

Preface

“There are decades where nothing happens; and there are weeks where decades happen.” For most of the near-quarter century since the terrorist attacks of September 11, the field of National Security Law has provided regular illustrations of the latter part of Vladimir Lenin’s famous quip — only the more so since the publication of the 7th edition of this casebook in 2020. With the COVID pandemic; the efforts to subvert the results of the 2020 presidential election, culminating in the January 6, 2021 assault on the U.S. Capitol (and former President Trump’s role in those efforts); the dramatic surge in violent threats against government officials from domestic extremists; heightened challenges posed by great powers competition, such as rising tensions in the South China Sea and the widening Russian invasion of Ukraine; and the October 7, 2023 attacks on Israel by Hamas-led fighters based in the Gaza Strip, the last four years have underscored the urgency of developing and furthering our understanding of the nuances of the legal frameworks and specific authorities (and constraints) that apply to and in the national security context. As ever, the importance of this study is not just in cataloging the actions available to governments to respond to myriad different threats that both humans and nature can pose to our national security. It is also in identifying the *constraints* that both limit the potential abuses that governments might carry out in the name of defending their people, and that provide at least the specter of accountability for those, whether within government or outside of it, who cross the relevant lines.

COVID, January 6, Ukraine, and Gaza may be the most visible headlines since the last edition of this casebook, but recent years have seen significant developments in any number of less-headline-generating national security law subfields, as well: from the challenges posed to cyber security by technological advances and the increasing prevalence of artificial intelligence, to the ongoing debate over reforms, both by statute and executive order, to the United States’ foreign intelligence surveillance authorities, to policy developments with respect to limits on the use of kinetic force by U.S. military forces overseas, to the continuing litigation over the still-ongoing military detention of non-citizens, and trials by military commission, at Guantánamo. Both within and across these fields, these developments raise not only the typical challenges of assimilating new information, but also broader questions about what differentiates National Security Law from other fields — and national security-specific government authorities from those that are available to respond to other types of policy challenges. Indeed, many of the hardest questions that have arisen from events since publication of the 7th edition are hard at least in part because of their novelty — further complicating the task of synthesizing an ever-expanding universe of primary and secondary material.

Drinking from this fire hose of national security-related developments poses unique pedagogical opportunities — and also unique pedagogical challenges. On one hand, each day’s headlines are likely to provide multiple opportunities to relate the classroom material to real-world events — all while underscoring their urgency. On the other, there are only so many classroom hours in the semester, and so much reading that can reasonably be assigned for each session. We have aspired, to an even greater extent than in prior editions, to strictly limit the materials that we include — and to leave many citations to additional reading and other relevant secondary sources to the Teacher’s Manual. We have also put some of the “framework” chapters on even more of a diet — on the assumption that many of the students who take a course in National Security Law will have been exposed, to at least some degree, to the basic structural topics in an introductory Constitutional Law class. And where prior editions provided multiple

chapters on topics that were more at the heart of then-dominant public policy debates (such as the substantive and procedural rules governing habeas corpus and military detention), we have collapsed into single chapters both those and other topics from prior editions to make way for what's new — especially Chapter 30 and its rich and detailed treatment of Domestic National Security Crimes and Domestic Terrorism, featuring a first-of-its-kind overview of the myriad legal questions to arise from the recent uptick in white supremacist violence and the January 6 attack. As in earlier editions, our twin goals are to provide at least some discussion of the entire universe of the field as we understand it, but also to highlight recent events and developments at least as much as those that are now decades- (if not centuries-) old.

The result of these efforts is an 8th edition somewhat *shorter* than the one it replaces and that comprises five fewer chapters. We hope that this reconfiguration makes it easier for teachers and students alike to make their way through much (if not most) of the book in a single course. But we recognize that many of the topics introduced in the pages that follow are merely *introduced* herein — and not surveyed to the point of exhaustion. Our ambition is to provide not just the means for a well-rounded introduction to the field of National Security Law, but also the foundation for interested students and scholars to take the topics addressed here and explore them further.

This field evolves on an almost daily basis. Courts continue to write opinions at a rapid clip, new sausage is being made (if at a somewhat slower pace) in Congress, and officials in the defense and intelligence communities scramble to respond to a bewildering variety of new security threats. Thus, in addition to what is included in these pages, further updates will be provided by annual published supplements to this casebook in 2025 and beyond, and by additional edited original materials that will be made available to teachers on the book's website throughout each year.

Few courses in the curriculum are likely to provoke stronger feelings or more spirited debate than a class in National Security Law. In our classrooms, we encourage that debate — while at the same time demanding respect for everyone's opinions. In this casebook we have tried to fuel that debate by fairly presenting all sides of the most contentious issues. We also have repeatedly stressed the strong interdependence of law and policy, and of the critical role of politics in shaping and implementing law. We have opinions, too, however, and we dare not hope that we have always been entirely politically or ideologically neutral. We only wish to emphasize that national security is too important to be left to either “conservative” or “liberal” characterizations. Good legal analysis and the nation's future security depend upon a careful and nuanced consideration of all points of view — and we hope that this book furthers those ends.

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