



Written by [Joe Wolverton, II, J.D.](#) on November 13, 2017

U.S. Government Detains American Citizen in Secret Iraqi Prison

As you are reading this, the government of the United States is keeping an American citizen prisoner at a secret facility in Iraq and the Trump administration refuses to reveal the prisoner's identity.

There are several theories being bandied about on the Internet, including that he was a journalist who happened to be at the wrong place at the wrong time; the only information that the government will provide about the prisoner is that he was captured fighting for ISIS. They've not bothered to release any evidence supporting that charge, though.



Being apprised of the laws one is accused of having violated is important, but it's the detention and the manner of it that must be of more immediate concern to those who are alarmed about the new world order being defined by the never-ending War on Terror.

While the War on Terror has brought many deprivations of liberty and violations of the Constitution, perhaps most pernicious is the denial of habeas corpus — a civil right so fundamental to Anglo-American common law history that it predates the Magna Carta. The Founding Fathers held habeas corpus to be one of the cornerstones of American civil liberty. In *The Federalist*, No. 84, Alexander Hamilton wrote, "The establishment of the writ of habeas corpus, the prohibition of ex post facto laws ... are perhaps greater securities to liberty and republicanism than any [the Constitution] contains." "The practice of arbitrary imprisonments [has] been, in all ages, the favorite and most formidable instrument of tyranny," Hamilton added. Thomas Jefferson described the writ of habeas corpus as one of the "essential principles of our Government."

In his book *The Power of Habeas Corpus in America*, Anthony Gregory summarizes the sanctity of habeas corpus in the early days of our republic: "As a purer common law right and a more populist cause than it had been in England, American habeas corpus was no longer something the British government could review, veto, or suspend. Tradition and memory of revolution, along with the colonies' new status as free and independent states, would ensure that habeas corpus would never be in systematic peril throughout the country."

Article I, Section 9 of the Constitution states, "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." While it could be argued that, if he truly was fighting for ISIS, this man was in rebellion against the United States, the Constitution gives *Congress*, not the president or the military leadership that answers to him, the power to suspend habeas corpus in cases of rebellion. This unaccountable ability to apprehend and detain American prisoners in overseas jails must be abolished. Put simply, Americans should not need to worry about being held without charge and the president should not be authorized to deploy the



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armed forces to seize a suspected Islamic State soldier and to then detain him indefinitely.

The fate of this American being held hostage (this is the correct term for a person being unlawfully detained without due process) is unclear. Writing for *Rare*, Bonnie Kristian summarized the situation succinctly:

Look, it's perfectly possible this American detained in Iraq is legitimately a terrorist. He may be guilty of truly evil crimes. But he could also be a journalist (or would-be journalist) who made bad decisions and got himself in the wrong place at the wrong time.

That's what due process rights are supposed to help us determine. That possibility of guilt isn't a reason to neglect these rights; it's exactly why we enshrine them in the law of the land. And if the government doesn't have enough evidence to make a conviction stick, as seems to be the case, the solution is not to throw out the rule of law. It's to find more evidence or throw out the case.

No habeas corpus, no due process, no end of imprisonment, and no citizenship — this is the post-9/11 America, one where the Constitution, apparently, can be sacrificed on the altar of empire.



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