s not widespread and most anger is directed at their governments for sucking

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

A 2012 poll found that 74 percent of Pakistanis viewed the United States as their enemy, likely in part because of the ongoing drone campaign. Similarly, in Yemen, as the scholar Gregory Johnsen has pointed out, drone strikes can win the enmity of entire tribes. This has led critics to argue that the drone program is shortsighted: that it kills today's enemies but creates tomorrow's in the process.

Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as SEAL team raids or cruise missile strikes, would make the United States more popular.

### 2NC Pakistan

#### Pakistan is stable---

First, drone strikes are decreasing and more precise which means there’s less blowback---this in combination with economic growth and polling that states citizens don’t hate US security policies proves the country is stabilizing---that’s Munter---their ev is spec

Second, the government won’t collapse---the nature of the government prevents radical takeover because formal institutions are so strong---that’s Dasgupta

#### No Pakistani collapse

AP 10 (Pakistan's stability, leadership under spotlight after floods and double dealing accusations, 6 August 2010, http://www.foxnews.com/world/2010/08/06/pakistans-stability-leadership-spotlight-floods-double-dealing-accusations/, AMiles)

Not for the first time, Pakistan appears to be teetering on the edge with a government unable to cope. Floods are ravaging a country at war with al-Qaida and the Taliban. Riots, slayings and arson are gripping the largest city. Suggestions are flying that the intelligence agency is aiding Afghan insurgents. The crises raise questions about a nation crucial to U.S. hopes of success in Afghanistan and to the global campaign against Islamist militancy. Despite the recent headlines, few here see Pakistan in danger of collapse or being overrun by militants — a fear that had been expressed before the army fought back against insurgents advancing from their base in the Swat Valley early last year. From its birth in 1947, Pakistan has been dogged by military coups, corrupt and inefficient leaders, natural disasters, assassinations and civil unrest. Through it all, Pakistan has not prospered — but it survives. “There is plenty to be worried about, but also indications that when push comes to shove the state is able to respond," said Mosharraf Zaidi, an analyst and writer who has advised foreign governments on aid missions to Pakistan. "The military has many weaknesses, but it has done a reasonable job in relief efforts. There have been gaps in the response. But this is a developing a country, right?" The recent flooding came at a sensitive time for Pakistan, with Western doubts over its loyalty heightened by the leaking of U.S. military documents that strengthened suspicions the security establishment was supporting Afghan insurgents while receiving billions in Western aid. With few easy choices, the United States has made it clear it intends to stick with Pakistan. Indeed, it has used the floods to demonstrate its commitment to the country, rushing emergency assistance and dispatching helicopters to ferry the goods. The Pakistani government's response to the floods has been sharply criticized at home, especially since President Asif Ali Zardari departed for a European tour. With so many Pakistanis suffering, the trip has left the already weak and unpopular leader even more vulnerable politically. The flooding was triggered by what meteorologists said were "once-in-a-century" rains. The worst affected area is the northwest, a stronghold for Islamist militants. Parts of the northwest have seen army offensives over the last two years. Unless the people are helped quickly and the region is rebuilt, anger at the government could translate into support for the militants. At least one charity with suspected links to a militant outfit has established relief camps there. The extremism threat was highlighted by a suicide bombing in the main northwestern town of Peshawar on Wednesday. The bomber killed the head of the Frontier Constabulary, a paramilitary force in the northwest at the forefront of the terror fight. With authorities concentrating on flood relief, some officials have expressed concern that militants could regroup. The city of Karachi has seen militant violence and is rumored to be a hiding place for top Taliban and al-Qaida fighters. It has also been plagued by regular bouts of political and ethnic bloodletting since the 1980s, though it has been calmer in recent years. The latest violence erupted after the assassination of a leading member of the city's ruling party. More than 70 people have been killed in revenge attacks since then, paralyzing parts of the city of 16 million people. While serious, the unrest does not yet pose an immediate threat to the stability of the country. Although the U.S. is unpopular, there is little public support for the hardline Islamist rule espoused by the Taliban and their allies. Their small movement has been unable to control any Pakistani territory beyond the northwest, home to only about 20 million of the country's 175 million people.

### 2NC They Work

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

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

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

# 1NR

### Deference

#### Concede no deference---their examples are about detention cases so it doesn’t hurt uniqueness for the other DA

#### I’ll answer target selection here

#### The current process already has tons of checks to resolve mistakes

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Based on this information, we can sketch a general picture of the kill-list approval process.210 First, military and intelligence officials from various agencies compile data and make recommendations based on internal vetting and validation standards.211 Second, those recommendations go through the NCTC, which further vets and validates rosters of names and other variables that are further tailored to meet White House standards for lethal targeting.212 Third, the president’s designee (currently the counterterrorism adviser) convenes a NSC deputies meeting to get input from senior officials, including top lawyers from the appropriate agencies and departments (i.e. CIA, FBI, DOD, State Department, NCTC, etc.).213 At this step is where the State Department’s Legal Adviser (previously Harold Koh) and the Department of Defense General Counsel (previously Jeh Johnson) along with other top lawyers would have an opportunity to weigh in with their legal opinions on behalf of their respective departments.214 Objections to a strike from top lawyers might prevent the decision from climbing further up the ladder absent more deliberation.215 In practice, an objection from one of these key attorneys almost certainly causes the president’s designee in the NSC process to hesitate before seeking final approval from the president. Finally, if the NSC gives approval, the president’s counterterrorism advisor shapes the product of the NSC’s deliberations and seeks final approval from the president.216 At this stage, targets are evaluated again to ensure that target information is complete and accurate, targets relate to objectives, the selection rationale is clear and detailed, and collateral damage concerns are highlighted.217 By this point in the bureaucratic process, just as in prior conflicts like Kosovo,218 there will be few targeting proposals that will reach the approval authority (the president) that will prompt absolute prohibitions under the law of armed conflict. Rather most decisions at this point will be judgment calls regarding the application of law to facts, or intelligence and analytic judgments regarding facts and expected outcomes.219

#### Their authors don’t even know how the process works---it’s effective now

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

To date scholars have lacked a thorough understanding of the U.S. government’s targeted killing practices. As such, their commentary is oftentimes premised on easily describable issues, and fails to grapple with the multiple levels of intergovernmental accountability present in current practice. When dealing with the theoretical and normative issues associated with targeted killings, scholars have failed to specify what they mean when they aver that targeted killings are unaccountable. Both trends have impeded legal theory, and constrained scholarly discourse on a matter of public import.

This article is a necessary corrective to the public and scholarly debate. It has presented the complex web of bureaucratic, legal, professional, and political accountability mechanisms that exert influence over the targeted killing process. It has demonstrated that many of the critiques of targeted killings rest upon poorly conceived understandings of the process, unclear definitions, and unsubstantiated speculation. The article’s reform recommendations, grounded in a deep understanding of the actual process, reflect an assumption that transparency, performance criteria, and politically grounded independent review can enhance the already robust accountability mechanisms embedded in current practice.

#### Fear of judicial review makes commanders risk acceptant---causes more risk-taking

Peter Margulies 10, Professor of Law, Roger Williams University, November 2010, “ARTICLE: Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law,” Iowa Law Review, 96 Iowa L. Rev. 195

Courts also correct for hindsight bias. n10 Graced with the omniscience of hindsight, courts and juries overestimate officials' ability to correctly decide whom to arrest, detain, or interrogate. To avoid separation-of-powers issues prompted by punishing officials for mere mistakes, courts have ruled that officials retain qualified immunity from suit unless they have violated "clearly settled" law. n11¶ While judicial correctives for both myopia and hindsight bias vindicate values like due process and the separation of powers, they also reduce volatility. Myopia and hindsight bias hold the rule of law hostage to wide political oscillations. These occur because people facing losses are risk-prone. n12 Behavioral substitutions that adjust to changes in the law n13 may [\*200] entail risk-seeking that undermines the potential for deliberation among divergent stakeholders. For example, when political dissenters lose faith in the prospects for a peaceful transition from myopic policies, they may substitute revolutionary action for reformist speech. n14 Having staged a revolution, some erstwhile rebels learn the wrong lesson, using the machinery of the state to police the purity of adherents. n15 Remnants of the former regime recoup, citing the rebels' excesses. In each phase of the cycle, differentiation from the previous phase becomes a proxy for soundness on the merits. A carefully crafted damages remedy restrains official myopia and thereby curbs this counterproductive cycle. Viewed in that light, judicial solicitude for free speech is not only an expression of constitutional principle; it is also an institutional mechanism for safely containing the sometimes volatile "experiment" of popular governance. n16¶ Hindsight bias's role in the promotion of volatility compounds the challenges that judicial review must confront. Theorists have observed that subjects of regulation who fear regulators' hindsight bias become alienated [\*201] from the entire legal regime. n17 They view the status quo as intolerable and take unwise risks that undermine compliance. Since defendants in Bivens actions are subject to regulation by judges and juries, fear of hindsight bias can make them unduly risk-prone. Officials who fear future retaliation may cling stubbornly to power, doubling down on repressive measures because they view the status quo as trending in the wrong direction. n18 This risk-prone behavior exacerbates the cycling that the Boumediene v. Bush Court sought to curb. To reduce cycling and enhance deliberation, courts must strive for an equilibrium that corrects for both myopia and hindsight bias.¶ Unfortunately, recent judicial decisions have abandoned this search for an equilibrium and embraced categorical deference or intervention. In Ashcroft v. Iqbal n19 and Arar v. Ashcroft, n20 categorical deference carried the day. Viewing qualified immunity as insufficient to protect against hindsight bias, Iqbal dismissed claims that senior officials turned a blind eye to the mistreatment of post-9/11 detainees. Arar precluded claims that defendants aided an "extraordinary rendition" to Syria. Neither decision discussed whether official myopia might have led to the brutal treatment that the plaintiffs alleged. Instead, these decisions viewed responses to risk as binary, requiring that officials choose between abusing detainees and abdication in the face of terror. n21¶ [\*202] The categorical-deference approach has an interventionist counterpart. n22 In al-Kidd v. Ashcroft n23 and Padilla v. Yoo, n24 courts evaluated officials' decisions from the cozy recliner of retrospect. Padilla, involving a formerly detained alleged enemy combatant's claim for damages, asked only whether the plaintiff's rights were violated. The court collapsed qualified immunity's core distinction between the present legal status of the plaintiff's rights and their status at the time of the official defendant's decision. The court in al-Kidd, a case involving a former material witness's claim that he was wrongly detained, insisted on a distinction between witness and target that would deprive officials of needed flexibility in transnational terrorism cases. Ironically, the interventionist decisions posit the same binary choice as the categorical-deference model: overreaching or abdication. Categorical deference and intervention thus undermine hopes for equilibrium between presentist and hindsight biases.

### Ov

#### Restraining drone use causes Taliban resurgence in Afghanistan---that loses the war, wrecks US credibility and causes global war as countries see us as a paper tiger and engage in provocations

#### Outweighs on timeframe and magnitude---their advantages depend on long-term buildup of support for nonstate actors whereas this is perception-based and occurs among states that are already prepared for war

#### Turns Yemen

Alan W. Dowd 13, writes on national defense, foreign policy, and international security in multiple publications including Parameters, Policy Review, The Journal of Diplomacy and International Relations, World Politics Review, American Outlook, The Baltimore Sun, The Washington Times, The National Post, The Wall Street Journal Europe, The Jerusalem Post, and The Financial Times Deutschland, Winter-Spring 2013, “Drone Wars: Risks and Warnings,” Parameters, Vol. 42.4/43.1

At the beginning of President Hadi’s May offensive he, therefore, had a fractured army and a dysfunctional air force. Army leaders from competing factions were often disinclined to support one another in any way including facilitating the movement of needed supplies. Conversely, the air force labor strike had been a major setback to the efficiency of the organization, which was only beginning to operate as normal in May 2012. Even before the mutiny, the Yemen Air Force had only limited capabilities to conduct ongoing combat operations, and it did not have much experience providing close air support to advancing troops. Hadi attempted to make up for the deficiencies of his attacking force by obtaining aid from Saudi Arabia to hire a number of tribal militia fighters to support the regular military. These types of fighters have been effective in previous examples of Yemeni combat, but they could also melt away in the face of military setbacks.

Adding to his problems, President Hadi had only recently taken office after a long and painful set of international and domestic negotiations to end the 33-year rule of President Saleh. If the Yemeni military was allowed to be defeated in the confrontation with AQAP, that outcome could have led to the collapse of the Yemeni reform government and the emergence of anarchy throughout the country. Under these circumstances, Hadi needed every military edge that he could obtain, and drones would have been a valuable asset to aid his forces as they moved into combat. As planning for the campaign moved forward, it was clear that AQAP was not going to be driven from its southern strongholds easily. The fighting against AQAP forces was expected to be intense, and Yemeni officers indicated that they respected the fighting ability of their enemies.16

Shortly before the ground offensive, drones were widely reported in the US and international media as helping to enable the Yemeni government victory which eventually resulted from this campaign.17 Such support would have included providing intelligence to combatant forces and eliminating key leaders and groups of individuals prior to and then during the battles for southern towns and cities. In one particularly important incident, Fahd al Qusa, who may have been functioning as an AQAP field commander, was killed by a missile when he stepped out of his vehicle to consult with another AQAP leader in southern Shabwa province.18 It is also likely that drones were used against AQAP fighters preparing to ambush or attack government forces in the offensive.19 Consequently, drone warfare appears to have played a significant role in winning the campaign, which ended when the last AQAP-controlled towns were recaptured in June, revealing a shocking story of the abuse of the population while it was under occupation.20 Later, on October 11, 2012, US Secretary of Defense Leon Panetta noted that drones played a “vital role” in government victories over AQAP in Yemen, although he did not offer specifics.21 AQAP, for its part, remained a serious threat and conducted a number of deadly actions against the government, although it no longer ruled any urban centers in the south.

#### Turns nuclear terrorism---permissive TK policy can pre-empt attacks

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71

Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.

What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.

But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115]

What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Turns Pakistan---limiting TKs causes large-scale ground assaults and collapse

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

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

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

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

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

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

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

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

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

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

### Prog Cllps

#### Counterplan solves these---resolves backlash and zenko says nothing about the courts being key

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

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

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

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

#### Overflight access for drones in Africa’s locked in---the U.S. is successfully promoting soft power tools to guarantee cooperation

Kevin Govern 13, Professor of Law, the Ave Maria School of Law, 2/11/13, “Drone Operations in Current US Counterterrorism Strategy in Africa,” http://jurist.org/forum/2013/02/kevin-govern-drones-counterterrorism.php

Where are the US drones operating from in Africa? A former French Foreign Legion post referred to as Camp Lemonnier in Djibouti is reportedly the center of a "constellation of hush-hush [US] drone, commando or intelligence facilities in East Africa [including] Ethiopia, Kenya, Somalia and the island nation of the Seychelles." The DOD will neither confirm nor deny those locations, , but Niger's ambassador to the US, Maman Sidikou, told CNN that his government has agreed to let US drones operate from its territory, a largely desert nation on the eastern border of Mali. Included among the 3,200 or so troops at Lemonnier are approximately 300 Special Operations personnel working on organizing raids and strategizing the drone strikes of eight or more Predator drones "flown" by pilots from thousands of miles away and eight F-15E fighter-bombers for other strike operations.

The US can and does operate more than drones as counterterrorism tools in Africa in the pursuit of a so-called "smart power" strategy: employing the "soft power" tools of diplomacy, economic assistance and communications to supplement or augment the traditional "hard power" capabilities of the military to defend and advance [PDF] US interests in Africa. The US and Algeria have concluded numerous treaties and bilateral agreements to increase near and long-term military, political and economic cooperation. Both nations reportedly consult closely on key international and regional issues such as law enforcement cooperation, have a customs mutual assistance agreement and signed a mutual legal assistance treaty. Both have conducted bilateral military exercises — as well as frequent military exchanges — and the US hosted an Algerian port visit for the first time in 2012. Algerians have granted overflight permission to French fighter jets, and perhaps also to US drone overflights as well. Algeria sealed their southern border with Mali, cutting off essential fuel supplies to the terrorists in northern Mali, but Algeria may be reluctant to support the fight against AQIM outside its borders. At present there is no unclassified US troop presence in Algeria to combat AQIM. Drone flights over Algeria, based from other African nations, and Special Operations support, keeps the US profile low in the ongoing "smart power" approach to combating AQIM in Algeria.

#### No program collapse---that’s all the 1NC evidence---Obama will continue even if the public hates it

#### Absolutely zero chance that criticism of the drone program causes the U.S. to stop it

Benjamin Wittes 13, Senior Fellow in Governance Studies at the Brookings Institution, 2/27/13, “In Defense of the Administration on Targeted Killing of Americans,” http://www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation.

There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

### Immin->HVT

#### They say imminence allows them to target high-value targets---firsst this is wrong---1NC McKelvey evidence says the pre-planning and long lead time for every strike means the courts would rule that none of them were imminent and ban strikes entirely

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

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

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

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

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

#### Targeting low-level operatives is key to the entire war on terror---just because their authors don’t understand why, that doesn’t mean they’re right

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

While al Qaeda has relied heavily on social hierarchy and key individuals to inspire action at lower levels,158 it can best be understood as a decentralized social network. Such social networks have hubs and nodes that can be targeted with strikes aimed at pressuring the network to harass it, leveraging the deaths of middle-men to disable it, and desynchronizing the network by targeting decision-makers and figureheads to alienate operatives and leaders.159 Of course networks are notably resistant to the loss of any one node, therefore the focus of targeting is to identify the critical person whose removal will cause the most damage to the network, and to remove sufficient critical nodes simultaneously, such that the network cannot reroute linkages.160 For example, Osama Bin Laden's courier, Abu Ahmed al-Kuwaiti, was Bin Laden's sole means of communicating with the rest of al Qaeda. By tracking al-Kuwaiti, analysts could determine the links and nodes in Bin Laden’s network. Moreover, if the government chose to kill al-Kuwaiti, a mere courier, it would have prevented Bin Laden from leading his organization (desynchronizing the network) until Bin Laden could find a trustworthy replacement. Finding such a replacement would be a difficult task considering that al Kuwaiti lived with Bin Laden, and was his trusted courier for years.161 Similarly the example of the U.S. experience in Iraq is instructive:

Al-Qaeda in Iraq task organized itself across a range of operational and support specialties that required the services of “facilitators, financiers, computer specialists, or bomb makers.” Attacking these leverage points enabled [attackers] to attempt to destroy the clandestine network's functionality; to damage the network “so badly that it cannot perform any function or be restored to a usable condition without being entirely rebuilt.” This deprofessionalized the network and imposed additional recruitment and training costs that further diminished operational capacity.162

As these examples demonstrate, sometimes targeting even low-level operatives can make a contribution to the U.S. war effort against al Qaeda and associated forces. Of course, there are legal consequences associated with this dispersal of al Qaeda and associated forces into a network, and to the manner in which the U.S. government determines if individuals are sufficiently tied to groups with whom the U.S. sees itself at war. Perhaps one of the biggest challenges is that to an external observer, it is not clear what criteria apply to identify an individual or a group as an associated force.163 As one NGO critic has stated, “It's difficult to see how any killings carried out in 2012 can be justified as in response to [the attacks that took place] in 2001. Some states seem to want to invent new laws to justify new practices.”164 However, just because it’s difficult for a worker at an NGO to see the relationship, it does not mean that the relationship does not exist. Nevertheless, the legal challenges have not been lost on the Obama administration, as Daniel Klaidman noted:

[President Obama] understood that in the shadow wars, far from conventional battlefields, the United States was operating further out on the margins of the law. Ten years after 9/11, the military was taking the fight to terrorist groups that didn't exist when Congress granted George Bush authority to go to war against al- Qaeda and the Taliban. Complicated questions about which groups and individuals were covered . . . were left to the lawyers. Their finely grained distinctions and hair-splitting legal arguments could mean the difference between who would be killed and who would be spared.165

Accountability for these “finely grained” legal distinctions is bound up in bureaucratic analysis that is not readily susceptible to external review. It relies on thousands of data points, spread across geographic regions and social relationships making it inherently complex and opaque. Accordingly, the propriety of adding an individual to a kill-list will be bound up in the analyst’s assessment of these targeting factors, and the reliability of the intelligence information underlying the assessment. How well that information is documented, how closely that information is scrutinized, and by whom, will be a key factor in any assessment of whether targeted killings are accountable.

### Cohesion

#### Our links solve their cohesion turn---if TKs are working now then no blowback attack can happen

#### Cross-apply no blowback---they have to win the whole advantage to win the turn

#### The impact to this link card is “division in the ranks” ---no warrant for why that destroys effectiveness or undermines TKs in any way---the existence of TKOs obviously outweighs

#### Restraint doesn’t stop attacks from happening

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

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

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

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

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

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

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

### Guiora

#### If they win that ex ante cards don’t apply, they don’t access Guiora since he advocates ex ante review

#### Cross-apply the answers from deference---they all apply here

#### Civilian casualties are already low---that was the 2NC---prefer issue-specific uniqueness because Guiora just wants to believe that his pet legal theory produces the best practical consequences

### No ! Cohesion

#### If they win no impact cohesion it takes out their link turn

#### Our impact isn’t generic cohesion---it’s risk aversion and a crushing fear of court second-guessing which means that operatives are ineffective because they’re answerable to random judges after the fact

### Whistleblowers

#### No impact---this evidence doesn’t refer to program effectiveness or impact the whistleblowing that would happen---it also doesn’t make predictive claims about court rulings or their implications---they have to draw a specific IL

#### Empirically denied---if they were right then these suits should have undermined effectiveness for a decade since no judicial review is the squo---they obviously haven’t

#### Criticism over lack of judicial review won’t collapse the program

Benjamin Wittes 13, Senior Fellow in Governance Studies at the Brookings Institution, 2/27/13, “In Defense of the Administration on Targeted Killing of Americans,” <http://www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/>

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation.

There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

Second, a mounting chorus of critics has insisted that judicial review must be a feature of the legal framework that authorizes the targeting of any American nationals. The New York Times, for example, has editorialized that “[g]oing forward, [President Obama] should submit decisions like [the Al-Aulaqi] one to review by Congress and the courts. If necessary, Congress could create a special court to handle this sort of sensitive discussion, like the one it created to review wiretapping.”

The question of whether targeting judgments might benefit from some form of judicial review—either prospectively or after-the-fact—is an enormously complicated one. Scholars have put together several thoughtful proposals for review mechanisms,[6] and I don’t rule out the idea of some form of judicial review—though I tend to disfavor it. But critically, none of these or other proposals to change the rules to include judicial review undermines the integrity of the administration’s view of current law, which simply does not provide for judicial involvement in targeting decisions. Whether some as-yet-unwritten statutory framework might usefully provide for judicial involvement presents a difficult question. But it’s hard to fault Attorney General Holder for failing to bring the Anwar Al-Aulaqi case for prospective review before a court that does not exist.

### Good standards

#### They say courts are competent and would rule well—our imminence link disproves this, that’s above---and a ton of our links are not about that

#### I’ll do the link debate here

#### Every targeted killing would be ruled unconstitutional

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

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

#### The prospect of judicial involvement causes battlefield risk aversion---TK decisions are made in split-seconds---any delay has massive negative effects

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>

War is the province of chance. “If we now consider briefly the subjective nature of war—the means by which war has to be fought—it will look more than ever like a gamble . . . [i]n the whole range of human activities, war most closely resembles a game of cards.” Clausewitz, 86-87. Within this field of human endeavor, the most successful armies are those led by decisive commanders who visualize the operational environment and make rapid, sound decisions. Combat leadership involves the motivation of others to risk their lives, and only the most decisive and confident leaders can inspire this kind of self-sacrifice.

Leadership is the multiplying and unifying element of combat power. Confident, competent, and informed leadership intensifies the effectiveness of all other elements of combat power by formulating sound operational ideas and assuring discipline and motivation in the force . . . Leadership in today’s operational environment is often the difference between success and failure.

Dept. of the Army, Field Manual 3-0, Operations, at ¶¶ 4-6 - 4-8 (2008), available at http://www.army.mil/fm3-0/fm3-0.pdf.

Battle command is a subset of combat leadership—it is how wartime leaders operationalize their intent and transmit their guidance to subordinate units. Battle command is the art and science of understanding, visualizing, describing, directing, leading, and assessing forces to impose the commander’s will on a hostile, thinking, and adaptive enemy. Battle command applies leadership to translate decisions into actions—by synchronizing forces and warfighting functions in time, space, and purpose—to accomplish missions. Battle command is guided by professional judgment gained from experience, knowledge, education, intelligence, and intuition. It is driven by commanders.

Id. at ¶ 5-9. Battlefield decisionmaking involves the visualization of the battlefield and all its components, the deliberate assessment of operational risk, and the selection of a course of action which accepts certain risks in order to achieve tactical, operational or strategic success. Id. at ¶5-10; see also Gen. Frederick M. Franks, Jr., Battle Command: A Commander’s Perspective, Military Review, May-June 1996, at 120-121. “Given the inherently uncertain nature of war, the object of planning is not to eliminate or minimize uncertainty but to foster decisive and effective action in the midst of such uncertainty.” Army Field Manual 3-07, Stability Operations, at ¶ 4-4 (2008), available at http://usacac.army.mil/cac2/repository/FM307/FM3- 07.pdf.

In bringing this case, Plaintiff asks this Court to substitute itself as the battlefield commander, and to second-guess the strategic, operational and tactical decisions made by this nation’s military chain of command in the campaign against Al Qaeda. Judicial decisionmaking is incompatible with military decisionmaking. Rather than produce rapid, confident, decisive actions, judicial resolution of this matter would produce deliberate and measured decisions which are the product of adversarial process, and which would reflect judicial considerations, not strategic or tactical ones.

Also, judicial involvement may induce risk aversion among commanders, who would worry about how their actions might be judged in courtrooms far removed from the battlefield, and thus hedge their battlefield decisions in order to protect themselves and their units from future judicial scrutiny. This is particularly true of Plaintiff’s prayer for relief, which calls upon the Court to enjoin the Government from using lethal force “except in circumstances in which they present concrete, specific, and imminent threats to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats.” Such decisions about the use of force can often be made by soldiers in a split-second, on the basis of intuition and training. The specter of judicial involvement will affect the way soldiers and leaders approach these decisions, potentially complicating and slowing their decisions by injecting judicial considerations which have no place on the battlefield.

#### 2AC says they ban signature strikes

#### Signature strikes are key to thin the ranks of militants--- make it impossible for militants to keep pace with their rates of losses

Philip Mudd 13, was a senior official at the CIA and the FBI, now director of global risk at SouthernSun Asset Management, 5/24/13, “Fear Factor,” http://www.foreignpolicy.com/articles/2013/05/24/fear\_factor\_signature\_strikes

The impact of armed drones during the decade-plus of this intense global counterterrorism campaign is hard to overestimate: Without operational commanders and visionary leaders, terror groups decay into locally focused threats, or disappear altogether. Targeted strikes against al Qaeda leaders and commanders in the years immediately after 9/11 deprived the group of the time and stability required to plot a major strike. But the London subway attacks in July 2005 illustrated the remaining potency of al Qaeda's core in the tribal areas of Pakistan. The threat was fading steadily. But not fast enough.

So-called signature strikes -- in which target selection is based not on identification of an individual but instead on patterns of behavior or unique characteristics that identify a group -- accelerated this decline for simple reasons. Targeting leadership degrades a small percentage of a diffuse terror group, but developing the tactical intelligence required to locate an individual precisely enough to stage a pinpoint strike, in a no-man's land half a world away, is time-consuming and difficult. And it's not a perfect science; the leaders of groups learn over time how to operate more securely. Furthermore, these leaders represent only a fraction of the threat: Osama bin Laden might have been the public face of al Qaeda, but he was supported by a web of document-forgers, bombmakers, couriers, trainers, ideologues, and others. They made up the bulk of al Qaeda and propelled the apparatus that planned the murder of innocents. Bin Laden was the revolutionary leader, but it was the troops who executed his vision.

Signature strikes have pulled out these lower-level threads of al Qaeda's apparatus -- and that of its global affiliates -- rapidly enough that the deaths of top leaders are now more than matched by the destruction of the complex support structure below them. Western conceptions of how organizations work, with hierarchal structures driven by top-level managers, do not apply to al Qaeda and its affiliates. These groups are instead conglomerations of militants, operating independently, with rough lines of communication and fuzzy networks that cross continents and groups. They are hard to map cleanly, in other words. Signature strikes take out whole swaths of these network sub-tiers rapidly -- so rapidly that the groups cannot replicate lost players and their hard-won experience. The tempo of the strikes, in other words, adds sand to the gears of terror organizations, destroying their operational capability faster than the groups can recover.

#### Plan destroys the integrity of the chain of command---destroys strategic clarity that’s key to operational effectiveness

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>

A. Adjudication Of This Case Would Compromise The Military Principle Of “Unity Of Command,” And Undermine The Chain Of Command

“Unity of command,” and its corollary, “unity of effort,” are fundamental principles of warfare which are central to the effectiveness of Western militaries. See Carl von Clausewitz, On War 200-210 (Michael Howard & Peter Paret, ed. and trans., Princeton University Press 1976) (1832) (hereinafter “Clausewitz”). There “is no higher and simpler law of strategy” than to apply this principle in order to concentrate a nation’s military power its adversaries’ “center of gravity.” Id. at 204. This principle was first embraced by the American military during the 19th Century, and has subsequently shaped the organizational structure of American warfighting through two world wars and countless other conflicts. See James F. Schnabel, History of the Joints Chiefs of Staff, Vol. 1 at 80-87 (1996); Russell F. Weigley, History of the United States Army at 422-423 (Bloomington: Indiana University Press, 1984). Unity of command requires the integration of all combat functions into a single organizational element, with command authority vested in a single individual. See U.S. Joint Chiefs of Staff, Joint Pub. 3-0, Joint Operations at Appx. A, p. A-2 (2010), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_0.pdf.

The U.S. military implements “unity of command” through its chain of command—a hierarchical organizational structure which transmits command authority from the President through the Secretary of Defense, through subordinate military officers, down to the lowest ranking soldier, sailor, airman or Marine on the frontlines of America’s armed conflicts. This chain of command serves important organizational purposes, by vesting command authority in individual officers who are responsible for specific missions, and are empowered to command their personnel to achieve those missions. The chain of command also supports important normative and legal policy purposes, such as the doctrine of “command responsibility,” which renders battlefield commanders responsible for all their units do or fail to do, whether they knew about such conduct, or should have known about it. See Application of Yamashita, 327 U.S. 1, 14-16 (1946); see also Army Field Manual 27-10, The Law of Land Warfare at ¶ 501 (1956) (stating U.S. Army doctrine on “command responsibility”).

“Everything in war is very simple,” Clausewitz noted, “but the simplest thing is difficult.” Clausewitz at 119. The dangers of war, the fatigue of close combat, and the uncertainty which lurks within the fog of war, all combine to create a kind of “friction” which impedes the progress of armies. Id. A more contemporary author and veteran describes this fog:

For the common soldier, at least, war has the feel, the spiritual texture, of a great ghostly fog, thick and permanent. There is no clarity. Everything swirls. The old rules are no longer binding, the old truths no longer true. Right spills over into wrong. Order blends into chaos, love into hate, ugliness into beauty, law into anarchy, civility into savagery. The vapor sucks you in. You can’t tell where you are, or why you’re there, and the only certainty is overwhelming ambiguity . . . . You lose your sense of the definite, hence your sense of truth itself.

Tim O’Brien, The Things They Carried 88 (1990).

The military chain of command is designed to counteract this fog and friction of war, by providing clarity of orders and purpose to individual soldiers and their units. Similarly, this organizational structure exists to impose some order on the behavior and actions of soldiers and units, aligning their conduct with national goals, framing their actions in the context of strategic and operational campaigns, and focusing their efforts on the missions which support these broader endeavors. It is this structure which differentiates the armed forces of a nation from an armed group of thugs, and which ensures that national armed forces conduct themselves in accordance with the laws of armed conflict. Cf. Annex to the Convention, Hague Convention No. IV Respecting the Laws and Customs of War on Land, art. 1, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277; Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 4, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364.

Our nation’s military personnel depend on their chain of command to provide them with certainty, clarity and authority in the heat of battle. Into this ordered system, Plaintiff wishes to inject the uncertainty of the American adversarial litigation process, by seeking, inter alia, that this Court declare there is no armed conflict in Yemen, and that orders issued by the President in response to that conflict should be enjoined. Not only would this force the court to go far beyond the “limited institutional competence of the judiciary” by involving it in sensitive matters of national security, cf. Arar v. Ashcroft, 585 F.3d 559, 576 (2d Cir. 2009) (citations omitted), but this also would undermine the chain of command by literally interposing this Court between the President and his subordinate officers, thereby contravening the core doctrinal principle of “unity of command,” which has served American military forces in good stead since the Civil War.

In asking the Court to hear this case, and to entertain the extraordinary remedy of injunctive relief against the President and his cabinet, the Plaintiff is asking the court to overturn the political judgment of the President and Congress that the nation is at war; that this war is an armed conflict against Al Qaeda; and that it is appropriate to use a blend of military, intelligence and diplomatic force to wage this war. All three branches of Government have decided that “[w]e are [] at war with al Qaeda and its affiliates.” Remarks of the President on National Security, May 21, 2009; see also Authorization for Use of Military Force (“AUMF”), Pub. L. No. 107-40, 115 Stat. 224 (2001); Hamdan v. Rumsfeld, 548 U.S. 557, 628-31 (2006). Political leaders from both political parties, over the course of two presidencies and five elected Congresses, have agreed upon, authorized, and appropriated funds for this war against Al Qaeda.

### Maher = Ex ante

#### Maher is not about ex ante---explicitly about potential liability and second-guessing after the fact which is what the plan creates

### Afghanistan

#### Afghanistan defense just says that the militants in Afghanistan won’t spill over---they have dropped a credibility impact---Carafano says the US will be seen as a paper tiger if it fails regardless of the practical implications

### Intel

#### Allied co-op can’t be a link turn

#### Allowing suits would collapse CT coop

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

Lastly, litigating this suit directly implicates foreign affairs, yet another special factor under binding precedent. See Ali, 649 F.3d at 774 ( “[T]he danger of foreign citizens’ using the courts . . . to obstruct the foreign policy of our government is sufficiently acute that we must leave to Congress the judgment whether a damage remedy should exist.” (quoting SanchezEspinoza, 770 F.2d at 209)). Although Plaintiffs’ decedents are all U.S. citizens, and therefore the precise foreign affairs concerns detailed in Ali and Sanchez-Espinoza do not squarely arise in this case, see Doe, 683 F.3d at 396, without question, litigating the allegations in this case, which involve at least one foreign citizen and purported events abroad, threatens to disrupt U.S. foreign policy. Cf. Vance, 2012 WL 5416500 at \*4 (“The [Supreme] Court has never created or even favorably mentioned a nonstatutory right of action for damages on account of conduct that occurred outside the borders of the United States.”).21

Plaintiffs’ claims, if litigated, could clearly affect our government’s relations with the government of Yemen. Litigating these issues also could affect our relations with Egypt because Plaintiffs claim Defendants specifically targeted and attempted to kill an Egyptian national. See Compl. ¶ 37.Beyond these countries, Plaintiffs allege that the United States has conducted strikes in other countries as well. See id. ¶ 1. Assuming the truth of Plaintiffs’ allegations, adjudication of this case could disrupt U.S. relations with these countries too. It takes little imagination to envision the repercussions on foreign relations that could be spurred by the creation of an entirely novel and discretionary damages remedy—in private civil litigation no less. Given the above separation-of-powers, national security, military effectiveness, classified information, and foreign policy concerns—and the binding precedent on these issues—the Court should decline to create a remedy for Plaintiffs’ claims in this novel context.

#### US CT intel is fine on its own – we don’t need allies

Barton Gellman and Greg Miller, 8-29-2013, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

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

#### Plan kills intel sharing---courts would mandate disclosure causing a chilling effect---low link threshold

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

Third, Plaintiffs’ claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that “the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny” are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, “‘even a small chance that some court will order disclosure of a source’s identity could well impair intelligence gathering and cause sources to close up like a clam.’” Id. (quoting Tenet v. Doe, 544 U.S. 1, 11 (2005)). And where litigation of a plaintiff’s allegations “would inevitably require an inquiry into ‘classified information that may undermine ongoing covert operations,’” special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at \*8 (“When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.”); Lebron, 670 F.3d at 554 (noting that the “chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplomatic initiatives at the heart of counterterrorism policy” are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the “extraordinary rendition” context).¶ This precedent controls here. Plaintiffs’ allegations that Department of Defense and CIA officials targeted Al-Aulaqi and then “authorized and directed” a series of missile strikes in Yemen are claims which—assuming their truth as pled for purposes of this motion only—would “inevitably require an inquiry into classified information,” Wilson, 535 F.3d at 710, as the United States has made clear in its statement of interest.20 The Court thus should not infer a novel remedy in this context.