



CONSTITUTIONAL PRINCIPLE: DUE PROCESS OF LAW

"It is more important that innocence be protected than it is that guilt be punished."

John Adams, Boston Massacre Trial, December 1770

BACKGROUND

In this fourth briefing in our series, “America, We Have a Problem”, we look at Due Process of Law, a fundamental Constitutional principle that guarantees the government cannot deprive any person (not just citizen) of life, liberty, or property without first following fair, uniform legal procedures. Due Process clauses are specifically provided by the 5th (Federal) and 14th (extended to state/local) Amendments. Within the 5th Amendment are five distinct clauses which protect individuals from government overreach: arbitrary prosecution; double jeopardy; self-incrimination; non-arbitrary legal process; just compensation for property seizures. The 4th Amendment protects against unreasonable searches and seizures. The 6th Amendment guarantees the right to counsel and a speedy trial by an impartial jury, and the 8th prohibits cruel and unusual punishment and excessive bail. These and the other amendments in the Bill of Rights were designed to protect individual liberties not spelled out directly in the core seven articles of the US Constitution.

SELECTED HISTORICAL THREATS

- **1830:** The Indian Removal Act aimed to seize southeastern tribes' lands. President Jackson defied the Supreme Court's ruling in *Worcester v. Georgia* (1832) to force the [Trail of Tears](#) removals. *McGirt v. Oklahoma* (2020) finally held that treaty-promised Muscogee (Creek Tribe) land was never legally disestablished.
- **1857:** In *Dred Scott v. Sandford*, the Supreme Court ruled that enslaved or formerly enslaved people were not citizens and had no right to sue, denying them due process rights under the 5th Amendment. The 14th Amendment (1868) overturned this, making all persons born or naturalized in the United States citizens entitled to due process and equal protection, regardless of race.
- **1961:** *Mapp v. Ohio* prohibited use by the government of illegally obtained evidence, guaranteeing defendants 14th Amendment protections for the first time.
- **1963:** *Gideon v. Wainwright* provided legal representation for indigent defendants facing serious charges, guaranteeing their 6th Amendment right to a fair trial.
- **2008:** *Boumediene v. Bush* granted Guantanamo detainees the constitutional right to Article I habeas corpus, providing them access to U.S. Courts, counsel, and fair trial.
- **2011:** The Obama administration killed designated Al-Qaida leader and U.S. citizen Anwar al-Aulaqi by drone strike in Yemen, based on a secret legal memo and without a trial. A lawsuit, *Al-Aulaqi v. Panetta*, was dismissed on national security grounds without a ruling on its legality.

SELECTED RECENT THREATS

- [ICE conducted raids in “Democrat cities” in 2025/’26](#) without probable cause. They included inhumane family separations, lack of judicial oversight for detainees, mass detentions and use of Expedited Removal (fast-track deportation without a hearing before an immigration judge) to wrongfully deport noncitizens (and some U.S. citizens) without due process. Many lawsuits remain in courts.
- [ICE memo dated 12 May 2025](#), authorized agents to enter homes solely based on an administrative warrant (issued by ICE itself) vs. a judicial warrant. Several lawsuits are currently in litigation.
- DHS used the Alien Enemies Act (1798) (AEA) to deport nearly 140 Venezuelan men to El Salvador without due process. The Supreme Court allowed removals to resume but required advance notice and a chance to challenge removal in court. A federal judge later ruled the administration violated those due process requirements. The Supreme Court has not ruled on peacetime of the AEA.
- Since September 2025, U.S. forces have killed over 227 people in [strikes on suspected drug boats](#) based on a classified legal opinion withheld from Congress. There were no boardings, charges, trial, or public evidence that any vessel carried narcotics; at least one strike was followed by a second strike purposefully killing survivors clinging to wreckage. Multiple lawsuits are in litigation, and a Pentagon Inspector General inquiry is ongoing.

Astronauts For America Focus: As NASA astronauts, our missions (and lives) depended on thorough design, flight-readiness and anomaly review processes based on tough lessons learned from the past. Bad things happen when the discipline of life and death decision processes is ignored. As former astronauts we are not constitutional scholars, but we know how to defer to subject matter experts when analyzing complex sociotechnical failures. We draw from reliable sources: court decisions, congressional records, peer-reviewed scholarship, and news reporting rather than commentary or opinion. We will publish our findings and recommendations in a series of briefings we call, “Failure Is Not an Option,” calling on accountable officials and citizens to “course correct,” and ensure that due process remains a fundamental principle of American democracy.

“No person shall be...deprived of life, liberty, or property, without due process of law.”

The Fifth Amendment to the Constitution

Appeal to Our Crewmates: We need your help. Please use the “Contact Us” feature on our website to make suggestions about how we can help the country strengthen its commitment to that important constitutional principle, **Due Process of Law**.