

Trump finally pulled the trigger today and declared a national emergency so he can build his wall. But if illegal border crossings are a national emergency, then there's a strong case for viewing climate change in similar terms. That point has been made by observers ranging from Marco Rubio to Legal Planet's own Jonathan Zasloff in a [post](#) last week. I agree but I want to dig deeper because it's such an important point. In order to uphold Trump's emergency declaration, the Supreme Court will have to either rule that the definition of emergency is exceedingly broad or that courts have little or no power to scrutinize a presidential declaration. There is a genuine legal basis for calling climate change a national emergency, as opposed to Trump's ridiculous border-security declaration.

If it upholds Trump's declaration, it would be extremely hard for the Supreme Court to overturn a climate change declaration. One reason is that some attributes of climate change and immigration are similar. Both issues involve the country's relations with the outside world, an area where presidential powers are strong. But it isn't as if we suddenly found out about border crossings or climate change. Given these similarities, it would be very difficult for the conservative majority to explain why it was deferring to the President in one case but not the other.

The only major difference actually cuts strongly in favor of an emergency declaration for climate change: The U.S. government has already classified climate change as a serious threat to national security, and it is a threat that is getting stronger daily. Recent science indicates that climate action is even more urgent than we thought.

Trump's stated justification in his proclamation is that "the problem of large-scale unlawful migration through the southern border is long-standing, and despite the executive branch's exercise of existing statutory authorities, the situation has worsened in certain respects in recent years." Trump's stated justification in his [proclamation](#) is that "the problem of large-scale unlawful migration through the southern border is long-standing, and despite the executive branch's exercise of existing statutory authorities, the situation has worsened in certain respects in recent years." Climate change, too, is a "longstanding problem," and it certainly has gotten worse despite the effort of the executive branch (Obama) to address the problem. Federal agencies, as well as Congress, have made it clear that climate is a serious threat to our nation.

The Environmental Protection Agency. EPA has made a formal finding, based on an exhaustive review of the scientific evidence, that greenhouse gases endanger human life and welfare both within the United States and globally. That finding was upheld by the D.C. Circuit. The Supreme Court reviewed other aspects of the D.C. Circuit's decision but pointedly turned down requests that it review this EPA finding. The scientific evidence is

ironclad. If a foreign power had somehow invented a weather-control technique to impose these harms on the United States, no one would doubt that this was a very serious national security problem.

Intelligence agencies. National security agencies have consistently viewed climate change as a serious threat. In written testimony to Congress about threats to national security, the Trump Administration's own Director of National Intelligence (DNI) [discussed](#) climate change. His discussion didn't equivocate about the reality or dangers of climate change. Rather, he took the science, and the threat, seriously: "The past 115 years have been the warmest period in the history of modern civilization, and the past few years have been the warmest years on record. Extreme weather events in a warmer world have the potential for greater impacts and can compound with other drivers to raise the risk of humanitarian disasters, conflict, water and food shortages, population migration, labor shortfalls, price shocks, and power outages. Research has not identified indicators of tipping points in climate-linked earth systems, suggesting a possibility of abrupt climate change."

The Pentagon. The military has also taken a proactive stance on climate change. Former Secretary Mattis was [clear](#) about the impact of climate change on national security: "Climate change is impacting stability in areas of the world where our troops are operating today. . . It is appropriate for the Combatant Commands to incorporate drivers of instability that impact the security environment in their areas into their planning."

Congress. Congress has also recognized climate change as a threat to national security and more specifically to military infrastructure and activities. The most significant action was the passage of the Defense Authorization Act of 2017, HR 1810. The Act was a funding statute for the Pentagon. Section 335 of the Act states that "climate change is a direct threat to the national security of the United States and is impacting stability in areas of the world both where the United States Armed Forces are operating today, and where strategic implications for future conflict exist." In a crucial House vote, 46 Republicans crossed the aisle to vote against an effort to take out the climate provision. President Trump signed the bill.

This is not the place to delve into issues that will be posed in legal challenges to Trump's order nor into the wisdom of declaring climate change a national emergency. But if the Supreme Court does uphold Trump's order, it will be very difficult indeed to overturn a Presidential declaration that climate change is a national emergency.

