No. 24-1287

In the

Supreme Court of the United States

LEARNING RESOURCES, ET AL.,
Petitioners,

v.

DONALD J. TRUMP, ET AL.,
Respondents.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONERS

Cory L. Andrews
Zac Morgan
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302
zmorgan@wlf.org

June 18, 2025

QUESTION PRESENTED

Whether 50 U.S.C. § 1702(a)(1)(B) grants the President legal authority to impose tariffs.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. IEEPA DOES NOT GIVE THE PRESIDENT LEGAL AUTHORITY TO IMPOSE TARIFFS 3

II. ONLY THIS COURT CAN PROVIDE CERTAINTY AND FINALITY ON THAT QUESTION 7

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases

Ala. Ass'n of Realtors v. U.S. Dep't of HHS,
594 U.S. 758 (2021).....2, 3, 7

Biden v. Neb.,
600 U.S. 477 (2023).....2, 6, 7

FDA v. Brown & Williamson Tobacco Corp.,
529 U.S. 120 (2000).....2, 6, 7

Lucia v. SEC,
585 U.S. 237 (2018).....1

Nat'l Fed'n of Indep. Bus. v. U.S. Dep't of Labor, Occupational Safety & Health Admin.,
595 U.S. 109 (2022).....1, 7

Sacks v. Office of Foreign Assets Control,
466 F.3d 764 (9th Cir. 2006).....4

Utility Air Regulatory Grp. v. EPA,
573 U.S. 302 (2014).....3, 6, 9

V.O.S. Selections, Inc. v. Trump,
Case No. 25-1812
(Fed. Cir. 2025) 7, 9

V.O.S. Selections, Inc. v. Trump,
Case No. 25-66
(Ct. of Int'l Trade May 28, 2025).....9

W. Va. v. EPA,
597 U.S. 697 (2022).....2, 6, 7

Whitman v. Am. Trucking Ass'ns,
531 U.S. 457 (2001).....6

Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952).....1

Constitutional Provisions

U.S. Const. art. I, § 8.....3

U.S. Const. art. II.....1, 3

U.S. Const. art. III 9

Statutory Provisions

19 U.S.C. § 1862.....5

19 U.S.C. § 2132(a).....8

50 U.S.C. § 1702(a)(1)(B) ..... i, 4-5

Executive Orders

Executive Order 14193 3

Executive Order 14194 3

Executive Order 14195 3

Executive Order 14231 3

Executive Order 14232 3

Executive Order 14245 3

Executive Order 14256 3

Executive Order 14257 .....3, 4

Executive Order 14259 .....3, 8

Executive Order 14266 3

Executive Order 14298 .....3, 8

Other Authorities

Alan Greenspan and Adrian Wooldridge, *Capitalism in America: A History* (2018).....2

Bureau of Economic Analysis, "U.S. International Trade in Goods and Services, December and Annual 2024," U.S. Dep't of Commerce (Feb. 5, 2025) 7-8

Pub. Law. 95-223.....4

Scott Lincicome, "Toys, Pencils, and Poverty at the Margins," Cato Inst., May 7, 2025 8

Xuan-Thao Nguyen and Jeffrey A. Maine, *Attacking Innovation*, 99 B.U. L. Rev. 1687 (2019)..... 8-9

Statement of President Carter on Signing H.R. 7738 Into Law (Dec. 28, 1977) 4, 6

INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free markets, individual rights, limited government, and the rule of law. It often appears as amicus before this Court in cases in which one branch of the federal government has usurped the powers of another, *Lucia v. SEC*, 585 U.S. 237 (2018), and has urged the Court to review such cases on an expedited basis when that unlawful action risks significant uncertainty for the American economy, *Nat'l Fed'n of Indep. Bus. v. U.S. Dep't of Labor, Occupational Safety & Health Admin.*, 595 U.S. 109 (2022) (*NFIB*).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case should skip the line for two reasons.

First, the President's legal basis for his authority to impose tariffs is wrong. "The President's power, if any, to issue" such an "order must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). While President Trump claims no Article II tariff power, he does claim that the International Emergency Economic Powers

---

* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation and submission. Because the brief is filed more than 10 days before the deadline, the brief itself serves as notice to all parties.

Act (IEEPA) functions as such. But IEEPA does not involve tariff authorities at all. App. 21a-22a.

The President's resort to two "vague terms," *W. Va. v. EPA*, 597 U.S. 697, 723 (2022) (internal quotation marks and citation omitted), separated from each other by sixteen words and tucked away in a 76-word operative subsection, are precisely the sort of "cryptic," *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000), claim to vast executive authority with major economic consequences that this Court has repeatedly condemned. *Cf. Biden v. Neb.*, 600 U.S. 477 (2023); *Ala. Ass'n of Realtors v. U.S. Dep't of HHS*, 594 U.S. 758 (2021).

Second, so long as the President claims this power, businesses throughout the Nation must assume he will continue to wield it. In prior cases when the Court has granted the writ before judgment, tens or hundreds of billions of dollars in activity were in issue. *Biden*, 600 U.S. at 502; *Ala. Ass'n of Realtors*, 594 U.S. at 764. Here, the President's actions affect trillions of dollars' worth of economic activity, with a direct impact on the purchasing, production, and pricing decisions of every American business that touches, even remotely, international trade.

Businesses "crave certainty as much as almost anything: certainty is what allows them to make long-term plans and long-term investments." Alan Greenspan and Adrian Wooldridge, *Capitalism in America: A History* 258 (2018). Already the President has modified some of these tariffs in response to outside events. Already one court has extinguished the tariffs wholesale—only to see that judgment

formally stayed. Businesses up and down the supply chain cannot plan around, or wait for, further executive modifications, the resolution of stop-and-start injunctions, or circuit percolation. Only this Court can provide the finality and certainty that America's businesses need.

ARGUMENT

I. IEEPA DOES NOT GIVE THE PRESIDENT LEGAL AUTHORITY TO IMPOSE TARIFFS.

No Article II tariff power exists. The Constitution gives the tariff power to Congress, and only Congress can authorize the President to "lay and collect Taxes, Duties, Imposts, and Excises." U.S. Const., art. I, § 8.

So the President must point to clear authorization in statutory text to unilaterally set tariff rates. *Ala. Ass'n of Realtors*, 594 U.S. at 764 ("We expect Congress to speak clearly when authorizing [the Executive] . . . to exercise powers of 'vast economic and political significance'") (quoting *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

The President points to IEEPA. *See*, *e.g.*, Executive Orders 14298, 14266, 14259, 14257, 14256, 14245, 14232, 14231, 14195, 14194, 14193. He has done so to impose specific tariffs on some of the Nation's largest trading partners. *E.g.*, Executive Orders 14193 (Canada), 14194 (Mexico), 14195 (China). He has done so to impose reciprocal rates on other countries to improve America's balance-of-payments. Executive Order 14257. And he has done

so to impose a more-or-less universal floor tariff of ten percent on all foreign goods sold in the United States. *Id*. Some of those tariffs have been altered or held in abeyance (for now), but not all. What certainly hasn't changed is the President's claim that IEEPA gives him a free hand to tariff.

Yet IEEPA does not vest the President with any power to issue tariffs. "IEEPA does not use the words 'tariffs' or 'duties,' their synonyms, or any other similar terms like 'customs,' 'taxes,' or 'imposts.'" App. 21a. This is unsurprising. IEEPA is an economic sanctions statute with wartime or near-wartime measures in mind. Pub. Law. 95-223 (enacting IEEPA "[w]ith respect to the powers of the President in time of war or national emergency"). President Carter, who signed IEEPA, deemed it a "largely procedural" statute which, if anything, "place[d] additional constraints" on "the President's emergency economic powers." Statement of President Carter on Signing H.R. 7738 Into Law (Dec. 28, 1977), https://perma.cc/3YDP-NW3Z; *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 776 (9th Cir. 2006) ("IEEPA was passed by Congress to counter the perceived abuse of emergency controls by [P]residents to unilaterally sanction foreign governments or interfere with international trade in non-emergency, peacetime situations").

Even so, the President—the only Chief Executive to ever use IEEPA as a tariffing authority—finds Congressional authorization in this provision:

> [T]he President may, under such regulations as he may prescribe, by

> means of instructions, licenses, or otherwise . . . 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) (emphasis supplied).

The district court correctly rejected this open-ended reading, which conflates the power to regulate with the power to tax. App. 23a ("To regulate is to establish rules governing conduct; to tariff is to raise revenue through taxes on imports or exports"). Neither the investigative powers discussed before the word "regulate," nor the sixteen words between "regulate" and "importation," raise even the ghost of a tariff authority. Far from rote rate-setting of customs duties, those sixteen words involve compellence, voidance, prevention—traditional national-security or wartime aims one would expect in a sanctions authority.

After all, Congress has already enumerated the circumstances under which the President may impose tariffs—as opposed to sanctions or an embargo—for national security reasons. 19 U.S.C. § 1862 (requiring

time-delimited investigation and report by the Commerce Secretary before the President may impose new tariffs for "[s]afeguarding national security"). IEEPA's "largely procedural" text neither adds to nor subtracts from that grant of authority. Statement of President Carter on Signing H.R. 7738 Into Law (Dec. 28, 1977).

In sum, the President rests his legal justification on two plucked words, sixteen apart (out of 76 operative words in the relevant subsection), with one of those plucked words given an uncommon meaning. App. 22a ("'Tariff' and 'regulate' also take different plain meanings"). "Extraordinary grants of regulatory authority," such as a unilateral Presidential writ to impose tariffs, "are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s].'" *W. Va.*, 597 U.S. at 723 (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001)) (brackets in original); *cf. Utility Air Regulatory Grp.*, 573 U.S. at 324 ("When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy'" courts must "typically greet its announcement with a measure of skepticism") (quoting *Brown & Williamson*, 529 U.S. at 159).

The President's reliance on "regulate . . . importation" sings in the same key as past unconstitutional Executive Branch practice that purported to find remarkable Congressional delegations of authority in a pocket of the U.S. Code. "Regulate" no more grants the Executive a tariff power than "waive or modify" granted a power to cancel debt, *Biden*, 600 U.S. at 506, "necessary" granted a power to freeze evictions nationwide, *Ala.*

Ass'n of Realtors, 594 U.S. at 765, or "drug" gave carte blanche to regulate tobacco products. *Brown & Williamson*, 529 U.S. at 125.

In short, IEEPA delegates no general tariff power to the Executive. Such "a sweeping and consequential authority" would not have been granted to the Executive "'in so cryptic a fashion'" as the President's strained reading of the statute suggests. *W. Va.*, 597 U.S. at 721 (quoting *Brown & Williamson*, 529 U.S. at 160).

And the stakes are too high for this Court not to say so now.

II. ONLY THIS COURT CAN PROVIDE CERTAINTY AND FINALITY ON THAT QUESTION.

Whether here or in another case, this Court must reckon with the Question Presented. *See* ECF No. 53, *V.O.S. Selections, Inc. v. Trump*, Case No. 25-1812 (Fed. Cir. June 13, 2025) (setting accelerated briefing schedule). There's no reason to wait. As in other separation-of-powers cases in which the Court has expedited review, this is a straightforward statutory interpretation case with "staggering" economic consequences. *Biden*, 600 U.S. at 502; *id.* at 489 (noting grant of certiorari before judgment); *NFIB*, 595 U.S. at 113 (emergency application for stay granted).

It is an understatement to call the Question Presented a trillion-dollar question. In 2024, the sum of the Nation's international trade in goods and services was over seven trillion dollars. Bureau of

Economic Analysis, "U.S. International Trade in Goods and Services, December and Annual 2024," U.S. Dep't of Commerce (Feb. 5, 2025); https://perma.cc/9XJT-237N. Whether IEEPA vests the President with a unilateral tariff authority is a question with purchasing, production, and pricing decisions for every business in America that engages, even in an ancillary fashion, in the international marketplace.

If IEEPA is (properly) set to the side, the Executive is largely capable of imposing tariffs only via authorities that are either strictly time-limited, 19 U.S.C. § 2132(a), require a pre-tariff investigation, or have a notice period before rates go into effect. App. 25a (discussing relevant statutes). Time limits provide market actors with a date certain for executive-only tariffs to expire. Time lags provide market actors with lead time to adjust (or petition for change).

But if IEEPA *is* a freestanding grant to the President, rates can immediately change from day to day under the Executive's policy preferences. Indeed, President Trump has repeatedly adjusted his IEEPA-authority tariff rates in response to business feedback and negotiations with foreign nations. *E.g.*, Executive Orders 14298, 14259.

Figuring out how to, say, fill shelves with enough inventory by Christmas in such circumstances is a heavy lift. Scott Lincicome, "Toys, Pencils, and Poverty at the Margins," Cato Inst., May 7, 2025, https://perma.cc/9Z2Y-UBP2 (observing that "97 percent of toys purchased in the United States are imported"). Tariffs are taxes, and "frequent tax

changes are the greatest factor in business uncertainty affecting investment and growth." Xuan-Thao Nguyen and Jeffrey A. Maine, *Attacking Innovation*, 99 B.U. L. Rev. 1687, 1738 (2019).

If the business community must live with the uncertainty of a moving target, it at least ought to be certain how the target can move. And if the IEEPA tariffs are unlawful, then this business uncertainty is being imposed on "a significant portion of the American economy" for naught. *Utility Air Regulatory Grp.*, 573 U.S. at 324 (internal quotation marks and citation omitted). Either way, there's no reason to let this drag on.

Leaving percolation to the lower courts risks causing more harm. There have already been moments where a single court extinguished the President's tariffs wholesale, *V.O.S. Selections, Inc. v. Trump*, Case No. 25-66 (Ct. of Int'l Trade May 28, 2025), only for another to turn them back on. ECF No. 51, *V.O.S. Selections, Inc. v. Trump*, Case No. 25-1812 (Fed. Cir. June 10, 2025) (order granting stay). Businesses throughout the supply chain should not have to contend with further whipsawing from stop-and-start injunctions, or plan around the possibility of a circuit division developing on this multi-trillion-dollar question.

As the sole judicial body with nationwide authority and finality-of-opinion, U.S. Const. art. III, only this Court can resolve this uncertainty for America's businesses and consumers.

CONCLUSION

The Court should grant the writ ahead of judgment.

Respectfully submitted,

Cory L. Andrews
Zac Morgan
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302
zmorgan@wlf.org

June 18, 2025