



Written by [R. Cort Kirkwood](#) on February 1, 2019

CRS: Trump Can Build a Wall With Emergency or Without

If Democrats and radical lawfare leftists think they can stop President Trump from building a border wall unilaterally after declaring a national emergency, they might want to think again.

The nonpartisan Congressional Research Service (CRS) says the president can build such a wall. Moreover, CRS reported, Trump needn't declare an emergency to build it.



That's likely what will happen on February 15, [when temporary funding](#) to keep the government open runs out, given that leftist House Speaker Nancy Pelosi has said Congress will not appropriate money for a border wall. Trump has said dealing with the intransigent, elderly radical from San Francisco isn't worth his time.

CRS Report

Very simply, [CRS reported](#), the president — Trump or any other one — has the statutory authority to act. The question is whether the move would survive a court challenge, which the Left is likely preparing even now if its subversive legal torpedoes haven't finished their anti-American dirty work already.

Concluded CRS:

Upon declaring a national emergency pursuant to the NEA, the President may invoke the emergency military construction authority set forth in 10 U.S.C. § 2808 (Section 2808) ... [which] provides that upon the President's declaration of a national emergency "that requires use of the armed forces," the Secretary of Defense may "without regard to any other provision of law ... undertake military construction projects ... not otherwise authorized by law that are necessary to support such use of the armed forces."... With certain limited exceptions, Presidents have generally invoked this authority in connection with construction at military bases in foreign countries.

[CRS envisioned](#) three legal problems. First and foremost, the Left will dispute whether the insanity at the border provides a "factual basis" to declare the emergency. That's because the law requires that the president "determine that the relevant construction project (i.e., border fencing) would address a problem qualifying as a national emergency 'that requires use of the armed forces.' Moreover, even if the problem 'requires use of the armed forces,' the construction project must be 'necessary to support such use of the armed forces.'"

Still, a federal court might not review Trump's decision, CRS concluded, because building such a wall is a political question, and if a court did review it, "courts have traditionally afforded significant deference to executive claims of military necessity, which may stand as a substantial obstacle to legal challenges."

Second, "if a court were to conclude that the situation at the border qualifies as a national emergency that 'requires use of the armed forces' and that construction of a border wall is 'necessary to support such use of the armed forces,' it would then need to assess whether construction of a border wall qualifies as a 'military construction project,'" which would involve another series of determinations.



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Third, a court review might also involve determining whether a barrier across the entire border, or only just certain sections, qualifies as a permissible project.

No Emergency Needed

That's only one problem facing Pelosi and the open-borders Left. Trump has two other options to erect a wall, [CRS concluded](#), neither of which require him to declare a national emergency.

First, "10 U.S.C. § 2803 (Section 2803) provides that the Secretary of Defense 'may carry out a military construction project not otherwise authorized by law' upon determining that (1) 'the project is vital to the national security or to the protection of health, safety, or the quality of the environment,' and (2) 'the requirement for the project is so urgent that' deferring the project 'would be inconsistent with national security or the protection of health, safety, or environmental quality.'"

[Another statute](#) says the defense secretary can help civilian law enforcement stop drug smuggling by building barriers. This statute, [CRS noted](#), applies to "drug-smuggling corridors."

Trump: I'm Building It

What will Trump do? [He told](#) the *New York Times* a wall is coming.

Trump said he won't act until the next shutdown deadline of February 15. But even that is "is a waste of time," given again, Pelosi's intransigence.

The open borders radical is "hurting the country," [he said](#), and "if she doesn't approve a wall, the rest of it's just a waste of money and time and energy because it's, it's desperately needed. People are flowing in."

Trump pointed to the 12,000-strong horde headed for the border and said he is using existing money to erect and renovate large sections of border barrier. "I'm building the wall now, as we speak. And I'll continue to build the wall, and we'll get the wall finished. Now whether or not I declare a national emergency, that you'll see."



Photo of border wall prototypes: AP Images



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