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What is the Alien Enemies Act of 1798?



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Over the past few weeks, Donald Trump has promised on multiple occasions to enact the Alien Enemies Act of 1798 to carry out mass deportations of undocumented immigrants.

The Alien Enemies Act of 1798 allows the president to detain or deport citizens of an “enemy nation” during wartime.

This sounds pretty scary, but the truth is far scarier.

It’s only been used three times in US history: the War of 1812, World War I, and World War II. The most infamous use of this power was its role in the mass internment of Japanese Americans during World War II, when 120,000 Japanese Americans, including children, were forced into prison camps.

Trump wants to use this power to detain and deport undocumented immigrants, but he likely won't stop there. Trump has already said he would deport Haitian and Venezuelan immigrants who are in the country legally, so it isn't much of a jump to say he would use the Alien Enemies Act to go after all immigrants, legal and undocumented alike. But he won't stop there. Trump has also called for the elimination of constitutionally guaranteed birthright citizenship, which grants citizenship to anyone born in the United States. So Trump could try to use this power to detain and deport undocumented immigrants, legal immigrants, and even their US citizen children.

You might be thinking "but that sounds unconstitutional" and "we aren't at war," and this is where Trump's subversion of the Supreme Court comes in. One-third of the Supreme Court was appointed by Donald Trump, and two-thirds of the court seem more than willing to do his bidding (see: overturning Roe, immunity case, etc.). Conservative Supreme Court Justices are likely to greenlight actions from a new Trump Administration, even if they would've previously been deemed unconstitutional. The Supreme Court could also help Trump get around the whole "not at war" thing. The Alien Enemies Act can also be invoked when a foreign government undertakes an "invasion" of US territory. Republicans have been talking about an "invasion" at our southern border for the past four years, and while it's not being carried out by a singular foreign government, Trump has jumped through smaller legal loopholes than that in the past. He could claim that the "invasion" of migrants is being carried out by a cartel acting as a foreign government, or that the migrants themselves coming in is enough. To be clear, this would be a major abuse of power, but that hasn't stopped him before.

Deploying the Alien Enemies Act would allow Trump to argue he can completely circumnavigate due process protections. Everybody in the United States, no matter their immigration status, is afforded due process through the 14th Amendment of the Constitution. When undocumented immigrants are detained, many are placed in deportation proceedings in our immigration courts, but deportation cases can take years to hear due to long backlogs. The Alien Enemies Act would allow Trump to circumnavigate the courts and detain and deport people without a court hearing. He would try to deport people based on their nationality, or even perceived nationality, without any checks. And if no due process is required, US citizens could easily be racially profiled and erroneously deported. And the Immigration and Customs Enforcement (ICE) has a history of racial profiling and discrimination, and even arresting and deporting US citizens in the past.

Trump's plan to use the Alien Enemies Act of 1798 won't just hurt undocumented people in the United States. It would also hurt the 11.3 million US citizens who live in mixed-status families. It would hurt the millions of legal immigrants living and working in our country. It could hurt the 4 million children born in the United States to undocumented immigrants who are natural-born citizens by edict of our Constitution. It could hurt additional US citizens who could be victimized by racial profiling and Trump's hateful rhetoric. And it would undermine the cornerstone of our judicial system: due process.

Trump has promised to invoke the Alien Enemies Act of 1798 to carry out mass deportations of undocumented immigrants, but he likely won't stop there. He will try to use the Act to circumnavigate the courts and detain and deport people based solely on their ethnicity with no checks or safeguards. This would wreak havoc on American families, the economy, and our collective psyche. Nobody should have this kind of unchecked power. Earlier this Congress, Senator Hirono and Representative Omar reintroduced the Neighbors Not Enemies Act to repeal the Alien Enemies Act once and for all. It's long overdue.