

Congress of the United States

Washington, DC 20515

March 11, 2025

President Donald J. Trump
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Trump:

We are writing to address the troubling and misguided interpretation of the Constitution advanced in your January 20, 2025 Proclamation titled “Guaranteeing the States Protection Against Invasion.”

Since you came into office, you have attempted to expand the scope of presidential power beyond that which is permitted by the United States Constitution and applicable federal laws.¹ This Proclamation is no different. It raises two novel legal claims: (1) that the term “invasion,” as it is used in Article IV of the Constitution, means something other than an armed attack by a foreign power; and (2) that an “invasion,” so defined, triggers unilateral presidential power over immigration, including the power to suspend or disregard laws that Congress has duly enacted. These claims are not only legally and factually unfounded; they also threaten civil liberties and the constitutional separation of powers.

You state in your Proclamation that “millions of aliens who potentially pose significant threats to health, safety, and national security have moved into communities nationwide.” These statements, and your Proclamation, appear to be a part of a larger attempt to invoke any available authority—including extraordinary wartime, public health, and counterterrorism authorities—to circumvent domestic immigration laws and the U.S. Constitution, without factual or legal basis. For example, experts have found no connection between increased migration and crime, and studies have shown that for the past 150 years, immigrants have been convicted of crimes at a far lower rate than U.S.-born citizens.² Prior attempts by your previous Administration to apply

¹ See, e.g., Tierney Sneed, *Judge blocks Trump’s ‘blatantly unconstitutional’ executive order that aims to end birthright citizenship*, CNN (Jan. 23, 2025), <https://www.cnn.com/2025/01/23/politics/birthright-citizenship-lawsuit-hearing-seattle/index.html>.

² See, e.g., Ran Abramitzky, Leah Platt Boustan, Elisa Jácome, Santiago Pérez & Juan David Torres, *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-born, 1870–2020*, National Bureau of Economic Research (July 2023), <https://siepr.stanford.edu/news/mythical-tie-between-immigration-and-crime>; Brianna Seid, Rosemary Nidiry, & Ram Subramanian, *Debunking the Myth of the ‘Migrant Crime Wave’*, Brennan Center for Justice (May 29, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/debunking-myth-migrant-crime-wave>.

Title 42 authorities to migrants had no basis in public health.³ Similarly, there is no factual basis for the statements in your Proclamation.

As a legal matter, migration is not an “invasion.” As courts have consistently held, an “invasion” under the Constitution requires “armed hostility from another political entity, such as another state or foreign country that is intending to overthrow the [] government.”⁴ Courts’ requirement of an armed attack is consistent with how the term “invasion” is used throughout the Constitution, alongside language like “insurrection” and “rebellion.”⁵ Proclaiming a rhetorical “invasion” would degrade protections throughout the Constitution—lowering the bar for suspending the writ of habeas corpus and even expanding the circumstances in which states may “engage in War” without the approval of the federal government.⁶ Under our constitutional design, these exceptional powers are reserved for times of armed conflict; they are not available to respond to migration or other non-military matters.⁷

Presidents have long hewed to this understanding and proclaimed invasions sparingly, in the context of requesting a declaration of war from the Congress. President Franklin D. Roosevelt proclaimed an “invasion” in response to Japan’s surprise attack on Pearl Harbor.⁸ The following day, Roosevelt requested and received a declaration of war against Japan.⁹

President James K. Polk also used the term “invasion” when he told Congress that Mexico had sent an armed force onto U.S. territory, “shed American blood upon the American soil,” and “proclaimed that hostilities have commenced.”¹⁰ He requested and received a declaration of war against Mexico. Notably, when Congress discovered that Polk had lied about the attack by Mexican forces, the House of Representatives, led by then-Representative Abraham Lincoln, passed language to censure Polk for “unnecessarily and unconstitutionally” proclaiming an

³ See, e.g., J. Dearen & G. Burke, *Pence ordered borders closed after CDC experts refused*, AP News (Oct. 3, 2020), <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.

⁴ *Padavan v. United States*, 82 F.3d 23, 28 (2d Cir. 1996). See also *State of N.J. v. United States*, 91 F.3d 463, 468 (“New Jersey alleges that the failure of the United States to prevent the entry of illegal aliens into that state violates the federal government’s obligation under the Constitution to ‘protect each of [the states] against invasion.’ U.S. Const. art. IV, § 4. It offers no support whatsoever for application of the Invasion Clause to this case or for its reading of the term ‘invasion’ to mean anything other than a military invasion.”); *State of Cal. v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) (“James Madison referred to the Invasion Clause as affording protection in situations wherein a state is exposed to armed hostility from another political entity.”).

⁵ U.S. Const. art. I, §§ 8 and 9.

⁶ Ilya Somin, *The ‘Invasion’ Executive Order and Its Dangerous Implications*, Just Security, Jan. 28, 2025, <https://www.justsecurity.org/106953/invasion-executive-order-implications/>. See also U.S. Const. art. I, § 10.

⁷ Elizabeth Goitein and Katherine Yon Ebricht, *Trump’s Doubly Flawed “Invasion” Theory*, Just Security, Feb. 19, 2025, <https://www.justsecurity.org/107699/invasion-theory-trump-immigration-policy/>.

⁸ Franklin D. Roosevelt, Proclamation 2525, Dec. 7, 1941, 6 Fed. Reg. 6321.

⁹ Franklin D. Roosevelt, *Joint Address to Congress Leading to a Declaration of War Against Japan*, Dec. 8, 1941, <https://www.archives.gov/milestone-documents/%20joint-address-to-congress-declaration-of-war-against-japan>.

¹⁰ James K. Polk, *Special Message to Congress on Mexican Relations*, May 11, 1846, <https://www.presidency.ucsb.edu/documents/special-message-congress-mexican-relations>.

“invasion” to aggrandize presidential power.¹¹ Furthermore, the idea that the president has broad inherent power over immigration that allows him to override duly-enacted laws is unfounded and damaging. Congress, not the president, has the authority to make laws, including our immigration laws. And as the courts have long recognized, Congress has created a “comprehensive scheme governing all aspects of immigration and naturalization.”¹²

The president has no authority to abandon or rewrite this comprehensive scheme; to the contrary, the president’s constitutional role is to take care that our immigration laws are faithfully executed.¹³ *Knauff v. Shaughnessy*, which you cite in your Proclamation, does not support your claim to broad presidential power—and the language that you quote from that case is stripped of its context.¹⁴ *Knauff*, like other cases before and after it,¹⁵ simply upholds Congress’s authority to delegate important questions relating to immigration to the president, given the president’s constitutional role in managing foreign relations. Nothing in *Knauff* says that the president can violate laws passed by Congress, rather than complying with those laws.

Any suggestion otherwise would fly in the face of the Supreme Court’s longstanding *Youngstown Sheet & Tube Co. v. Sawyer* framework.¹⁶ As *Youngstown* makes clear, where the president and Congress share power, the president may not act contrary to the laws Congress has passed. That fundamental rule would not change even if our nation were being invaded. As Justice William O. Douglas stated in his *Youngstown* concurrence, “[O]ur history and tradition rebel at the thought that the [Constitution’s] grant of military power [to the president] carries with it authority over civilian affairs.”¹⁷

The United States is not being invaded, it is not at war with migrants, and you must uphold our duly-enacted immigration laws. We have full faith that the courts will stand firm in the face of your attacks on the separation of powers.

¹¹ Abraham Lincoln, *Speech on the Mexican War [Revised draft] to Congress*, Jan. 12, 1848, <https://www.loc.gov/resource/mal.0007400/>; Congressional Globe, 30th Cong., 1st sess., 1848, 95.

¹² *De Canas v. Bica*, 424 U.S. 351, 354 (1976).

¹³ *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018) (“Where ‘Congress itself has significantly limited executive discretion by establishing a detailed scheme that the Executive must follow in [dealing with] aliens,’ the Attorney General may not abandon that scheme because he thinks it is not working well.”); *see also* U.S. Const. art. II, § 3.

¹⁴ 338 U.S. 537, 544 (1950) (holding that any procedure *authorized by Congress* constituted due process, so far as a noncitizen denied entry is concerned).

¹⁵ The Supreme Court has never recognized a presidential power to act in excess of or opposition to duly-enacted law, downgrading Congressional authority. *Fong Yue Ting v. United States*, 149 U.S. 698 (“The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the government, and is to be regulated by treaty or by act of congress, and to be executed by the executive authority according to the regulations so established.”); *Department of State v. Muñoz*, 602 U.S. 899, 907 (2024) (“Congress may delegate to executive officials the discretionary authority to admit noncitizens . . . Congress’s authority to ‘formulat[e] . . . policies’ concerning the entry of noncitizens ‘has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government.’”).

¹⁶ 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

¹⁷ 343 U.S. at 632 (Douglas, J., concurring).

We call on you to rescind your Proclamation and work with Congress to pass much-needed, overdue bipartisan immigration reform that respects immigrants' dignity and the rule of law.

Sincerely,



Richard J. Durbin
Ranking Member
Senate Committee on the
Judiciary



Jamie Raskin
Ranking Member
House Committee on the
Judiciary



Alex Padilla
Ranking Member
Senate Judiciary
Subcommittee on Border
Security and Immigration



Pramila Jayapal
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