



Written by [Veronika Kyrylenko](#) on May 23, 2025

DHS Secretary Noem Misstates Habeas Corpus as Presidential Power While White House Weighs Suspension

At a Senate hearing meant to review the Department of Homeland Security's budget, Secretary Kristi Noem delivered something far more revealing: a crash course in how *not* to interpret the Constitution. When asked to define *habeas corpus* — a constitutional safeguard against unlawful detention — Noem said it was “a constitutional right that the president has to be able to remove people from this country.”

To put it plainly, Noem described a constitutional protection against government abuse as a tool to expand it. That's not just a gaffe — it's a legal face-plant, made worse by the fact that the White House is actively considering suspending *habeas corpus* for noncitizens, while President Donald Trump endorses the idea of deporting American citizens as well.



AP Images
Kristi Noem

The Exchange

At a Tuesday Senate hearing, Senator Maggie Hassan (D-N.H.) asked Noem to define *habeas corpus*.

HASSAN: What is habeas corpus?

NOEM: Habeas corpus is a constitutional right that the president has to be able to remove people from this country

HASSAN: That's incorrect pic.twitter.com/ozRVVfdSoP

— Aaron Rupar (@atrupar) [May 20, 2025](#)

Noem's response raised immediate concern:

Well, *habeas corpus* is a constitutional right that the president has to be able to remove people from this country. And suspend their right to...

Hassan swiftly cut in, “Excuse me, that's incorrect.”

The senator, a former attorney, offered a direct explanation:

Habeas corpus is the legal principle that requires that the government provide a public reason for detaining and imprisoning people. If not for that protection, the government



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could simply arrest people, including American citizens, and hold them indefinitely for no reason.

She added that it was the “foundational principle that separates free societies like America from police states like North Korea.” The senator then asked if Noem supported this principle.

Noem replied that she supports the principle, but claimed:

The president of the United States has the authority under the Constitution to decide if it should be suspended or not.

Hassan corrected her again, “That’s never been done without approval of Congress.” She added, “Even Abraham Lincoln got retroactive approval.”

Later, Senator Andy Kim (D-N.J.) followed up.

During a recent hearing, Rep. Andy Kim pressed Governor Kristi Noem on the constitutional basis for suspending habeas corpus. When asked whether such a suspension requires an act of Congress, Noem cited President Lincoln’s actions during the Civil War, referencing retroactive... pic.twitter.com/vHxBXw1Ue1

— The Kind Joe (@TheKindJoe) [May 20, 2025](#)

“Do you understand that any suspension of *habeas corpus* requires an act of Congress?” he asked.

Noem responded:

President Lincoln executed *habeas corpus* in the past with a retroactive action of Congress. I believe that any president that was able to do that in the past, it should be afforded to our current-day president.

When pressed, Noem could not cite which article of the Constitution outlines the suspension power. She also failed to accurately state how many times presidents have invoked it.

Kim then asked, “Do you know which branch of government Article I outlines the tasks and the responsibilities for?”

“Yes,” Noem replied. “Congress.”

That exchange underscored the stakes. The right to *habeas corpus* is not an executive power. It is a constitutional limit — carefully placed in the legislative article of the Constitution for a reason.

Habeas 101

Habeas corpus, Latin for “you have the body,” is a [core constitutional protection](#). It allows individuals in government custody to challenge their detention before a judge. The government must explain why someone is being held, or release them.

The U.S. Constitution protects this right in [Article I, Section 9](#):

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of



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Rebellion or Invasion the public Safety may require it.

This is the Constitution's only reference to the writ — underscoring its foundational importance while making clear that suspension is rare, limited, and subject to specific conditions. Its placement in Article I reinforces that only Congress, not the president, holds that authority.

The White House Rhetoric

During her testimony, Noem claimed that President Trump had never discussed suspending *habeas corpus*. Yet her flawed definition closely mirrored the rhetoric coming from the top of the administration — particularly from Stephen Miller, Trump's deputy chief of staff and chief immigration strategist.

Stephen Miller says the White House is looking into suspending habeas corpus, which protects people from unlawful detentions: "A lot of it depends on whether the courts do the right thing or not." pic.twitter.com/AZLhFy79oZ

— CSPAN (@cspan) [May 9, 2025](#)

Speaking to reporters outside the White House on May 9, Miller said:

Well, the Constitution is clear. And that, of course, is the supreme law of the land, that the privilege of the writ of *habeas corpus* can be suspended in a time of invasion. So, that's an option we're actively looking at.

He further stressed that "a lot of it depends on whether the courts do the right thing or not."

Miller framed the southern border situation as an "invasion" — language intended to trigger the Suspension Clause. The administration claims that approximately 10 million people entered the U.S. illegally during the Biden presidency. They argue that this volume, combined with drug and gang activity, meets the constitutional threshold for invoking emergency powers.

Days earlier, Trump himself signaled potential support for the idea.

☐BREAKING: President Trump hints at suspending the Writ of Habeas Corpus to conduct mass deportations☐

2 days ago I went to the White House Press Briefing and asked if President Trump planned to suspend the writ of habeas corpus to circumvent radical judges blocking his mass...
pic.twitter.com/CRVekWa8MD

— DC_Draino (@DC_Draino) [April 30, 2025](#)

Asked by a friendly commentator whether he would suspend *habeas corpus* to bypass "radical judges," Trump said, "There are very strong ways ... one way that's been used by three very highly respected Presidents," referring to Abraham Lincoln, Ulysses S. Grant, and Franklin Delano Roosevelt. Trump added that he hoped he didn't have to take this route.



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Legally Baseless, Constitutionally Dangerous

In a [Truthout column](#), legal scholar Marjorie Cohn responded directly to Miller's proposal, calling it "legal garbage." Her critique rested on three core constitutional failures.

First, only Congress — not the president — can suspend *habeas corpus*, and only in cases of "rebellion or invasion" where public safety requires it.

Second, federal courts have rejected the claim that immigration constitutes an "invasion." Judges in Texas, Colorado, and New York have blocked the administration's use of the Alien Enemies Act, ruling that neither unlawful entry nor gang-related crime meets the constitutional threshold.

Third, the Immigration and Nationality Act does not eliminate federal court jurisdiction over immigration matters. *Boumediene v. Bush* reaffirmed that even noncitizens held by the U.S. government retain the right to seek *habeas* review.

Cohn warned that suspending the writ to bypass judicial review would violate both the text and intent of the Constitution. The Suspension Clause was designed for rare, extraordinary crises — not to shortcut legal checks on executive detention.

Are "Homegrown" Next?

It's important to acknowledge that the immigration system has been deliberately broken in recent years, with [serious — and often devastating — consequences](#). No doubt, illegal entry by violent criminals is a real problem and deserves a firm response. But a genuine threat cannot be met with unconstitutional tools.

Trump has publicly floated deporting American citizens — "homegrown" criminals — to El Salvador.

Trump to Fox on deporting Americans to a gulag in El Salvador: "We want to do it. I would love to do that." pic.twitter.com/ZOea5UzCwj

— Aaron Rupar (@atrupar) [April 15, 2025](#)

"Homegrown are next," Trump told Salvadoran President Nayib Bukele. He urged him to build "five more" facilities like the infamous CECOT prison — a symbol of mass detention and unchecked state power.

Not only did Trump flirt with "deporting U.S. citizens," he was also caught on a hot mic saying "homegrown are next." Biden used that same term for "domestic terrorists." Same script, different actors—especially when "homegrown" call out Israel, right? pic.twitter.com/d7AYu20g8C

— Jason Bassler (@JasonBassler1) [April 15, 2025](#)

That alone should give pause. If *habeas corpus* is suspended today for migrants, what prevents its erosion tomorrow for citizens?

A broken system cannot be repaired by new abuses. The ends, however urgent, do not justify unconstitutional means. The right to challenge government detention is not a pesky obstacle — it is the firewall between law-bound governance and the slow descent into authoritarianism.



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