

May 1, 2026

IN THE SUPREME COURT
OF THE UNITED STATES

No. 2026–2027

Bobby Bronner, Petitioner-Appellee

vs.

United States of America, Respondent-Appellant

On Writ of Certiorari to the Court of Appeals for the Fourteenth Circuit

ORDER OF THE COURT ON SUBMISSION

IT IS THEREFORE ORDERED that counsel appear before the Supreme Court to present oral argument on the following issues:

1. Whether warrantless video surveillance of a home’s exterior over 93 days, using a “pole camera” installed on public property, violates the Fourth Amendment’s prohibition against unreasonable searches and seizures.
2. Whether the president exceeded his authority under Article II when he ordered the prolonged offshore detention of a lawful permanent resident whose presence the attorney general deemed detrimental to national security.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT No. 01-76318

UNITED STATES OF AMERICA, RESPONDENT-APPELLANT

vs.

BOBBY BRONNER, PETITIONER-APPELLEE

United States Court of Appeals for the District of Olympus

Before Ivonne Sotelo, Chief Circuit Judge, Kylie Barnhart and Katie Cassady, Circuit Judges.

OPINION BY Judge Barnhart, with Chief Judge Sotelo concurring:

I

Order

The United States appeals the decision of the United States District Court for the District of Olympus granting a writ of habeas corpus to the Plaintiff-Appellee, Bobby Bronner (hereinafter “Bronner”). Bronner filed suit against Defendant-Appellant, the United States of America, claiming: (1) that his Fourth Amendment rights were violated and (2) that his 12-month detention exceeded executive power under Article II of the United States Constitution.

Based on the findings provided below, the district court, after a bench trial, concluded that the President’s Executive Order 15,000 was incompatible with Congress’s expressed will (thereby exceeding his constitutional authority), and that the government’s surveillance violated the Fourth Amendment. We disagree. Because the president acted within his constitutional authority at the apex of his national security powers, and the surveillance at issue did not constitute a Fourth Amendment search, we reverse the judgment of the district court and remand the Petitioner to the United States District Court for the District of Olympus for further detention proceedings.

The district court had jurisdiction under 28 U.S.C. §§ 1331, 1343(3). Our jurisdiction rests on 28 U.S.C. § 1291. The parties have stipulated to the following facts on appeal. There are no material disputes of fact. All issues presented are purely legal and are reviewed de novo. All issues not raised in this opinion are not preserved for appeal and are not properly before this Court. The judgment of the District Court is REVERSED.

II

Factual Background

A. The Authorization for the Use of Military Force (AUMF) and the National Defense Authorization Act (NDAA)

In September of 2001, Congress enacted the Authorization for Use of Military Force (AUMF) (see Appendix I). Section 2(a) of the AUMF authorized the President of the United States to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

In 2011, Congress enacted House Resolution 1540, “The National Defense Authorization Act for Fiscal Year 2012.” P.L. 112-81 (NDAA). President Obama signed H.R. 1540 into law on December 31, 2011. Section 1022 of that resolution stated that the military “shall hold a person . . . who is captured in the course of hostilities authorized by the Authorization for Use of Military Force (Public Law 107-40) in military custody pending disposition under the law of war.” Section 1022 authorized the president to “waive the requirement . . . if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.”

The statute did not expressly forbid the president from detaining Americans or lawful residents indefinitely. Rather, § 1022(b)(1) and § 1022(b)(2) stipulated, respectively, “[t]he requirement to detain a person in military custody under this section does not extend to citizens of the United States” and “[t]he requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.”

Prior to its enactment, the Senate debated amending the NDAA to forbid the president from detaining Americans indefinitely. That effort failed. Thus, while the president was not required to detain Americans indefinitely, he was not forbidden to do so. To that end, § 1021(d) stated, “[n]othing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force” (see Appendix III). Section 1022(e) stated, “[n]othing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States” (see Appendix IV).

Persons susceptible to indefinite detainment are termed “unprivileged enemy belligerents” (see Appendix II). They are to be tried by military courts. § 1022. Federal law does not compel the United States to charge unprivileged enemy belligerents. § 1024. Efforts to pass laws expressly forbidding the president to detain Americans indefinitely failed in both houses of Congress.

When President Obama signed the National Defense Authorization Act for Fiscal Year 2012, he issued a signing statement that stated his concerns that the law did not expressly confirm his inherent power as Commander-in-Chief to order the indefinite detainment of “unprivileged enemy

belligerents” regardless of their citizenship. Prior presidents, including George W. Bush, had asserted a similar power. In response, the Senate again debated and again failed to pass a resolution that would have forbidden the president from detaining Americans indefinitely. The House Committee on the Judiciary passed a resolution that expressly authorized such detainments, but the full House did not take up the resolution. The Senate voted to repeal the AUMF in 2023 and 2025, but the House never took up the matter. The effect was to allow the AUMF to stand.

B. The Anti-Terrorist Act (ATA)

In early 2025, in the wake of several highly publicized violent crimes involving non-citizens, several of whom were alleged to have ties to international terrorist organizations, Congress enacted the “Anti-Terrorist Act” (ATA). Section 4(a) of the ATA expressly authorized the Department of Justice (DOJ) to detain “any person who is present in the United States” and is suspected of terrorism “for such period as the Attorney General deems necessary.” Section 4(b) of the ATA permitted detention by the DOJ, “inside or outside the territorial jurisdiction of the United States,” of non-citizens suspected of terrorism found to be unlawfully inside the United States. That detainment could occur “outside the territorial jurisdiction of the United States if expressly ordered by the President upon finding that the detainee would be at risk or a risk to others if detained inside the territorial jurisdiction of the United States.”

The law did not address the issue of lawful resident non-citizens whose residency status may change from lawful to unlawful, nor did it expressly forbid the detainment of lawful residents outside “the territorial jurisdiction of the United States.” Section 4(b)(2) of the ATA permitted detention by the DOJ, “inside the territorial jurisdiction of the United States,” of citizens suspected of terrorism found to be lawfully inside the United States. Section 4(b)(2) does not authorize any detainment of citizens “outside the territorial jurisdiction of the United States.” The detention provisions of the ATA found in § 4(a)-(d) contained no fixed time limit, no requirement of a finding of individualized dangerousness, and no guarantee of access to counsel or judicial review.

In both 2025 and 2026, both houses of Congress considered and rejected provisions that would have allowed presidents to detain citizens outside the territorial jurisdiction of the United States. In 2026, the House passed a bill which would allow the president to detain outside the United States non-citizens who are lawfully within the United States and have no criminal record. As of this date, that provision is still pending a vote in the United States Senate.

C. Executive Order 15,000: Protection Against Terrorism (PAT)

On February 14, 2025, President William DeNolf issued Executive Order 15,000 “Protection Against Terrorism” (PAT) (see Appendix VI). Citing his authority as Commander in Chief and the need to respond swiftly to hybrid warfare and foreign-enabled criminal activity, the PAT directed the attorney general to “identify, remove, and detain outside the continental United States all non-citizens with criminal records or pending criminal charges whose presence the attorney general deems detrimental to national security, regardless of immigration status or length of residence.”

While the PAT referenced the ATA as a statutory foundation, at the signing ceremony, President DeNolf emphasized that, “in situations presenting an evolving national security threat, the

president’s inherent foreign affairs and war powers allow him to act beyond any specific law or statutory framework.” The PAT specifically named the United States Naval Base at Guantanamo Bay as an appropriate facility to hold such detainees.

D. Petitioner Bobby Bronner

Bobby Bronner is a 46-year-old lawful permanent resident of the United States. He entered the country lawfully at age 15 under a program intended to provide asylum for persons whose lives and safety may be at risk due to political reasons.¹ Bronner, who lives in the city of Knerr in the state of Olympus, has lived continuously in the United States since 1995. He obtained his green card in 2010 at age 30 after marrying an American citizen, and he subsequently built a successful construction business, paid taxes, and is raising two American-citizen children.

In early 2024, Bronner applied for naturalization. On February 17, 2025, United States Citizenship and Immigration Services formally approved his application, finding that he satisfied all statutory requirements, including continuous residence and good moral character. He was scheduled to take the oath of allegiance and become a U.S. citizen on July 4, 2025.

E. The FBI’s Investigation and Surveillance

On March 17, 2025, the Federal Bureau of Investigation (FBI) received an anonymous tip from a woman who only identified herself as “Jersey.” Jersey reported that Bronner was involved in importing fentanyl and selling it in the United States. Jersey stated that “Bronner had people arriving at his home at odd hours, and he would come and go in the middle of the night.” Jersey provided Bronner’s address and cell phone number. It is unclear how Jersey obtained that data, and the tipster’s identity was never discovered.

The FBI decided further investigation was necessary to corroborate the anonymous tip. The investigation was led by FBI Special Agents Kelly Bello and Maggie Cruz. Attempting to establish probable cause, the Special Agents purchased four commercially available Ring video cameras from a local home improvement store. The store owner, Willow Albano, explained how to install the cameras and how to operate them. On the evening of March 18, Special Agent Bello installed the cameras on four utility poles located on public property near Bronner’s home at 18 Wheeler Road.² Special Agent Bello never physically entered Bronner’s property or home.

¹ Bronner’s mother, Bobbi Bronner, was a university professor with a degree in Government and Politics. She had been critical of the policies of the government of her county of birth – Sommerland. Professor Bronner was placed on house arrest after she delivered a lecture in which she criticized the nation’s founder and leader, Andrew Sommerland, for eliminating academic freedom as well as for requiring that all Sommerlandians eat at least a pound of red meat daily. In 1995, Bronner and her son escaped their detention and fled to the United States embassy, which granted them shelter and ultimately arranged their safe passage to the United States. Bronner has since become a professor at Olympus State University where she teaches a popular class on food policy and politics.

² Olympus is one of twenty-two states, that allows for speed enforcement cameras on public property and one of twenty-six to allow for red light cameras. Just over half of the states allow for hidden cameras in public places, while six states require public notice of cameras and five more recommend or suggest such notice. The remaining states—including Olympus--do not have any laws on public cameras, although Olympus allows municipalities to adopt their use by local ordinance. Knerr does not use traffic cameras, nor does it have an ordinance forbidding them.

Ring cameras are smart home devices designed to enhance security by providing video surveillance around the user's home in real-time.³ Each pole camera has a built-in feature that automatically records individuals entering and leaving the home and can be panned by a remote operator. Each camera also comes equipped with a 10x optical zoom lens, which is about twice as powerful as the zoom on a smart phone camera. While they function best in daylight, each camera comes equipped with infrared night vision, which produces a black-and-white recording in low light. All footage captured by the cameras is time-stamped and stored for later review.⁴

Special Agents Bello and Cruz did not seek or obtain a warrant to install these cameras, and neither entered or touched any of Bronner's property while installing them. While Ring cameras do come equipped with optional features such as "Search Party,"⁵ and Ring has some partnerships with local law enforcement agencies,⁶ there is no evidence that the FBI obtained footage from private Ring users or partnered with Ring or any third-party camera network in this investigation.

Over the next three months, Special Agents Bello and Cruz used these "pole cameras" to surveil the exterior of Bronner's home. The cameras were motion activated, recording activity twenty-four hours a day for 93 consecutive days. Bronner lives in an area prone to flooding, and his home, is a "pier house," elevated on piers or pilings approximately four feet off the ground. As a result, while the slat fence that surrounds Bronner's property obscured most of his property from view, the cameras captured footage of Bronner's front steps, and porch, which were also visible from nearby streets. Additionally, the front door and windows of Bronner's home were clearly visible to the Ring cameras, as were the physical characteristics of any individuals who were entering or exiting through the front door. Bronner's driveway was also visible from the street. The home itself was set back a significant distance from the street. There was no gate limiting access to the driveway.

³ Ring cameras are commercially available through their manufacturer, Ring, and through Amazon (which owns Ring). There are other brands of smart home cameras available for public purchase. As of 2023, *Consumer Reports* estimates that over 30% of all homes in the United States use a doorbell camera, at least 10 million of which were Ring cameras. Ring cameras can be purchased both on-line and in numerous stores.

⁴ Ring cameras typically store data for 30 or 60 days, although users may customize the storage range to retain footage for up to 180 days (as Special Agents Bello and Cruz did). Although each camera was able to capture audio, no intelligible statements from Bronner or anyone else were ever recorded.

⁵ Ring cameras also come equipped with a "search party" function that allows users to report lost pets in the Ring app by uploading an image of their pet, so that nearby outdoor Ring cameras can scan their saved footage for potential matches. If there is a match, the camera's owner gets a notification and can choose to share the clip with the user who initiated the search. A Search Party request expires after a few hours unless renewed, and Ring users can opt-out of Search Party. Law enforcement can request video from Ring camera users but cannot compel users to share footage without a warrant. This feature was not used here. The cameras used in the FBI's investigation were standalone devices and were not connected to any broader law enforcement camera network.

⁶ Ring denies having any contractual arrangements with any federal agencies or departments, although it will cooperate with valid search warrants, subpoenas, or court orders presented by law enforcement officers, including those of the federal government. Ring does have contracts with just over 200 local police departments (out of the 19,000 nationwide), where Ring sells cameras to police departments. The departments then distribute cameras to local citizens who can share footage from their doorbell cameras that may be connected to a criminal investigation. Knerr Police Department spokesperson Hannah Cavanaugh states that it is not one of those departments.

The cameras' zoom features were not powerful enough to see items in the interior of Bronner's home, nor could they see identifiable physical features of any occupants. But because Bronner regularly keeps his blinds open for most of the day, the cameras could see lights going on and off inside, as well as movement near the windows in the home's common areas. These observations allowed the FBI to establish Bronner's patterns of behavior. For example, because of the length and nature of the surveillance, the FBI learned that Bronner: ordered pizza at least twice a week, had Sparklets water jugs delivered on Tuesdays and Blue Apron on Thursdays, and received monthly deliveries from Chewy and Omaha Steaks. FBI Special Agents Bello and Cruz observed deliveries of unknown products from Costco, and they witnessed a representative from Geek Squad and representatives from an HVAC repair company visit the home. FBI also learned that Bronner was visited by a masseuse twice a week, and they observed him purchase Girl Scout cookies – specifically Thin Mints, Samoas, and Tag-Alongs -- at his front door.

The pole cam surveillance did not disclose any visits from persons known to be involved with drugs. But on May 4, 2025, the FBI observed a SUV drive up and two men get out and go to Bronner's front door. Bronner opened the door but never stepped outside. Using the pole cam's optical zoom, the FBI recognized the men as Dickie Roper and Sandy Langbourne. The men, both foreign nationals, previously served prison sentences abroad for illegally selling military-grade arms and had been questioned twice before by federal agents about suspected ties to international terrorist organizations involved in drug smuggling. The men entered Bronner's home, remained inside for fifteen minutes, then departed while Bronner remained inside. Most of the footage relied on by the FBI -- including the May 4 meeting -- took place on Bronner's property, which was unobscured and could have been observed by anyone standing on the public street.

Late in the evening on May 27, 2025, National Security Agency (NSA) agents Maggie Bourgeois and Adam Quinlan were conducting independent warrantless surveillance of a warehouse at 89 New Road, which was rented by Roper. NSA Agents Bourgeois and Quinlan observed Roper and Langbourne meeting with Bronner at the warehouse and contacted Special Agent Cruz. Because the NSA agents declined to disclose the purpose of their investigation or the intelligence they had gathered (citing national security concerns). Special Agent Cruz contacted Assistant United States Attorney (AUSA) Amanda DeLeon. Special Agent Cruz summarized the surveillance footage that had been gathered by the Ring cameras over the previous 93 days. Based on this information, AUSA DeLeon drafted a warrant to search the warehouse, Bronner's automobile, and Bronner's home for evidence of suspected domestic terrorism and drug possession. AUSA DeLeon woke the on-call judge, United States Magistrate Judge Ryan Olson, who authorized the warrants after the AUSA disclosed the government's evidence, including its use of warrantless pole-mounted cameras. The parties stipulate that the government relied primarily on the pole-mounted camera footage in establishing probable cause for the search warrants.

F. Bronner's Arrest and Subsequent Detention

As soon as the warrants were granted, the FBI apprehended Bronner, Roper, and Langbourne. The search of Bronner's home yielded fentanyl patches, fentanyl lollipops, and fentanyl nasal spray, along with a log of drug sales. The police also searched Bronner's automobile and discovered four boxes of fentanyl lozenges. At the warehouse, the FBI did not find any evidence of drugs but did find documents that it claims indicate that Bronner had arranged to purchase a "dirty bomb" from Roper and Langbourne. Citing national security concerns, these documents have been sealed, and

Bronner has not been given an opportunity to review them. Bronner maintains that he was unaware of Roper and Langbourne’s connection to foreign terrorist organizations and denies that he ever sought to purchase a dirty bomb from them.

On May 29, 2025, Bronner was booked into a federal detention facility in South Olympus. The next day Bronner was arraigned on charges of possession of fentanyl with intent to distribute. He appeared before the United States District Court for the District of Olympus, pled not guilty, and was released on bond.

Immediately after his release, Bronner was rearrested on charges of knowingly providing material support to a foreign terrorist organization.⁷ Roper and Langbourne were also arraigned on charges of conspiracy to commit domestic terrorism. Like Bronner, they denied any violations of the law or that they had plans to commit terrorist acts. None of the three men were released on bail.

Within 48 hours, on May 31, 2025, Attorney General Chester Comerford invoked the PAT and the ATA, and classified Bronner as a “removable non-citizen with a criminal record” because he had been “accused” of a federal crime involving national security. Although Bronner had no prior criminal convictions and was in the country lawfully, Attorney General Comerford determined that Bronner fell under the jurisdiction of § 3 of the ATA. He also concluded that Bronner’s detention was warranted under § 1021(c)(1) of the NDAA, as well as the president’s inherent powers under Article II of the United States Constitution.

The attorney general consulted with President DeNolf, who ordered that Bronner be removed by the FBI from the Olympus facility and transported to an Air Force base. Federal law enforcement officials surrendered Bronner to military authorities on July 7, 2025, and the military transported him to the United States Naval Base at Guantanamo Bay. Upon arrival, Bronner was placed in a high security compound. He was told that he was being held under the authority of the ATA as implemented by the President’s Executive Order. Roper and Langbourne, who have separate counsel, were also transferred to military custody outside the United States.

As of the date this opinion was issued, Bronner has been held for 12 months. The United States, citing the ATA, § 1021(c)(1), and the PAT, states that it intends to try Bronner as soon as practicable, that its delay reflects the sensitive nature of the evidence that would need to be presented at trial, and that the president has determined that disclosure at this point would endanger national security.

G. Bronner’s Habeas Petition and Proceedings in the District Court

After several months of confinement, a group of volunteers participating in a law school clinic innocence project supervised by OSU Law Professor Ayanna Grunwald learned of Bronner’s detention through a redacted government filing in another national security case. They filed a petition for a writ of habeas corpus in the United States District Court for the Central District of Olympus on Bronner’s behalf.

⁷ A felony punishable by up to 20 years imprisonment.

The petition alleged that Bronner's arrest, removal, and indefinite detention violated the United States Constitution on the grounds that the president exceeded his Article II authority by effectively creating a new detention category for lawfully present non-citizens that Congress had expressly considered and rejected when enacting the ATA.

Bronner raised two issues in his petition. First, he challenged the admissibility of the evidence obtained by the FBI from the pole cameras under the Fourth Amendment. Bronner argued that the pole cam surveillance was unreasonable, and that the evidence seized from the warehouse (including his alleged purchase of a dirty bomb) should have been suppressed as the fruit of an illegal search. The United States argued the pole camera surveillance did not violate Bronner's reasonable expectation of privacy and thus was not a Fourth Amendment search.⁸

Second, Bronner argued that his indefinite detention exceeded the president's inherent authority under Article II, was inconsistent with the will of Congress as expressed by the AUMF, the NDAA, the ATA, and violated his right to due process (which acts as an independent limit on presidential authority). The United States contends that Bronner's detention falls within the president's inherent powers over national security, was authorized by Congress, and that he will be tried when the evidence against him no longer poses national security risks.⁹

Judge D.R. Fair of the United States District Court for the Central District of Olympus ruled in favor of Bronner but stayed his ruling to allow the United States to appeal. The United States appealed in a timely fashion to this court. Both sides stipulated that this body has jurisdiction because Bronner was apprehended by civilian authorities in its jurisdiction.

For the following reasons, we REVERSE the district court and affirm the constitutionality of Bronner's arrest and detention.

III

Fourth Amendment Analysis

The Fourth Amendment protects the people from unreasonable searches and seizures. The Supreme Court judges Fourth Amendment cases by asking whether one has a subjective expectation of privacy and whether society can be objectively expected to find that claim reasonable. *Katz v. United States*, 389 U.S. 347 (1967).

Additionally, *Kyllo v. United States*, 533 U.S. 27 (2001) and *Carpenter v. United States*, 585 U.S. 296 (2018) caution that the use of uncommon, sense-enhancing technology or comprehensive digital tracking may violate the Fourth Amendment. But those concerns are absent where the government uses commercially available devices to observe only what is exposed to public view.

⁸ The United States did not assert that it had probable cause to obtain a warrant without the data obtained from the pole cameras, and Bronner did not assert that Magistrate Judge Olson's order on May 27th was unsupported by probable cause. Accordingly, both issues are not preserved and are not before this Court.

⁹ No statutes or treaties or protocols or other international agreements are before this court other than those cited in the appendices. Bronner did not raise any issues relating to a speedy trial, bail, or his ability to introduce evidence that might establish his innocence. Accordingly, those issues are not preserved and are not before this Court.

A. Bronner has no reasonable expectation of privacy regarding who enters and exits his home

In *Katz*, the Supreme Court held that the Fourth Amendment protects people, not places, establishing a two-part inquiry: (1) whether the individual manifested a subjective expectation of privacy, and (2) whether society recognizes that expectation as reasonable.

Here, the record does not support Bronner’s claim that the use of Ring cameras constituted a Fourth Amendment search. While Bronner took some steps to shield the interior of his home from prying eyes, society generally does not recognize an expectation of privacy in activities readily observable from public vantage points. *See, e.g., California v. Ciraolo*, 476 U.S. 207 (1986). Here, the cameras were placed on utility poles located on public property. The only areas surveilled—the driveway, front steps, and porch—were also visible from nearby public streets. The cameras captured only general interior activity, such as movement and lights turning on and off (which were only observable because Bronner regularly left his blinds open), without revealing any interior details or identifiable features of occupants.

The dissent concedes as much but argues this case is different because the government’s observations lasted three months. But duration alone does not transform lawful observation into a search. *See United States v. Tuggle*, 4 F.4th 505, 526 (7th Cir. 2021).

The Fourth Amendment forbids technological intrusion into the home or the compelled disclosure of information not otherwise exposed. It does not forbid persistent observation of what is knowingly visible to the public.

B. The FBI’s use of Ring cameras did not constitute a search

This is a case of first impression for this circuit. While the constitutionality of pole camera surveillance is a matter of first impression in this circuit, we are not without guideposts. Several circuits and at least one state supreme court have wrestled with similar sets of facts involving pole cameras. The circuits have all affirmed the warrantless use of pole cameras, at least one state supreme court reached the opposite conclusion.¹⁰

In *Kyllo v. United States*, the Supreme Court held that use of sense-enhancing technology not in general public use to obtain information about the interior of a home constitutes a search. Here, while the Ring cameras employed by the FBI contained features such as motion tracking, zooming, and infrared night vision, such technology is regularly used by the public to provide reliable security for private homes. These cameras were also standalone consumer devices, not connected to any broader surveillance network or other private Ring users. While some of these features undoubtedly enhanced the FBI agents’ senses, they did not reveal any intimate details of Bronner’s home, did not penetrate the walls, and only recorded activity that was already observable from public vantage points. The cameras retained all of the footage they took, could film at night, and had a zoom that was about twice as powerful as a smart phone camera. But the cameras still only observed a small fraction of Mr. Bronner’s life. Unlike the thermal imager in *Kyllo*, these cameras

¹⁰ Compare *United States v. Moore-Bush*, 36 F.4th 320 (1st Cir. 2022) and *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021) with *People v. Tafoya*, 494 P.3d 613 (Colo. 2021).

did not surveil anything that happened after he entered his home or after he left his property. They did not penetrate walls or reveal any intimate details of domestic life. Indeed, they could not observe *anything* that occurred within his home except that which would have been visible through an open window from a public street. Put differently, the cameras may have provided enhanced observation, but it was merely enhanced observation of already-exposed activity. *Tuggle; United States v. Moore-Bush*, 36 F.4th 320, 361 (1st Cir. 2022) (Lynch, J., concurring).

Bronner does not prevail by relying on *Carpenter*. *Carpenter*, which addressed long-term digital tracking, concluded that prolonged collection of cell-site location information constitutes a search. The FBI used Ring cameras to record the exterior of Bronner’s home for 93 days, from fixed public vantage points—a far cry from the almost 13,000 location points catalogued by the surveillance in *Carpenter*. The surveillance here was focused narrowly on one individual who was already a Person of Interest to the FBI. There is no suggestion that the government routinely uses Ring cameras to conduct broad, fishing expeditions. *Carpenter* involved highly-advanced technological surveillance that leveraged a person’s cell phone—a specialized device that raises specialized privacy concerns. The surveillance here was conducted using low-tech tools that were readily available to the public and which were not owned by Bronner. *Moore-Bush*, 36 F.4th at 371.

C. Even if this is a search, the government’s interests outweigh Bronner’s

Even if the use of Ring cameras constituted a “search,” the Fourth Amendment merely demands that searches be “reasonable” *Katz v. United States*, 389 U.S. 347 (1967). To determine “reasonableness,” we weigh the degree of intrusion on privacy against the government’s interests in conducting the search. Unlike Bronner’s privacy interests (which, as discussed above, are remote),¹¹ the government’s interests are of the highest order. The government was investigating credible allegations of serious criminal activity, including drug trafficking. In addition, there are few threats graver than domestic terror attacks carried out by unknown foreign assailants.

Here, the FBI’s surveillance was limited to four stationary cameras that were installed on public property. Similar to a stakeout, these cameras collected information that any passerby could have observed, in a manner that did not interfere with Bronner’s ability to enjoy his property. There was no physical intrusion, no audio capture, and no surveillance of the interior of his home.

Balancing all these considerations, we conclude that the Ring camera surveillance did not constitute a search under the Fourth Amendment. Bronner had no reasonable expectation of privacy regarding who visited his home. The limited and passive nature of the technology used, combined with its commercial availability and the absence of advanced technology, distinguishes this case from *Kyllo* and *Carpenter*. The monitoring fell within the bounds of lawful public observation, and the district court erred in suppressing the evidence derived from the surveillance.

¹¹ The Dissent argues that Bronner’s privacy interests are high because the FBI conducted a warrantless search of his home. For the reasons discussed above, we reject the argument that the FBI searched Bronner’s home, with or without a warrant.

IV

Article II Analysis

The question before this court is whether the President of the United States exceeded his authority when he ordered the prolonged, potentially indefinite detention of Bobby Bronner, a lawful permanent resident whom the Executive has classified as an unprivileged enemy belligerent after he arranged to purchase a radiological “dirty bomb” from arms dealers previously investigated for ties to international terrorist organizations.

The Constitution divides war powers between Congress and the president—but it does not render the executive powerless to detain enemy belligerents when Congress has authorized detention. Because protecting the nation from terrorist attacks is at the core of the president’s responsibilities as Commander in Chief, and because Congress has repeatedly provided statutory authority that encompasses detention of unprivileged enemy belligerents, we conclude that the president did not exceed his constitutional power in directing Bronner’s detention at Guantanamo Bay.

A. The prolonged detention of unprivileged enemy belligerents is permissible under the law of war and the president’s inherent war powers

As an unprivileged enemy belligerent, Bronner is susceptible to detention under the law of war. Congress has expressly recognized this category in 10 U.S.C. § 948(a)(7), which defines an “unprivileged enemy belligerent” to include individuals who have engaged in hostilities against the United States or purposefully and materially supported such hostilities. Bronner’s conduct, which included arranging to purchase a dirty bomb from dealers previously investigated for ties to international terrorist organizations, materially supports hostilities and therefore falls squarely within this statutory framework.

The president’s inherent war and foreign affairs powers under Article II have long included the authority to respond to sudden threats. In *The Prize Cases*, the Supreme Court recognized that when the nation is attacked, the president is bound to respond without waiting for Congress to “baptize it with a name.” 67 U.S. 635, 669 (1863). Incidents of war include the detention of enemy belligerents. That principle applies with equal force to more modern types of warfare and terrorist activity that threaten mass casualties on American soil.

The Supreme Court has recognized that detention of enemy combatants is a “fundamental incident of waging war.” See *Ex parte Quirin*, 317 U.S. 1 (1942). *Quirin* upheld the military trial and detention of enemy saboteurs, including an American citizen, as unprivileged belligerents not immune from the laws of war. That Bronner has long resided lawfully in the United States and applied for citizenship does not alter the analysis if he has materially supported hostilities; as *Quirin* explained, “citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful.” *Id.* at 37–38.

B. Bronner’s detention is consistent with the expressed will of Congress.

At the same time, the case law makes clear that Article II does not operate in a vacuum. In *United States v. Curtiss-Wright Export Corp.*, the Court emphasized that the president possesses “plenary and exclusive” power as the nation’s “sole organ” in external relations. 299 U.S. 304, 319 (1936).

Here, as in *Curtiss-Wright*, the president acted in an area where Congress has also legislated and where the political branches are acting in concert. The president’s actions therefore fall within Justice Jackson’s first *Youngstown* category—where executive authority is at its maximum.

After the September 11 attacks, Congress enacted the Authorization for Use of Military Force (AUMF), authorizing the president to use “all necessary and appropriate force” against persons and organizations responsible for those attacks “in order to prevent any future acts of international terrorism against the United States.” Congress later reaffirmed and specified that authority in the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81. Section 1021(b)(2) of that statute defines a “covered person” as any individual who was part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities against the United States, including those who have committed a belligerent act or directly supported such hostilities. Section 1021(c)(1) further confirms that such covered persons may be detained “under the law of war without trial until the end of the hostilities authorized by the AUMF.”

The president’s authority to detain Bronner is also consistent with the framework of Justice Jackson’s familiar concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952). When the president acts pursuant to an express or implied authorization of Congress, “his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” When he acts contrary to Congress’s expressed will, his power is “at its lowest ebb.” And when Congress has been silent, he operates in a “zone of twilight” where congressional inertia may have practical significance but does not conclusively resolve the issue.

Here, the president’s order detaining Bronner outside the territorial United States rests on multiple statutory foundations as well as Article II. The AUMF authorizes the use of “all necessary and appropriate force” against enemy forces responsible for the September 11 attacks. *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) interpreted this power to include detention of enemy combatants for the duration of hostilities. Public Law 112-81 § 1021 expressly affirms that the president’s AUMF authority includes detention of “covered persons” under the law of war.

Congress’s repeated refusal to enact amendments that would categorically forbid the detention of citizens or lawful permanent residents in military custody is significant. Efforts to bar indefinite detention of Americans failed during consideration of the NDAA, and subsequent attempts to repeal or significantly narrow the AUMF also failed. In *Costanzo v. Tillinghast*, 287 U.S. 341 (1932), the Court recognized that legislative inaction in the face of a longstanding administrative interpretation can, over time, create a presumption that Congress has acquiesced in that interpretation. While *Costanzo* involved immigration administration, the principle equally applies here. Congress has been aware of executive claims to detain unprivileged enemy belligerents, including citizens and lawful residents but has declined to expressly foreclose that authority. Against this backdrop, the president’s order falls within the first *Youngstown* category.

Nor does *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866), compel a different result. *Milligan* involved the military trial of a civilian in Indiana, where civilian courts were open, and the defendant was not part of or supporting enemy forces on the battlefield. By contrast, *Quirin* and *Hamdi* make clear that individuals who join or materially support enemy forces may be treated as enemy belligerents even if they are citizens and even when captured on U.S. soil, so long as their detention is tied to ongoing hostilities authorized by Congress.

In 2025, Congress enacted the Anti-Terrorist Act (ATA), which further illuminates its view of the correct balance between national security and individual liberty in terrorism investigations. In light of the ATA's broad grants of detention authority, Congress's silence regarding the detention of lawful permanent residents, and the explicit preservation of existing detention authorities in the NDAA and the ATA, the president's order to detain Bronner at Guantanamo Bay is reasonably understood as falling within, or at least not contrary to, Congress's will. Under *Youngstown*, this places the president's authority in the first category with his power at its maximum.

C. The President's authority to detain Bronner is not limited by other Constitutional provisions, including the due process clause

Nothing in our holding means that the executive's detention authority is unlimited. Because our Constitution is a unified whole, no power granted to the executive can be exercised in a way that deprives individuals of their constitutional rights. *See, e.g., Youngstown Sheet & Tube, Co.* Here, Bronner argues that even if Article II and congressional enactments support the president, his right to due process limits the president's authority to indefinitely detain him. In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court articulated a balancing test for assessing the procedural safeguards required by due process: the test requires weighing the private interest, the risk of erroneous deprivation, the probable value of additional safeguards, and the government's interest. *Hamdi* adapted that framework to the national-security detention context, holding that a citizen detained as an enemy combatant must receive notice of the factual basis for his classification and a fair opportunity to rebut the government's evidence before a neutral decision maker.

Bronner has pursued relief through a habeas petition in federal court. The district court's judgment in his favor is fully reviewable, as this appeal demonstrates. The United States has indicated that it intends to try Bronner "as soon as practicable" and that the delay reflects the sensitivity of the evidence and national-security concerns regarding disclosure, not a desire to "punish" him.

While the 12-month period of detention that has elapsed is substantial, it remains tied to ongoing hostilities and to a plan for prosecution rather than to an unbounded assertion of perpetual executive power. Further, recent lower court decisions demonstrate that courts remain available to review detention decisions and to ensure they do not devolve into unchecked executive imprisonment. The Court has not categorically banned detentions that last longer than six months, nor has it held that defendants like Bronner are entitled to an "individual determination" of each detention decision, especially when there is no evidence that the detention is "a 'ruse to incarcerate [him] for other reasons.'" *Banyee v. Garland*, 115 F.4th 928, 934 (8th Cir. 2024).

Balancing the grave national-security interests at stake, the express statutory authority in the AUMF, NDAA, and ATA, Congress's longstanding acquiescence in executive detention of unprivileged enemy belligerents, and the ongoing availability of habeas review, we conclude that the president did not exceed his Article II authority in ordering Bronner's detention.

The judgment of the district court on the Article II claim is therefore REVERSED.

DISSENTING OPINION BY Judge Cassidy

I dissent from the conclusion that the government’s use of prolonged, continuous video surveillance of the exterior of a private home did not violate the Fourth Amendment.

The Fourth Amendment draws a firm line at the entrance to the house; and while that line may be tested by the surreptitious deployment of technology, it has not been erased. *Kyllo v. United States*, 533 U.S. 27 (2001). While the majority’s analysis focuses on the common-place nature of “Ring cameras,” it undervalues the cumulative intrusiveness of the surveillance at issue, overreads the “public vantage point” doctrine, and gives insufficient weight to the warrant requirement that remains the “central protection” of the Fourth Amendment.

Taken to its logical conclusion, the majority would usher in a society that ignores the warning in the Police song “Every Breath You Take”:

*Every breath you take and every move you make
Every bond you break, every step you take
I’ll be watching you*

I

Fourth Amendment Analysis

The majority relies heavily on the proposition that Bronner lacked a reasonable expectation of privacy in activity visible from public spaces. Although that principle is correct as far as it goes, it does not resolve this case.

A. Prolonged, targeted video surveillance of a home triggers the essence of Carpenter

The majority casts *Carpenter v. United States*, 585 U.S. 296 (2018) as a decision about long-term digital fishing, collecting thousands of data points from an untold number of citizens. But that only tells part of the story: *Carpenter* also rejected the notion that prolonged surveillance is immune from Fourth Amendment scrutiny simply because each individual data point could have been observed in public. What mattered in *Carpenter* was not the visibility of isolated movements, but rather the government’s ability to assemble a “comprehensive chronicle” of a person’s life through sustained monitoring. *Id.*, at 300. The facts here point to the dangers that the mosaic theory of the Fourth Amendment describes. R. at 7. See *United States v. Tuggle*, 4 F.4th 505, 517-525 (7th Cir. 2021) (detailing the Justices of the Supreme Court, courts and scholars who have embraced it). Simply put, from the use of Ring camera for 93 straight days we learn so much about so many distinct aspects of Bronner’s life that we can paint a pretty accurate picture as to overarching nature of his life as a whole.

Here, the FBI engaged in continuous, targeted video surveillance of Bronner’s home for three months, recording his comings and goings at the entrance to his home, documenting the timing of visits, identifying visitors, discerning patterns of behavior, and allowing officers to reconstruct his daily routines and associations. That the surveillance occurred through fixed cameras rather than cell-site location data does not diminish its constitutional significance. Indeed, it arguably intensifies it: the home, not the cell phone, has long occupied the core of Fourth Amendment

protection. By training these cameras on Bronner’s home, for three months, the FBI was able to transform ordinary observation into something much more penetrating and comprehensive.

B. The FBI’s surveillance functionally intruded into Bronner’s home

The majority correctly invokes *Kyllo* but applies it too narrowly. *Kyllo* holds that when the government uses technology that is not in general public use to obtain information about the interior of the home, which could not otherwise be obtained without physical intrusion, a search has occurred. While Ring cameras are commercially available, even commonplace technology can reveal detailed information about domestic life that casual observation never could—especially when deployed in a persistent and targeted manner.

The cameras here were equipped with motion tracking, a 10x optical zoom, infrared night vision, and persistent recording—features that, in combination, allowed the government to monitor Bronner’s home continuously and in conditions that defeat ordinary human observation. While no single feature penetrated the walls of the home, their aggregate use revealed information about the rhythms of the household—such as periods of activity, lighting changes, and patterns of presence or absence—through continuous monitoring of the home’s entrance and visible windows. *United States v. Moore-Bush*, 36 F.4th 320 (1st Cir. 2022) (Barron, C.J., concurring).

Kyllo warned against precisely this sort of end run around the Fourth Amendment—where technology “shrinks the realm of guaranteed privacy” by extracting information about the home that previously required physical intrusion. *Kyllo*, 533 U.S. at 34. The majority’s insistence that the cameras merely enhanced what was already visible ignores the reality that persistent, automated surveillance is not a natural extension of casual observation. As the Colorado Supreme Court has noted: “[p]ut simply, the duration, continuity, and nature of surveillance matter when considering all the facts and circumstances in a particular case.” *People v. Tafoya*, 494 P.3d 613, 620 (Colo. 2021).

The majority repeatedly emphasizes that the cameras were placed on public property and captured activity visible from public vantage points. But the fact that the driveway, porch, and front steps were visible from nearby streets does not resolve the constitutional question. The Fourth Amendment inquiry turns not only on visibility, but also includes duration, automation, and aggregation. The Supreme Court has never held that the government may permanently station surveillance equipment outside a person’s home and record continuously without judicial oversight and it has refused to draw a distinction between the “intimate” and “unimportant” details of the home. *See Kyllo*, 533 U.S. 27, 37 (2001) (stating “our cases show, *all* details are intimate details, because the entire area is held safe from prying government eyes.”).

On the contrary, the Court has cautioned that Fourth Amendment analysis must account for the *degree of intrusion*, not merely the location of the observer. A passerby glimpsing a driveway is not constitutionally equivalent to the government recording that driveway every minute of every hour of every day for months. *See Moore-Bush*, 36 F.4th at 336 (Barron, C.J., concurring).

C. The surveillance of Bronner’s home is fatally deficient without a warrant

Perhaps most troubling is that the government conducted this surveillance of Bronner’s home without a warrant, despite ample opportunity to seek one. The warrant requirement is not an

inconvenience to be tolerated when efficiency permits—it is the mechanism by which neutral magistrates ensure that intrusive surveillance is justified, limited, and accountable. *United States v. United States District Court*, 407 U.S. 297 (1972).

By approving warrantless, long-term video surveillance of a home, the court creates a blueprint for surveillance practices that evade meaningful judicial review. This situation was neither a rapidly evolving emergency nor a fleeting exigency. The government installed four cameras as part of an investigative strategy and operated them continuously for ninety-three days without judicial authorization. If the government believed that Bronner posed a serious threat, as it asserts, it could have sought a warrant supported by probable cause. It did not. Its failure to do so is fatal.

The Fourth Amendment does not forbid all observation. But it does prohibit state from converting ordinary visibility into a sustained, technologically-driven monitoring regime that reveals patterns of life centered on the home over an extended period of time—without a warrant. *Kyllo*, 533 U.S. at 36-38.

II

Article II Analysis

It is true that decisions related to the conduct of war are entrusted to the political branches, which possess the institutional capacity to respond to threats to national security. But it does not follow that constitutional protections are extinguished whenever the executive invokes the terms “war” or “terrorism.” As Justice O’Connor reminded us in *Hamdi v. Rumsfeld*, “a state of war is not a blank check for the president when it comes to the rights of the Nation’s citizens.” 542 U.S. 507, 535 (2004). That warning applies with equal force to lawful permanent residents like Bronner, whose liberty interests, ties to the United States, and access to habeas corpus implicate the same core constitutional values that *Hamdi* and its progeny seek to protect.

Our task is to evaluate whether the president exceeded his authority when he ordered Bronner’s prolonged, potentially indefinite detention in military custody outside the territorial jurisdiction of the United States. In my view, the answer is yes. Properly understood, the AUMF, Public Law 112-81, and the Anti-Terrorist Act do not place the president in Justice Jackson’s first *Youngstown* category; at best, they situate him in the “zone of twilight,” and more plausibly, they place him in the third category as acting against the implied will of Congress. Under these circumstances, the Constitution’s protections must be respected.

A. Congress has not authorized the indefinite detention of lawful permanent residents

The majority assumes that the joint operation of the AUMF, NDAA § 1021–1022, and the ATA places this case in the first *Youngstown* category. That assumption is misplaced. Section 1022(b)(1)– (2) of Public Law 112-81 explicitly declares that the requirement to detain “a person in military custody under this section does not extend to citizens of the United States” and does not extend to lawful resident aliens regarding conduct within the United States, except as the Constitution permits. Section 1021(e) further provides that nothing in the law “shall be construed to affect existing law or authorities relating to the detention of United States citizens or lawful resident aliens.” Far from affirmatively authorizing military detention of individuals situated like

Bronner, Congress deliberately declined to impose such a requirement and took care not to expand the president's authority over them.

The majority leans heavily on the AUMF's broad language and on Congress's refusal to repeal it. But legislative inaction cannot be treated as an affirmative grant of new detention powers. *Youngstown* held that where Congress has legislated in a field and declined to confer the power the executive now claims, we should be wary of recharacterizing that silence as endorsement. See *Youngstown*, 343 U.S. at 637–38 (explaining that when the president acts contrary to Congress's implied will, courts must scrutinize such claims "with caution"). In my view, the effect of § 1022, combined with § 4(b)(2) of the ATA (which requires that U.S. citizens be detained inside the territorial jurisdiction of the United States), indicates that Congress has at least implicitly *rejected* the notion that the president may unilaterally create a new category of detainees to be held indefinitely at Guantanamo. That places this case squarely in Justice Jackson's third category, where the president's power is at its "lowest ebb."

B. The president has no inherent authority to detain lawful permanent residents not captured in an active theater of war.

The Supreme Court's decisions in *Ex parte Quirin*, 317 U.S. 1 (1942), and *Hamdi* recognize that detention of enemy combatants can be a "fundamental incident of waging war" authorized by the AUMF. *Quirin* upheld the military trial and detention of enemy saboteurs, including a citizen, captured while engaged in wartime sabotage on U.S. soil. *Hamdi* held that the AUMF authorized the detention of a citizen captured on the battlefield in Afghanistan as a Taliban fighter. But those precedents do not stretch as far as the majority suggests. *Quirin* involved enemy saboteurs sent by a foreign nation during a declared war, and the Court took pains to distinguish *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866), which held that it was unconstitutional to exercise military jurisdiction over a civilian in an area where courts were open. *Hamdi*, in turn, tied its holding to the narrow category of individuals captured in active combat zones fighting with Taliban forces. Bronner, by contrast, was a lawful permanent resident living openly in Olympus, arrested by civilian law enforcement, arraigned in federal court, and held where civilian courts are fully functioning.

Moreover, the nature of the "war" in question matters. In *The Prize Cases*, 67 U.S. 635 (1863), the Court upheld President Lincoln's blockade of Confederate ports during an active civil war, recognizing that the executive must respond to armed rebellion. But that case arose in the context of open hostilities between organized forces and did not involve the long-term detention of residents seized far from any recognized battlefield. The "War on Terror" is a never-ending concept and thus fundamentally differs from the finite conflicts that informed *Quirin* and *The Prize Cases*, and that difference heightens the constitutional concern that war powers might be used to justify the perpetual detention of persons like Bronner.

C. The president's detention authority is further limited by the Due Process Clause, which forbids the indefinite off-shore detention of lawful permanent residents

While the president's powers under Article II are substantial, the president must still respect the fundamental rights of all persons, which are central to our system of government. *Ex parte Milligan* established that the executive may not substitute military jurisdiction for civilian courts where the latter remain open and capable of administering justice. *Milligan* rejected the argument

that wartime exigency allowed the president to bypass ordinary constitutional protections when trying civilians. Its reasoning applies with equal force to the prolonged military detention of residents who are within the reach of Article III courts and federal criminal statutes.

Hamdi further clarified that any detention of a citizen as an enemy combatant must be accompanied by due process, including notice of the factual basis for classification and a meaningful opportunity to contest that classification before a neutral decision maker. The Court relied on the balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs (1) the private interest at stake, (2) the risk of erroneous deprivation and the probable value of additional safeguards, and (3) the government’s interest, including the function involved and the burdens that alternative procedures would entail. When we engage in that balancing, the government comes up short.

Mathews and *Hamdi* guarantee a more substantive process than Bronner has received. His interest, namely freedom from physical restraint in a high-security compound at Guantanamo Bay after 12 months (and counting) of detention, is among the most significant liberty interests our law recognizes. The grave risk of error is not hypothetical. Bronner was initially arrested, arraigned, and released on bond by a federal court, indicating that existing civilian processes were already engaged. The government has since invoked the sensitivity of the evidence and national-security concerns to justify delaying trial “as soon as practicable,” but has not demonstrated why a neutral tribunal cannot test the factual basis for labeling him an unprivileged enemy belligerent.

The recent experience of the Eighth Circuit Court of Appeals in addressing prolonged detention in the immigration and national-security context underscores the dangers of allowing open-ended confinement without robust judicial oversight is instructive. In *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), that court emphasized that even where statutes authorize detention, due process may require periodic review to prevent detention from becoming effectively indefinite. While *Banyee* is not controlling, we are persuaded that it illustrates that courts are fully capable of crafting procedures that protect national security while safeguarding individual liberty. *See also United States v. United States District Court*, 407 U.S. 297 (1972).

The majority’s approach risks normalizing a government in which lawful permanent residents (many of whom, like Bronner, have built lives and families in this country and are on the cusp of citizenship) can be removed from the protections of civilian courts and placed into military detention whenever an administration deems it expedient. That is not a path our constitutional tradition permits. I would hold that the president exceeded his authority under Article II and would affirm the district court’s judgment granting the writ of habeas corpus.

If I may be permitted a second musical observation, this case calls to mind the Bob Dylan lyric:

But even the President of the United States
Sometimes must have to stand naked

After today’s decision, I am less than confident that we as a people will make it – that we won’t slide into the abyss that is totalitarianism. For that reason, I respectfully dissent.

Appendix I

Authorization for Use of Military Force (AUMF), Public Law 107-40 (2001)

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

* * *

SECTION 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

- (a) That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

Appendix II

10 U.S.C. § 948 (a)(7)

In this chapter:

- (7) **Unprivileged enemy belligerent.**— The term “unprivileged enemy belligerent” means an individual . . . who—
- (A) has engaged in hostilities against the United States or its coalition partners;
 - (B) has purposefully and materially supported hostilities against the United States or its coalition partners;
 - (C) was a part of al Qaeda at the time of the alleged offense under this chapter; or
 - (D) has previously been defined as “enemy combatant.”

Appendix III

National Defense Authorization Act (NDAA), Public Law 112-81 (2012)

SECTION 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

- (a) In General.--Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.
- (b) Covered Persons.--A covered person under this section is any person as follows:
 - (1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.
 - (2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.
- (c) Disposition Under Law of War.--The disposition of a person under the law of war as described in subsection (a) may include the following:
 - (1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.
- (d) Construction.--Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.
- (e) Authorities.--Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

Appendix IV

National Defense Authorization Act (NDAA), Public Law 112-81 (2012)

SECTION 1022. MILITARY CUSTODY FOR FOREIGN AL-QAEDA TERRORISTS.

(a) Custody Pending Disposition Under Law of War.—

- (1) In general.-- Except as provided in paragraph (4), the Armed Forces of the United States shall hold a person described in paragraph (2) who is captured in the course of hostilities authorized by the Authorization for Use of Military Force (Public Law 107-40) in military custody pending disposition under the law of war.
- (2) Covered persons.-- The requirement in paragraph (1) shall apply to any person whose detention is authorized under section 1021 who is determined—
 - (A) to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and
 - (B) to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.
- (4) Waiver for national security.-- The President may waive the requirement of paragraph (1) if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.

(b) Applicability to United States Citizens and Lawful Resident Aliens.—

- (1) United States citizens.-- The requirement to detain a person in military custody under this section does not extend to citizens of the United States.
- (2) Lawful resident aliens.-- The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

Appendix V

Anti-Terrorist Act (ATA), Public Law 417-01 (2025)

SECTION 1. PURPOSE

An Act to protect the people of the United States from terrorism.

SECTION 2. DEFINITIONS

(a) As used in this chapter—

(1) Unlawfully present in the United States:

(a) Being in the United States without the authorization or approval of the United States.

(2) Terrorism: Any violent acts or acts dangerous to human life that are:

(a) A violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; or

(b) Appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(3) Territorial Jurisdiction:

(a) Where the United States has the authority to make laws.

SECTION 3. FINDINGS: Congress makes the following findings:

(a) **IN GENERAL** -- The power vested in the United States to protect its people and its territories, while limited by congressional acts and the provisions of the Constitution is vast, expansive, and an inherent attribute of sovereignty.

(b) **TERRORISM IS A THREAT TO THE UNITED STATES:** Terrorists want to harm the United States and its people and their way of live. Every year acts of terrorism and/or the threat of terrorism disrupts people's lives and livelihoods resulting in loss of life, money, and property; dangers to interstate commerce; threats to the general welfare of the nation; and missed opportunities due to fear of terrorism.

- (c) WE MUST NEVER GIVE IN TO TERRORISM – The people of the United States must persevere against threats or acts of terrorism.

SECTION 4. DETAINMENT OF PERSONS IN THE UNITED STATES WHO ARE SUSPECTED OF TERRORISM

- (a) Detention of persons suspected of terrorism.--The Attorney General of the United States is hereby authorized to instruct officials in the Department of Justice to detain any person who is present in the United States who is suspected of terrorism.
- (b) Location of detention.--The Attorney General of the United States is hereby authorized to instruct officials in the Department of Justice to:
 - (1) detain any person who is unlawfully present in the United States who is suspected of acts of terrorism or conspiring to commit acts of terrorism or assisting others in the act of terrorism. This detainment shall occur inside the territorial jurisdiction of the United States. This detainment shall occur outside the territorial jurisdiction of the United States if expressly ordered by the President upon finding that the detainee would be at risk or a risk to others if detained inside the territorial jurisdiction of the United States; and
 - (2) detain any citizen of the United States, born or naturalized, which must occur inside the territorial jurisdiction of the United States.
- (c) Construction.--Nothing in this section is intended to limit or expand the authority of the President.
- (d) This law shall go into effect on signature by the President or if the Congress, in the occurrence of a veto, vote to override said veto in accordance with Article I, Section 7 of the United States Constitution.

Appendix VI

Executive Order 15,000, “Protection Against Terrorism Executive Order” 95 Fed. Reg. (February 14, 2025)

In accordance with the Anti-Terrorism Act of 2025, Section (4), I, William DeNolf, President of the United States of America, determines that the risk of terrorism to the United States is significant.

By the authority vested in me by the Anti-Terrorism Act and the Authorization for Use of Military Force, Congress’s longstanding acquiescence in executive detention during national security emergencies, my inherent authority under Article II of the Constitution of the United States, and the need to respond swiftly to hybrid warfare and foreign-enabled criminal activity, I hereby order:

Section 1. The Attorney General of the United States to identify, remove, and detain outside the continental United States all non-citizens with criminal records or pending criminal charges whose presence the Attorney General deems detrimental to national security, regardless of immigration status or length of residence.

Section 2. Detainments outside the United States shall occur the United States Naval Base at Guantanamo Bay, as well as other sites that the Attorney General, in conjunction with the President, shall deem appropriate facilities to hold such detainees.

Section 3: This order shall be implemented consistent with applicable law.

List of Fourth Amendment Cases Cited:

[Katz v. United States, 389 U.S. 347 \(1967\)](#)

[United States v. United States District Court, 407 U.S. 297 \(1972\)](#)

[California v. Ciraolo, 476 U.S. 207 \(1986\)](#)

[Kyllo v. United States, 533 U.S. 27 \(2001\)](#)

[Carpenter v. United States, 585 U.S. 296 \(2018\)](#) or [585us1r62 mlho.pdf](#)

People v. Tafoya, 494 P.3d 613 (Colo. 2021) -- [PEOPLE v. TAFOYA \(2021\) | FindLaw](#)

[United States v. Tuggle, 4 F.4th 505 \(7th Cir. 2021\)](#)

[United States v. Moore-Bush, 36 F.4th 320 \(1st Cir. 2022\)](#)

List of Article II Cases Cited:

[The Prize Cases, 67 U.S. 635 \(1863\)](#)

[Ex parte Milligan, 71 U.S. \(4 Wall.\) 2 \(1866\)](#)

[Costanzo v. Tillinghast, 287 U.S. 341 \(1932\)](#)

[United States v. Curtiss-Wright Export Corp., 299 U.S. 304 \(1936\)](#)

[Ex parte Quirin, 317 U.S. 1 \(1942\)](#)

[Youngstown Sheet & Tube, Co. v. Sawyer, 343 U.S. 579 \(1952\)](#)

[Mathews v. Eldridge, 424 U.S. 319 \(1976\)](#)

U.S. Reports: [Hamdi et al v. Rumsfeld, Secretary of Defense, et al., 542 U.S. 507 \(2004\).](#) |
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[Banyee v. Garland, 115 F.4th 928 \(8th Cir. 2024\)](#)