

Habeas Corpus

[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.

A writ of habeas corpus directs a person, usually a prison warden, to produce the prisoner and justify the prisoner's detention. If the prisoner argues successfully that the incarceration is in violation of a constitutional right, the court may order the prisoner's release. Habeas corpus relief also may be used to obtain custody of a child or to gain the release of a detained person who is insane, is a drug addict, or has an infectious disease. Usually, however, it is a response to imprisonment by the criminal justice system.

A writ of habeas corpus is authorized by statute in federal courts and in all state courts. An inmate in state or federal prison asks for the writ by filing a petition with the court that sentenced him or her. In most states, and in federal courts, the inmate is given the opportunity to present a short oral argument in a hearing before the court. He or she also may receive an evidentiary hearing to establish evidence for the petition.

The habeas corpus concept was first expressed in the Magna Charta, a constitutional document forced on King John by English landowners at Runnymede on June 15, 1215. Among the liberties declared in the Magna Charta was that "No free man shall be seized, or imprisoned, or disseized, or outlawed, or exiled, or injured in any way, nor will we enter on him or send against him except by the lawful judgment of his peers, or by the law of the land." This principle evolved to mean that no person should be deprived of freedom without Due Process of Law.

The writ of habeas corpus was first used by the common-law courts in thirteenth- and fourteenth-century England. These courts, composed of legal professionals, were in competition with feudal courts, which were controlled by local landowners, or "lords." The feudal courts lacked procedural consistency, and on that basis, the common-law courts began to issue writs demanding the release of persons imprisoned by them. From the late fifteenth to the seventeenth centuries, the common-law courts used the writ to order the release of persons held by royal courts, such as the Chancery, ADMIRALTY courts, and the Star Chamber.

The only reference to the writ of habeas corpus in the U.S. Constitution is contained in Article I, Section 9, Clause 2. This clause provides, "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." President Abraham Lincoln suspended the writ in 1861, when he authorized his Civil War generals to arrest anyone they thought to be dangerous. In addition, Congress suspended it in 1863 to allow the Union army to hold accused persons temporarily until trial in the civilian courts. The Union army reportedly ignored the statute suspending the writ and conducted trials under Martial Law.

In 1789, Congress passed the Judiciary Act of 1789 (ch. 20, § 14, 1 Stat. 73 [codified in title 28 of the U.S.C.A.]), which granted to federal courts the power to hear the habeas corpus petitions of federal prisoners. In 1867, Congress passed the Habeas Corpus Act of February 5 (ch. 28, 14 Stat. 385 [28 U.S.C.A. §§ 2241 et seq.]). This statute gave federal courts the power to issue habeas corpus writs for "any person ... restrained in violation of the Constitution, or of any treaty or law of the United States." The U.S. Supreme Court has interpreted it to mean that federal courts may hear the habeas corpus petitions of state prisoners as well as federal prisoners.

The writ of habeas corpus is an extraordinary remedy because it gives a court the power to release a prisoner after the prisoner has been processed through the criminal justice system, with all its procedural safeguards and appeals. For this reason, the burden is initially on the petitioning prisoner to prove that he or she is being held in violation of a constitutional right. If the petitioner can meet this burden with sufficient evidence, the burden then shifts to the warden to justify the imprisonment.

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Definition:

Habeas Corpus is a Latin term which means "you should have the body," and is a legal principle which requires that the government must present an accused and arrested person before an impartial judge in order to prove that there exists just cause to hold that person against his or her will.

Without the Writ of Habeas Corpus (traditionally called the "Great Writ"), a government could hold a person in jail for any length of time without having to prove that there is any good reason for doing so. Thus, if you are being held by the government, you can request a writ of habeas corpus and, if a court issues it, then the government must bring you to that court and demonstrate that they have arrested you for a compelling reason. If they cannot, then they must set you free.

The principle of habeas corpus also refers to the power of federal courts to review the legal decisions made by lower state courts. Thus, if you think that you have been unjustly convicted in a state court, then you can appeal to a federal court. If your appeal is approved, the federal court can issue a writ, requiring that government officials bring you before it so that your case can be reviewed. This oversight authority has been restricted in recent years, in particular with regards to death penalty convictions. The ability to request a hearing before a federal court means that it takes longer for a death sentence to be carried out, and about 40% of capital convictions are overturned on federal review. Supporters of the death penalty find this unacceptable and have successfully lobbied for less federal oversight.

It should be noted that a person's right to a writ of habeas corpus was the only one considered important enough to be included in the original text of the Constitution.

By [Tom Head](#)

Definition: Habeas corpus, a Latin term meaning "you have the body," refers to the right of every prisoner to challenge the terms of his or her incarceration in court before a judge.

When the term first came into widespread use in medieval England, a "writ of habeas corpus" was simply a subpoena. A king or local official could impose a "writ of habeas corpus" to force someone to appear and testify. But over time, it took on a more libertarian meaning. By the time England's Habeas Corpus Act came into effect in 1679, it was understood as a civil right protecting the populace from being arrested without charge.

Violation of habeas corpus is not in and of itself the most severe civil liberties violation imaginable, but it can be used to disguise any number of more severe civil liberties violations. When Adolf Hitler signed the Nacht und Nebel ("Night and Fog") Decree of December 1941, essentially abolishing habeas corpus in cases where anti-government sentiment was suspected, it helped disguise some of the earlier stages of the Holocaust. And the Soviet Union's frequent disregard for habeas corpus, particularly during and following the Stalin era, allowed for the imprisonment of dissidents on a frightening scale.

Today, the most frequently discussed international habeas corpus controversy is the Bush administration's policy of imprisoning hundreds of suspected Afghan and Iraqi terrorist associates in Guantanamo Bay and other offshore U.S. prisons without trial or meaningful judicial review. Both President-Elect Barack Obama and the Democratic Congress have promised to reestablish habeas corpus following Obama's January 2009 inauguration, but whether they will follow through on this promise remains to be seen.