

National Security Law (Law 384)

Fall 2023

Professors Mika'il Ali and Paul Ahern¹

Syllabus

Class Schedule:

Class meets Tuesdays and Thursdays from 8:10 to 9:35 p.m.

Office hours available by appointment

Contact Information and Availability:

Major Mika'il Ali is a Commissioned Marine Corps Officer and Judge Advocate. Major Ali is currently assigned to the United States Marine Corps Training and Education Command, where he provides legal advice to the Commanding General of the Marine Corps Training and Education enterprise and all other comprehensive legal services on matters under the cognizance of the Department of the Navy General Counsel and Staff Judge Advocate to the Commandant of the Marine Corps. Major Ali's previous assignments include United States Cyber Command, Joint Task Force Guantanamo Bay, Cuba, and the Marine Corps Air Ground Combat Center in Twentynine Palms, CA. Major Ali focuses on issues surrounding national security, cyber, technology, privacy, and data governance. He can be reached at mali31@gmu.edu.

Paul Ahern, the Treasury Department's Counselor for Enforcement, is the senior official charged with coordinating the operational enforcement activities of Treasury's Office of Terrorism and Financial Intelligence, or TFI. He previously served as the Principal Deputy Assistant Secretary and Acting Assistant Secretary in TFI's Office of Terrorist Financing and Financial Crimes or TFFC. As the policy development and outreach office for Treasury's national security functions, TFFC works across all elements of the national security community, the private sector, and foreign governments to identify and address the threats presented by all forms of illicit finance. Before this role, Paul was the Assistant General Counsel for Enforcement and Intelligence, where he oversaw the provision of legal advice throughout TFI, to include supervising the chief counsel offices of OFAC and FinCEN. Before joining Treasury, Paul was a Trial Attorney in the U.S. Department of Justice, focused on national security-related civil and criminal litigation. He clerked on the U.S. Circuit Court of Appeals for the Seventh Circuit and previously served as an officer in the U.S. Army. He can be contacted at pahern2@gmu.edu.

Do not hesitate to contact us with any class-related questions, concerns or with requests to schedule a meeting. Please be mindful that it may take several hours / overnight to return a call or email, but calls or emails will always be returned.

¹ Views expressed in this course are ours personally and do not necessarily reflect the views of the Departments of Defense or of the Treasury, or of the U.S. Government.

Required Course Materials and Assignments:

National Security Law (7th Ed.), Dycus, Banks, Raven-Hansen, Vladeck. Aspen Casebook Series. ISBN 9781543806793.

We may supplement the casebook with outside materials on occasion, and the block of instruction on economic tools addressing national security will be sourced entirely from outside the casebook. National security law is an evolving discipline. Assignments may be adjusted from time to time given the pace of the course, as well as consideration of certain subjects or topics that require more attention or less attention, as the case may be.

Expectations, Classroom Participation and Attendance:

This lecture course will survey the distribution of national security powers among the three coordinate branches of government. The subject matter covered in this course is by definition very broad so the goal is to provide the proper legal foundation for the numerous issues that arise within the national subject matter. We will be applying the law to facts and policy determinations that arise in the national security context. In other words, the goal is to develop the foundational skills to think and work like a national security lawyer. Throughout this course, students will demonstrate not only their knowledge of the laws and policies that govern the legality of war, protection of national security information, foreign intelligence surveillance, covert action, prosecution of terrorism suspects, and cybersecurity, among other topics, but also how to apply those laws to given fact patterns – to think and work as a national security lawyer. As in national security legal practice, students should also consider their best counsel, not just their best legal advice.

At the end of this course students will be able to apply the course information and skills to real world situations as well as learn the skills for taking and passing the state bar exam. Classroom participation is part of the course requirements. Class participation is also the best way to improve or refine your skills to think like a lawyer. Everyone should get in the habit of reciting facts, applying the facts to the law, arriving at plausible analysis, and providing your best counsel. These are skills you will continue to develop for the remainder of your career

Class attendance is obviously important and will be monitored. If you fail to attend class with some frequency without sufficient explanation, you may be precluded from taking the final exam.

Internet, Phone and Recording Policies:

Use of the internet during class is only permitted for class-related searches or access to class related material. Also, please silence or turn off your phones during class – texting or any other phone use is prohibited during class. Recording of the class in any way is prohibited.

Grading:

Students will receive a grade based on class participation (20%) and one final exam (80%). Students should attend every class/discussion session having read and be prepared to discuss the materials assigned for that session. As contributions to class discussion, thoughtful and informed questions are as valuable as cogent and defensible answers. The exam will take place during the exam period designated for this semester. We will provide further details as the semester draws to a close.

Class Assignments:

(All References to Chapters (Ch.) and Pages (pps.) refer to the Class Textbook: Dycus, et al.)

08/22/2023 Introduction to National Security Law

- Chs. 1-2, pps 1-22
- Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence, March 2023, at [2023 Annual Threat Assessment of the U.S. Intelligence Community \(dni.gov\)](#)

08/24/2023 Separation of Powers: The President's National Security Powers

- Ch. 3, pps. 25-53, 68-80
- *Youngstown* ("Steel Seizure Cases"), 343 U.S. 579 (1953), in its entirety

08/29/2023 Separation of Powers: Congress

- Ch. 4, pps. 81-127

08/31/2023 Separation of Powers: The Courts

- Ch. 5, pps. 129-65

09/05/2023 International Law and Treaties

- Ch. 6, pps 169-207

09/07/2023 Extraterritorial Reach of U.S. Law

- Ch. 7 pps. 204-35
- Ch. 34 pps. 1070-76

09/12/2023 The Right to Wage War and Int'l Humanitarian Law

- Chs. 8-9 pps 241-95

09/14/2023 **Using Force Abroad**

- Ch. 11 pps 333-46
- Ch. 12 pps 347-73

09/19/2023 **Targeting Terrorists**

- Ch. 13 pps. 375-412

09/21/2023 **Cyber Operations**

- Ch. 14 pps. 413-35

09/26/2023 **Intelligence and the Intelligence Community**

- Ch. 17 pps. 489-503
- Ch. 18 pps. 505-41

09/28/2023 **Intelligence Activities and Controls**

- Ch. 19 pps. 543-76
- Materials TBD

10/03/2023 **Fourth Amendment and National Security**

- Ch. 21 pps. 577-610

10/05/2023 **Foreign Intelligence Surveillance and Oversight**

- Ch. 21 pps 611-40
- Ch. 22 pps. 641-78

10/10/2022 **No class – Monday Schedule**

10/12/2023 **The Third-Party Doctrine**

- Ch. 23 pps. 679-705

10/17/2023 **The Collection and Use of Third-Party Records**

- Ch. 24 pps. 707-41

10/19/2023 **Interrogating Terrorism Suspects**

- Ch. 32 pps. 973-96
- Ch. 33 pps. 997-1028

10/24/2023 **Criminalizing Terrorism and Its Precursors**

- Ch. 34 pps. 1031-68

10/26/2023 **Terrorism Trials: Procedure and Evidence**

- Ch. 35 pps. 1083-1121

10/31/2023 **Habeas Corpus: The Structure and Scope of the Suspension Clause**

- Ch. 27 pps. 823-45
- Ch. 28 pps. 847-73

11/02/2023 **Military Detention: U.S. Persons**

- Ch. 29 pps. 875-908

11/07/2023 **Military Detention: Non-U.S. Persons**

- Ch. 30 pps. 909-35

11/09/2023 **Preventive Detention**

- Ch. 31 pps. 937-70

11/14/2023 **Economic Tools of National Security**

- Reading assignment TBP

11/16/2023 **National Security Information**

- Ch. 39 pps. 1217-53

11/21/2023 **Censorship; Course Review and Exam Preview**

- Ch. 41 pps. 1299-1324

END