No. 25-250, 24-1287

# In the Supreme Court of the United States

**DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL.,**
*Petitioners*,
*v.*
**V.O.S. SELECTIONS, INC., ET AL.,**
*Respondents*.

**LEARNING RESOURCES, INC., ET AL.,**
*Petitioners*,
*v.*
**DONALD J. TRUMP, ET AL.,**
*Respondents*.

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

## BRIEF AMICUS CURIAE OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS IN NO. 25-250


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## INTEREST OF AMICUS[1]

Amicus Curiae, the American Center for Law and Justice ("ACLJ"), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g., Trump v. Anderson*, 601 U.S. 100 (2024); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); or for amici, *e.g., Trump v. United States*, 603 U.S. 593 (2024); *Trump v. Hawaii*, 585 U.S. 667, 667 (2018); and *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 572 (2017). The ACLJ has a strong interest in defending the constitutional separation of powers and ensuring that each branch of government operates within its proper sphere of authority. The ACLJ is particularly concerned here with preserving the Executive's constitutional and long-recognized role in foreign affairs and national security, areas where the President enjoys unique authority and responsibility.

## SUMMARY OF ARGUMENT

The Constitution's text and structure establish a clear division of responsibility: the President serves as the nation's "sole organ" in foreign affairs, while

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[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

Congress and the judiciary operate within their respective spheres. When federal courts second-guess presidential determinations about international emergencies and economic threats, they do not merely exceed their proper role—they undermine the constitutional framework that has governed our Republic for over two centuries. This case presents four interlocking principles that together compel judicial restraint and executive deference in matters of foreign affairs and national security.

**First, the Constitution vests primary foreign affairs authority in the Executive.** The text is clear: Article II designates the President as Commander in Chief, grants him authority to receive foreign ambassadors, and charges him with faithful execution of the laws. These provisions, combined with the practical necessities of international relations, establish executive primacy in foreign policy. As this Court recognized in *United States v. Curtiss-Wright Export Corp.*, the President possesses "the very delicate, plenary and exclusive power" as "the sole organ of the federal government in the field of international relations." 299 U.S. 304, 320 (1936). Foreign policy demands unity of command, speed of action, and access to confidential information that only a single executive can provide.

**Second, Congress has deliberately and repeatedly delegated broad emergency authority to the President.** The International Emergency Economic Powers Act ("IEEPA") exemplifies this pattern of delegation. Congress

crafted IEEPA with sweeping language, authorizing the President to "investigate, regulate, or prohibit" international economic activities during declared emergencies. This broad delegation reflects Congress's recognition that international economic crises require rapid, coordinated responses that only unified executive action can provide. Congressional acquiescence over decades of presidential emergency declarations confirms this understanding.

**Third, the major questions doctrine does not apply directly in the foreign affairs context.** That doctrine developed to address domestic regulatory overreach by unelected administrators. But foreign affairs present fundamentally different considerations. The President—not an unelected bureaucrat—makes these determinations, and he answers to all the American people. Moreover, as Justice Kavanaugh recently observed, "the major questions canon has not been applied by this Court in the national security or foreign policy contexts" because Congress typically "intends to give the President substantial authority and flexibility" in these domains. *FCC v. Consumers Research*, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring). The practical requirements of international relations favor broad executive discretion, not detailed micromanagement.

**Fourth, emergency determinations represent quintessentially executive judgments that courts cannot competently review.** Assessing whether international conditions

constitute an unusual and extraordinary threat requires evaluation of complex geopolitical factors, access to classified intelligence, and predictive judgments about future developments. These capabilities reside uniquely within the Executive Branch. Courts lack both the expertise and institutional capacity to make such assessments. When judges probe the reasoning underlying presidential emergency determinations, they invade the legislative and executive domains in violation of separation of powers principles. This Court should overturn the lower court's decision and reaffirm that emergency determinations in foreign affairs remain within executive—not judicial—authority.

## ARGUMENT

### I. CONSTITUTIONAL SEPARATION OF POWERS REQUIRES JUDICIAL DEFERENCE TO EXECUTIVE AUTHORITY IN FOREIGN AFFAIRS.

The Constitution's allocation of foreign affairs powers reflects a deliberate choice by those who drafted and ratified our founding charter. The Founders understood that effective diplomacy in international relations and national security demand a single executive. As Alexander Hamilton wrote, the President and the Executive Branch is "the *organ* of intercourse between the Nation and foreign Nations" and "that Power which is charged with the command and application of the Public Force." Alexander Hamilton, Pacificus No. 1 *in* The Pacificus-Helvidius Debates of 1793-94 11 (2007 ed. Frisch, Morton J.)

(emphasis in original). When federal judges substitute their judgment for the President's assessment of international threats and emergencies—matters where the Constitution places primary responsibility with the Executive—they venture beyond their appropriate constitutional role and risk disrupting the careful balance of powers our constitutional framework envisions.

### A. The President serves as the "sole organ" of federal government in international relations.

The President's unique constitutional position in foreign affairs stems from both the text of the Constitution and the practical necessities of international relations. Article II vests "[t]he executive Power" in the President. U.S. Const. art. II, § 1, cl. 1. This provision, combined with the President's authority to "receive Ambassadors and other public Ministers" and ensure that "the Laws be faithfully executed," establish the Executive as the primary constitutional actor in foreign affairs. *Id.* § 2, cl. 2; id. § 3.

The Founders chose a single executive precisely because they understood that effective foreign policy requires what Alexander Hamilton called "Decision, activity, secrecy, and despatch"—qualities that "characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number." The Federalist No. 70. A committee of 535 legislators cannot negotiate treaties, respond to international crises, or speak with one voice to foreign nations. Only the President can.

This Court has long recognized the President's "unique position in the constitutional scheme." *Trump v. Vance*, 591 U.S. 786, 800 (2020) (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982)). The President's "duties, which range from faithfully executing the laws to commanding the Armed Forces, are of unrivaled gravity and breadth." *Id.* In particular, the President has a "vast share of responsibility for the conduct of our foreign relations." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610–11 (1952) (Frankfurter, J., concurring).

The foundational precedent establishing executive primacy in foreign affairs remains this Court's decision in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936). The Court recognized that presidential foreign affairs authority derives "not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations." *Id.* at 319–20.

The *Curtiss-Wright* Court emphasized the practical necessities that support executive authority in foreign affairs. Successful foreign policy requires "unity of design" that only executive leadership can ensure. *Id.* at 319 (citation omitted) . The fragmented, deliberative processes of Congress and the judiciary are ill-suited to the continuous, coordinated decision-making that effective foreign policy demands. As the Court elsewhere observed, foreign relations involve "delicate" and "complex" considerations that "involve large elements of prophecy" and require decisions "of a kind for which the Judiciary has neither aptitude,

facilities nor responsibility." *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948).

Furthermore, foreign policy decisions often require access to confidential information available only to the Executive. The President's "opportunity of knowing the conditions which prevail in foreign countries" and his access to "confidential sources of information" give him unique advantages in making foreign policy judgments. *Curtiss-Wright*, 299 U.S. at 320. Courts, lacking such access, cannot effectively second-guess executive foreign policy determinations without undermining both the separation of powers and national security.

Recent decisions of this Court have reaffirmed these principles. In *Trump v. Hawaii*, this Court applied strong deference to executive decisions on immigration and national security that implicate foreign policy concerns. 585 U.S. 667 (2018). Presidential travel restrictions were upheld because immigration decisions involving national security "are frequently of a character more appropriate to either the Legislature or the Executive" than to the Judiciary. *Id.* at 702 (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)). This Court emphasized that such determinations involve "predictive judgments" about "sensitive and weighty interests of national security and foreign affairs." *Id.* at 708 (citations and internal quotations omitted).

Similarly, in *Ziglar v. Abbasi*, this Court recognized that "[n]ational-security policy is the prerogative of the Congress and President" and that "[j]udicial inquiry into the national-security realm raises concerns for the separation of powers in

trenching on matters committed to other branches." 582 U.S. 120, 142 (2017). The Court noted that "courts have shown deference to what the Executive Branch has determined . . . is essential to national security" and "traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs unless Congress specifically has provided otherwise." *Id.* (citation and internal quotations omitted).

This principle reflects the fundamental separation of powers and President's unique function within the constitutional structure: "[t]he executive power is vested in a President; and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power." *Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 610 (1838). This principle is at its zenith in international relations. *Zemel v. Rusk*, 381 U.S. 1, 17 (1965) ("[B]ecause of the changeable and explosive nature of contemporary international relations, . . . Congress -- in giving the Executive authority over matters of foreign affairs -- must of necessity paint with a brush broader than that it customarily wields in domestic areas.").

### B. Congress has delegated to the President substantial authority over international matters.

Congress granted the executive broad discretion when it enacted the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95–223, §§ 201–7, 91 Stat. 1625, 1626–28 (1977) (codified as

amended at 50 U.S.C. §§ 1701–6). The statute grants the President authority to "investigate, regulate, or prohibit" specified international economic activities. 50 U.S.C. § 1702(a). Congress did not say "may sometimes regulate" or "may regulate in limited circumstances," but "may regulate." Indeed, Congress picked broad verbs—"investigate," "regulate," "prohibit"—and paired them with expansive objects covering many kinds of foreign transactions. The trigger is equally broad: "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States." 50 U.S.C. § 1701(a). Congress used the word "any"—as capacious a term as English provides. It chose "unusual and extraordinary"—standards that inherently require judgment calls about complex, evolving situations. This is the language of delegation.

Congress has a long history of delegating extensive emergency authority to the President, particularly in matters involving national security and foreign affairs. As the Federal Circuit's dissenting judges correctly observed, "especially since the days of the 1933 economic emergency, it has been Congress' habit to delegate extensive emergency authority—which continues even when the emergency has passed—and not to set a terminating date." App. 70a (Taranto, J., joined by Moore, Prost, and Chen, JJ., dissenting) (citation omitted). Highlighting sources from the original passage of IEEPA, they added: "[t]he United States thus has on the books at least 470 significant emergency powers statutes without time limitations delegating to the Executive extensive discretionary powers, ordinarily

exercised by the Legislature, which affect the lives of American citizens in a host of all-encompassing ways." *Id.* (citation omitted).

IEEPA represents a paradigmatic example of such congressional delegation. When Congress enacted IEEPA in 1977, it drew from the preexisting Trading with the Enemy Act (TWEA), Pub. L. No. 65–91, §§ 1–19, 40 Stat. 411, 411–26 (1917) (codified as amended at 12 U.S.C. § 95a; 50 U.S.C. §§ 4305–41), to address threats to the U.S. economy resulting from our entry into World War I. Section 5(b) of TWEA empowered the President to "investigate, regulate, or prohibit[] any transactions in foreign exchange" during wartime. 50 U.S.C. § 4305(b)(1)(A).

The authorities granted to the President under IEEPA are "essentially the same as those in § 5(b) of TWEA[.]" *Regan v. Wald*, 468 U.S. 222, 228 (1984). In particular, both statutes contain identical authorization of the President to "regulate . . . importation." *Dames & Moore v. Regan*, 453 U.S. 654, 675 (1981). As the Court of Customs and Patent Appeals observed in *United States v. Yoshida International, Inc.*, TWEA, this predecessor statute, represents a broad grant of congressional authority that must be interpreted in light of its emergency context. 526 F.2d 560, 578 & n.28 (C.C.P.A. 1975) (stating that "Congress necessarily intended a grant of power adequate to deal with national emergencies" and referred to "the flexibility inherent in the delegation of emergency powers").

This broad delegation reflects Congress's recognition that international economic emergencies require rapid, coordinated responses by Executive action. The statute's language is sweeping by design,

granting the President authority to "regulate" or "prohibit" entire categories of international economic activity. Congress deliberately chose expansive terms that would provide the Executive with maximum flexibility to address diverse and unpredictable international threats.

This Court has consistently recognized the breadth of this congressional delegation. In *Dames & Moore*, this Court analyzed IEEPA in the context of the Iranian hostage crisis and concluded that the statute provided sufficient authority for the President's actions in response. 453 U.S. at 677–88. The Court emphasized that the "language of IEEPA is sweeping and unqualified." *Id.* at 671. This Court emphasized that "congressional acquiescence" in longstanding executive practice provides strong evidence of congressional approval. *Id.* at 686. When Congress has multiple opportunities to restrict presidential authority but repeatedly chooses not to do so, courts should interpret that pattern as confirming rather than questioning the scope of delegated authority. *Id.* at 677–78 (noting that Congress has elsewhere shown its "acceptance of a broad scope for executive action in circumstances such as those presented" there and that IEEPA "delegates broad authority to the President to act in times of national emergency with respect to property of a foreign country").

Likewise, *United States v. George S. Bush & Co.*, 310 U.S. 371 (1940), held that the President's actions under section 336(c) of the Tariff Act of 1930 were unreviewable because the statute left the determination to the President to decide if action was necessary. The Court addressed challenges to a

presidential proclamation increasing duties on imports from Japan, issued pursuant to the flexible tariff provisions of the Tariff Act of 1930. This Court firmly rejected judicial second-guessing of executive tariff determinations. The Court emphasized that "[t]he President's method of solving the problem was open to scrutiny neither by the Court of Customs and Patent Appeals nor by us." *Id.* at 379. The Court explained that judicial review of such executive determinations was inappropriate because "it certainly does not permit judicial examination of the judgment of the President that the rates of duty recommended by the Commission are necessary to equalize the differences in the domestic and foreign costs of production." *Id.*

The *George S. Bush & Co.* Court established a broad principle of judicial deference to presidential tariff determinations that applies regardless of the specific statutory framework involved. The Court noted that "[t]he powers which Congress has entrusted to the President under the Act of 1930 do not essentially differ in kind from those which have been granted him under the tariff acts for well over a century." *Id.* at 379. This historical pattern of delegation demonstrates Congress's consistent recognition that tariff policy requires executive flexibility and judgment.

The Court's reasoning in *George S. Bush & Co.* directly supports executive authority under IEEPA. When Congress authorizes presidential action based on executive judgment about economic facts, "the judgment of the President on those facts which is determinative of whether or not the recommended rates will be promulgated" and "the judgment of the

President that on the facts, adduced in pursuance of the procedure prescribed by Congress, a change of rate is necessary is no more subject to judicial review under this statutory scheme than if Congress itself had exercised that judgment." *Id.* at 379–80. This principle applies with even greater force to IEEPA, where Congress has granted the President broad discretion to determine when international economic emergencies exist and what responses are appropriate.

Most importantly, the *George S. Bush & Co.* Court recognized that judicial intrusion into executive tariff determinations violates separation of powers principles. The Court stated unequivocally that "[f]or the judiciary to probe the reasoning which underlies this Proclamation would amount to a clear invasion of the legislative and executive domains. Under the Constitution it is exclusively for Congress, or those to whom it delegates authority, to determine what tariffs shall be imposed." *Id.* at 380. This separation of powers analysis applies with full force to presidential emergency determinations under IEEPA, where Congress has explicitly delegated authority to the President to make such determinations.

Congress has crafted IEEPA with deliberately broad language, granting the President authority to "investigate, regulate, or prohibit" a sweeping range of international economic activities. Congress has had decades of opportunity to narrow this delegation—through amendment, oversight, or new legislation—yet has consistently chosen not to do so. This pattern of congressional acquiescence carries persuasive weight. When the legislative branch repeatedly

observes executive action under a statute and acquiesces in it, it signals approval of that interpretation.

### C. The Major Question Doctrine does not squarely apply to foreign affairs matters.

The major questions doctrine developed as a tool for interpreting domestic regulatory statutes where Congress typically legislates with greater specificity and where concerns about democratic accountability are paramount. In "certain extraordinary cases," circumstances give "reason to hesitate before concluding that Congress meant to confer" the authority needed to uphold a challenged government action. *West Virginia v. EPA*, 597 U.S. 697, 723, 721 (2022) (internal quotation marks and citation omitted). However, this doctrine has limited applicability in the foreign affairs and national security context, where different constitutional principles and practical necessities govern the relationship between Congress and the Executive. *See, e.g., Waterman S.S.*, 333 U.S. at 109 ("The President . . . possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs.").

Justice Kavanaugh emphasized this distinction in his concurrence in *FCC v. Consumers Research*, noting that "the major questions canon has not been applied by this Court in the national security or foreign policy contexts" because it "does not reflect ordinary congressional intent in those areas." 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring).

Rather, "the usual understanding is that Congress intends to give the President substantial authority and flexibility to protect America and the American people—and that Congress specifies limits on the President when it wants to restrict Presidential power in those national security and foreign policy domains." *Id.*

First, this understanding reflects both constitutional structure and practical necessity. In domestic affairs, the major questions doctrine serves as a democracy-forcing mechanism, requiring Congress to speak clearly when authorizing agencies to make decisions of vast economic and political significance. *See Biden v. Missouri*, 595 U.S. 87, 89 (2022). The doctrine rests on the assumption that such decisions should be made by elected representatives rather than unelected administrators. But here, "the President and his subordinate executive officials maintain control over the executive actions undertaken pursuant to a delegation. And the President is elected by and accountable to all the American people." *FCC*, 145 S. Ct. at 2517 (Kavanaugh, J., concurring).

Foreign affairs and national security present fundamentally different considerations. While Congress retains important powers in this sphere—including the authority to declare war, regulate foreign commerce, and control appropriations—the President serves as the nation's "sole organ" in international relations. *See Curtiss-Wright*, 299 U.S. at 320. This constitutional allocation means that broad congressional delegations in foreign affairs enhance rather than diminish democratic accountability by placing responsibility with the

constitutionally designated actor.

Second, the practical requirements of foreign policy differ markedly from those of domestic regulation. "The canon does not translate to those contexts because of the nature of Presidential decision-making in response to ever-changing national security threats and diplomatic challenges." *FCC*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring). International relations demand rapid response capabilities, access to classified information, and the ability to coordinate complex diplomatic, economic, and military instruments. These requirements favor broad executive discretion rather than detailed legislative specification. As this Court observed in *Curtiss-Wright*, Congress "must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." 299 U.S. at 320.

Third, the major questions doctrine's emphasis on clear congressional authorization is inapplicable in the established pattern of broad delegation in foreign affairs and national security statutes. Congress has consistently granted sweeping authority to the President in these areas. These delegations reflect Congress's recognition that it cannot anticipate all possible international contingencies or specify appropriate responses in advance. The language of IEEPA is undeniably broad on its face. It lists a host of powers—some even more restrictive of trade than tariffing. As the dissent emphasized below, "[t]he facially evident intent is to provide flexibility in the tools available to the President to address the unusual and extraordinary threats specified in a declared national emergency. This is not an

'ancillary,' 'little used backwater' provision, or a delegation outside the recipient's wheelhouse." App. 122a (Taranto, J., joined by Moore, Prost, and Chen, JJ., dissenting) (quoting *West Virginia*, 597 U.S. at 710, 730).

Simply put, the major questions doctrine does not fit the foreign affairs context. That doctrine arose to address a specific problem—agencies making transformative policy decisions based on vague statutory language in areas where Congress typically legislates with specificity. But foreign affairs statutes work differently, and for good constitutional reasons. Here, Congress intentionally wrote IEEPA in broad terms because international crises are unpredictable and diverse. The Executive needs flexibility to respond to threats Congress cannot foresee.

### D. The definition of an international emergency is not something for courts to second guess.

Finally, the determination of what constitutes an international emergency threatening American economic interests represents a quintessentially executive function, a political question that courts are institutionally ill-suited to review. Such determinations require assessment of complex geopolitical factors, access to classified intelligence, evaluation of economic data and trends, and consideration of potential responses and their likely consequences. These questions reside uniquely within the Executive Branch's domain.

Emergency determinations often involve "large elements of prophecy" that require predictive

judgments about future developments and their potential impact on American interests. *Waterman S.S.*, 333 U.S. at 111. Courts lack both the expertise and institutional capacity to make such forward-looking assessments. Crises can develop rapidly, requiring immediate responses to prevent significant harm to American interests.

The statutory structure of IEEPA confirms Congress's intent to vest emergency determination authority in the Executive. The statute requires the President to declare a "national emergency 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." 50 U.S.C. § 1701(a). This language grants the President broad discretion to identify threats that warrant emergency response, using terms like "unusual," "extraordinary," and "threat" that inherently involve subjective assessments.

Unlike Congress, which consists of hundreds of members representing diverse constituencies, or the federal judiciary, which operates through multiple, independent courts, the presidency provides the single, clarion voice that international relations require. Foreign nations need to know with whom they are dealing and must be able to rely on consistent, authoritative communications from the United States government. When courts intrude upon executive foreign policy authority, they violate this constitutional allocation of functions.

In short, "[h]ow the President chooses to exercise the discretion Congress has granted him is not a matter for [judicial] review," *Dalton v. Specter*, 511

U.S. 462, 476 (1994). IEEPA authorizes the President to take certain actions in response to a declared national emergency arising from an "unusual and extraordinary threat[] . . . to the national security, foreign policy, or economy of the United States." 50 U.S.C. § 1701(a), and the question whether these reciprocal tariffs constitute emergency action under IEEPA, or violate the unusual-and-extraordinary-threat requirement, is not a judicial question but a political one. The Court need not and ought not weigh in on those political judgments or economic debates one way or another; rather, they are political questions suited to the political branches. *See George S. Bush & Co.*, 310 U.S. at 380.

The Federal Circuit's decision raises significant constitutional concerns by applying domestic regulatory standards to review core executive determinations in foreign policy—an area where the Constitution traditionally vests primary authority in the Executive Branch. This approach may impede the Executive's effectiveness in foreign affairs and disturb the constitutional balance of powers that has guided our nation for over two centuries.

## CONCLUSION

This Court should reverse the decision of the Federal Circuit.

Respectfully submitted,

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