IN THE SUPREME COURT OF THE UNITED STATES

No. 24-1287

LEARNING RESOURCES, INC., ET AL., PETITIONERS

v.

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

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENTS' RESPONSE TO PETITIONERS' MOTION TO EXPEDITE CONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

Pursuant to Rule 21 of the Rules of this Court, the Solicitor General, on behalf of the respondents, respectfully opposes petitioner's motion for expedited consideration of their petition for a writ of certiorari before judgment.

STATEMENT

The International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (50 U.S.C. 1701 et seq.) authorizes the President to "regulate * * * importation" of foreign goods to "deal with any unusual and extraordinary threat" to "national security, foreign policy or [the U.S.] economy" if

the President finds that a national emergency exists. 50 U.S.C. 1701(a). Invoking that authority, the President has determined that certain acute national emergencies should be addressed by imposing tariffs on the responsible nations. First, to address the failure of the People's Republic of China (PRC) to address the flow of contraband drugs like fentanyl into the United States, the President has imposed tariffs on imports from the PRC. See Pet. App. 7a-9a. Second, to address the national emergency created by large and persistent U.S. trade deficits, the President has imposed a 10% tariff on most imported goods, along with additional country-specific tariffs. See id. at 9a-10a. Those tariffs have yielded significant foreign-policy successes and have prompted fruitful negotiations with many foreign partners.

Petitioners filed this suit challenging the tariffs in the U.S. District Court for the District of Columbia. See Pet. App. 13a-14a. The court granted petitioners a preliminary injunction prohibiting the government from collecting the tariffs from petitioners. See id. at 3a-43a. On its own motion, the court stayed its injunction for 14 days. See id. at 43a. The government then appealed to the D.C. Circuit, and the district court granted the government's motion to stay its preliminary injunction pending appellate review. See id. at 44a-45a.

ARGUMENT

This Court should deny petitioners' unwarranted request for a petition for a writ of certiorari before judgment and a motion

to expedite consideration of the petition, the principal effect of which would be to leapfrog the ongoing, expedited proceedings before both the D.C. Circuit and en banc Federal Circuit. Despite the fact that two courts of appeals are now expediting these cases, petitioners ask this Court (Mot. 3) to order the government to file its response by June 23 (i.e., six days after the filing of the petition) and to consider the petition before the Court's summer recess. That proposed course makes little sense.

First, this particular case does not warrant departing from the Court's ordinary procedures. Certiorari before judgment is an exceptional procedure reserved for cases "of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. R. 11. But given the expedited treatment that these cases are receiving in the courts of appeals, no such "deviation" is necessary here. Petitioners also seek certiorari after having prevailed in the district court, even though this Court has "generally declined to consider cases at the request of a prevailing party." Camreta v. Greene, 563 U.S. 692, 704 (2011). On top of that, they ask this Court to order the government to respond to the petition for a writ of certiorari before judgment within six days, even though this Court's rules ordinarily give a respondent at least 30 days. See Sup. Ct. R. 15.3. Petitioners have not justified such a stark departure from established practice, particularly given petitioner's ability to obtain

refunds if the tariffs are ultimately held unlawful, see Sunpreme Inc. v. United States, No. 15-315, 2017 WL 65421, at *5 (C.I.T. Jan. 5, 2017), as well as the fact that this case involves an injunction limited to petitioners rather than universal relief, see Pet. App. 2a.

Second, certiorari before judgment on a highly expedited timeframe would be all the more unwarranted here because the main issue in this case -- unlike the proceedings challenging the President's tariffs in the Federal Circuit -- is whether the federal district court has subject-matter jurisdiction over this suit at all. This, in short, is not a case likely to resolve ultimate questions about the legality of the tariffs, because Congress has granted the Court of International Trade (CIT) exclusive jurisdiction over many types of suits addressing international-trade matters, see 28 U.S.C. 1581, and has deprived district courts of jurisdiction over such matters, see 28 U.S.C. 1337(c).

Specifically, the CIT's exclusive jurisdiction encompasses "any civil action" against the government that "arises out of any law of the United States providing for * * * tariffs * * * on the importation of merchandise for reasons other than the raising of revenue" or for "administration and enforcement with respect to" such tariffs. 28 U.S.C. 1581(i)(1)(B) and (D). The challenged Executive Orders qualify as a "law * * * providing for * * * tariffs," or for "administration and enforcement with respect to"

tariffs, within the meaning of that provision. Ibid. The Executive Orders modified the Harmonized Tariff Schedule of the United States, see Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,090 (Apr. 7, 2025); Exec. Order 14,226, 90 Fed. Reg. 15,625, 15,626 (Apr. 15, 2025), and Congress has provided that "[e]ach modification or change made to the Harmonized Tariff Schedule under authority of law" "shall be considered to be statutory provisions of law for all purposes," 19 U.S.C. 3004(c)(1)(C). The district court accordingly lacked subject-matter jurisdiction over this case, making the case an unsuitable vehicle for resolving the question presented.* At a minimum, this Court should deny the motion to expedite, so that the parties can properly brief and the Court can properly consider that important jurisdictional issue before the Court decides whether to grant review.

Third, certiorari before judgment on a highly expedited timeframe is also unwarranted given the ongoing proceedings now before the Federal Circuit that do not involve the same jurisdictional problem. Two other sets of plaintiffs filed suits challenging the tariffs in the CIT. Addressing both challenges at once, the CIT granted a permanent injunction against the collection of the tariffs. See V.O.S. Selections, Inc. v. United States,

* Several lower courts have correctly concluded that the Court of International Trade has exclusive jurisdiction over legal challenges to these tariffs. See California v. Trump, No. 25-cv-3372, 2025 WL 1569334, at *4 (N.D. Cal. June 2, 2025); Emily Ley Paper, Inc. v. Trump, No. 25-cv-464, 2025 WL 1482771, at *8 (N.D. Fla. May 20, 2025); Webber v. DHS, No. 25-cv-26, 2025 WL 1207587, at *1 (D. Mont. Apr. 25, 2025).

Nos. 25-66, 25-77, 2025 WL 1514124 (C.I.T. May 28, 2025). The en banc Federal Circuit has stayed that injunction. See V.O.S. Selections, Inc. v. Trump, No. 25-1812, 2025 WL 1649290, at *1 (June 10, 2025). The en banc court also has issued an expedited briefing schedule and has scheduled oral argument on the merits for July 31, 2025. See C.A. Doc. 53, V.O.S. Selections, supra (No. 25-1812) (June 13, 2025).

Once that Federal Circuit issues its decision, this Court would likely have an opportunity to determine whether to grant certiorari -- and, if so, to hear the case during the October 2025 Term. That case would be a better vehicle than this one for resolving the question presented, both because it originates in the CIT (which has exclusive original jurisdiction over this suit) and because this Court would have the benefit of a court of appeals' decision. If the Court ultimately grants review in the Federal Circuit case, and if it believes there is any meaningful doubt as to the CIT's jurisdiction, it could grant review in this case at that time (either before or after the D.C. Circuit has issued its judgment).

Fourth, petitioners and the government have both agreed that the D.C. Circuit should expedite its consideration of the government's appeal. Petitioners have proposed a schedule under which appellate briefing would conclude on July 18, 2025, see C.A. Doc. 2120566, at 2 (June 12, 2025), while the government has urged a schedule under which briefing would conclude on August 8, 2025,

see C.A. Doc. 2120719, at 2 (June 13, 2025). Either schedule would allow the D.C. Circuit to hear and decide this case expeditiously. For that reason, too, this Court need not expedite consideration of the certiorari petition.

Finally, denying the motion to expedite would not necessarily mean postponing the resolution of the certiorari petition until after the Court's summer recess. The government plans to file its response to the petition within 30 days (i.e., by July 17, 2025) without seeking an extension. If the Court determines that certiorari before judgment is warranted, it could release an order granting certiorari during the summer. See, e.g., United States v. Booker, 542 U.S. 956 (2004) (granting certiorari on August 2, 2004).

CONCLUSION

The motion to expedite consideration of the petition for a writ of certiorari before judgment should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

JUNE 2025