Habeas Corpus

By Paul Engel

May 16, 2022

- What is a writ of habeas corpus?
- Why is your right to such a writ protected by the Constitution of the United States.
- What does this petition for a writ of habeas corpus mean, not only for the other January 6th detainees, but for everyone?

Finally! The first of those incarcerated for participating in the January 6th demonstration have petitioned for a writ of habeas corpus. What does this mean? What are the constitutional issues? And why should this be important to all Americans?

Habeas Corpus

Christopher Quaglin has petitioned the District Court for Washington, D.C. for a writ of habeas corpus. I will not be going into the details of Mr. Quaglin's case in this article, that is fodder for another day. Rather, I want to focus on the writ itself and why it is so important to protecting our liberty. To understand what this petition means and why it is important, we need a basic understanding of what habeas corpus is.

[Latin, You have the body.] A writ (court order) that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody and

decide whether to order the prisoner's release.

Habeas Corpus, The Free Legal Dictionary

In short, Mr. Quaglin is asking for his day in court. Specifically, he claims that he is being held illegally and he wants a court's opinion on the matter. His petition accuses those in the federal prison system of some truly terrible treatment as justification of his request. So he is asking the court to issue an order for Merrick Garland as the U.S. Attorney General of the United States and Tell Hull as the Superintendent of the Northern Neck Regional Jail to bring him to court so he can make his case. This ability to petition for a writ of habeas corpus is protected by the Constitution of the United 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.

U.S. Constitution, Article I, Section 9, Clause 2

This is where we find that not only do words matter, but allowing people to manipulate them for their own gain is extremely dangerous. Since January 6, 2021, there are those in politics and the media who have claimed that the demonstration was an insurrection.

A rising against civil or political authority; the open and active opposition of a number of persons to the execution of a law in a city or state.

Insurrection, Webster's 1828 Dictionary

January 6th was not a rise against civil or political authority. Neither was it an opposition to the execution of the law. Instead, it was a demonstration to require our elected employees in Congress to follow the supreme law of the land, the Constitution of the United States. Did some people

enter the capitol? Yes. Did a few do damage? Yes. Was it an insurrection? No. Yet that has not stopped some from attempting to disqualify candidates for their participation in the demonstration. Neither was the demonstration a rebellion:

An open and avowed renunciation of the authority of the government to which one owes allegiance; or the taking of arms traitorously to resist the authority of lawful government; revolt.

Rebellion, Webster's 1828 Dictionary

Since the demonstrators were protesting the illegal counting of votes from presidential electors who were not legally appointed, they were trying to uphold the government they owed allegiance to, not renounce it. The government of the United States was created by its Constitution, and is subject to the rules and restrictions documented within. In this day and age though, it appears many Americans won't let little things like the law or the definition of a word get in the way of a political agenda.

Since there was no rebellion, no invasion, and the public safety was not threatened by Mr. Quaglin, I see no reason why the court should deny his petition. Then again, we stopped treating the Constitution as the supreme law of the land decades ago.

The Supreme Court has not definitively ruled as to whether a conditions of confinement claim is proper in habeas but has instead called it an open question. In lieu of a definitive ruling from the Supreme Court, circuit courts have stepped in to fill the void, One cohort of circuits favor of a conditions of confinement claims while others oppose it.

Quaglin v. Garland, et. al.

I have been asking attorneys for years if they studied the Constitution or Constitutional Law when they were in law

school. To date, only one person said they studied the Constitution. The rest admitted that they studied the opinions of judges, euphemistically referred to as Constitutional Law. Which is why I was not surprised to see the lawyer who is representing Mr. Quaglin acting as if, without a definitive opinion from the Supreme Court (courts opine, thy do not rule), his client's right to habeas corpus is in jeopardy.

History of Habeas Corpus

Many of you may know that President Lincoln suspended the right of habeas corpus at the beginning of the Civil War. What you may not know is the story around it.

On April 27, 1861, President Lincoln issued a proclamation suspending the right of habeas corpus for anyone held in a military facility by sentence of a military court martial or military commission. There were several problems with this proclamation.

First, nowhere in the Constitution is the President given the authority to suspend any legal protection. Since the language about suspending that right is in Article I, which both establishes and sets the rules for the legislative branch, it can easily be assumed that any act involving habeas corpus would come from that branch, not the executive. Some have pointed out that President Lincoln's order was limited to military facilities and cases coming from military courts. However, even though the President is the Commander in Chief of the Army and Navy (Article II, Section 2), it's Congress that has been delegated the power to make the rules and regulations for those entities (Article I, Section 8). Also, while the proclamation was limited to military courts, it was not limited to military personnel. The first challenge to Lincoln's proclamation came rather quickly.

On May 25, 1861, John Merryman of Baltimore was arrested by Union troops and petitioned for a writ of habeas corpus. On

May 26th, Chief Justice of the Supreme Court Roger B. Taney issued an order to General George Cadwalader, command of Fort McHenry, to produce Mr. Merryman for a hearing to justify his detainment. The General replied that he was acting under the orders of the President to suspend habeas corpus. Chief Justice Taney found that General Cadwalader was in contempt of court and ordered U.S. Marshalls to seize him and bring him before the justice. It shouldn't be much of a surprise that the U.S. Marshalls were not allowed entry in to Fort McHenry, and were therefore unable to seize him. Chief Justice Taney filed a written opinion with the Circuit Court for the District of Maryland arguing that President Lincoln had no authority to suspend habeas corpus or to order military officers to do so. The controversy continued until Congress passed, and President Lincoln signed, the Habeas Corpus Suspension Act on March 3, 1863. For two years America had a suspension of constitutionally protected rights based solely on an illegal presidential order. Sound familiar?

While Lincoln was the only President I'm aware of who unilaterally suspended habeas corpus, that was not the last time it was illegally suspended. In 2006, Congress passed and President George W. Bush signed the Military Commissions Act of 2006. This legislation included a suspension of habeas corpus:

No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

S.3930 – Military Commissions Act of 2006

While this suspension of habeas corpus is usually attributed to President Bush, it was Congress that passed the legislation and the President only signed it. Since there was neither

rebellion nor invasion in the United States in 2006, this act violated Article I, Section 9, Clause 2 of the Constitution, making it both illegal and void.

Conclusion

All this leaves us with the question of what the District Court for the District of Columbia will do? Will they recognize Mr. Quaglin's right to have his detention reviewed by the court or will they look at the opinions of previous Supreme Courts and waffle? Time will tell.

Meanwhile, what does this mean for the rest of America? If a year of pretrial detainment, along with accusations of abuse and the denial of due process are not enough to have a case reviewed, what would happen to someone who stands up against an illegal action by a government agent? Can you be held indefinitely for not allowing police to enter your home without a warrant or for refusing to comply with an illegal mandate? Can you be labeled an insurrectionist or a rebel without proof? What good are your rights to due process if the process isn't followed?

What happens if the court denies Mr. Quaglin's petition? Will the American people meekly stand by and watch while a fellow citizen's rights are trampled? If the American people will not stand up to protect the rights of this man, who do you think will stand up if and when you rights are ignored? To paraphrase Martin Neimoller:

First they came for the Trumpists, and I did not speak out—because I was not a Trumpist.
Then they came for the vaccine hesitant, and I did not speak out— because I was not vaccine hesitant.
Then they came for the January 6th demonstrators, and I did not speak out—because I was not a January 6th demonstrator.
Then they came for me—and there was no one left to speak for me.

E-Mail Paul Engel: paul@constitutionstudy.com