



Justice Department Reportedly Asks Congress for Indefinite Detention Powers To Fight Coronavirus

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The Justice Department is using the COVID-19 outbreak to press for sweeping new powers that include being able to detain Americans indefinitely without a trial, *Politico* reports.

The department is asking Congress to allow the U.S. attorney general to ask courts to suspend court proceedings. These include "any statutes or rules of procedure otherwise affecting pre-arrest, post-arrest, pre-trial, trial, and post-trial procedures in criminal and juvenile proceedings and all civil process and proceedings," reports Betsy Woodruff Swan, citing DOJ documents presented to Congress.

In other words, the Justice Department would be able to postpone trials, hearings, and other procedural steps that follow arrest. That represents a potentially huge violation of the constitutional right to a speedy trial.

Those powers would apply "whenever the district court is fully or partially closed by virtue of any natural disaster, civil disobedience, or other emergency situation," Woodruff Swan writes, and would remain in place for "one year following the end of the national emergency."

"The docs show DOJ has asked Congress to let the attorney general ask chief judges to postpone any and all court proceedings during an emergency, which would include hearings after arrest"

Perhaps the Justice Department is attempting to find out whether there are any libertarians in a pandemic. The right to see a judge and seek release from detention after an arrest—known in legal lingo as *habeas corpus*—is one of the fundamental building blocks of a democratic society, one in which the state cannot deprive individuals of their freedom without due process. The times in American history when that right has been suspended or circumvented are some of the darkest. We should not be seeking to repeat them.

"The DOJ proposal is deeply troubling and would raise a whole host of constitutional concerns," says Scott Bullock, president and general counsel for the Institute for Justice, a libertarian law firm. "History demonstrates again and again that governments use a crisis to expand power and

violate vital constitutional principles. And when the supposed emergency is over, the expanded powers often become permanent."

Clark Neily, vice president for criminal justice at the Cato Institute, says the Justice Department should not be trusted with more expansive powers.

"If history is any indication, it's a near certainty that these powers will be abused and that DOJ will try to hide those abuses when they occur," says Neily. "This is simply not an agency that has earned the kind of trust implied by these requests for increased authority and discretion."

It's also unclear how allowing indefinite detention would help fight the coronavirus outbreak. It seems more likely that the DOJ is learning from members of Congress and the president that the crisis provides a convenient excuse to ask for things it already wanted in the first place.

"Congress must loudly reply 'NO,'" wrote Rep. Justin Amash on Twitter.

"The Justice Department has quietly asked Congress for the ability to ask chief judges to detain people indefinitely without trial during emergencies."

If you think that those powers, once granted by Congress, would be used only in temporary or emergency situations—well, I have a 2001 Authorization on the Use of Military Force to sell you.