



Written by [Joe Wolverton, II, J.D.](#) on March 22, 2020

Justice Department Seeks Power to Suspend Habeas Corpus, Indefinitely Detain Americans

The Department of Justice has secretly requested that Congress suspend habeas corpus and to allow “indefinite detention” of citizens without trial until the end of the Coronavirus panic, several news agencies are reporting today.



Politico reports:

Documents reviewed by POLITICO detail the department’s requests to lawmakers on a host of topics, including the statute of limitations, asylum and the way court hearings are conducted. POLITICO also reviewed and previously reported on documents seeking the authority to extend deadlines on merger reviews and prosecutions.

More precisely, Attorney General William Barr seeks the authority to empower federal judges throughout the country to provisionally deny constitutionally protected civil and individual rights to people within their jurisdictions. This power would, per Politico, “span several stages of the legal process, from initial arrest to how cases are processed and investigated.”

Barr’s quest for supremacy of his opinion over the rights guaranteed by the Constitution doesn’t stop there, though. Again, per the story broken by Politico’s Betsy Woodruff Swan:

The proposal would also grant those top judges broad authority to pause court proceedings during emergencies. It would apply to “any statutes or rules of procedure otherwise affecting pre-arrest, post-arrest, pre-trial, trial, and post-trial procedures in criminal and juvenile proceedings and all civil process and proceedings,” according to draft legislative language the department shared with Congress. In making the case for the change, the DOJ document wrote that individual judges can currently pause proceedings during emergencies, but that their proposal would make sure all judges in any particular district could handle emergencies “in a consistent manner.”

Many advocates of civil liberties see this as yet another step toward martial law and toward the usurpation by the Trump administration of extraordinarily broad powers over the lives and liberty of Americans, using the COVID-19 crisis as cover.

Already President Donald Trump is claiming sweeping powers far beyond those granted to him by the states and the people in the U.S. Constitution.

Eight years ago — almost to the day — I wrote of an executive order issued by then-President Barack Obama claiming executive-branch powers under the Defense Procuton Act to give himself powers that likely would have caused the autocrats ruling the Roman Empire to blush with shame at their own excess. Now President Trump is claiming authority under to same act to exercise sweeping extra-



constitutional powers.

Here's a short selection from my 2012 article regarding Obama's power grab:

In the order, the National Defense Resources Preparedness Order, the President granted to himself the authority to approve the dispensing of all domestic energy, production, transportation, food, and water supplies as he deems necessary to protect national security.

Despite the national defense hurdle that ostensibly must be jumped in order for the order to take effect, the text of the document itself does not limit implementation to a time of war. In fact, the specific sections of the order make it clear that the President may take complete command and control of the country's natural resources in peacetime, as well.

In fact, the President may invoke the powers of this order to "meet national defense requirements" in "the full spectrum of emergencies." The relevant sections read:

Section 101. Purpose. This order delegates authorities and addresses national defense resource policies and programs under the Defense Production Act of 1950, as amended (the "Act").

Sec. 102. Policy. The United States must have an industrial and technological base capable of meeting national defense requirements and capable of contributing to the technological superiority of its national defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to the national defense needs of the United States.

Sec. 103. General Functions. Executive departments and agencies (agencies) responsible for plans and programs relating to national defense (as defined in section 801(j) of this order), or for resources and services needed to support such plans and programs, shall:

identify requirements for the full spectrum of emergencies, including essential military and civilian demand;

(b) assess on an ongoing basis the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of the most critical resource and production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel...

The underlying legal authority for the execution of such a radical order is found in the Defense Production Act of 1950, the President claims. That law combined with the rights vested in him as Commander-in-Chief of the U.S. Armed Forces supposedly empowers the President to endow himself with these expansive powers.

Just how expansive are the claimed powers and what resources are included in their scope? Livestock? Yes. All food "resources" and "resource facilities?" Yes. Veterinary clinics? Yes. All forms of energy? Yes. Will the President control the water supply? Yes.

Again, that was in 2012. And last week, on Thursday, March 19, President Trump announced that he had "put it [the Defense Production Act] into gear."

As reported by U.S. News & World Report:

Asked why he was putting it into action now, the president told reporters it would be used to ensure that U.S. states could get masks and other equipment needed to fight the virus.



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“I invoked the Defense Production Act, and last night, we put it into gear,” Trump said.

The president “is currently using it to drive the private-sector’s response to this crisis,” said a White House official, who spoke on condition of anonymity. “And the private-sector’s response, to date, to his direction has been overwhelming, fulfilling government-identified needs faster than anyone thought possible,” the official said.

Now, the Trump administration’s Department of Justice is seeking to be granted authority not only over the private-sector’s business, but over one of the most basic rights: habeas corpus, a civil right so fundamental to Anglo-American common law history that it predates the Magna Carta. Should Congress accede to the attorney general’s request, habeas corpus will be voidable upon the command of federal judges, who in turn take their orders from Barr, who takes his orders from the Oval Office. The Sixth Amendment right to counsel is also revocable at his will.

Of course, the denial of habeas corpus (or a trial) comes a little late in the process of being indefinitely detained, which is precisely the power proposed by Barr.

Presidents have issued similar orders in the name of national defense. For example, during the Civil War, President Abraham Lincoln famously (infamously) suspended habeas corpus and the right to an impartial trial as protected by the Sixth Amendment.

Then, during World War I, President Woodrow Wilson, frustrated with Congress’s reluctance to grant him a full panoply of power over natural resources, invoked the powers given him under an executive order to assume absolute and unilateral authority over the same range of resources as are included in the act invoked by President Trump.

As of press time, Congress has not commented on the request for authority to indefinitely detain American citizens the administration believes to be possible threats to the fight against the Coronavirus.

The New American will update this important story as soon as there is any word from Congress or from the Department of Justice.

Photo:ViewApart/iStock/Getty Images Plus

*Joe Wolverton II, J.D., is the author of the books *The Real James Madison* and “What Degree of Madness?”: Madison’s Method to Make America STATES Again. He also hosts the popular YouTube channel “Teacher of Liberty.”*



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