2021-2022 Supplement

National Security Law
_Seventh Edition_

and

Counterterrorism Law
_Fourth Edition_
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## Contents

*Preface*  
*Table of Cases*  

<table>
<thead>
<tr>
<th>Note on Termination of Border Emergency</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>U.S. House of Reps. v. Mnuchin</em> (D.C. Cir. 2020)</td>
<td>1</td>
</tr>
<tr>
<td>Note on Border Wall Cases</td>
<td>3</td>
</tr>
<tr>
<td>Note on Halting Diversion of Funds</td>
<td>4</td>
</tr>
<tr>
<td>Note on <em>Kareem v. Haspel</em> (D.C. Cir. 2021)</td>
<td>5</td>
</tr>
<tr>
<td><em>U.S. House of Reps. v. Mnuchin</em> (D.C. Cir. 2020)</td>
<td>6</td>
</tr>
<tr>
<td><em>Hernandez v. Mesa</em> (2020)</td>
<td>10</td>
</tr>
<tr>
<td>Note on <em>Hernandez v. Mesa</em> (2020)</td>
<td>24</td>
</tr>
<tr>
<td>Note on <em>Swartz v. Rodriguez</em> (2020)</td>
<td>24</td>
</tr>
<tr>
<td>Note on Extraterritorial Constitutional Rights</td>
<td>24</td>
</tr>
<tr>
<td>Note on <em>Nestlé USA, Inc. v. Doe</em> (2021)</td>
<td>26</td>
</tr>
<tr>
<td>Note on ICC Afghanistan Investigation</td>
<td>28</td>
</tr>
<tr>
<td>Note on Universal Jurisdiction for War Crimes</td>
<td>28</td>
</tr>
<tr>
<td>Note on Withdrawal from Afghanistan</td>
<td>29</td>
</tr>
<tr>
<td>Note on Operations in Syria</td>
<td>30</td>
</tr>
<tr>
<td>Note on H.R. 7500 (2020)</td>
<td>32</td>
</tr>
<tr>
<td>Note on S.J. Res. 68 (2020)</td>
<td>33</td>
</tr>
<tr>
<td>Contents</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Note on Trump Administration Targeting Standards</td>
<td>34</td>
</tr>
<tr>
<td>Note on <em>Kareem v. Haspel</em> (D.C. Cir. 2021)</td>
<td>35</td>
</tr>
<tr>
<td>Case Study: Targeting General Soleimani</td>
<td>35</td>
</tr>
<tr>
<td>Note on Ransomware Attacks on Power Grid</td>
<td>37</td>
</tr>
<tr>
<td>Note on Ransomware Attacks</td>
<td>37</td>
</tr>
<tr>
<td>Note on 2021 NATO Pledge</td>
<td>38</td>
</tr>
<tr>
<td>Note on Exec. Order 14,028 (May 12, 2021)</td>
<td>39</td>
</tr>
<tr>
<td>Note on Military Cyber Operations</td>
<td>40</td>
</tr>
<tr>
<td>Note on Cyber as a Weapon of Mass Destruction</td>
<td>40</td>
</tr>
<tr>
<td>Note on Increased Potential for Nuclear Conflict</td>
<td>41</td>
</tr>
<tr>
<td>Note on New START</td>
<td>42</td>
</tr>
<tr>
<td>Note on U.S. Withdrawal From Open Skies Treaty</td>
<td>42</td>
</tr>
<tr>
<td>Note on the Treaty on the Prohibition of Nuclear Weapons</td>
<td>42</td>
</tr>
<tr>
<td>Note on Presidential Control of Nuclear Weapons</td>
<td>43</td>
</tr>
<tr>
<td>Note on Presidential Instability and Chain of Command</td>
<td>43</td>
</tr>
<tr>
<td>Note on National Intelligence Priorities Framework</td>
<td>43</td>
</tr>
<tr>
<td>Note on National Security Memorandum 2 (2021)</td>
<td>44</td>
</tr>
<tr>
<td>Note on Covert Action and Cyber Operations</td>
<td>44</td>
</tr>
<tr>
<td>Note on Exceptions to Warrant Clause</td>
<td>45</td>
</tr>
<tr>
<td>Note on Purchase of Location Data</td>
<td>45</td>
</tr>
<tr>
<td>Note on Lone Wolf Provision</td>
<td>46</td>
</tr>
<tr>
<td>Note on Accuracy Concerns Before FISA Court</td>
<td>46</td>
</tr>
<tr>
<td>viii</td>
<td></td>
</tr>
</tbody>
</table>
Contents

Note on National Strategy for Countering Domestic Terrorism 74

United States v. Miselis (4th Cir. 2020) 76

Note on United States v. Stone and the 2021 Capitol Riot 94

Note on Torture and the Al-Nashiri Prosecution 95

Note on TOPOFF and COVID-19 95

Note on Pandemic Communication and Outreach 96

Planning for a Pandemic 98

Note on the Military’s Role in Vaccine Delivery 101

Note on Ransomware Attacks 101

Note on COVID-19 Pandemic Threat 102

Notes on COVID-19 Lockdown Restrictions 103

42 U.S.C. §265 111

Note on Federalism in the Time of COVID 111

Note on Supplies to Combat COVID-19 112


Note on George Floyd Protests 115

The Military’s Role in Elections 116

Note on Termination of the Border Wall National Emergency 121

Notes on Troops at the Polls and the Capitol 122

Note on General Flynn’s Proposed Coup d’Etat 124

Note on Former Presidents and Intelligence Briefings 125

Note on Edgar v. Haines (4th Cir. 2021) 126
Contents

Note on United States v. Snowden (E.D. Va. 2019) 126
Note on John Bolton Pre-Publication Review Dispute 126
Note on U.S. Fish & Wildlife Serv. v. Sierra Club (2021) 128
Note on Public Access to FISA Court Decisions 128
Note on Protecting Our Democracy Act, H.R. 8363 (2020) 130
Note on Trump v. Vance (2d Cir. 2020) 130
Note on Trump v. Mazars USA, LLP (D.C. Cir. 2020) 130
Note on McGahn and Mueller Report Litigation 132
Note on Pentagon Papers at 50 133
Note on Secret Investigations of the Media 133
Note on National Intelligence Council Report 135
Note on Rise of Domestic Extremism 136
Note on IC Report on Domestic Violent Extremists 136
Note on Operations in Syria 136
Note on H.R. 7500 (2020) 138
Note on Kaplan v. Lebanese Canadian Bank (2d Cir. 2021) 139
Note on Gonzalez v. Google LLC (9th Cir. 2021) 140
Note on Black Lives Matter DC v. Trump (D.D.C. 2021) 140
Preface

For most casebooks, the immediate aftermath of a new edition is relatively calm, with little need to quickly address new developments, and even less likelihood of multiple field-shifting events following shortly on the heels of publication. But as is so often true in the fields of National Security Law and Counterterrorism Law, and has so often been true for the *National Security Law* and *Counterterrorism Law* casebooks for which this *Supplement* exists, the last year has been . . . busy. Indeed, the new content in this *Supplement* runs to a total of 142 pages. Not only has the COVID-19 pandemic raised many important, novel, and complex legal questions about governmental emergency powers, especially in the field of public health, but the 2020 election and its violent aftermath have likewise surfaced (or resurfaced) long-running debates over the difference between international and domestic terrorism — and how (if at all) the authorities for the former can and should be mapped onto the latter.

Nor are these questions entirely in the rear-view mirror. As this *Supplement* goes to press, for example, litigation is ongoing over many of the state and federal responses to COVID-19, and the criminal cases arising out of the January 6 violence at the U.S. Capitol continue to produce new and interesting judicial decisions that, in some cases, must construe long-dormant statutory authorities. Meanwhile, the Supreme Court is set to consider during its October 2021 term its first-ever case about the Foreign Intelligence Surveillance Act (FISA), along with a major case about the state secrets privilege as it relates to the CIA’s torture of terrorism suspects overseas in the first years after the September 11 attacks.

Speaking of FISA, there have also been a number of important new developments on that front in all three branches of government — including curious decisions by Congress to allow surveillance authorities that had expanded dramatically after September 11 to either revert to their pre-9/11 form or completely expire. The *Supplement* addresses these developments in detail, as well.

And, of course, there is still the ongoing military detention and military commission regimes at Guantánamo, where 40 men remain in custody as this *Supplement* goes to press. New in this *Supplement* is detailed coverage of the *Al-Hela* case — in which the en banc D.C. Circuit is set to hear argument in September 2021, and which may have
major implications not just for Guantánamo habeas cases, but for the constitutional rights of non-citizens outside the United States more generally.

As ever, we have tried to keep up with these and many other developments without overly complicating the use of the core casebooks. Achieving that practical goal necessarily requires discriminating selection and presentation. As in past supplements, we have carefully edited the principal new cases and supplied a minimum of new Notes and Questions, trusting our enterprising adopters to use (and embellish) them as they feel best fits their teaching goals.

To aid us in this project, we have also brought onboard a terrific new co-author, Professor Emily Berman from the University of Houston Law Center, who adds her formidable professional and academic background and cutting-edge scholarship to our cohort.

This Supplement serves two closely related casebooks: National Security Law (7th ed. 2020) and Counterterrorism Law (4th ed. 2020). This Preface is followed immediately by two Teacher’s Guides, one for each book, which indicate the placement of supplemental materials within each casebook (and are intended to make it easier for adopters to match Supplement entries to their syllabi). Each document in the Supplement is accompanied by a reference to one or both casebooks, depending on where the relevant underlying material appears. For example, the insert concerning the ongoing dispute over the government’s reliance upon evidence obtained through torture in one of the Guantánamo military commission prosecutions appears with this instruction: [NSL p. 1156, CTL p. 808. Insert after Note 6.] “NSL” refers to National Security Law (7th ed.), and “CTL” to Counterterrorism Law (4th ed.).

As important new developments arise during the coming year, we will continue to document them by posting edited new materials on the websites for the two casebooks — supplements to this Supplement — from which they may be downloaded by teachers and shared with students. The website for National Security Law (7th ed.) may be found at https://www.wklegaledu.com/Dycus-NationalSec7; the website for Counterterrorism Law (4th ed.) may be found at https://www.wklegaledu.com/Dycus-Counterterrorism4. For each book, log in with a validated professor account for access to our materials.

However, adopters are forewarned that when events move as quickly as they have in our field, the first responsibility for keeping up lies with them. Thus, the adopter who wishes to discuss the implications of the January 6, 2021 riots for domestic terrorism laws, or the government’s
Preface

authority to buy third-party data or to obtain the metadata of journalists in a leak investigation, should consider the materials in the casebooks and this Supplement as, at most, a platform for discussion, on which they must build with contemporaneous materials that they themselves locate and curate from the media and from the wonderful national security blogs available to them. (And, when they do, share them with us!)

As always, we are extremely grateful to our adopters, fellow members of the National Security Law Section of the Association of American Law Schools, fellow members of the Editorial Board of the Journal of National Security Law & Policy, fellow casebook authors (our collaborators in building the field), members of the ABA Standing Committee on Law and National Security, and our many friends in the national security community. We also wish to thank our research assistants. Finally, we wish to express our gratitude to Carol McGeehan, John Devins, and Jeff Slutzky, our long-time editors and friends, for their encouragement and support in this work.

Stephen Dycus
William C. Banks
Emily Berman
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Stephen I. Vladeck

July 15, 2021

Casebook Page Supplement Page

Chapter 3. The President’s National Security Powers
Page 75 Note on Termination of Border Emergency 1

Chapter 4. Congress’s National Security Powers
Page 107 U.S. House of Reps. v. Mnuchin (D.C. Cir. 2020) 1
Page 121 Note on Border Wall Cases 3
Page 122 Note on Halting Diversion of Funds 4

Chapter 5. The Courts’ National Security Powers
Page 138 Note on Kareem v. Haspel (D.C. Cir. 2021) 5
Page 140 U.S. House of Reps. v. Mnuchin (D.C. Cir. 2020) 6
Page 151 Hernandez v. Mesa (2020) 10

Chapter 7. The Extraterritorial Reach of U.S. Law
Page 227 Note on Hernandez v. Mesa (2020) 24
Page 228 Note on Swartz v. Rodriguez (2020) 24
Page 228 Note on Extraterritorial Constitutional Rights 24
Page 237 Note on Nestlé USA, Inc. v. Doe (2021) 26

Chapter 8. The Right to Wage War (jus ad bellum)
Page 262 Note on ICC Afghanistan Investigation 28
Chapter 9. International Humanitarian Law (jus in bello)

Page 285 Note on Universal Jurisdiction for War Crimes 28

Chapter 11. Collective Use of Force

Page 343 Note on Withdrawal from Afghanistan 29

Chapter 12. Unilateral Use of Force

Page 364 Note on Operations in Syria 30
Page 367 Note on H.R. 7500 (2020) 32
Page 369 Note on S.J. Res. 68 (2020) 33

Chapter 13. Targeting Terrorists

Page 397 Note on Trump Administration Targeting Standards 34
Page 409 Note on Kareem v. Haspel (D.C. Cir. 2021) 35
Page 411 Case Study: Targeting General Soleimani 35

Chapter 14. Cyber Operations

Page 415 Note on Ransomware Attacks on Power Grid 37
Page 415 Note on Ransomware Attacks 37
Page 419 Note on 2021 NATO Pledge 38
Page 428 Note on Exec. Order 14,028 (May 12, 2021) 39
Page 431 Note on Military Cyber Operations 40
Page 432 Note on Cyber as a Weapon of Mass Destruction 40

Chapter 15. Nuclear War

Page 440 Note on Increased Potential for Nuclear Conflict 41
Page 444 Note on New START 42
Page 445 Note on U.S. Withdrawal From Open Skies Treaty 42
Page 455 Note on the Treaty on the Prohibition of Nuclear Weapons 42
Page 458 Note on Presidential Control of Nuclear Weapons 43
Page 464 Note on Presidential Instability 43
Chapter 17. Introducing Intelligence

Page 492 Note on National Intelligence Priorities Framework 43

Chapter 18. The Intelligence Community:
Organization and Authority

Page 513 Note on National Security Memorandum 2 (2021) 44

Chapter 19. Covert Operations

Page 563 Note on Covert Action and Cyber Operations 44

Chapter 20. The Fourth Amendment and
National Security

Page 580 Note on Exceptions to Warrant Clause 45
Page 598 Note on Purchase of Location Data 45

Chapter 21. Congressional Authority for Foreign
Intelligence Surveillance

Page 624 Note on Lone Wolf Provision 46
Page 625 Note on Accuracy Concerns Before FISA Court 46
Page 627 Note on Roving Wiretaps 48

Chapter 22. Programmatic Electronic Surveillance for
Foreign Intelligence

Page 675 Note on Querying Rules for Section 702 Data 49
Page 677 Note on United States v. Hasbajrami (2d Cir. 2019) 49

Chapter 23. The Third-Party Doctrine:
Origins and Applications

Page 699 Note on Purchasing Location Data 50
Chapter 24. The Collection and Use of Third-Party Records

Page 707  Note on Business Records Provision 50
Page 727  Note on Restored Business Records Provision 51
Page 728  Note on Recent Leak Investigations 53
Page 729  Bulk Collection of Third-Party Records 54
Page 740  Third-Party Records: Summary of Basic Principles 63

Chapter 25. Screening for Security

Page 754  Note on Alasaad v. Mayorkas (1st Cir. 2021) 64
Page 756  Note on Alasaad v. Mayorkas (1st Cir. 2021) 65
Page 771  Note on Elhady v. Kable (4th Cir. 2021) 65
Page 774  Note on Elhady v. Kable (4th Cir. 2021) 66

Chapter 26. Profiling and Travel Bans

Page 818  Note on Arab American Civil Rights League v. Trump (6th Cir. 2021) 67
Page 818  Proclamation Ending Trump Travel Ban 68

Chapter 28. Habeas Corpus: The Scope of the Suspension Clause

Page 862  Note on DHS v. Thuraissigiam (2020) 69

Chapter 30. Military Detention of Non-U.S. Persons

Page 916  Note on Al-Hela and the Laws of War 70
Page 920  Note on Al-Hela and Substantial Support 71
Page 932  Note on Al-Hela and the Due Process Debate 71

Chapter 31. Preventive Detention

Page 958  Note on Hassoun v. Searls (2d Cir. 2020) 72
Chapter 33. Case Study of Coercive Interrogation of Detainees in U.S. Custody After 9/11

Page 1023  Note on CACI v. Al Shimari (2021)  73
Page 1027  Note on U.S. Efforts to Block Foreign Torture Investigations  74

Chapter 34. Criminalizing Terrorism and Its Precursors

Page 1032  Note on National Strategy for Countering Domestic Terrorism  74
Page 1033  United States v. Miselis (4th Cir. 2020)  76
Page 1048  Note on United States v. Stone and the 2021 Capitol Riot  94

Chapter 36. Trial by Military Commission

Page 1156  Note on Torture and the Al-Nashiri Prosecution  95

Chapter 37. Homeland Security

Page 1164  Note on TOPOFF and COVID-19  95
Page 1166  Note on Pandemic Communication and Outreach  96
Page 1170  Planning for a Pandemic  98
Page 1171  Note on the Military’s Role in Vaccine Delivery  101
Page 1171  Note on Ransomware Attacks  101
Page 1172  Note on COVID-19 Pandemic Threat  102
Page 1178  Notes on COVID-19 Lockdown Restrictions  103
Page 1180  42 U.S.C. §265  111
Page 1182  Note on Federalism in the Time of COVID  111
Page 1182  Note on Supplies to Combat COVID-19  112
Chapter 38. The Military’s Domestic Role

Page 1194 Note on George Floyd Protests 115
Page 1207 The Military’s Role in Elections 116
Page 1208 Note on Termination of Border Wall Emergency 121
Page 1208 Notes on Troops at the Polls and the Capitol 122
Page 1212 Note on General Flynn’s Proposed Coup d’Etat 124

Chapter 39. Safeguarding National Security Information

Page 1226 Note on Former Presidents’ Intelligence Briefings 125
Page 1228 Note on Edgar v. Haines (4th Cir. 2021) 126
Page 1234 Note on United States v. Snowden (E.D. Va. 2019) 126
Page 1234 Note on Bolton Pre-Publication Review Dispute 126

Chapter 40. Access to National Security Information

Page 1271 Note on U.S. Fish & Wildlife Serv. v. Sierra Club (2021) 128
Page 1285 Note on Public Access to FISA Court Decisions 128
Page 1293 Note on Protecting Our Democracy Act, H.R. 8363 (2020) 130
Page 1295 Note on Trump v. Vance (2d Cir. 2020) 130
Page 1295 Note on Trump v. Mazars USA (D.C. Cir. 2020) 130
Page 1296 Note on McGahn and Mueller Report Litigation 132

Chapter 41. Censorship

Page 1302 Note on Pentagon Papers at 50 133
Page 1323 Note on Secret Investigations of the Media 133
## Casebook Page Supplement Page

### Chapter 1. Defining Terrorism and Counterterrorism

<table>
<thead>
<tr>
<th>Page</th>
<th>Note on National Intelligence Council Report</th>
<th>Supplement Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>135</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Note on Rise of Domestic Extremism</td>
<td>136</td>
</tr>
<tr>
<td>7</td>
<td>Note on Intelligence Community Report on Domestic Violent Extremists</td>
<td>136</td>
</tr>
</tbody>
</table>

### Chapter 4. International Humanitarian Law (jus in bello)

<table>
<thead>
<tr>
<th>Page</th>
<th>Note on Universal Jurisdiction for War Crimes</th>
<th>Supplement Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>123</td>
<td>28</td>
<td></td>
</tr>
</tbody>
</table>

### Chapter 5. Targeting Terrorists

<table>
<thead>
<tr>
<th>Page</th>
<th>Note on Trump Administration Targeting Standards</th>
<th>Supplement Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>157</td>
<td>34</td>
<td></td>
</tr>
<tr>
<td>169</td>
<td>Note on Kareem v. Haspel (D.C. Cir. 2021)</td>
<td>35</td>
</tr>
<tr>
<td>171</td>
<td>Case Study: Targeting General Soleimani</td>
<td>35</td>
</tr>
</tbody>
</table>

### Chapter 6. Introducing Intelligence Operations

<table>
<thead>
<tr>
<th>Page</th>
<th>Note on National Intelligence Priorities Framework</th>
<th>Supplement Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>178</td>
<td>43</td>
<td></td>
</tr>
</tbody>
</table>

### Chapter 7. The Intelligence Community: Organization and Authority

<table>
<thead>
<tr>
<th>Page</th>
<th>Note on National Security Memorandum 2 (2021)</th>
<th>Supplement Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>199</td>
<td>44</td>
<td></td>
</tr>
</tbody>
</table>
### Chapter 8. The Fourth Amendment and National Security

<table>
<thead>
<tr>
<th>Page 232</th>
<th>Note on Exceptions to Warrant Clause 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Page 250</td>
<td>Note on Purchase of Location Data 45</td>
</tr>
</tbody>
</table>

### Chapter 9. Congressional Authority for Foreign Intelligence Surveillance

<table>
<thead>
<tr>
<th>Page 276</th>
<th>Note on Lone Wolf Provision 46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Page 277</td>
<td>Note on Accuracy Concerns Before FISA Court 46</td>
</tr>
<tr>
<td>Page 279</td>
<td>Note on Roving Wiretaps 48</td>
</tr>
</tbody>
</table>

### Chapter 10. Programmatic Electronic Surveillance for Foreign Intelligence

<table>
<thead>
<tr>
<th>Page 327</th>
<th>Note on Querying Rules for Section 702 Data 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Page 329</td>
<td>Note on United States v. Hasbajrami (2d Cir. 2019) 49</td>
</tr>
</tbody>
</table>

### Chapter 11. The Third-Party Doctrine: Origins and Applications

| Page 351  | Note on Purchasing Location Data 50 |

### Chapter 12. The Collection and Use of Third-Party Records

<table>
<thead>
<tr>
<th>Page 359</th>
<th>Note on Business Records Provision 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Page 379</td>
<td>Note on Restored Business Records Provision 51</td>
</tr>
<tr>
<td>Page 380</td>
<td>Note on Recent Leak Investigations 53</td>
</tr>
<tr>
<td>Page 381</td>
<td>Bulk Collection of Third-Party Records 54</td>
</tr>
<tr>
<td>Page 392</td>
<td>Third-Party Records: Summary of Basic Principles 63</td>
</tr>
</tbody>
</table>
Chapter 13. Screening for Security

Page 406 Note on Alasaad v. Mayorkas (1st Cir. 2021) 64
Page 408 Note on Alasaad v. Mayorkas (1st Cir. 2021) 65
Page 423 Note on Elhady v. Kable (4th Cir. 2021) 65
Page 426 Note on Elhady v. Kable (4th Cir. 2021) 66

Chapter 14. Profiling and Travel Bans

Page 470 Note on Arab American Civil Rights League v. Trump (6th Cir. 2021) 67
Page 470 Proclamation Ending Trump Travel Ban 68

Chapter 16. Habeas Corpus: The Scope of the Suspension Clause

Page 514 Note on DHS v. Thuraissigiam (2020) 69

Chapter 18. Military Detention of Non-U.S. Persons

Page 568 Note on Al-Hela and the Laws of War 70
Page 572 Note on Al-Hela and Substantial Support 71
Page 584 Note on Al-Hela and the Due Process Debate 71

Chapter 19. Preventive Detention

Page 610 Note on Hassoun v. Searls (2d Cir. 2020) 72

Chapter 20. Case Study of Coercive Interrogation of Detainees in U.S. Custody After 9/11

Page 675 Note on CACI v. Al Shimari (2021) 73
Page 679 Note on U.S. Efforts to Block Foreign Torture Investigations 74
Chapter 21. Criminalizing Terrorism and Its Precursors

Page 684 Note on National Strategy for Countering Domestic Terrorism 74
Page 685 United States v. Miselis (4th Cir. 2020) 76
Page 700 Note on United States v. Stone and the 2021 Capitol Riot 94

Chapter 24. Trial by Military Commission

Page 808 Note on Torture and the Al-Nashiri Prosecution 95

Chapter 25. Homeland Security

Page 816 Note on TOPOFF and COVID-19 95
Page 818 Note on Pandemic Communication and Outreach 96
Page 822 Planning for a Pandemic 98
Page 823 Note on the Military’s Role in Vaccine Delivery 101
Page 823 Note on Ransomware Attacks 101
Page 824 Note on COVID-19 Pandemic Threat 102
Page 830 Notes on COVID-19 Lockdown Restrictions 103
Page 832 42 U.S.C. §265 111
Page 834 Note on Federalism in the Time of COVID 111
Page 834 Note on Supplies to Combat COVID-19 112

Chapter 26. The Military’s Domestic Role

Page 846 Note on George Floyd Protests 115
Page 859 The Military’s Role in Elections 116
Page 860 Note on Termination of Border Wall Emergency 121
Page 860 Notes on Troops at the Polls and the Capitol 122
Page 864 Note on General Flynn’s Proposed Coup d’Etat 124
Chapter 28. Suing Terrorists and Their Supporters

Page 912  Note on Kaplan v. Lebanese Canadian Bank (2d Cir. 2021)  139
Page 913  Note on Gonzalez v. Google LLC (9th Cir. 2021)  140
# Table of Cases

[Redacted] (FISA Ct. 2019) 49

*ACLU v. Clapper* (2d Cir. 2015) 55

*ACLU v. United States* (2021) 129


*Alasaad v. Mayorkas* (1st Cir. 2021) 64

*Al-Hela v. Trump* (D.C. Cir. 2020) 70, 71

*Arab Am. Civil Rights League v. Trump* (6th Cir. 2021) 67

*Biden v. Sierra Club* (2021) 4


*California v. Trump* (9th Cir. 2020) 4

*CACI Premier Tech., Inc. v. Al Shimari* (2021) 74

*Carpenter v. United States* (2018) 45

*Comm. on the Judiciary v. McGahn* (D.C. Cir. 2021) 132

*Dep’t of Justice v. House Comm. on the Judiciary* (2021) 133

*Edgar v. Haines* (4th Cir. 2021) 126

*Elhady v. Kable* (4th Cir. 2021) 65, 66

*Gonzalez v. Google LLC* (9th Cir. 2021) 139, 140

*Hassoun v. Searls* (2d Cir. 2020) 74

*Hernandez v. Mesa* (2020) 10, 24

*Husayn v. Mitchell* (9th Cir. 2019) 74

xxix
In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC (FISA Ct. 2019) 46

In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC (FISA Ct. 2020) 47

In re Application of the Federal Bureau of Investigation (FISA Ct. June 29, 2015) 59

In re Comm. on the Judiciary (D.C. Cir. 2020) 132

In re Opinions & Orders by the FISC Addressing Bulk Collection of Data under the Foreign Intelligence Surveillance Act (FISA Ct. of Rev. 2020) 129

In re Page (FISA Ct. 2020) 48

Int’l Refugee Assistance Proj. v. Trump (4th Cir. 2020) 67

Kaplan v. Lebanese Canadian Bank (2d Cir. 2021) 139

Kareem v. Haspel (D.C. Cir. 2021) 5, 35

Larrabee v. Braithwaite (D.D.C. 2020) 125

Nestlé USA, Inc. v. Doe (2021) 26

Roman Catholic Diocese of Brooklyn v. Cuomo (2020) 107

S. Bay Pentecostal Church v. Newsom (2020) 107

Swartz v. Rodriguez (2020) 24

Trump v. Mazars USA, LLP (D.C. Cir. 2020) 130

Trump v. Sierra Club (9th Cir. 2020) 4

Trump v. Vance (2d Cir. 2020) 130

U.S. Fish & Wildlife Serv. v. Sierra Club (2021) 128

U.S. House of Reps. v. Mnuchin (D.C. Cir. 2020) 1, 6

United States v. Abu Zubaydah (2021) 74

xxx
United States v. Al Nashiri (Mil. Comm’n 2021) 95
United States v. Begani (C.A.A.F. 2021) 125
United States v. Cano (9th Cir. 2019) 65
United States v. Hasbajrami (2d Cir. 2019) 49
United States v. Miselis (4th Cir. 2020) 77
United States v. Moalin (9th Cir. 2020) 58, 60
Zaidan v. Trump (D.D.C. 2020) 5