

Course: Terrorism and the Law – Spring 2022
Instructor: 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 domestic and foreign terrorist organizations. The course is taught by an Assistant United States Attorney who prosecutes national security matters. In addition, guest speakers from the FBI, CIA and DOJ will discuss the role their agencies play in dealing with national security issues.

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 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," 3rd Edition, Dycus, Banks, Raven-Hansen, and Vladeck, published by Wolters Kluwer. Throughout the course, Professor Hamdani will notify students of additional reading materials not found in the casebook. Students will be responsible for reading these additional materials.

NOTICES

UHLC Course Listing Course Note

(Face-to-Face) The UH registration system instruction mode for this course is listed in parenthesis. After student registration in November, there may be instruction mode changes to this course up through Jan. 5th, 2022, but notice of such changes will be sent to then-registered students. Instructors and students are expected to normally be physically present in the classroom. If the course has a final examination, it will be in a classroom requiring your physical presence. Other assessment, such as a mid term exam, may also be in a classroom. Whether this instructor will offer “remote presence” (starting a zoom meeting from the podium computer to enable student remote access on an occasional basis) for part or all of the semester is not known, but students should not rely on an expectation that remote presence will be available.

Counseling and Psychological Services (CAPS)

CAPS can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus.

www.uh.edu/caps/outreach/lets_talk.html .

Sexual Misconduct Policy

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system’s Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

Names and Pronouns

Chosen names and preferred pronouns (including non-binary ones such as they/them/their) must be respected in my classroom. Please feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronoun, or if you have concerns about how I or your classmates address you.

SYLLABUS

WHAT IS TERRORISM & INTRODUCTION

22 U.S.C. § 2656f(d)(2)
18 U.S.C. § 2332b(g)(5)
8 U.S.C. § 1182(a)(3)(B)(iii)-(iv)

Domestic Terrorism v International Terrorism

- *National Strategy for Countering Domestic Terrorism*, found at <https://s3.documentcloud.org/documents/20891033/national-strategy-for-countering-domestic-terrorism.pdf>
- *A Road Map for Congress to Address Domestic Terrorism*, Mary McCord and Jason Blazakis, Lawfare, Feb. 27, 2019
- January 6, 2021 United States Capitol Domestic Terror Attack & Commission
 - Status and Types of Prosecutions
- Overseas Terrorism acts for FTOs and Home Grown Violent Extremists (HVEs)

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)

Military Detention of Terrorist Suspects (Part II)

Rumsfeld v. Padilla, 542 U.S. 426 (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>
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.

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>