

**Course:** Terrorism and the Law – Spring 2020  
**Instructors:** Abe Martinez and Alamdar Hamdani

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**CONTENT:** This course will focus on the U.S. Government's authority and limitations to prevent and prosecute acts of terrorism in the homeland and elsewhere. Special attention will be given to national security policies and laws that affect the individual privacy rights of all citizens. Topics will include the investigation and interrogation of terrorism targets, the prosecution of alleged terrorists in federal courts, the designation and detention of enemy combatants, military tribunals, and Executive powers as it relates to all of these topics. Attention will also be given to the use of secret wiretaps used by the FBI and other federal stakeholders to monitor and disrupt terrorist activity. Particular attention will be given to limits the courts place on the President and Congress as they attempt to protect the nation from attacks by foreign terrorist organizations. The course is taught by Assistant United States Attorneys who prosecute national security matters. In addition, guest speakers from the FBI, CIA and DOJ will discuss the role their agencies play in the war on terror.

**GRADE:** The grade in this class will be based on a written exam at the end of the semester made up of true/false, multiple choice, short answer, and short essay questions. Attendance and participation will make up 10% of the grade.

**ATTENDANCE:** The law school mandates that you attend 80% of the classes. You must comply with this requirement. Attendance will be taken each class.

**PARTICIPATION:** The class will be more rewarding if you participate in discussion and make a good faith effort to read all of the assigned materials. This will also improve your grade.

**OFFICE HOURS:**

Please email Abe Martinez at [abran.martinez@sbcglobal.net](mailto:abran.martinez@sbcglobal.net) or Alamdar Hamdani at [Alamdar.hamdani@gmail.com](mailto:Alamdar.hamdani@gmail.com) to set up an appointment.

**READING:** The majority of the reading materials are contained in the casebook titled "Counterterrorism Law," 3<sup>rd</sup> Edition, Dycus, Banks, Raven-Hansen, and Vladeck, published by Wolters Kluwer. Throughout the course, Professors Martinez and Hamdani will notify students of additional reading materials not found in the casebook. Students will be responsible for reading these additional materials.

# **SYLLABUS**

## **WHAT IS TERRORISM**

22 U.S.C. § 2656f(d)(2)

18 U.S.C. § 2332b(g)(5)

8 U.S.C. § 1182(a)(3)(B)(iii)-(iv)

[A Road Map for Congress to Address Domestic Terrorism](#), Mary McCord and Jason Blazakis, *Lawfare*, Feb. 27, 2019

## **PRESIDENT’S POWERS & CONSTITUTIONAL AUTHORITY**

*Prize Cases*, 67 U.S. 635 (1862)

*United States v. Curtiss-Wright*, 299 U.S. 304 (1936)

*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)

*Trump v. Hawaii*, 138 S.Ct. 2392 (2018)

## **DETECTING TERRORISTS AND CONDUCTING COUNTERTERRORISM INVESTIGATIONS**

### **Investigating Abroad—Extraterritorial Application of Constitutional Rights**

*Reid v. Covert*, 354 U.S. 1 (1957)

*United States v. Verdugo Urquidez*, 494 U.S. 259 (1990)

*United States v. Bin Laden*, 92 F.Supp.2d 189 (S.D.N.Y. 2000)

## **THE FOURTH AMENDMENT AND NATIONAL SECURITY**

*United States v. Ehrlichman*, 376 F.Supp. 29 (D.D.C. 1974)

*United States v. United States District Court (Keith)*, 407 U.S. 297 (1972)

*United States v. Truong Dinh Hung*, 629 F.2d 908 (D.N.M. 1980)

*In re Terrorist Bombings of U.S. Embassies in East Africa* (Fourth Amendment Challenges), 552 F.3d 157 (2nd Cir. 2008).

### **Intelligence & Evidence Gathering (FISA, Border Searches, & Third Party Records)**

*Smith v. Maryland*, 442 U.S. 735 (1979)

*United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010)

*United States v. Jones*, 565 U.S. 400 (2012)

*Carpenter v. United States*, 138 S.Ct. 2206 (2018)  
*United States v. Cotterman*, 709 F.3d 952 (9th Cir. 2013)  
*United States v. Rosen*, 447 F.Supp.2d 538 (E.D.Va. 2006)  
*United States v. Duggan*, 743 F.2d 59 (2nd Cir. 1984)  
***In re Sealed Case*, 310 F.3d 717 (FISA Court of Review 2002)**  
*Clapper v. Amnesty Int’l USA*, 133 S.Ct. 1138 (2013)

### **Interrogating Terrorist Suspects**

*New York v. Quarles*, 467 U.S. 649 (1984)  
*United States v. Abdulmutallab*, 2011 WL 3435243 (E.D.Mich. 2011)  
*Missouri v. Seibert*, 542 U.S. 600 (2004)  
*Office of Legal Counsel Memorandums on Torture*. Handouts

### **Criminalizing Treason, Terrorism, and Material Support – Foreign Terrorist Organization**

*United States v. Rahman*, 189 F.3d 88 (2nd Cir. 1999)  
*Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010)  
*United States v. Bin Laden*, 126 F.Supp.2d 264 (S.D.N.Y. 2000)

## **DETENTION OF TERRORIST SUSPECTS**

### **Suspending the Great Writ**

*Ex Parte Milligan*, 71 U.S. 2 (1866)  
*Johnson v. Eisentrager*, 339 U.S. 763 (1950)  
*Rasul v. Bush*, 542 U.S. 466 (2004)  
*Boumediene v. Bush*, 553 U.S. 723 (2008)

### **Military Detention of Terrorist Suspects (Part I)**

*Korematsu v. United States*, 323 U.S. 214 (1944)  
*Ex Parte Quirin*, 371 U.S. 1 (1942)  
Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001)  
*Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)

### **Government Discovery Obligations & Classified Issues**

Classified Information Procedures Act (CIPA), 18 U.S.C. App. III, §§1-16

United States Attorney's Manual, Criminal Resource Manual 2054 (synopsis of CIPA Procedures) found at <https://www.justice.gov/usam/criminal-resource-manual-2054-synopsis-classified-information-procedures-act-cipa>

### **Military Detention of Terrorist Suspects (Part II)**

*Rumsfeld v. Padilla*, 542 U.S. 426 (2004)

*Al-Marri v. Pucciarelli*, 534 F.3d 213 (2008)

*Al-Bihani v. Obama*, 590 F.3d 866 (D.C. Cir. 2010)

### **TRYING SUSPECTED TERRORISTS**

*United States v. Lee*, 90 F.Supp.2d 1324 (D.N.M. 2000)

*United States v. Rosen*, 487 F.Supp.2d 703 (E.D.Va. 2007)

### **Confronting Secret Witnesses**

*United States v. Marzook*, 412 F.Supp.2d 913 (N.D. Ill. 2006)

### **Handling Classified Exculpatory Evidence**

*United States v. Abu Ali*, 528 F.3d 210 (4th Cir. 2008)

*United States v. Moussaoui*, 365 F.3d 292 (4th Cir. 2004)

*United States v. Ghailani*, 743 F.Supp.2d 261 (S.D.N.Y. 2010)

### **Trials as Unlawful Enemy Combatants**

Military Commissions Act of 2006

*Hamdan v. Rumsfeld*, 542 U.S. 507 (2004)

*Hamdan v. United States*, 696 F.3d 1238 (D.C. Cir. 2012)

Military Commissions Act of 2009

### **LETHAL OPERATIONS AGAINST CITIZENS**

Dep't of Justice: White Paper: Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or an Associated Force (undated), available at

[http://msnbcmedia.msn.com/i/msnbc/sections/news/020413\\_DOJ\\_White\\_Paper.pdf](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf).

Memorandum for the Attorney General re: Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi (July 16, 2010), available at <https://www.justsecurity.org/wp-content/uploads/2014/06/OLC-Awlaki-Memo.pdf>