

Handout A: Lincoln and *Habeas Corpus* in the Civil War

Directions: Analyze the document excerpts provided and answer the questions below.

Background: The “Great Writ” or *habeas corpus* has been an essential civil liberty guaranteed since *Magna Carta*. The Constitution denies Congress the power to suspend the privilege of a writ of *habeas corpus* except in very limited circumstances. In 1861, Abraham Lincoln invoked this power of Congress—which was not in session—to suspend *habeas corpus* in certain areas. By the spring of 1861, states of the Confederacy, including Virginia, had proclaimed their secession from the union. Maryland also seemed ready to secede, which would have left Washington, D.C. surrounded by Confederate territory. Since federal troops and supplies could only reach the capital through Maryland, President Lincoln determined to hold Maryland. Though he was reluctant to suspend *habeas corpus* there, he knew it was essential to keep roads and bridges open, and a mob had already attacked a Massachusetts regiment passing through Baltimore.

United States Constitution, Article I, Section 9, Clause 2

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.

Abraham Lincoln to General Winfield Scott, April 25, 1861

I therefore conclude that it is only left to the commanding General to watch, and await their [the Maryland state legislature’s] action, which, if it shall be to arm their people against the United States, he is to adopt the most prompt, and efficient means to counteract, even, if necessary, to the bombardment of their cities—and in the extremest necessity, the suspension of the writ of *habeas corpus*.

Abraham Lincoln to General Winfield Scott, April 27, 1861

You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military line, which is now used between the City of Philadelphia and the City of Washington, via Perryville, Annapolis City, and Annapolis Junction, you find resistance which renders it necessary to suspend the writ of *Habeas Corpus* for the public safety, you, personally or through the officer in command at the point where the resistance occurs, are authorized to suspend the writ.

Abraham Lincoln Memorandum [May 17, 1861]

Unless the *necessity* for these arbitrary arrests [in Washington, D.C.] is *manifest*, and *urgent*, I prefer they should cease.

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Critical Thinking Questions

1. What is *habeas corpus* and why is it called the “Great Writ”?
2. According to the Constitution, under what conditions can *habeas corpus* be suspended?
3. To what extent did President Lincoln seem to be eager to suspend *habeas corpus*?