No. 23-69

In the Supreme Court of the United States

PRIMESOURCE BUILDING PRODUCTS, INC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Section 232 of the Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 877 (19 U.S.C. 1862), empowers the President to take action to adjust imports that threaten to impair the national security. The question presented is as follows:

Whether Presidential Proclamation 9980, which imposed tariffs on certain steel derivatives, was issued in accordance with Section 232's procedural requirements.

ADDITIONAL RELATED PROCEEDINGS

United States Court of International Trade:

PrimeSource Building Products, Inc. v. *United States*, No. 20-cv-32 (Apr. 5, 2021)

United States Court of Appeals (Fed. Cir.):

PrimeSource Building Products, Inc. v. *United States*, No. 21-2066 (Feb. 27, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 59 F.4th 1255. An opinion of the Court of International Trade (Pet. App. 19a-31a) is reported at 505 F. Supp. 3d 1352. An additional opinion and order of the Court of International Trade (Pet. App. 32a-150a) is reported at 497 F. Supp. 3d 1333.

JURISDICTION

The judgment of the court of appeals was entered on February 7, 2023. A petition for rehearing was denied on June 22, 2023 (Pet. App. 151a-153a). The petition for a writ of certiorari was filed on July 21, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Pursuant to Section 232 of the Trade Expansion Act of 1962 (Act), Pub. L. No. 87-794, 76 Stat. 877 (19 U.S.C. 1862), the President established tariffs on certain imports of steel derivatives. Petitioner filed suit in the Court of International Trade (CIT) to challenge the tariffs on various grounds. The CIT granted summary judgment for petitioner. Pet. App. 19a-31a. The court of appeals reversed and remanded. *Id.* at 1a-18a.

1. Section 232 establishes a procedure through which the President may "adjust the imports" of an article in order to protect "national security." 19 U.S.C. 1862(c)(1)(A)(ii). Under that procedure, the Secretary of Commerce (Secretary) first investigates the effects on national security of imports of the article. 19 U.S.C. 1862(b)(1)(A). During the investigation, the Secretary must consult with the Secretary of Defense and other federal officers and must, if "appropriate," hold public hearings or otherwise give interested parties an opportunity to present information. 19 U.S.C. 1862(b)(2)(A). After the investigation, the Secretary must submit to the President a report containing his findings and recommendations. 19 U.S.C. 1862(b)(3).

If the Secretary finds that imports of the article "threaten to impair the national security," the President must, within 90 days, "determine whether [he] concurs with the finding." 19 U.S.C. 1862(c)(1)(A)(i). If the President concurs, he must, within the same 90-day period, "determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security." 19 U.S.C. 1862(c)(1)(A)(ii). If the President "determines * * * to take action," he must "im-

plement" that action within 15 days of the determination. 19 U.S.C. 1862(c)(1)(B).

Congress has identified several factors that the President and Secretary must consider when acting under Section 232. Those factors include: (1) the "domestic production needed for projected national defense requirements," (2) "the capacity of domestic industries to meet such requirements," (3) "existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense," (4) "the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth," and (5) "the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements." 19 U.S.C. 1862(d). Congress also has directed the President and Secretary to "recognize the close relation of the economic welfare of the Nation to our national security." *Ibid.* More specifically, the President and Secretary must consider "the impact of foreign competition on the economic welfare of individual domestic industries," as well as "any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports." *Ibid.*

2. In April 2017, the Secretary initiated an investigation to determine the effect of imports of steel on the national security. On January 11, 2018, the Secretary submitted to the President a report finding that the present quantities and circumstances of steel imports "threaten to impair the national security" of the United

States. *Publication of a Report on the Effect of Imports of Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, 85 Fed. Reg. 40,202, 40,224 (July 6, 2020). The Secretary explained that steel imports were "weakening our internal economy" and undermining our "ability to meet national security production requirements in a national emergency." *Id.* at 40,222, 40,224. He recommended that the President address this threat by adjusting the level of imports through global quotas or tariffs on steel imported into the United States. *Id.* at 40,205.

On March 8, 2018, in Proclamation 9705, the President concurred in the Secretary's finding that "steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security." Proclamation No. 9705, *Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625, 11,626 (Mar. 15, 2018). Proclamation 9705 accordingly instituted a 25% tariff on most imports of steel articles. *Ibid.* The proclamation explained that the President "may remove or modify" his actions "and, if necessary, make any corresponding adjustments to the tariff as it applies to other countries as our national security interests require." *Ibid.*

In January 2020, the President issued Proclamation 9980, which adjusted the tariff to cover not only steel articles but also certain steel derivatives. See Proclamation No. 9980, *Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 Fed. Reg. 5281 (Jan. 29, 2020). The Secretary had found that "imports of certain derivatives of steel articles ha[d] significantly increased since the imposition of the tariffs." *Id.* at 5282. The Secre-

tary explained that such imports were "circumvent[ing]" the tariffs imposed by Proclamation 9705 and were "undermin[ing] the actions taken to address the risk to the national security" identified in Proclamation 9705. *Ibid.* Accepting the Secretary's findings, the President extended the tariff imposed by Proclamation 9705 to steel derivatives such as nails, staples, and tacks. See Pet. App. 9a.

3. Petitioner, a domestic importer of nails, filed this suit in the CIT to challenge the lawfulness of Proclamation 9980. See Pet. App. 20a. As relevant here, petitioner argued that Proclamation 9980 violated Section 232's requirements that the President determine within 90 days of the Secretary's report whether he concurs in the Secretary's finding, see 19 U.S.C. 1862(c)(1)(A)(i), and that the President implement his action within 15 days of that determination, see 19 U.S.C. 1862(c)(1)(B). Pet. App. 28a-29a.

The CIT granted summary judgment for petitioner on that claim, see Pet. App. 19a-31a, but dismissed other claims that are not at issue here, see *id.* at 32a-150a. The court accepted petitioner's argument that Proclamation 9980 violated Section 232's 90-day and 15-day timing requirements. See *id.* at 28a-29a.

4. The court of appeals reversed. Pet. App. 1a-18a. The court observed that, in *Transpacific Steel LLC* v. *United States*, 4 F.4th 1306 (Fed. Cir. 2021), cert. denied, 142 S. Ct. 1414 (2022), it had held that Section 232 does not preclude the President from modifying his initial action after the expiration of the statute's 90-day and 15-day deadlines. See Pet. App. 12a-13a. The court stated that "Proclamation 9980 comes within the interpretation of § 232 [the Federal Circuit] adopted in *Transpacific*." *Id.* at 13a. The court further explained

that "imposition [of a tariff] on imports of derivatives of the articles that were the subject of the Secretary's threat finding is expressly authorized as an available remedy by § 232(c). In acting to close a loophole exploited by steel-derivatives importers, the President was * * * adding use of a tool that he could have used in the initial set of measures and later found important to address a specific form of circumvention." *Id.* at 14a.

The court of appeals also concluded that "[r]eading § 232 to permit the President to modify an initial plan of action to include derivatives, as he did here, does not render it an unconstitutional delegation." Pet. App. 17a. The court explained that this Court had previously "rejected a delegation-doctrine challenge to § 232 (in an earlier form)," and that intervening statutory amendments have "further defined the congressional delegation of authority to the President." *Ibid.**

ARGUMENT

Petitioner contends (Pet. 18-34) that Proclamation 9980 was issued in violation of Section 232's procedural requirements. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. This Court recently denied another petition for a writ of certiorari that raised the same statutory question that is presented here, albeit in the context of a different adjustment to the steel tariffs imposed by Proclamation 9705. See *Transpacific Steel LLC* v. *United*

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* The court of appeals consolidated this case with another appeal. See Pet. App. 1a-2a. A party to that consolidated appeal has stated that it plans to file its own petition for a writ of certiorari. See Oman Fasteners Br. in Support 1; see also Appl. at 3, *Oman Fasteners* v. *United States*, No. 23A237 (filed Sept. 8, 2023) (seeking an extension of the time within which to file a petition).

States, 142 S. Ct. 1414 (2022) (No. 21-721). The Court also has recently and repeatedly denied other petitions that have challenged the lawfulness of the steel tariffs. See *USP Holdings, Inc.* v. *United States*, 143 S. Ct. 1056 (2023) (No. 22-565); *American Inst. for Int'l Steel, Inc.* v. *United States*, 141 S. Ct. 133 (2020) (No. 19-477); *American Inst. for Int'l Steel, Inc.* v. *United States*, 139 S. Ct. 2748 (2019) (No. 18-1317). The same course is appropriate here.

1. Section 232 authorizes the President to take "action" to adjust imports. 19 U.S.C. 1862(c). "*[A]ction* suggests a process—the many discrete events that make up a bit of behavior—whereas *act* is unitary." Bryan A. Garner, *Garner's Dictionary of Legal Usage* 18 (3d ed. 2011). Section 232 thus empowers the President to perform a course of acts, not just a single act, to adjust imports.

Under Section 232, the President retains authority to modify that course of acts as necessary in light of changed circumstances or new information. In general, the power to take regulatory action carries with it the power to amend that action. See, *e.g.*, *North American Fund Mgmt. Corp.* v. *FDIC*, 991 F.2d 873, 875 (D.C. Cir.) ("[T]he agency is the source of the regulations and also has the power to amend them."), cert. denied, 510 U.S. 959 (1993); *Case & Co.* v. *Board of Trade*, 523 F.2d 355, 363 (7th Cir. 1975) ("The power to adopt regulations includes the power to amend them."). It would have been especially odd in the present statutory context for Congress to foreclose the President from responding to changed circumstances or new information. Section 232 deals with foreign policy and national security, settings in which flexibility to address changed circumstances and new information is especially vital.

Longstanding executive practice confirms that reading of Section 232. In 1959, President Eisenhower took action to adjust crude oil imports after receiving a report from the Secretary; over the next 16 years, different Presidents modified that initial action at least 26 times, without receiving any new reports from the Secretary. See *Transpacific Steel LLC* v. *United States*, 4 F.4th 1306, 1327 (Fed. Cir. 2021), cert. denied, 142 S. Ct. 1414 (2022). On several occasions during the 1970s and 1980s, Presidents modified other Section 232 actions without receiving new reports. See Pet. App. 146a (collecting examples). The Attorney General has explained that Section 232 "contemplates a continuing process of monitoring, and modifying the import restrictions, as their limitations become apparent and their effects change." *Restriction of Oil Imports*, 43 Op. Att'y Gen. 20, 21 (1975). And the Office of Legal Counsel has explained that Section 232 "contemplate[s] a continuing course of action, with the possibility of future modifications." *Presidential Authority to Adjust Ferroalloy Imports Under § 232(b) of the Trade Expansion Act of 1962*, 6 Op. O.L.C. 557, 562 (1982).

Section 232's deadlines do not restrict the President's power to adopt such amendments. The relevant statutory provisions set deadlines for "the adoption and initiation of a plan of action or course of action," not for "each individual discrete imposition on imports." *Transpacific*, 4 F.4th at 1321. The first provision on which petitioner relies (Pet. 25) states that, within 90 days after receiving the Secretary's report, the President must "determine the nature and duration of the action that, in the judgment of the President, must be taken." 19 U.S.C. 1862(c)(1)(A)(ii). The phrase "nature and duration" indicates that, within the initial 90-day in-

terval, the President need only determine the general character of his plan; he need not identify, in advance, each measure that he will undertake. The other provision on which petitioner relies (Pet. 25) states that the President must "implement that action" within 15 days after making the determination. 19 U.S.C. 1862(c)(1)(B). But the phrase "implement that action" means only that the President must put his plan into effect within 15 days, not that each step in the plan must be completed within that period.

The statutory history of the time limits confirms that point. The current time limits were not part of Section 232 as originally enacted in 1958. Rather, those limits were added to the statute in 1988. See *Transpacific*, 4 F.4th at 1324-1326; Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, Tit. I, Subtit. E, § 1501, 102 Stat. 1257-1260. By the time of that amendment, Presidents had for three decades been exercising the power to modify initial actions under Section 232. See p. 8, *supra*. Absent a "clear indication from Congress of a change in policy," *United States* v. *O'Brien*, 560 U.S. 218, 231 (2010) (citation omitted), a court should not infer that Congress disturbed that long-settled understanding. Neither the text nor the history of the 1988 amendment to Section 232 provides any clear indication that Congress intended to deprive the President of his longstanding authority to modify initial actions in response to changed circumstances and new information.

Finally, even if the President misses the deadlines set forth in Section 232, his power to take the steps described in that provision does not evaporate. See *Transpacific*, 4 F.4th at 1320-1321. This Court's precedents recognize that "duties are better carried out late

than never," and that "a statutory rule that officials '"shall" act within a specified time' does not by itself 'preclude action later.'" *Nielsen* v. *Preap*, 139 S. Ct. 954, 967 (2019) (opinion of Alito, J.) (brackets and citation omitted); see, *e.g.*, *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 160 (2003) ("[W]e do not readily infer congressional intent to limit an agency's power to get a mandatory job done merely from a specification to act by a certain time."); *United States* v. *James Daniel Good Real Property*, 510 U.S. 43, 63 (1993) ("[I]f a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction."); *United States* v. *Montalvo-Murillo*, 495 U.S. 711, 718 (1990) ("[T]he sanction for breach [of a time limit] is not loss of all later powers to act."). Section 232 directs that the President "shall" determine the nature and duration of the action within the 90-day deadline, 19 U.S.C. 1862(c)(1)(A)(ii), and "shall" implement the action within the 15-day deadline, 19 U.S.C. 1862(c)(1)(B). A failure to comply with those time limits would not preclude the President from fulfilling his substantive obligations at a later time.

2. Petitioner argues (Pet. 20-25) that separation-of-powers principles justify its contrary interpretation of Section 232. But petitioner's separation-of-powers arguments lack merit.

a. Petitioner argues (Pet. 20) that courts should read Section 232 narrowly in order to avoid a violation of the nondelegation doctrine. This Court rejected the same argument in *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976).

Algonquin arose after the President invoked Section 232 to establish license fees for certain imports of pe-

troleum. 426 U.S. at 556. In the course of upholding the license fees, the Court rejected the contention that a court "must construe [Section 232] narrowly in order to avoid 'a serious question of unconstitutional delegation of legislative power.'" *Id.* at 558-559 (citation omitted). The Court instead held that the statute "easily fulfills" the test set forth in the Court's nondelegation cases: It provides "'an intelligible principle'" to guide the President's exercise of discretion. *Id.* at 559 (citation omitted). The Court observed that Section 232 "establishes clear preconditions to Presidential action," including a finding by the Secretary that an "'article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.'" *Ibid.* (citation omitted). The Court also emphasized that "the leeway that the statute gives the President in deciding what action to take in the event the preconditions are fulfilled is far from unbounded," since "[t]he President can act only to the extent 'he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security.'" *Ibid.* (citation omitted). Finally, the Court noted that Section 232 "articulates a series of factors to be considered by the President in exercising his authority." *Ibid.* For those reasons, the Court "s[aw] no looming problem of improper delegation." *Id.* at 560.

b. Petitioner suggests (Pet. 23) that the court of appeals' interpretation of Section 232's time limits has created a nondelegation problem that did not exist when *Algonquin* was decided. But when this Court decided *Algonquin*, Section 232 imposed no time limits at all. See p. 9, *supra*. The Court still rejected the nondelegation challenge, emphasizing the other constraints im-

posed by the statute: the requirement of a finding that the imports threaten to impair national security, the requirement that the President take action only to the extent necessary to address that threat, and the list of specific factors that the President must consider when exercising his authority. If those constraints sufficed to defeat the nondelegation challenge in *Algonquin*, they suffice to defeat any nondelegation challenge here, regardless of how a court interprets the statute's time limits.

c. Petitioner also asks this Court (Pet. 24) to "use this case to begin reconsidering its approach to nondelegation." But under the doctrine of stare decisis, petitioners must identify a "special justification" for reconsidering the questions resolved in *Algonquin*. *United States* v. *International Business Machines Corp.*, 517 U.S. 843, 856 (1996) (citation omitted). Petitioner has not identified any such justification for revisiting either *Algonquin*'s constitutional holding that Section 232 complies with Article I, or its statutory-interpretation holding that a court need not "construe [Section 232] narrowly in order to avoid" nondelegation issues. 426 U.S. at 558-559.

Algonquin was in any event correctly decided. First, the President's discretion under Section 232 is far more constrained than in other cases in which this Court has rejected nondelegation challenges. This Court has upheld statutes that have empowered executive agencies to regulate in the "public interest," *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 225-226 (1943) (citation omitted); to set prices that are "fair and equitable," *Yakus* v. *United States*, 321 U.S. 414, 422 (1944); and to establish air-quality standards to "protect the public health," *Whitman* v. *American Trucking*

Ass'ns, 531 U.S. 457, 472-476 (2001) (citation omitted). Section 232's standards are far more specific than those. That specificity is particularly apparent in this case, where petitioner challenges the President's extension to steel *derivatives* of pre-existing tariffs on imported steel. The imposition of tariffs "on imports of derivatives of the articles that were the subject of the Secretary's threat finding is expressly authorized as an available remedy by § 232(c)." Pet. App. 14a; see 19 U.S.C. 1862(c)(1)(A)(ii) (requiring that, if the President concurs with the Secretary's finding that imports of "an article * * * threaten to impair the national security," the President shall determine what action "must be taken to adjust the imports of the article *and its derivatives*") (emphasis added).

Second, in "authorizing action by the President in respect of subjects affecting foreign relations," Congress may "leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 324 (1936). In particular, Congress may "invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." *Field* v. *Clark*, 143 U.S. 649, 691 (1892). Because Section 232 empowers the President to act in the fields of foreign affairs and foreign trade, it would be constitutional even if it established a "more general" standard than would be permissible in the domestic context. *Curtiss-Wright*, 299 U.S. at 324. In fact, as discussed above, Section 232 provides standards that are more specific than some of the standards that this Court has sustained in the domestic sphere.

Third, the line between a permissible grant of discretion to the executive and an impermissible delegation of legislative power "must be fixed according to common sense and the inherent necessities of the governmental co-ordination." *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 406 (1928). If there is any area in which common sense and the inherent necessities of governmental coordination support a grant of discretion to the President, it is the area in which Section 232 operates: "national security." 19 U.S.C. 1862(b)(1)(A). It would be "unreasonable and impracticable to compel Congress to prescribe detailed rules," beyond those set out in Section 232, to constrain the President's power to adjust imports that threaten to impair national security. *Algonquin*, 426 U.S. at 560 (citation omitted).

d. Finally, petitioner invokes (Pet. 3) the major questions doctrine—the principle that, when agencies claim "[e]xtraordinary grants of regulatory authority" based on "modest words," the "history and the breadth" of the asserted power may provide "reason to hesitate before concluding that Congress" meant to confer such authority." *West Virginia* v. *EPA*, 142 S. Ct. 2587, 2608-2609 (2022) (citations and internal quotation marks omitted). But the major questions doctrine is a tool for determining the substantive scope of the power that a statutory provision has granted to the Executive Branch. See, *e.g.*, *id.* at 2608. Petitioner cannot dispute that Proclamation 9980 fits within the substantive scope of the President's power to "adjust the imports" of an "article and its derivatives" in order to protect "national security." 19 U.S.C. 1862(c)(1)(A)(ii). The Act thus would have specifically and unambiguously authorized the President to impose tariffs on steel derivatives in his initial Proclamation 9705. See Pet. App. 15a ("The

President may take action against derivative products regardless of whether the Secretary has investigated and reported on such derivatives.").

The only disputed question here is whether the Act authorized the President to take the same step at a later date in light of new information. See Pet. App. 14a ("In acting to close a loophole exploited by steel-derivatives importers, the President was * * * adding use of a tool that he could have used in the initial set of measures and later found important to address a specific form of circumvention."). Construing the Act to confer that authority cannot reasonably be described as "delegating vast legislative power to the Executive." Pet. 3.

Petitioner argues (Pet. 24) that, because Section 232 grants the President significant power, a court should interpret its "procedural requirements" "strictly." Petitioner does not identify any case in which this Court has applied such an interpretive rule. To the contrary, petitioner candidly asks the Court (Pet. 3) to adopt such a rule as "the next step" in its "major-questions and related separation of powers jurisprudence." But the Court is "not at liberty" "to create a new" clear-statement rule in that way. *Tanzin* v. *Tanvir*, 141 S. Ct. 486, 493 (2020). "Although background presumptions can inform the understanding of a word or phrase, those presumptions must exist at the time of enactment. [A court] cannot manufacture a new presumption now and retroactively impose it on a Congress that acted [35] years ago." *Ibid.*

3. Contrary to petitioner's suggestion (Pet. 34), this Court should not hold the petition for a writ of certiorari pending its decision in *Loper Bright Enterprises* v. *Raimondo*, cert. granted, No. 22-451 (May 1, 2023). *Loper Bright* presents the question whether this Court should

overrule *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which instructs courts to defer to an agency's reasonable interpretation of an ambiguous statute that the agency administers. But the court of appeals did not invoke *Chevron* and did not defer to the government's interpretation of Section 232. In fact, the word "deference" appears nowhere in the court's opinion. See Pet. App. 1a-18a.

Petitioner argues (Pet. 34) that the court of appeals granted the President "*Chevron*-style deference" when it stated that, under its decision in *Maple Leaf Fish Co.* v. *United States*, 762 F.2d 86 (Fed. Cir. 1985), it could hold Proclamation 9980 invalid only if there was a "clear misconstruction of the governing statute." Pet. App. 11a (citation omitted). But petitioner misreads the court's opinion. Because the President is not an "agency" within the meaning of the Administrative Procedure Act (APA), his actions are not subject to judicial review under the APA. See *Franklin* v. *Massachusetts*, 505 U.S. 788, 801 (1992); 5 U.S.C. 706. They are instead subject only to a narrow form of review "outside the framework of the APA," and even that review "is not available when the statute in question commits the decision to the discretion of the President." *Dalton* v. *Specter*, 511 U.S. 462, 474 (1994). The standard that the Federal Circuit set out in *Maple Leaf* and applied in this case reflects the "very limited" scope of judicial review when "the President" makes "highly discretionary" decisions. 762 F.2d at 89; see Pet. App. 12a (noting that the Federal Circuit has "repeatedly relied on the *Maple Leaf* formulation to indicate the 'limited' scope of review of non-constitutional challenges to presidential action") (citation omitted). It does not reflect a form of "*Chevron*-style deference," Pet. 34, and it would not be affected

by this Court's decision in *Loper Bright*, which does not involve a challenge to action taken by the President.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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