Course: Terrorism and the Law – Summer I 2016
Instructors: Abe Martinez and Alamdar Hamdani

**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 al Qaeda, ISIS and other foreign terrorist organizations. Guest speakers from the FBI, CIA and DOD will appear in class to 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 or Alamdar Hamdani at Alamdar.hamdani@gmail.com to set up an appointment.

**READING:** The majority of the reading materials are contained in the casebook titled “Counterterrorism Law,” 2nd Edition, Dycus, Banks, Raven-Hansen, 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)
Department of State Country Reports on Terrorism 2014 at 7-9, 328-29, found at http://www.state.gov/documents/organization/239631.pdf

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)

THE FOURTH AMENDMENT AND NATIONAL SECURITY

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)

TARGETING TERRORISTS AND CONDUCTING COUNTERTERRORISM INVESTIGATIONS

Intelligence Gathering (FISA, Terrorist Surveillance Program, & 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. 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)

Investigating Abroad—Extraterritorial Application of Constitutional Rights
Reid v. Covert, 354 U.S. 1 (1957)
In re Terrorist Bombings of U.S. Embassies in East Africa (Fourth Amendment Challenges), 552 F.3d 157 (2nd Cir. 2008).
United States v. Cotterman, 709 F.3d 952 (9th Cir. 2013)

Interrogating Terrorist Suspects
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)

Detention of Terrorist Suspects

Suspending the Great Writ
Ex Parte Milligan, 71 U.S. 2 (1866)
Johnson v. Eisentrager, 339 U.S. 763 (1950)

Military Detention of Terrorist Suspects
Korematsu v. United States, 323 U.S. 214 (1944)
Ex Parte Quirin, 371 U.S. 1 (1942)
Al-Bihani v. Obama, 590 F.3d 866 (D.C. Cir. 2010).

Trying Suspected Terrorists

Government Discovery Obligations & Classified Issues
Classified Information Procedures Act (CIPA), 18 U.S.C. App. III, §§1-16


**Confronting Secret Witnesses**


**Handling Classified Exculpatory Evidence**

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


**Trials as Unlawful Enemy Combatants**

Military Commissions Act of 2006


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

Military Commissions Act of 2009

**LETHAL OPERATIONS AGAINST CITIZENS**
