Let Me Outta Here!: Emergency Powers

A Lesson to Accompany *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*

Rationale:

Chapter 19 of *Fault Lines in the Constitution*, which is titled "Let Me Outta Here!: Emergency Powers," points out that the Constitution is vague about the circumstances under which our government can detain people during a state of emergency. Many people think of the attacks on September 11, 2001, as the most frightening national emergency. However, a pandemic that affects the health of millions of Americans might be even more threatening.

The Constitution states that people who are imprisoned have the right to ask for a writ of habeas corpus, which requires the government to explain their detention or release them. But, during times of "rebellion or invasion" we lose that right. Is a possible pandemic one of those times when Americans could be confined against their will? Does "invasion" refer only to attackers carrying guns or throwing bombs? Or, does it also include people who are unknowingly carrying a potentially dangerous virus?[1]

These resources explore these questions as well as the history and evolution of the right of habeas corpus in the United States, and ask students to apply this information to events in the past and present.

[1] Original text is from "Coronavirus and the Constitution," Fault Lines in the Constitution, February 13, 2020. It has been updated to reflect the new name of Chapter 19 in the 3rd edition of *Fault Lines*.

Essential Questions:

- How does federal law protect and prioritize habeas corpus?
- To what extent have national and international events challenged the Framers' ideas about habeas corpus?
- To what extent do new emergencies necessitate evolving ideas about habeas corpus and due process?

Objectives: *Students will be able to…*

- Define habeas corpus.
- Identify legal documents that mention habeas corpus and how each contributed to its evolution.
- Describe the Supreme Court's use and interpretation of habeas corpus over time.
- Discuss actions taken by state and federal governments that expand the Suspension Clause.
- Evaluate the ways in which "rebellion or invasion" came to encompass intangible threats.
- Assess whether modern crises demand rethinking constitutional principles.

Common Core Standards:

Middle School:

Key Ideas and Details:

CCSS.ELA-LITERACY.RH.6-8.1
Cite specific textual evidence to support analysis of primary and secondary sources.
CCSS.ELA-LITERACY.RH.6-8.2
Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

Integration of Knowledge and Ideas:

CCSS.ELA-LITERACY.RH.6-8.7
Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.
CCSS.ELA-LITERACY.RH.6-8.8
Distinguish among fact, opinion, and reasoned judgment in a text.

High School:

Key Ideas and Details:

CCSS.ELA-LITERACY.RH.11-12.1
Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.
CCSS.ELA-LITERACY.RH.11-12.2
Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
CCSS.ELA-LITERACY.RH.11-12.3
Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

Integration of Knowledge and Ideas:

CCSS.ELA-LITERACY.RH.11-12.7
Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.
CCSS.ELA-LITERACY.RH.11-12.8
Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.
CCSS.ELA-LITERACY.RH.11-12.9
Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

Resources

I) Habeas Corpus: A History

The Framers debated whether to include certain rights in the Constitution but decided not to, with one essential exception–the writ of habeas corpus. This is a court order with a Latin name meaning "that you have the body." It guarantees a person who is in prison the right to be granted what is called the great writ, which directs the court to release the prisoner if it can't explain why the government has the power to keep the person in jail.

The colonists were accustomed to the right of habeas corpus because the British had guaranteed this protection to citizens for more than a century. Some people traced it back to the Magna Carta, which granted rights to the British people in 1215. Nevertheless, through most of the summer, the Framers did not include it in the Constitution. They considered it one of those basic rights that belonged in a bill of rights.

In August, Alexander Hamilton of New York returned to the issue, arguing that habeas corpus belonged in the Constitution proper. He quoted William Blackstone, an expert in British law, who had said, "confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten" was the worst form of tyranny. Hamilton labeled unjustified imprisonment a "fatal evil."

Other Framers agreed with Hamilton, although they debated whether to include exceptions—circumstances under which protection against long term imprisonment could be allowed without explaining the situation to a judge. Gouvernor Morris of Pennsylvania proposed that "Rebellion or invasion" would justify suspending the right of habeas corpus. Nearing the end of their work, the Framers agreed to incorporate habeas corpus, with Morris's exception, into the Constitution.

The first Congress then passed a law giving US courts the power to issue writs—court orders—to enforce this provision. They could do so by demanding that the government justify detentions and, if it could not, then demanding release of the prisoner.

But how would this right be protected and guaranteed? The answer, called due process, was provided in the Fifth Amendment, which is part of the Bill of Rights, ratified in 1789. This amendment guarantees the right to protect their very lives, freedom, and goods through a legal process, such as by making their case in a court of law.

In 1833, the Supreme Court decided that the Fifth Amendment applied only to the national government, so the Fourteenth Amendment was added in 1868. It is identical to the Fifth Amendment, except that it applies due process to state governments.

But in times of rebellion or invasion, governments do not necessarily have to follow these rules. During these times the writ of habeas corpus can be suspended, and suspects can be kept in jail indefinitely without any official having to explain why.[2]

Question:

- Why did the Framers include habeas corpus in the Constitution?

[2] Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition (Atlanta: Peachtree Publishing Company, 2025), 229-231.

II) The Constitution and Habeas Corpus

Article I, Section 9:
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.

***Amendment V*:**
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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.

***Amendment XIV*:**
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Clauses in the Fifth and Fourteenth Amendment stating that no person shall be deprived of life, liberty, or property without due process of law are known as Due Process rights. A person cannot be stripped of these rights without a fair trial and all that entails (right to an attorney, jury of one's peers, etc). The extension of due process rights, then, is directly related to habeas corpus, under which someone accused of a crime cannot be held indefinitely.

III) Habeas Corpus in the Judiciary Act of 1789

SEC . 14. And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the Supreme Court, as well as judges of the district courts, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment. Provided, That writs of habeas corpus shall in no case extend to prisoners in jail, unless where they are in custody, under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

Question:

- How did habeas corpus evolve and become further entrenched over time?

IV) The Supreme Court and Habeas Corpus

Ex Parte Merryman (1861)

Case Summary:

After the start of the Civil War, President Lincoln ordered General Winfield Scott to suspend habeas corpus near railroad lines that connected Philadelphia to Washington, amid fears of a rebellion in Maryland that would endanger Washington. On May 25, 1861, federal troops arrested a Maryland planter, John Merryman, on suspicion that he was involved in a conspiracy as part of an armed secessionist group. Merryman was detained at Fort McHenry without a warrant. Merryman's attorney petitioned the U.S. Circuit Court for Maryland, which Chief Justice Taney oversaw, for his client's release. Though Taney issued the writ, Fort McHenry's commander declined to appear, citing Lincoln's suspension. Days later, Taney issued an oral opinion stating that the Constitution clearly intended for Congress, and not the President, to have the power to suspend the writ during emergencies.

Decision:

The clause in the Constitution which authorizes the suspension of the privilege of the writ of *habeas corpus* is in the ninth section of the first article.

This article is devoted to the Legislative Department of the United States, and has not the slightest reference to the Executive Department…. The power of legislation granted by [the necessary and proper] clause is by its word carefully confined to the specific objects before enumerated. But as this limitation was unavoidably somewhat indefinite, it was deemed necessary to guard more effectually certain great cardinal principles essential to the liberty of the citizen and to the rights and equality of the States by denying to Congress, in express terms, any power of legislation over them.

…the great importance which the framers of the Constitution attached to the privilege of the writ of *habeas corpus*, to protect the liberty of the citizen, is proved by the fact that its suspension, except in cases of invasion and rebellion, is first in the list of prohibited powers; and even in these cases the power is denied and its exercise prohibited unless the public safety shall require it….

It is the second article of the Constitution that provides for the organization of the Executive Department, and enumerates the powers conferred on it, and prescribes its duties. And if the high power over the liberty of the citizens now claimed was intended to be conferred on the President, it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the exercise of the power.

Question:

- Why did Chief Justice Taney rule against the suspension of habeas corpus in Merryman's case? Might he have ruled differently under other circumstances?

***Rasul v. Bush* (2004)**

Case Summary:

Two Australians and 12 Kuwaitis were captured by the American military in Pakistan or Afghanistan during the United States' War on Terror. The captives were transported to the American military base in Guantanamo Bay, Cuba. When their families learned of the arrests, they filed suit in federal district court seeking a writ of habeas corpus that would declare the detention unconstitutional. They claimed that the government's decision to deny the men access to attorneys and to hold them indefinitely without access to a court violated the Fifth Amendment's Due Process Clause. The government countered that the federal courts had no jurisdiction to hear the case because the prisoners were not American citizens and were being held in territory over which the United States did not have sovereignty (the Guantanamo Bay base was leased from Cuba indefinitely in 1903, and Cuba retains "ultimate sovereignty").

Decision:

…Consistent with the historic purpose of the writ, this Court has recognized the federal courts' power to review applications for habeas relief in a wide variety of cases involving Executive detention, in wartime as well as in times of peace. The Court has, for example, entertained the habeas petitions of an American citizen who plotted an attack on military installations during the Civil War, *Ex parte Milligan*... (1866), and of admitted enemy aliens convicted of war crimes during a declared war and held in the United States, *Ex parte Quirin*... (1942), and its insular possessions, *In re Yamashita*... (1946)….

Application of the habeas statute to persons detained at the base is consistent with the historical reach of the writ of habeas corpus. At common law, courts exercised habeas jurisdiction over the claims of aliens detained within sovereign territory of the realm, as well as the claims of persons detained in the so-called "exempt jurisdictions," where ordinary writs did not run, and all other dominions under the sovereign's control. As Lord Mansfield wrote in 1759, even if a territory was "no part of the realm," there was "no doubt" as to the court's power to issue writs of habeas corpus if the territory was "under the subjection of the Crown."… Later cases confirmed that the reach of the writ depended not on formal notions of territorial sovereignty, but rather on the practical question of "the exact extent and nature of the jurisdiction or dominion exercised in fact by the Crown."…

In the end, the answer to the question presented is clear. Petitioners contend that they are being held in federal custody in violation of the laws of the United States. No party questions the District Court's jurisdiction over petitioners' custodians…. We therefore hold that [the District Court has] jurisdiction to hear petitioners' habeas corpus challenges to the legality of their detention at the Guantanamo Bay Naval Base.

Questions:

- How did the Supreme Court's decision in *Rasul v. Bush* expand Guantanamo prisoners' rights?
- Why do you think the Supreme Court heard multiple cases on prisoners' rights after 9/11 and during the War on Terror?

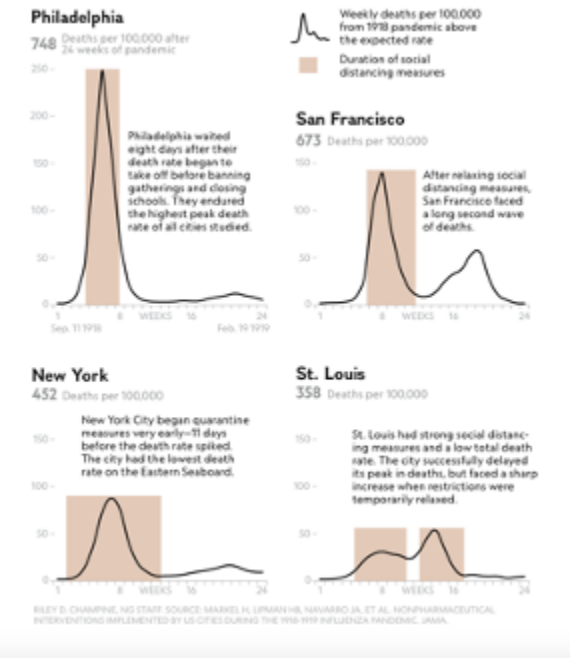
V) Habeas Corpus and Infectious Disease

The Constitution says the federal government can suspend habeas corpus only in cases of "Rebellion or Invasion." Can an infectious microbe be considered an invasion, like a foreign army?

Compared to other possible epidemics, Ebola is easy to address. Because victims develop a fever before they become contagious, no one, including nurses who travel from affected countries, need to be restrained until and unless they develop symptoms. Influenzas and COVID-19, however, which have killed millions, can be spread by people who do not yet show signs of being sick.

…The bottom line is that the Constitution doesn't explain what counts as an emergency, and when a president asserts that one has surfaced, we, the people, can lose our rights.[3]

1) The 1918 Flu Pandemic



"Flattening the Curve" in 1918

The 1918 flu lasted until 1920 and is considered the deadliest pandemic in modern history…. From its first known US case at a Kansas military base in March 1918, the flu spread across the country. Shortly after health measures were put in place in Philadelphia, a case popped up in St. Louis. Two days later, the city shut down most public gatherings and **quarantined victims** in their homes. San Francisco, Milwaukee, Kansas City, and New York instituted **mandatory quarantines**. The cases slowed. By the end of the pandemic, between 50 and 100 million people were dead worldwide, including more than 500,000 Americans.

Image Source: National Geographic

See also:
"What New York Looked Like During the 1918 Flu Pandemic," *The New York Times*, 4.2.2020.

Social Distancing in U.S. Cities, 1918

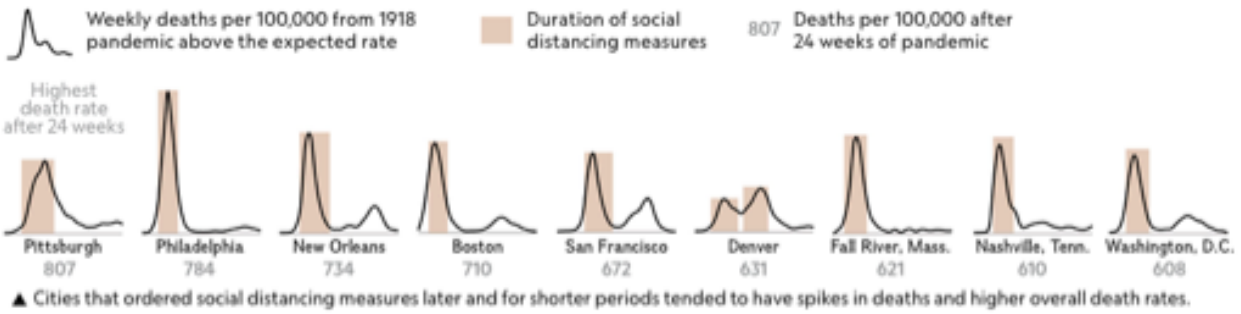


Image Source: National Geographic

[3] Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition, 235-236.

An Unfinished Lesson: What the 1918 Flu Tells Us About Human Nature

Excerpts from an interview with Nancy Bristow, author of American Pandemic: The Lost Worlds Of The 1918 Influenza Epidemic

VEDANTAM: Historian Nancy Bristow says the ferocity and virulence of the 1918 influenza pandemic caught the world by surprise. But in many ways, it shouldn't have been a surprise. The pandemic hit a world engulfed in war. We've seen how the movement of soldiers were a powerful vector for the virus, but it went deeper than that. Nancy, how did the conflict between nations change how they responded, especially when it came to taking steps to limit the spread of the virus?

BRISTOW: The war again really facilitated the virus' work. In the United States, for instance, President Woodrow Wilson would never - and I say never - speak publicly about the pandemic. Even as more than half a million Americans are dying of influenza, the president of the United States refused to speak of the crisis that was underway precisely because he was worried about the war effort. He was so preoccupied with the prosecution of the war that he feared that people would lose sight of the most important business at hand, which was, for the United States, to win the war.

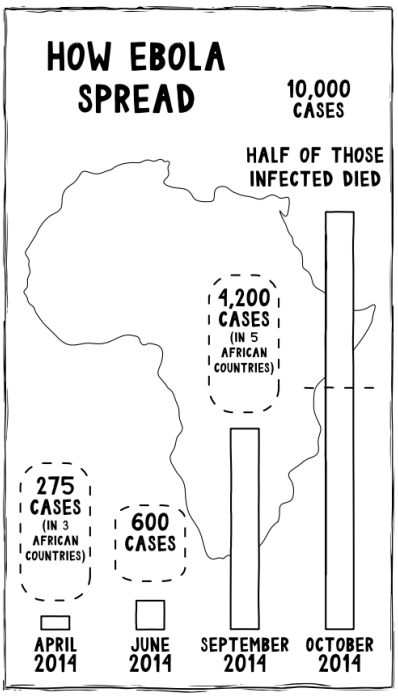
VEDANTAM: But it's so understandable, isn't it, which is that, you know, you're trying to follow the public health guidelines, and then the virus comes back and you start to question how good are these guidelines. And then perhaps you follow some of the social distancing requirements that are put in place, and you do that for a couple of months, and it's difficult because schools are closed and businesses are closed and everyone's itching to get back to normal. And then the third wave hits. And at this point, when people say let's go back to social distancing, it's not surprising that people would say absolutely not.

BRISTOW: It's not surprising at all, and I think it's a really important idea to put out in our minds that even if we follow the social distancing practices, people will continue to sicken and people will continue to die. That doesn't mean that it's not working because those figures are going to be substantially lower than if we move forward without social distancing. But people get frustrated, again partly because it's really inconvenient. It is not that fun to be quarantined. It's not that fun to not be able to leave your homes. So people are anxious to get back to regular life. And there is this suspicion that somehow, well, none of this is really working because people are still getting sick and dying. But that's not how we measure the success when we're in the midst of a deadly pandemic.

Questions:

- How effective were social distancing and quarantine measures during the 1918 flu pandemic?
- Based on what you know of habeas corpus, were these quarantines constitutional?

2) The Ebola Quarantine Controversy, 2014



The Story of Kaci Hickox[4]

In October 2014, Kaci Hickox returned to the United States from Sierra Leone, West Africa, where she had worked for Médecins Sans Frontières at an Ebola treatment unit. In a widely publicized series of events, Hickox spent nearly four days in isolation by order of the New Jersey Department of Health, initially at Newark International Airport. News reports followed her subsequent removal to Maine, where she remained under a quarantine order for three weeks. Hickox exhibited no symptoms throughout her isolation and never developed Ebola.

After being ordered by the Maine Department of Health into strict home confinement, Hickox and her attorneys successfully sued the Maine Department of Health to modify the order. The quarantine order in Maine became the first, and so far only, judicial modification of a public health order related to Ebola. A state judge ruled that public health officials had not proved "by clear and convincing evidence that limiting respondent's movements to the degree requested" was needed to protect the public.[1] The modification eased the most stringent aspect of the order—home seclusion for three weeks—while retaining monitoring and social-distancing aspects of the quarantine order consistent with recommendations by the Centers for Disease Control and Prevention.

Norman Siegel, Kaci Hickox's lawyer[5]*:*

"The conditions that the state of Maine is now requiring Kaci to comply with are unconstitutional and illegal and there is no justification for the state of Maine to infringe on her liberty."

Judge Charles C. LaVerdiere[6]

"The court is fully aware of the misconceptions, misinformation, bad science, and bad information being spread from shore to shore in our country with respect to Ebola. The court is fully aware that people are acting out of fear and that this fear is not entirely rational."

[4] **Image**: Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition, 227.
[5] Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition, 228.
[6] Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition, 240.

Marc Santora, "New Jersey Accepts Rights for People in Quarantine to End Ebola Suit,"
New York Times*, July 27, 2017*

A nurse who worked with Ebola patients in West Africa in 2014, only to wind up isolated in a tent behind a New Jersey hospital, ended her lawsuit against the state on Thursday with a settlement that spells out rights for people in quarantine…. Many public health officials viewed the governors' quarantine policy as overbroad and worried that it would have a chilling effect on health care workers who were desperately needed in West Africa to combat the virus…. Mr. Siegel said it became clear during negotiations that if Ms. Hickox allowed the state to escape financial liability, she could do something more important: bring about systemic change. Under the settlement, anyone quarantined in New Jersey can contest the order and has the rights to have legal counsel, to be given prior notice of any hearings and to send and receive communications. It also guarantees a person the right to privacy so long as it does not interfere with vital public health needs…. Ms. Hickox plans to work to establish similar guidelines in other states. "The settlement upholds the principles and values of liberty and due process," she said.

Question:

- Why was Hickox's challenge successful? How might different health crises necessitate different quarantine practices?

3) COVID-19, 2020

COVID-19: Current Travel Restrictions and Quarantine Measures, Congress.gov, Updated May 28, 2020

Quarantine and Isolation

The Administration's January 31, 2020, Proclamation also directed the Secretary of Homeland Security "to regulate the travel of persons and aircraft to the United States to facilitate the orderly medical screening and, where appropriate, quarantine of persons who enter the United States and who may have been exposed to the virus." To this end, on February 2, 2020, the U.S. Department of Homeland Security (DHS) imposed screening and quarantine rules for persons – including U.S. nationals, LPRs, and their immediate family members – who arrive in the United States within 14 days after having been in mainland China. Those persons travelling by air must arrive at one of 11 designated airports where they are to be screened. On March 2, 2020, DHS imposed similar requirements for air travelers who were recently present in Iran. And, on March 13, 2020, DHS increased the number of designated airports to 13, and extended these screening requirements to those arriving from the majority of European countries….

Authority for these quarantine rules comes from Section 361 of the Public Health Service Act, which authorizes the U.S. Department of Health and Human Services (HHS) to promulgate and enforce regulations "necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession."...

In addition to federal quarantine authority, states may quarantine or isolate persons as public health risks using their police powers. State mandatory quarantine laws vary, with some implemented through public health orders issued by state health departments, and others effectuated through court orders authorizing the detention of an individual upon some evidentiary showing that the person poses a public health risk.

Possible Constitutional Challenges

Because quarantine requirements involve a deprivation of a person's liberty to move freely, they have occasionally been challenged on constitutional grounds. Specifically, the Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Accordingly, quarantine measures may be challenged as violating the Constitution's ... due process protections….

See also:

- "Your legal rights in a quarantine, explained," Vox, March 25, 2020.
- Debra Cassens Weiss, "Lawsuits over coronavirus quarantines are unlikely to succeed, experts say," ABA Journal, March 18, 2020.

Mike Baker, "A 'Liberty' Rebellion in Idaho Threatens to Undermine Coronavirus Orders," The New York Times, updated April 8, 2020

…In a state with pockets of deep wariness about both big government and mainstream medicine, the sweeping restrictions aimed at containing the spread of the virus have run into outright rebellion in some parts of Idaho, which is facing its own worrying spike in coronavirus cases.

The opposition is coming not only from people like Mr. Bundy, whose armed takeover of the Oregon refuge with dozens of other men and women in 2016 led to a 41-day standoff, but also from some state lawmakers and a county sheriff who are calling the governor's statewide stay-at-home order an infringement on individual liberties….

State Representative Heather Scott, a Republican from Blanchard, northwest of Coeur d'Alene, is encouraging her constituents to push back on the statewide stay-at-home order, saying people have "a God-given constitutionally protected right to peacefully assemble."…

Mr. Wheeler, the Bonner County sheriff, said in his letter to the governor that the state needed to discuss how serious the threat was. "I do not believe that suspending the Constitution was wise, because Covid-19 is nothing like the plague," he wrote.

Ms. Scott, while acknowledging the coronavirus outbreak as an emergency, sent a newsletter to constituents calling it "The Virus That Tried to Kill the Constitution."…

Mr. Remington [a pastor and state representative] said he was hoping that more Idahoans would decide to stand up for their rights. "Whatever happened to 'Give me liberty or give me death'?" he said.

Protests

Image credits: Vox

Questions:

- Given the conditions during the COVID-19 pandemic and the ways in which the virus spread, could restrictions on personal liberty be deemed constitutional?
- Why might some Americans argue that these restrictions violated due process?

VI) Habeas Corpus and Immigration in the 21st Century

The Trump administration has invoked the Alien Enemies Act of 1798 to justify imprisoning and deporting immigrants throughout the United States since his return to the presidency in January 2025. According to the American Civil Liberties Union (ACLU), the administration has:

- Invoked the 1798 Alien and Enemies Act to justify mass detentions and deportations to a torture prison in El Salvador.
- Locked up protesters for their protected speech and argued that they must sit in jail for years before seeing a federal judge.
- Deported people in violation of court orders and without hearings, notice, or access to legal counsel.
- Argued that these individuals have no right to challenge their detention.

The ACLU and others, therefore, have invoked habeas corpus as a defense against these actions.

1) Hernandez D. Stroud, Katherine Von Ebright, Ames Grawert, "Habeas Corpus, Explained," The Brennan Center for Justice, June 18, 2025

How is habeas corpus used in the immigration context?

Historically, habeas corpus could be used to challenge the validity of a deportation order under immigration law. In the **1990s** and **2000s**, however, Congress substantially limited this practice and created alternative pathways for challenging immigration law deportations.

These limitations have not affected immigrants' ability to use habeas corpus to contest unlawful immigration detentions. For example, they can file a habeas petition to argue that they are being held without a legal basis, held for an unduly long period, or subjected to impermissible detention conditions. Nor have these limitations affected immigrants' ability to use habeas corpus to contest deportations conducted under exceptional authorities outside of the immigration code.

How are habeas corpus petitions being used under the Trump administration?

Habeas petitions have been a vital instrument for challenging the administration's immigration policies, particularly the **president's invocation** and use of the **Alien Enemies Act of 1798**, a law that authorizes sweeping detentions and deportations of immigrants in wartime.

Since the War of 1812, courts have allowed immigrants to file habeas petitions to contest their detention or potential removal under the Alien Enemies Act, and the Supreme Court **recently reaffirmed** immigrants' ability to do so. In these petitions, immigrants have historically argued that they were not "alien enemies," that the law was improperly applied in peacetime, or that the law's use had constitutional shortcomings — in other words, that the Alien Enemies Act could not serve as a legal basis for their detention or deportation.

Today, Venezuelan immigrants accused of being "alien enemy" members of the gang Tren de Aragua have **filed** habeas corpus petitions across the country raising these same arguments. So far, every court to consider an

Alien Enemies Act case has granted some form of relief to the Venezuelan immigrants, deciding that the petitioners were not gang members, that the president had improperly invoked the law in peacetime, or that the attempted use of the law violated constitutional due process. These petitions **have prevented** the Trump administration from using the wartime law to conduct further deportations of Venezuelan immigrants without an opportunity for a court hearing. Other habeas petitions have **sought the return of immigrants** already deported under the Alien Enemies Act and other authorities, insofar as those immigrants, **like Kilmar Abrego Garcia**, have been held without legal basis in a Salvadoran prison at the direction of the Trump administration. Habeas petitions have also been filed to challenge the administration's immigration detentions, such as those of students **Mahmoud Khalil** and **Rümeysa Öztürk**. In these cases, the petitioners have argued that their apprehension was unconstitutional retaliation for their political speech and that there was no legal basis for detaining them during immigration processing. Courts have ordered the release of both Khalil and Öztürk.

2) KPBS Media, "Family ordeal highlights importance of habeas corpus in immigration cases," May 29, 2025

This video, which tells the story of Angela Mata Mendoza, a longtime US resident arrested and held by ICE in California and her lawyer's successful use of habeas corpus to secure her release.

Watch video here:

Family ordeal highlights importance of habeas corpus in immigration cases

Question:

- To what extent has the current (2025) immigration crisis demonstrated the importance of habeas corpus for individuals in the United States?

Student Resources and Activities:

Directions: Students will fill in the following graphic organizer using the information in these resources.

Three reasons the Framers included habeas corpus in the Constitution 1. 2. 3.	Historical challenges to habeas corpus 1. 2. 3.	Circumstances under which habeas corpus **can** legitimately be suspended 1. 2. 3.	Circumstances under which habeas corpus **can not** legitimately be suspended 1. 2. 3.
This information influenced my opinion on the habeas corpus and due process because…	This information influenced my opinion on the habeas corpus and due process because…	This information influenced my opinion on the habeas corpus and due process because…	This information influenced my opinion on the habeas corpus and due process because…

Answer: The government should be able to limit habeas corpus and due process rights during public health crises. (Circle one)

Strongly Disagree Disagree Neutral Agree Strongly Agree

Explain your response:

Activity #1:

Students will read the following excerpts from Fault Lines in the Constitution:

> In times of war, disease, or other extraordinary circumstances, governors–sometimes along with their legislatures–can issue a state of emergency….
> In any case, states cannot violate the US Constitution during a declared emergency. For instance, they can't suspend due process and round people up, the way the government did during World War II. But governors are generally given wide latitude in defining and carrying out protection of public health, safety, and welfare….[7]
>
> The Constitution would serve the country better if it was amended to spell out more clearly and in more detail the actions particular federal officials could take in times of crisis. In addition, the definition of "crisis" needs to include more situations than simply rebellion and invasion. In these frightening instances, we might need someone who can make fast, unquestioned decisions. But it's not clear who has the authority to do what. And shouldn't a constitution specify or limit what a person can do?[8]

Students will use the information in this packet and their knowledge of government actions in times of emergency to respond to this excerpt.

Students will **write a letter to Cynthia and Sanford Levinson**, the authors of *Fault Lines*, in which they will offer clarity on what power they believe state and federal governments should have during times of emergency (war, medical/public health, or any other emergency), and how people's rights should be protected during these frightening times.

[7] Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition, 236-237.
[8] Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd edition, 240.

Activity #2:

Using the resources and their graphic organizers, students will respond to the following questions:

- Under what circumstances, if at all, should federal and/or state governments be able to suspend habeas corpus?
- To what extent should state and national governments exercise increased power during state and national emergencies? (What qualifies as an emergency? Who should determine that?)

Students can respond to the questions in one of the following ways*: essay; legal brief; newspaper editorial or letter to the editor; speech (recorded on video); PowerPoint presentation/Google slides; captioned illustration; song (recorded on video); poem; mock social media posts/exchange; or iMovie. (Other presentation methods at the teacher's discretion.)

All work must meet the following requirements:

- Clearly state an opinion on the government's power to suspend habeas corpus and exercise emergency powers.
- Thoughtfully respond to the selected question, or both questions (at the teacher's discretion).
- Use evidence from the resources to support claims.
- Acknowledge both sides of the debate.
- Include information on past events and current issues.
- Evaluate information to draw an original conclusion.
- Remain focused on the topic and task assigned.

*The recommended activities refer to work students will complete independently. Teachers may also choose to use this information to prepare students for a debate, Socratic seminar, philosophical chairs activity, or any other large group activity where circumstances allow.

Activity #3:

In Chapter 22 of *Fault Lines in the Constitution* Cynthia and Sanford Levinson grade the Constitution based on the way that it fulfills the goals asserted in the Preamble:

> *We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

The authors divide their report card into the following categories--form a more perfect union; establish justice; insure domestic tranquility; provide for the common defense; promote the general welfare; secure the blessings of liberty to ourselves and our posterity—and assign composite grades based on the various aspects of the Constitution they evaluate in their book.

After studying habeas corpus and its application, including the material in *Fault Lines* and outside sources, it's your turn to grade the Constitution! Based on what you learned and the ideas you formed about the habeas corpus, please grade the Constitution in the following categories. Don't forget to add comments!

The Constitution's Report Card

Subject	Grade	Comments
Form a More Perfect Union		
Establish Justice		
Insure Domestic Tranquility		
Provide for the Common Defense		
Promote the General Welfare		
Secure Blessings of Liberty		
Average		