Now that Trump has belatedly declared a national emergency, what powers does he have to respond to the coronavirus pandemic? There has been a lot of talk about this on the Internet, some of it off-base. it's important to get the law straight. For instance, there's been talk about whether Trump should impose a national curfew, but I haven't been able to find any legal authority for doing that so far.

The legal discussion of this issue is still at an early stage, but here are some of the major sources of power and how they might play out.

The Stafford Act (major disasters and national emergencies). Trump has specifically invoked the emergency provisions of the Stafford Act. The Stafford Act, which is mostly administered by FEMA, covers federal responses for two categories of events: major disasters and national emergencies. As the Congressional Research Service (CRS) has explained, declaring a major disaster unlocks greater powers than declaring a national emergency under this Act.

A major disaster authorizes the government to distribute supplies and emergency assistance, unemployment assistance, emergency grants to assist low-income migrant and seasonal farmworkers, food coupons and distribution, relocation assistance, community disaster loans, and emergency public transportation.

In contrast, CRS says a national emergency "would not authorize grants, unemployment assistance, food coupons, crisis counseling assistance and training, or community disaster loans as would be available through a major disaster declaration." However, it would authorize "technical and advisory assistance to affected state and local governments for certain needs…and assistance in the distribution of medicine, food, and other consumable supplies."

It's not clear whether a pandemic would qualify as a major disaster. The statutory definition of disaster speaks of any natural catastrophe "including" a long list of things like earthquakes, tornadoes, droughts, and explosions, all of which seem very different than a disease. So the question would be whether "natural catastrophe" is by implication limited to these kinds of physical threats. There's some ambiguity here. However, I suspect that a court would be very unwilling to get in the President's way in using disaster authority to respond to the pandemic.

National Emergencies Act. I wrote a lengthy post a year ago about whether climate change would qualify as a national emergency under this Act, and if so, what powers doing so would release. There's no question that a pandemic qualifies

as a national emergency, and Trump has already made use of this authority. Making such a declaration triggers scores of statutory provisions authorizing emergency action by the President.

The Brennan Center has a list of 136 federal statutes that can be used once a national emergency is declared. One clear use would be to prioritize production of medical supplies needed to deal with the pandemic. The government would also be authorized to allow drugs that haven't been approved by the FDA, which might conceivably speed things up if we ever get promising anti-virals or vaccines. Much of the list of 136 statutes seems irrelevant (such as provisions relating to military staffing), but there may be a few other useful powers tucked away here or there.

Disease-related laws. The CDC website has a list of powers to deal with contagious diseases. Beyond the ones listed here, the main one seems to be the power to issue regulations to prevent disease transmission from foreign countries or between states. It provides:

> "The Surgeon General, with the approval of the Secretary, is authorized to make and enforce *such regulations as in his judgment are necessary* to prevent the *introduction, transmission, or spread* of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. "

Another subsection indicates that the powers to block travel are limited under this provision. In regard to people moving between states, the statute provides that they can be required to submit to an examination if they are reasonably believed to be infected. But they can be detained only if they are actually found to be infected and potentially contagious. In other words, this is a catch-and-release policy, except that people who are infected can be quarantined. [*Addendum*: the way this was originally stated, it was a bit too narrow. The Feds can also test and quarantine those who are likely to infect people who will cross state lines.] So unlike travel from foreign countries, the President can't impose any blanket travel bans between states. The statute is oriented toward identifying individual Typhoid Marys, not toward dealing with mass movement during a pandemic.

Inherent Constitutional Powers. The courts have sometimes allowed the President to take emergency actions without any direct authority from Congress. The law in this area is murky. Emergency action without Congressional authorization seems most likely to be upheld if the President is acting to protect the

federal government itself from threats or when there’s a history of Congress approving similar previous actions. The Supreme Court has indicated that these actions are least likely to be approved when Congress has frowned on them, either implicitly or by prohibiting them outright.

For a President to take action on this basis would be a last resort, at least if the President’s lawyers or the courts have anything to say about.There aren’t any clear answers here, and the result could turn on the direness of the situation and the compelling need for the actions taken by the President.

Two takeaways: Yes, the President does have genuine powers to act in an emergency like this epidemic. No, those powers aren’t unlimited. They don’t provide a substitute for vigorous action by state and local governments.