THE BIG FEATURE

Mr. Biden, Tear Down This Wall!

The president has halted construction on Trump's barrier. Activists and residents on the border say that's not enough.

https://www.motherjones.com/politics/2021/02/joe-biden-trump-border-wall/?utm_source=twitter&utm_campaign=naytev&utm_medium=social

Tim Murphy, February 18, 2021

At least once a week for the last few years, Laiken Jordahl, a staffer for the Center for Biological Diversity based in Tucson, Arizona, would head into the desert with a backpack and an iPhone to film the encroaching progress of Donald Trump's wall. His videos, viewed hundreds of thousands of times on Twitter, captured an unrelenting march of devastation: mountainsides blasted to bits; forests of ancient cacti toppled over; roads and floodlights blighting fragile wilderness; indigenous land desecrated. But in late January, as Jordahl made his rounds in the Coronado National Forest and San Bernardino National Wildlife Refuge, he saw something new: The construction crews were leaving.

"Everywhere that we visited, construction has totally wound down," he told me when we spoke in early February. "The destruction is on pause."

A new section of the border wall built under President Trump extends through the remote wilderness of the Coronado National Forest, east of Sasabe, Arizona.

On the same day he took office, President Joe Biden signed an executive order giving all contractors and government agencies one week to halt construction and freezing work for 60 days while his administration determined what to do next. Biden's order formally ended the emergency declaration Trump had used to free up extra funding for the project and blocked the allocation of additional funds for the project.

Jordahl savored the victory. The Center for Biological Diversity, which he joined after a stint with the National Park Service in Texas' Big Bend, was part of a coalition of environmental advocates, border activists, immigrant rights organizations, and indigenous groups that had written to Biden in November demanding he shut the project down. These groups and other opponents of the wall had fought the Trump administration in court and on the ground for four years—challenging the funding stream, slowing land acquisition, and in some cases putting their bodies in the way of construction crews. Last fall, Border Patrol officers used tear gas against member of the Tohono O'odham tribe who'd tried to block construction near a sacred site in southern Arizona.

But activists who have spent years fighting border fence construction aren't ready to declare mission accomplished just yet. Not while the contracts are still in force, court cases are ongoing, and the language in the order leaves open the possibility of more construction to come. Much of the equipment is still there—Jordahl recently filmed a video from inside a stack of 30-foot-long steel bollards piled in Arizona's Peloncillo Mountains. The pile rose higher than his head; it looked as if he were walking through a slot canyon. Every day the barriers stay up, the damage to people, ecosystems, and communities continues to accrue, and the loopholes that made it possible for Trump to build so much so fast are still on the books. It's not enough to just hit pause, they say; both the physical wall and its legal scaffolding must come down.

"This is step one," Jordahl said of Biden's construction freeze. Then he corrected himself. "We're not even through step one yet."

During his campaign, Biden promised, "There will not be another foot of wall constructed [in] my administration," but his executive order isn't quite as definitive. It simply instructed the departments of Defense and Homeland Security to review existing contracts and funding mechanisms and determine what it would take to get out of those contracts and redirect the money. Following the two-month review period, per the order, "the Secretary of Defense and the Secretary of Homeland Security shall take all appropriate steps to resume, modify, or terminate projects." And in the meantime, agencies "may make an exception to the pause…where an exception is required to ensure that funds appropriated by the Congress fulfill their intended purpose."

"At the end of the 60-day review period, we need to make sure that they don't say, well, it's best just to let them let the contracts run their course," said Juan Ruiz, an organizer for the No Border Wall Laredo Coalition. The group recently joined with dozens of other borderlands organizations to launch the Not Another Foot campaign, which is dedicated to holding Biden to his promise and pushing the administration to "heal" the harm the wall has caused in their communities.

Trump's wall started off as a rhetorical device. When he was first planning his run for president in 2014, *Bloomberg*'s Joshua Green reported, Trump's advisers settled on the idea of a wall to remind him to talk about immigration. Such campaign-trail rhetoric was hardly new—in 2011, Herman Cain had proposed a "great wall," 20-feet high, and even a moat filled with alligators. Dating back to the 1990s, a progression of Democratic and Republican administrations had built 650 miles of fencing along the southern border—a hodgepodge of tall steel slats, vehicle barriers, and even spare Vietnam-era helicopter landing pads.

But in Trump's hands, both the symbolism and ambitions of the wall took on a new scale. It was a mascot and a manifesto all in one, the physical embodiment of the white supremacist policies he was promising. Supporters would even show up to rallies dressed as bricks. The promised thousand-mile barrier that Mexico would pay for never fully materialized, but the wall was real enough. Trump spent $15 billion to fund the project and left office with 453 new miles of fencing to his name. (Literally—he put up plaques and signed bollards along the border.) Most of that was on land where some form of fence existed before. But he also built 47 miles of barriers on previously unfenced lands.

From the beginning, most Democrats were united in their condemnations of Trump's barrier. It was a "vanity project," in the words of Kamala Harris; a "racist wall" according to Elizabeth Warren. But they were divided about what to do with it. Some Democratic presidential candidates were open to razing portions of it. But while Biden promised to stop work, he rebuffed calls to undo anything completed before January 20.

To activists, Biden's middle ground is untenable: If it was a "racist wall" when Trump was president, why must every last foot of it stay up under Biden? Even if the new president cancels the contracts, halting construction this way would still do nothing to *end* the project. A successor could simply start up again. Nor would it do anything to reverse the destruction that has already been wrought. Every day that 30-foot steel bollards stay up on sacred land and in threatened habitats, they're causing real damage. And decades of fence construction and militarization have pushed migrants into ever more dangerous routes across the border; at least 227 migrants died during the overland crossing in 2020 alone.

To give the freeze finality, Biden and Democrats in Congress would have to dismantle the law that made it so easy to construct so much fencing in the first place. A provision buried in the Real ID Act of 2005—which was itself folded into a must-pass tsunami relief and war-on-terror funding bill—granted the president, through the secretary of Homeland Security, broad powers to bypass environmental laws through waivers to expedite border fence construction.

The waivers have been like an Easy Button for border wall construction. A year after the passage of Real ID, the Secure Fence Act authorized 700 miles of new fencing, and the Bush administration bypassed environmental laws five times to fast-track the effort. The Obama administration did not grant any waivers, though it continued to build previously authorized projects. The Trump administration issued 27 waivers. A 2019 report from Democrats on the House Homeland Security Committee, which recommended repealing this waiver power, listed a sampling of the "bedrock Federal environmental laws" that had been waived. They include:

- The National Environmental Policy Act
- The Endangered Species Act
- The Clean Water Act
- The National Historic Preservation Act
- The Migratory Bird Treaty Act
- The Clean Air Act

- The Archeological Resources Protection Act
- The Safe Drinking Water Act
- The Noise Control Act
- The Solid Waste Disposal Act
- The Comprehensive Environmental Response, Compensation, and Liability Act
- The Archaeological and Historic Preservation Act
- The Antiquities Act
- The Historic Sites, Buildings, and Antiquities Act
- The Wild and Scenic Rivers Act
- The Farmland Protection Policy Act
- The Coastal Zone Management Act
- The Wilderness Act
- The Federal Land Policy and Management Act
- The National Wildlife Refuge System Administration Act
- The Fish and Wildlife Act of 1956
- The Fish and Wildlife Coordination Act
- The Administrative Procedure Act
- The Otay Mountain Wilderness Act of 1999
- The California Desert Protection Act [Sections 102(29) and 103 of Title I]
- The National Park Service Organic Act
- The National Park Service General Authorities Act
- The National Parks and Recreation Act of 1978 [Sections 401(7), 403, and 404]
- The Arizona Desert Wilderness Act [Sections 301(A)-(F)]
- The Rivers and Harbors Act of 1899
- The Eagle Protection Act
- The Native American Graves Protection and Repatriation Act
- The American Indian Religious Freedom Act
- The Religious Freedom Restoration Act
- The National Forest Management Act of 1976
- The Multiple Use and Sustained Yield Act of 1960
- The Military Lands Withdrawal Act of 1999
- The Sikes Act
- The Arizona-Idaho Conservation Act of 1988
- The Federal Grant and Cooperative Agreement Act of 1977

• The Migratory Bird Conservation Act

[Deep breath]

• The Paleontological Resources Preservation Act

• The Federal Cave Resources Protection Act of 1988

• The National Trails System Act

• The National Wildlife Refuge System Improvement Act of 1997

• The Reclamation Project Act of 1939 [Section 10]

• The Wild Horse and Burro Act

According to Kenneth Madsen, an associate professor of geography at Ohio State University who tracks border construction projects, the Bush and Trump administrations together waived a combined 84 federal laws, relating to the environment, cultural resources, and procurement.

In order to undo Trump's legacy, Biden must also undo his own. As a senator, Biden voted for both the Real ID law (it passed the Senate unanimously) and the Secure Fence Act. He bragged about those votes during his second run for president, telling voters in South Carolina in 2006, "Unlike most Democrats—and some of you won't like it—I voted for 700 miles of fence."

Activists would like Biden not just to forswear the waiver power but also to rescind the waivers that have already been granted, so that every existing stretch of wall can be evaluated for legal compliance. Dan Millis, a staffer at the Sierra Club based in Tucson, suggested that doing so would empower agencies to conduct the kind of studies—with community input—that were ignored the first time around.

"The law not being in place is the only thing that has allowed that wall to be there," he said.

Existing federal laws prohibit the destruction of Indigenous graves, for instance. But an O'odham burial ground called Monument Hill was blasted during construction that had been fast-tracked with a waiver. The Endangered Species Act exists to protect animals like the lone jaguar recently spotted in Arizona's Sky Islands—except that law was waived to allow fencing to go up in the mountains, cutting off the big cat from much of its habitat and food supply.

A member of the Kumeyaay band of Native Americans holds a sage bundle to protest construction of border wall on ancestral grounds in Boulevard, California.

Border activists want Biden to end the waiver power by signing a law repealing it—that's the kill switch. Rep. Kathleen Rice (D-N.Y.) and eight Democratic co-sponsors pushed a measure in the last Congress to repeal that provision of the Real ID Act, but it never got a floor vote. "If the REAL ID Act is revoked, or removed, then border communities are in a stronger position to be

able to challenge the construction of future walls," Ruiz said. (If such a repeal did make it through the House, it would likely still face an uphill path to passage in the Senate.)

The legal legacy that needs to be undone is not just statutory. It also requires action in the courtroom. On the western half of the border, construction was quickest during the Trump years because much of the land was already controlled by the federal government. In South Texas, however, Trump left behind a tangled legal mess, as his administration took hundreds of landowners to court to seize or gain access to their land.

During his campaign, Biden also promised to call off the lawyers. "End. Stop. Done. Over," he said. "Withdraw the lawsuits. We're out. We're not going to confiscate the land."

And after the construction freeze went into effect on January 27, the feds did drop some of these cases, or at least signaled they would. But many are still active, and the executive order offers no further instructions to the Department of Justice. (A department spokesperson said the agency could not comment on active litigation; the White House did not respond to a request for comment.)

"There have been pretty dramatic differences in how individual DOJ attorneys…have interpreted the proclamation," said Ricky Garza, a lawyer for the Texas Civil Rights Project, which is representing clients in seven land-seizure cases.

In some cases, the government has taken the initiative to pause proceedings; in others, it has put the onus on landowners to press the matter. Earlier this month, the feds opposed an effort by a Starr County family to dismiss an eminent domain lawsuit that was initiated just this past December. Confounding things is that some of TCRP's cases, and about 20 ongoing lawsuits overall, began in the Bush era. They were slow-walked but never dropped when Obama was president, and then restarted under Trump. The fact that there are 13-year-old court cases in South Texas—cases entering their fourth presidential administration—gets at the seeming intractability of the problem. Trump didn't create a wall from scratch; it was built on top of a legal foundation poured by his predecessors.

Garza showed me a flow chart TCRP had made, which detailed the range of legal fights still underway between the government and border landowners, and the different ways they might be resolved: "If it looks complicated, that's because it is," the group wrote. But he had a simple solution—for Biden to ask the Department of Justice to dismiss the cases, just as he'd leaned on the Department of Homeland Security to figure out if it could get out of its construction contracts.

There's a lot of work to do to bring Trump's wall project to a full stop. But even if Biden delivers on that promise, there are other forms of border-security infrastructure that could take its place, with their own adverse effects on migrants, local communities, and the environment. Biden has indicated his support for a more tech-driven approach to policing the border—what proponents in the past have dubbed a "virtual fence." But surveillance requires physical infrastructure, too. Suspending wall construction but building a 200-foot camera post on someone's land, for instance, would present many of the same problems. Spotlights to serve as

deterrents or simply to illuminate worksites threaten native species. There are many ways to disrupt a space without putting up a fence.

Still, activists and experts say, there are also ways Biden can begin to reverse the damage. The feds can revest property—that is, transfer land back to the owners—that they've taken in Texas; they've done it in the past. Some border advocates have proposed other forms of compensation, including reparations, for the damages (physical and otherwise) the wall has caused.

Tannya Benavides, another Laredo-based activist, pointed out that the massive investment in border security infrastructure and technology has come in places where funding for things like health care access is lacking. Biden could begin to make amends for the damage imposed on those communities by diverting border-security funds to more directly benefit the people who live there. If the money simply must be spent on the physical border, well, there's a nearly 900-mile stretch of border that could use some shoring up. "Why not invest in the Rio Grande as the natural barrier that it is?" she asked.

And though Biden has said tearing down the wall is off the table, activists have put together a plan they hope will convince him otherwise. Jordahl sent me a draft proposal circulating among dozens of anti-wall organizations which proposes specific sites (right down to the GPS coordinates) where removing the wall or replacing it with a less-onerous barrier would have the most impact. The list includes a pronghorn corridor in Cabeza Prieta National Wildlife Refuge and Quitobaquito Springs, a Tohono O'odham pilgrimage site in Organ Pipe that's also the only habitat of an endangered fish.

In the short term, small steps would make a difference. It could be something as simple as restoring Trump's wall to the more porous edifice it replaced in many places. Cut 25 feet off the 30-foot fence and remove every other vertical slat and suddenly you have a vehicle barrier. You can't "undynamite a mountain," as Jordahl said, but you can still save a jaguar.

The truest indication of Biden's preferences will come in late March, when the 60-day freeze ends. Even the slightest reversal would mark a radical departure from Biden's recent predecessors and from his own record as senator and vice president. Just consider the history. Over the past three-plus decades, the federal government has spent tens of billions of dollars constructing more than 700 miles of border fencing. It has been a bipartisan exercise, beginning in the Clinton years, ramping up in the Bush era, continuing apace in the Obama era, and shifting into warp speed during Trump's presidency. And barriers that go up stay up. No one I spoke to, including academics who have studied it, could think of a single place along the entire border where fencing has ever been removed.

A few weeks after I spoke with Jordahl, another borderlands group released footage that appeared to show backhoes moving dirt in the Pajarito Mountains outside Nogales on February 10. To Jordahl and the Center for Biological Diversity, which demanded a federal investigation, it validated the caution with which they and others had greeted Biden's announcement. Just how much of a freeze was it, anyway?

For decades the project has only ever been a one-way ratchet, enabled and funded by leaders of both political parties. The answer, until now perhaps, has always been *more*. Spending billions to further militarize the border might have been the most bipartisan thing Trump ever did. He is gone from office, but the wall is still as potent a symbol—of fear, cynicism, inertia—as it was on the day he proposed it.