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| **Case** | **Who and Where** | **Facts** | **Test** | **Holding** | **Type** |
| *Keith* (SCOTUS 1972) | Domestic | -US Citizen-Evidence at trial: tape obtained without a warrant | -Is it domestic surveillance for national security?🡪If so, prior judicial approval required (something like a warrant) | - 4th Amendment governs domestic intelligence-Congress did not create an exception to Title III for national security for domestic surveillance (simply did not want to legislate) | SURVEILLANCE (electronic) |
| *Truong* (4th Cir. App. 1980) | Domestic | -Non-US citizen passing info to informant overseas.-Surveilled electronically without a warrant.-Original goal: intelligence; switches to criminal investigation at a certain point. | -Primary Purpose Test:🡪Intelligence gathering: 4th amendment warrant not necessary🡪Criminal Prosecution: once purpose shifts, 4th amendment warrant necessary  | The law of intelligence gathering should be shaped by what the government is attempting to do with the knowledge it is trying to obtain. | SURVEILLANCE (electronic) |
| *Ehrlichman* (D.C. App. 1976) | Domestic | - Executive officers broke into US citizen’s office to obtain records of a patient who leaked docs to media | -Is it domestic physical surveillance for national security?🡪If so, presidential authorization required | -Unclear if 4th amendment exception to physical searches for national security, but if there is, President needs to specifically authorize | SURVEILLANCE (physical) |
| *In re Directives* (FISC 2008) | International and domestic | -US telecoms directed by executive to give them access to their information without consulting lawyers-For wholesale surveillance that will capture US Persons (outside the US and accidentally in the US) | -Warrant requirement: 🡪Significant Purpose Test: Purpose that goes beyond typical criminal investigation = exception to the Warrant ClauseReasonableness requirement: 🡪Totality of the Circs: Weigh Government’s interest (national security, paramount or “of the highest order of magnitude”) and individual privacy interests (after targeting procedures, minimization procedures, and internal checks) | Foreign intelligence exception exists when surveillance is conducted to obtain foreign intelligence for national security purposes and is directed against foreign powers or agents of foreign powers reasonably believed to be located outside the United States | SURVEILLANCE (electronic) |
| *Smith* (SCOTUS 1979) | Domestic | -Gov’t requested pen register records (do not disclose contents of calls, just numbers dialed) without a warrant | -Is there a legitimate expectation of privacy?🡪If not, no warrant necessary. | No reasonable expectation of privacy in information given to or held by 3rd parties. | SURVEILLANCE (electronic) |
| *US v. Maynard (Jones)* (DC Circuit 2011) | Domestic |  | -Is the surveillance constant?🡪 Need a warrant | Use of GPS to undertake constant surveillance of a suspect must get a warrant, even though physical surveillance would not require a warrant | SURVEILLANCE (electronic/physical) |
| *Reid v. Covert* (SCOTUS 1957) | US Persons on US military bases abroad | - Women killed their servicemen husbands while living and stationed overseas; tried overseas on US military bases under military law because the crimes were committed on the overseas bases, petition for habeas (5th and 6th amendment rights violated) | -Is it a US person being tried for breaking a US law?🡪Protected by the Bill of Rights | -Courts of law alone have the power to try civilians for their offenses against the United States: US is a creature of the constitution and its citizens abroad subject to Bill of Rights-Military bases are US land | ACCESS TO COURTS (US Person, domestic and international) |
| *Verdugo-Urquidez* (SCOTUS 1990) | Non-US Person internationally | - DEA agents executed a search of a Mexican citizen in Mexico without a warrant from a US court. | -Is the person affected a member of the class of persons part of national community or who have otherwise developed a sufficient connection with this country to be considered part of that community?🡪If not, not due protections of Bill of Rights | 4th amendment does not apply to the search and seizure by the US of property owned by a nonresident alien and located in a foreign country | SURVEILLANCE (physical) |
| *In Re Terrorist Bombings of US Embassies in East Africa* (2nd Cir. 2008) | US Person internationally | Working with Kenyan authorities, U.S. officials searched D’s home in Nairobi, pursuant Kenyan warrant (but without a US warrant). D was not present during the search of his home. | Is it an overseas search of a US citizen?🡪Needs to satisfy 4th Amendment reasonableness requirement. | Constitution doesn't impose a warrant requirement here; FISA statute just builds in a level of statutory protection over and above baseline supplied by constitution. | SURVEILLANCE (electronic and physical (FISA)) |
| *Rosen* (E.D.Va. 2006) | US Persons domestically | -Charged with violating a Espionage Act to communicate national defense information to someone not authorized to receive it-Gov't got orders from FISC, under FISA, authorizing physical searches and electronic surveillance | Is there PC to believe targets are agents of a FP?🡪If yes, FISA warrant proper | FISC had PC to believe defendants were agents of a foreign power when granting warrant. | SURVIELLANCE(electronic and physical (FISA)) |
| *In Re Sealed Cases* (FISC 2002) |  |  | Significant purpose test: Is gov't entertaining a realistic option of dealing with an agent of a FP other than through criminal prosecution?🡪If yes, foreign intelligence collection does not need to be primary purpose of investigation | -FISA did not require government to demonstrate that its primary purpose in conducting electronic surveillance was not criminal prosecution-Patriot Act's amendment to FISA, permitting government to conduct surveillance of agent of foreign power if foreign intelligence is “significant purpose” of such surveillance, did not violate Fourth Amendment. | SURVEILLANCE |
| *Laird* (SCOTUS 1972) | US Persons domestically | Army gathering intelligence on civilian activities that “could cause public disorder” (HUMINT and OSINT) | -Is there standing?🡪 Injury in fact (concrete and imminent), causal relationship between injury and challenged conduct, AND likelihood that injury will be redressed by a favorable decision | “Chilling” effect on the 1st Amendment rights by the mere existence of the Army's intelligence-gathering, where plaintiffs complained of no specific action against them, and where evidence disclosed no unlawful surveillance activities but indicated that the principal sources of information were news media and publications in general circulation, does not provide standing | SURVEILLANCE(HUMINT AND OSINT)STANDING |
| *Amnesty Int’l* (2nd Cr. 2011) | US Persons and non-US Persons, domestic and international | US lawyers complaining that FAA violates their 4th amendment rights by forcing lawyers to travel overseas to visit their clients, etc. | Is there a reasonable fear of future injury and costs incurred to avoid that injury, AND have the plaintiffs have established that they have a reasonable fear of injury and have incurred costs to avoid it?🡪Then they have standing | Plaintiffs have standing: their fear that amendments will affect them is reasonable | SURVEILLANCE (FAA)STANDING |
| *Doe v. Ashcroft* (S.D.N.Y. 2004) | US Persons (people and telecoms) domestically | US ISPs issued NSLs complaining that:-Subscribers’ 1st amendment rights may be violated because there is not judicial review (chilling subscribers); -ISP’s 1st amendment rights are being violated by this gag order |  | -National Security Letter provision forbidding disclosure violated Fourth Amendment as applied-Disclosure bar was not narrowly tailored to further Government's interest in protecting the integrity and efficacy of international terrorism and counterintelligence investigations, in violation of First Amendment free speech protections | SURVEILLANCE (national security letters) |
| *Arnold* (Cal. 2008) | US Person entering the US (at border) | US Person returning from trip; laptop was seized, searched, and child porn found on it without a warrant | At the border, the test is not intrusiveness, but a more general  | Reasonable suspicion is not needed for customs officials to search laptop | SURVEILLANCE (physical, border) |
| *Farag* (E.D.N.Y. 2008) | US Persons on a domestic flight | Arab men switching seats; speaking a mixture of Arabic and English; checking watch; deleting cell phone numbers upon landing; electing to sit in a middle seat | Probable cause: need reasonable suspicion | Tacking together benign circumstances to create a great number of “suspicious” inferences does not create PC | SEIZURE (arrest) |
| *MacWade* (2nd Cir. 2006) | US Persons domestically | Random subway searches by LE in NYC | Is this regime serving a purpose different from criminal investigation?🡪If yes, balance:-Weight/immediacy of gov't interest -Nature of privacy interest alleged-Character of intrusion imposed-Efficacy of the search in advancing the interest |  | SURVEILANCE (physical searches) |
| *Fazaga* (C.D. Cal. 2011) | US Persons domestic | FBI going into the field to analyze and determine where/what the threat may be—collect intelligence from Muslim communities |  | Undecided | SURVEILLANCE |
| *Milligan* (SCOTUS 1866) | US Person domestic | Habeas corpus suspended during the Civil War by the President; Milligan, sympathizer (but not enemy combatant) arrested and detained. State not an active zone of hostilities and end of civil war hostilities. | Is there a real prospect of getting justice in some other way than a military tribunal/are courts open and functioning?Then denial of that option to a US person is unconstitutional. | President has the authority to suspend the writ of habeas corpus, but unless the civil courts are actually closed, they are perfectly competent to try this case, and should-no right to detain a US citizen indefinitely | DETENTION(domestic) |
| *Quirin* (SCOTUS 1942) | US and non-US Persons domestic | German spies caught in plainclothes (losing legal combatant status while doing so) on US soil during WWII (beginning of US involvement) | Citizenship irrelevant: If an enemy combatant violating the laws of war, eligible to be tried by military commission. | because being charged with violating laws of war and because Congress did not mean to extend 5th and 6th amendments to trial by military commission, proper to try them by military commission | DETENTION (domestic) |
| *Hamdi* (SCOTUS 2004) | US person battlefield | US citizen, captured on the battlefield in Afghanistan, moved to GTMO, then held on a military brig on SC as an enemy combatant (to insulate GTMO from habeas petitions) | -Who can be detained? 🡪Individuals who are “part of or supporting forces hostile to the US or coalition partners” in Afghanistan who are “engaging in an armed conflict against the U.S.”-What level of DP is required?🡪 Balancing between:Private interest affected (risk of erroneous deprivation, interest in life and liberty) AND Gov't's asserted interest and burdens gov't would face in providing greater process | -AUMF authorizes the detention of Hamdi because detention is a fundamental incident of waging a war (act of congress allowing detention of a US citizen)-Some level of DP required, not to extent of full criminal trial.-Limited to detention for the duration of conflict for combatants captured on the battlefield. | Detention (US Person, domestic, international) |
| *Padilla* (4th Cir. 2005) | US citizen on US soil | Arrested in O’Hare when returning from Pakistan  |  | 4th Circuit upheld indefinite detention (released before SCOTUS could rule) | DETENTION (US Person, domestic) |
| *Al-Marri*(4th Cir. 2008) | US Person on US soil | Resident alien arrested for credit card fraud and lying to the FBI | Different for each judge? | Authority to detain militarily, but due process standards not met | DENTENTION (US Person, domestic) |
| *Eisentrager* (SCOTUS 1950) | Non-US persons international | Post-WWII, German soldiers fighting after Germany had already surrendered, never present on US soil, habeas petition. | -Are they a US Person or on US soil?🡪If neither, no Constitutional right to file a habeas petition. | Constitution does not grant aliens the right to file habeas petitions. Federal courts will not be open to detainees who have been tried by US military tribunals abroad. | DENTENTION (Non-US persons international) |
| *Boumediene* (SCOTUS 2008) | Non-US persons, battlefield/international🡪GTMO | Aliens detained at Guantanamo after being captured in Afghanistan or elsewhere abroad and designated enemy combatants by CSRTs.Boumediene, a Bosnian of Algerian decent, was arrested by US forces in Bosnia in fall of 2001 & sent to Gitmo as an enemy combatant. He reportedly was under suspicion for making lots of phone calls to Afghanistan and Pakistan. Bosnian courts found no evidence against him. | Were detainees afforded some sort of process akin to habeas?🡪If not, process unconstitutional. | -Suspension Clause has full effect at GTMO-Aliens detained as enemy combatants GTMO were entitled to privilege of habeas corpus to challenge legality of their detention;-MCA clause denying federal courts of jurisdiction to hear habeas corpus actions that were pending at the time of its enactment effected unconstitutional suspension of writ of habeas corpus. | DETENTION |
| *Al-Bihani* | Alien at GTMO | AB was a cook for the Taliban, unclear if he wore a uniform, captured and detained at GTMO | Does his status meet “part of” and “in support of” prongs of MCA?🡪If so, properly detained | -Amended MCA can classify combatant in order to justify detention.-Gov’t can use preponderance of evidence standard andhearsay evidence. | DETENTION |
| *Ghailani I* (SDNY 2010) | Alien at GTMO | Assisted AQ with East Africa bombings |  | A defendant is not suppressible fruit, as in what he said elicited by torture enough that he is the fruit of the torture and the case should be dismissed | INTERROGATION |
| *Ghailani II (SDNY 2010)* | Alien at GTMO | Assisted AQ with East Africa bombings | Was the an incriminating statement obtained through coercion?🡪If yes, Fifth Amendment right against self-incrimination prohibits use of the statement or its fruits (evidence derived from any statement coerced from the defendant, unless the evidence has been come at instead by means sufficiently distinguishable to be purged of the primary taint). Burden on gov’t. | Gov’t did not prove attenuatedness of testimony by KSM, would violate 5th amendment to use even if obtained for intelligence purposes | INTERROGATION |
| *Jeppesen Dataplan* (9th Cir. 2009) | Non-US Persons abroad | Foreign nationals who allegedly had been transferred in secret to foreign countries for detention and interrogation pursuant to “extraordinary rendition” program operated by Central Intelligence Agency (CIA) brought action under Alien Tort Statute (ATS) against company alleged to have taken part in program. | -Reynolds test for Glomar principle: 🡪Have procedural requirements for invoking state secrets privilege been satisfied?🡪Interdependent determination if information is privileged🡪If can't prove prima facie without restricted evidence, case must be dismissed | Even if P’s could prove their case on public documents, allowing the case to go forward would still put state secrets at too much risk of exposure. | DETENTION, INTERROGATION |
| *Humanitarian Law Project* (SCOTUS 2010) |  | Relief organizations that support two FTOs (that engage in humanitarian AND terrorist work) challenging statute that forbids proving those FTOs with “training” in the form of legal training to petition the UN for relief, etc. | ? | -No DP violation: statutory terms clear here in application to P's proposed conduct-Support is not equivalent to freedom of speech: support is fungible and any support devoted to innocent endeavors by an FTO could be used (or enable other funds) to be used for the terrorist activities.-No freedom of association violation: Congress allowed to forbid training, even if in legal techniques | CRIMINAL |
| *Bin Laden* | Non-US person outside the US |  |  | US laws can reach outside the US; limit is due process | CRIMINAL; EXTRATERRITORIALITY |
| *Moussaoui* (4th Cir. 2004) | US Person domestic | In order to mount his defense, D needs to be able to depose KSM who will then be able to show that he was not in fact an instrumental planner of 9/11. |  | government's rightful exercise of its prerogative to protect national security interests by refusing to produce the witnesses warranted use of written summaries of the witness' statements made over the course of several months in lieu of their deposition testimony. | CRIMINAL |
| *Lee* (D. N.M. 2000) | US Person, domestic | Lee accused of passing classified information |  | Classified Information Procedures Act does not violate privilege against self-incrimination, the 6th amendment right to confront, and due process; just general disclosure of what classified info expect to use at trial, not what will cross on, and not one sided burden on defense. | CRIMINAL |
| *Abu Ali* (4th. Cr. 2008) | US Person, arrested internationally, turned over to US | Abu Ali was born in US, went to Saudi Arabia for college, became affiliated with AQ cell, arrested by Saudi officials and turned over to the US | Can use CIPA unless it violates Confrontation Clause | Redaction of information itself is not a violation of CIPA, but there is a violation of the Confrontation Clause when prosecution only provides the redacted version to the defense, and give the jury access to the unredacted version | CRIMINAL |
| *Kindhearts* (N.D. Ohio 2009) | US Person (organization) inside US | Kindhearts challenging asset blocking by OFAC | -Is authority present?🡪Here, IEEPA, EO 12,224, Patriot Act-Is authority being used properly (is there due process)?🡪Here, even if authority, two branches at highest Youngstown cannot circumvent 4th amendment | -“Blocking action” by OFAC constituted a “seizure” for purposes of the Fourth Amendment-Government failed to show that “blocking action” was justified under exigent circumstances exception to Fourth Amendment | CRIMINAL |
| *Kadi* (EU 2008) | Non-US person international | Saudi Arabian resident with his financial resources and funds located in Europe accused of supporting terrorism, challenging lawfulness of regulation that freezes his financial resources | -Does plaintiff have a way to challenge a determination?🡪If not, DP has been violated | EU can review decisions of the UN for due process reasons | CRIMINAL |
| *Rosen* (E.D.Va. 2006) | US Persons domestically | Two employees for pro-Israel lobby (AIPAC) in DC are being prosecuted for the violations of the espionage act, received confidential information from a US government official and then passed the information along to Israeli officials and the media (but private citizens, not gov’t officials) | Balancing test:-Assessment of the competing societal interests🡪Defendants: Significant, implicate core values 1st amendment designed to protect🡪Gov’t: Not just gov’t secrets but NDI, no matter value of an informed public, may be restricted in service of nation’s security -Narrowly tailored to instances in which need for secrecy is legitimate🡪Relationship of gov’t to person whose First Amendment rights are implicated (those w/official gov’t positions and those outside the gov’t)🡪Must be info person KNOWS, if disclosed, is potentially harmful to the U.S. | Espionage Act upheld as constitutional as applied to non-officials transmitting oral information that they KNOW is potentially harmful to U.S. | CRIMINAL |
| *New York Times* (SCOTUS 1971) | US Person domestic | Gov’t wants to stop NYT from publishing history of US Decision-Making Process on Vietnam | -Did gov’t show justification for prior restraint?🡪Threshold: unclear (judges disagree) | Presumption against constitutional validity for prior restraints of expression has; burden for enjoining publication is very high, and gov't has not met that burden | INFORMATION |
| *Boim* (7th. Cir. 2008) | US person killed overseas | Kid killed by members of Hamas; family sued foundations allegedly supporting Hamas | -To give money to an organization that commits terrorist acts is not intentional misconduct unless:🡪Knows that the organization engages in such acts OR🡪Is deliberately indifferent to whether it does or not(one knows there is a substantial probability that the organization engages in terrorism but does not care)-Standard of causation:🡪 Significantly enhancing the risk of terrorist acts | -Donation to terrorist group that targets Americans outside United States is within statute's scope;-Donor's liability requires showing of knowledge or deliberate indifference-Causation element of civil liability statute could be satisfied by defendants' having donated money to terrorist organization | CIVIL |
| *Gates* (D.D.C. 2008) | Sovereign entity international | Families of two US contractors suing Syria for supporting terrorists that killed their family members | Except for immunity of foreign sovereign if state sponsor of terrorism | Syrian Arab Republic can be held liable for money damages to the families of the two men pursuant to the Foreign Sovereign Immunities Act | CIVIL |