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September 4, 2025

VIA HAND DELIVERY

The Hon. Scott S. Harris
Supreme Court of the United States
1 First Street NE
Washington, D.C. 20543

Re: *Learning Resources, Inc., et al. v. Donald J. Trump, President of the United States, in his official capacity, et al.*, No. 24-1287

Dear Mr. Harris:

Petitioners Learning Resources, Inc. and hand2mind, Inc., hereby request that the Court align its consideration of their petition for a writ of certiorari before judgment to the United States Court of Appeals for the District of Columbia with the Court's consideration of a petition for certiorari newly filed by the Solicitor General in a parallel case (No. 25-250). Petitioners have conferred with the Solicitor General, who provided the following statement: "The government states that it does not oppose expedited consideration, but adheres to its position that the petition for a writ of certiorari before judgment should be denied or, at most, held."

Petitioners' fully briefed petition for certiorari before judgment asks the Court to review a decision from the United States District Court for the District Court of Columbia holding that the International Emergency Economic Powers Act ("IEEPA") does not authorize any tariffs. The petition is currently conferenced for September 29, 2025. On September 3, the Solicitor General filed a petition for this Court's review of a recent decision from the United States Court of Appeals for the Federal Circuit holding that IEEPA does not authorize the same challenged tariffs imposed under IEEPA. The Solicitor General has asked this Court to act on that separate petition by September 10, 2025.

It is critical that the Court consider (and grant) Petitioners' petition for certiorari before judgment in this case alongside the Solicitor General's petition in the Federal Circuit case. Only one court—*either* the CIT *or* a federal district court—has jurisdiction to hear these challenges. The district court below concluded that the federal district courts have jurisdiction over challenges to the IEEPA tariffs. The CIT

and Federal Circuit, without the benefit of adversarial briefing, concluded that the CIT exclusively does. Given the threshold question of mutually exclusive jurisdiction, granting certiorari in both cases is the only way to ensure this Court has jurisdiction to reach the merits of the IEEPA tariffs' lawfulness—an issue of urgent importance that all parties agree must be resolved by this Court.

Petitioners therefore respectfully request that this Court consider their petition for certiorari before judgment concurrently with the Solicitor General's petition for certiorari to the Federal Circuit.

BACKGROUND

1. On April 22, 2025, Petitioners filed suit in the United States District Court for the District of Columbia to challenge the President's authority to issue the IEEPA tariffs. Respondents moved to transfer the case to the CIT pursuant to 28 U.S.C. § 1581(i)(1), which gives that court exclusive jurisdiction over "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 *** tariffs[.]" Petitioners opposed transfer and moved for a preliminary injunction on the ground that IEEPA is not a "law of the United States providing for *** tariffs."

After full briefing and a hearing on both motions, the district court granted Petitioners a preliminary injunction, finding they had shown both a likelihood of success and irreparable harm. On the former, the district court held that IEEPA does not authorize or otherwise "provid[e] for" tariffs—meaning both that the district court had jurisdiction and the challenged IEEPA tariffs were unlawful. On the latter, the district court determined that the tariffs were irreparably harming Petitioners, which faced "an existential threat to their businesses." Pet. App. 37a.

After Respondents appealed, the district court stayed its injunction "pending disposition of the pending appeal before the United States Court of Appeals for the District of Columbia Circuit." Pet. App. 45a. Petitioners sought—over Respondents' objection—a briefing schedule that would align with the schedule in a parallel case then being appealed to the Federal Circuit. *See* Pet'rs Mot. to Govern 2, *Learning Resources, Inc. v. Trump*, No. 25-5202 (D.C. Cir. June 12, 2025). Although the D.C. Circuit expedited Respondents' appeal, it scheduled oral argument for two months after the Federal Circuit's argument date. The Federal Circuit has already issued an opinion, while argument in the D.C. Circuit is scheduled for September 30, 2025.

After the district court stayed its injunction, Petitioners filed a petition for certiorari before judgment in this Court, as well as a motion for expedited consideration of that petition. This Court denied Petitioners' motion for expedited consideration on June 20, 2025. The petition for certiorari before judgment is now fully briefed and scheduled to be considered at the Court's September 29 conference.

2. As noted, a parallel challenge to the IEEPA tariffs has been unfolding in the CIT and Federal Circuit. One day before the district court issued its decision in this case, the CIT accepted the parties' uncontested submission there that it had exclusive jurisdiction over actions challenging the IEEPA tariffs. *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1366 (Ct. Int'l Trade 2025) (concluding that "an action involving a challenge to a presidential action that imposes tariffs, duties, or other import restrictions is one that arises from a 'law providing for' those measures"). On the merits, the CIT—unlike the district court in this case—assumed IEEPA authorizes some tariffs. But it concluded that the challenged tariffs were unlawful, granted the plaintiffs summary judgment, and issued a nationwide injunction. *Id.* at 1383. The Federal Circuit subsequently stayed the injunction pending appeal. Order, Nos. 2025-1812, -1813 (Fed. Cir. May 29, 2025).

On August 29, 2025, the Federal Circuit issued a decision holding the challenged tariffs unlawful. *V.O.S. Selections, Inc. v. Trump*, Nos. 2025-1812, -1813, 2025 WL 2490634, at *10 (Fed. Cir. Aug. 29, 2025). "Although no party *** question[ed] [its] jurisdiction," the Federal Circuit first held that the CIT had exclusive jurisdiction over challenges to the IEEPA tariffs—albeit based primarily on reasoning never articulated by the CIT or pressed by Respondents in any case. *Id.* at *8. Specifically, the Federal Circuit concluded that an action "arises out of" a law "providing for *** tariffs" so long as the law "is *invoked* as the authority to impose a tariff"—whether or not the law does in fact "provid[e] for *** tariffs." *Id.* at *9 (emphasis added). As to the merits, the Federal Circuit concluded that IEEPA did not authorize the President's executive orders, reasoning that the phrase "regulate *** importation" evinced no clear congressional authorization for the challenged tariffs. *Id.* at *13, *15 (quoting 50 U.S.C. § 1702(a)(1)(B)). The Court left open the possibility that IEEPA could nonetheless authorize other tariffs.

DISCUSSION

The Court should align consideration of this petition for certiorari before judgment with its consideration of the Solicitor General's petition for certiorari to the Federal Circuit, to ensure that no jurisdictional impediment precludes a merits resolution in these exceptionally pressing cases.

1. It is essential that this Court consider and grant the two petitions together to ensure it has jurisdiction to reach the merits of the IEEPA tariffs' lawfulness. *See K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 182 (1988) (resolving split between D.C. Circuit and Federal Circuit over "both the jurisdictional" question and merits, and concluding jurisdiction lay in the district court rather than the CIT). There is a serious question as to whether the CIT has jurisdiction over challenges to the IEEPA tariffs—a question that did not face adversarial testing in either the CIT or Federal Circuit. In this case—where the question *did* undergo adversarial testing—the district court concluded that federal district courts, and not the CIT, possess jurisdiction.

The district court was correct: Petitioners' case is a civil action that "arises out of" IEEPA—the only substantive law underlying each of Petitioners' claims and the only law a court must interpret to decide this case. *See* Pet. Reply 3-4. Because IEEPA is *not* a law that provides for tariffs, the federal district courts, not the CIT, have jurisdiction over challenges to the IEEPA tariffs. *See* 28 U.S.C. § 1581(i)(1)(B) (CIT has jurisdiction only if action "arises out of any law of the United States providing for *** tariffs").

The Federal Circuit's theory of jurisdiction is incorrect. A law that is "invoked" as authority for tariffs is not thereby a law that "provide[s] for *** tariffs." 28 U.S.C. § 1581(i)(1)(B); *see K Mart Corp.*, 485 U.S. at 185 (asking whether statute imposed embargoes, not whether it was *invoked* to impose embargoes); *cf. Miami Free Zone Corp. v. Foreign Trade Zones Bd.*, 22 F.3d 1110, 1112 (D.C. Cir. 1994) (28 U.S.C. § 1581(i) "grants the CIT exclusive jurisdiction over actions arising from laws *providing for*—not 'designed to deal with' or 'relating to'—revenue from imports"). The Federal Circuit was thus wrong to conclude that "[t]o determine jurisdiction pursuant to an 'arising out of' provision, we do not have to decide whether the statute does in fact confer such authority." *V.O.S. Selections*, 2025 WL 2490634, at *9. The Federal Circuit appeared to be concerned about the overlap between the merits and jurisdictional issues. *Id.* at *9 n.11. But such an overlap is not unusual—especially where, like here, the plain text of the jurisdictional statute compels it. *See, e.g.,*

Bolivarian Republic of Venez. v. Helmerich & Payne Int'l Drilling Co., 581 U.S. 170, 178 (2017) (courts may sometimes need to "decide some, or all, of the merits issues" to "answer the jurisdictional question").

Nor do these challenges to the IEEPA tariffs "arise[] out of" any *actual* (as opposed to "purported," 2025 WL 2490634, at *9) "law of the United States providing for *** tariffs." 28 U.S.C. § 1581(i)(1)(B). *See* Pet. Reply 4-5. The phrase "arises out of" refers to the "substantive law" that gives rise to Petitioners' claims—IEEPA—not the technical vehicle for implementing an unlawful action. *International Lab. Rights Fund v. Bush*, 357 F. Supp. 2d 204, 208 (D.D.C. 2004) (analyzing CIT jurisdiction based on "substantive law giving rise to [plaintiffs'] claims"); *see 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 claim). The challenged executive orders are not themselves "law[s] of the United States" because they were made without statutory authority. *See Dreyfus v. Von Finck*, 534 F.2d 24, 29 (2d Cir. 1976) ("Executive Orders issued without statutory authority providing for presidential implementation are generally held not to be 'laws' of the United States."). Despite acknowledging that "executive orders are not ordinarily 'law within the meaning of the Constitution,'" 2025 WL 2490634, at *9 (quoting *Sierra Club v. U.S. Dep't of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025)), the Federal Circuit erroneously held that these orders were different because they "purported to" modify the Harmonized Tariff Schedule of the United States ("HTSUS"). But the fact that "the Challenged Executive Orders, *if authorized* [by IEEPA], would modify the HTSUS," *id.* at *9 (emphasis added), confirms that these cases arise solely out of IEEPA—not any other "law of the United States." *See* 19 U.S.C.§ 3004(c)(1) ("modification[s] or change[s] made" to the HTSUS without "authority of law" are not considered "statutory provisions of law").

2. The only way for this Court to ensure jurisdiction to resolve the merits—and to consider the full range of arguments—is to concurrently consider and grant certiorari in both this and the Federal Circuit cases. Otherwise, the question of the CIT's jurisdiction will continue to evade adversarial testing. *See* 2025 WL 2490634, at *8 (acknowledging that "no party here questions our jurisdiction"). If the Court were to conclude that the CIT lacks jurisdiction over challenges to the IEEPA tariffs, moreover, the Court will have to vacate the CIT and Federal Circuit's decisions without a judgment on the merits. The far more sensible path is to grant certiorari

in this case, too, thereby ensuring that the Court has jurisdiction to decide the merits definitively no matter what.

It is not unusual for this Court to grant certiorari before judgment when the same or similar question is before it in another case. *See* Pet. Reply 10-12 (collecting authorities). Respondents have in fact endorsed that prudent approach in this very case. The Solicitor General opposed Petitioners' earlier motion to expedite in this Court by arguing that "[i]f the Court ultimately grants review in the Federal Circuit case, *** it could grant review in this case *at that time* (either before or after the D.C. Circuit has issued its judgment)." Resp. to Mot. to Expedite 6 (emphasis added). Respondents told the D.C. Circuit the same thing when opposing Petitioners' motion to align the appeal schedule with that of the Federal Circuit cases. *See* C.A. Resp. Mot. to Govern 4-5, No. 25-5202 (D.C. Cir. June 13, 2025). There is now no conceivable reason for denying certiorari before judgment that would facilitate concurrent review in both sets of cases—the only way this Court can ensure prompt and final resolution of the pressing merits questions.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court align its consideration of Petitioners' petition for certiorari before judgment with its consideration of the Solicitor General's petition for certiorari to the Federal Circuit.[1]

We would greatly appreciate distribution of this letter to the Court as soon as possible.

Sincerely,

Pratik A. Shah
Counsel for Petitioners

[1] Assuming the Court grants both petitions, it should align the briefing schedules for all plaintiffs (*i.e.*, set the same bottom-side deadline for Petitioners here and Respondents in No. 25-250). Petitioners do not oppose the Solicitor General's request for expedited briefing and argument.

CERTIFICATE OF SERVICE

Pursuant to Rules 29.3 and 29.5 of the Rules of this Court, I certify that all parties required to be served have been served. On September 4, 2025, I caused a copy of the foregoing letter to be served by electronic filing and overnight delivery on the below-named counsel for Respondents:

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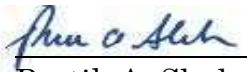

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