No. 24-1287

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.

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

RESPONSE BRIEF FOR PETITIONERS LEARNING RESOURCES, INC. AND HAND2MIND, INC.

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QUESTION PRESENTED

The International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq*. ("IEEPA") permits the President, upon a valid emergency declaration, 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[.]" *Id*. § 1702(a)(1)(B). Until now, no President in IEEPA's nearly 50-year history has ever invoked it to impose tariffs—let alone the sweeping worldwide tariffs imposed pursuant to the executive orders challenged here.

The question presented is:

Whether IEEPA authorizes the President to impose tariffs.

PARTIES TO THE PROCEEDINGS

Petitioners (Plaintiffs-Appellees below) are Learning Resources, Inc., and hand2mind, Inc.

Respondents (Defendants-Appellants below) are Donald J. Trump, President of the United States, in his official capacity; Kristi Noem, Secretary of the Department of Homeland Security, in her official capacity; United States Department of Homeland Security; Scott Bessent, Secretary of the Treasury, in his official capacity; United States Department of the Treasury; Howard W. Lutnick, Secretary of Commerce, in his official capacity; United States Department of Commerce; Pete Flores, Acting Commissioner of Customs & Border Protection, in his official capacity; United States Customs and Border Protection; Jamieson Greer, U.S. Trade Representative, in his official capacity; and Office of the United States Trade Representative.

RULE 29.6 STATEMENT

Petitioners Learning Resources, Inc. and hand2mind, Inc. are private, family-owned corporations. Learning Resources, Inc. and hand2mind, Inc. have no parent corporation or publicly held corporation that owns 10% or more of either entity's stock.

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INTRODUCTION

Asserting authority under the International Emergency Economic Powers Act ("IEEPA"), the President with the stroke of a pen increased the Nation's effective tariff rate tenfold to the highest it has been since at least World War II. In the months since, he has raised and lowered, paused and resumed, and threatened and unthreatened tariffs at will, for a grab bag of reasons. By the government's own account, those actions amount to an over $3 *trillion* tax increase on Americans over the next decade.

IEEPA does not give the President such vast unilateral power. Indeed, it does not give the President any taxing or tariffing power. Despite being the "most frequently cited emergency authority," Gov't Br. 37—invoked 69 times since its enactment in 1977—"no President until now has ever invoked [IEEPA]—or its predecessor [statute]—to impose tariffs." Pet.App.27a.[1] Yet the current President has used IEEPA to impose sweeping tariffs that rewrite U.S. trade laws and reshape the national economy.

The Framers understood that taxation is a potent power that can destroy the taxed as it fills the sovereign's coffers. The Constitution vests that extraordinary power exclusively in the branch of government considered most responsive to the citizenry: Congress. This Court should not lightly assume that Congress abdicated its core taxing power to permit the President to tax Americans with

[1] Unless otherwise indicated, "Pet.App." citations are to the appendix to the petition for certiorari before judgment in No. 24-1287.

virtually no limits. When Congress *has* delegated its taxing power, it has done so clearly—as numerous laws in Title 19 of the United States Code (governing "Customs Duties") confirm—with well-defined limits on its exercise. The Government cannot escape that history by conflating the delegation of *Article I* taxing power with the President's *Article II* foreign-affairs power. After all, the President has no "inherent" taxing authority—even in times of national emergency. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 636 (1952) (Jackson, J., concurring).

Against that backdrop, the Government concedes that the only possible textual basis for tariffs in IEEPA is a reference to the generic power to "regulate *** importation or exportation." But the Government cannot find a single other example where Congress delegated taxing authority through the word "regulate," much less the phrase "regulate *** importation or exportation." IEEPA's history proves the opposite here: Until 1941, the operative provision in IEEPA's predecessor statute authorized the President to "regulate" certain "exports," not imports. That precluded a construction by which "regulate" includes taxes because the Constitution explicitly prohibits taxing exports. When Congress amended the provision after Pearl Harbor to the current text ("regulate *** importation or exportation"), it could not have intended to redefine "regulate" to sweep in the distinct taxing power—and thereby embed a constitutional defect with respect to exports. The word "regulate" is not a "chameleon" that means one thing when applied to imports and another thing when applied to exports (or every other object of the

provision). Worse than violating the presumption that words carry consistent meanings throughout the *same statute*, the Government's protean definition ascribes different meanings to a single use of the *same word*.

Fortunately, the better reading avoids these problems. To "regulate *** importation or exportation" contemplates traditional forms of control over the quality and quantity of imports and exports. But it does not permit the President to levy tariffs.

For the same reason, the district court had jurisdiction over this case. The Court of International Trade ("CIT") possesses exclusive jurisdiction over only those civil actions "arising out of" a law "providing for *** tariffs." But this case arises out of IEEPA—the only substantive law underlying each of Plaintiffs' claims and the only law that must be interpreted to decide Plaintiffs' claims. And IEEPA does not provide for tariffs.

This Court should hold the IEEPA tariffs unlawful, and finally put an end to the unprecedented and unrelenting tax burden on Americans.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions of the U.S. Constitution and key statutes are reproduced in the appendix to this brief. App., *infra*, 1a-8a.

STATEMENT OF THE CASE

A. Background

1. The Constitution Grants Congress The Exclusive Power To Set Tariff Policy

The imposition of tariffs is a distinctly legislative power that the Constitution assigns exclusively to Congress. U.S. CONST. art. I, § 8, cl. 1 ("Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises[.]"). The Framers believed it essential to vest the power to tax and tariff in Congress to guard against the threat of despotism. The power to tax is "the most complete and effectual weapon" with which a branch of government could be armed, FEDERALIST NO. 58 (Madison), because it combines the power to enrich with the power to destroy. The Framers thus made the branch of government they considered most responsive to the Nation's diverse constituencies—Congress—"the guardian of this treasure." 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1342, at 213-214 (1833).

For over a century, Congress did not delegate its tariffing power at all. Starting in the twentieth century, Congress began to do so in a series of explicit statutory enactments (all codified in Title 19, titled "Customs Duties") that carefully constrain the President's tariff authority. *See, e.g.*, 19 U.S.C. §§ 1323, 1332a(b), 1336, 1338, 1671-1671f, 1673-1673h, 1675, 1821, 1862(a), 1981, 2111, 2114d, 2132(a), 2134, 2135, 2251-2254, 2411-2419, 2492, 2902, 3521, 3803, 4031, 4032, 4063, 4082, 4513. For example:

- Section 122 of the Trade Act of 1974 authorizes the President to impose "duties" on imports "to deal with large and serious United States balance-of-payments deficits"—but "not to exceed 15 percent" and expiring after 150 days absent congressional legislation, 19 U.S.C. § 2132(a);
- Section 201 of the Trade Act authorizes the President to "take all appropriate and feasible action within his power," including imposing a "duty"—but the U.S. International Trade Commission must first make a finding that imports are causing or threatening "serious injury" to a domestic industry, and the President cannot "increase a rate of duty to (or impose a rate) which is more than 50 percent" above the existing rate, 19 U.S.C. § 2253(a)(1)(A), (3)(A), (e)(3);
- Section 301 authorizes the President to direct the U.S. Trade Representative to "impose duties" on countries responsible for unfair trade practices—but the Trade Representative must first initiate an investigation, consult with the foreign country, publish the proposed action and factual findings on which it is based, and allow for public comment, 19 U.S.C. §§ 2411(a), (c)(1)(B), 2412, 2413, 2414; and
- In a series of statutes, Congress authorized the President to enter into

> trade agreements and modify duty rates if he determines that "existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States"—but in each instance Congress capped the amount and duration of that tariff modification authority, 19 U.S.C. §§ 1821, 2111, 2134, 2902, 3803.

Such specific, discrete, and delimited statutory authorizations illustrate the President's circumscribed role with respect to tariffs. Absent congressional authorization, "the President [cannot] increase or decrease tariffs." *Consumers Union of U.S., Inc. v. Kissinger*, 506 F.2d 136, 142-143 (D.C. Cir. 1974).

2. IEEPA Allows The President To Exercise Specified Powers To Impose Sanctions On Foreign Interests

Under IEEPA, 50 U.S.C. § 1701(a), when the President declares a national emergency with respect to an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States," the President may use the powers granted in section 1702 to "deal with" that threat. Section 1702 provides, in relevant part, that the President may

> 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[.]

50 U.S.C. § 1702(a)(1)(B).

Since its enactment in 1977, Presidents have invoked IEEPA to address specific threats from specific foreign countries and persons by imposing targeted sanctions and other non-revenue-raising restrictions. For instance, President Carter relied on IEEPA to "order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States" in response to the Iranian hostage crisis.[2] President Reagan prohibited imports and exports with Nicaragua in response to the Sandinista government's support of terrorism and human rights violations.[3] Currently, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") maintains comprehensive IEEPA sanctions against Iran, North Korea, and the Crimea, Donetsk, and Luhansk Regions of Ukraine.

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[2] Exec. Order No. 12,170, 44 Fed. Reg. 65,729, 65,729 (Nov. 14, 1979).

[3] *See* Exec. Order No. 12,513, 50 Fed. Reg. 18,629 (May 1, 1985).

Presidents have also used IEEPA to sanction foreign persons in identified geographical areas,[4] or foreign persons engaged in proscribed activities regardless of nationality or geographic location.[5] Such sanctions have included blocking access to assets, preventing utilization of U.S. financial systems or credit, excluding designated persons from the United States, and prohibiting U.S. persons from engaging in transactions with designated persons. The government has also relied on IEEPA to issue licenses that allow companies to engage in otherwise prohibited activities, such as licensing a U.S. oil company's importation of oil from Venezuela despite a general ban on such imports.[6]

Before February 1, 2025, however, no President had ever invoked IEEPA to impose a single tariff. Pet.App.27a.

3. The President Bypasses Congress To Impose Tariffs Through IEEPA

President Trump nevertheless has claimed a unilateral power to impose (and withdraw and re-impose) expansive tariffs under IEEPA. Two sets of executive orders are at issue in this case.

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[4] *E.g.*, Exec. Order No. 13,219, 66 Fed. Reg. 34,777 (Jun. 26, 2001).

[5] *E.g.*, Exec. Order No. 13,581, 76 Fed. Reg. 44,757 (Jul. 24, 2011).

[6] *See* OFAC, General License No. 41 (Nov. 26, 2022), https://ofac.treasury.gov/media/929531/download?inline.

i. The China Trafficking Orders

On February 1, 2025, the President issued an executive order imposing 10% tariffs on China pursuant to "section 1702(a)(1)(B) of IEEPA." Exec. Order No. 14,195, § 1, 90 Fed. Reg. 9,121, 9,122 (Feb. 1, 2025). That order asserted that China had "fail[ed] to stem the ultimate source of many illicit drugs distributed in the United States." *Id*. at 9,121. One month later, the President raised the tariffs from 10% to 20% based on his determination that China "ha[d] not taken adequate steps to alleviate the illicit drug crisis through cooperative enforcement actions." Exec. Order No. 14,228, § 1, 90 Fed. Reg. 11,463, 11,463 (Mar. 3, 2025). Then, a month after that, he ordered the elimination of duty-free *de minimis* treatment for goods subject to these tariffs, ignoring a congressionally enacted statutory program that had permitted duty exemptions for imported goods valued at less than $800. Exec. Order No. 14,256, 90 Fed. Reg. 14,899 (Apr. 2, 2025).

ii. The Reciprocal Tariff Orders

On April 2, 2025, the President took an even more dramatic step under IEEPA, imposing on virtually all trading partners "reciprocal" tariffs consisting of (i) a 10% universal tariff and (ii) higher country-specific tariffs ranging from 11% to 50%. Exec. Order No. 14,257, 90 Fed. Reg. 15,041 (Apr. 2, 2025). Since then, the President has "repeatedly amended the China-specific Reciprocal Tariff rate." VOS.Pet.App.8a.

On April 8, 2025, the President responded to retaliatory tariffs from China by raising the reciprocal

tariff rate on China by 50 percentage points—from 34% to 84%. Exec. Order No. 14,259, 90 Fed. Reg. 15,509 (Apr. 8, 2025). The next day, the President suspended for 90 days the higher country-specific tariffs on all countries except for China, for which he raised the reciprocal tariff again—from 84% to 125%. Exec. Order No. 14,266, §§ 2, 3, 90 Fed. Reg. 15,625, 15,626 (Apr. 9, 2025). Meanwhile, the 20% trafficking tariff on imports from China remained in place, such that most imports from China faced a minimum 145% IEEPA tariff. *Id*.

Starting May 14, President Trump paused the country-specific tariff on China for a period of 90 days, until August 12, 2025. Exec. Order No. 14,298, 90 Fed. Reg. 21,831, 21,831-21,832 (May 12, 2025). On August 11, the President extended the pause to November 10, 2025. Exec. Order No. 14,334, 90 Fed. Reg. 39,305, 39,305-39,306 (Aug. 11, 2025).

The universal 10% tariff and 20% trafficking tariff remain in effect, for a current (at least at the moment of this filing) IEEPA tariff of 30% on imports from China.

4. IEEPA Tariffs Have Seismic Economic Consequences, Including For Plaintiffs

The President described the day he announced the IEEPA reciprocal tariffs orders as "one of the most important days in American history."[7] It was indeed

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[7]Aimee Picchi, *Trump reveals these 2 new types of tariffs on what he calls "Liberation Day,"* CBS NEWS (Apr. 2, 2025). https://www.cbsnews.com/news/liberation-day-trump-tariffs-explained/.

a consequential one. Because tariffs are paid primarily by American businesses (and ultimately American consumers), not foreign governments, the IEEPA tariffs have equated to the largest peacetime tax increase in American history.[8]

The United States imports trillions of dollars of goods every year, with imports in 2024 topping $3 trillion ($439 billion of which came from China).[9] Just a 10% across-the-board tariff thus imposes roughly $300 billion annually in new taxes. Accordingly, the Congressional Budget Office estimates that the tariffs will reduce primary federal deficits by $3.3 trillion over ten years.[10] *See* Gov't Br. 11. Put another way, the Government expects to raise $3.3 trillion in taxes from IEEPA tariffs alone.

Since January, the tariff onslaught has caused "the nation's overall average effective tariff rate" to jump from "2.5 percent" to "around 27 percent"—more

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[8] Eric Boehm, *Peter Navarro Says Tariffs Will Be a $6 Trillion Tax Increase, but Also a Tax Cut*, REASON MAG. (Mar. 31, 2025), https://reason.com/2025/03/31/peter-navarro-says-tariffs-will-be-a-6-trillion-tax-increase-but-also-a-tax-cut/.

[9] Ken Roberts, *2024 Trade Tops $5 Trillion, Exports Top $2 Trillion, Imports Above $3 Trillion*, FORBES (Feb. 5, 2025), https://www.forbes.com/sites/kenroberts/2025/02/05/2024-trade-tops-5-trillion-exports-top-2-trillion-imports-above-3-trillion/; *China Trade Summary*, OFF. OF THE U.S. TRADE REPRESENTATIVE, https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china (last visited Oct. 15, 2025).

[10] *See* Phill Swagel, *An Update About CBO's Projections of the Budgetary Effects of Tariffs*, CONG. BUDGET OFF. (Aug. 22, 2025), https://www.cbo.gov/publication/61697 (noting that $0.7 trillion of the $4 trillion figure comes from interest savings).

than a tenfold increase and "the highest for the U.S. in more than a century."[11] All told, the newly imposed IEEPA tariffs are projected to amount to an average tax increase of $1,000 to $2,300 per American household in 2025,[12] and equate to a 15% increase in the corporate income tax rate.[13]

American businesses—especially small to midsize firms—are bearing the brunt. "[W]ith trade policy living on three-to-six-month cycles[,] *** business planning [is] a nightmare."[14] And smaller

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[11] Sudeep Reddy, *Reality Check: What Trump's Supposed Retreat Really Means in a Historic Trade* War, POLITICO (Apr. 10, 2025), https://www.politico.com/news/magazine/2025/04/10/tariff-reality-check-trump-retreat-00285270.

[12] Erica York & Alex Durante, *Trump Tariffs: Tracking The Economic Impact of the Trump Trade War*, THE TAX FOUND. (Oct. 10, 2025), https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/; *State of U.S. Tariffs: May 12, 2025*, THE BUDGET LAB (May 12, 2025), https://budgetlab.yale.edu/research/state-us-tariffs-may-12-2025.

[13] Lysle Boller et al., *The Economic Effects of President Trump's Tariffs,* PENN WHARTON: BUDGET MODEL (updated Apr. 16, 2025), https://budgetmodel.wharton.upenn.edu/issues/2025/4/10/economic-effects-of-president-trumps-tariffs.

[14] Ben Berkowitz, *The only trade certainty is uncertainty*, AXIOS (June 13, 2025), https://www.axios.com/2025/06/13/trump-tariffs-uncertainty.

businesses are being pummeled to the brink of bankruptcy.[15]

Plaintiffs, two family-owned American businesses under common control and now in their fourth generation, are not immune. Their award-winning experiential educational products are found in toy closets and classrooms across the country. With the mission to "bring learning to life," Plaintiffs seek to help younger children develop verbal, counting, and fine motor skills, and introduce older children to science, technology, engineering, and math. Plaintiffs, headquartered in Vernon Hills, Illinois, and employing over 500 people in the United States, develop their products domestically but manufacture most products abroad (primarily China). Pet.App.54a. The IEEPA tariff rates have been "so high as to effectively prevent importation" from China, Pet.App.13a—presenting an "existential threat to their businesses," Pet.App.37a.

B. Procedural History

1. The District Court Action

On April 22, 2025, Plaintiffs sued in district court to challenge the President's authority to impose the IEEPA tariffs. The Government moved to transfer the case to the CIT under 28 U.S.C. § 1581(i)(1), which gives that court exclusive jurisdiction over "any civil action commenced against the United States, its

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[15] *E.g.*, *'A Matter of Survival': Small Businesses Speak Out on Tariffs*, U.S. CHAMBER OF COM. (updated Oct. 1, 2025), https://www.uschamber.com/small-business/american-workers-businesses-consumers-trade-tariffs.

agencies, or its officers, that arises out of any law of the United States providing for *** tariffs[.]" Plaintiffs moved for a preliminary injunction and opposed transfer on the ground that IEEPA is not a "law of the United States providing for *** tariffs."

On May 29, after a hearing, the district court granted a preliminary injunction limited to Plaintiffs, finding they had shown both a likelihood of success and irreparable harm. On the former, the district court held that IEEPA does not authorize the President "to unilaterally impose, revoke, pause, reinstate, and adjust tariffs to reorder the global economy," Pet.App.4a—meaning both that the district court had jurisdiction and that the challenged IEEPA tariffs were unlawful, Pet.App.18a-37a. On the latter, the district court determined that Plaintiffs were suffering multiple forms of severe and unrecoverable losses. Pet.App.37a-39a. The court further found that the balance of harms and public interest weighed in Plaintiffs' favor. Pet.App.40a-43a.

The district court nevertheless stayed its injunction pending appeal, Pet.App.44a-45a, and that stay remains in effect.

2. The CIT Actions

As litigation unfolded in the district court, the CIT concurrently considered challenges to the IEEPA tariffs. One day before the district court issued its decision in this case, the CIT accepted the parties' uncontested submission that it had exclusive jurisdiction over actions challenging the IEEPA tariffs. VOS.Pet.App.139a. As to the merits, the CIT assumed that IEEPA may authorize some tariffs but

concluded the challenged tariffs were unlawful, granted the plaintiffs summary judgment, and issued a nationwide injunction. *Id*. at 196a.

After staying the injunction pending appeal, on August 29, the *en banc* Federal Circuit issued a decision holding the challenged tariffs unlawful. VOS Pet.App.3a. "Although no party *** question[ed] [its] jurisdiction," the Federal Circuit held that the CIT had exclusive jurisdiction over challenges to the IEEPA tariffs. *Id.* at 21a, 25a, 45a. As to the merits, the Federal Circuit concluded that IEEPA did not authorize the executive orders, reasoning that the phrase "regulate *** importation" evinced no clear congressional authorization for the challenged tariffs. *Id.* at 31a-38a (quoting 50 U.S.C. § 1702(a)(1)(B)). Although the majority did not foreclose the possibility that IEEPA could authorize other tariffs, four judges concurred on the ground that IEEPA provides no tariffing authority whatsoever. *Id.* at 48a. The stay of the CIT's injunction, however, remains in effect. *See id.* at 10a; *see also* Order, *V.O.S. Selections Inc. v. Trump*, No. 25-1812 (Fed. Cir. Aug. 29, 2025), ECF No. 161.

C. Post-Decision Tariff Actions

Despite being subject to multiple federal court decisions concluding that he lacks power under IEEPA to impose the challenged tariffs, the President has continued to rely on IEEPA to impose new, or increase existing, tariffs. Effective in August, over a month after the district court and CIT decisions, the President increased the tariff on Canada to 35% (from 25%), increased certain reciprocal tariff rates, and

imposed an additional 40% tariff on Brazil (partly due to the President's disagreement with judicial proceedings against Brazil's former president).[16] In September, after the Federal Circuit's *en banc* decision, the President expanded reciprocal tariffs to reach new products.[17] On October 10, the President announced his intent to impose an *additional 100%* tariff on China, effective November 1 (or sooner if the President so decrees).[18]

While the President and members of his cabinet have warned of "country-killing" consequences should this Court conclude IEEPA does not authorize tariffs, Gov't Br. 2, the same cabinet members have elsewhere contradicted such hyperbole. They have acknowledged that there exist "lots of other authorities that the president can use" to impose tariffs—even if, in their view, those tools are "not as efficient, not as powerful" as the unlimited powers claimed under IEEPA.[19]

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[16] *See* Exec. Order No. 14,325, 90 Fed. Reg. 37,957 (July 31, 2025); Exec. Order No. 14,326, 90 Fed. Reg. 37,963 (July 31, 2025); Exec. Order No. 14,323, 90 Fed. Reg. 37,739 (July 30, 2025).

[17] Exec. Order No. 14,346, 90 Fed. Reg. 43,737 (Sept. 5, 2025).

[18] Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Oct. 10, 2025, at 4:50 PM), https://truthsocial.com/@realDonaldTrump/posts/115351840469973590.

[19] Interview with Howard Lutnick, Secretary of Commerce at 06:08, CNBC Squawk Box (Sept. 5, 2025), https://www.cnbc.com/video/2025/09/05/watch-cnbcs-full-

Less than a year into his second term, President Trump has pursued numerous policy goals by relying on delegations of tariffing power under statutes other than IEEPA. Utilizing both Section 232 of the Trade Expansion Act of 1961 and Section 301 of the Trade Act of 1974, the President has initiated investigations into semiconductors and semiconductor manufacturing equipment (April 1, 2025); processed critical minerals and derivative products (April 22, 2025); commercial aircraft and jet engines (May 1, 2025); polysilicon and its derivatives (July 1, 2025); unmanned aircraft systems and their parts and components (July 1, 2025); Brazil's acts, policies, and practices related to digital trade and electronic payment services, unfair preferential tariffs, anti-corruption enforcement, intellectual property protection, ethanol market access, and illegal deforestation (July 15, 2025); wind turbines (August 13, 2025); personal protective equipment, medical consumables, and medical equipment, including devices (September 2, 2025); and robotics and industrial machinery (September 2, 2025).

The President, moreover, already has imposed new Section 232 tariffs impacting multiple industries (in addition to the massive Section 301 China tariffs

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interview-with-commerce-secretary-howard-lutnick.html; *see also* Andrea Shalal & Jeff Mason, *Bessent expects Supreme Court to uphold legality of Trump's tariffs but eyes Plan B*, REUTERS (Sept. 1, 2025), https://www.reuters.com/legal/government/bessent-expects-supreme-court-uphold-legality-trumps-tariffs-eyes-plan-b-2025-09-01/ (Treasury Secretary Bessent: "there are lots of other authorities that can be used" to impose tariffs).

still in effect from his first term). The President has implemented increases to the scope and duty rate imposed on steel products, aluminum products, and their derivatives (March 12, June 4, and June 16, 2025).[20] He imposed new tariffs on automobiles (April 3, 2025), auto parts (May 3, 2025), and copper (August 1, 2025).[21] Effective October 14, the President decreed 10% tariffs on softwood timber and lumber products, 25% tariffs on upholstered wooden furniture (increasing to 30% on January 1, 2026), and 25% tariffs on kitchen cabinets and bathroom vanities (increasing to 50% on January 1, 2026).[22] The President has also announced new tariffs on medium- and heavy-duty vehicles, effective November 1.[23] *See also* David J. Lynch, *Trump pushes definition of national security to expand tariffs on goods*, WASH. POST (Oct. 5, 2025) ("Including his first term, Trump

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[20] Proclamation No. 10896, 90 Fed. Reg. 9,817, 9,822-9,826 (Feb. 10, 2025); Proclamation No. 10895, 90 Fed. Reg. 9,807, 9,810-9,814 (Feb. 10, 2025).

[21] Proclamation No. 109081, 90 Fed. Reg. 14,705, 14,706-14,707 (Mar. 26, 2025); Proclamation No. 10962, 90 Fed. Reg. 37,727, 37,729-37,730 (July 30, 2025).

[22] Proclamation No. 10976, 90 Fed. Reg. 48,127, 48,129-48,130 (Sept. 29, 2025).

[23] Proclamation, Adjusting Imports of Medium- and Heavy-Duty Vehicles, Medium- and Heavy-Duty Vehicle Parts, and Buses into the United States, THE WHITE HOUSE (Oct. 17, 2025), https://www.whitehouse.gov/presidential-actions/2025/10/adjusting-imports-of-medium-and-heavy-duty-vehicles-medium-and-heavy-duty-vehicle-parts-and-buses-into-the-united-states/.

has employed Section 232 19 times, far more than any of his predecessors.").[24]

None of those tariff actions relies on IEEPA.

SUMMARY OF ARGUMENT

I. IEEPA does not authorize tariffs. In the five decades since Congress enacted IEEPA, no President until now has invoked that law (or its predecessor) when imposing tariffs. That is no surprise: Unlike every actual tariff statute, IEEPA nowhere mentions "tariffs," "duties," or any other revenue-raising mechanism.

The only conceivable textual hook in IEEPA for the power to tariff is the reference to "regulate *** importation or exportation." 50 U.S.C. § 1702(a)(1)(B). But Congress has never authorized taxing or tariffing using the term "regulate" alone or in combination with "importation" (and certainly not with "importation or exportation"). Congress understands the unique potency of its taxing power. The Framers vested that extraordinary power in the branch considered most responsive to the citizenry, and Congress (pursuant to this Court's direction) has guarded it jealously through clear and limited delegations only.

Locating a delegation of tariffing power in the generic verb "regulate," with no substantive limits, would be a stark deviation from that practice. In fact, if "regulate" means (or includes) "tax," empowering the President to "regulate *** importation or exportation"

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[24] https://www.washingtonpost.com/business/2025/10/04/trump-tariffs-national-security/?_pml=1.

would violate the Constitution's express prohibition on export taxes. U.S. CONST. art. I, § 9, cl. 5. That is an impermissible construction, and the Government offers no coherent response. Other statutory context likewise confirms that the power to "regulate *** importation or exportation" does not include the power to tax those activities. None of the verbs surrounding "regulate" in section 1702(a)(1)(B) connotes taxing authority.

Nor is there any evidence in the statutory history of IEEPA, or its predecessor Trading with the Enemy Act ("TWEA"), that Congress intended to grant the President unbounded power to impose tariffs. When the term "regulate" originally appeared in TWEA's operative provision, it modified "export" but not "import." From the start, then, interpreting "regulate" to include "tax" would have been unconstitutional.

If there were any doubt, concerns underlying the "major questions" and nondelegation doctrines should eliminate it. Congress does not (and could not) use such vague terminology to grant the Executive virtually unconstrained taxing power of such staggering economic effect—literally trillions of dollars—shouldered by American businesses and consumers. That IEEPA operates upon a President's declaration of a "national emergency" does not justify the Government's anything-goes construction, especially when it comes to the core Article I taxing power.

II. The district court, not the CIT, had jurisdiction over Plaintiffs' case. The CIT has exclusive jurisdiction over a civil action arising under

federal law only (in pertinent part) if it "arises out of any law of the United States providing for *** tariffs." 28 U.S.C. § 1581(i)(1)(B). This action "arises out of" IEEPA, which is the only substantive law underlying each of Plaintiffs' claims and the only law a court must interpret to decide this case. This action does not arise out of the executive orders purporting to modify the Harmonized Tariff Schedule of the United States ("HTSUS"), which no court has had any reason to construe. Those executive orders lack the requisite "authority of law" and thus do not constitute "law[s] of the United States providing for *** tariffs."

ARGUMENT

I. IEEPA DOES NOT AUTHORIZE TARIFFS

A. The Plain Meaning Of "Regulate *** Importation or Exportation" Does Not Entail A Tariffing Power

1. Congress Has Never Authorized A Tariff Or Tax Via The Word "Regulate"

This Court "begins with the text" of IEEPA. *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 583 U.S. 366, 378 (2018). The ordinary meanings of "tariff" and "regulate" are distinct. To tariff is to impose taxes—that is "duties or customs"—"on imports or exports." *Tariff*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1454 (1973); *see* CHRISTOPHER A. CASEY, CONG. RSCH. SERV., IF11030, U.S. TARIFF POLICY: OVERVIEW 1 (2025) ("A tariff is a tax levied on imported goods and services."). [25] "[T]he essential

[25] https://www.congress.gov/crs-product/IF11030.

feature of any tax" is that "[i]t produces at least some revenue[.]" *NFIB v. Sebelius*, 567 U.S. 519, 564 (2012). Regulation does not share that "essential feature," even though taxation often has a regulatory purpose or effect. To regulate instead means to "'[c]ontrol by rule' or 'subject to restrictions.'" *Regulate*, THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 943 (6th ed. 1976); *see also Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 697 (2022) ("[T]o *regulate* something is usually understood to mean to 'fix the time, amount, degree, or rate' of an activity 'according to the rule[s].'" (quoting *Regulate*, WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1913 (1986)) (second alteration in original)).

Consistent with those definitions, nobody disputes that the tariffing power is a subset of the taxing power. The Constitution expressly confers on Congress the power to levy taxes and tariffs (or duties) in the same clause: "Power To lay and collect Taxes, Duties, Imposts and Excises[.]" U.S. CONST. art. I, § 8, cl. 1. As Chief Justice Marshall recognized, tariffing is thus "a branch of the taxing power," not "of the power to regulate commerce." *Gibbons v. Ogden*, 22 U.S. (9 Wheat) 1, 201 (1824) ("We must first determine whether the act of laying 'duties or imposts on imports' *** is considered in the constitution as a branch of the taxing power, *or* of the power to regulate commerce. We think it is very clear, that it is considered as a branch of the taxing power." (emphasis added)). The Government (citing *Gibbons* itself) takes the view that tariffing can *also* arise from the commerce power, even though *Gibbons* describes it as "entirely distinct" from the taxing power. *Id.*; *see* Gov't Br. 24 (referring to the

"right to regulate commerce, even by the imposition of duties" (quoting 22 U.S. at 202)). Whatever the merits of that debate, there is no dispute that the Constitution vests Congress alone with the tariffing power (however derived). So the key question here is how Congress delegates that special taxing power to the Executive Branch—and whether IEEPA meets that threshold.

As history bears out, IEEPA's power to "regulate *** importation or exportation" gives the President the power to control the flow of goods coming into and leaving the country, such as by restricting their quantity or quality and requiring inspections or quarantines. *E.g.*, CHRISTOPHER A. CASEY & PAUL K. KERR, CONG. RSCH. SERV., R46814, THE U.S. EXPORT CONTROL SYSTEM AND THE EXPORT CONTROL REFORM ACT OF 2018 (2021).[26] It also gives the President the power to establish certain traditional licensing regimes, as supported by IEEPA's express reference to the President's power to act "by means of *** licenses," to implement such import or export controls. 50 U.S.C. § 1702(a); *e.g.*, Casey & Kerr, *supra* (Export Administration Regulations, authorized for a time by IEEPA, establish licensing policies and conditions for dual-use and certain defense articles).

A congressional grant of power to "regulate," however, has *never* authorized the President to impose taxes. Indeed, despite countless delegations of regulatory authority in the U.S. Code, the Government cannot cite a single other example where

[26] https://www.congress.gov/crs-product/R46814.

the word "regulate" delegates authority to tax or tariff. The Government contends that "regulate" may carry different connotations in different contexts, *see* Br. 39, but it cannot explain why IEEPA is the *only* place in the U.S. Code where the power to "regulate" encompasses the power to "tax."

Tellingly, when Congress has sought to confer both the authority to regulate and the authority to tax in a single statute, it has named the two as individually distinct powers. *See, e.g.*, 49 U.S.C. § 40117(j) (state actors may not "*tax*, *regulate*, or prohibit *** the imposition or collection of a passenger facility charge or the use of the revenue from the passenger facility charge" (emphasis added)); 16 U.S.C. § 460bbb-9(a) (specifying state still had power "to *tax* *** private property on the lands and waters included in the recreation area, or to *regulate* the private lands within the recreation area" (emphasis added)); *see also* 2 U.S.C. § 622(8)(B)(1) ("government-sponsored enterprise" does not have "power to *tax* or to *regulate* interstate commerce" (emphasis added)). The Communications Act of 1934 thus gives the FCC the power to "regulat[e]" communication carriers, on the one hand, and impose taxes on such carriers in support of a "universal service" fund, on the other. *Compare* 47 U.S.C. § 201(b), *with* 47 U.S.C. § 254(d). If the power to "regulat[e]" already encompassed the power to tax, the FCC could ignore key "limiting principles" found solely in the latter provision that circumscribe its power to raise revenue—principles this Court just last term considered crucial to uphold the Act. *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482,

2502-2504, 2507 (2025); *see* 47 U.S.C. § 254(b)(5), (d), (e).

The Government suggests that "regulate" specially includes "tax" when "paired with 'importation'" because imposing tariffs "is a traditional and commonplace way to regulate importation." Br. 31. But if that were so, it is odd that the phrase has nowhere else been construed to delegate an authority to tax imports. *E.g.*, 7 U.S.C. § 7711(c)(1) ("The Secretary may issue *regulations* to allow the *importation*, entry, exportation, or movement in interstate commerce of specified plant pests[.]" (emphases added)). It is also odd that Congress has never used the term "regulate" to delegate the power to "tax" in the section of the U.S. Code titled "Customs Duties." *E.g.*, 19 U.S.C. § 1434(c)(1) (authorizing Treasury "by *regulation*" to "prescribe the manner and format" for entry of foreign vessels (emphasis added)).

In any case, imposing taxes is "a traditional and commonplace way" to regulate any number of things. "[E]very tax is in some measure regulatory," in that "it interposes an economic impediment to the activity taxed as compared with others not taxed." *NFIB*, 567 U.S. at 567. For example, taxation has been a common way of regulating financial services for hundreds of years. *See M'Culloch v. State*, 17 U.S. 316, 393 (1819) (recognizing that the purpose of Maryland's tax on the Second Bank of the United States was "for a political purpose"—to "destroy[] [that] great institution"); *First Nat'l Bank of Fairbanks v. Camp*, 465 F.2d 586, 592 n.7 (D.C. Cir. 1972) (noting that Congress in 1865 imposed a "ten per cent 'death tax' *** on the note

issues of state-chartered banks" with the regulatory goal of "provid[ing] a sound and uniform national currency").

Thus, if "regulate" encompasses the taxation power whenever "commonplace," the Consumer Financial Protection Bureau may impose a 50% tax on credit card companies under its authority to "regulate the offering and provision of consumer financial products or services" by banks and other financial institutions, 12 U.S.C. § 5491(a); or the SEC may impose a 50% tax on all "transactions on a national securities exchange," 15 U.S.C. § 78k(a)(2). Indeed, a neighboring provision in IEEPA itself gives the President the unilateral power to "regulate *** transfers of credit or payments" through any banking institution involving a foreign interest. 50 U.S.C. § 1702(a)(1)(A); *see also id.* § 1702(a)(1)(B) (President may "regulate" "any acquisition, holding, withholding, use, transfer, withdrawal, [or] transportation" of any foreign property). But Congress does not hide the exceptionally powerful taxing power in the delegation of power to "regulate" (including to regulate imports and exports).

2. This Court Has Required Congress To Speak Clearly When Delegating The Uniquely Dangerous Taxing Power

The notion that Congress would have casually delegated (unbridled) taxing power through the word "regulate," including in the phrase "regulate importation or exportation," is also inconsistent with this Court's precedent and Congress's practice.

The Framers viewed "the power of taxation" to be "the most important of the authorities proposed to be conferred upon the Union." FEDERALIST NO. 33 (Hamilton). As colonists of the British Crown, they had resisted "the undefined and arbitrary power of taxation by [a] Parliament" that did not represent them. 1 JOSEPH STORY, p. 4, *supra,* § 168, at 152. The Framers thus believed it to be critical that the power to tax—that "most complete and effectual weapon"—reside in "the immediate representatives of the people." FEDERALIST NO. 58 (Madison); *see Consumers' Rsch.*, 145 S. Ct. at 2491 (Gorsuch, J., dissenting) ("Within the federal government, Congress 'alone has access to the pockets of the people.'" (quoting FEDERALIST NO. 48 (Madison))); *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 118 (2015) (Thomas, J., concurring) ("To the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution.").

Indeed, "[b]y the time of the Constitutional Convention, the principle of legislative supremacy over fiscal matters engendered little debate and created no disagreement." *CFPB v. Community Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 431 (2024). As Justice Story explained, if Congress did not have the taxing and spending power,

> the executive would possess an unbounded power over the public purse of the nation[.] *** In arbitrary governments the prince levies what money he pleases from his

> subjects, disposes of it, as he thinks proper, and is beyond responsibility or reproof.

3 JOSEPH STORY, p. 4, *supra,* § 1342, at 213-214. To ensure the body wielding such a dangerous power remains responsive to the people, the Framers vested the power to originate revenue-raising laws in the House—the body "in which the people of the Union are proportionably represented" and whose representatives enjoy appointments "sufficiently short to render [them] as dependent as [they] ought to be upon [their] constituents." 4 THE DEBATES IN THE SEVERAL STATE CONVENTIONS 329 (Jonathan Elliot ed., 1836) (Pinckney).

Because the power to tax has the potential to be wielded arbitrarily and despotically, this Court historically has expected Congress to speak clearly when it imposes taxes—including tariffs. "[D]uties are never imposed on the citizen upon vague or doubtful interpretations." *Hartranft v. Wiegmann*, 121 U.S. 609, 616 (1887). Instead, "the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language." *Eidman v. Martinez*, 184 U.S. 578, 583 (1902).

It is thus no surprise that whenever Congress has delegated its tariffing power to the Executive, it has used unequivocal terms accompanied by specified limitations. Case in point: After "President Nixon declared a national emergency with respect to the balance-of-payments crisis and under that emergency imposed a surcharge on imports," Gov't Br. 14 (citations and internal quotation marks omitted), Congress (at his request) enacted a new statute—

Section 122 of the Trade Act of 1974—authorizing the President to impose (subject to strict caps) an "import *surcharge* *** in the form of *duties* *** on articles imported into the United States" to "deal with large and serious United States balance-of-payments deficits," 19 U.S.C. § 2132(a) (emphases added). Section 201 of the Trade Act of 1974 likewise permits the President to impose (again subject to caps) a "*duty* on the imported article" upon a finding that it is causing "serious injury" to a domestic industry. *Id.* §§ 2251(a), 2253(a)(3)(A) (emphasis added). And Section 301 empowers the President to direct the U.S. Trade Representative (subject to specified procedures) to respond to unfair practices, including by "impos[ing] *duties*" on those countries responsible for the harmful conduct. *Id.* §§ 2411(a), (c)(1)(B) (emphasis added); *see also* pp. 4-5, *supra* (collecting tariff statute citations).

To observe that every other tariff statute has some reference to tariffs, duties, or imposts—in other words, some indication that Congress intends to delegate its closely guarded tariffing power—is not to impose a "magic words" requirement. *Contra* Gov't Br. 27. It is to recognize that when Congress delegates the power to tax, it does so through "clear and unambiguous language," *Eidman*, 184 U.S. at 583—and never just through the term "regulate" (or the phrase "regulate importation or exportation" standing alone).

Section 232 of the Trade Expansion Act of 1962 (codified in Title 19) is no exception. *Contra* Gov't Br. 27-28. In *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976), this Court concluded

that Section 232 delegates the power to impose certain license fees. But Congress expressly directed the President not to decrease or eliminate a "*duty* or other import restrictions on any article" if doing so "would threaten to impair national security." 19 U.S.C. § 1862(a) (emphasis added). In the same section, Congress directed the President "to adjust the imports of [an] article so that such imports will not threaten to impair the national security." *Id.* § 1862(c)(3)(A). The subsections' shared concern about the impact of imports on national security creates a clear link between the two, indicating that the President's power to "adjust *** imports" includes the imposition of duties, as referenced in subsection (a).

It is also relevant that *Algonquin* focused almost entirely on legislative history and purpose. *See Algonquin*, 426 U.S. at 561-564. But "we're all textualists now." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 443 n.6 (2024) (Gorsuch, J., concurring). This Court thus "do[es] not resort to legislative history to cloud a statutory text that is clear," *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 259 n.6 (2009)—as it is here. To the extent relevant, however, the difference in respective histories is stark. Section 232's legislative history is replete with references to "duties," "tariffs," "import taxes," and "fees" on imports, 426 U.S. at 562-569, while IEEPA's is silent: The Government cannot locate a single reference in IEEPA's history that the law would support monetary exactions of any kind.

B. Statutory Context Shows That "Regulate *** Importation Or Exportation" Does Not Include The Power To Tariff

While the language itself is important, "context is everything" because "the meaning of a word depends on the circumstances in which it is used." *Biden v. Nebraska*, 600 U.S. 477, 511 (2023) (Barrett, J. concurring) (quoting ANTONIN SCALIA, A MATTER OF INTERPRETATION 37 (1997)); *see also* Caleb Nelson, *What Is Textualism?* 91 VA. L. REV. 347, 348 (2005) ("[N]o 'textualist' favors isolating statutory language from its surrounding context."). Context demonstrates that the power to "regulate *** importation or exportation" in IEEPA excludes the power to tax or tariff.

1. The Government's Reading Renders The Key Phrase Unconstitutional In Part

The government's interpretation of the key phrase renders half of it unconstitutional in all relevant applications. IEEPA authorizes, within a single clause, the regulation of "importation or exportation." If "regulate" includes the power to impose duties with respect to importation, it must mean the same with respect to exportation. But the Constitution expressly *prohibits* the taxation of exports. U.S. CONST. art. I, § 9, cl. 5 ("No Tax or Duty shall be laid on Articles exported from any State").

The Government's reading thus presupposes that Congress enacted an unconstitutional statute. *See United States v. International Bus. Machines Corp.*, 517 U.S. 843, 849 (1996) (noting that the Export

Clause is a prohibition this Court "has strictly enforced"). The better reading—and certainly a permissible one—is that "regulate *** importation or exportation" does not confer a taxing power. "[W]hen deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice." *Clark v. Martinez*, 543 U.S. 371, 380-381 (2005). Where, as here, "one of them would raise a multitude of constitutional problems, the other should prevail—whether or not those constitutional problems pertain to the particular litigant before the Court." *Id.*

The Government has no persuasive response to that gaping interpretive hole. It feebly contends (without any citation) that "exports from the territories or the District of Columbia" are excepted from the constitutional prohibition. Br. 30. That the Government's interpretation renders IEEPA unconstitutional "only" with respect to the fifty States is hardly a reason to prefer it over a fully constitutional one.

The Government next asserts that its interpretation of "regulate" does not render the word a "chameleon." Br. 30 (quoting *Clark*, 543 U.S. at 382). The Government does not deny that "[i]n all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019). It nonetheless claims that "regulate" should be understood to have an "ordinary (fixed) meaning," but one "whose broad contours are contextually shaped by the object of the regulation."

Br. 30. That's a head-scratcher. If the definition of the single term "regulate" as it appears in Section 1702(a)(1)(B) is "contextually shaped" depending on its object (*i.e.*, "importation" versus "exportation"), its meaning is fluid, not "fixed." "Regulate *** importation or exportation" either encompasses the taxing power or it doesn't. The Government cannot have it both ways.

The Government finally contends, *see* Br. 30-31, that Congress must have expected courts to construe "regulate *** importation or exportation" to allow taxation on the former but not the latter—and apparently not on any of the other ten objects in that provision (in contravention of the bedrock interpretive principles just discussed). But in the same provision, Congress exempted certain *other* potentially unconstitutional applications of IEEPA—without exempting this obvious one. *See* 50 U.S.C. § 1702(b)(1), (3) (denying President authority to regulate "communication" or the importation or exportation "of any information"). The lack of a similar carve-out for the taxing of exports underscores that "regulate" has a single, fixed meaning—one that does not authorize taxing or tariffing.

2. None Of IEEPA's Surrounding Verbs Confers The Power To Raise Revenue

"[T]o avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress," this Court relies "on the principle of *noscitur a sociis*—a word is known by the company it keeps." *Yates v. United States*, 574 U.S. 528, 543

(2015) (internal quotation marks omitted). IEEPA identifies eight enumerated actions—(1) "investigate," (2) "block during the pendency of an investigation," (3) "regulate," (4) "direct and compel," (5) "nullify," (6) "void," (7) "prevent," and (8) "prohibit."

None of the verbs surrounding "regulate" empowers the President to raise revenue. To the contrary, the other verbs comport with the common law doctrine that "all subjects trading with the public enemy, unless with the permission of the sovereign, is interdicted." *The Hoop* [1799] 165 Eng. Rep. 146, 147; *see also* VOS.Pet.App.33a n.14 (citing authority). The verbs "investigate, *regulate*, or prohibit" originated in IEEPA's wartime predecessor, TWEA, which was enacted as "strictly a war measure" upon the United States's entry into World War I. § 5(b), App., *infra*, 7a (emphasis added); *Stoehr v. Wallace*, 255 U.S. 239, 242 (1921). The verbs "direct and compel, nullify, void, [and] prevent" were then added in an amendment to TWEA a week after Pearl Harbor. *See* First War Powers Act of 1941, App., *infra*, 8a. Forged at times of war, IEEPA's verbs reflect distinct actions a President might take in forbidding trade with a belligerent nation, such as prohibiting transfers of property in which a belligerent nation has an interest; investigating such transfers; and regulating such transfers by granting exemptive licenses.

Contrary to the Government's contention, recognizing that the other seven verbs in IEEPA's scheme do not empower the President to raise revenue does not strip "regulate" of "nearly all effect." Br. 29. As discussed (p. 24, *supra*), the power to "regulate"

gives the President powers he has always exercised under IEEPA—namely, to establish quantity and quality controls (including quotas, inspections, and quarantines) and comprehensive licensing regimes granting permission to conduct otherwise prohibited transactions.

Nor is it strange for Congress to have given the President the power to prohibit all imports from a particular country but not the power to tax those imports. The latter is not a lesser included or "more modest" power. *Contra* Gov't Br. 36. As explained, the Framers viewed taxation—with its potential to enrich the taxer at the expense of the taxed—as a uniquely awesome power to be carefully guarded by Congress, the branch closest to the American people. Indeed, the Framers believed the danger of taxation to be so great that they "categorically bar[red] Congress from imposing any tax on exports." *United States v. U.S. Shoe Corp.*, 523 U.S. 360, 363 (1998). The Southern states—the nation's primary exporters—were concerned that otherwise the Northern states would seek to "aggrandize [themselves] at the South's expense by taxing exports." *Trafigura Trading LLC v. United States*, 29 F.4th 286, 288 (5th Cir. 2022). The Framers did not, however, impose a constitutional prohibition on banning exports altogether. Both taxes and bans might have the "power to destroy," *Fairbank v. United States*, 181 U.S. 283, 291 (1901), but only the former promises to fill the sovereign's coffers.

3. Tariff Authority Is At Odds With IEEPA's Foreign-Property Limitation

Interpreting "regulate" to include the power to tariff also cannot be squared with IEEPA's limitation to "property in which any foreign country or a national thereof has any interest." 50 U.S.C. § 1702(a)(1)(B). No matter how broadly "interest" is construed, the present tense "has" indicates the foreign national's property interest cannot be in the past. *See Real v. Simon*, 510 F.2d 557, 562 (5th Cir. 1975) (concluding TWEA did not apply because no foreign national "retains an interest" in the relevant property). Treasury's own implementing regulations encompass only those interests that are "present, future, or contingent," not historical. 31 C.F.R. § 510.323 (defining "property interest"). But tariffs are most often imposed on property wholly owned by American nationals, like Plaintiffs, with no foreign interest (present, future, or contingent). *See* Pet.App.54a ("When [Plaintiffs] import, [they] purchase and take title to the products in the foreign country and thus own the merchandise at the time of importation."); *see also* 19 U.S.C. § 1484(a)(2)(B) (defining "importer of record" as the "owner or purchaser of the merchandise").

Some imports, such as from an American-owned factory in a foreign country, have *never* been foreign owned. Nor does IEEPA grant the President power to tariff or tax American-owned property just because it was *once* foreign owned. Had Congress wished to include property formerly subject to a foreign interest, Congress could have done so—just as it did when it

specified, in the same subsection, that the President can require individuals to keep records of property in which a foreign country or national "has or has *had* any interest." 50 U.S.C. § 1702(a)(2) (emphasis added); *see Lackey v. Stinnie*, 604 U.S. 192, 205 (2025) ("Atextual judicial supplementation is particularly inappropriate when *** Congress has shown that it knows how to adopt the omitted language or provision." (ellipsis in original)). Absent such text, there is no reason to believe that Congress intended IEEPA—which permits actions against foreigners and their property—to allow the President to tax wholly American property. That reality further undercuts an interpretation that IEEPA authorizes tariffs at all.

C. History Confirms That IEEPA Does Not Authorize Tariffs

1. No President Has Ever Invoked IEEPA To Impose Tariffs

Past practice and statutory history confirm IEEPA does not delegate the power to tariff. "In the five decades since IEEPA was enacted, no President until now has ever invoked the statute—or its predecessor, TWEA—to impose tariffs." Pet.App.27a; *see Loper Bright Enters.*, 603 U.S. at 386 ("[T]he longstanding practice of the government *** can inform a court's determination of what the law is." (internal quotation marks and alteration omitted)). Every other President instead has relied on the panoply of actual tariff statutes to impose tariffs.

When President Nixon in 1971 declared a national emergency to "strengthen the international economic position of the United States" and imposed a

surcharge on imports to address a balance-of-payments issue, he relied on solely the Tariff Act of 1930 and the Trade Expansion Act of 1962 (both of which explicitly provide for "tariff[s]" or "dut[ies]"). *See* Proclamation No. 4074, 36 Fed. Reg. 15,724, 15,724 (Aug. 17, 1971). It was only when President Nixon's tariffs were challenged in court that the government cited TWEA as authority in a made-for-litigation argument.

President Trump's own first term actions follow that pattern. He imposed tariffs under Section 232, Section 301, and other authorities—but never IEEPA. In fact, the President acknowledged he lacked the powers he now claims by urging Congress in 2019 "to pass the United States Reciprocal Trade Act, so that if another country places an unfair tariff on an American product, we can charge them the exact same tariff on the same product that they sell to us." Administration of Donald J. Trump, 2019, Address Before a Joint Session of the Congress on the State of the Union, 2019 DAILY COMP. PRES. DOC. 63 (Feb. 5, 2019); *see* H.R. 764, 116th Cong. § 3(a), (b)(2) (2019). There was little reason to urge passage of such a bill if the President already enjoyed such powers—indeed, far greater ones—under IEEPA. *See FTC v. Bunte Bros.*, 312 U.S. 349, 352 (1941) (proper interpretation "reinforced by the Commission's unsuccessful attempt *** to secure from Congress an express grant of [such] authority"); *see also West Virginia v. EPA*, 597 U.S. 697, 731 (2022) ("[W]e cannot ignore that the regulatory writ [the Executive] newly uncovered conveniently enabled it to enact a program that ***

Congress considered and rejected multiple times." (internal quotation marks omitted)).

2. TWEA's Wartime Powers Did Not Include Tariffing

The history of IEEPA's wartime predecessor, TWEA, demonstrates that neither statute was meant to authorize tariffs. Section 5(b) of TWEA, as enacted in 1917, empowered the President to

> investigate, *regulate*, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, *export* or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country[.]"

App., *infra*, 7a (emphasis added).

Two things stand out. *First*, as originally enacted, TWEA § 5(b) did not permit the President to "regulate *** importation"—which the Government claims is crucial to its interpretation of "regulate" as encompassing tariffs. *See* Br. 31. *Second*, the original language *did* authorize the President to "regulate *** *export[s]*"—which, under the Government's interpretation, would run afoul of the constitutional prohibition on taxing "export[s]." In other words, from

its start, the operative provision could not have included the power to tariff.[27]

When, in the days after Pearl Harbor, Congress revised section 5(b) to add "importation" as an object, it did nothing to indicate it was broadening the meaning of "regulate." *See* Pub. L. No. 77-354, § 301, 55 Stat. at 839-840, App., *infra*, 8a. On the contrary, the decision to combine—in a single phrase—"importation *or exportation*" indicates that Congress expected "regulate" to carry its original (non-tariff) meaning. Confirming that interpretation, after World War II ended, "presidents used TWEA to impose economic sanctions on foreign adversaries, regulate foreign exchange, and control exports based on several declarations of national emergencies." VOS Pet.App.14a-15a (citing examples).

To be sure, the government subsequently defended President Nixon's tariffs in court by (unlike President Nixon himself) invoking section 5(b) of TWEA. After a three-judge panel of the U.S. Customs Court concluded that "regulate" as used in section 5(b) did *not* authorize the imposition of tariffs at all (including President Nixon's 1971 action), the United States Court of Customs and Patent Appeals ("CCPA")

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[27] The only mention of imports in the original version of TWEA was in a different section temporarily authorizing the President to declare "unlawful to import into the United States from any [designated] country *** under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe." Pub. L. No. 65-91, § 11, 40 Stat. 411, 422-423 (1917). But that section did not use the relevant phrase, made no reference to tariffs or duties, and lapsed at the end of World War I.

reversed. *See United States v. Yoshida Int'l, Inc.* ("*Yoshida II*"), 526 F.2d 560 (C.C.P.A. 1975); *Yoshida Int'l, Inc. v. United States* ("*Yoshida I*"), 378 F. Supp. 1155, 1172 (Cust. Ct. 1974). The CCPA took an explicitly purposive rather than textualist approach. The CCPA acknowledged that "no undelegated power to regulate commerce, or to set tariffs, inheres in the Presidency," *Yoshida II*, 526 F.2d at 572; that "nothing in the TWEA or in its history *** specifically either authorizes or prohibits the imposition of a surcharge," *id.* at 572-573; and that "Congress did not specify that the President could use a surcharge in a national emergency," *id.* at 576. Yet it concluded that because nothing in the legislative history of section 5(b) indicated an intent to *prohibit* tariffs, section 5(b) authorized their imposition. *Id.* The district court in this case correctly rejected that reasoning as unpersuasive: "That is no longer how courts approach statutory interpretation." Pet.App.33a.

Notably, even before the decision in *Yoshida I*, President Nixon asked Congress to give him authority to negotiate tariffs to address "deficits in our trading balance" and to "raise or lower import restrictions on a temporary basis to help correct deficits or surpluses in our payments position." Special Message to the Congress Proposing Trade Reform Legislation, 1973 PUB. PAPERS 258, 261, 266 (Apr. 10, 1973). That request led to the passage of the Trade Act of 1974. Pub. L. No. 93-618, 88 Stat. 1978 (1975). Section 122 of the Act gave the President the requested authority to impose "duties" to address "balance-of-payments deficits." *Id.* § 122 (codified at 19 U.S.C. § 2132(a)). Those developments undermine the notion—on which

this Court never opined—that the President *already* had unilateral power to impose tariffs under TWEA.

3. Congress Enacted IEEPA To Limit Emergency Authority

Three years after enacting the Trade Act of 1974, Congress amended TWEA to limit its application to times of war and adopted IEEPA to apply in the case of peacetime emergencies. The emergency powers set out in section 1702(a)(1)(B) of IEEPA are largely those previously set out in section 5(b) of TWEA, but limited to transactions involving foreign countries and nationals. 50 U.S.C. § 1702(a)(1)(B); *see* H.R. Rep. No. 95-459, at 2 (1977) (describing the President's powers under section 1702(a)(1)(B) as "more limited in scope than those of [TWEA] and subject to various procedural limitations"). The Senate and House Reports described the enumerated powers as the ability to regulate foreign exchange and banking transactions, "to control or freeze property transactions where a foreign interest is involved," and to require recordkeeping. S. Rep. No. 95-466, at 5 (1977); *see also* H.R. Rep. No. 95-459, at 14-15 (similar). Congress never suggested that, through IEEPA, it was delegating its paramount authority to impose taxes, tariffs, or otherwise generate revenue.

Nor is there any reason to think that Congress did so without any substantive limits. The Government argues that the limits in IEEPA are not "toothless," Br. 32, but reality says otherwise. The "default one-year limit on emergencies, 50 U.S.C. 1622(d)," *id.*, poses no meaningful constraint: The President can renew the designation unilaterally, and,

as the Government acknowledged below, the Iranian hostage crisis "order has been renewed continuously since 1979"—approximately 45 times, Gov't D.C. Cir. Br. 12 (June 27, 2025). The "enumerated list of exceptions," Br. at 32, does not address (let alone limit) tariffing authority, but rather protects First Amendment rights and certain humanitarian interests, 50 U.S.C. § 1702(b). And the threat that Congress might "override the President's determinations," Br. 32, is barely a check because any such override must overcome a Presidential veto.

The Government nonetheless implies that Congress meant to ratify *Yoshida II*—indeed, to go farther than *Yoshida II* by rejecting that decision's limits—because Congress "knew" of the decision when it carried over TWEA's operative language into IEEPA. Br. 26. But ratification is an especially thin reed here. *Yoshida II* itself noted Congress's intervening enactment of the Trade Act of 1974, conferring actual tariff authority on the President, such that a future tariff action "must, of course, comply with" that Act's terms. 526 F.2d at 582 n.33. In addition, what the Government cites as evidence that Congress "knew" of *Yoshida II* is a background section of a House Committee markup drawn from a memorandum drafted by the Department of Justice—along with a reference to *Yoshida I*'s contrary holding and to the fact that President Nixon had never invoked TWEA. *See* H.R. Rep. No. 95-459, at 3 & n.6, 5 (1977). That is no indication that Congress intended to adopt *Yoshida II*'s obsolete holding, and a single decision by a lower court that conflicts with the only other decision on the statutory language is not the type of "settled

precedent" that gives rise to a presumption of ratification. *BP P.L.C. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1541 (2021) ("It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of judicial consensus so broad and unquestioned that we must presume Congress *** endorsed it." (internal quotation marks omitted)).

D. "Major Questions" And Nondelegation Concerns Reinforce That IEEPA Does Not Authorize Tariffs

To the extent any doubt remains regarding whether IEEPA authorizes tariffs, the "major questions" doctrine and nondelegation principles should eliminate it.

1. The Government's interpretation raises the same concerns animating the major questions doctrine. That doctrine reflects the understanding that "in a system of separated powers, a reasonably informed interpreter would expect Congress to legislate on 'important subjects' while delegating away only 'the details.'" *Nebraska*, 600 U.S. at 515 (Barrett, J., concurring) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1 (1825)). Congress is expected to speak "clearly" before delegating to the Executive the type of "never previously claimed powers" of "staggering" "economic and political significance" that the President now claims under IEEPA. *Id.* at 501-502, 507.

As explained, no President has never interpreted IEEPA to authorize tariffs. That "lack of historical precedent, coupled with the breadth of authority that

the [President] now claims, is a telling indication that the [tariffs] extend[] beyond the [President's] legitimate reach." *National Fed'n of Indep. Bus. v. Department of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 119 (2022) (per curiam) (internal quotation marks omitted).

It is also beyond dispute that "[t]he 'economic and political significance' of the" President's newfound tariff authority is "staggering by any measure." *Nebraska*, 600 U.S. at 502 (citation omitted). The IEEPA tariffs will affect trillions of dollars of imports, drive small American businesses into bankruptcy, and cost the average American at least $1,000 per year. The impact dwarfs the power claimed in other major question cases. *See Alabama Ass'n of Realtors v. DHS*, 594 U.S. 758, 764 (2021) (approximately "$50 billion"); *Nebraska*, 600 U.S. at 496, 502-503 ("$430 billion in federal debt"); *West Virginia*, 597 U.S. at 714-715, 724 ("billions of dollars in compliance costs" and GDP reduction of "at least a trillion 2009 dollars by 2040"). The IEEPA tariffs—which will result in over $3 trillion in new taxes over the next decade, p. 12, *supra*—fall comfortably within those precedents.

The IEEPA tariffs, moreover, could continue *for years*. Or, alternatively, they could be paused, reinstated, or substantially increased on a moment's notice—which the President has already done multiple times. This represents an unprecedented and "unheralded power," *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014), to inflict enormous economic costs on Americans and to inject (repeatedly) massive uncertainty and volatility in domestic and global

markets. If the IEEPA tariffs are upheld, this and future Presidents would "enjoy virtually unlimited power to rewrite" U.S. tariff laws—by adding, increasing, or decreasing taxes on imports—whenever and however they chose. *Nebraska*, 600 U.S. at 502.

Rather than dispute the "major[ness]" of the question, the Government argues that the doctrine does not apply to presidential action. Br. 36. But every appellate decision on the books has said otherwise. *See Kentucky v. Biden*, 23 F.4th 585, 606-608 (6th Cir. 2022); *Louisiana v. Biden*, 55 F.4th 1017, 1029 (5th Cir. 2022); *Georgia v. President of the U.S.*, 46 F.4th 1283, 1295-1296 (11th Cir. 2022); *see also Nebraska v. Su*, 121 F.4th 1, 17-22 (9th Cir. 2024) (Nelson, J., concurring) (concluding that "nothing excuses the President from [the doctrine's] commands"). After all, "because the President controls [them]," "[d]elegations to executive officers and agencies are *** *de facto* delegations to the President." *Consumers' Research*, 145 S. Ct. at 2512 n.1 (Kavanaugh, J., concurring). Absent vigilance under the major questions doctrine, "[l]egislation would risk becoming nothing more than the will of the current President[.]" *West Virginia*, 597 U.S. at 737, 739 (Gorsuch, J., concurring).

The Government further argues that the doctrine does not apply in national-security and foreign-policy matters. Br. 34-36. But at issue here is taxation: one of the most fundamental of Congress's powers. When the President assumes powers "the Constitution has expressly confided to the Congress and not to the President," *Youngstown*, 343 U.S. at 582, deference is

afforded only so long as the President acts under the "authorization of Congress," *id.* at 635-636 (Jackson, J., concurring). That is true even in the national security context.

In *Youngstown*, the majority and four separate opinions all recognized that presidential orders must be invalidated if "not rooted in" statutory authority, *id.* at 586, and so the Court proceeded to invalidate the President's seizure of the Nation's steel mills during the Korean War—a decision with obvious implications for the President's conduct of foreign policy. In *Dames & Moore v. Regan*—a case analyzing the President's powers under IEEPA—the Court emphasized that Justice Jackson's *Youngstown* concurrence had "focused not on the 'plenary and exclusive power of the President' but rather responded to a claim of virtually unlimited powers for the Executive by" emphasizing that the Framers had not "creat[ed] their new Executive in [the] image" of King George III. 453 U.S. 654, 661-662 (1981) (quoting *Youngstown*, 343 U.S. at 641 (Jackson, J., concurring)). And, most recently in *Nebraska*, this Court rejected the notion that the doctrine vanishes when a statutory delegation operates upon the President's declaration of a "national emergency." 600 U.S. at 486-487, 500-501 (applying doctrine despite claim that Congress had delegated "unlimited power" to the Executive Branch to modify student loans if and only if the President has declared a "national emergency").

In other words, the President enjoys deference in his exercise of Congress's tariff power only if Congress, in fact, delegated that power to the President. That is

where the major questions doctrine comes in: "[T]reating the Constitution's structure as part of the context in which a delegation occurs," the doctrine serves as a "tool for discerning *** the text's most natural interpretation." *Nebraska*, 600 U.S. at 508, 515 (Barrett, J., concurring). Viewing IEEPA "as a whole, and consider[ing] context that would be important to a reasonable observer," it becomes evident that the President asserts "highly consequential power *** beyond what Congress could reasonably be understood to have granted" through the isolated phrase on which the Government relies. *Id.* at 520 (Barrett, J., concurring) (citation omitted). Whether or not the doctrine applies as a formal matter, the same commonsense concerns underlying it reinforce why IEEPA should not be construed to confer on the Executive a blank check to levy tariffs.

2. The Government's interpretation triggers nondelegation doctrine concerns as well. Had Congress granted the President the authority to unilaterally impose tariffs that remake the national economy, without any restrictions beyond the President's (assertedly unreviewable) power to declare an "emergency," then that grant of authority would amount to an unconstitutional delegation of legislative power. Any grant of legislative authority to the Executive must be accompanied by an "intelligible principle" to guide the Executive's discretion. *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)). "The guidance needed is greater *** when an [executive] action will affect the entire national economy."

Consumers' Rsch., 145 S. Ct. at 2497 (internal quotation marks omitted). And when delegating the power to tax, Congress must provide at least "a floor and a ceiling." *Id.* at 2501-2502.

Under the Government's view of IEEPA, however, there is no limiting guidance, instruction, or restriction from Congress about the products on which the President may impose tariffs; which country or countries the President may target; the permissible rate or range of the tariff; the duration of the tariff; the amount of notice the President must provide; or the relationship between the tariff action and the emergency declared. *E.g.*, Br. 40 (arguing question of measures President takes to "deal with" declared emergency "resists meaningful judicial review"); *id.* at 42 ("[T]he President's determinations in this area [of threat evaluations] are not amenable to judicial review."); *id.* at 46 (no "numerical limits on rate or duration"); *id.* at 33 (criticizing Federal Circuit for purporting to evaluate tariff legality based on "how long is too long, how much is too much, or how many countries are too many").

Accordingly, in the Government's view, every IEEPA tariff action is at the President's unreviewable discretion. Any President thus could invoke IEEPA to circumvent the careful congressional limitations prescribed in every tariff statute. Although the nondelegation bar might not be a high one, the virtually limitless delegation of taxing power the Government seeks here at least raises "serious constitutional doubts" foreclosing that interpretation. *Clark*, 543 U.S. at 381.

II. THE DISTRICT COURT PROPERLY EXERCISED JURISDICTION

Because this action arises under federal law, *see* 28 U.S.C. §§ 1331, 1346, the district court had jurisdiction to hear it unless it falls within the CIT's exclusive jurisdiction. "Congress did not commit to the [CIT's] exclusive jurisdiction *every* suit against the Government challenging customs-related laws and regulations." *K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 188 (1988). Instead, the CIT has exclusive jurisdiction only over actions (in pertinent part) that "arise[] out of any law of the United States providing for *** tariffs" or for "administration and enforcement with respect to" tariffs. 28 U.S.C. § 1581(i)(1)(B) and (D).

This case "arises out of" IEEPA (which is not a tariff law). Pet.App.18a. As the Government "agree[d]" below, Gov't D.C. Cir. Reply Br. 5, the phrase "arises out of" refers to the "substantive law giving rise to" Plaintiffs' claims, Pet.App.18a & 20a n.4; *see International Lab. Rights Fund v. Bush*, 357 F. Supp. 2d 204, 208 (D.D.C. 2004) (analyzing 1581(i) jurisdiction). Thus, to "determin[e] whether a cause of action might be embraced by" section 1581(i), "it is necessary that the gravamen of the complaint be determined." *Schaper Mfg. Co., a Div. of Kusan. Inc. v. Regan*, 566 F. Supp. 894, 896 (Ct. Int'l Trade 1983); *see also Corus Staal BV v. United States*, 493 F. Supp. 2d 1276, 1285 (Ct. Int'l Trade 2007) (analyzing § 1581(i) jurisdiction by looking to the "true nature" of the underlying injury, rather than the technical

vehicle by which the allegedly unlawful action was imposed).

Only one "substantive law" requires "interpretation and application" to decide this case: IEEPA. Because Plaintiffs' claims center on IEEPA, the district court properly concluded that this "civil action *** arises out of" IEEPA (and IEEPA alone). Pet.App.18a.

That conclusion comports with the way *every* prior IEEPA case has been litigated. Section 1581(i) refers to "any law"—not a particular challenged action—"providing for *** tariffs." So if IEEPA is a law providing for tariffs, *all* civil actions against the government arising out of IEEPA—whether involving tariffs or not—would have to be adjudicated in the CIT. Yet every IEEPA case from 1977 until now has been adjudicated in a federal district court. Besides this year's tariff challenges, the Government cannot cite a single CIT case citing IEEPA's provisions, much less substantively construing them. By contrast, district courts have cited IEEPA literally hundreds of times. *See* Pet.App.28a.

Given the extensive expertise district and regional circuit courts have developed over the past several decades, a holding that the CIT is the "exclusive" home of every civil action against the United States arising out of IEEPA would mark a sea change. *E.g.*, *TikTok Inc. v. Garland*, 122 F.4th 930, 942 (D.C. Cir. 2024), *aff'd*, 604 U.S. 56 (2025); *Van Loon v. Department of the Treasury*, 122 F.4th 549, 571 (5th Cir. 2024). Presumably that is why the Government ducks the stark jurisdictional

implications of its merits position that IEEPA "provides for" tariffs and focuses on other "laws" instead.

Specifically, the Government argues that these cases arise out of the challenged executive orders that modified the HTSUS, a schedule of tariff rates. But that is wrong for two independent reasons. *First*, this case does not "arise[] out of" the HTSUS modifications. The HTSUS does not provide the substantive law underlying any of the Plaintiffs' claims and does not require any interpretation for a court to decide those claims. Neither the district court nor the CIT substantively analyzed the HTSUS or the executive orders. Modifying the HTSUS merely effectuates a technical implementation after a tariff rate is changed. 19 U.S.C. § 3004(c). Indeed, Customs and Border Protection starts imposing newly announced tariffs even before the HTSUS is updated, which may take anywhere from a few days to a few weeks.[28] Any modification to the HTSUS in this case is only the

[28] Tariffs often go into effect before the HTSUS is updated. *Compare* U.S. Customs & Border Prot., CSMS # 64297292 - *GUIDANCE: Additional Duties on Imports from Mexico* (Mar. 3, 2025), https://content.govdelivery.com/bulletins/gd/USDHSCBP-3d5194c?wgt_ref=USDHSCBP_WIDGET_2, *with* U.S. Int'l Trade Comm'n, *Preface, Harmonized Tariff Schedule of the United States* (2025 Revision 3) (Mar. 6, 2025), https://hts.usitc.gov/download?release=2025HTSRev3&releaseDate=03%2F04%2F2025; *compare also* Proclamation No. 10339, 87 Fed. Reg. 7,357 (Feb. 4, 2022), effective February 7, 2022, *with* U.S. Int'l Trade Comm'n, *Preface, Introduction to the Harmonized Tariff Schedule* (2022 Basic and Revision 1) (Feb. 15, 2022) https://hts.usitc.gov/download?release=2022HTSABasicRev1B&releaseDate=02%2F14%2F2022.

incidental, downstream effect of the President's (unlawful) assumption of tariffing authority under IEEPA.

Second, the Government's theory assumes that the executive orders purporting to modify the HTSUS are "law[s] of the United States" for purposes of § 1581(i). Yet only HTSUS modifications "made *** *under authority of law* *** shall be considered to be statutory provisions of law for all purposes." 19 U.S.C. § 3004(c)(1) (emphasis added). And "Executive Orders issued without statutory authority providing for presidential implementation are generally held not to be 'laws' of the United States." *Dreyfus v. Von Finck*, 534 F.2d 24, 29 (2d Cir. 1976) (citing cases); *see also Chen v. INS*, 95 F.3d 801, 805 (9th Cir. 1996) ("Executive Order lacked the force and effect of law" because "Congress did not explicitly delegate the requisite authority"). The whole premise of this litigation is that the challenged executive orders lack "authority of law" because they exceed the President's IEEPA powers.

The Government counters that Section 3004 provides that "authority of law" includes "section 604 of the Trade Act of 1974," 19 U.S.C. § 3004(c)(1)(C), which authorizes the President to modify the HTSUS "as appropriate" to reflect "actions" taken under "Acts affecting import treatment," 19 U.S.C. § 2483; *see* Br. 47-48. On that convoluted theory, because IEEPA is at least a law "affecting import treatment," the President's actions—even if patently unlawful under IEEPA—are transformed into "provisions of law for all purposes," including the CIT's jurisdictional

provisions. That would absurdly render *any* executive action invoking IEEPA (or any other statute affecting imports) a "statutory provision[] of law for *all* purposes" so long as the President modifies tariff rates reflected in the HTSUS. 19 U.S.C. § 3004(c) (emphasis added). No wonder neither the Federal Circuit nor the CIT relied on that newly concocted rationale.[29]

The Government finally argues that merging the jurisdictional and merits inquiries is "nonsensical." Br. 49. In fact, "it is common for jurisdictional inquiries and the merits to overlap." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 554 n.5 (2022). Courts may need to "decide some, *or all*, of the merits issues" to "answer the jurisdictional question." *Bolivarian Republic of Venez. v. Helmerich & Payne Int'l Drilling Co.*, 581 U.S. 170, 178 (2017) (emphasis added); *see, e.g., Brownback v. King*, 592 U.S. 209, 217 (2021) (where "the merits and jurisdiction *** come intertwined[] *** a court can decide *all of the merits issues* in resolving a jurisdictional question, or vice versa" (emphasis added) (internal quotation marks and ellipsis omitted)). That is why "all elements of a meritorious claim" under the Federal Tort Claims Act

[29] Tellingly, the Government offers no defense of the Federal Circuit's primary justification for CIT jurisdiction, *i.e.*, finding it sufficient if "the law in question is *invoked as* the authority to impose a tariff," even if that law (here IEEPA) does not actually "provid[e] for tariffs" as Section 1581(i)(1) plainly requires. V.O.S. Pet. App. 23a (emphasis added). Although the Government has cycled through multiple arguments to support CIT jurisdiction—ultimately latching onto the CIT's self-devised HTSUS rationale—even the Government abandons the Federal Circuit's indefensible theory.

"are also jurisdictional." *Brownback*, 592 U.S. at 217. Likewise in any Foreign Sovereign Immunities Act case alleging that "'property' has been 'taken in violation of international law,'" the jurisdictional and merits questions turn on a common determination. *Helmerich & Payne Int'l Drilling Co.*, 581 U.S. at 178-179. Even if such instances of *complete* overlap are "unusual," *Aleman Gonzalez*, 596 U.S. at 554 n.5, that is plainly Congress's choice to make.

CONCLUSION

For the foregoing reasons, the Court should affirm that IEEPA does not authorize the imposition of tariffs and remand for entry of final judgment against the Government.[30]

Respectfully submitted.

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October 20, 2025

[30] The Government no longer contests that it must stop collecting IEEPA tariffs from everyone (including Plaintiffs) if the Court rules them unlawful. For good reason: a binding holding from this Court that IEEPA does not authorize tariffs would moot the question of nationwide relief. *See Nebraska*, 600 U.S. at 507 (dismissing government's application to vacate nationwide injunction as "moot" given merits holding).

APPENDIX

APPENDIX TO
RESPONSE BRIEF FOR PETITIONERS
LEARNING RESOURCES, INC. AND
HAND2MIND, INC.

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Constitution of the United States

Article I, Section 8, Clause 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States[.]

Article I, Section 8, Clause 3

The Congress shall have Power *** To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

Article I, Section 9, Clause 5

No Tax or Duty shall be laid on Articles exported from any State.

United States Code Annotated

Title 28. Judiciary and Judicial Procedure

Part IV. Jurisdiction and Venue

Chapter 95. Court of International Trade

Section 1581. Civil actions against the United States and agencies and officers thereof

****

(i)(1) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for--

****

(B) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

****

(D) administration and enforcement with respect to the matters referred to in subparagraphs (A) through (C) of this paragraph and subsections (a)-(h) of this section.

****

United States Code Annotated

Title 50. War and National Defense

Chapter 35. International Emergency Economic Powers

Section 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential Authority

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

United States Code Annotated

Title 50. War and National Defense

Chapter 35. International Emergency Economic Powers

Section 1702. Presidential authorities

(a) In general

(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit--

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) 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[.]

***

(b) Exceptions to grant of authority

The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly--

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD

ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 46043 of this title, or under section 46053 of this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of Title 18;

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

***

United States Statutes

Trading with the Enemy Act

Pub. L. No. 65-91, 40 Stat. 411, 415 (1917)

Chapter 106. An Act To define, regulate, and punish trading with the enemy, and for other purposes

Section 5

***

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

United States Statutes

First War Powers Act of 1941

Pub. L. No. 77-354, 55 Stat. 838, 839-840

Title III. Trading with the Enemy

Section 301

The first sentence of subdivision (b) of section 5 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

"(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

"(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

"(B) investigate, 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[.]

***