Nos. 24-1287 and 25-250

IN THE

Supreme Court of the United States

LEARNING RESOURCES, INC., ET AL., *Petitioners,*

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., *Respondents.*

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., *Petitioners*,

v.

V.O.S. SELECTIONS, INC., ET AL., *Respondents.*

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the District of Columbia Circuit and on Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF FOR MEMBERS OF THE UNITED STATES CONGRESS AS AMICI CURIAE SUPPORTING PETITIONERS IN NO. 24-1287 AND RESPONDENTS IN NO. 25-250

JENNIFER HILLMAN
PETER HARRELL
GEORGETOWN UNIVERSITY LAW CENTER

600 New Jersey Ave NW
Washington, DC 20001

WILLIAM FRED NORTON
NATHAN L. WALKER
JOSEPHINE K. PETRICK
Counsel of Record
CELINE G. PURCELL
EMILY KIRK
THE NORTON LAW FIRM
300 Frank H. Ogawa Plaza, Ste. 450
Oakland, CA 94612
(510) 906-4900
jpetrick@nortonlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici Curiae are XXX Members of the U.S. House of Representatives and the U.S. Senate. *See* Appendix (listing *Amici*). *Amici*, who include members on committees with jurisdiction over tariffs and trade, have a strong interest in ensuring any action by the President complies with the authority delegated to him by Congress. The Constitution grants Congress, not the President, the authority to impose tariffs and regulate commerce with foreign nations. When the President wishes to impose tariffs, he must comply with the existing, lawful delegations of tariff power that Congress has enacted or, if he finds those authorities insufficient, ask Congress for new authority. Here, however, the President has usurped Congress's constitutional authority by impermissibly using the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 *et seq.*, to impose tariffs. *Amici* urge this Court to hold the President's IEEPA tariffs are unlawful.

[1] Undersigned counsel authored this brief in its entirety. No monetary contributions have been made to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The Federal Circuit, Court of International Trade, and District Court for the District of Columbia all reached the same correct conclusion: President Trump's imposition of tariffs under IEEPA is unlawful.

Only Congress has the power to "lay and collect Taxes, Duties, Imposts and Excises," U.S. Const. Art. I, § 8, cl. 1, and to "regulate Commerce with foreign Nations," *id.*, cl. 3. This reflects the Framers' intent for the most democratically accountable branch—the one closest to the People—to be responsible for enacting taxes, duties, and tariffs. Federalist Papers Nos. 31–36.

Congress enacted IEEPA, 50 U.S.C. §§ 1701–1710, to provide the President with the power to impose sanctions, export controls, and similar measures. It provides the President with defined powers to address national emergencies but does not confer the power to impose or remove tariffs.

Neither the word "duties" nor the word "tariffs" appears anywhere in IEEPA. Rather, IEEPA allows the President, in times of a declared emergency, to "regulate … importation or exportation" of property. 50 U.S.C. § 1702(a)(1)(B). IEEPA's delegated power to "regulate" is not a power to impose tariffs.

IEEPA contains none of the hallmarks of legislation delegating tariff power to the executive, such as limitations tied to specific products or countries, caps on the amount of tariff increases, procedural safeguards, public input, collaboration with Congress, or time limitations. In the five decades

since IEEPA's enactment, no President from either party, until now, has ever invoked IEEPA to impose tariffs.

The Administration's interpretation of IEEPA would effectively nullify the guardrails set forth in every statute in which Congress expressly granted the President limited tariff authority—a result Congress did not intend.

Contrary to the views expressed by the Administration and the Federal Circuit dissent, IEEPA does not authorize the President to impose tariffs as "bargaining chips." While this Court has held that Presidents may use IEEPA to freeze foreign assets and to then use those frozen assets as leverage in foreign affairs negotiations, *Dames & Moore* v. *Regan*, 453 U.S. 654, 673 (1981), IEEPA does not grant the President the power to impose tariffs on American citizens importing goods to generate leverage in trade talks. Nor may the President use IEEPA to override America's trade statutes, which Congress has carefully considered and enacted over the years. The President "is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue." *Zivotofsky* v. *Kerry*, 576 U.S. 1, 21 (2015).

This Court should hold that IEEPA does not delegate tariff authority to the President and the President's tariffs under IEEPA are therefore unlawful.

DISCUSSION

I. When Congress delegates constitutional authority to impose tariffs, it does so explicitly and with procedural safeguards.

A. The Constitution gives Congress, not the President, control over whether to impose tariffs.

"The President's power, if any, … must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 585 (1952). Neither is present here.

The Constitution vests Congress—not the President—with the exclusive power to "lay and collect Taxes, Duties, Imposts and Excises," and to "regulate Commerce with foreign Nations." U.S. Const., Art. I, § 8, cls. 1, 3. The Administration does not argue to the contrary. Thus, absent a delegation of that authority, the President may not impose tariffs on imported goods. See *Youngstown*, *supra*, 343 U.S. at 585.

B. When Congress delegates its tariff authority, it does so explicitly and specifically, as it must.

Congress uses the word "duty" to signal a delegation of its Article I power to "lay and collect … Duties" and has done so from the moment it began delegating tariff authority.[2]

---

[2] The following provisions all reference "duties": Section 122, Sections 201–204, and Sections 301–310 of the Trade Act of 1974; and Section 338 of the Tariff

- Section 338 of the Tariff Act of 1930 refers to "new or additional duties." 19 U.S.C. § 1338(a) (hereinafter "Section 338").
- Section 232, which authorizes the President to "adjust imports," *id.*, § 1862(c), explicitly refers to "duties" when discussing limits on presidential adjustments, *id.*, § 1862(a) (titled "Prohibition on Decrease or Elimination of Duties or Other Import Restrictions").
- Section 122 of the Trade Act of 1974 empowers the President to proclaim "a temporary import surcharge ... in the form of duties." *Id.*, § 2132(a)(3)(A).
- Section 201 of that same Act authorizes the President to "proclaim an increase in, or the imposition of, any duty on the imported article" or to "proclaim a tariff-rate quota." *Id.*, §§ 2253(a)(3)(A)–(B).
- Section 301, also of the Trade Act of 1974, allows the President to "impose duties or other import restrictions." *Id.*, § 2411(c)(1)(B).

Unlike these statutes, "Congress did not use the term 'tariff' or any of its synonyms" in IEEPA. *V.O.S. Selections, Inc.* v. *Trump*, 149 F.4th 1312, 1330, 1332 (Fed. Cir. 2025); see *infra* § II.A.

Act of 1930. 19 U.S.C. § 2132 ("Section 122"); *id.*, §§ 2251–2254 ("Section 201"); *id.*, §§ 2411–2420 ("Section 301"); *id.*, § 1338 ("Section 338").

All the express tariff statutes were enacted pursuant to a trade or tariff act:

- Section 338 is part of Chapter 4 of Title 19 of the U.S. Code. Chapter 4 is titled the "Tariff Act of 1930." 19 U.S.C. § 1338.
- Section 232 is part of Chapter 7 of Title 19 of the U.S. Code. Chapter 7 is titled the "Trade Expansion Program." 19 U.S.C. § 1862.
- Sections 122, 201, and 301 are all part of Chapter 12 of Title 19 of the U.S. Code. Chapter 12 is titled the "Trade Act of 1974." 19 U.S.C. §§ 2132, 2251–2254, and 2411–2420.

By contrast, IEEPA is part of Title 50 (denominated "War and National Defense") and is titled the "International Emergency Economic Powers Act." It is not a "Tariff" or "Trade" act, nor was it codified as a tariff statute in Title 19 of the United States Code (denominated "Customs Duties"). See *INS* v. *Nat'l Ctr. for Immigrants' Rights, Inc.* (1991) 502 U.S. 183, 189 (the title of a statute can aid its interpretation); *V.O.S. Selections*, 149 F.4th at 1332 (same).

Further, Congress has generally limited delegations of its tariff authority to physical goods, often "articles" from a single country:

- Section 338 refers to duties "upon articles wholly or in part the … product of … any foreign country." 19 U.S.C. § 1338(a).
- Section 201 limits the President's tariff authority to a duty or a tariff-rate quota

"on the imported article." *Id.*, § 2253(a)(3).

- Section 301 permits the duties or other import restrictions "on the goods of … such foreign country." *Id.*, § 2411(c)(1)(B).
- Only Section 122 permits temporary, broad-based tariffs on all imports from all countries, but it limits those tariffs to a maximum increase of 15% ad valorem and to a period of no more than 150 days. *Id.*, § 2132(a)(3)(A).

IEEPA, on the other hand, permits the regulation of the importation or exportation of "any property in which any foreign country or a national thereof has any interest[,] … or with respect to any property subject to the jurisdiction of the United States." 50 U.S.C. § 1702(a)(1)(B). Unlike the trade laws, IEEPA extends to many forms of property that historically have never been subject to import tariffs, such as financial assets, real property, and intellectual property rights. Indeed, IEEPA has most commonly been used to freeze financial assets, prohibit certain financial transactions, or impose embargoes and export controls on sensitive technology. See *infra* §§ II.D–E; *V.O.S. Selections*, 149 F.4th at 1335.

IEEPA bears none of the hallmarks of a tariff statute. It is not one.

C. When Congress delegates its tariff authority, it imposes substantive limitations and procedural controls.

Before the 1930s, Congress did not typically delegate tariff power at all but set tariff rates legislatively. When Congress did delegate tariff authority to the President, it was generally to adjust legislatively established tariff rates within specified limits and after the President made specific factual determinations.

With the Reciprocal Trade Agreements Act of 1934, Pub. L. 73-316, 48 Stat. 943, Congress began more regularly delegating carefully limited tariff-setting authority to the President. Those delegations usually authorized the President to negotiate reciprocal trade agreements and to proclaim limited tariff reductions, within bounds Congress prescribed.

In recent decades, Congress has enacted statutes that allow the President to adjust tariff rates in response to specific trade-related concerns or required findings by U.S. agencies.

These laws, however, include specific procedures, substantive standards, and temporal limits, unlike IEEPA.

First, trade-specific prerequisites must be met before the President is allowed to act. Section 338, for example, requires a finding "as a fact" that a foreign country imposes a non-reciprocal "charge, exaction, regulation, or limitation" on U.S. exports, or "discriminates in fact" against U.S. imports, compared to imports from other countries. 19 U.S.C. § 1338(a)(1)–(2).

Section 232 requires a finding and report by the Secretary of Commerce that an article is being imported "in such quantities or under such circumstances as to threaten to impair the national security." *Id.*, § 1862(b)(3)(A). Section 232 also requires formal consultations with the Secretary of Defense. *Id.*, § 1862(b)(1)(B).

Section 122 requires a determination of "large and serious United States balance-of-payments deficits" or "an imminent and significant depreciation of the dollar" requiring special import measures. *Id.*, § 2132(a)(1)–(2).

A surge in imports that threatens serious injury to the domestic industry producing a comparable product is the prerequisite to action under Section 201. *Id.*, § 2253.

Section 301 requires a finding that either U.S. rights under a trade agreement have been denied or that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce.

Second, Congress has historically set procedural safeguards before delegating tariff authority to the President. Section 201 investigations, for example, require extensive processes conducted by the independent U.S. International Trade Commission, including (1) detailed questionnaires, (2) public hearings permitting written submissions and testimony by interested parties, (3) a formal vote by the Commission as to whether the prerequisites are met, and (4) a written report outlining the factual basis for the Commission's determination. 19 U.S.C. §§ 2252, 2254.

Similarly, Section 301 requires (1) a formal investigation by the Office of the United States Trade Representative, (2) consultations with interested parties, (3) a public hearing, and (4) publication in the Federal Register of the investigation results and the determination of whether the statutory prerequisites to tariff action have been met. *Id.*, §§ 2411–2413.

Third, Congress maintains control over delegated tariff authority by imposing time limitations, stating the length of time the tariffs can be in place, or prescribing how much notice importers must be given before the tariffs are imposed. Section 122, for example, limits tariffs to no more than 150 days.

Congress has also capped tariff increases. Section 122 limits additional duties to 15% ad valorem. *Id.*, § 2132(a)(3)(A). Section 338 and Section 201 limit increased tariffs to 50% ad valorem. *Id.*, §§ 2253(e)(3), 1338(d). Section 301(a)(3) specifies that any action taken be "in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States Commerce." *Id.*, § 2411 (a)(3).

The Administration claims that this Court has long approved broad Congressional delegations to the President to regulate international trade, including through tariffs. Brief for Administration 45. But its supporting cases fall into two categories: those that do not involve tariffs at all (*Brig Aurora v. United States*, 7 Cranch 382 (1813), addressed embargoes), and those that involve only narrow tariff applications. The latter required explicit delegation and compliance with congressional mandates, including investigations, fact-finding, product limitations, and rate caps.

For example, *J.W. Hampton, Jr. & Co.* v. *United States*, 276 U.S. 394 (1928) involved a tariff on a single product (barium dioxide) from a single country (Germany) imposed only after completing a required investigation, including a public hearing, by the U.S. Tariff Commission (predecessor of the U.S. International Trade Commission) and a finding that equalizing the cost of production of barium dioxide between Germany and the United States would require imposing a two cent per pound additional duty.

Marshall Field & Co. v. *Clark*, 143 U.S. 649 (1892) involved the authority for the President to suspend duty-free treatment for imports of specific products (sugar, molasses, coffee, tea or hides) from specific countries that the President determined were not granting reciprocal access to U.S. agricultural exports. But the effect of suspending the duty-free treatment merely allowed the tariffs to return to the rates that Congress specified by statute. "Congress itself prescribed, in advance the duties to be levied, collected and paid, on sugar, molasses, coffee, tea, or hides, produced by or exported from such designated country, while the suspension lasted. Nothing involving the expedience or the just operation of such legislation was left to the determination of the President." *Id.*, at 692–693.

Federal Energy Administration v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976) involved the imposition of license fees only on imports of crude oil and its derivatives, following a Section 232 investigation which determined that imports of petroleum products were high enough to threaten national security due to an overdependence on strategically important oil.

These cases are a far cry from the President's IEEPA tariffs, which have been imposed on virtually all products from virtually all countries, with no public process and no regard for the tariff statutes or tariff levels that Congress established.

As an emergency powers statute, IEEPA contains none of the limits carefully constructed by Congress. These "comprehensive statutory limitations would be eviscerated if the President could invoke a virtually unrestricted tariffing power under IEEPA." *Learning Resources, Inc.* v. *Trump*, 784 F. Supp. 3d 209, 225 (D.D.C. 2025).

II. IEEPA does not allow the President to impose tariffs.

In enacting IEEPA, Congress did not grant the President additional authority to impose or remove tariffs. Congress adopted IEEPA against a history of statutes that delegate to the President powers to impose embargoes, financial sanctions, and similar measures—not tariffs—and IEEPA's text and context foreclose it from delegating tariff authority. Further, the President's interpretation of IEEPA could lead to absurd results: if adopted, it could allow the President to claim an effectively unbounded power to raise revenues on Americans, upending the Constitution's structural commitment to congressional control over tariffs and revenue-raising.

A. The plain text of IEEPA does not provide the President the power to impose tariffs.

IEEPA specifies the powers it grants the Executive. 50 U.S.C. § 1702. In relevant part, it authorizes the President to

> "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States …."

Id., § 1702(a)(1)(B).

Despite the many powers enumerated in the statute, nowhere does it contain the word "tariff," "duty," "excise," or other similar words Congress consistently uses when delegating tariff powers to the President. *Supra*, §§ I.B–C. This silence speaks volumes. See, *e.g.*, *Jama* v. *ICE*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply…."); *Bittner* v. *United States*, 598 U.S. 85, 94 (2023) (similar).

B. Reading IEEPA to confer tariff authority would nullify trade statutes.

Just three years before passing IEEPA, Congress built on its extensive architecture of trade statutes by enacting the Trade Act of 1974, which explicitly authorizes the President to impose tariffs to address balance-of-payments emergencies (Section 122, 19 U.S.C. § 2132), surges in imports (Section 201, *id.*, §§ 2251–2254), and unlawful or discriminatory trading practices (Section 301, *id.*, § 2411). Congress would hardly have chosen to give the President an effectively unbounded tariff power in IEEPA three years later. See, *e.g.*, *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 587 U.S. 601, 611 (2019) (Congress is presumed to legislate against the background of existing law).

For example, with Section 122 of the Trade Act of 1974, Congress recognized that tariffs might be needed on an urgent and temporary basis to address "large and serious United States balance-of-payments deficits" or certain other situations that present "fundamental international payments problems." 19 U.S.C. § 2132. But Section 122 tariffs are limited in duration and rate and are subject to other substantive limitations. *Ibid.*

If IEEPA were to authorize tariffs to remedy urgent balance of payment problems, it would render Section 122 a nullity, violating the canon against rendering other statutes redundant. See *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012). Section 122 "removes the President's power to impose remedies in response to balance-of

payments deficits, and specifically trade deficits, from the broader powers granted to a president during a national emergency under IEEPA by establishing an explicit non-emergency statute with greater limitations." *V.O.S. Selections, Inc.* v. *United States*, 772 F. Supp. 3d 1350, 1375 (CIT 2025).

Similar logic applies to other aspects of the 1974 Act. For example, if a President could simply declare a national emergency and invoke IEEPA to impose tariffs in response to a perceived unfair practice by a U.S. trade partner, the President would have no reason to adhere to the detailed fact-finding, transparent process requirements, and limitations on tariff levels that Congress specified in Section 301. See 19 U.S.C. § 2412.

C. IEEPA lacks the clear authorization Congress provides when delegating tariff authority.

This Court requires a "clear congressional authorization" before interpreting a statute as conferring sweeping authority over areas of vast economic and political significance—the kind the Administration claims here. *V.O.S. Selections*, 149 F.4th at 1336; see *West Virginia* v. *EPA*, 597 U.S. 697, 723 (2022); *Biden*, 600 U.S. at 501.[3] "It would be anomalous, to say the least, for Congress to have so

---

[3] The Federal Circuit correctly held—as its sister circuits have—that these principles apply equally when the challenged action is the result of presidential or agency action: agency heads are accountable to the President. *V.O.S. Selections*, 149 F.4th at 1335, n. 17 (collecting cases).

painstakingly described the President's limited authority on tariffs in other statutes, but to have given him, just by implication, nearly unlimited tariffing authority in IEEPA." *Learning Resources*, 784 F. Supp. 3d at 225 (quoting *Gonzales* v. *Oregon*, 546 U.S. 243, 262 (2006)) (cleaned up).

Congress's pattern is unmistakable. In every tariff delegation, Congress uses explicit language—"duties," "tariffs," "articles," "countries of origin"—and imposes trade-specific prerequisites. See *supra* §§ I.B–C; 19 U.S.C. §§ 1338(a), 1862(a), 2132(a)(3)(A), 2251(a)(3)(A), (B), 2411(c)(1)(B), 2492(a). IEEPA contains none of this language. 50 U.S.C. §§ 1701–1710.

These limitations are not just signals—they are constitutional requirements. Separation of powers principles, including the nondelegation doctrine, demand such constraints before tariff power can be delegated at all. *V.O.S. Selections*, 149 F.4th at 1336. Yet IEEPA contains no "clear preconditions to Presidential action" comparable to those in tariff statutes. *Algonquin*, 426 U.S. at 559. Instead, IEEPA requires only a declaration of an "unusual and extraordinary threat" to national security, foreign policy, or the economy originating from abroad, with no trade-specific criteria. 50 U.S.C. § 1701(a). While IEEPA covers a wide variety of national emergencies, Congress did not authorize the delegated use of tariffs to remedy them.

D. The history of IEEPA confirms that it does not bestow a tariff power.

To circumvent IEEPA's plain language, the Administration invokes "foreign affairs powers" to

justify the IEEPA tariffs. But whatever the President's powers may be in matters of foreign affairs, it is not in dispute that only Congress has the constitutional power to regulate commerce or impose duties. Unlike the English King, the President "can prescribe no rules concerning the commerce or currency of the nation"; nor could the President, unlike the King, "lay embargoes for a limited time." The Federalist No. 69, p. 361 (G. Carey & J. McClellan, eds. 2001) (A. Hamilton). And the President "is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue." *Zivotofsky* v. *Kerry*, 576 U.S. at 21. Thus, tariffs and trade are not an area where the President has "constitutional responsibilities and independent Article II authority," *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring), such that the President should be entitled to substantial deference in interpreting such statutes.

Further, Congress has long distinguished between delegations of its power to regulate commerce via the imposition of embargoes and sanctions, on the one hand, and delegations of its power to impose tariffs, on the other. The dissenting opinion below misreads both this history and IEEPA when it contends that since "IEEPA includes authorization for the extreme tools of "prohibit[ing]" and "prevent[ing]" importation it should also authorize tariffs, as "taxing through tariffs is just a less extreme, more flexible tool for pursuing the same objective…." *V.O.S. Selections*, 149 F.4th at 1363 (Taranto, J., dissenting). This misreading flows, in part, from the dissent's erroneous assertion that "tariffs involve the President's role and responsibilities in foreign affairs." *Id.*, at 1379. They do not. Tariffs are paid by U.S. importers who decide

to purchase a foreign good, and they are assessed under U.S. laws and regulations at rates established by Congress.

Congress's periodic delegations of the power to impose embargoes and other sanctions have never included a tariff power. This reflects the Founders' insistence that tariffs, one of the principal forms of revenue-raising in the 18th and early 19th Centuries, be managed by the most democratically accountable branch—the one closest to the People—Congress. Federalist Nos. 31–36.

In 1794, for example, after enacting a series of short-term embargoes due to heightened tensions with Britain, Congress authorized President Washington to make decisions regarding the embargo for a period of five months while Congress was out of session. But Congress did not delegate to President Washington any power to change the tariff rates levied on imported goods, only the power to maintain or suspend the embargo. See Parrillo, Foreign Affairs, Nondelegation, and Original Meaning: Congress's Delegation of Power to Lay Embargoes in 1794, 172 U. Pa. L. Rev. 1803 (2024). Similarly, the Non-Intercourse Act of 1809, Pub. L. 10-24, § 2, 2 Stat. 528, authorized the President to terminate the embargo against either France or Britain after making certain factual determinations—but not to change the tariff rates imposed on either country.

The history of both IEEPA and its predecessor, the Trading with the Enemy Act (TWEA), 50 U.S.C. § 4301 *et seq.*, confirms that Congress delegates power to impose sanctions and embargoes in foreign affairs contexts—but not tariff power. In October 1917, during World War I, Congress enacted TWEA to

establish a comprehensive regime to administer German and other enemy-owned property in the United States, limit or regulate financial transactions with Germany and its allies, and allow or disallow trade with the enemy powers. See 55 Cong. Rec. 4842–4853 (1917). TWEA expanded on provisions of the Espionage Act of 1917, Pub. L. 65-24, 40 Stat. 217, enacted several months earlier, that had authorized the President to prohibit or regulate U.S. exports.

During World War I, the President used TWEA to restrict imports and exports, Exec. Order No. 2792A (Oct. 12, 1917); to prohibit foreign insurance companies from operating in the U.S., Exec. Order No. 2770 (Dec. 7, 1917); to regulate foreign exchange and securities transactions with Germany and other enemy countries; to restrict debt payments to enemy nationals, Exec. Order No. 2796 (Feb. 5, 1918); and to administer or confiscate enemy property in the U.S., see Harris & Ewing, How Seized German Millions Fight Germany, N. Y. Times, Jan. 27, 1918, among other purposes. None of these actions involved tariffs.

President Roosevelt invoked TWEA in the 1930s, first for the 1933 Bank Holiday and later to freeze foreign assets. (Indeed, faced with legal ambiguity about the use of TWEA to impose the Bank Holiday, Congress quickly amended the statute to clarify that the President could use it outside the context of war. 48 Stat. 1, § 2 (1933).) In 1940, following Germany's invasion of Norway and Denmark, Roosevelt used it to freeze Norwegian and Danish assets in the U.S. to keep them beyond Germany's reach. Exec. Order. No. 8389, 5 Fed. Reg. 1400 (Apr. 12, 1940). TWEA was also the basis for President Roosevelt's wartime freezing of German and

Italian property, Exec. Order No. 8785, 6 Fed. Reg. 2897 (June 17, 1941) and Japanese property, Exec. Order No. 8832, 6 Fed. Reg. 3715 (July 29, 1941). Roosevelt never used TWEA to impose tariffs, even after Congress amended it in December 1941 to add the language, later incorporated into IEEPA in 1977, at issue here. See Casey, Elsea, & Rosen, The International Emergency Economic Powers Act: Origins, Evolution, and Use, Cong. Research Serv. (Sept. 1, 2025), https://www.congress.gov/crs_external_products/R/PDF/R45618/R45618.16.pdf.

When Congress enacted IEEPA in 1977, it was part of a package of reforms designed to limit—not expand—the President's use of emergency powers while maintaining authority for the President to issue embargoes or restrict financial transactions in the context of foreign affairs. Thronson, Toward Comprehensive Reform of America's Emergency Law Regime, 46 U. Mich. J. L. Reform 737 (2013). IEEPA was also enacted against the backdrop of the Trade Act of 1974, which provided the President with new, carefully circumscribed delegations to impose tariffs, augmenting existing tariff authorities to protect national security (Section 232) and combat discrimination (Section 338). See 19 U.S.C. §§ 1862, 1338. There was no comparable statute, other than TWEA, delegating to the President the authority to impose sanctions and embargoes. Thus, Congress needed to provide the President with a flexible authority to block, nullify or prohibit foreign transactions, but it did not need to provide tariff powers in IEEPA.

It is true that Congress passed IEEPA three years after the Court of Customs and Patent Appeals

upheld President Nixon's reliance on TWEA to impose limited and temporary tariffs on certain imports, *United States* v. *Yoshida,* 526 F.2d 560 (C.C.P.A. (Cust.) 1975), and that the House and Senate Reports on IEEPA include references to Nixon's use of TWEA in sections describing TWEA's historical use, H. R. Rep. No. 95-459, p. 5; S. Rep. 95-466, p. 2. But Congress responded in 1974 to President Nixon's imposition of tariffs *by enacting Section 122*—not by any supposed ratification of *Yoshida* in IEEPA. When it did so, Congress expressly declined to ratify President Nixon's 1971 surcharge, while concluding that the Executive needed "explicit statutory authority to impose certain restrictions on imports for balance of payment reasons." S. Rep. No. 93-1298, pp. 87–88 (1974). And Congress included in Section 122 additional constraints beyond those stipulated in TWEA, for example, limiting tariffs to 150 days, 19 U.S.C. § 2132, whereas TWEA actions had no specific statutorily required endpoint.

When Congress has ratified after-the-fact presidential action, it has done so explicitly, as it did with respect to President Roosevelt's 1933 Bank Holiday. See 48 Stat. 1, § 2 (1933). IEEPA contains no express ratification of the power to tariff after President Nixon's action at issue in *Yoshida*. This is entirely consistent with IEEPA's legislative history that makes clear that Congress intended to narrow, not expand, IEEPA's scope.

The House and Senate Reports describe IEEPA's powers as "authoriz[ing] the President to regulate transactions in foreign exchange, banking transactions involving any interest of any foreign country or national thereof, or the importing or

exporting of currency or securities, and to regulate or freeze any property in which any foreign country or national thereof has any interest." H. R. Rep. No. 95-459, p. 15 (1977); see also S. Rep. No. 95-466, p. 4,543 (1977); H. R. Rep. No. 95-459, p. 15 (1977). Notably absent from these descriptions is any reference to the word "tariff."

E. Presidents' past uses of IEEPA confirm that it does not include a tariff power.

Presidents invoked IEEPA sixty-nine times between 1977 and early 2024. Casey & Elsea, The International Emergency Economic Powers Act: Origins, Evolution, and Use, Cong. Research Serv. (Jan. 30, 2024), https://www.congress.gov/crs-product/R45618. During that time, Presidents used IEEPA to respond to a diverse range of emergencies ranging from the 1979 Iranian hostage crisis, see Exec. Order No. 12170, 44 Fed. Reg. 65,729 (1979), to foreign cyber hacking groups threatening U.S. security, see Exec. Order No. 13694, 80 Fed. Reg. 18,077 (2015).

Presidents have used IEEPA to block financial transactions with hostile actors, freeze assets, and to impose targeted sanctions. *V.O.S. Selections*, 149 F.4th at 1335. Yet between 1977 and 2024, not once did a President use IEEPA to impose tariffs. The total absence of tariffs for nearly fifty years reinforces the conclusion that the statute does not authorize such measures. See *Biden* v. *Nebraska*, 600 U.S. 477, 501 (2023) (rejecting Administration's interpretation as "inconsistent with the statutory language and past practice under the statute"); *National Federation of Independent Bus.* v. *Dept. of Labor, Occupational*

Safety & Health Admin., 595 U.S. 109, 119–120 (2022) (*per curiam*) ("This lack of historical precedent, coupled with the breadth of authority that the [Government] now claims, is a telling indication" that its reading of a statute is incorrect (cleaned up)); *Dames & Moore*, 453 U.S. at 669–674 (interpreting IEEPA considering past presidential action); *V.O.S. Selections*, 149 F.4th at 1335 (same).

F. Reading IEEPA's power to "regulate" to include a power to levy tariffs or other surcharges would lead to unconstitutional and absurd results.

The President claims authority to fundamentally upend Congress's longstanding and constitutional power over trade based on no more than the inclusion of the phrase "regulate … importation or exportation" of property included in a 1977 emergency powers statute. 50 U.S.C. § 1702. The power the President claims—to raise or lower tariffs unbounded by any limits on geography, rates, or the types of products covered—far exceeds any authority that Congress has ever granted in a trade statute. Congress does not "hide elephants" (broad tariff authority) "in mouseholes" (a strained and unconstitutional interpretation of the term "regulate"). *Whitman* v. *Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001); accord *V.O.S. Selections*, 149 F.4th at 1343 (Cunningham, J., concurring).

To defend its reading of "regulate," the Administration relies on case law holding Congress may impose tariffs pursuant to Congress's Foreign Commerce Clause authority. Brief for Administration

24–25, 29–30. But whether *Congress* has the power to impose tariffs under the Foreign Commerce Clause is separate and apart from whether Congress *delegated* that authority to the President; any such delegation must be clear and unequivocal, not cryptic or tacit. See *West Virginia*, 597 U.S. at 723; *Biden*, 600 U.S. at 501. And even when Congress does use its power to "regulate" commerce, the power to "regulate" does not include or incorporate the discrete and more limited power to impose tariffs or other surcharges. See *National Federation of Independent Bus.* v. *Sebelius*, 567 U.S. 519, 561–63 (2012) (Affordable Care Act's individual mandate was permissible exercise of Congress's taxation power, even if it could not be sustained under its discrete commerce power); *V.O.S. Selections*, 149 F.4th at 1333 (same).

Further, reading "regulate" to implicitly include the power to impose tariffs would produce untenable results: it would require interpreting the same term differently within the same clause of the statute because exports cannot constitutionally be tariffed, and it could lead to an assertion of broad presidential power to impose tariffs or similar surcharges on many types of cross-border economic transactions.

Consider first the Export Clause problem. The President's novel and expansive interpretation of "regulate" would either violate the consistent usage principle or render IEEPA unconstitutional. *V.O.S. Selections*, 149 F.4th at 1341 (Cunningham, J., concurring). IEEPA confers the power to "regulate" both imports and exports. 50 U.S.C. § 1702(a)(1)(B). Thus, in the President's reading, IEEPA must authorize "tariffs" on exports. *Ibid.* But the Constitution expressly forbids export tariffs. U.S.

Const. Art. I, § 9, cl. 5 ("No Tax or Duty shall be laid on Articles exported from any State."). If "regulate imports" were construed to include imposing tariffs, consistency would require reading "regulate exports" the same way. *V.O.S. Selections*, 149 F.4th at 1341 (Cunningham, J., concurring). This latter scenario would plainly violate the Constitution. See *ibid.*; U.S. Const. Art. I, § 9, cl. 5; *A.G. Spalding & Bros.* v. *Edwards*, 262 U.S. 66 (1923) (taxing exports is "forbidden … by the Constitution"). This Court must avoid an interpretation of the statute that is implausible and unconstitutional. See *Sebelius*, 567 U.S. at 537–538, 574 (courts must construe a statute to save it from unconstitutionality whenever possible); *Edward J. DeBartolo Corp.* v. *Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (same); *National Credit Union Admin.* v. *First Nat. Bank & Trust Co.*, 522 U.S. 479, 501 (1998) ("[S]imilar language contained within the same section of a statute must be accorded a consistent meaning."); *Wisconsin Dept. of Revenue* v. *William Wrigley, Jr.,* Co., 505 U.S. 214, 225 (1992) (similar).

The Administration's position would also lead to absurd results. Congress routinely grants regulatory power with no intention of conferring authority to impose tariffs. *V.O.S. Selections*, 149 F.4th at 1333; see, *e.g.*, Securities Exchange Act of 1934, § 4(a), 15 U.S.C. § 78(d) (SEC's power to regulate); Communications Act of 1934, § 303, 47 U.S.C. § 303(e) (FCC's power to regulate). These are not grants of authority to impose or remove tariffs, and the presumption of consistent usage requires treating the term in IEEPA the same way. *V.O.S. Selections*, *supra*, at 1333; see, *e.g.*, *United States* v. *Penn*, 63 F.4th 1305, 1313 (11th Cir. 2023) (courts "read terms

consistently across multiple statutes on the same subject"; "a legislative body generally uses a particular word with a consistent meaning in a given context" (cleaned up) (citing, *inter alia*, *Erlenbaugh* v. *United States*, 409 U.S. 239, 243–244 (1972))).

The Administration seeks to distinguish the use of the word "regulate" in statutes like the SEC Act from that term's use in IEEPA by arguing the use of "regulate" in these other statutes "does not naturally carry the same inference or have the same pedigree" as the use of "regulate … importation or exportation" in 50 U.S.C. § 1702(b). Brief for Administration 31–32. But the Administration offers no textual basis for this distinction. The word "regulate" does not transform into "tariff" or "surcharge" simply because it appears near "importation" and "exportation." The clear statement rule demands explicit language, not interpretive bootstrapping. See *Whitman*, 531 U.S. at 468.

Further, construing the term "regulate" in IEEPA to include tariff authority would have vast unintended consequences. Section 1702(b) authorizes the President to "regulate" not just "importation or exportation" but also property "acquisition," "transfer," "withdrawal," "transportation," and numerous other transactions involving foreign interests. If "regulate" means impose tariffs for imports, the President may next claim authority to impose surcharges on all these other enumerated activities. See *V.O.S. Selections*, 149 F.4th at 1333. This type of broad Executive Branch power over commerce is precisely what the Framers sought to avoid when they granted Congress, not the President, the authority to "regulate commerce" and to "lay and

collect Taxes, Duties, Imposts and Excises." U.S. Const. Art. 1, § 8, cls. 1, 3.

Rather than equate "regulate" with "tariff" or other surcharges, this Court should construe "regulate ... importation or exportation" in 50 U.S.C. § 1702(b) to mean what the Government consistently used it to do between 1977 and early 2025: to regulate the manner or conditions of imports or exports. With respect to sanctions programs, the most common use of IEEPA, the U.S. Treasury Department has an extensive practice of issuing licenses to individuals and companies to engage in transactions that would otherwise be prohibited by IEEPA sanctions. For example, the Treasury Department has issued regulations permitting Iranians coming to the U.S. to import personal household effects subject to specified conditions, despite a general IEEPA import and export ban on Iran. Similar licenses exist across U.S. sanctions programs, and companies can also apply for individual licenses that would apply only to a specific firm or firms. This decades-long practice confirms what the statutory text requires: IEEPA authorizes the President to control whether and how trade occurs during a declared emergency, not to impose tariffs or other surcharges on it.

G. Courts have repeatedly held that IEEPA's delegation of congressional power to the President must be narrowly construed.

Courts have repeatedly rejected the President's erroneous interpretations of provisions of IEEPA and enjoined his abuses of the statute. These courts have

consistently held that IEEPA's delegation of congressional power should be narrowly construed.

The Fifth Circuit rejected the Treasury Department's contention that the definition of "property" in the same provision of IEEPA at issue here, 50 U.S.C. § 1702, encompassed cryptocurrency "smart contracts" and noted that courts "discharge [their] duty by independently interpreting the statute and effectuating the will of Congress subject to constitutional limits." *Van Loon* v. *Dept. of the Treas.*, 122 F.4th 549, 563 (5th Cir. 2024) (quoting *Loper Bright* v. *Raimondo*, 603 U.S. 369, 395 (2024)) (cleaned up).

In 2020, two federal district courts enjoined the President from using IEEPA to ban distribution of Chinese-owned social media app TikTok, ruling that the ban on TikTok likely exceeded the President's authority under the statute—giving the President no deference despite IEEPA's emergency powers. *TikTok Inc.* v. *Trump*, 507 F. Supp. 3d 92 (D.D.C. 2020); *Marland* v. *Trump*, 498 F. Supp. 3d 624 (E.D. Pa. 2020).

Here, too, "because IEEPA does not authorize the President to impose tariffs, the tariffs that derive from the Challenged Orders are *ultra vires*." *Learning Resources*, 784 F. Supp.3d at 230.

III. The President's use of IEEPA as a trade statute usurps Congress's core constitutional powers.

The Administration attempts to defend its usurpation of Congress's power by arguing that IEEPA tariffs have been essential to negotiating what

the Administration calls trade deals with foreign governments. But IEEPA was never intended to provide the President with the power to enter into trade deals, much less deals that contravene existing law. His effort to use IEEPA for this purpose further usurps Congress's constitutionally committed power.

The President has no independent authority to enter into binding agreements to regulate foreign commerce. See U.S. Const. Art. I, § 8, cl. 3; United States–Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, Pub. L. 118-13, § 2(7), 137 Stat. 63, 64 (2023), codified at 19 U.S.C. § 2112 note ("Article I, section 8, clause 3 of the Constitution of the United States grants Congress authority over international trade. The President lacks the authority to enter into binding trade agreements absent approval from Congress."); *United States* v. *Guy W. Capps Inc.*, 204 F.2d 655, 659 (4th Cir. 1953) (striking down an executive agreement regulating Canadian imports because "the power to regulate interstate and foreign commerce is not among the powers incident to the presidential office"); see also *Youngstown*, 343 U.S. at 585 ("The President's power, if any, … must stem either from an act of Congress or from the Constitution itself.").

IEEPA provides no process or authority to the President to change existing U.S. law, yet the "deals" the Administration has announced appear to contemplate that the United States will raise duties on imports from trade partner countries, which conflicts with statutes implementing trade agreements and tariff rates, including the recently enacted U.S.–Mexico–Canada Agreement. 19 U.S.C. §§ 4501–4732; see also *id.*, § 3521(c).

Nor can the Administration justify the use of IEEPA tariffs to provide it with leverage to negotiate unauthorized trade deals. Relying on *Dames & Moore,* 453 U.S. 654, the Administration contends that "IEEPA permits using property to 'serve as a 'bargaining chip' to be used by the President when dealing with a hostile country'." Brief for Administration 40. But in *Dames & Moore*, the President nullified attachments and transferred frozen Iranian government assets—actions the Court found were both explicitly authorized by IEEPA and involved foreign property already under presidential control. 453 U.S. at 673. Tariffs are not foreign assets that can be controlled by the President. Tariffs are paid by American importers, subject to Congress's control over revenue and expenditures. And the President's tariffs are applied to imports from the United States' closest allies, who are sworn to defend the United States if we are under attack and with whom we jointly share high level intelligence—hardly "hostile countr[ies]." See Brief for Administration 40 (quoting *Dames & Moore*, *supra*, at 673).

The President's use of IEEPA for tariffs exceeds not only the statute's scope but also constitutional limits. Power over "Taxes, Duties, Imposts and Excises" and "Commerce with foreign nations" are core Congressional prerogatives. "The question here is not whether something should be done; it is who has the authority to do it"—and how. *Biden*, 600 U.S. at 501.

Since the Nation's founding, Congress has exercised its constitutional responsibility over trade. The very first U.S. Congress enacted the Tariff Act of 1789, 1 Stat. 24, within its first months of existence. Since then, Congress has enacted thousands of pages

of trade and tariff statutes. In recent decades alone, Congress has approved 16 trade agreements with trading partners (including 14 still in force) and provided the President with a specific negotiating mandate for all but one. Zirpoli, Congressional and Executive Authority Over Foreign Trade Agreements, Congressional Research Service, Sept. 25, 2025. These include the U.S.–Mexico–Canada Agreement, 19 U.S.C. §§ 4501–4732, which President Trump negotiated and which Congress enacted in 2020. Congress has also enacted a series of tariff preference programs to promote trade and economic development.[4]

The President's claim that IEEPA allows him to impose or remove sweeping tariffs—even in the absence of any grant of authority from Congress—threatens to undermine the tariff and trade law architecture that Congress has constructed through these and other laws. These unlawful IEEPA tariffs do not merely modify the statutory tariffs Congress has promulgated and approved—they have "abolished them and supplanted them with a new regime entirely," *Biden*, 600 U.S. at 496 (cleaned up)—and have done so in the absence of any statutory delegation of power by Congress.

---

[4] See, *e.g.*, the African Growth and Opportunity Act, 19 U.S.C. §§ 3701–3741; Caribbean Basin Economic Recovery Act, *id.*, §§ 2701–2707; Caribbean Basin Trade Partnership Act of 2000, *id.*, §§ 2701–2707; Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act of 2006, *id.*, § 2703A; Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. 114-125, 130 Stat. 122.

The President's actions are not consistent with the lawful power Congress granted in IEEPA in 1977 nor America's constitutional structure. If the President believes that imposing, removing, or amending tariffs are an appropriate policy measure, Congress has given him tools to pursue those goals.[5] But IEEPA is not one of them.

CONCLUSION

The Court should hold that IEEPA does not authorize tariffs.

Respectfully submitted,

JENNIFER HILLMAN
PETER HARRELL
GEORGETOWN UNIVERSITY LAW CENTER

WILLIAM FRED NORTON
JOSEPHINE K. PETRICK
Counsel of Record
NATHAN L. WALKER
CELINE G. PURCELL
EMILY KIRK
THE NORTON LAW FIRM PC

October 24, 2025

[5] *Amici* take no position as to whether any of the other statutes discussed herein would permit the tariffs at issue. That is a question for another day.

APPENDIX OF AMICI