

The USA PATRIOT and USA FREEDOM Acts, Terrorism, and the Laws, Executive Orders, and Presidential Decision Directives That are Used to Deter Terrorism

Donald L. Buresh, Ph.D., Esq.

Morgan State University

ABSTRACT: This article discusses the USA PATRIOT Act, the USA FREEDOM Act, and the laws, executive orders, and presidential decision directives that are used to deter terrorism. The paper also highlights emergency response management, outlining the supply and demand for emergency response management. The first section defines homeland security, terrorism, anti-terrorism, and counterterrorism. The second section lists the laws, executive orders, and presidential decision directives that address homeland security and anti-terrorism. In the third section, a short history of homeland security is provided. The fourth section explains the fundamental rights at issue when dealing with homeland security and anti-terrorism, including the First, Fourth, Fifth, and Sixth Amendments, as well as the suppression clause and the right to be free from infringement. The section also outlines in greater detail the anti-terrorism measures and the associated executive orders. The fifth section addresses the USA PATRIOT and USA FREEDOM Acts. The sixth section describes emergency resource management in terms of supply and demand. The article concludes by noting that homeland security and anti-terrorism laws, executive orders, and presidential decision directives are in place to ensure that individuals are aware of the consequences of illicit behavior. However, laws, executive orders, and presidential decision directives are often ineffective against individuals who believe that illicit behavior is necessary to create a better world. The laws, executive orders, and presidential decision directives do not solve the root causes of such behavior. They only act as a barrier against illicit behavior.

KEYWORDS: Anti-Terrorism , Counterterrorism , Emergency Resource Management , Terrorism , Usa Freedom Act , Usa Patriot Act.

DONALD L. BURESH BIOGRAPHY

Donald L. Buresh earned his Ph.D. in engineering and technology management from Northcentral University. His dissertation assessed customer satisfaction for both agile-driven and plan-driven software development projects. Dr. Buresh earned a J.D. from The John Marshall Law School in Chicago, Illinois, focusing on cyber law and intellectual property. He also earned an LL.M. in intellectual property from the University of Illinois Chicago Law School (formerly, The John Marshall Law School) and an LL.M. in cybersecurity and privacy from Albany Law School, graduating summa cum laude. Dr. Buresh received an M.P.S. in cybersecurity policy and an M.S. in cybersecurity, concentrating in cyber intelligence, both from Utica College. He has an M.B.A. from the University of Massachusetts Lowell, focusing on operations management, an M.A. in economics from Boston College, and a B.S. from the University of Illinois-Chicago, majoring in mathematics and philosophy. Dr. Buresh is a member of Delta Mu Delta, Sigma Iota Epsilon, Epsilon Pi Tau, Phi Delta Phi, Phi Alpha Delta, and Phi Theta Kappa. He has over 25 years of paid professional experience in information technology and has taught economics, project management, negotiation, managerial ethics, cybersecurity, business law, and quality management at several universities. Dr. Buresh is an avid Chicago White Sox fan and is active in fencing épée and foil at a local fencing club. Dr. Buresh is a member of the Florida Bar.

LIST OF ABBREVIATIONS

Abbreviation	Description
ACLU	American Civil Liberties Union
AEDPA	United States Antiterrorism and Effective Death Penalty Act of 1996
ASA	Alien and Sedition Act of 1798
ATSA	Aviation and Transportation Security Act of 2001

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Beijing Protocol	Protocol Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 2010
BPAIICA	Border Protection, Anti-Terrorism, and Illegal Immigration Control Act of 2005
BWATA	Biological Weapons Anti-Terrorism Act of 1989
DHS	Department of Homeland Security
DMA	Disaster Mitigation Act of 2000
DoD	Department of Defense
EO	Executive Order
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FISA	Foreign Intelligence Surveillance Act of 1978
FISC	Foreign Intelligence Surveillance Court
GTI	Global Terrorism Index
HLP	Humanitarian Law Project
HSA	Homeland Security Act of 2002
IR911CA	Implementing Regulations of the 9/11 Commission Act of 2007
IRTPA	Intelligence Reform and Terrorism Prevention Act of 2004
JASTA	Justice Against Sponsors of Terrorism Act of 2016
MCA	Military Commissions Act of 2006
NEA	National Emergencies Act of 1976
NSA	National Security Act of 1947
OCA	Omnibus Counterterrorism Act of 1995
OPA	Oil Pollution Act of 1990
PCA	Posse Comitatus Act 1878
PDD	Presidential Decision Directive
PHSBPRA	Public Health Security and Bioterrorism Preparedness and Response Act of 2002
RTS DREA	Robert F. Stafford Disaster Relief and Emergency Act of 1974
Tokyo Convention	Convention on Offenses and Certain Other Acts Committed on Board Aircraft of 1963
TSA	Transportation Security Administration
USA FREEDOM	Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015
USA PATRIOT	Uniting and Strengthening America by Providing Appropriate Tools for Intercepting and Obstructing Terrorism Act of 2001

MISCELLANEOUS CONSIDERATIONS

I thank Leizza Buresh for her tireless editorial efforts. I also thank my law professors for their insights and help while conducting this research. The information I have learned from these individuals has been invaluable. Any other errors that remain in this article are mine.

INTRODUCTION

This article discusses the USA PATRIOT Act, the USA FREEDOM Act, and the laws, executive orders, and presidential decision directives that are used to deter terrorism. The paper also highlights emergency response management, outlining the supply and demand for emergency response management. The first section defines homeland security, terrorism, anti-terrorism, and counterterrorism. The second section lists the laws, executive orders, and presidential decision directives that address homeland security and anti-terrorism. In the third section, a short history of homeland security is provided. The fourth section explains the fundamental rights at issue when dealing with homeland security and anti-terrorism, including the First, Fourth, Fifth, and Sixth Amendments, as well as the Suppression Clause and the Right to Be Free from Infringement. The section also outlines in greater detail the anti-terrorism measures and the associated executive orders. The fifth section addresses the USA Patriot and USA FREEDOM Acts. The sixth section describes emergency resource management in terms of supply and demand. The article concludes by noting that homeland security and anti-terrorism laws, executive orders, and presidential decision directives are in place to ensure that individuals are aware of the consequences of illicit behavior. However, laws, executive orders, and presidential decision directives are often ineffective against individuals who believe that illicit behavior is necessary to create a better world. The laws,

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executive orders, and presidential decision directives do not solve the root causes of such behavior. They only act as a barrier against illicit behavior.

DEFINITIONS OF TERMS

In this section, the terms homeland security, terrorism, anti-terrorism, and counterterrorism are defined. These subsections are included to help readers understand why these terms are essential.

Definition of Homeland Security

There are numerous definitions of the term “homeland security.” President George W. Bush officially defined homeland security to be a “concerted national effort to prevent terrorist attacks within the United States, to reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”¹ This definition centered around terrorism. The Department of Homeland Security (DHS) defined homeland security as the “intersection of evolving threats and hazards with traditional governmental and civic responsibilities for civil defense, emergency response, law enforcement, customs, border patrol, and immigration.”² This definition encompasses the different agencies within the DHS. The Department of Defense (DOD) defines the term homeland defense as the “protection of United States sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression or other threats as directed by the President.”³ This definition focuses on the land known as the United States, its infrastructure, and the people who reside in the country. Thus, it is apparent that the definition of homeland security depends on the function and activities of the organization proposing the definition.

Definition of Terrorism and Anti-Terrorism

Although not a reasonable explanation, the word “anti-terrorism” could be defined as the absence of terrorism. Terrorism is difficult to define for many reasons. First, it is a pejorative term.⁴ Second, the terms terror and terrorism are intertwined.⁵ Terrorism is context-sensitive and can be viewed from various perspectives, including historical, political, power, motivational, and media-based.⁶ Terrorism has been perceived as an illegitimate use of force to achieve a political end, a method of combat (i.e., tactic), a use of force to ensure political change, or even a synthesis of war and theater.⁷ The Federal Bureau of Investigation (FBI) defines terrorism to be “[t]he unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives.”⁸

Definition of Counterterrorism

Now that the term terrorism has been defined, it is time to turn the attention to the term anti-terrorism. The Merriam-Webster Dictionary defines anti-terrorism as “acting against, opposing, or combating terrorism.”⁹ The term “anti-terrorism” is distinguished from the term “counter-terrorism.” According to the Merriam-Webster Dictionary, “counter-terrorism” refers to “measures designed to combat or prevent terrorism.”¹⁰ Thus, it is apparent that anti-terrorism is the absence of terrorism, whereas counter-terrorism is the positive activities that individuals, organizations, and nations undertake to combat terrorism, so that others do not use terrorism to further their ends. It is essential not to confuse these two terms with one another.

LAWS, EXECUTIVE ORDERS, AND PRESIDENTIAL DECISION DIRECTIVES

This section contains two subsections. The first subsection outlines the various homeland security laws, executive orders, and presidential decision directives. The second subsection lists the various anti-terrorism and executive orders.

List of Homeland Security Laws, Executive Orders, and Presidential Decision Directives

The list of laws related to homeland security is also quite extensive. The list includes:¹¹

¹ GEORGE W. BUSH, NATIONAL STRATEGY FOR HOMELAND SECURITY 2 (White House Jul. 2002).

² DEPARTMENT OF HOMELAND SECURITY, THE REPORT OF THE QUADRENNIAL HOMELAND SECURITY REVIEW 11 (Department of Homeland Security Feb. 2010).

³ DEPARTMENT OF DEFENSE, STRATEGY FOR HOMELAND DEFENSE AND CIVIL SUPPORT 5 (Department of Defense Jun. 2005).

⁴ Keith Gregory Logan & James D. Ramsey (eds.), INTRODUCTION TO HOMELAND SECURITY 314 (Westview Press 2012).

⁵ *Id.* at 315.

⁶ *Id.*

⁷ *Id.*

⁸ FEDERAL BUREAU OF INVESTIGATION, TERRORISM IN THE UNITED STATES i (Federal Bureau of Investigation 1999).

⁹ MERRIAM-WEBSTER DICTIONARY (n.d.), available at <https://www.merriam-webster.com/dictionary/anti-terrorism>.

¹⁰ MERRIAM-WEBSTER DICTIONARY (n.d.), available at <https://www.merriam-webster.com/dictionary/counterterrorism>.

¹¹ Keith Gregory Logan & James D. Ramsey (eds.), *supra*, note 4.

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- Aviation and Transportation Security Act (ATSA) of 2001;
 - Disaster Mitigation Act (DMA) of 2000;
 - Foreign Intelligence Surveillance Act (FISA) of 1978;
 - Implementing Recommendations of the 9/11 Commissions Act (IR911CA) of 2007;
 - Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004;
 - Homeland Security Act (HSA) of 2002;
 - National Emergencies Act (NEA) of 1976;
 - National Security Act (NSA) of 1947;
 - Oil Pollution Act (OPA) of 1990;
 - Posse Comitatus Act (PCA) of 1878;
 - Robert T. Stafford Disaster Relief and Emergency Act (RTS DREA) of 1974;
 - Uniting and Strengthening America by Providing Appropriate Tools for Intercepting and Obstructing Terrorism Act (USA PATRIOT) of 2001; and
 - Public Health Security and Bioterrorism Preparedness and Response Act (PHSBPRA) of 2002.
- A sample of Executive Orders (EO) that are concerned with homeland security includes:¹²
- Executive Order 10450, signed on April 27, 1953, authorized personnel security requirements for service in the United States government;
 - Executive Order 12333, signed on December 4, 1981, established the goals, directions, duties, and responsibilities of the Intelligence Community;
 - Executive Order 13224, signed on September 23, 2001, defined terrorism, blocked property, and prohibited transactions potentially related to terrorism;
 - Executive Order 13228, signed on October 8, 2001, created the White House Office of Homeland Security and the Homeland Security Council; and
 - Executive Order 13470, signed on July 30, 2008, amended Executive Order 12333, amended by Executive Order 13284, amended by Executive Order 13355, to ensure compliance with the Intelligence Reform and Terrorism Prevention Act of 2004.
- A sample of Presidential Decision Directives (PDDs) that deal with homeland security includes:¹³
- PDD 39 (1995) tackled the responsibilities for crisis management and consequence management when responding to a disaster or an act of terrorism;
 - PDD 62 (1998) created a systematic approach to combating terrorism;
 - PDD 63 (1998) facilitated critical infrastructure protection and was replaced by EO 13231; and
 - PDD 67 (1998) authorized the continuity of government and operations planning for the federal government.

List of Anti-Terrorism Laws and Executive Orders

Various international conventions address terrorism and anti-terrorism, ranging from the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) to the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Beijing Protocol).¹⁴ There are at least four United Nations Security Council resolutions that deal with terrorism, including Resolution 731 (January 21, 1992), Resolution 748 (March 31, 1992), Resolution 883 (November 11, 1993), and Resolution 1373 (September 28, 2001) in response to the 9/11 tragedy.¹⁵ In the United States, the following is a list of laws that address terrorism and anti-terrorism:¹⁶

- Biological Weapons Anti-Terrorism Act (BWATA) of 1989;
- Border Protection, Anti-Terrorism, and Illegal Immigration Control Act (BPAIICA) of 2005;
- Executive Order 12947, signed on January 23, 1995, that prohibited a transaction with terrorists who threaten to disturb the Middle East peace process (this executive order includes the freezing of assets of terrorists);
- Executive Order 13224, signed on September 23, 2001, that authorized the seizure of assets of individuals or organizations that assist, sponsor, or provide material support to terrorists;

¹² *Id.* at 35-36.

¹³ *Id.* at 35.

¹⁴ Wikipedia Staff, Anti-Terrorism Legislation, *Wikipedia.org* (n.d.), available at https://en.wikipedia.org/wiki/Anti-terrorism_legislation.

¹⁵ *Id.*

¹⁶ *Id.*

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- Homeland Security Act of 2002;
- Military Commissions Act (MCA) of 2006;
- Omnibus Counterterrorism Act (OCA) of 1995;
- REAL ID Act of 2005;
- U.S. Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996; and
- USA PATRIOT Act of 2001 and the USA FREEDOM Act of 2015.

The purpose of these laws and executive orders is to ensure that law enforcement and the courts have the necessary tools to combat terrorism in a manner that is both efficient and effective, under the law.¹⁷

Please observe that there is some overlap in the lists addressing anti-terrorism and homeland security. The overlap exists because the laws, executive orders, and presidential decision directives apply to both categories.

A SHORT HISTORY OF HOMELAND SECURITY

The first time the federal government became involved in homeland security was in 1803, when the government provided financial assistance to a New Hampshire town that had been destroyed by fire.¹⁸ The Posse Comitatus Act (PCA) was passed in 1878 at the end of the Reconstruction Period that followed the end of the Civil War.¹⁹ Aside from this incident, there was almost no government intervention due to issues relating to homeland security. The next time the federal government was involved in homeland security was during the Battle of Los Angeles in 1942, also known as the Great Los Angeles Air Raid.²⁰ Between late February 24, 1942, and early February 25, 1942, there was a barrage of anti-aircraft fire, where it was thought that the Japanese were invading the United States mainland.²¹ Fortunately, it was a false alarm.²²

The 1950s through the mid-1970s were a turbulent period in American history. It was a time of the Civil Rights Movement, which led to the passage of the Civil Rights Act of 1964, and the Vietnam War, during which massive anti-war protests took place.²³ For example, in 1968, the Democratic Convention was held in Chicago.²⁴ The demonstrations in Lincoln and Grant Park attracted numerous anti-war protestors, both young and old.²⁵ Regarding current thinking, these protests could be construed to be acts of domestic terrorism.²⁶

The 1980s were relatively quiet until the World Trade Center was bombed in 1993 and the Murrah Federal Building was effectively destroyed in Oklahoma City in 1995 by a massive truck bomb.²⁷ In this incident, 168 people died, and 674 people were injured.²⁸ In response to these tragedies, the federal government reacted with laws, executive orders, and presidential decision directives aimed at helping the federal government deal with disasters of this kind and establishing laws that would punish such behavior.²⁹

The attention of the federal government and the public at large was focused on the events that occurred on September 11, 2001.³⁰ On this day, the twin towers of the World Trade Center, along with Building 7, collapsed, the Pentagon was attacked, as well as a foiled attack where American Airlines Flight 77, a Boeing 757, crashed in Shanksville, Pennsylvania, due to the apparent

¹⁷ *Id.*

¹⁸ JANE A. BULLOCK, GEORGE D. HADDOW, & DAMON P. COPPOLA, INTRODUCTION TO HOMELAND SECURITY (Elsevier, Inc. 2013).

¹⁹ Robert Longley, Posse Comitatus Act and the US Military on the Border, *ThoughtCo* (Apr. 9, 2018), available at <https://www.thoughtco.com/posse-comitatus-act-military-on-border-3321286>.

²⁰ Museum Staff, California and the Second World War: The Battle of Los Angeles, *Military Museum* (Jun. 23, 2017), available at <http://www.militarymuseum.org/BattleofLA.html>.

²¹ *Id.*

²² *Id.*

²³ Michelle L. Janowiecki, Protesting in the 1960s and 1970s, *American Archive of Public Broadcasting* (n.d.), available at <http://americanarchive.org/exhibits/first-amendment/protests-60s-70s>.

²⁴ History Channel, Protests at Democratic National Convention in Chicago, *History.com* (n.d.), available at <https://www.history.com/this-day-in-history/protests-at-democratic-national-convention-in-chicago>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Jane A. Bullock, George D. Haddow, & Damon P. Coppola, *supra*, note 18.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 36-40.

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heroism of the passengers onboard.³¹ After 9/11, anti-terrorism and homeland security efforts went into overdrive. A plethora of laws, executive orders, and presidential decision directives were instituted to defeat the terrorist threat. The rest is history.

Based on the concise history outlined above, little or no effort was made to address anti-terrorism and homeland security until the bombing of the World Trade Center in 1993 and the Oklahoma City bombing of 1995. After 9/11, anti-terrorism and homeland security became of paramount importance. In one sense, anti-terrorism and homeland security efforts are a relatively recent phenomenon that began in earnest around 1993 and continue to the present day. If an individual was born in the mid-20th Century, they likely remember the event vividly. For a person born right before the turn of the millennium, he or she might think that the events outlined above are ancient history. After all, it is a matter of perspective.

THE FUNDAMENTAL RIGHTS THAT ARE AT ISSUE

This section highlights the various fundamental rights that come into play when discussing homeland security and terrorism. The first subsection addresses First Amendment issues. The second subsection discusses Fourth Amendment issues. The third subsection describes Fifth Amendment issues. The fourth subsection deals with Sixth Amendment issues. The fifth subsection talks about Suspension Clause issues. The sixth subsection defines what a lawful United States resident is. The seventh subsection considers infringement issues. The final two subsections provide an in-depth discussion of homeland security laws and executive orders, as well as anti-terrorism laws and executive orders.

First Amendment Fundamental Rights Issues

According to the First Amendment, the people have the right to assemble peaceably.³² In other words, an individual has the right to freely associate with other people without a clear, present, and compelling need. Government officials cannot arbitrarily prevent a public assembly on their individual whim.³³ However, the government can impose restrictions on the time, place, and manner of a peaceful assembly when constitutional safeguards are satisfied.³⁴

Fourth Amendment Fundamental Rights Issues

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”³⁵ The amendment requires law enforcement officers to obtain a warrant before searching.¹⁵ Police officers must make a sworn statement before a neutral magistrate, and describe in particularity “the place to be searched or things to be seized.”³⁶ According to the Fourth Amendment, physical searches require law enforcement to demonstrate to a neutral magistrate that probable cause of criminal activity exists.³⁷ However, over the past 50 years and even before the Warren Court, the Supreme Court had carved out a variety of exceptions.³⁸

³¹ *Id.*

³² U.S. Const. amend I.

³³ *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969), available at

<https://supreme.justia.com/cases/federal/us/394/147/> (here, the Supreme Court struck down a Birmingham, Alabama ordinance prohibiting citizens from holding parades and/or processions on the streets of a city without first obtaining a permit).

³⁴ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989), available at

[https://supreme.justia.com/cases/federal/us/491/781/#:~:text=Rock%20Against%20Racism-,Ward%20v.,%2C%20491%20U.S.%20781%20\(1989\)&text=The%20government%20does%20not%20need,and%20manner%20restrictions%20on%20speech.&text=New%20York%20City%20imposed%20regulations,sound%20volume%20of%20concerts%20there](https://supreme.justia.com/cases/federal/us/491/781/#:~:text=Rock%20Against%20Racism-,Ward%20v.,%2C%20491%20U.S.%20781%20(1989)&text=The%20government%20does%20not%20need,and%20manner%20restrictions%20on%20speech.&text=New%20York%20City%20imposed%20regulations,sound%20volume%20of%20concerts%20there) (quoting *Clark v. Community For Creative Non-Violence*, 468 U.S. 288, 293 (1984), available at <https://supreme.justia.com/cases/federal/us/468/288/>) (here, the Court found that the city had a substantial interest in limiting excessive noise, and that "narrow tailoring" is satisfied provided that the regulation promoted a substantial government interest that would be achieved less effectively without the regulation).

³⁵ U.S. Const. amend. IV.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Chimel v. California*, 395 U.S. 752 (1969), available at <https://supreme.justia.com/cases/federal/us/395/752/> and *Arizona v. Gant*, 556 U.S. 332 (2009), available at <https://supreme.justia.com/cases/federal/us/556/332/> (search incident to a lawful arrest exception), *Arizona v. Hicks*, 480 U.S. 321 (1987), available at <https://supreme.justia.com/cases/federal/us/480/321/> (plain view exception), *Illinois v. Rodriguez*, 497 U.S. 177 (1990), available at <https://supreme.justia.com/cases/federal/us/497/177/> (consent exception), *Terry v. Ohio*, 392 U.S. 1 (1968), available at <https://supreme.justia.com/cases/federal/us/392/1/> (stop and frisk exception), *Carroll v. United States*, 267 U.S. 132 (1925), available at <https://supreme.justia.com/cases/federal/us/267/132/> (automobile exception), *Kentucky v. King*, 563 U.S. 452 (2011), available at <https://supreme.justia.com/cases/federal/us/563/452/> (hot pursuit exception), etc.

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Fifth Amendment Fundamental Rights Issues

The Fifth Amendment states that no person “shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”³⁹ In other words, the federal government cannot try a person twice for the same crime after being found not guilty, take away an individual’s life, liberty, or property arbitrarily, or deprive a person of their property for use by the public without fair compensation.

Sixth Amendment Fundamental Rights Issues

The Sixth Amendment observes that a person accused of a crime shall “enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.”⁴⁰ This means that if an individual is indicted for a crime, they have the right to a prompt and public trial in the community where the crime was committed. Furthermore, a person must be “informed of the nature and cause of the accusation,” able to confront “the witnesses against him . . .,” able to compel favorable witnesses to testify, and to “have the Assistance of Counsel for his [or her] defence.”⁴¹ In other words, criminal trials should be conducted in a timely manner. An accused person should be able to confront any witnesses against them, compel witnesses to testify in their defense, and have an attorney present at trial.

Suspension Clause Fundamental Rights Issues

The Suspension Clause of the Constitution demands that “[t]he privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”⁴² The writ of *habeas corpus* is also an integral part of English common law.

Definition of a Lawful United States Resident

A lawful U.S. permanent resident is a non-citizen who is “living in the [United States] under legally recognized and lawfully recorded permanent residence as an immigrant.”⁴³ Notice that a United States citizen is not included in the definition of a lawful permanent United States resident. Even so, a citizen of the United States does indeed lawfully reside in this country. In other words, the question could be construed to apply to both U.S. citizens and U.S. permanent residents, and will be presumed by this essay.

Infringement of Fundamental Rights Issues

Now that the terms have been appropriately defined, the analysis can begin. In a 1755 letter to the colonial governor during the French and Indian War and as a member of the Pennsylvania Assembly, Benjamin Franklin wrote that “[t]hose who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.”⁴⁴ These words resonated in 1755 and apply even to this day. To answer the question, one must examine the anti-terrorism and homeland security laws and executive orders in some detail.

Homeland Security Laws and Executive Orders

The Transportation Security Administration (TSA) was created by ATSA.⁴⁵ Before the ATSA, the airlines were responsible for passenger screening. Passengers were asked if at any time their luggage was out of their control. Visitors were required to go through metal detectors before entering the concourse. At the time, a photo ID was not required. With the passage of the ATSA, security became the responsibility of DHS. Both lawful U.S. residents and U.S. citizens were substantially affected by this law.

DMA is a law that can be invoked when natural disasters or terrorist acts occur, resulting in a disaster. Its purpose is to provide Federal assistance programs when both public and private losses occur.⁴⁶ This law can offer benefits to a lawful United States citizen or resident who is a victim of a disaster. FISA established procedures for physical and electronic surveillance and the

³⁹ U.S. Const. amend. V.

⁴⁰ U.S. Const. amend. VI.

⁴¹ *Id.*

⁴² U.S. Const. art. I, § 9, cl. 2.

⁴³ CIS Staff, Lawful Permanent Resident, *Department of Homeland Security: U.S. Citizen and Immigration Services* (Mar. 22, 2018), available at <https://www.uscis.gov/tools/glossary/lawful-permanent-resident>.

⁴⁴ Eugene Volokh, Liberty, Safety, and Benjamin Franklin, *The Washington Post* (Nov. 11, 2014), available at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/11/11/liberty-safety-and-benjamin-franklin/?utm_term=.d181eb24bd1f.

⁴⁵ Rick Seany, TSA Turns 10: Examining the Agency's Strengths and Weaknesses, *ABC News* (Nov. 18, 2011), available at <https://abcnews.go.com/Travel/tsa-turns-10-examining-agencys-strengths-weaknesses/story?id=14977724>.

⁴⁶ Public Law 106-390.

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collection of intelligence information between foreign nations and individuals suspected of espionage or terrorism.⁴⁷ In other words, a lawful U.S. resident suspected of espionage or terrorist acts falls under the jurisdiction of FISA.

The IRTPA requires the DHS to conduct pre-flight comparisons of airline passenger information to federal government watch lists for international and domestic flights.⁴⁸ This can substantially curtail lawful U.S. residents as well as U.S. citizens if they are familiar with designated terrorists, whether innocently or intentionally. As for the HSA, this law is described above. On March 6, 2014, then President Obama invoked the National Emergencies Act (NEA) by signing an executive order that declared a national emergency and ordered sanctions on unnamed individuals who were involved in the annexation of the Crimea by Russia.⁴⁹ If a lawful U.S. resident or a U.S. citizen contributed to this annexation, then they could be subject to sanctions and possible violations of their Fourth, Fifth, or Sixth Amendment rights, depending on the circumstances. The USA PATRIOT Act is discussed herein.

Executive Order 13224 deterred terrorism, blocked property, and prohibited transactions potentially related to terrorism. This executive order can have profound implications for lawful U.S. residents or even U.S. citizens who are related to designated terrorists or are doing business with them. Executive Order 13470 amended EO 12333, amended by EO 13284, amended by EO 13355, ensuring compliance with the Intelligence Reform and Terrorism Prevention Act of 2004. As far as a lawful U.S. resident is concerned, this executive order has the same or a similar effect as the IRPA.

Based on the analysis above, my conclusion is that a substantial number of anti-terrorism and homeland security laws and executive orders infringe upon the rights of lawful U.S. residents, including U.S. citizens. There can be no doubt that Americans are currently sacrificing their essential liberties for temporary security. Benjamin Franklin's prophetic words remain as relevant today as they were more than 200 years ago.

Events Leading Up to the Passing of the USA PATRIOT Act

On September 11, 2001, the two towers of the World Trade Center collapsed in an apparent attack using commercial airline jets by an Islamist extremist group, al-Qaeda. American Airlines Flight 11, a Boeing 767, crashed into the North Tower at 8:46 AM ET, and United Airlines Flight 175, a Boeing 767, crashed into the South Tower at 9:02 AM ET.⁵⁰ There was also an attack on the Pentagon, located in Washington, D.C., which is part of the Department of Defense. American Airlines Flight 77, a Boeing 757, crashed into the Pentagon at 9:37 AM ET.⁵¹ Finally, there was an attack that the passengers foiled. United Airlines Flight 93, a Boeing 757, crashed into Shanksville, Pennsylvania, at 10:03 AM ET.⁵² In all four attacks, there were no survivors.⁵³

On that day, 2,977 people were killed, and more than 6,000 other people were injured.⁵⁴ In New York City, 343 firefighters and 71 law enforcement officers died in the World Trade Center attacks.⁵⁵ Fifty-five military personnel were killed when the Pentagon was attacked, and another law enforcement officer died when Flight 93 crashed.⁵⁶ ⁵⁷ In total, 2,605 U.S. citizens, including 2,135 civilians, died in the attacks, including hundreds of non-U.S. citizens and 19 terrorists.⁵⁸ Ninety countries lost citizens as a result of

⁴⁷ Kevin Caslava, FISA Debate Involves More Than Terrorism, 80 DAILY NEXUS 88 (Feb. 20, 2008), available at <https://web.archive.org/web/20090123213757/http://www.dailynexus.com/article.php?a=15892>.

⁴⁸ Donna Wentworth, 9/11 Legislation Launches Misguided Data-Mining and Domestic Surveillance Schemes, *Electronic Frontier Foundation* (Dec. 20, 2004), available at <https://www.eff.org/deeplinks/2004/12/9-11-legislation-launches-misguided-data-mining-and-domestic-surveillance-schemes>.

⁴⁹ Barack H. Obama, Executive Order -- Blocking Property of Certain Persons Contributing to the Situation in Ukraine, *The White House*, March 6, 2014, available at <https://obamawhitehouse.archives.gov/the-press-office/2014/03/06/executive-order-blocking-property-certain-persons-contributing-situation>.

⁵⁰ Jane A. Bullock, George D. Haddow, & Damon P. Coppola, *supra*, note 18.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ CNN Staff, September 11th Terror Attacks Fast Facts, *Cable News Network Library* (Aug. 24, 2017), available at <https://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/>.

⁵⁵ Wikipedia Staff, Casualties of the September 11 Attack, *Wikipedia.org* (Jun. 27, 2025), available at https://en.wikipedia.org/wiki/Casualties_of_the_September_11_attacks#:~:text=World%20Trade%20Center,-The%20September%2011&text=This%20consisted%20of%20%2C192%20civilians,in%20the%20attacks%20as%20well.

⁵⁶ The Unofficial Home Page of FDNY (n.d.), available at http://nyfd.com/9_11_wtc.html.

⁵⁷ NPS Staff, Flight 93, *National Park Service* (n.d.), available at <https://www.nps.gov/flni/learn/historyculture/richard-j-guadagno.htm>.

⁵⁸ David Hancock, Americans Weren't Only Victims Of 9/11, *CBS News* (Sep. 11, 2006), available at <https://www.cbsnews.com/news/americans-werent-only-victims-of-9-11/>.

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the attacks.⁵⁹ The attacks were unprecedented. It brought back to Americans images of December 7, 1941, a day that will live in infamy,⁶⁰ when Pearl Harbor was attacked by the Japanese, precipitating the entry of the United States into World War II.⁶¹

The USA PATRIOT Act was signed into law by then-President George W. Bush on October 26, 2001, just 45 days after the 9/11 attacks.⁶² The constitutional basis for the USA PATRIOT Act was Article I, Section 8, which gives Congress the power to “provide for the common Defense.”⁶³ The name of the act is an abbreviation. The full title of the Act is “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.”⁶⁴ The House vote was 357-66, and the Senate vote was 98-1.^{65 66}

THE CREATION OF NEW FEDERAL GOVERNMENT AGENCIES

BWATA made it illegal for private individuals to buy, sell, or manufacture biological agents to be employed as a weapon.⁶⁷ On its face, this law appears to be reasonable; however, it did not prevent nation-states from creating biological weapons. HSA created the Department of Homeland Security and established a new cabinet-level position, the Secretary of Homeland Security. It combined several government agencies, including the Customs Service, the Coast Guard, and the U.S. Secret Service. MCA defined an “enemy combatant” as a “person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant.”⁶⁸ In other words, a U.S. resident or even a U.S. citizen can be classified as an enemy combatant provided that he or she is not a member of a military force. Enemy combatants may not (1) use an attorney that does have a security clearance;⁶⁹ (2) invoke the Geneva Conventions or any protocols in any *habeas corpus*, civil action or proceeding as a source of rights;⁷⁰ and (3) tried by a military commission for a second time for the same offense.⁷¹ Based on this information, the Military Commissions Act may indeed infringe on the rights of lawful U.S. residents because it could be construed to violate an individual’s Sixth Amendment right to legal counsel.

The READ ID Act set minimum security standards for driver's licenses and identification cards issued by states.⁷² The purpose of the Act was to ensure that only individuals' IDs that met these standards could access Federal facilities, enter nuclear power plants, and board federally regulated commercial aircraft.⁷³ The most significant aspect of the ATEDPA was that it made substantial changes to habeas corpus, while also deterring terrorism, providing justice for victims, and establishing an effective death penalty, among other objectives.⁷⁴ Although one could argue that the War on Terror is a bona fide war, terror is a tactic,⁷⁵ and it is logically inconceivable to make war on a tactic. Thus, the READ ID Act could be construed to restrict the *habeas corpus* rights of both lawful U.S. residents and U.S. citizens.

⁵⁹ *Id.*

⁶⁰ On December 8, 1941, then-President Franklin D. Roosevelt delivered a speech to a joint session of Congress. Roosevelt described December 7, 1941 as a “day that will live in infamy.” The speech is commonly referred to as the “Pearl Harbor Speech.”

⁶¹ On December 8, 1941, the United States Congress declared war (Public Law 77-328, 55 STAT 795) on the Empire of Japan in response to that country's surprise attack on Pearl Harbor the prior day.

⁶² President George W. Bush, Signing of the USA PATRIOT Act, *The White House* (Oct. 26, 2001), available at <https://georgewbush-whitehouse.archives.gov/news/releases/2001/10/images/20011026-5.html>.

⁶³ U.S. Const. art. I § 8, cl. 1.

⁶⁴ United States Government Printing Office, 107th Congress Public Law 56, Section 1(a), (n.d.), available at <https://www.gpo.gov/fdsys/pkg/PLAW-107publ56/html/PLAW-107publ56.htm>.

⁶⁵ Final Vote Results for Roll Call 398, *United States House of Representatives* (Oct. 24, 2001), available at <http://clerk.house.gov/evs/2001/roll398.xml>.

⁶⁶ Roll Call Vote 107th Congress - 1st Session, On Passage of the Bill (H.R. 3162), *United States Senate* (Oct. 25, 2001), available at

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00313.

⁶⁷ SCOTT STERN, BIOLOGICAL RESOURCE CENTERS: KNOWLEDGE HUBS FOR THE LIFE SCIENCES 31 (Brookings Institution Press, 2004).

⁶⁸ Chapter 47A—Military commission: Subchapter I--General provisions: Sec. 948a. Definitions.

⁶⁹ 10 U.S.C. sec. 949c(b)(3)(D).

⁷⁰ Military Commissions Act, sec. 5(a), available at <https://2009-2017.state.gov/documents/organization/150084.pdf>.

⁷¹ 10 U.S.C. sec. 949h(a).

⁷² DHS Staff, READ ID, *Department of Homeland Security* (Jan. 25, 2018), available at <https://www.dhs.gov/real-id>.

⁷³ *Id.*

⁷⁴ Public Law. 104–132.

⁷⁵ Keith Gregory Logan & James D. Ramsey (eds.), *supra*, note 4.

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The USA PATRIOT Act had several sections that significantly impacted lawful U.S. residents. According to the Constitutional Rights Foundation, Section 213 authorizes “sneak-and-peek” searches for all federal criminal investigations.⁷⁶ Section 215 allows the FBI to appear before the Foreign Intelligence Surveillance Court (FISC) to search for tangible evidence related to terrorism.⁷⁷ Section 216 extends pen-trap orders to include email and web browsing.⁷⁸ These sections have a significant impact on lawful U.S. residents, as if found guilty, their residency status could be revoked, and they could be deported. The USA PATRIOT Act can be a significant abridgment of an individual’s Fourth Amendment (searches and seizures) and Fifth Amendment (seizures and due process) rights.

Executive Order 12947 prohibited a lawful U.S. resident from conducting a transaction with terrorists who threaten to disturb the Middle East peace process, including freezing the individual’s assets. Executive Order 13224 authorized the seizure of assets of individuals or organizations that assist, sponsor, or provide material support to terrorists. Taken together, these executive orders ban personal or financial interaction with any individual or organization deemed to be a terrorist or promote terrorist activities. Thus, these two executive orders substantially limit the activities of lawful U.S. residents. Problems occur when an organization is deemed to be a terrorist organization by the federal government, the party in question associates with a member of a designated terrorist organization for innocent purposes. In this case, a miscarriage of justice is likely to occur.

Thus, based on the discussion above, it is evident that anti-terrorism laws do have a significant effect on lawful U.S. residents as well as U.S. citizens.

USA PATRIOT ACT AND THE USA FREEDOM ACT

This section describes the USA PATRIOT Act and the USA FREEDOM Act. The first subsection provides a brief overview of the sequence of events that led to the passage of the USA PATRIOT Act. The second subsection lists the ten titles of the USA PATRIOT Act. The final subsection highlights the constitutional authority for the USA PATRIOT Act.

The Ten Titles of the USA PATRIOT Act

The USA PATRIOT Act consists of ten titles. Title I expands the funding for counterterrorism operations.⁷⁹ Title II increases the authority of intelligence agencies.⁸⁰ Title III addresses banking regulations, counterfeiting, and smuggling.⁸¹ Title IV enhances the U.S.-Canadian border.⁸² Title V authorizes the employment of National Security Letters.⁸³ Title VI provides aid for the families of firefighters and police killed in the 9/11 attacks.⁸⁴ Title VII addresses information sharing to fight terrorist activities.⁸⁵ Title VIII is concerned with attacks on public transit systems.⁸⁶ Title IX gives the director of the CIA increased responsibility and authority over foreign intelligence information gathering and analysis.⁸⁷ Finally, Title X contains miscellaneous provisions about charity fraud, assistance to first responders, authorizing funds for the Drug Enforcement Agency (DEA), and police training in South and Central Asia.⁸⁸

There have been several dark moments in U.S. history when individual rights protected by the Constitution have been trampled. There were the Alien and Sedition Act (ASA) of 1798,⁸⁹ the suspension of habeas corpus during the Civil War (1861-1865),⁹⁰ and internment of Japanese-American citizens during World War II (1941-1945).⁹¹ Although these acts may have had good

⁷⁶ CRF Staff, The PATRIOT Act: What Is the Proper Balance Between National Security and Individual Rights?, *Constitutional Rights Foundation*, (n.d.), available at <http://www.crf-usa.org/america-responds-to-terrorism/the-patriot-act.html>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Jurist Staff, The PATRIOT Act and Civil Liberties, *Jurist News* (Jul. 20, 2013), available at <http://www.jurist.org/feature/2013/07/the-patriot-act-and-civil-liberties.php>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Jeremy D. Bailie, The Constitutionality of the PATRIOT Act: Examining Section 213, 4 *INQUIRIES JOURNAL* 1 (2012), available at <http://www.inquiriesjournal.com/articles/622/the-constitutionality-of-the-patriot-act-examining-section-213>.

⁹⁰ *Id.*

⁹¹ *Id.*

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intentions, fear in Americans ran amok. Congress and President Bush attempted not to fall into these traps when passing the USA PATRIOT Act into law.⁹²

Constitutional Authority for the USA PATRIOT Act

The USA PATRIOT Act was passed in response to the horrendous terrorist acts committed on September 11, 2001. At the time of its passage, the Act had substantial public support.^{93 94} However, as time passed and the consequences of the Act were better understood, questions arose regarding its constitutionality.⁹⁵

The most controversial aspects of the USA PATRIOT Act centered on privacy issues and government surveillance.⁹⁶ The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”⁹⁷ The amendment requires law enforcement officers to obtain a warrant before conducting a search.⁹⁸ Police officers must make a sworn statement before a neutral magistrate and describe in particularity “the place to be searched or things to be seized.”⁹⁹ According to the Fourth Amendment, physical searches require law enforcement to demonstrate to a neutral magistrate that probable cause of criminal activity exists.¹⁰⁰ However, before the USA PATRIOT Act became law, the Supreme Court had carved out a variety of exceptions, including, for example, pen-trap orders and other matters under the jurisdiction of the FISC.^{101 102}

The USA PATRIOT Act extends all of the exceptions to the probable cause requirement. For example, Section 213 authorizes “sneak-and-peek” searches for all federal criminal investigations.¹⁰³ Section 215 permits the FBI to approach the FISC for a search warrant for any tangible article connected to terrorism, including business records.¹⁰⁴ Section 216 expands pen-trap orders to include email and web browsing.¹⁰⁵ Sections 213 and 216 are permanent parts of the USA PATRIOT Act.¹⁰⁶ Section 215 expired on June 2, 2015, but its provisions were seemingly renewed until 2019 by the USA FREEDOM Act.¹⁰⁷

In 2001, Yaser Esam Hamdi, a detainee at Guantánamo Bay, Cuba, who was both a U.S. and Saudi citizen, was captured in Afghanistan.¹⁰⁸ In 2004, the Supreme Court held that a detainee who is a United States citizen has due process rights with the ability to challenge their enemy combatant status before an impartial court.¹⁰⁹ In 2005, the American Civil Liberties Union (ACLU) sued then-Attorney General Gonzales, challenging the government’s employment of National Security Letters, which permitted the FBI to demand the personal records of library patrons.¹¹⁰ In March 2007, the Department of Justice (DOJ) apologized for illegal activities

⁹² *Id.*

⁹³ David W. Moore, Public Little Concerned About PATRIOT Act, *Gallup* (Sep. 9, 2003), available at <https://news.gallup.com/poll/9205/public-little-concerned-about-patriot-act.aspx>.

⁹⁴ Gary Langer, Poll: Support Seen for PATRIOT Act, *ABC News* (Jun. 9, 2005), available at <https://abcnews.go.com/US/PollVault/story?id=833703>.

⁹⁵ Jeremy D. Bailie, *supra*, note 89.

⁹⁶ CRF Staff, The PATRIOT Act: What Is the Proper Balance Between National Security and Individual Rights?, *Constitutional Rights Foundation* (n.d.), available at <http://www.crf-usa.org/america-responds-to-terrorism/the-patriot-act.html>.

⁹⁷ U.S. Const. amend. IV.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ CRF Staff, *supra* note 96.

¹⁰² See note 38 for a list of the relevant cases.

¹⁰³ CRF Staff, *supra*, note 96.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Spencer Ackerman, NSA Reform Bill Imperiled as It Competes with Alternative Effort in the Senate, *The Guardian* (Apr. 28, 2015), available at <https://www.theguardian.com/us-news/2015/apr/28/house-nsa-reform-bill-senate-usa-freedom-act>.

¹⁰⁸ *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), available at <https://supreme.justia.com/cases/federal/us/542/507/>. According to his Hamdi’s father, Hamdi traveled to Afghanistan in the late summer of 2001 to be a relief worker. Two months later, Hamdi was captured by the Afghan Northern Alliance who turned him over to United States military. He was then classified as an enemy combatant and detained in connection with the Afghan War.

¹⁰⁹ *Id.* (in the holding, the Court opined that U.S. citizens who are detainees have due process rights with the ability to challenge their enemy combatant status before an impartial court.)

¹¹⁰ *Doe v. Gonzales*, 546 U.S. 1301 (2005), available at [https://scholar.google.com/scholar_case?case=12059927636856120106&q=Doe+v.+Gonzales,546+U.S.+1301+\(2005\)&hl=en&as_sdt=400006&as_vis=1](https://scholar.google.com/scholar_case?case=12059927636856120106&q=Doe+v.+Gonzales,546+U.S.+1301+(2005)&hl=en&as_sdt=400006&as_vis=1) (The case was initially filed as *Doe v. Ashcroft*, 334 F.Supp.

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after it was revealed that the FBI had broken the law by obtaining personal records from telephone companies, internet service providers, banks, and credit bureaus.¹¹¹ In September 2007, a federal district court judge in Oregon held that two provisions of the USA PATRIOT Act were unconstitutional when an Oregon attorney was arrested and detained for two weeks after the FBI mistakenly identified him as a terrorist based on his fingerprints.¹¹²

In 2010, the Supreme Court ruled against the Humanitarian Law Project (HLP), which was seeking to help the Kurdistan Workers' Party in Turkey and Sri Lanka's Liberation Tigers of Tamil Eelam learn how to resolve conflicts peacefully.¹¹³ The Court opined that Congress had intended to thwart aid to such groups because HLP's support fit the Act's definition of "training," etc., even though its purpose was to promote peace and further United Nations processes.¹¹⁴ The Court's finding was predicated on the principle that any assistance to legitimize a terrorist organization is illegal.¹¹⁵

In March 2006, President Bush renewed the USA PATRIOT Act.¹¹⁶ In May 2011, President Obama extended the Act for an additional four years.¹¹⁷ In June 2015, the USA PATRIOT Act was reformatted and is now known as the USA FREEDOM Act.¹¹⁸ The USA FREEDOM Act was designed to limit the federal government's ability to conduct extensive surveillance.¹¹⁹ Furthermore, the USA FREEDOM Act gave the federal government the ability to track an alleged terrorist for 72 hours after the individual enters the United States.¹²⁰ In September 2016, Congress overrode President Obama's veto of the Justice Against Sponsors of Terrorism (JASTA) Act.¹²¹ President Obama believed that the bill violated international standards of sovereign immunity.¹²² Under JASTA, U.S. victims may sue a foreign government provided that the government is responsible for a terrorist attack occurring inside the United States.¹²³ So far, because of JASTA, the victims of 9/11 are suing or have sued both Saudi Arabia and Iran.¹²⁴ ¹²⁵ Both countries have strenuously objected to these suits.¹²⁶

In 2018, Justice Alito, writing for the majority, held that no provision in 8 U.S.C. § 1226 limits the length of detention to six months when deciding whether to release a detained immigrant.¹²⁷ The defendant argued that only a suspected terrorist under the USA PATRIOT Act can be imprisoned indefinitely.¹²⁸ The Court disagreed, stating that §§ 1225(b)(1) and (2), as well as §

2d (S.D.N.Y.2004), available at <https://case-law.vlex.com/vid/doe-v-ashcroft-no-888844756>. Here, the Court held that a vacatur of stay of injunction pending appeal was not warranted.)

¹¹¹ OIG Staff, A Review of the Federal Bureau of Investigation's Use of National Security Letters, *U.S. Department of Justice: Office of the Inspector General* (Mar. 2007), available at <https://oig.justice.gov/special/s0703b/final.pdf>.

¹¹² Matthew Harwood, *The terrifying surveillance case of Brandon Mayfield*, al Jazeera America (Feb. 8, 2014), available at <http://america.aljazeera.com/opinions/2014/2/the-terrifying-surveillancecaseofbrandonmayfield.html>.

¹¹³ *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), available at <https://www.thefire.org/supreme-court/holder-v-humanitarian-law-project/opinions> (here, the Court rule against the Humanitarian Law Project, holding that such activities satisfied the definitions of "training", "expert advice or assistance", "service", and "personnel" that were contained in the USA PATRIOT Act.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Joel Roberts, Bush Signs PATRIOT Act Renewal, *CBS News* (Mar. 9, 2006), available at <https://www.cbsnews.com/news/bush-signs-patriot-act-renewal/>.

¹¹⁷ Julian Hattem, Obama Signs NSA Bill, Renewing PATRIOT Act Powers, *The Hill* (Jun. 2, 2015), available at <http://thehill.com/policy/national-security/243850-obama-signs-nsa-bill-renewing-patriot-act-powers>.

¹¹⁸ Jurist Staff, USA PATRIOT Act, *Jurist News* (Jun. 21, 2015), available at <http://www.jurist.org/feature/2015/06/usa-patriot-act.php>.

¹¹⁹ Jurist Staffs, *supra*, note 79.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Bob Van Voris, Saudi Arabia Asks U.S. Judge to Throw Out 9/11 Lawsuits, *Insurance Journal* (Jan. 2, 2018), available at <https://www.insurancejournal.com/news/national/2018/01/22/477984.htm>.

¹²⁵ Al Jazeera Staff United States, *US judge: Iran must pay \$6bn to victims of 9/11 attacks*, *Al Jazeera United States* (May 1, 2018), available at <https://www.aljazeera.com/news/2018/05/judge-iran-pay-6bn-victims-911-attacks-180501120240366.html>.

¹²⁶ *Id.*

¹²⁷ *Jennings v. Rodriguez*, 583 U.S. ____ (2018), available at <https://supreme.justia.com/cases/federal/us/583/15-1204/#tab-opinion-3858465> (here, the Court held that the Immigration and Nationality Act (INA) of 1990, as amended, does not implicitly limit detention to aliens to six months or require periodic bond hearings).

¹²⁸ *Id.*

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1226(c), both apply to individuals suspected of terrorism, but only § 1226(c) pertains to aliens convicted of common criminal offenses.¹²⁹

Despite numerous attempts, as discussed above, to demonstrate that the USA PATRIOT Act and its successor, the Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring (USA FREEDOM) Act, are unconstitutional, these efforts have thus far been unsuccessful. Even the most contentious parts of the USA PATRIOT Act, such as Section 213, have withstood constitutional scrutiny.¹³⁰ Thus, the USA PATRIOT Act and its successor, the USA FREEDOM Act, appear to be constitutional.

The USA FREEDOM Act

The USA FREEDOM Act, enacted on June 2, 2015, restored and modified various provisions of the USA PATRIOT Act that had expired on June 1, 2015.¹³¹ The Act restored roving wiretaps and the tracking of lone wolf terrorists.¹³² The USA FREEDOM Act also established limitations on the bulk collection of telecommunication metadata on United States citizens by American intelligence agencies, such as the NSA.¹³³

As a bill, the USA FREEDOM Act was introduced in Congress on October 29, 2013, because of the massive leak by Edward Snowden in June 2013. It was reintroduced in the 114th Congress (2015-16) as a balanced approach.¹³⁴ Its supporters demanded that all the provisions of the USA PATRIOT Act be extended through the end of 2019, except the bulk collection of data under Section 215 of the USA PATRIOT Act.¹³⁵ The critics observed that mass surveillance would still continue under Section 702 of FISA¹³⁶ and Executive Order 12333.¹³⁷ This was because the surveillance-industrial complex was unstoppable, even though the House had previously closed backdoor mass surveillance.¹³⁸ The USA FREEDOM Act could establish a common law framework for the FISA court regarding surveillance.¹³⁹ The Act did not address disclosing retroactive decisions before 2015.¹⁴⁰ In October 2016, the ACLU filed a Motion for the Release of FISA Court Records, releasing court interpretations before the USA FREEDOM Act became law.¹⁴¹

EMERGENCY RESOURCE MANAGEMENT

This section reviews emergency resource management. In the first subsection, emergency resource management is defined. The second subsection defines the notion of a perceived threat. The third subsection discusses the factors affecting the supply and demand for emergency resource management. The final subsection is concerned with perceived threats and actual physical data.

¹²⁹ *Id.*

¹³⁰ Jeremy D. Bailie, *supra*, note 89.

¹³¹ Public Law 114-23, available at <https://www.govinfo.gov/app/details/PLAW-114publ23#:~:text=An%20act%20to%20reform%20the,criminal%20purposes%2C%20and%20for%20other>.

¹³² Bill Chappell, Senate Approves USA FREEDOM Act, Obama Signs It, After Amendments Fail, *National Public Radio* (Jun. 2, 2015), available at <https://www.npr.org/sections/thetwo-way/2015/06/02/411534447/senate-is-poised-to-vote-on-house-approved-usa-freedom-act>.

¹³³ *Id.*

¹³⁴ Ellen Nakashima, (28 April 2015) With Deadline Near, Lawmakers Introduce Bill to End NSA Program, *The Washington Post* (Apr. 28, 2015), available at https://www.washingtonpost.com/world/national-security/with-deadline-near-lawmakers-introduce-bill-to-end-nsa-program/2015/04/28/8fd1cf6e-edb4-11e4-a55f-38924fca94f9_story.html?tid=hybrid_linearcol_1_na.

¹³⁵ Jennifer Granick, NSA's Creative Interpretations Of Law Subvert Congress And The Rule Of Law, *Forbes* (Dec. 17, 2013), available at <https://www.forbes.com/sites/jennifergranick/2013/12/16/a-common-law-coup-detat-how-nasas-creative-interpretations-of-law-subvert-the-rule-of-law/>.

¹³⁶ Diedre M. Walsh, Response to Question from the 5 June 2014 Hearing, *Office of the Director of National Intelligence* (Jun. 27, 2014), available at <https://www.wyden.senate.gov/imo/media/doc/20140727%20ODNI%20letter%20confirming%20number%20of%20backdoor%20searches.pdf>.

¹³⁷ Natalie Butz, Congress Must Put Human Rights at the Center of Surveillance Reform, *Amnesty International* (May 7, 2014), available at <https://www.amnestyusa.org/press-releases/congress-must-put-human-rights-at-the-center-of-surveillance-reform/>.

¹³⁸ House Judiciary Committee, Markup of H.R. 2048, The USA FREEDOM Act, *House of Representatives, United States Congress* (May 18, 2015), available at https://web.archive.org/web/20150518072652/http://judiciary.house.gov/_cache/files/9cf342ec-8479-4b45-996c-dce8b9971a68/04.30.15-markup-transcript.pdf.

¹³⁹ Spencer Ackermann, ACLU Takes on FISA Court Over Secret Decisions on Surveillance Laws, *The Guardian* (Oct. 19, 2016), available at <https://www.theguardian.com/law/2016/oct/19/aclu-fisa-court-surveillance-laws-classified>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

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Definition of Emergency Resource Management

According to the Federal Emergency Management Agency (FEMA), “[e]mergency management is the managerial function charged with creating the framework within which communities reduce vulnerability to hazards and cope with disasters.”¹⁴² An emergency management resource is a tool employed by an organization charged by law to mitigate emergencies.¹⁴³ An organization can be at the federal level, such as FEMA, or it can be an arm of a state or local government.¹⁴⁴

Definition of a Perceived Threat

A perceived threat is “[a]ny possible danger that is experienced by a person subjectively and out of proportion to the real threat or physical danger.”¹⁴⁵ In other words, a perceived threat is a stimulus that arouses the emotion of fear. Regarding group dynamics, a “[p]erceived intergroup threat is conceptualized as the belief that a given out-group is in some way detrimental to one’s in-group.”¹⁴⁶ For this essay, a perceived threat is defined to be some activity or action by one group that is seen to be detrimental to another group.

Supply and Demand for Emergency Resource Management

To determine where emergency management resources should be effectively employed, it is germane to use the economic principles of supply and demand when making the decision. In performing a supply and demand analysis, it is evident that the emergency management resources constitute the supply side of the investigation. The demand side is probably best characterized as the intensity or the force of a potential adverse effect of a perceived threat.

When undertaking a supply and demand analysis, each perceived threat will have its own supply curve and demand curve, where the supply curve is upward-sloping and the demand curve is downward-sloping. See Figure 1. The intersection of these two curves is known as the equilibrium point. From the equilibrium point, two dotted projection lines are drawn, one from the equilibrium point to the horizontal axis and the other from the equilibrium point to the vertical axis. The intersection of the dotted projection lines to the horizontal and vertical axes, respectively, establishes the coordinates of the equilibrium point. Because the horizontal axis is quantity and the vertical axis is price, if the equilibrium price multiplies the equilibrium quantity, the result is a cost associated with a particular perceived threat. For the k th perceived threat, the cost (C_k) is calculated by the equation:

$$C_k = P_k * Q_k \quad \text{where } k = 1, \dots, n \text{ and } n \text{ is the total number of perceived threats}$$

The costs can be ordered according to their magnitude. Without loss of generality, it can be assumed that the highest cost is C_1 , followed by C_2 , followed by C_3 , and so on.

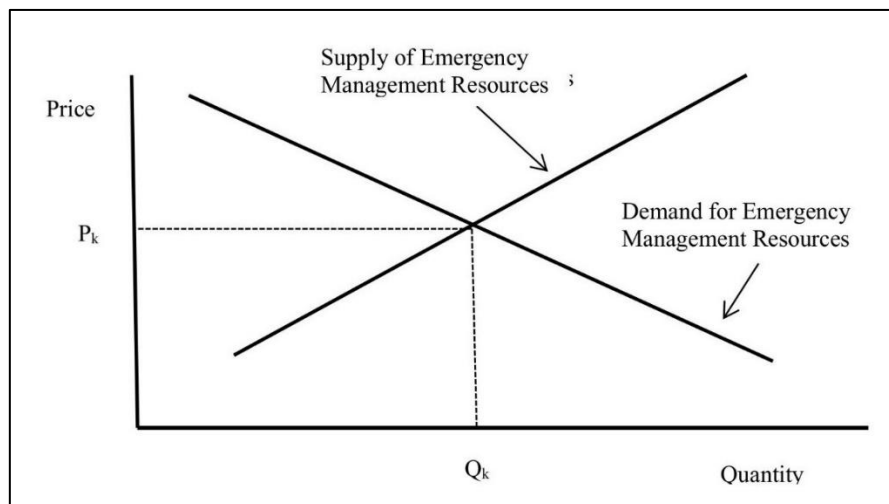


Figure 1. Supply and Demand Curves for the k th Emergency Management Resource

¹⁴² FEMA Staff, Principles of Emergency Management Supplement 4, *Federal Emergency Management Agency* (Sep. 11, 2007), available at https://www.fema.gov/media-library-data/20130726-1822-25045-7625/principles_of_emergency_management.pdf.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ APHC Staff, Perceived Threat, *U.S. Army Medical Department: Army Public Health Center* (n.d.), available at <https://definedterm.com/a/definition/292695>.

¹⁴⁶ Katharina Schmid, & Orla T. Muldoon, Perceived Threat, Social Identification, and Psychological Well-Being: The Effects of Political Conflict Exposure, 36 *POLITICAL PSYCHOLOGY* 1, available at <https://doi.org/10.1111/pops.12073>.

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The remaining questions are what are perceived threats, what is their ordering, and which perceived threat should receive the most significant focus, or the perceived threat with the highest economic cost.

Perceived Threats and the Data

The rankings of perceived threats depend on the thing being threatened. Regarding the marine environment, Potts et al. found that industrial pollution and litter were the two biggest perceived threats.¹⁴⁷ According to Bullock et al., transportation safety is a concern, with vehicular crashes and accident damages being the highest perceived threat when transporting hazardous materials.¹⁴⁸

When examining perceived terrorist threats, one needs to remember that one person's terrorist is another person's freedom fighter. According to the Vision for Humanity, when ranking the top ten countries by the impact of terrorism using the Global Terrorism Index (GTI) for 2023, Table 1 shows that:¹⁴⁹

Table 1. Countries Ranked by the Number of Terrorism-Related Fatalities

Country	2023 Rank	2023 GTI Score
Burkina Faso	1	8.571
Israel	2	8.143
Mali	3	7.998
Pakistan	4	7.916
Syria	5	7.890
Afghanistan	6	7.825
Somalia	7	7.814
Nigeria	8	7.575
Myanmar	9	7.536
Niger	10	7.274

Because of the current war between Israel and Gaza, Israel is likely to rank number one in 2025. Notice that the United States is not included in the top ten countries listed in Table 1. This means that in the United States, actual terrorism is not a significant issue and is probably an overly inflated issue.

As for cyber-attacks, Rid aptly observed that not a single individual death can be attributed to a cyber-attack.¹⁵⁰ In contrast, cyberattacks have been effectively used to damage property, as seen with the effects of the Stuxnet virus (2009-2010).¹⁵¹ The Israelis also employed a cyberattack to spoof Syrian radar before Israel bombed the Dayr ez-Zor nuclear power plant in 2007.¹⁵² As for a cyber-attack against the United States, even though Special Prosecutor Robert Mueller has indicted 13 Russian citizens, the actions looked more like social engineering than a genuine¹⁵³ cyberattack.¹⁵⁴

Based on the argument above, terrorism and cyberattacks should be the primary focus of the Department of Homeland Security's scarce emergency management resources. This is not to say that terrorism and cyberattacks are not important. They are very important. However, I believe that a vast majority of the scarce resources should probably be dedicated to mitigating the effects

¹⁴⁷ Tavis Potts, Timothy O'Higgins, & Emily Hastings, Oceans of Opportunity or Rough Seas? What Does the Future Hold for Developments in European Marine Policy?, *Philosophical Transactions of The Royal Society A Mathematical Physical and Engineering Sciences* (Dec. 2012), available at https://www.researchgate.net/publication/232920825_Oceans_of_opportunity_or_rough_seas_What_does_the_future_hold_for_developments_in_European_marine_policy?_sg=8is3WSQSa_HiAmV8KFZiT9ulEmETg322-W-fzShdf3gQ79dIV5uXIRYniR82g2-p27x_BmQahA.

¹⁴⁸ Jane A. Bullock, George D. Haddow, & Damon P. Coppola, *supra*, note 18.

¹⁴⁹ VOH Staff, Ten countries most impacted by terrorism: GTI 2024, Vision of Humanity (Feb. 28, 2024), available at <https://www.visionofhumanity.org/10-countries-most-impacted-by-terrorism-gti-2024/>.

¹⁵⁰ THOMAS RID, CYBER WAR WILL NOT TAKE PLACE (Oxford University Press 2013).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Matt Apuzzo, & Sharon LaFraniere, 13 Russians Indicted as Mueller Reveals Effort to Aid Trump Campaign, *The New York Times* (Feb. 16, 2018), available at <https://www.nytimes.com/2018/02/16/us/politics/russians-indicted-mueller-election-interference.html>.

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of hurricanes, tornadoes, floods, and other natural disasters. Although terrorism and cyberattacks are high-profile threats, their incident rates are too low to rank them among the top perceived threats.

CONCLUSION

How does a nation prevent terrorism? It is not a matter of passing laws, such as the USA PATRIOT Act or the USA FREEDOM Act, or any of the numerous laws currently in effect. It is not a matter of the President of the United States issuing executive orders or presidential decision directives. These are actions of a country that is experiencing terrorism and is attempting to mitigate the effects by establishing penalties. Laws, executive orders, and presidential decision directives designate specific behaviors as terrorism. An individual who engages in terrorism is doing so because they feel aggrieved in one way or another. The individual may be a citizen of the United States or a citizen of another country. For some people, the threat of a significant penalty will deter them from participating in illegal actions. This individual mentally determines that the cost of the punishment exceeds the benefit resulting from the deed. For these individuals, the laws, executive orders, and presidential decision directives have fulfilled their purpose.

However, for other individuals, the calculus takes on a different perspective. These individuals have likely concluded that the situation is so dire that nothing less than drastic and profound change is the only viable solution. These individuals sometimes become terrorists despite the laws, executive orders, and presidential decision directives. They perceive the laws, executive orders, and presidential decision directives as violating their fundamental rights. They take a stand and violate the laws, executive orders, or presidential decision directives, knowing the potential for adverse legal consequences. In this instance, eliminating the root causes of terrorism is the more effective approach. Most people want to live their lives in peace. Some individuals understand that the price of freedom is death. They are willing to die for the freedom that they seemingly lack.

Thus, although the laws, executive orders, and presidential decision directives may be needed to maintain the peace in the short run, a more effective solution is to look beyond the existing laws, executive orders, and presidential decision directives and objectively examine the root causes of terrorism, recognizing that it is better to give people the freedom to live their lives in peace so that terrorism is not seen as a necessity, but as an unwelcome option. Only then will terrorism fade from people's memory, where swords will be made into plowshares, and war in any form will be made no more.

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