

JURISPRUDENCE

Trump Perfected His Favorite New Legal Pretext in Environmental Cases

BY JAY DUFFY AND JONAS MONAST

SEPT 25, 2026 • 2:21 PM



A military installation? Nathan Posner/Anadolu via Getty Images

[Sign up for Executive Dysfunction](#), a weekly newsletter that highlights one under-the-radar story about how Trump is changing the law—or how the law is pushing back—and keeps you posted on the latest from Slate’s Jurisprudence team.

Last week, President Donald Trump announced that his planned 250-foot triumphal arch between the Lincoln Memorial and Arlington National Cemetery would become a “Military

Complex” housing drones, snipers, and ammunition, all “for National Security purposes.” It is easy to roll our eyes. The whole thing has the air of an *Avengers* subplot, not a serious proposal from a U.S. president. But the timing is telling: The announcement came as veterans and an architectural historian pressed a lawsuit arguing that Congress never authorized the arch. Faced with a legal obstacle, the president clearly reached for a pretextual justification that courts are reluctant to question: a national security priority.

There is a reason *emergency* and *national security* are powerful words in court. Presidents need flexibility to respond to genuine threats, and courts give the executive branch substantial room when exercising its national security responsibilities. Under past presidents, this has often been appropriate. That is also what makes those words so tempting for this administration. The White House ballroom was recast as a security project; now the arch has been too. But the same move used to try to shore up Trump vanity projects shows up, with far greater consequences, in ordinary domestic policy disputes.

Again and again, the Trump administration invokes an emergency or a national security to justify extraordinary action—from stripping union rights from federal workers and deploying the National Guard to cities including Chicago and Los Angeles to, most recently, barring several major news organizations from the White House grounds. It then asks courts to defer to its judgment—or argues they cannot review the decision at all. And in many cases, it uses the resulting federal power to push aside states, regulators, courts, or other institutions that would ordinarily have a say.

The pattern is particularly prominent in the administration's attempts to transform the energy sector to the president's liking, with more fossil fuels and fewer constraints on their development. Look across the legal fights over coal plants, oil pipelines, offshore drilling, renewable energy, and state climate policies, and the same playbook emerges.

On his first day back in office, Trump declared a "national energy emergency," asserting that inadequate energy production and infrastructure threatened the economy and national security. The declaration also blamed "dangerous State and local policies" in the Northeast and on the West Coast. The administration then invoked the emergency to promote fossil-fuel production while restricting new sources of less expensive, clean generation.

Consider an oil pipeline in California that had been shut down for roughly a decade after a catastrophic spill. When state regulators and courts stood in the way of restarting it, the Department of Energy invoked the Defense Production Act—a law meant to support national defense—and ordered the pipeline to operate. The DOE cited California's military installations, declining oil production, and dependence on imported crude. But it identified no military fuel shortage, no defense customer waiting for the oil, and no mechanism ensuring that the oil would ever reach the military.

Genuine national security judgments deserve deference. But that deference cannot come simply from invoking the words *national security*. Courts must be able to test whether the claimed threat is genuine and supported by the facts before giving the government the deference that follows.

Similarly, declaring an emergency does not rewrite the law. Yet the administration has repeatedly invoked emergencies and national security to claim powers that Congress never granted.

Consider Michigan's Campbell coal plant. Its owner spent years planning its retirement with

state regulators and the regional grid operator. Shortly before the plant was scheduled to close, the DOE invoked a rarely used Federal Power Act provision for electricity emergencies to keep it running. Historically, that authority had been an emergency backstop—used for hurricanes, unexpected outages, and other immediate threats. The DOE instead used successive 90-day orders to address concerns extending months and years into the future, overriding the ordinary state and regional planning process.

The Clean Air Act provides another example. A narrow provision allows the president to exempt a pollution source when required technology is unavailable and national security requires it. Trump instead invoked that authority based on generalized concerns about grid reliability to exempt dozens of coal-fired power plants from toxic pollution standards at once, without making the required plant-by-plant showing.

Different statutes, same basic move: Start with something narrow and use an extraordinary predicate to make it broad.

After invoking an emergency or a national security to justify extraordinary action, the government has repeatedly relied on those same concepts to seek less judicial scrutiny.

In the California pipeline case, the government argued that the order was effectively presidential action outside ordinary review and, alternatively, that the DOE's determinations were committed to unreviewable agency discretion.

The pattern is even clearer in the Gulf of Mexico. The secretary of defense invoked a never-before-used Endangered Species Act provision to conclude that a sweeping exemption for oil and gas activity was necessary for national security—not because of an identified military fuel shortage, but because endangered species litigation might disrupt future oil production. The government then argued that the secretary's national security determination could not be reviewed by a court.

Think about that sequence: Make an extraordinary factual claim; use it to unlock extraordinary legal authority; then argue that the factual claim itself is something a judge should not examine.

The courts, fortunately, are seeing through this strategy. In the Campbell case, the D.C. Circuit examined the claimed emergency, the statutory text, and the history of the provision and rejected the DOE's attempt to turn a temporary emergency tool into a mechanism for

long-term electricity planning.

Deference, in other words, is not the same as taking the government's word for it.

The last step in the Trump administration's broader strategy is about shaping who retains authority when the dust settles. Federal law can override state law. But there must be valid federal law that actually does the overriding.

In the California pipeline dispute, the federal order to restart the pipelines became the basis for arguments that California's environmental, land-use, and pipeline-safety requirements—and even a judicial consent decree—had to give way.

On climate change, the contradiction is even starker. The federal government has argued that states cannot use their own laws to address certain climate harms because the matter belongs to the federal government. At the same time, it has argued that federal law does not give it authority to regulate greenhouse gas emissions.

The federal government claims authority broad enough to keep states from acting, while elsewhere disclaiming the authority to regulate the same problem itself. The result is a regulatory vacuum, with neither state nor federal protections left in place.

Once you see the pattern, it becomes harder to miss. Declare an emergency or invoke national security. Use it to claim extraordinary power. Tell courts not to look too closely. Then use that power to push aside states and other decisionmakers. Not every case is the same, and invoking national security does not make an action illegitimate. But invoking it when it is plainly pretextual does. When the same moves appear again and again, courts, and the public, can start to recognize the pattern for what it is—an effort to concentrate power in the president's hands for issues entirely unrelated to national security. And increasingly, courts are doing just that: looking past the label, examining the facts, and asking whether the law actually gives the president the authority he claims. "Because I said so" is for kings, not American presidents.