Introduction

The doctrine of habeas corpus is the right of any person under arrest to appear in person before the court, to ensure that they have not been falsely accused. The US Constitution specifically protects this right in Article I, Section 4: "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." Lincoln initially suspended habeas corpus in the volatile border state of Maryland in 1861 in order to try large numbers of civilian rioters in military courts and to prevent the movement of Confederate troops on Washington. The order was eventually extended in response to different threats. In the summer of 1862, President Lincoln had called up the state militias, leading to increased opposition within the Union. By General Orders No. 141, September 25, 1862, Lincoln subjected protestors to martial law and the suspension of habeas corpus.

The suspension of habeas corpus was one of Lincoln's most controversial decisions. In the spring of 1863, General Ambrose Burnside arrested Peace Democrat Clement Vallandigham, who had been critical of the US government, and banned publication of the *Chicago Times*, which was supportive of Vallandigham. Burnside's actions drew widespread criticism, to which Lincoln responded by reducing Vallandigham's sentence and revoking Burnside's order suppressing the *Times*. Lincoln defended himself against charges that his administration had subverted the Constitution, however, arguing that acts that might be illegal in peace time might be necessary "in cases of rebellion," when the nation's survival was at stake.

Questions for Discussion

Read the document introduction, examine the document, and apply your knowledge of American history in order to answer the following questions.

- 1. Why did the Founders make certain to incorporate the right of habeas corpus as the sole liberty included in the original text of the US Constitution?
- 2. Make a chart with two columns. In one column list the stipulations in the Constitution under which habeas corpus may be suspended. In the second column list President Lincoln's reasons for ordering the suspension of habeas corpus.
- 3. To what extent do Lincoln's reasons satisfy the Constitutional provisions under which habeas corpus may be suspended?
- 4. Why is this historical event of particular interest to Americans today?

No. 141.

WAR DEPARTMENT,
Adjutant General's Office,
Washington, September 25, 1862.

The following Proclamation by the President is published for the information and government of the Army and all concerned:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS it has become necessary to call into service not only Volunteers but also portions of the Militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure and from giving aid and comfort in various ways to the insurrection:

Now, therefore, be it ordered-

First. That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission.

Second. That the writ of habeas corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority, or by the sentence of any court-martial or military commission.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,

. Secretary of State.

BY ORDER OF THE SECRETARY OF WAR:

OFFICIAL:

L. THOMAS,

Adjutant General.

Assistant Adjutant General.

Abraham Lincoln, General Orders No. 141, September 25, 1862. (The Gilder Lehrman Institute, GLC06099)