Nos. 24-1287 & 25-250

IN THE
Supreme Court of the United States

LEARNING RESOURCES, INC., ET AL., *Petitioners,*
v.
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., *Respondents.*

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

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

BRIEF OF U.S. REPRESENTATIVES DARRELL ISSA & BRIAN MAST, AMERICA FIRST LEGAL FOUNDATION, AND COALITION FOR A PROSPEROUS AMERICA AS *AMICI CURIAE* IN SUPPORT OF DONALD J. TRUMP, ET AL.

DANIEL Z. EPSTEIN
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave. SE
Suite 231
Washington DC 20003
(202) 964-3721
daniel.epstein@aflegal.org

R. TRENT MCCOTTER
Counsel of Record
BOYDEN GRAY PLLC
800 Connecticut Ave. NW
Suite 900
Washington, DC 20006
(202) 706-5488
tmccotter@boydengray.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitution and Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amicus curiae Darrell Issa is a U.S. Representative from California. As chairman of the Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet of the Judiciary Committee, and Vice Chair of the House Foreign Affairs Committee, Mr. Issa seeks to ensure that courts follow constitutional principles and respect the constitutional authorities of the legislative and executive branches of government, especially in areas of foreign affairs. Mr. Issa also seeks to ensure that the Court has a fulsome record as to the legislative context and views of Members of Congress on the issues raised in this appeal.

Amicus curiae Brian Mast is a U.S. Representative from Florida. As chairman of the House Foreign Affairs Committee, Mr. Mast seeks to ensure that the constitutional authorities of the legislative and executive branches of government are respected in areas of foreign affairs. Mr. Mast also seeks to ensure that the Court has a fulsome record as to the legislative context and views of Members of Congress on the issues raised in this appeal.

Amicus curiae America First Legal Foundation is a nonprofit organization dedicated to promoting the rule of law in the United States and defending individual rights guaranteed under the Constitution

---

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person other than *amici curiae* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

and federal statutes. As part of *Amicus*'s commitment to the rule of law, it seeks to ensure that principles of jurisdiction are strictly enforced.

Amicus curiae the Coalition for a Prosperous America ("CPA") is a national organization focused on representing the tax and trade policy interests of domestic manufacturers, farmers, and workers. Founded in 2007, CPA seeks to promote domestic self-sufficiency, quality job opportunities, and the nation's security by advocating for policy that best supports those concerns.

SUMMARY OF THE ARGUMENT

The International Emergency Economic Powers Act (IEEPA) authorizes the President to (among other things) "regulate … importation … of … any property" under specified conditions. 50 U.S.C. § 1702(a)(1)(B). The primary merits question is whether this language authorizes the imposition of tariffs on such property. Under longstanding precedent and historical understanding, it does. *See* Part I, *infra*. Nor does the particular use of tariffs here violate—or require narrowing by—the major-questions or nondelegation doctrines. *See* Parts II & III, *infra*. Moreover, the Court lacks authority to second-guess the President's determinations under IEEPA. *See* Part IV, *infra*.

Finally, the proper case for a merits decision is *V.O.S.*, not *Learning Resources*, because the Court of International Trade had exclusive original jurisdiction over these disputes. *Amici* proffer an independent basis for reaching that conclusion. *See* Part V, *infra*.

ARGUMENT

I. Judicial Precedent and Congressional Use of "Regulate" Confirm That IEEPA Authorizes Tariffs.

The core question before the Court is whether the statutory phrase "regulate … importation" includes the power to impose monetary charges like a tariff. The answer is yes. "Regulate" in the context of foreign commerce is a longstanding term with a settled meaning that includes the authority to levy financial charges. "When Congress transplants a common-law

term, the old soil comes with it." *SEC v. Jarkesy*, 603 U.S. 109, 125 (2024).

Most notably, the U.S. Constitution grants Congress the power to "*regulate* Commerce with foreign Nations." U.S. Const. art. I, § 8, cl. 3 (emphasis added). This Court has long held that this includes authority to impose charges on imports.

In 1841, the Court explained that "[u]nder the power to regulate foreign commerce Congress [can] impose duties on importations, give drawbacks, pass embargo and non-intercourse laws, and make all other regulations necessary to navigation, to the safety of passengers, and the protection of property." *Groves v. Slaughter*, 40 U.S. 449, 505 (1841). A century later, the Court again confirmed that "[t]he laying of duties is 'a common means of executing the power'" to regulate foreign commerce. *Bd. of Trs. of Univ. of Illinois v. United States*, 289 U.S. 48, 58 (1933).

Thus, although it is "true that the taxing power [in Article I, § 8] embraces the power to lay duties, … it does not follow that duties may not be imposed in the exercise of the power to regulate commerce." *Id.* These cases remain good law. *See Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 15 (2025) (citing *Illinois*).

Subsequent congressional drafting practices followed this understanding of "regulate." As relevant here, in 1941 Congress amended the Trading With the Enemy Act (TWEA) to authorize the President to "regulate" certain imports. *See* First War Powers Act, ch. 593, § 301, 55 Stat. 838, 839–40 (1941). The Federal Circuit's predecessor held that this language

authorized President Nixon to "impos[e] an import duty surcharge" because "impos[ing] duties can be to 'regulate'" the importation of the items on which duties are imposed. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 575–76 (C.C.P.A. 1975). That interpretation accorded with decades of broad presidential actions under various iterations of TWEA. *See, e.g.*, *Vesting Power and Authority in Designated Officers and Making Rules and Regulations Under Trading with the Enemy Act and Title VII of the Act*, Exec. Order No. 2729A (June 15, 1917) (invoking 1917 Trading With the Enemy Act, ch. 106, § 11, 40 Stat. 411, 422–23, to create a War Trade Board with authority to impose "licenses" to import articles into the United States).

IEEPA, which likewise uses the term "regulate," was drafted against this longstanding backdrop. *See* H.R. Rep. No. 95-459, at 5 (1977) (citing *Yoshida* expressly). The relevant language in IEEPA was "directly drawn" from TWEA, *Dames & Moore v. Regan*, 453 U.S. 654, 671 (1981), and the Court has held that IEEPA gave the President "essentially the same" powers as TWEA, *Regan v. Wald*, 468 U.S. 222, 225–28 (1984). "When Congress adopts the language used in an earlier act," courts "presume that Congress adopted also the construction given" to that language. *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 270 (2020) (cleaned up).[2]

---

[2] After *Yoshida* was decided but before IEEPA was enacted, Congress enacted balance-of-payments authority in 19 U.S.C. § 2132, but Congress did not make this an exclusive remedy nor

Thus, far from a unique or unusual interpretation, the government's view that "regulate … importation" includes the power to impose tariffs is fully in line with centuries of this Court's precedent on the word "regulate" in the context of foreign importation, as well as congressional drafting practices that reflected and adopted that longstanding interpretation.

This Court has even held that related phrases—like "adjust … imports"—likewise authorize the imposition of monetary charges on those imports. Most notably, in *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976), the Court interpreted the Trade Expansion Act of 1962, as amended by the Trade Act of 1974, where the relevant statutory language authorized the President to "take such action" as he deemed necessary "to *adjust* the imports of" specified articles. *Id.* at 550 (emphasis added). The Court held there was "no support in the language of the statute for [the] contention that the authorization to the President to 'adjust' imports should be read to encompass only quantitative methods, i.e., quotas as opposed to monetary methods, i.e., license fees of effecting such adjustments." *Id.* at 561. In that case, the President had imposed increasing "license fees" on certain petroleum imports, and this Court held that he clearly had that authority as a form of "action … to adjust imports." *Id.* at 550.

The relevant statutory language in *Algonquin* did not specify license fees or tariffs, yet the Court held

---

did it curtail the President's powers under IEEPA, which—as noted—subsequently used the same language as TWEA. *Contra* Pet.App.178a.

the President had the power to impose such "monetary methods." "[L]imiting the President to the use of quotas would effectively and artificially prohibit him from directly dealing with some of the very problems against which [the statute] is directed." *Id.* at 561–62.

Algonquin is especially on point given that "regulate" (used in IEEPA) is a synonym for "adjust" (used in *Algonquin*). *See Adjust*, Merriam-Webster Thesaurus, https://www.merriam-webster.com/thesaurus/adjust (last visited May 19, 2025). In fact, this Court has elsewhere held that, historically, "'to *regulate*' meant 'to *adjust* by rule or method.'" *NFIB v. Sebelius*, 567 U.S. 519, 550 n.4 (2012) (cleaned up) (emphases added). That closeness in meaning is especially strong because both IEEPA and the statute in *Algonquin* address actions taken by the President with respect to imports. That provides an easy syllogism: this Court has already held that "adjusting imports" allows for charges like tariffs and that "adjusting" means the same as "regulating," so when IEEPA authorizes "regulating imports," that means IEEPA authorizes tariffs, too.

If anything, the contextual statutory language in IEEPA is even more broadly worded than the statute in *Algonquin*, as IEEPA authorizes the President not only to "regulate" imports, but also to investigate, block, void, nullify, prevent, and prohibit them, along with a wide array of other covered actions, as well. 50 U.S.C. § 1702(a)(1)(B). It would make little sense to conclude that the language in *Algonquin* authorized monetary charges, yet the broader language in IEEPA does not.

For all these reasons, IEEPA's grant of power to "regulate" imports authorizes the President to impose tariffs on those imports, just as the Commerce Clause's grant of power to "regulate" foreign commerce authorizes Congress to impose tariffs on that foreign commerce.

II. Use of IEEPA for Tariffs Does Not Violate the Major-Questions Doctrine.

The major-questions doctrine primarily reflects courts' skepticism that Congress would provide administrative agencies with great power *without* clearly saying so. Indeed, this Court's leading case on the issue indicates a threshold requirement that "the statute at issue … confers authority upon *an administrative agency*." *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (emphasis added).

There is good reason to doubt that the same skepticism applies to statutory grants of power directly to the President, given that he is a branch of government unto himself, rather than an unelected agency bureaucrat, as in the *West Virginia* case. "The President occupies a unique position in the constitutional scheme," and that "unique status under the Constitution distinguishes him from other executive officials." *Nixon v. Fitzgerald*, 457 U.S. 731, 749–50 (1982). Unlike when dealing with agency bureaucrats, it should come as no surprise that Congress would grant broad powers to the President himself, and thus no inherent skepticism is warranted for statutes that appear to do so. That logic is what animated Congress's decision not to subject presidential actions to review under the

Administrative Procedure Act. *See Franklin v. Massachusetts*, 505 U.S. 788, 827 (1992) (Scalia, J., concurring in part and in the judgment).

Indeed, the statutory scheme that provides the predicate for use of the authorities under IEEPA acknowledges this important distinction. The National Emergencies Act (NEA) does not provide a basis for judicial review of declarations of national emergencies. *See* 50 U.S.C. § 1701. Rather, the NEA establishes a process under which the President or Congress can terminate a national emergency. *See* 50 U.S.C. § 1622. These political questions—i.e., when to declare a national emergency and when to end a national emergency declaration—are squarely within the authority of the executive and legislative branches.

There is serious cause to doubt that the major-questions doctrine applies to a statute that reserves such inquiries to the political branches, especially when the statute relates to the President's inherent Article II foreign-relations powers, "because the canon does not reflect ordinary congressional intent in those areas." *FCC v. Consumers' Rsch*, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring). "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936) (quoting 10 Annals of Cong. 613 (1800) (statement of John Marshall)); *see also Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 13, 20–21 (2015).

When it comes to foreign affairs, "broad grants by Congress of discretion to the Executive are common."

Florsheim Shoe Co., Div. of Interco, Inc. v. United States, 744 F.2d 787, 795 (Fed. Cir. 1984). So "the usual understanding is that Congress intends to give the President substantial authority and flexibility" in "the national security or foreign policy contexts." *Consumers' Rsch*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring); *see also Curtiss-Wright*, 299 U.S. at 320 ("[C]ongressional legislation … within the international field 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.").

Thus, there is little reason to "hesitate," *West Virginia*, 597 U.S. at 721 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)), before concluding that Congress would grant the President broad authority in a realm where he already possesses significant constitutional powers—and thus the premise of the major-questions doctrine "does not translate" to the context of statutes dealing with the President and international relations. *Consumers' Rsch*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring).

Even if the major-questions doctrine did apply, however, IEEPA satisfies it. As noted above, there are nearly two centuries of precedent holding that "regulating" foreign commerce includes the power to impose monetary charges on imports. That means imposing tariffs pursuant to that statutory language is not the exercise of an "unheralded power." *West Virginia*, 597 U.S. at 724. Further, this means the relevant statutory text provides sufficiently "clear congressional authorization" for such actions. *Id.* at

732. Just as importantly, at every turn, the text of IEEPA embodies broadness, not "modest[y]," *id.* at 723–24. Its natural reading authorizes the President to take an extraordinarily wide range of actions, with respect to an extraordinarily wide range of products and transactions.

That interpretation was by congressional design—it is not some *post hoc*, overly clever interpretation espoused by an agency trying to circumvent Congress.

III. IEEPA Does Not Violate the Nondelegation Doctrine.

The concurring decision below suggested that the nondelegation doctrine would bar the government's interpretation of IEEPA. That is also incorrect under current precedent. Again, the *Algonquin* decision resolves the matter. There, this Court expressly rejected a nondelegation challenge to the statute in that case, which (as discussed above) broadly granted the President power to "take such action … to adjust the imports of" specified articles, if the article's importation "threaten[s] to impair the national security." *Algonquin*, 426 U.S. at 550.

The Court's nondelegation analysis admittedly is not lengthy, but it squarely held that the statute satisfies existing nondelegation requirements because it "establishes clear preconditions to Presidential action," including a finding that the article "'is being imported into the United States in such quantities or under such circumstances as to threaten to impair the *national security*,'" and "[a]rticulates a series of specific factors to be considered by the President in exercising his authority." *Id.* at 559 (emphasis added).

IEEPA likewise requires a finding of an "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) (emphases added).

Algonquin also expressly "reject[ed] [the] suggestion that we must construe [the statutory text] narrowly in order to avoid 'a serious question of unconstitutional delegation of legislative power.'" *Algonquin*, 426 U.S. at 558–59. In other words, *Algonquin* also forecloses using constitutional avoidance to narrowly construe IEEPA, especially given that Congress clearly intended "regulate" to be broad. A court cannot invoke constitutional avoidance to "usurp legislative power, rewrite the statute, and dictate its own terms for Congress's surrender." *Consumers' Rsch.*, 145 S. Ct. at 2491 (Gorsuch, J., dissenting); *see Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (a "court relying on [the constitutional-avoidance] canon still must *interpret* the statute, not rewrite it") (emphasis in original).

Further, this Court recently blessed an unprecedented and sweeping delegation of Congress's domestic taxing power to an unelected federal agency, without any clear limits in the statutory text, and even though the agency itself had long disclaimed any meaningful limits while extracting over $100 billion in taxes from American consumers. *See Consumers' Rsch*, 145 S. Ct. at 2482. Arguments about the importance of congressional control over domestic taxation fell on deaf ears, excepting the three dissenting Justices. If that statute passed

nondelegation muster, it strains credulity for anyone to claim IEEPA nonetheless fails.

Even as an original matter, there is a good argument that IEEPA would pass nondelegation muster. Powers that are strictly and exclusively legislative (e.g., domestic taxation), *Nat'l Cable & Television Ass'n, Inc. v. United States*, 415 U.S. 336, 340 (1974), are supposed to be subject to rigorous nondelegation scrutiny (notwithstanding *Consumers' Research*), with Congress often required to legislate in particular detail, leaving the executive with—at most—only minor details to fill in.

By contrast, the Court has long held that nondelegation "limitations are … less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter." *United States v. Mazurie*, 419 U.S. 544, 556–57 (1975).

Thus, "in the national security and foreign policy realms, the nondelegation doctrine … appropriately has played an even more limited role in light of the President's constitutional responsibilities and independent Article II authority." *Consumers' Rsch.*, 145 S. Ct. at 2491 (Kavanaugh, J., concurring). This includes statutes "confid[ing] to the President … an authority which was cognate to the conduct by him of the foreign relations of the government," *Panama Refining Co. v. Ryan*, 293 U.S. 388, 422 (1935), as "many foreign affairs powers are constitutionally vested in the president under Article II," *Gundy v. United States*, 588 U.S. 128, 159 (2019) (Gorsuch, J., dissenting).

Indeed, the Court's first foray into the nondelegation thicket was a challenge to the embargo authorized by the 1809 Non-Intercourse Act, which permitted the President to decide whether to lift an embargo on Great Britain. There, the Court blessed a broad delegation to the President in such matters and explained it saw "no sufficient reason[] why the legislature should not exercise its discretion in reviving the [Non-Intercourse Act], either expressly or conditionally, as their judgment should direct." *The Aurora*, 11 U.S. 382, 388 (1813).

Thus, "statutes relating to trade and commerce with other nations," *Marshall Field & Co. v. Clark*, 143 U.S. 649, 691 (1892), including "embargoes" and "suspending commercial intercourse with [certain countries]," *id.* at 684–85, arguably need not require the same specificity to pass nondelegation scrutiny as would domestic revenue-raising statutes, given that foreign relations are already "cognate" to the President, *Curtiss-Wright*, 299 U.S. at 327. As Justice Thomas has explained, delegation of powers regarding embargoes and tariffs "arguably did not involve an exercise of core legislative power" and thus would not necessarily trigger the same nondelegation scrutiny as something like domestic taxation. *DOT v. Ass'n of Am. R.R.s*, 575 U.S. 43, 80 (2015) (Thomas, J., concurring in the judgment).

Professor Michael McConnell has explained that this approach "provide[s] a superior grounding for *Field v. Clark*, where Congress gave the President a bargaining chip to use in foreign negotiations, and *Curtiss-Wright*, which recognized a broader range of legitimate delegation in the foreign affairs arena than

in domestic law," and it "may also explain why stronger nondelegation norms survive in the context of power that is especially central to the legislative branch, such as domestic taxation." Michael W. McConnell, *The President Who Would Not Be King: Executive Power Under the Constitution* 334 (2020).

This would also track English practice, where (post-Glorious-Revolution) Parliaments imposed strict controls on domestic taxation, down to the penny or percentage, but the king's "role in protecting shipping engaged in overseas trade" meant that Parliament could grant customs powers on terms "much more liberal[]" than it could for domestic taxation. Paul Einzig, *The Control of the Purse: Progress and Decline of Parliament's Financial Control* 65–66 (1959). Accordingly, kings often had broad powers to issue a new "book of rates" for duties, something that would have been unthinkable for domestic taxation. *Id.* at 69.

This all means that because tariffs and duties implicate foreign relations, a core Article II authority, Congress could legislate with less specificity and leave more policy decisions for the President to make in the first instance.

Another area of overlapping congressional and presidential powers—and thus similarly subject to lessened nondelegation scrutiny—is the realm of national defense, which IEEPA also implicates. The Constitution empowers Congress "[t]o … provide for the common Defence and general Welfare of the United States," U.S. Const. art. I, § 8, cl. 1, and the Framers understood that safeguarding the common

defense required *executive* flexibility in responding to national emergencies. Alexander Hamilton explained that the powers essential to the common defense "ought to exist without limitation" because "it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." The Federalist No. 23 (1787) (Alexander Hamilton).

Early congressional practice confirmed this understanding: in 1794, just a few years after ratification, Congress authorized President George Washington to "lay, regulate and revoke Embargoes" whenever "in his opinion, the public safety shall so require." Ch. 41, 1 Stat. 372. This 1794 Act, like IEEPA, gave the President flexibility, under emergency circumstances, to broadly regulate imports. *Compare id.* ("[T]he President … is authorized … to lay an embargo … under such regulations as the circumstances of the case may require"), *with* 50 U.S.C. § 1702(a)(1)(B) ("[T]he President may, under such regulations as he may prescribe … regulate … importation … of … property").

IEEPA thus lies at the heart of international relations *and* national defense, two areas where Congress has its widest latitude from a nondelegation perspective. Further, there is perhaps even lessened nondelegation concern because IEEPA includes special mechanisms for Congress to move to terminate declarations of national emergencies. *See* 50 U.S.C. § 1622.

Some *amici* supporting the challengers argued below that the President lacks inherent constitutional authority to impose tariffs. But the question here is not whether the President has inherent Article II authority to impose tariffs *absent* any pre-authorization by Congress. Rather, the questions here are whether Congress authorized tariffs in IEEPA and (if so) whether that authorization is sufficiently specific to conform to nondelegation principles. As explained above, IEEPA does authorize tariffs, and *Algonquin* dictates that a nondelegation challenge to that language should fail.

The same *amici* suggested below that *Algonquin* was different because the statute there imposed "limits," presumably referring to the complex procedural requirements before the President could impose monetary charges. But those procedural hurdles are irrelevant from a nondelegation perspective. *See United States v. Rock Royal Co-Op.*, 307 U.S. 533, 576 (1939) ("[P]rocedural safeguards cannot validate an unconstitutional delegation."). For the nondelegation inquiry, the statute either imposes sufficient substantive limitations, or not. And under *Algonquin*, IEEPA passes muster.[3]

---

[3] Nor must the nondelegation test be the same for domestic taxes and tariffs simply because both are in Article I, Section 8. The Framers used different terms for these concepts, indicating that they have different meanings; moreover, Section 8 includes such disparate powers as regulating naturalization and creating lower federal courts, yet presumably Congress could not authorize the President to create lower federal courts under the same types of broad and open-ended statutory language routinely used and approved in (for example) the immigration context.

IV. The Court Cannot Second-Guess the President's Determinations Under IEEPA.

Nor can courts review or second-guess the President's findings and determinations to trigger IEEPA. In the related context of TWEA, this Court held that "[m]atters relating 'to the conduct of foreign relations … are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.'" *Regan*, 468 U.S. at 242 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952)).

In *Regan*, the challengers "argue[d] that there is no 'emergency' at the present time," but the Court declined to dispute the President's contrary view. *Id.* "[C]ourts have not normally reviewed 'the essentially political questions surrounding the declaration or continuance of a national emergency,'" as the "statute contained no standards by which to determine whether a national emergency existed or continued; in fact, Congress had delegated to the President the authority to define all of the terms in that subsection of the TWEA including 'national emergency,' as long as the definitions were consistent with the purposes of the TWEA." *United States v. Spawr Optical Rsch., Inc.*, 685 F.2d 1076, 1080 (9th Cir. 1982).

As explained above, the NEA establishes a process under which the President or Congress can terminate a national emergency. *See* 50 U.S.C. § 1622. That confirms Congress intended decisions about beginning and ending national emergency declarations to be political questions not subject to

judicial review, especially when IEEPA provides no cause of action to challenge such determinations.

But even if some minimal judicial review were available, it would be extraordinarily deferential, lest the courts risk substituting their own judgment for the President's in matters of international relations and national defense. The Court has reaffirmed "the deference traditionally accorded the President" on such matters. *Trump v. Hawaii*, 585 U.S. 667, 686 (2018). Here, the President declared the necessary emergency in part because the nation's "military readiness" and "national security posture" have been "compromised" due to decreased "domestic production capacity." *Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits*, Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,044–45 (Apr. 7, 2025). That relationship is not just logical but one already recognized by the Federal Circuit. *See Yoshida*, 526 F.2d at 580. It accordingly passes any minimal scrutiny.

V. The Proper Case for a Merits Decision is *V.O.S.*, Not *Learning Resources*.

The Court granted certiorari in both *V.O.S.* and *Learning Resources*, presumably to ensure a merits decision would be issued despite the disagreement over which court had original jurisdiction over these disputes. Because the Court of International Trade (CIT)—not the U.S. District Courts—had exclusive jurisdiction, this Court should issue a merits determination in *V.O.S.* and remand *Learning Resources* for dismissal.

In support of that conclusion, *amici* proffer a basis independent from the one invoked by the Federal Circuit below. In *amici*'s view, the CIT had exclusive jurisdiction because this case arises out of IEEPA, which authorizes embargoes for reasons other than public safety. That triggers one of the CIT's mandatory jurisdictional triggers, and it does not matter whether this particular suit involves embargoes (or tariffs, for that matter). Congress created a categorical approach based on the nature of the *underlying law*, ensuring that jurisdiction could be determined swiftly and without becoming entangled in the merits.

IEEPA does not expressly provide a cause of action. One provision implies that IEEPA itself provides no such review. *See* 50 U.S.C. § 1702(c) ("This subsection does not confer or imply any right to judicial review."). Accordingly, IEEPA certainly does not state which court has jurisdiction over civil actions arising out of it. As explained above, this is a strong indication that Congress did not intend judicial review.

Even assuming a cause of action does exist for challenging the President's invocation of IEEPA, however, § 1581(i) of Title 28—which is a "broad jurisdictional grant"[4]—says that the CIT "shall have exclusive jurisdiction" over "any civil action commenced against" the federal government where the action "arises out of any law of the United States providing for," *inter alia*, "embargoes … for reasons

[4] *Int'l Lab. Rts. Educ. & Rsch. Fund v. Bush*, 954 F.2d 745, 747 (D.C. Cir. 1992) (Henderson, J., concurring).

other than the protection of the public health or safety." 28 U.S.C. § 1581(i)(1), (i)(1)(C).

If the civil action arises out of a statute providing for embargoes on certain bases, then the action can be heard only in the CIT—regardless of whether the particular suit implicates embargoes. That ensures jurisdiction can be determined quickly and without the merits and jurisdiction becoming entangled. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("[A]dministrative simplicity is a major virtue in a jurisdictional statute.").

IEEPA provides for (among many other things) embargoes to protect the "economy of the United States." 50 U.S.C. § 1701(a). Because that means IEEPA provides for embargoes for a reason other than public health and safety, and because Plaintiffs' civil action arises from IEEPA, each requirement of § 1581(i)(1) is satisfied, as explained below.

Even if there were a doubt, however, the Court should still find that the CIT had jurisdiction because any perceived "conflicts" between that court's "exclusive … jurisdiction and the broad jurisdiction of the district courts should be resolved by upholding the exclusivity of the [CIT's] jurisdiction." *United States v. Universal Fruits & Vegetables Corp.*, 370 F.3d 829, 833 n.7 (9th Cir. 2004).

Civil Action Against the Federal Government. There can be no dispute the *Learning Resources* case is a "civil action commenced against the United States, its agencies, or its officers." 28 U.S.C. § 1581(i)(1). The challengers named President Trump

and several other federal officials (in their official capacities) and agencies as Defendants.

Arises Out of IEEPA. *Learning Resources* also "arises out of" IEEPA. *Id.* The district court expressly held as much. Pet.App.20a n.4 in No. 24-1287. Section 1581(i) does not say that the "civil action" must be *provided for* or *authorized by* the relevant law (i.e., IEEPA). Rather, Congress used the broader term "arising out of" to indicate a looser causal connection.

The "Supreme Court … has indicated that the phrase 'arising out of' should be broadly construed" in the context of federal statutes. *Metz v. United States*, 788 F.2d 1528, 1533 (11th Cir. 1986). A natural meaning of "arising out of it" is that something is "associated in any way with" something else. *Id.* (quoting *Kosak v. United States*, 465 U.S. 848, 854 (1984)). At the very most, something can be said to arise out of specific "underlying governmental conduct" when the conduct is "'essential' to plaintiff's claim." *Id.* at 1534 (quoting *Block v. Neal*, 460 U.S. 289, 297 (1983)). Further, Congress twice used the word "any" in § 1581(i) (i.e., "any civil action" and "any law") to re-emphasize this broadness. *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'").[5]

---

[5] Although cases like *Metz* and *Kosak* arose in the context of the Federal Tort Claims Act, this Court has made clear that its interpretation of the phrase "arising out of" in those cases did "not implicate the general rule that 'a waiver of the Government's sovereign immunity will be strictly construed, in

This action "aris[es] out of" IEEPA because that law is "associated in any way with" and is "essential" to this civil action, given that the Complaint is entirely premised on IEEPA, its scope, and its use by the President, which prompted this suit. *See Metz*, 788 F.2d at 1533–34. Indeed, the first two Counts of the Complaint are expressly labeled as forms of IEEPA challenges. It makes no difference that the challengers' other claims are framed as violations of the Administrative Procedure Act or constitutional challenges. A plaintiff's choice of a particular cause of action cannot let it escape the broad language in § 1581(i)(1), or else the CIT's exclusive jurisdiction could be easily skirted. This Court has held, for example, that a plaintiff cannot evade a statutory bar on claims "*arising out of* assault or battery" simply "by framing her complaint in terms of negligent failure to prevent the assault and battery," because the statute "does not merely bar claims *for* assault or battery" but rather "in sweeping language it excludes any claim *arising out of* assault or battery." *United States v. Shearer*, 473 U.S. 52, 55 (1985) (emphases in original).

Likewise here, all that matters for this element is whether, under the statute's "sweeping language," this civil action arises out of IEEPA. *Id.* It does, as explained above, because this entire suit is premised

---

terms of its scope, in favor of the sovereign.'" *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 491–92 (2006) (quoting *Lane v. Pena*, 518 U.S. 187, 192 (1996)). In other words, the Court held that the phrase "arising out of" is naturally broad, even without a thumb on the scale.

on IEEPA and the President's invocation of that law. *See Metz*, 788 F.2d at 1533–34.

IEEPA Provides for Embargoes on Non-Public-Health-and-Safety Grounds. The only remaining inquiry is whether IEEPA provides for "embargoes … for reasons other than the protection of the public health or safety." 28 U.S.C. § 1581(i)(1)(C).

IEEPA has long been recognized as providing for embargoes. *See, e.g.*, *Regan v. Wald*, 468 U.S. 222, 225–28 (1984) (holding that IEEPA and the Trading with the Enemy Act both gave the President "essentially the same" powers, including "broad authority to impose comprehensive embargoes on foreign countries").[6] And that embargo power can be triggered on the grounds of protecting the "economy of the United States." 50 U.S.C. § 1701(a). That is certainly not a "public health and safety" ground. *See K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 184 (1988) (distinguishing embargoes based on "trade policy" from embargoes based on "public health" or "safety" grounds, which addressed things like adulterated foods or vehicles that do not conform to federal safety standards).

Taken together, this means IEEPA provides for embargoes for reasons other than the protection of the

---

[6] This Court has held that § 1581(i) uses "the ordinary meaning of the word 'embargoes,'" which are "government order[s] prohibiting commercial trade with individuals or businesses of other nations," or "a policy which prevents goods from entering a nation and which may be imposed on a product or on an individual country." *K Mart*, 485 U.S. at 184 (cleaned up).

public health and safety—and thus satisfies the final requirement under § 1581(i)(1).

To be clear, § 1581(i)(1)(C) does not say that the relevant law must provide for embargoes *exclusively* "for reasons other than the protection of the public health or safety." Rather, so long as IEEPA affirmatively authorizes an embargo for *any reason* other than public health and safety, that is sufficient. And IEEPA undoubtedly does. It is irrelevant whether IEEPA might *also* provide for embargoes on *other* grounds, like public health and safety. *See Int'l Lab. Rts. Educ. & Rsch. Fund*, 954 F.2d at 747 (Henderson, J., concurring) ("The phrase 'providing for' [in § 1581] has a broader meaning than the simple verb 'provide' and can be construed to mean 'relating to,' as the Supreme Court has done in considering this very provision."). The district court in *Learning Resources* therefore erred by concluding that the use of IEEPA for health-and-safety reasons defeats jurisdiction in the CIT. Pet.App.36a n.12 in No. 24-1287.

Again note that this element of § 1581(i) does not ask what kind of claim the plaintiff brings, or how the relevant law was invoked in this particular challenge. The inquiry is "whether that law (rather than the specific claims set forth by the plaintiff) provides for an embargo." *Int'l Lab. Rts. Fund v. Bush*, 357 F. Supp. 2d 204, 209 n.3 (D.D.C. 2004).

The district court seemed to suggest this approach is incorrect because prior civil suits arising out of IEEPA were not uniformly brought in the CIT. *See* Pet.App.36a n.12 in No. 24-1287. Of course, recent

district courts have—with the exception of the *Learning Resources* decision below—uniformly transferred these tariff challenges to the CIT. *See Emily Lay Paper, Inc. v. Trump*, No. 3:25-cv-464 (N.D. Fla.); *Webber v. U.S. Dep't of Homeland Security*, No. 4:25-cv-26 (D. Mont.); *California v. Trump*, No. 3:25-cv-3372 (N.D. Cal.). As to older cases, it appears none addressed how § 1581(i)(1) applies to IEEPA, so there is not even a "drive-by jurisdictional ruling" on the matter. *Wilkins v. United States*, 598 U.S. 152, 160 (2023) (cleaned up).

The district court reasoned that sending all IEEPA cases to the CIT would mean it is no longer a court of specialized jurisdiction, Pet.App.36a n.12, but that is wrong for two reasons: (1) cases arising under IEEPA are still a specialized and limited set; and (2) § 1581(i) was added in 1980 to "*expand*[] the jurisdiction of the CIT beyond that of the earlier Customs Court," and thereby send more embargo- and tariff-related cases to that court, *Earth Island Inst. v. Christopher*, 6 F.3d 648, 651 (9th Cir. 1993) (emphasis added).

Channeling such suits to the CIT makes perfect sense: it ensures a single trial-level court hears challenges to civil suits arising out of statutes related to certain trade actions that are national—really, international—in effect. Rather than a multitude of challenges brought in different district courts whenever the President invokes such a law, with each court potentially reaching contradictory determinations, there will instead be a single court reaching a single determination. That concern is not hypothetical. There were multiple suits filed in different district courts challenging the President's

invocation of IEEPA. Chaos would have ensued if there had been conflicting rulings or injunctions.

This Court has recognized that Congress "enacted the jurisdictional provision" in § 1581 "first and foremost, to remedy the confusion over the division of jurisdiction between the Customs Court (now the CIT) and the district courts and to '*ensure ... uniformity in the judicial decisionmaking process*.'" *K Mart*, 485 U.S. at 187–88 (emphasis added).

Because all requirements of § 1581(i)(1) are met, the CIT had "exclusive jurisdiction" over these challenges. 28 U.S.C. § 1581(i); *see also* 28 U.S.C. § 1337(c) (U.S. District Courts lack jurisdiction over all cases in the province of the CIT). Accordingly, the U.S. District Court for the District of Columbia lacked jurisdiction in the *Learning Resources* case, and this Court should remand that case for dismissal while issuing a merits decision in *V.O.S.*

CONCLUSION

For the foregoing reasons, *amici* urge the Court to reverse in No. 25-250 and to remand for dismissal in No. 24-1287.

Respectfully submitted,

DANIEL Z. EPSTEIN
AMERICA FIRST
LEGAL FOUNDATION
611 Pennsylvania Ave. SE
Suite 231
Washington DC 20003
(202) 964-3721
daniel.epstein@aflegal.org

R. TRENT MCCOTTER
Counsel of Record
BOYDEN GRAY PLLC
800 Connecticut Ave. NW
Suite 900
Washington, DC 20006
(202) 706-5488
tmccotter@boydengray.com

September 23, 2025