**Executive Order - Unnumbered**

**Revoking Habeas Corpus**

**President: Abraham Lincoln**

**Year: 1861**

**Executive Order Summary**

The doctrine of habeas corpus is the right of any person under arrest to appear in person before the court and hear charges against them, to ensure that they have not been falsely accused. A judge would determine if there is sufficient evidence to proceed to trial. The US Constitution specifically protects this right in Article I (Legislature), Section 9: “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 fall of 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.

**Historical Background Information**

During the Civil War, President Lincoln suspended the writ of habeas corpus without consulting Congress. In doing so, Lincoln enabled the military to arrest and imprison thousands of civilians suspected of sympathizing with or assisting the confederacy through communication or actions. Lincoln’s first order suspending the writ applied only to Maryland, a border state sympathetic to the South that virtually surrounded Washington, D.C. Shortly after, Lincoln issued this suspension order, Union troops arrested a Maryland man for helping to organize a pro-Confederate militia. On September 24, 1862, Lincoln issued a proclamation unprecedented in American history. He suspended the writ of habeas corpus everywhere in the United States. The suspension applied to Confederate spies or to those who aided the rebel cause, interfered with military enlistments, resisted the draft, or were "guilty of any disloyal practice." This last offense allowed the military to arrest newspaper editors and speakers critical of the Union war effort.

**Presidential Justification of Action**

When the war started, there was little doubt in Lincoln's mind that his suspension of civil liberties was both necessary and constitutional. His political opponents may have disagreed, but facing a full-fledged insurrection in the South and with the loyalty of Maryland, the state between Washington, D.C., and the rest of the Union, wavering, Lincoln had grounds to worry that the nation's capital was in real danger. Legally, Lincoln felt he was on firm ground. The Constitution, after all, explicitly grants the government the power to suspend habeas corpus "in cases of rebellion or invasion," though it is not clear on whether this power resides with Congress or the president

**Opposition to the Executive Order**

Abraham Lincoln’s use of presidential war powers was indispensible to his success. But one of his biggest problems at the time was convincing the Northern public that suspending habeas corpus and other restraints on civil liberties were both temporary and constitutional, and that their enforcement was necessary to win the war. But even among many of Lincoln’s supporters, the suspension of habeas corpus and the detention of civilians raised the specter of dictatorship.

Federal Judge Roger Taney, the chief justice of the Supreme Court, issued a ruling that President Lincoln did not have the authority to suspend habeas corpus because the power was given to the Legislative Branch in Article I.

