

STEPHEN MILLER THREATENS TO SUSPEND HABEAS CORPUS BECAUSE HE GOT CAUGHT LYING

You should know that the question to Stephen Miller about habeas corpus was a set up.

The male “journalist” who asked it after Miller called on him for the first question at a staged press event posed it in terms of “taking care of the illegal immigration problem.”

President Trump has talked about potentially suspending habeas corpus to take care of the illegal immigration problem. When could we see that happen?

So Miller’s misrepresentation of what the Constitution says about habeas corpus – similar to his misrepresentation of the 9-0 Supreme Court ruling that detainees get habeas corpus before they are rendered to El Salvador during the Nayib Bukele presser, Miller’s warning that, “it depends on whether the courts do the right thing or not,” his grotesque claim that “radical rogue judges are at war with the legislative branch” – all of that appears to be a set up, a set up from one of the right wingers the White House has invited in as if they were journalists.

Miller's "answer" was a response to a question premised on Stephen Miller's propaganda being true: That undocumented immigration is and remains a problem, even after Trump's draconian efforts and attacks on his own country have largely shut down border crossings, that suspending habeas corpus will "take care of" it. That the decision will be rolled out like some kind of new benefit, a benefit that doesn't also risk destroying the rights of citizens.

The reporting on Miller's comment was not *totally* negligent. Paragraph 11 of NYT's story, for example, notes that three judges have already ruled there's no invasion that might justify suspending habeas corpus, before treating the rulings of judges as something up for political debate.

In addition, three federal judges have in recent weeks issued rulings rejecting the argument that the wave of immigration constitutes an invasion, as Mr. Miller maintained.

Still, the administration has insisted that the courts cannot overrule the president's decisions regarding how, where and when immigrants are deported.

ABC put the same detail in ¶9, sandwiched between "analysis" that suggests the Constitution is not cut and dry.

But two separate federal judges, including one appointed by Trump, said the use of the Alien Enemies act was unlawful because the Trump administration did not prove United States is being invaded by Tren de Aragua.

And while CNN invited Maggie Haberman on to call all this an "aggressive posture," its written report sandwiched the legal rulings between 3 ¶¶ of Eli Honig debunking Miller's claim and 4 ¶¶ of Ilya Somin doing so.

Miller's comments pick up on ongoing efforts by the Trump administration to use the current state of illegal border crossings to claim that the US is under invasion – which the administration says allows the government to eschew due process protections afforded to migrants. The administration is making a similar argument in defending Trump's invocation of the Alien Enemies Act, which would allow the government to quickly deport migrants without adherence to such due process procedures.

Multiple judges, including a Trump appointee, have rejected the invocation, saying in rulings that the administration hadn't shown the United States is under invasion by a hostile foreign power, as laid out under the 18th century statute.

Of course, all three cast Trump and Stephen Miller as the actors here without describing this setup as a staged opportunity for Miller to threaten judges based on his transparently false claim that there was and remains, after Trump shut down border crossings, an invasion.

Of the reporting I've seen, just Kyle Cheney foregrounded the judges from both parties who've been warning about Trump's assault on due process for all people, with Miller's comment appearing in ¶10, after airing warnings from judges from both parties.

A fundamental promise by America's founders – that no one should be punished by the state without a fair hearing – is under threat, a growing chorus of federal judges say.

That concept of "due process under law," borrowed from the Magna Carta and enshrined in the Bill of Rights, is most clearly imperiled for the immigrants

President Donald Trump intends to summarily deport, they say, but U.S. citizens should be wary, too.

Across the country, judges appointed by presidents of both parties – including Trump himself – are escalating warnings about what they see as an erosion of due process caused by the Trump administration’s mass deportation campaign. What started with a focus on people Trump has deemed “terrorists” and “gang members” – despite their fierce denials – could easily expand to other groups, including Americans, these judges warn.

[snip]

Trump’s close adviser Stephen Miller has railed daily against what he’s called a “judicial coup” that has largely centered around rulings upholding due process rights of immigrants. Miller has scoffed at the notion that people Trump claims are terrorists – even if they deny it – must be allowed to contest their deportations, saying they only have the right to be deported. Miller suggested Friday that the White House was “actively looking at” suspending habeas corpus, the right of due process to challenge a person’s detention by the government.

Even Cheney didn’t point out something else: This assault on due process is all based on lies: years of propaganda about invading migrants, the takeover of suburban Colorado, diligent workers eating house pets; false claims about planeloads of terrorists; claims of invasion that even members of Congress unwittingly debunk every time they say Trump has solved the problem of border crossings.

Trump’s legal claims are bullshit (as Steve Vladeck lays out here). But they are bullshit

piled on top of underlying bullshit claims and – as Vladeck also notes – the reason Miller is throwing this bullshit is *because* those judges have already ruled his claim of invasion is bullshit.

Miller gives away the game when he says “a lot of it depends on whether the courts do the right thing or not.” It’s not just the mafia-esque threat implicit in this statement (“I’ll make him an offer he can’t refuse”); it’s that he’s telling on himself: He’s suggesting that the administration would (unlawfully) suspend habeas corpus if (but apparently only if) it disagrees with how courts rule in these cases. In other words, it’s not the judicial review *itself* that’s imperiling national security; it’s the possibility that the government might **lose**. That’s not, and has never been, a viable argument for suspending habeas corpus. Were it otherwise, there’d be no point to having the writ in the first place—let alone to enshrining it in the Constitution.

Miller’s problem is that judges are not required to accept his blatantly false claims as true – indeed, are required to test them, as even the Trump judges have done.

Our problem, however, is that the journalists seem to believe it is *their job* to accept what Miller says as true.

Update: In a worthwhile post on this, Jack Goldsmith IDs two of the three propagandists who set up this discussion of habeas.

The machinations began in a White House press briefing on April 28. White House Press Secretary Karoline Leavitt gave the first question to MAGA influencer Rogan O’Handley. He stated that “[m]any are now calling for Trump to circumvent these radical judges [thwarting his

deportation agenda] and consider suspending the writ of habeas corpus solely for these illegal aliens in accordance with the terms of Article I Section 9 of the United States Constitution.” He cited the “strong precedent for this action ... by three of our greatest presidents, Abraham Lincoln, Ulysses S. Grant, and Democrats’ favorite president of all time, FDR.”

[snip]

Ten days later, last Friday, Stephen Miller approached reporters outside the White House, stated that he only had time for a few questions, then pointed to the rear of the gathered reporters **and said**, “Hold on, I see there’s a question back there first.” The person chosen was Jordan Conradson, **the controversial reporter** for MAGA-friendly Gateway Pundit, who stated: “President Trump has talked about potentially suspending habeas corpus to take care of the illegal immigration problem. When could we see that happen, do you think?”