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Trump Administration Invokes Patriot Act Provision to Detain Man — Indefinitely

A writ of habeas corpus — Latin for a judge's order to produce "the body" (the accused) and release a person in jail who has neither been convicted of, nor even charged, with a crime — goes back many centuries. Noted English legal scholar William Blackstone cited its first usage as in 1305, during the reign of King Edward I.



But, despite its codification in English law by Parliament in 1679, and its specific mention in the U.S. Constitution, a provision of the 2001 Patriot Act (Section 412) gives the U.S. government extensive power to detain non-citizens on U.S. soil who cannot be deported, but on "reasonable grounds," are considered to be involved in "activity that endangers the national security of the United States."

During the 18 years that the Patriot Act has been in effect, this provision permitting the indefinite detention of non-citizens has never been used — until now.

President Donald Trump's Administration has invoked it to keep a Palestinian man — Adham Amin Hassoun — imprisoned, despite his having completed his sentence. Hassoun was first detained in June 2002 on an immigration violation charge, but he was later charged with giving several checks to Muslim "charities" operating in Chechnya and Kosovo — Islamic "charities" contributions that were outlawed in the United States following the 9/11 attacks on the World Trade Centers and the Pentagon.

Only one of the checks was written *after* those attacks.

After Hassoun completed his 15-year sentence in 2017, he was taken into custody by the Immigration and Customs Enforcement (ICE), and detained in New York. ICE's intention was to simply deport him as an undesirable illegal alien, but no country wanted to take him. His lawyers argued that since his deportation was therefore highly unlikely, he should be freed.

Instead, the Trump Administration turned to Section 412 of the Patriot Act to keep him jailed, arguing that he was a continued threat to national security. The government argued that Hassoun had committed various misdeeds (not publicly revealed) while in prison, but his lawyers argued that testimony was all hearsay, drawing upon testimony by what they called jailhouse snitches.

Kevin McAleenan, then acting secretary at Homeland Security, recently informed Hassoun that he would "remain in the custody of U.S. Immigration and Customs enforcement pending your removal from the United States or reconsideration of this decision."

Of course, since it is highly unlikely that he will ever be deported, as no foreign country has agreed to accept him, this means that Hassoun will very likely be detained until his death — in effect, a life



sentence.

His lawyers argue that Section 412 of the Patriot Act was intended to take a non-citizen deemed a threat into custody, not to designate someone who has already been detained for several years. “If the government were to prevail in its claim of extraordinary and unprecedented executive power, the government would be free to lock up non-citizens indefinitely based solely on executive say-so, even after they have completed their sentences,” complained Jonathan Hafetz of the ACLU.

But exactly how “unprecedented” is the government’s actions? After all, the Alien Enemies Act was passed in 1798 (along with the better-known Sedition Act, signed into law by President John Adams), which allowed the president to imprison or deport non-citizens deemed dangerous to America. The impetus for that law was the presence of radical foreign advocates of the madness of the French Revolution, who were attempting to win converts in the United States. While the Sedition Act soon expired, the Alien Enemies Act had no such expiration date.

Defining an “enemy” of the United States is problematic when Congress has not declared war on a foreign country, as was the case in 1798. While the United States and France fought an undeclared naval war for months, Congress had *authorized* military action on the High Seas against France, but had never declared war on France. This illustrates a danger in when Congress has unconstitutionally delegated its war-declaring power over to a president. (After all, the Constitution nowhere allows Congress to delegate any of its powers, although it has often done so.) The act was used during World War II by President Franklin Roosevelt to jail German, Japanese, and Italian aliens, who had not been charged with any specific crime.

In fact, the U.S. Constitution does allow for *habeas corpus* to be “suspended” in cases of “rebellion or invasion [when] the public safety may require it.” But, considering that this suspension provision is found in Article I, which covers Congress, many legal scholars make the understandable argument that only Congress can suspend habeas corpus, not the president acting on his own authority. Roosevelt did have precedent for his unilateral executive action, considering that President Abraham Lincoln suspended *habeas corpus* during the Civil War, without any authorization to do so from Congress.

Most recently, President George W. Bush sent detainees to Guantanamo Bay in Cuba in an effort to go beyond the reach of any *habeas corpus* jurisdiction.

Also, the word “suspended” implies a temporary act, a not continuing law denying the right of habeas corpus since 1798, or even 2001.

When Hassoun was first convicted, the federal judge in the case — Marcia Cooke, a Bush appointee — specifically rejected a life sentence, arguing that there was no evidence that he had “maimed, killed or kidnapped anyone in the United States or elsewhere.” The U.S. government was unable to produce any “identifiable victims” as a result of Hassoun’s actions.

Hassoun contends that the government’s initial prosecution was a result of his refusal, while in immigration custody, to become a federal informant.

Regardless of who is telling the complete truth — perhaps neither Hassoun nor the government is doing so — it seems that this is a case that should be in the court system, not simply left to the discretion of the executive branch.

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