The following document is an excerpt from the United States District Court For the District of Columbia decision in the case of **Nasser Al-Alaqi v. Barack Obama**.

Civil Action No. 10-1469 (JDB)

The passages have been excerpted as the court's response to the following complaint, as quoted from the Complaint for Declaratory and Injunctive Relief, page 3.

"1. This case concerns the executive's asserted authority to carry out "targeted killings" of U.S. citizens suspected of terrorism far from any field of armed conflict. According to numerous published reports, the government maintains lists of suspects— "kill lists"—against whom lethal force can be used without charge, trial, or conviction.Individuals, including U.S. citizens, are added to the lists based on executive determinations that secret criteria have been satisfied. Executive officials are thus invested with sweeping authority to impose extrajudicial death sentences in violation of the Constitution and international law....

5. The government's refusal to disclose the standard by which it determines to target U.S. citizens for death independently violates the Constitution: U.S. citizens have a right to know what conduct may subject them to execution at the hands of their own government. Due process requires, at a minimum, that citizens be put on notice of what may cause them to be put to death by the state."

[redacted]

III. The Political Question Doctrine

Defendants argue that even if plaintiff has standing to bring his constitutional claims or states a cognizable claim under the ATS, his claims should still be dismissed because they raise non-justiciable political questions. Like standing, the political question doctrine is an aspect of "the concept of justiciability, which expresses the jurisdictional limitations imposed on the federal courts by the 'case or controversy' requirement of Article III of the Constitution." Schlesinger, 418 U.S. at 215. The political question doctrine "is 'essentially a function of the separation of powers,'" El-Shifa, 607 F.3d at 840 (quoting Baker v. Carr, 369 U.S. 186, 217 (1962)), and "'excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.'" Id. (quoting Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 230 (1986)). The precise "'contours'" of the political question doctrine remain "'murky and unsettled.'" Harbury v. Hayden, 522 F.3d 413, 418 (D.C. Cir. 2008) (quoting Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 803 n.3 (D.C. Cir. 1984) (Bork, J., concurring)); see also Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 1514 (D.C. Cir. 1984) (en banc), *vacated on other grounds*, 471 U.S. 1113 (1985) (describing the "shifting contours and

uncertain underpinnings" of the political question doctrine). Still, the Supreme Court has articulated six factors which are said to be "[p]rominent on the surface" of cases involving non-justiciable political questions:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and 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 respect due coordinate branches of 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.

Baker, 369 U.S. at 217. The first two factors -- a textual commitment to another branch of government and a lack of judicially manageable standards -- are considered "the most important," see Harbury, 522 F.3d at 418, but in order for a case to be non-justiciable, the court "need only conclude that one factor is present, not all," Schneider v. Kissinger, 412 F.3d 190, 194 (D.C. Cir. 2005).

Unfortunately, the Baker factors are much easier to enumerate than they are to apply, and it is perhaps for this reason that the political question doctrine "continues to be the subject of scathing scholarly attack." See Ramirez, 745 F.2d at 1514. Dean Erwin Chemerinsky has gone so far as to remark that the Baker criteria "seem useless in identifying what constitutes a political question." See Erwin Chemerinsky, Federal Jurisdiction 149 (5th ed. 2007). According to him, the political question doctrine cannot be understood by mechanically applying the factors enumerated in Baker, but "only by examining the specific areas where the Supreme Court has invoked [the doctrine]." Id. at 150. Although Dean Chemerinsky's derogation of the Baker factors is extreme, it is true that "the category of political questions is more amenable to

description by infinite itemization than by generalization." Comm. of U.S. Citizens Living in Nicaragua v. Reagan, 859 F.2d 929, 933 (D.C. Cir. 1988) (internal quotation marks and citations omitted).

An examination of the specific areas in which courts have invoked the political question doctrine reveals that national security, military matters and foreign relations are "'quintessential sources of political questions.'" See El-Shifa, 607 F.3d at 841 (quoting Bancoult v. McNamara, 445 F.3d 427, 433 (D.C. Cir. 2006)); see also Haig v. Agee, 453 U.S. 280, 292 (1981) (explaining that "[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention"). As the D.C. Circuit recently explained, cases involving national security and foreign relations "raise issues that 'frequently turn on standards that defy judicial application' or 'involve the exercise of a discretion demonstrably committed to the executive or legislature.'" El-Shifa, 607 F.3d at 841 (quoting Baker, 369 U.S. at 211). Unlike the political branches, the Judiciary has "no covert agents, no intelligence sources, and no policy advisors." See Schneider, 412 F.3d at 196. Courts are thus institutionally ill-equipped "to assess the nature of battlefield decisions," DaCosta v. Laird, 471 F.2d 1146, 1155 (2d Cir. 1973), or to "define the standard for the government's use of covert operations in conjunction with political turmoil in another country," Schneider, 412 F.3d at 197. These types of decisions involve "delicate, complex" policy judgments with "large elements of prophecy," and "are decisions of a kind for which the Judiciary has neither aptitude, facilities, nor responsibility." Chicago & S. Air Lines v. Waterman Corp., 333 U.S. 103, 111 (1948). The difficulty that U.S. courts would encounter if they were tasked with "ascertaining the 'facts' of military decisions exercised thousands of miles from the forum, lies at the heart of the determination whether the question

[posed] is a 'political' one." DaCosta, 471 F.2d at 1148.

At the same time, the Supreme Court has also made clear that "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." Baker, 369 U.S. at 211.[13] Although "'attacks on foreign policymaking are nonjusticiable, claims alleging non-compliance with the law are justiciable, even though the limited review that the court undertakes may have an effect on foreign affairs.'" Schneider, 412 F.3d at 198 (quoting DKT Memorial Fund Ltd. v. Agency for Int'l Dev., 810 F.2d 1236, 1238 (D.C. Cir. 1987)). The political question doctrine, the Supreme Court has warned, was only designed to cover a "narrow" category of "carefully defined" cases, and should not be employed as "an ad hoc litmus test of [courts'] reactions to the desirability of and need for judicial application of constitutional or statutory standards to a given type of claim." Davis v. Bandemer, 478 U.S. 109, 126 (1986). Hence, in order to decide whether a particular legal challenge constitutes an impermissible "attack on foreign policymaking" or is instead a justiciable claim with a permissible "effect on foreign affairs," a court "must conduct 'a discriminating analysis of the particular question posed' in the 'specific case.'" El-Shifa, 607 F.3d at 841 (quoting Baker, 369 U.S. at 211).

Judicial resolution of the "particular questions" posed by plaintiff in this case would require this Court to decide: (1) the precise nature and extent of Anwar Al-Aulaqi's affiliation with AQAP; (2) whether AQAP and al Qaeda are so closely linked that the defendants' targeted killing of Anwar Al-Aulaqi in Yemen would come within the United States's current armed conflict with al Qaeda; (3) whether (assuming plaintiff's proffered legal standard applies) Anwar

[13] Indeed, since Baker, the Supreme Court has only sustained a political question claim twice. See Walter Nixon v. United States, 506 U.S. 224 (1993); Gilligan v. Morgan, 413 U.S. 1 (1973).

Al-Aulaqi's alleged terrorist activity renders him a "concrete, specific, and imminent threat to life or physical safety," see Compl., Prayer for Relief (c); and (4) whether there are "means short of lethal force" that the United States could "reasonably" employ to address any threat that Anwar Al-Aulaqi poses to U.S. national security interests, see id. Such determinations, in turn, would require this Court, in defendants' view, to understand and assess "the capabilities of the [alleged] terrorist operative to carry out a threatened attack, what response would be sufficient to address that threat, possible diplomatic considerations that may bear on such responses, the vulnerability of potential targets that the [alleged] terrorist[] may strike, the availability of military and non-military options, and the risks to military and nonmilitary personnel in attempting application of non-lethal force." Defs.' Mem. at 26; see also Mot. Hr'g Tr. 38:6-14. Viewed through these prisms, it becomes clear that plaintiff's claims pose precisely the types of complex policy questions that the D.C. Circuit has historically held non-justiciable under the political question doctrine.

Most recently, in El-Shifa v. United States the D.C. Circuit examined whether the political question doctrine barred judicial resolution of claims by owners of a Sudanese pharmaceutical plant who brought suit seeking to recover damages after their plant was destroyed by an American cruise missile. President Clinton had ordered the missile strike in light of intelligence indicating that the plant was "'associated with the [Osama] bin Ladin network' and 'involved in the production of materials for chemical weapons.'" El-Shifa, 607 F.3d at 838 (internal citation omitted). The plaintiffs maintained that the U.S. government had been negligent in determining that the plant was tied "to chemical weapons and Osama bin Laden," and therefore sought "a declaration that the government's failure to compensate them for the

destruction of the plant violated customary international law, a declaration that statements government officials made about them were defamatory, and an injunction requiring the government to retract those statements." Id. at 840. Dismissing the plaintiffs' claims as non-justiciable under the political question doctrine, the D.C. Circuit explained that "[i]n military matters . . . the courts lack the competence to assess the strategic decision to employ force or to create standards to determine whether the use of force was justified or well-founded." Id. at 844. Rather than endeavor to resolve questions beyond the Judiciary's institutional competence, the court held that "[i]f the political question doctrine means anything in the arena of national security and foreign relations, it means the courts cannot assess the merits of the President's decision to launch an attack on a foreign target." Id.

Here, plaintiff asks this Court to do exactly what the D.C. Circuit forbid in El-Shifa -- assess the merits of the President's (alleged) decision to launch an attack on a foreign target. Although the "foreign target" happens to be a U.S. citizen, the same reasons that counseled against judicial resolution of the plaintiffs' claims in El-Shifa apply with equal force here. Just as in El-Shifa, any judicial determination as to the propriety of a military attack on Anwar Al-Aulaqi would "'require this court to elucidate the . . . standards that are to guide a President when he evaluates the veracity of military intelligence.'" Id. at 846 (quoting El-Shifa Pharm. Indus. Co. v. United States, 378 F.3d 1346, 1365 (Fed. Cir. 2004)). Indeed, that is just what plaintiff has asked this Court to do. See Compl., Prayer for Relief (d) (requesting that the Court order the defendants to "disclose the criteria used in determining whether the government will carry out the targeted killing of a U.S. citizen"). But there are no judicially manageable standards by which courts can endeavor to assess the President's interpretation of military intelligence and his

resulting decision -- based on that intelligence -- whether to use military force against a terrorist target overseas. See El-Shifa, 378 F.3d at 1367 n. 6 (expressing the view that "it would be difficult, if not extraordinary, for the federal courts to discover and announce the threshold standard by which the United States government evaluates intelligence in making a decision to commit military force in an effort to thwart an imminent terrorist attack on Americans"). Nor are there judicially manageable standards by which courts may determine the nature and magnitude of the national security threat posed by a particular individual. In fact, the D.C. Circuit has expressly held that the question whether an organization's alleged "terrorist activity" threatens "the national security of the United States" is "nonjusticiable." People's Mohahedin Org. of Iran v. U.S. Dep't of State, 182 F.3d 17, 23 (D.C. Cir. 1999). Given that courts may not undertake to assess whether a particular organization's alleged terrorist activities threaten national security, it would seem axiomatic that courts must also decline to assess whether a particular individual's alleged terrorist activities threaten national security. But absent such a judicial determination as to the nature and extent of the alleged national security threat that Anwar Al-Aulaqi poses to the United States, this Court cannot possibly determine whether the government's alleged use of lethal force against Anwar Al-Aulaqi would be "justified or well-founded." See El-Shifa, 607 F.3d at 844. Thus, the second Baker factor -- a "lack of judicially discoverable and manageable standards" for resolving the dispute -- strongly counsels against judicial review of plaintiff's claims.

The type of relief that plaintiff seeks only underscores the impropriety of judicial review here. Plaintiff requests both a declaration setting forth the standard under which the United States can select individuals for targeted killing as well as an injunction prohibiting defendants

from intentionally killing Anwar Al-Aulaqi unless he meets that standard -- i.e., unless he "presents a concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threat." Compl., Prayer for Relief (a), (c). Yet plaintiff concedes that the "'imminence' requirement" of his proffered legal standard would render any "real-time judicial review" of targeting decisions "infeasible," Pl.'s Opp. at 17, 30, and he therefore urges this Court to issue his requested preliminary injunction and then enforce the injunction "through an after-the-fact contempt motion or an after-the-fact damages action." Id. at 17-18. But as the D.C. Circuit has explained, "[i]t is not the role of judges to second-guess, with the benefit of hindsight, another branch's determination that the interests of the United States call for military action." El-Shifa, 607 F.3d at 844. Such military determinations are textually committed to the political branches. See Schneider, 412 F.3d at 194-95 (explaining that "Article I, Section 8 of the Constitution . . . is richly laden with the delegation of foreign policy and national security powers to Congress," while "Article II likewise provides allocation of foreign relations and national security powers to the President, the unitary chief executive" and Commander in Chief of the Army and Navy). Moreover, any post hoc judicial assessment as to the propriety of the Executive's decision to employ military force abroad "would be anathema to . . . separation of powers" principles. See El-Shifa, 607 F.3d at 845. The first, fourth, and sixth Baker factors thus all militate against judicial review of plaintiffs' claims, since there is a "textually demonstrable constitutional commitment" of the United States's decision to employ military force to coordinate political departments (Congress and the Executive), and any after-the-fact judicial review of the Executive's decision to employ military force abroad would reveal a "lack of respect due

coordinate branches of government" and create "the potentiality of embarrassment of multifarious pronouncements by various departments on one question." Baker, 369 U.S. at 217.

The mere fact that the "foreign target" of military action in this case is an individual -- rather than alleged enemy property -- does not distinguish plaintiff's claims from those raised in El-Shifa for purposes of the political question doctrine. The D.C. Circuit has on several occasions dismissed claims on political question grounds where resolution of those claims would require a judicial determination as to the propriety of the use of force by U.S. officials against a specific individual abroad. For example, the court in Harbury v. Hayden dismissed as non-justiciable the claims of an American widow who alleged that her husband -- a Guatemalan rebel fighter -- had been tortured and killed by Guatemalan army officers working in conjunction with the CIA in Guatemala. See 522 F.3d at 415. Notwithstanding the plaintiff's contention that "U.S. officials were responsible for physically abusing and killing" her husband, the D.C. Circuit concluded that "the political question doctrine plainly applies to this case." Id. at 420.

Similarly, in Schneider v. Kissinger, the D.C. Circuit deemed non-justiciable the claims raised by the decedents of a Chilean general, who alleged that the United States had caused the general's kidnaping, torture, and death in furtherance of its Cold War efforts to overthrow the leftist Chilean leader Salvador Allende. 412 F.3d at 191-92. As the Schneider court explained, "in order to determine whether the covert operations which allegedly led to the tragic death of [the general] were wrongful," it would first need to determine "whether, 35 years ago, at the height of the Cold War . . . 'it was proper for an Executive Branch official . . . to support covert actions against' a committed Marxist who was set to take power in a Latin American country." Id. at 196-97 (internal citation omitted). The court conceded that it may have been a "drastic

measure" for the United States to ally itself with "dissidents in another country to kidnap a national of that country," but nonetheless concluded that any 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." Id. at 197. Because there were no judicially "discoverable and manageable standards for the resolution" of the plaintiffs' claims, the court dismissed the case as posing a non-justiciable political question. See id.; see also Gonzalez-Vera, 449 F.3d at 1264 (holding non-justiciable claims alleging that Henry Kissinger and other U.S. executive officials cooperated with Chilean dictator Augusto Pinochet to commit human rights abuses in Chile, since "[w]hatever Kissinger did as National Security Advisor or Secretary of State 'can hardly be called anything other than foreign policy'") (internal citation omitted); Bancoult, 445 F.3d at 436 (dismissing claims by former residents of the Chagos Archipelago, who alleged that the United States had caused the forcible relocation and killing of island residents in the 1960s in order to establish a military base on the island, on the ground that the "specific tactical measures" employed by the United States in depopulating the island were "inextricably intertwined with the underlying strategy of establishing a regional military presence" -- an unreviewable political question).

Plaintiff's claim is distinguishable from those asserted in these cases in only one meaningful respect: Anwar Al-Aulaqi -- unlike the Guatemalan rebel fighter in Harbury, the Chilean general in Schneider, the other Chileans in Gonzalez-Vera, or the Chagos Archipelago inhabitants in Bancoult -- is a U.S. citizen. The significance of Anwar Al-Aulaqi's U.S. citizenship is not lost on this Court. Indeed, it does not appear that any court has ever -- on political question doctrine grounds -- refused to hear a U.S. citizen's claim that his personal

constitutional rights have been violated as a result of U.S. government action taken abroad.

Nevertheless, there is inadequate reason to conclude that Anwar Al-Aulaqi's U.S. citizenship -- standing alone -- renders the political question doctrine inapplicable to plaintiff's claims. Plaintiff cites two contexts in which courts have found claims asserting violations of U.S. citizens' constitutional rights to be justiciable despite the fact that those claims implicate grave national security and foreign policy concerns. See Pl.'s Opp. at 22-23, 25-27. Courts have been willing to entertain habeas petitions from U.S. citizens detained by the United States as enemy combatants, see, e.g., Hamdi, 542 U.S. at 509, and they have also heard claims from U.S. citizens alleging unconstitutional takings of their property by the U.S. military abroad, see, e.g., Ramirez de Arellano, 745 F.2d at 1511-12. But habeas petitions and takings claims are both much more amenable to judicial resolution than the claims raised by plaintiff in this case.

Courts have been willing to hear habeas petitions (from both U.S. citizens and aliens) because "the Constitution specifically contemplates a judicial role" for claims by individuals challenging their detention by the Executive. See El-Shifa, 607 F.3d at 848-49; see also Boumediene v. Bush, 553 U.S. 723, 745 (2008) (explaining that the Suspension Clause "protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account"). While the Suspension Clause reflects a "textually demonstrable commitment" of habeas corpus claims to the Judiciary, see Baker, 369 U.S. at 217, there is no "constitutional commitment to the courts for review of a military decision to launch a missile at a foreign target," El-Shifa, 607 F.3d at 849. Indeed, such military decisions are textually committed not to the Judiciary, but to the political branches. See Schneider, 412 F.3d at 194-96. Moreover, the resolution of habeas petitions does not require expertise beyond the purview of the Judiciary.

Although plaintiff is correct to point out that habeas cases involving Guantanamo detainees often involve judicial scrutiny of highly sensitive military and intelligence information, see Mot. Hr'g Tr. 54:7-10, 83:24-84:1, such information is only used to determine whether "the United States has unjustly deprived an American citizen of liberty through acts it has already taken." Abu Ali v. Ashcroft, 350 F. Supp. 2d 28, 65 (D.D.C. 2004); see also Defs.' Mem. at 31. These post hoc determinations are "precisely what courts are accustomed to assessing." Abu Ali, 350 F. Supp. 2d at 65. But courts are certainly not accustomed to assessing claims like those raised by plaintiff here, which seek to prevent future U.S. military action in the name of national security against specifically contemplated targets by the imposition of judicially-prescribed legal standards enforced through "after-the-fact contempt motion[s]" or "after-the-fact damages action[s]." See Pl.'s Opp. at 17-18. Hence, the Baker factors dictate a different outcome for plaintiff's claims than for habeas petitions filed by detainees at Guantanamo Bay.

Plaintiff's claims are also fundamentally distinct from those in which U.S. citizens have been permitted to sue the United States for alleged unconstitutional takings of their property by the U.S. military abroad. In Ramirez de Arellano, the D.C. Circuit declined to dismiss as non-justiciable the claims brought by U.S. citizens who asserted that the U.S. military had unlawfully expropriated their cattle ranch in Honduras in violation of the Fifth Amendment. 745 F.2d at 1511-12. The D.C. Circuit, ruling en banc, explained that the plaintiffs' claims did not constitute a challenge "to the United States military presence in Honduras" but instead were "narrowly focused on the lawfulness of the United States defendants' occupation and use of the plaintiffs' cattle ranch." Id. at 1512. Once the court characterized the case as a land dispute between the plaintiffs and the U.S. government, it had little difficulty concluding that "adjudication of the

defendants' constitutional authority to occupy and use the plaintiffs' property" did not require "expertise beyond the capacity of the Judiciary" or "unquestioning adherence to a political decision by the Executive." See id. at 1513, 1514; see also Comm. of U.S. Citizens Living in Nicaragua, 859 F.2d at 934-35 (finding justiciable the Fifth Amendment claims raised by U.S. citizens living in Nicaragua, who alleged that the United States's funding of the Contras in Nicaragua deprived them of their liberty and property without due process by making them "targets of the Contra 'resistance,'" but ultimately declining to hear the plaintiffs' claims since there was "no allegation that the United States itself has participated in or in any way sought to encourage injuries to Americans in Nicaragua").

Unlike Ramirez, the questions posed in this case do require both "expertise beyond the capacity of the Judiciary" and the need for "unquestioning adherence to a political decision by the Executive." Here, plaintiff asks the Judiciary to limit the circumstances under which the United States may employ lethal force against an individual abroad whom the Executive has determined "plays an operational role in AQAP planning terrorist attacks against the United States." Defs.' Mem. at 36; see also Clapper Decl. ¶¶ 13-17. The injunctive and declaratory relief sought by plaintiff would thus be vastly more intrusive upon the powers of the Executive than the relief sought in Ramirez, where the court was only called upon to adjudicate "the defendants' constitutional authority to occupy and use the plaintiffs' property." Ramirez, 745 F.2d at 1513. Moreover, although resolution of the plaintiffs' claims in Ramirez only required "interpretations of the Constitution and of federal statutes," which are "quintessential tasks of the federal Judiciary," see id., resolution of the claims in this case would require assessment of "strategic choices directing the nation's foreign affairs [that] are constitutionally committed to the political

branches," El-Shifa, 607 F.3d at 843.

To be sure, this Court recognizes the somewhat unsettling nature of its conclusion -- that there are circumstances in which the Executive's unilateral decision to kill a U.S. citizen overseas is "constitutionally committed to the political branches" and judicially unreviewable. But this case squarely presents such a circumstance. The political question doctrine requires courts to engage in a fact-specific analysis of the "particular question" posed by a specific case, see El-Shifa, 607 F.3d at 841 (quoting Baker, 369 U.S. at 211), and the doctrine does not contain any "carve-out" for cases involving the constitutional rights of U.S. citizens. While it may be true that "the political question doctrine wanes" where the constitutional rights of U.S. citizens are at stake, Abu Ali, 350 F. Supp. at 64, it does not become inapposite. Indeed, in one of the only two cases since Baker v. Carr in which the Supreme Court has dismissed a case on political question grounds, the plaintiffs were U.S. citizens alleging violations of their constitutional rights. See Gilligan v. Morgan, 413 U.S. 1, 3 (1973).

In Gilligan, students at Kent State University brought suit in the wake of the "Kent State massacre," seeking declaratory and injunctive relief that would prohibit the Ohio Governor from "prematurely ordering National Guard troops to duty in civil disorders" and "restrain leaders of the National Guard from future violation of the students' constitutional rights." Id. According to the Court, the plaintiffs were, in essence, asking for "initial judicial review and continuing surveillance by a federal court over the training, weaponry, and orders of the Guard." Id. at 6. Dismissing the plaintiffs' claims as presenting non-justiciable political questions,[14] the Court

[14] The precise scope of the Court's holding in Gilligan is not entirely clear. Although the Court noted that "the questions to be resolved . . . are subjects committed expressly to the political branches of government," it went on to state that "[t]hese factors, when coupled with the

noted that "[i]t would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches." Id. at 10. As the Court explained, the Judiciary lacks the "competence" to make "complex subtle, and professional decisions as to the composition, training, equipping, and control of a military force," and "[t]he ultimate responsibility for these decisions is appropriately vested in branches of the government which are periodically subject to electoral accountability." Id.

So, too, does the Constitution place responsibility for the military decisions at issue in this case "in the hands of those who are best positioned and most politically accountable for making them." Hamdi, 542 U.S. at 531; see also Oetjen v. Cent. Leather Co., 246 U.S. 297, 302 (1918) (explaining that "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative - 'the political' - departments of the government, and the propriety of what may be done in the exercise of this power is not subject to judicial inquiry or decision"). "Judges, deficient in military knowledge . . . and sitting thousands of miles away from the field of action, cannot reasonably or appropriately determine" if a specific military operation is necessary or wise. DaCosta, 471 F.2d at 1155. Whether the alleged "terrorist activities" of an individual so threaten the national security of the United States as to warrant that military action be taken against that individual is a "political judgment[]. . . [which] belong[s] in the domain of political power not subject to judicial intrusion or inquiry." El-Shifa, 607 F.3d at 843 (internal quotation marks and citations omitted).

Contrary to plaintiff's assertion, in holding that the political question doctrine bars

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uncertainties as to whether a live controversy still exists and the infirmity of the posture of respondents as to standing, render the claim . . . nonjusticiable." 413 U.S. at 10.

plaintiff's claims, this 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." See Mot. Hr'g Tr. 118:1-2. Rather, 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, see Clapper Decl. ¶ 15, 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," id. ¶ 13. 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." 412 F.3d at 197. 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.

IV. The Military and State Secrets Privilege

Defendants invoke the military and state secrets privilege as the final basis for dismissal of plaintiff's complaint. The state secrets privilege is premised on the recognition that "in exceptional circumstances courts must act in the interest of the country's national security to prevent disclosure of state secrets, even to the point of dismissing a case entirely." See Mohamed v. Jeppesen Dataplan, Inc., 614 F.3d 1070, 1077 (9th Cir. 2010) (en banc) (citing