



From June 2025 Voter

Habeas Corpus: “Produce the Body”

Editor’s note: We thought you might like a refresher and an update on this Article 1 constitutional right. The Trump administration has invoked the Alien Enemies Act of 1798 to justify ignoring habeas corpus for undocumented immigrants, claiming that the United States is currently under invasion and, hence, habeas corpus may be suspended. The Supreme Court has

blocked lower courts’ restraining orders on rapid deportations without due process, holding that, first, the lower courts must hear cases that have been brought on the basis of habeas. Many have expressed concern that widespread suspension of habeas corpus could extend beyond undocumented immigrants to legal residents—as it already has in at least 50 cases, according to the libertarian [Cato Institute](#). If our government can detain, imprison, and deport immigrants who are here legally, can it do the same to U.S. citizens whom the Executive simply dislikes? For fuller context, read [ProPublica’s overview](#) and learn about the rationale for suspending habeas based on the [Alien Enemies Act](#).

[writ of] ha-be-as corpus  (hābē-əs), *noun*

1. A writ that a person may seek from a court to obtain immediate release from an unlawful confinement, as when the confinement has occurred through a means that violated the person’s constitutional rights.

2. The right of a person to obtain such a writ.

[Middle English, from Medieval Latin *habeās corpus*, produce the body (from the opening words of the writ): Latin *habeās*, second person sing. present subjunctive of *habēre*, to have + Latin *corpus*, body.]

—[American Heritage Dictionary](#)

No free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land.

To no one will we sell, to no one will we deny or delay right or justice.

—[Magna Carta](#), Articles 39–40, 1215

The 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.

—[U.S. Constitution, Article I, Section 9, Clause 2](#), 1788

The establishment of the writ of habeas corpus, the prohibition of ex post facto laws, and of TITLES OF NOBILITY, to which we have no corresponding provision in our Constitution, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny.

—Alexander Hamilton, [Federalist 84](#), 1788

The Constitution is clear—and that of course is the supreme law of the land—that the privilege of the writ of habeas corpus can be suspended in a time of invasion, so it is an option we’re actively looking at. Look, a lot of it depends on whether the courts do the right thing or not.

—White House Deputy Chief of Staff Stephen Miller, [statement to reporters](#), May 12, 2025

SENATOR MAGGIE HASSAN: Secretary Noem, what is habeas corpus?

HOMELAND SECURITY SECRETARY KRISTI NOEM: Well, habeas corpus is a constitutional right that the president has to be able to remove people from this country ...

HASSAN: No, let ...

NOEM: ... To suspend their right ...

HASSAN: Let me stop you, Ma’am.

NOEM: ... That’s to suspend their right ...

HASSAN: Habeas corpus—excuse me, that’s incorrect.

—[Noem’s testimony](#) before the Senate Committee on Homeland Security, May 20, 2025