

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 FOR THE STATE RESPONDENTS
IN No. 25-250**

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QUESTIONS PRESENTED

1. Whether the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626, authorizes the tariffs imposed by President Trump pursuant to the national emergencies declared or continued in Proclamation 10,886 and Executive Orders 14,157, 14,193, 14,194, 14,195, and 14,257, as amended.

2. If IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President.

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INTRODUCTION

The question presented is whether Congress delegated to the President, in a statute that does not once mention tariffs, the “essentially judicially unreviewable” (Br. 21) power to impose tariffs of any rate on any country at any time. To ask that question is to answer it. The Framers assigned the tariff power to Congress, not the President. Congress has delegated authority to the President to adjust tariff rates in response to discrete, specifically enumerated circumstances. But it always has done so explicitly and subject to intelligible principles that cabin the President’s authority.

Not satisfied with the scope of those existing authorities, the President purported to discover a new power to impose unlimited tariffs in an old statutory provision that gives him authority to “regulate ... importation or exportation of” foreign property to deal with certain threats. 50 U.S.C. § 1702(a)(1)(B). The “breathtaking” scope and “unprecedented” nature of that claimed power counsel against accepting defendants’ interpretation. *Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 594 U.S. 758, 764–65 (2021). Context, history, and common sense all support a more modest understanding of that provision—one that leaves the President ample tools to address emergencies but does not delegate Congress’s tariffing power wholesale.

Defendants’ hyperbolic rhetoric obscures what this case is about. The question is not whether America is

a “rich nation” or “poor nation,” whether tariffs are “country-saving,” or whether without them we are “declin[ing] into a vassal state.” Br. 2-5. The question is not whether control over tariff policy would empower the President to make trade deals or reduce the national deficit. Br. 10–11. The question, as in other recent cases of executive overreach, is: “Who decides?” *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. 109, 121 (2022) (Gorsuch, J., concurring). Congress, not the President, decides whether and how much to tax Americans who import goods from abroad. This Court should reject the President’s bid to seize that power for himself.

STATEMENT

A. Congress has granted the President limited authority to adjust tariff rates.

1. The Constitution gives Congress—not the President—exclusive “Power To lay and collect Taxes, Duties, Imposts and Excises” and “To regulate Commerce with foreign Nations[.]” U.S. Const., Art. I, § 8. Tariffs are taxes on imports—and for all practical purposes, taxes on Americans who import goods from overseas. *See Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 201 (1824) (“the act of laying ‘duties or impost[s] on imports’ ... is considered as a branch of the taxing power”); Timothy Meyer & Ganesh Sitaraman, *Presidential Regulation*, 42 Yale J. on Reg. 803, 827 (2025) (describing tariffs as

“domestic taxes assessed within the United States’s borders”).

On some matters relating to tariffs, Congress has specifically authorized the President to act. For example, the President may negotiate trade agreements, including tariff reductions, that Congress then enacts into law. *See* 19 U.S.C. §§ 2111–14, 2191 (authorizing negotiations for certain periods, granting fast-track authority, and setting objectives for trade agreements). Today, the United States is party to several trade agreements, negotiated by the President and approved and implemented by Congress. *See, e.g.*, 19 U.S.C. ch. 22 (implementing the Uruguay Round Agreements); 19 U.S.C. ch. 26 (implementing the Dominican Republic-Central America Free Trade Agreement); 19 U.S.C. ch. 29 (implementing the United States-Mexico-Canada Agreement).

For recurring trade issues, such as the dumping of goods onto markets or other unfair trade practices, Congress has specifically authorized the President to adjust tariff rates. In each of those circumstances, Congress required the President to follow specific procedures, make certain findings or determinations, or limit the duration and magnitude of the adjustments. *See* 19 U.S.C. § 1671(a) (limiting countervailing duties to amount equal to net countervailing subsidy); 19 U.S.C. § 1671d(a)(1) (providing procedures for countervailing duties); 19 U.S.C. § 1673 *et seq.* (providing limits and procedures for antidumping tariffs); 19 U.S.C. § 1675(a) (requiring annual review of antidumping and

countervailing duty orders); 19 U.S.C. § 2253(e) (providing limitations on duties to protect domestic industry); 19 U.S.C. § 2417 (providing procedures for duties imposed in response to burdensome trade practices).

A typical example is Section 122 of the Trade Act of 1974. Section 122 authorizes the President to proclaim a “temporary import surcharge ... in the form of duties” to “deal with large and serious United States balance-of-payments deficits.” 19 U.S.C. § 2132(a). But Section 122 also limits the duration and size of that surcharge: “for a period not exceeding 150 days (unless such period is extended by Act of Congress),” and “not to exceed 15 percent ad valorem.” *Id.*

2. Unlike each of those statutes, the International Emergency Economic Powers Act (IEEPA) does not mention “tariffs” or “duties.” It traces its origin to a different statute, the Trading with the Enemy Act (TWEA), enacted in 1917 to empower the President to take and use foreign property during World War I. Pub. L. No. 65-91, 40 Stat. 411 (1917) (codified as amended at 50 U.S.C. §§ 4305 *et seq.*); Joseph W. Bishop, Jr., *Judicial Construction of the Trading with the Enemy Act*, 62 Harv. L. Rev. 721, 723 (1949) (describing purposes).

Section 5(b) of TWEA empowered the President to “investigate, regulate, or prohibit” “any transactions in foreign exchange” during wartime. Pub. L. No. 65-91, § 5(b). That section did not originally include “importation” among the list of items that could be regulated. That term was added without explanation in 1941. *See*

First War Powers Act of 1941, Pub. L. No. 77-354, § 301, 55 Stat. 839.

By the 1970s, Congress became concerned about expansive use of TWEA and took steps to rein it in. *See* Legislative History of the Wartime or National Emergencies Presidential Powers P.L. 95-223, at 5 (1977) (Chairperson Bingham suggesting that TWEA created “a dangerous situation in that it virtually conferred on the President what could have been dictatorial powers that he could have used without any restraint by the Congress”). First came the National Emergencies Act in 1976, which ended all existing emergencies except those proclaimed under Section 5(b) of TWEA and placed restrictions on the declaration of new emergencies. Pub. L. No. 94-412, 90 Stat. 1255 (1976), *codified as amended at* 50 U.S.C. §§ 1601 *et seq.* A year later, Congress amended TWEA to make it applicable only during times of war. Pub. L. No. 95-223, § 101, 91 Stat. 1625 (1977).

At the same time, Congress crafted IEEPA to provide the President “somewhat narrower” emergency powers during peacetime. H.R. Rep. No. 95-459, at 1 (1977). IEEPA did not “include authorities more appropriately lodged in other legislation.” *Id.* at 11.

IEEPA allows the President to exercise those narrower powers “only” to “deal with” an “unusual and extraordinary threat” arising from outside the United States and “not ... for any other purpose.” 50 U.S.C. § 1701(b). Among the narrower powers are the power to “regulate” the “importation or exportation” of “any

property in which any foreign country or a national thereof has any interest”:

(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

* * *

(B) 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[.]

Id. § 1702(a) (emphases added).

In the nearly five decades from its enactment through January 2024, Presidents declared 69 emergencies invoking IEEPA. See Christopher A. Casey & Jennifer K. Elsea, Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 15, 26 (2024). But no President ever used IEEPA to impose tariffs.

B. For the first time in history, the President invoked IEEPA to impose tariffs on every U.S trading partner.

Earlier this year, the President invoked IEEPA to impose tariffs ranging from 10 percent to 145 percent on most imports worldwide. The tariffs generally fell into two categories. First, the President imposed tariffs on most imports from Canada, Mexico, and China based on his declarations of emergencies regarding fentanyl trafficking and other crime (the “trafficking tariffs”). Exec. Order No. 14,193, 90 Fed. Reg. 9113 (Feb. 1, 2025); Exec. Order No. 14,194, 90 Fed. Reg. 9117 (Feb. 1, 2025); Exec. Order No. 14,195, 90 Fed. Reg. 9121 (Feb. 1, 2025). Second, he imposed tariffs worldwide, including additional tariffs on China, based on “large and persistent annual U.S. goods trade deficits” (the “trade tariffs”). Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,041 (Apr. 2, 2025).

Over the following months, the President suspended some tariffs, increased others, and modified the scope of the exceptions they allow. *See* Pet. App. 151a–56a (detailing history). For example, the President imposed 25 percent tariffs on Canada and Mexico on February 1, 2025, but then two days later suspended those tariffs for four weeks. *Id.* at 152a–53a. The President threatened country-by-country trade tariffs of up to 50 percent on April 2, 2025, but suspended them a week later, leaving only worldwide 10 percent tariffs in effect. *Id.* at 154a–55a. And for China, the combined tariffs surged from 10 percent (on February 1) to 145

percent (on April 10) and then fell back to 30 percent (on May 12). Pet. App. 155a–56a. As of the time of the Court of International Trade’s (CIT’s) ruling, the orders subjected most imports from China to a 30 percent additional tariff rate, most imports from Canada and Mexico to a 25 percent additional tariff rate, and most imports from the rest of the world to a 10 percent additional tariff rate. *Id.* 156a & n.2. The suspended trade tariffs ultimately went into effect on August 7, 2025, with rates ranging from 10 percent to 41 percent. Pet. App. 9a; Exec. Order No. 14,326, 90 Fed. Reg. 37,963, 37,967 (July 31, 2025).

While this appeal was pending, the President also invoked IEEPA to impose additional tariffs on some countries. For instance, on July 30, 2025, the President imposed an additional 40 percent tariff on imports from Brazil based in part on what the President viewed as the Brazil Supreme Court’s “misguided[]” ruling that former President Jair Bolsonaro must stand trial for criminal charges related to election interference. Exec. Order No. 14,323, 90 Fed. Reg. 37,739, 37,740 (July 30, 2025). And the President imposed an additional 25 percent tariff on India because it imports Russian oil. Exec. Order No. 14,329, 90 Fed. Reg. 38,701 (Aug. 6, 2025).

C. The lower courts held that IEEPA does not authorize the President’s tariffs.

The State plaintiffs are 12 States that both import products directly and purchase goods and supplies imported by others. Pet. App. 165a–66a. In April 2025,

the States sued defendants in the CIT, arguing that the trade and trafficking tariffs were unlawful and seeking a declaration and injunctive relief to stop the Administration from enforcing them. In a separate case, *V.O.S. Selections v. Trump*, a group of businesses sued defendants in the same court seeking the same relief solely as to the trade tariffs. The CIT consolidated the two cases.

1. A three-judge panel of the CIT unanimously granted summary judgment to the States and businesses. Pet. App. 143a. The court held that IEEPA did not authorize any of the tariffs that the President had imposed. *Id.* at 168a.

First, the court held that the trade tariffs were invalid because IEEPA does “not confer unlimited tariff authority,” and in particular does not authorize tariffs that exceed the limits in Section 122 of the Trade Act of 1974—which, as noted above, limits tariffs that address “large and serious United States balance-of-payments deficits” to 15 percent for 150 days. Pet. App. 172a, 178a. The court concluded that a finding that IEEPA authorizes “unlimited” tariffs would run afoul of both the nondelegation canon and the major questions doctrine. *Id.* at 170a–72a. The court also noted that Congress meant IEEPA to deal with threats not addressed in non-emergency statutes. *Id.* at 175a–77a. Thus, the court held, the trade tariffs, which were “imposed in response to a balance-of-payments deficit,

must conform with the limits of Section 122,” which they do not. *Id.* at 180a.

Second, the court held that the trafficking tariffs were invalid because they do not “deal with” the identified threat of drug trafficking and other crime. Pet. App. 181a (quoting 50 U.S.C. § 1701(b)). The term “deal with” requires “a direct link between an act and the problem it purports to address.” Pet. App. 191a. But collecting tariffs on lawful imports has no direct link to stopping illegal drug trafficking. *Id.* at 191a. Nor is potential leverage in trade negotiations enough to satisfy the statutory requirement. *Id.* at 191a–92a.

Based on those conclusions, the court declared the challenged executive orders invalid and enjoined their operation. *Id.* at 200a.

2. The en banc Federal Circuit affirmed the CIT’s judgment on the merits but vacated and remanded the injunctive relief for reconsideration in light of *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025). Pet. App. 44a–45a.

The en banc court concluded that IEEPA did not authorize any of the tariffs that the States had challenged. Although it refrained from “deciding whether IEEPA authorizes any tariffs at all,” Pet. App. 25a, it concluded that at a minimum IEEPA does not authorize the trafficking or trade tariffs. It explained that IEEPA does not use the word “tariff” or “duty,” nor does any other verb in IEEPA suggest a monetary action or the power to tax or impose tariffs. *Id.* at 26a–27a. That

“contrasts with statutes where Congress has affirmatively granted” the power to impose or adjust tariffs. *Id.* at 27a. And that context shows that “whenever Congress intends to delegate to the President the authority to impose tariffs, it does so explicitly, either by using unequivocal terms like tariff and duty, or via an overall structure which makes clear that Congress is referring to tariffs.” *Id.* at 30a. Congress’s failure to do so in IEEPA provides a strong textual reason to conclude that IEEPA does not “grant the President unlimited authority to impose tariffs.” *Id.*

Confirming that textual conclusion is the major questions doctrine, which counsels caution before concluding that a statute authorizes executive action of vast “economic and political significance.” Pet. App. 34a (quoting *FDA v. Brown & Williamson*, 529 U.S. 120, 159 (2000)). In applying that doctrine, the court found it significant that no President before now had used IEEPA to impose tariffs or adjust tariff rates. Pet. App. 35a. The court rejected the federal government’s argument that the major questions doctrine carries no weight when applied to the President or to areas involving foreign policy. *Id.* at 38a.

Judge Cunningham, joined by Judges Lourie, Reyna, and Stark, concurred but added that IEEPA’s plain text does not authorize the imposition of *any* tariffs. *Id.* at 48a. Judge Cunningham explained that the federal government’s reading would require the court to give multiple meanings to the same word in the same statutory provision and to attribute to the term

“regulate” a meaning that would make many of the other terms in § 1702(a)(1)(B) superfluous. Pet. App. 50a–52a. Judge Cunningham also rejected the federal government’s argument that Congress intended to ratify the holding of *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560 (C.C.P.A. 1975), which interpreted the phrase “regulate ... importation” in TWEA to encompass the imposition of limited surcharges on imports. Pet. App. 54a–57a. Judge Cunningham likewise suggested that the federal government’s reading of IEEPA to authorize limitless tariffs would render the statute an unconstitutional delegation of congressional power. *Id.* at 57a–61a.

Judge Taranto, joined by Chief Judge Moore and Judges Prost and Chen, dissented. In the dissent’s view, IEEPA authorizes tariffs, and the tariffs at issue here otherwise satisfied IEEPA’s requirements. Pet. App. 66a–67a. The dissent concluded that IEEPA empowers the President to impose any tariff at any rate, regardless of existing statutory limitations, as long as the President identifies an unusual and extraordinary threat. *Id.*

3. The federal government petitioned for certiorari, which the Court granted. The Court also granted the petition for certiorari before judgment in *Learning*

Resources, Inc. v. Trump (24-1287) and consolidated the cases for briefing and argument.¹

SUMMARY OF ARGUMENT

IEEPA allows the President, during a national emergency, to “regulate ... importation or exportation” to “deal with an unusual and extraordinary threat.” The trade and trafficking tariffs fail every one of those statutory requirements.

First, the best reading in context of “regulate ... importation or exportation” does not include tariffs. The most important context is the many other statutes that delegate tariffing power to the President, all of which reference tariffs or duties explicitly. None of them uses a general phrase like “regulate importation.” Congress simply does not speak that obliquely when it intends to delegate its taxing or tariffing power. Instead, it speaks clearly.

Even if that were not the most natural reading of the text, basic principles of statutory construction confirm that, at a minimum, IEEPA does not convey the unlimited tariffing authority that the President claims here. This Court is properly skeptical when the

¹ In recent weeks, the President has imposed or announced plans to impose new tariffs under statutes *other than* IEEPA. *See, e.g.*, Proclamation 10.976, 90 Fed. Reg. 48.127 (Sept. 29, 2025) (imposing tariffs on wood products under Section 232). Although those tariffs are based on concerns about manufacturing and military readiness, none invoke IEEPA.

executive branch claims to discover in an old statute a breathtaking new power to remake the national economy. So even if “regulate ... importation” included *some* power to adjust tariffs, it would not include the power to impose trillions of dollars in new tariffs as the President did here. Constitutional avoidance points the same way: Defendants’ reading of the statute as delegating the entirety of Congress’s tariffing authority to the President’s “essentially judicially unreviewable” discretion (Br. 21), with no intelligible principles guiding the amount or duration of the tariffs, raises serious questions under the nondelegation doctrine. Those questions are avoided by adopting a less expansive—and more textual—reading of “regulate ... importation or exportation.”

Second, even if “regulate ... importation” meant “impose tariffs,” the trade tariffs still exceed IEEPA’s grant of authority. Elsewhere, in Section 122, Congress specifically provided authority to address large and serious trade deficits, the purported impetus for the trade tariffs. Section 122 sets limits on those tariffs, and those specific limits control over IEEPA’s general grant of authority. IEEPA itself confirms that, because it limits the President to dealing with an “unusual and extraordinary threat.” Trade deficits are not unusual, because—as the President himself emphasized—they are persistent. And they are not extraordinary, because Congress enacted specific authority to address them. Congress intended IEEPA to cover situations that were *not* the subject of other legislation, not to

override the carefully crafted limits in every other statutory delegation.

Finally, the trafficking tariffs violate IEEPA's statutory requirement that the President's actions "deal with" only the identified threat and not be used "for any other purpose." Blunderbuss tariffs on lawful trade of all goods do not stop illegal drug trafficking or other crime. Defendants' only theory is that they give the President leverage for negotiations, but that is too attenuated to satisfy the statutory requirement. If merely creating leverage were enough, the only-to-deal-with and not-for-any-other-purpose requirements would be meaningless.

ARGUMENT

A. IEEPA does not grant the President the unlimited tariff power he would need to impose the trade or trafficking tariffs.

The power the President claims here is extraordinary: the power to impose tariffs of any rate, on any country, for any length of time, and for reasons that are "essentially judicially unreviewable." Br. 21. That extraordinary claim of power demands extraordinary proof of congressional intent to confer it. Yet defendants' effort to ground that power in IEEPA falls far short. IEEPA's authority to "regulate ... importation or exportation"—read in context, and in light of historical practice and common sense—does not mean unchecked

power to impose sweeping tariffs on every U.S. trading partner.

As explained below, the best reading of the statutory text in context, including in light of the separation of powers and the history of tariff law, is that IEEPA does not include *any* delegation of Congress’s tariff power. But this Court need not decide that question definitively, because at a minimum IEEPA does not convey the unlimited tariff authority claimed by the President here. If IEEPA authorized the President to adjust tariffs at all, it would not authorize the trillions of dollars of new and varied tariffs at issue in this case.

1. In context, the best reading of “regulate ... importation or exportation” does not include tariffs.

As in all matters of interpretation, context is crucial. *See King v. Burwell*, 576 U.S. 473, 486 (2015) (noting that the Court must “read the words in their context” with “a view to their place in the overall statutory scheme” because the Court’s goal is “to construe statutes, not isolated provisions”) (cleaned up).

The most important context here is other statutory provisions, because they reflect how Congress in fact uses statutory terms to convey or not convey authority. *See Feliciano v. Dep’t of Transp.*, 145 S. Ct. 1284, 1291 (2025) (“compar[ing] the statute before us with other laws” as a “contextual clue[]”); *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) (noting that “a legislative body generally uses a particular word with a

consistent meaning in a given context”). Defendants all but ignore that context and instead focus on dictionary definitions and the use of the term “regulate” in other settings, like court opinions and treatises. Dictionaries and opinions are useful in determining what words *can* mean. But in the specific context at issue here, Congress’s striking consistency when delegating tariffing authority provides much more direct evidence of statutory meaning.

When Congress delegates tariffing authority, it uses an express term like “tariffs” or “duties” in the statute. When it delegates only authority to “regulate,” it does not empower the executive branch to impose new taxes. Congress has never used a phrase like “regulate importation” to cover tariffs. Neither dictionary definitions nor out-of-context snippets from case law nor a single lower court decision interpreting IEEPA’s predecessor show that Congress intended to depart from its consistent historical practice.

a. No other statute uses comparable terms to authorize tariffs.

Section 1702(a) of IEEPA, describing a President’s powers, does not mention “tariffs” or “duties.” That is the first textual clue that IEEPA does not authorize tariffs, much less unlimited tariffs. When Congress empowers the President to impose “tariffs” or “duties,” it uses those words in the statute. *See, e.g.*, 19 U.S.C. § 1671(a) (providing for “countervailing duty” to protect domestic industry against “countervailable subsidy”); 19 U.S.C. § 1673 (providing for a “antidumping

duty”); 19 U.S.C. § 2253(a)(3)(A) (authorizing President to “proclaim an increase in, or the imposition of, any duty on the imported article” to respond to harms or threats to domestic industry); 19 U.S.C. § 2411(c)(1)(B) (authorizing the executive branch to “impose duties” to respond to certain trade practices or violations of trade agreements).

Defendants have not pointed to a single statute in Title 19, which governs the imposition of tariffs and duties, that uses the phrase “regulate importation” or anything similar to convey tariff authority. Nor have they pointed to any other statute that delegates authority to tax through the term “regulate.”

Federal statutes consistently grant explicit authority to tax certain activities separately from authority to regulate them. *See, e.g.*, 16 U.S.C. § 460bbb-9(a) (describing power to “tax” people, franchises, or property on lands separately from power to “regulate” the lands); 49 U.S.C. § 40117(j) (providing that state may not “tax, regulate, or prohibit” certain passenger facility charges in aviation context). And the U.S. Code contains countless examples of authority to “regulate” matters that defendants agree do *not* carry with them the authority to tax. For example, the CFPB has the power to “regulate the offering and provision of consumer financial products,” 12 U.S.C. § 5491(a); the SEC has the power to “regulate ... transactions on a national securities exchange,” 15 U.S.C. § 78k(a)(2); and the FDA has the power to “regulate” drugs, biological products, and devices, 21 U.S.C. § 360bbb-2(a). No

one thinks that those agencies have blanket authority to tax the products that they regulate. Br. 31–32 (conceding the point). Context requires a narrower reading of “regulate.”

Congress knows how to speak clearly when it intends to grant the power to impose tariffs. Its failure to include any similar express provision in IEEPA suggests that it did not so intend. *See Lackey v. Stinnie*, 604 U.S. 192, 205 (2025) (when Congress “show[s] that it knows how to adopt” omitted language, courts should not add to the text to create such authority). That commonsense observation is not a “magic word” requirement. Br. 27. It reflects a reasonable expectation that Congress will use similar words to convey similar authority across different statutes. *Cf. Pulsifer v. United States*, 601 U.S. 124, 149 (2024) (courts may presume that “terms with some heft and distinctiveness” are used consistently).

The closest defendants can come to finding a statute like IEEPA in which Congress delegated tariff authority is Section 232 of the Trade Expansion Act, which authorizes the President to “adjust the imports” of any article that “threaten[s] to impair the national security.” 19 U.S.C. § 1862(c)(1)(A)–(B); *see* Br. 27–28. In *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 571 (1976), this Court interpreted Section 232 to permit license fees on imports. But Section 232 and *Algonquin* only confirm how little

contextual support defendants have for their reading of IEEPA.

First, Section 232—unlike IEEPA—*does* refer explicitly to tariffs. Parallel to subsection (c)’s authority to “adjust the imports” to protect national security, subsection (a) prohibits the President from decreasing “the duty ... on any article” if it would impair national security. More generally, the surrounding sections of the Trade Expansion Act are rife with provisions addressing tariffs and authorizing the President to modify them in appropriate circumstances. *See, e.g.*, Pub. L. No. 87-794, § 201(a)(2), 76 Stat. 872 (authorizing the President to proclaim certain “modifications” of “any existing duty”); *id.* § 231 (requiring the President to suspend reductions of “any existing duty” in certain circumstances). That context is crucial: It may be natural to read a phrase like “adjust the imports” as referring to tariffs in a statute that explicitly deals with tariffs. It is just as unnatural to read a phrase like “regulate ... importation or exportation” as referring to tariffs in a statute that otherwise has nothing to do with tariffs.

Second, *Algonquin* relied in large part on unusually clear legislative history, which the decision discussed at far greater length than the statutory text. That history showed that key members of Congress believed that Section 232 and its predecessors would authorize the President to use “tariffs, quotas, import taxes or other methods of import restriction.” 426 U.S. at 563–64 (quoting Senator Millikin and observing that

Senator Martin also noted that the President had authority to “increase” duties). This Court today relies far more on text, and far less on legislative history, than it did in the 1970s. But even on its own terms, *Algonquin*’s reasoning has no bearing here: No comparable legislative history exists for IEEPA.²

b. Excluding tariff authority is more harmonious with the surrounding text.

The text surrounding IEEPA’s phrase “regulate ... importation” makes far more sense if that phrase excludes tariffs than if it includes them. Three features in particular provide contextual support for reading “regulate” not to authorize tariffs: (1) it makes “regulate” more consistent with the rest of the verbs in § 1702; (2) it gives “regulate” the same meaning for both “importation” and “exportation”; and (3) it comports with IEEPA’s limit to foreign property.

Consider first the other verbs in § 1702(a)(1)(B): “Block,” “direct,” “compel,” “nullify,” “void,” “prevent,” and “prohibit” are overlapping terms with one goal in common: to stop transactions between the United States and another country during an emergency. What those terms have in common is not that they are “capacious,” Br. 25, but rather that they connote control over whether the transaction happens. Tariffs, by

² Defendants do not reprise the puzzling suggestion of the dissent below (Pet. App. 98a) that 19 U.S.C. § 1351(c)(1) shows Congress using “regulate” to mean “tariffs.” The statute defines the phrase “duties and other import restrictions”—not “duties” alone.

contrast, give private parties control over whether the transaction happens—as long as they pay. Viewed among a list of verbs connoting actions that stop or direct certain financial activities during emergencies, “regulate” does not suggest a power to keep the activity unchecked as long as the government makes money from it. See *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 US 146, 160 (2025) (noting that the *noscitur a sociis* canon counsels against reading one term to be “different in kind and broader than” the other terms that appear in the same list). When the President is trying to end certain activities immediately in an emergency, tariffs make little sense.³

Consider as well that the object of “regulate” is the phrase “importation or *exportation*.” 50 U.S.C. § 1702(a)(1)(B) (emphasis added). Article I, section 9, of the Constitution forbids any “Tax or Duty” on exports. Congress was presumably aware of the constitutional prohibition on taxing exports. Cf. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 729 (1989) (considering the “constitutional background known to those who

³ The dissent below suggested that the power to tariff imports follows logically from the power to bar imports altogether. Pet. App. 97a. Not so. The power to ban activity does not always imply the power to restrict it in “less extreme, more flexible” ways. *Id.*; cf. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 511 (1996) (rejecting a “greater-includes-the-lessor” argument as “inconsistent with both logic and well-settled doctrine”). The power to tax activity is fundamentally different from the power to regulate or even ban it; delegation of the latter authority is not *carte blanche* to raise taxes.

enacted” the statute). Yet it listed “exportation” as a matter that the President could regulate. Whatever Congress meant by “regulate” for “importation,” it likely meant the same for “exportation.” That is not asking the Court to adopt an “artificially narrow reading” of “regulate” in the context of imports. Br. 30. It is ensuring that the word has a consistent meaning.

Defendants’ broad reading of “regulate,” by contrast, would create a nearly boundless power to tax goods used or held in the United States. Section 1702 contains several other objects of the verb “regulate,” including “use,” “acquisition,” and “holding.” If “regulate ... importation or exportation” means that a President may tax imports without limitation, then “regulate ... use” of any foreign property would likewise permit taxation of any foreign property merely because it was held or used in the United States. On that reading, Congress gave the President unreviewable and virtually unlimited taxing power over goods in which a foreign national has any interest. But “[i]t would be ... a sharp break with our traditions to conclude that Congress had bestowed on [the executive branch] the taxing power.” *Nat’l Cable Television Ass’n v. United States*, 415 U.S. 336, 341 (1974).

Reinforcing that reading is IEEPA’s limitation of presidential authority to “property in which any foreign country or a national thereof *has* any interest.” 50 U.S.C. § 1702(a)(1)(B) (emphasis added). That is not a normal way to describe property subject to import tariffs. Tariffs normally apply to *all* property imported

from a particular country, not just property in which there is an ongoing foreign ownership interest. *See* 19 C.F.R. § 102.11 (prescribing rules for determining the origin of a product, with no mention of ownership). Had Congress wanted to empower the President to impose tariffs on imports, it likely would have allowed the President to “regulate” any property of foreign *origin*, not just property in which a foreign country or foreigner “has” any interest.

A narrower reading of the statute does not “strip ‘regulate’ of nearly all effect.” Br. 29. The federal government can “regulate ... importation or exportation” by implementing rules that control the flow of goods coming into the country, such as by restricting the quantity or quality of the goods or requiring inspections or quarantines. *See, e.g.*, 21 U.S.C. § 1046(1) (describing regulatory authority to control inspection and safety of egg products); 46 U.S.C. § 4304 (providing for regulation of importation of recreational vessels not in conformity with applicable safety requirements). It also can “regulate” importation by permitting specific transactions that otherwise would be prohibited by IEEPA sanctions. *See Venezuela-Related Sanctions*, Off. of Foreign Assets Control, <https://ofac.treasury.gov/sanctions-programs-and-country-information/venezuela-related-sanctions> (listing licenses permitting certain transactions otherwise barred by sanctions). By authorizing the President to “regulate ... importation or exportation,” IEEPA ensures that a President may impose rules to control, take, or direct

property. That does not mean that the President can impose tariffs.

c. Dictionaries and usage from other contexts do not show that Congress meant a broader reading of “regulate.”

Rather than focusing on Congress’s own patterns of usage and the specific context in which the word “regulate” is used here, defendants urge this Court to rely on other information about how the word “regulate” can be used, such as dictionary definitions, excerpts from case law or treatises, and the Court of Customs and Patent Appeals’ decision in *Yoshida*. Br. 24–25. But none of defendants’ anecdotal observations overcome the contextual evidence.

The ordinary meaning of “regulate” is “to control (an activity or process) esp. through the implementation of rules.” *Regulate*, BLACK’S LAW DICTIONARY (12th ed. 2024); *see also Regulate*, BLACK’S LAW DICTIONARY 1451 (4th ed. 1968) (“To fix, establish, or control; to adjust by rule, method, or established mode.”); *Regulate*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1913 (1961) (“to govern or direct according to rule” or “to fix the time, amount, degree, or rate of (as by adjusting, rectifying)”). None of that inherently conveys a power to tax. Defendants also rely on usage in court opinions or treatises to suggest that the power to “regulate commerce” in Article I can include the power to impose tariffs or duties. *See* Br. 24–25 (quoting authorities). They overlook that most of those sources were addressing the respective authority of the federal and

state governments, not the separation of powers within the federal government. *See, e.g., McGoldrick v. Gulf Oil Corp.*, 309 U.S. 414, 422, 428–29 (1940) (considering whether state had authority to tax certain oil imports).

But more importantly, they misplace their focus on whether the word “regulate” could *ever* describe the constitutional authority to impose tariffs reserved to Congress in Article I. The question is not whether it is lexically correct English to talk about a “rule” or “regulation” that imposes taxes or tariffs. It is whether *Congress* used that term to convey an expansive delegation of tariff or taxing authority. Defendants effectively concede that the answer turns on context, not dictionary definitions in a vacuum. They agree, for example, that the term “does not naturally carry the same inference” in the context of statutes governing the SEC or EPA, or even in IEEPA in the phrase “regulate ... exportation.” Br. 30–32. What they miss is the relevant context here: every other statute that Congress has enacted governing tariffs. Defendants have found no examples of their usage in a statute. Not one.

That leaves only *Yoshida*, which cannot plug the holes in defendants’ textual analysis. In *Yoshida*, the Court of Customs and Patent Appeals considered the only instance in which a President has relied on emergency economic powers to impose import surcharges—President Nixon’s Proclamation 4074 in 1974 based on Section 5(b) of TWEA. That section, like § 1702 of IEEPA, authorizes the President to “regulate ...

importation or exportation.” But President Nixon did not claim the sort of unlimited authority at issue here; he limited the surcharges to rates previously approved by Congress. *Yoshida*, 526 F.2d at 577 (describing limitations on surcharges dependent on rates in column 2 of tariff schedule).⁴ In that respect, Proclamation 4074 was not “tear[ing] down or supplant[ing] the entire tariff scheme of Congress” but “impos[ing] a limited surcharge, as ‘a temporary measure’” within congressionally approved limits. *Id.* at 577–78.

Defendants insist that Congress intended to codify the holding of *Yoshida* when it enacted IEEPA because it chose the same wording as in Section 5(b) of TWEA. Br. 26. But Congress did not intend to approve any prior use of TWEA when it enacted IEEPA. H.R. Rep. No. 95-459, at 10 (clarifying that it was not endorsing any particular uses of TWEA). Nor does its choice to use the same wording as Section 5(b) mean that it agreed with *Yoshida*’s interpretation of that wording.

⁴ The Tariff Schedule of the United States contained two columns setting forth tariff rates. Column 1 rates, which generally applied to all countries except certain communist countries, were often lower than the column 2 rates based on concessionary rate reductions negotiated by the President under either the Reciprocal Trade Agreement Act or the Trade Expansion Act of 1962. United States Tariff Commission, *Tariff Schedule of the United States Annotated*, III–IV, 3–7 (5th ed. 1970). In those circumstances, the column 2 rates—but not the column 1 rates—had “the status of statutory provisions duly enacted by the Congress.” Tariff Classification Act of 1962, Pub. L. No. 87-456, § 103, 76 Stat. 72, 74. By capping the increased rates at column 2 levels, President Nixon stayed within the congressionally approved limit.

Congress was as concerned about President Nixon's use of TWEA as it was about prior Presidents' use of TWEA authorities. *See, e.g.*, H.R. Rep. No. 95-459, at 4–5, 8–9 (describing historical examples as “beyond the authority of section 5(b),” including President Nixon's Proclamation 4074, and noting that “[s]uccessive Presidents have seized upon the open-endedness of section 5(b) to turn that section, through usage, into something quite different from what was envisioned in 1917”).

Moreover, Congress was aware when it enacted IEEPA that Section 122 and other trade acts would govern the kind of trade problems that prompted Proclamation 4074. *See, e.g., Emergency Controls on International Economic Transactions, Hearings on H.R. 1560 and H.R. 2382, Before the H. Subcomm. on Int'l Econ. Pol'y & Trade of the H. Comm. on Int'l Rel.*, 95th Cong. 114, 119 (1977) (statement of Julius L. Katz, Assistant Sec'y for Econ. & Bus. Aff., Dep't of State) (discussing the availability of “other permanent legislation” to address “balance-of-payments” problems and confirming that “[s]uch measures would not have to be taken pursuant to Section 5(b) [of TWEA] in the future” because of more specific authority in the Trade Act of 1974); *id.* at 73 (statement of David J. Steinberg, President of U.S. Council for an Open World Econ.) (explaining that emergency legislation is not necessary for import controls to address national security concerns

because the President can rely on authorities in the Trade Act of 1974).

Simply put, *Yoshida* cannot bear the weight defendants place on it. It is one thing to argue that Congress intended terms in IEEPA and TWEA to carry the same meaning. It is quite another to argue that Congress intended to codify a particular lower-court interpretation of TWEA—much less an interpretation that came from just a single case that had divided the lower courts. *See BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 141 (2021) (“It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it.”) (cleaned up).

2. Other statutory interpretation principles confirm that IEEPA does not authorize unlimited tariffs.

The best reading of IEEPA’s text, in context, does not authorize tariffs at all. But two other principles of statutory interpretation confirm that at a minimum, it does not give the President unlimited tariff authority. First, courts are properly skeptical when the federal government claims to discover broad new powers in an old statute, and context does not suggest that Congress intended to delegate those powers. Second, courts interpret statutes to avoid rather than confront difficult constitutional questions. Both principles counsel against reading IEEPA—even if it authorized the

President to adjust tariffs in some respects—to grant the expansive power the President seeks here.

a. The breadth and novelty of the power the President claims counsels against defendants’ reading of IEEPA.

1. Congress “speak[s] clearly” when it intends to delegate authority to make decisions of “vast economic and political significance.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (cleaned up); *see also Ala. Ass’n of Realtors*, 594 U.S. at 764 (noting that the “sheer scope” of claimed authority is a reason for caution in interpreting a Congressional delegation of authority). So when the Executive “claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy,” *Util. Air*, 573 U.S. at 324, courts have every “reason to hesitate before concluding that Congress meant to confer such authority.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (cleaned up).

That observation is sometimes called the “major questions doctrine.” *Id.* at 723. But the label is not what matters. The doctrine is just proper recognition of “the importance of *context*” in interpreting statutory grants of authority. *Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring) (emphasis in original). That context includes using “common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude.” *Id.* at 511 (cleaned up). This Court expects

Congress to “speak clearly” when it intends to do so. *Id.* at 507 (majority op.).

This Court has rejected claims of broad, new federal authority that had far more textual support than defendants can muster here. In *Biden v. Nebraska*, for example, the Administration invoked express statutory authority under the HEROES Act to “waive” or “modify” statutory provisions related to student loans during a war or national emergency. *Id.* at 488; 20 U.S.C. § 1098bb(a)(1). This Court invalidated the Administration’s regulations relieving \$430 billion in debt for 43 million borrowers. It reasoned that accepting the Administration’s interpretation of “waive” or “modify” would give it “virtually unlimited power to rewrite the Education Act,” effecting a “fundamental revision of the statute.” *Biden v. Nebraska*, 600 U.S. at 502.

For similar reasons, in *National Federation of Independent Businesses v. OSHA*, this Court held that the Secretary of Labor’s authority to set workplace safety standards under emergency authorities did not include authority to require COVID-19 vaccines or tests. 595 U.S. at 120. In so holding, this Court emphasized the lack of historical precedent and the sweeping effects of the mandate on the economy. *Id.* at 119–21. But it also observed that its holding was about the breadth of the Secretary’s claim of authority, not the complete absence of authority. As this Court explained, the Secretary could issue “targeted regulations” specific to a particular industry or work environment. *Id.* at 119. But

it could not require 80 million Americans to receive vaccinations or take tests. *Id.* at 120.

Same for *Alabama Association of Realtors*. There, the Court held that the Surgeon General’s authority to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases” did not include the authority to impose an eviction moratorium in areas of high COVID-19 transmission. 594 U.S. at 763–65. Although the broad statutory text in isolation might be read to cover the moratorium, the “sheer scope” of the claimed authority made it implausible. *Id.* at 764. The Administration’s broad reading of the Surgeon General’s authority would have given the CDC “a breathtaking amount of authority” with little “outside the CDC’s reach.” *Id.* at 764–65. Equally important, the Administration had identified “no limit” in the relevant statute beyond the requirement that the Surgeon General “deem a measure ‘necessary.’” *Id.* at 765. That “claim of expansive authority” under the statute was “unprecedented.” *Id.*

And in *Brown & Williamson*, this Court rejected the FDA’s determination that it had jurisdiction to regulate nicotine as a “drug”—which, if one consulted only dictionary definitions, it obviously is. Context led this Court to conclude otherwise. The FDA had never regulated nicotine products, and several statutes suggested that Congress intended to treat nicotine products differently than other drugs. 529 U.S. at 135–56. This Court was “confident that Congress could not have

intended to delegate a decision of such economic and political significance in so cryptic a fashion.” *Id.* at 160.

The expansive tariffing power that the President is claiming here—unilateral authority over trillions of dollars in trade—is even more breathtaking and unprecedented than the powers claimed in any of those cases. Imported goods and services are worth more than \$4 trillion, representing 14 percent of the nation’s GDP and affecting the price of practically every product in every home. Pet. App. 37a; *see also* Br. 11 (describing projections that the trade tariffs “will reduce the national deficit by \$4 trillion in upcoming years”). And given the chance to adopt legislation that would empower the President to impose unlimited tariffs to address trade imbalances, Congress has declined. *See, e.g.*, H.R. 116-764 (2019); H.R. 119-735 (2025). As in the cases discussed above, context and common sense weigh decisively against defendants’ reading of the statute.

2. In resisting that conclusion, defendants fundamentally misunderstand both the commonsense insight behind the major questions doctrine and the implications of their broad reading of IEEPA.

First, IEEPA does not “unambiguously” authorize tariffs any more than the terms “drug” unambiguously authorizes the FDA to regulate nicotine or “modify” unambiguously authorizes the Secretary of Education to forgive student-loan debt. Br. 33. Quite to the contrary: Considering the extraordinary breadth of the power the President claims, one would expect Congress to

speak exceptionally clearly if it intended to delegate that authority.

Nor would it be “atextual” for the Court to leave open that IEEPA might authorize some tariffs but conclude that it does not authorize unlimited tariffs. Br. 32. Defendants assert that “regulate” means, more or less, “adjust.” Br. 24. Yet the verb “adjust” suggests “no significant alteration or modification but rather a bringing into a correspondence or harmony, prearranged or clearly possible but not quite achieved previously.” WEBSTER’S, *supra*, at 23 (explaining scope of “adjust” in explaining synonyms for “adapt”). In other words, if “regulate ... importation” means “adjust tariffs,” as defendants suggest, then it means no more than “bringing tariff rates into a harmony not quite achieved previously”—say, by undoing previous executive reductions in rates and returning them to congressionally approved levels. *Cf. Yoshida*, 526 F.2d at 577 (upholding such action). That meaning does not encompass authority to impose any tariff on any country for any period of time.

This Court has followed a similar path in other cases involving extraordinary claims of executive authority. It assumed that the HEROES Act, for instance, permits “specific and limited” loan forgiveness although not blanket forgiveness for millions of borrowers. *Biden v. Nebraska*, 600 U.S. at 498. It assumed that the Public Service Health Act permits “direct targeting of disease” although not broad eviction moratoriums affecting millions of renters. *Ala. Ass’n of*

Realtors, 594 U.S. at 764. And it assumed that the Clean Air Act permits some “system of emission reduction” beyond those governing individual sources, but not a cap-and-trade system. *West Virginia*, 597 U.S. at 734–35 & n.5. As in those cases, this Court need not explain in advance the precise limits on what IEEPA allows. The “only interpretative question before [the Court], and the only one [the Court need] answer, is more narrow”: whether IEEPA authorizes the President to impose any tariff on any country at any time merely by declaring a national emergency. *Id.* at 734–35. The answer is no.

Second, the President’s role in foreign affairs does not alleviate the need for Congress to speak clearly when delegating its power. For starters, the relevant distinction is not between foreign and domestic affairs, but rather between matters that fall within the President’s independent constitutional authority and matters that do not. See Curtis Bradley & Jack Goldsmith, *Foreign Affairs, Nondelegation, and the Major Questions Doctrine*, 172 U. Pa. L. Rev. 1742, 1759–60 (2024). The Constitution gives Congress, not the President, the power to impose tariffs and to regulate foreign commerce. U.S. Const., Art. I, § 8. That is direct, textual evidence that “foreign commerce” cannot simply be lumped into the broader category of “foreign affairs” or “foreign relations” when analyzing questions like those presented here.

Whatever independent constitutional authority the President may have in the area of foreign relations, it

does not include power that is textually committed to another branch of government. Put differently, “[t]he President does not have unlimited authority over foreign affairs and sometimes, as in domestic affairs, needs congressional authorization or approval in order to act.” Bradley & Goldsmith, *supra*, at 1747.

If anything, defendants’ historical examples purportedly showing how Congress has “supplemented the President’s constitutional power over foreign affairs,” Br. 12, establish that Congress, not the President, controlled the substantive details of trade matters. In *Marshall Field & Co. v. Clark*, 143 U.S. 649, 683 (1892), this Court held that Congress had authority to condition the imposition of *congressionally set* tariffs on a limited category of goods upon a presidential finding that other countries imposed “reciprocally unequal and unreasonable” duties on the same goods. *Id.* at 692 (noting that it was vital that “Congress itself prescribed, in advance, the duties to be levied, collected, and paid”). Similarly, in *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 410 (1928), this Court held that Congress may delegate to the President authority to adjust duties up to congressionally approved rates because that gave the President no power to determine rates in the first instance and thus “did not in any real sense invest the President with the power of legislation.” *See also Hamilton v. Dillin*, 88 U.S. 73, 73 (1874) (holding that the President’s imposition of licensing

fees was not a “tax” on property and that Congress expressly ratified the fees).

Context certainly matters. Perhaps Congress might not be expected to speak quite as clearly when delegating important decisions in statutes that affect only foreign affairs. But the President is not exercising purely *foreign* affairs powers by imposing taxes on *domestic* importers. In imposing tariffs, Congress, not the President, is the central player. Congress should be expected to speak especially clearly if it intends to delegate that power wholesale.

Relatedly, even if IEEPA grants broad powers to the President, there is still a “mismatch” between the power that the President claims—the power to tax imports without limits—and the categories of actions that IEEPA otherwise authorizes. *See Biden v. Nebraska*, 600 U.S. at 517 (Barrett, J., concurring). None of the actions IEEPA authorizes involves taking money from foreigners—much less from U.S. citizens who import products—while they continue to do the things that have created an “unusual and extraordinary” threat. *Cf.* 50 U.S.C. § 1702(a)(1)(C) (granting authority to “confiscate” certain foreign property but only “when the United States is engaged in armed hostilities”). Moreover, Congress has enacted several statutes in Title 19 that specifically describe tariff authority and prescribe limitations on its use under particular circumstances. IEEPA’s complete silence on tariff authority is the kind of “mismatch” that should give “reason

to hesitate before concluding that Congress meant to confer such authority.” *West Virginia*, 597 U.S. at 721.

Third, defendants are wrong that the concerns underlying the major questions doctrine “dissipate” where “Congress delegates authority directly to the President.” Br. 36. The commonsense principles behind the major questions doctrine derive from the separation of powers between the legislative and executive branches, not the distribution of power within the executive branch. *Biden v. Nebraska*, 600 U.S. at 505 (relying on “separation of powers concerns” when Congress cedes “its control of the purse”); *id.* at 515 (Barrett, J., concurring) (noting that the doctrine rests on separation-of-powers principles); *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. at 124 (Gorsuch, J., concurring) (same). Congress also knows that the President effectively controls the work of some of the subordinates to which it delegates authority, because the Constitution generally vests the executive power in the President. *Seila Law LLC v. CFPB*, 591 U.S. 197, 203–04 (2020). Common sense suggests that Congress will speak clearly when giving the executive branch authority to make decisions of vast significance—whether it gives that authority to the President or a subordinate.

b. Reading IEEPA as authorizing unlimited tariffs would raise a serious nondelegation question.

The doctrine of constitutional avoidance leads to the same conclusion. “Under the constitutional-avoidance canon, when statutory language is susceptible of

multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). The alternative need not be “the most natural interpretation” of the statutory text as long as it is a “fairly possible” one. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 563 (2012) (cleaned up).

Start with defendants’ interpretation of IEEPA: Under the auspices of “regulat[ing] ... importation,” the President claims power to impose new tariffs of unlimited magnitude on any U.S. trading partner for an indefinite period of time, regardless of any limits Congress set in other tariff statutes. And, on defendants’ reading of IEEPA, the President’s imposition of any such tariffs is “essentially judicially unreviewable.” Br. 21; *see also id.* at 40–41 (arguing that the “deal with” requirement is not subject to “meaningful judicial review”). In the President’s view, Congress has told him to tax imports however he wants.

That reading of IEEPA raises serious constitutional doubts under the nondelegation doctrine. Article I assigns “[a]ll legislative Powers” to Congress, and that assignment of power “is a bar on its further delegation.” *FCC v. Consumers’ Research*, 145 S. Ct. 2482, 2496 (2025). Congress may “seek assistance” from the executive branch to “implement and apply the laws it has enacted—for example, by deciding on the details of their execution.” *Id.* at 2497. But Congress must “set out an ‘intelligible principle’ to guide what it has given

the agency to do.” *Id.* And “[t]he guidance needed is greater ... when an agency action will affect the entire national economy than when it addresses a narrow, technical issue.” *Id.* (cleaned up).

The President’s broad claim of unlimited taxing authority on imports, “affect[ing] the entire national economy,” lacks any intelligible principle to guide it. Defendants argue that IEEPA sets forth “sufficient boundaries” because the President cannot invoke IEEPA for any purpose other than dealing with the stated national emergency and cannot regulate certain types of goods. Br. 46. But those are no boundaries. According to defendants, the President can declare essentially anything a national emergency, courts cannot review the President’s determination that the emergency qualifies as an “unusual and extraordinary threat” or that the action “deal[s] with” that threat, and any action “deal[s] with” a threat if it gives the President negotiating leverage. Br. 40–41. Constitutional avoidance dictates that the statute not be construed that broadly. A narrower construction that avoids any serious nondelegation question is not only “fairly possible” here—it is the most logical and textually supported construction. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. at 563.

Defendants contend that nondelegation principles should play a more limited role in reviewing statutes delegating authority over foreign affairs. Br. 44–45. But a statute purporting to delegate tariff authority does not delegate authority over foreign affairs. *See*

Consumer Watchdog Am. Br. at 8–12 (explaining why that assumption is false). And even if taxes on American importers qualified as foreign affairs, defendants overlook that the “intelligible principle” standard itself comes from a case involving the President’s authority over tariffs. *See J.W. Hampton*, 276 U.S. at 404–05. The State plaintiffs do not seek to apply any higher standard here.

In the end, this Court need not decide whether defendants’ broad reading of IEEPA would survive a non-delegation challenge. Constitutional avoidance is enough to end the analysis, because another “fairly possible” reading of IEEPA avoids the question altogether.

* * *

Every significant piece of context points in the same direction here. IEEPA does not use the terms that Congress typically uses to authorize tariffs, and reading “regulate” to authorize tariffs is difficult to reconcile with its surrounding text. Common sense weighs against discovering an extraordinary new power to remake the national economy in a longstanding statute. And there is a serious question whether Congress even can delegate such blanket authority. For all those

reasons, the best reading of IEEPA’s text in context does not authorize the tariffs at issue in this case.⁵

B. Even if “regulate ... importation” included tariffs, the trade and trafficking tariffs still exceed IEEPA’s authority.

As explained above, IEEPA does not confer on the President any tariff authority—or, at a minimum, not unlimited tariff authority. But even if that were not so, the Court still should affirm for three additional reasons. First, the trade tariffs exceed Section 122’s limits. Second, the President has not identified an unusual and extraordinary threat justifying the trade tariffs. And third, the President has not shown that the trafficking tariffs “deal with” any of the threats invoked to justify them.

1. The trade tariffs are invalid because they exceed Section 122’s limits.

The threat the President identified to justify the trade tariffs is the existence of “large and persistent annual U.S. goods trade deficits.” 90 Fed. Reg. at 15,041. But Congress gave the President specific—and limited—authority in Section 122 of the Trade Act of 1974 to impose tariffs to address that very threat. That

⁵ This Court should not address the argument, raised only by amicus America First Policy Institute, that Section 338 of the Tariff Act of 1930 authorizes the tariffs at issue here. Because the President did not identify Section 338 in his declaration of the emergencies or in any subsequent Executive Orders, it cannot authorize the tariffs. *See* 50 U.S.C. § 1631 (requiring President to specify the provisions of law under which he or other officers will act).

Congress spoke directly on this topic in Section 122 is further textual evidence that IEEPA does not cover the same topic. But even if there were some overlap, the specific limits in Section 122 would control over the more general grant of authority in IEEPA.

Section 122 provides that “[w]hensoever fundamental international payment problems require special import measures to restrict imports ... to deal with large and serious United States balance-of-payments deficits,” the President “shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress) ... a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties.” 19 U.S.C. § 2132(a). As the CIT explained, trade deficits are a type of “balance-of-payment deficit,” because the balance of trade is a key component of the balance of payments. Pet. App. 179a–80a.⁶ Thus, the statute directly addresses the President’s authority to impose tariffs to deal with “large and serious” trade deficits. And it limits the tariffs to 15 percent and 150 days—

⁶ Defendants properly do not endorse the contrary conclusion of the dissent below. Pet. App. 116a–18a. In concluding that “balance-of-payments deficits” means only “problems [that] concern the payments (financial, cash) side of the accounting statement,” the dissent mistakenly focused on the word “payments” in isolation. Pet. App. 117a. But the phrase “balance of payments” is a term of art, and—as the dissent acknowledged—trade in goods is part of the overall balance of payments. Pet. App. 116a–17a n.11. All parties appear to agree that “balance-of-payments deficits” in Section 122 include not just financial or cash deficits but also deficits in the current account, including trade in goods.

limits that the President claimed the authority to ignore in imposing the trade tariffs.

Defendants' interpretation of IEEPA would allow the President to avoid those limits whenever he wants. But nothing in IEEPA purports to override Section 122's limits. Defendants recognize that this Court's task is to harmonize IEEPA and Section 122, but they propose an implausible way to do so. Br. 38. They contend Section 122 applies only to nonemergency situations and IEEPA applies instead when the President declares an emergency. But Section 122 applies "[w]henever" import restrictions are needed to deal with "large and serious" trade deficits. 19 U.S.C. § 2132(a). If large and serious trade deficits become an emergency, it is one fully covered by Section 122. Congress did not limit Section 122 to nonemergency situations.

The history of Section 122 confirms what its text suggests: that it applies equally to declared emergencies. Congress enacted Section 122 at President Nixon's request after the Customs Court held that he lacked authority to impose similar surcharges under then-existing emergency powers in TWEA. S. Rep. No. 93-1298, at 88 (explaining that committee members did not "wish to take a position one way or the other on the validity of the 1971 surcharge" but that the President should have authority to impose surcharges even if "such authority is not likely to be utilized"). President Nixon had declared an emergency. Proclamation 4074, 36 Fed. Reg. 15,724, 15,724 (Aug. 17, 1971)

(declaring an emergency based on serious threats to trade and international competitive position). The whole issue was the President's authority in an emergency. Congress chose not to amend TWEA to add additional authority; instead, it conferred limited authority in a stand-alone provision. But the history could not be clearer that Congress intended Section 122 to address emergencies. *See, e.g., Trade Reform: Hearings before the H. Comm. on Ways and Means*, 93rd Cong. 365 (1973) (explaining that balance-of-payments authority would be used "only temporarily" and "in exceptional circumstances"); 93 Cong. Rec. 10931 (1973) (statement of Rep. Ullman) (explaining that balance-of-payments authority could prove useful in "unusual circumstances").

That does not mean that Section 122 "displaces" IEEPA. Br. 38. It just reflects the "basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976). Defendants dispute that Section 122 is the more specific statute, Br. 39, but in this circumstance it plainly is: Section 122 provides express, limited authority to raise tariffs to address trade deficits, while IEEPA grants only general authority to regulate importation to address emergencies. When the purported emergency is trade deficits, Section 122 is specific and directly on point.

Finally, if Congress *did* intend to codify into IEEPA *Yoshida*'s interpretation of TWEA, as defendants contend, Br. 26, it codified all of it—including *Yoshida*'s observation that any future surcharge “must, of course, comply with [Section 122] now governing such action.” 526 F.2d at 582 n.33; *see also id.* at 578 (“Congress has said what may be done with respect to foreseeable events in the Tariff Act, the TEA, and in the Trade Act of 1974”). Defendants cannot cherry-pick the parts of *Yoshida* they like without accepting the rest of the opinion, which firmly rejected any argument for unlimited tariff authority for the President. *Id.* at 583 (“We do not here sanction the exercise of an unlimited [Executive] power, which...[would] strike a blow to our Constitution.”).

2. The trade tariffs do not address an “unusual” or “extraordinary” threat.

IEEPA's text reinforces that its powers do not supplant more specific sources of limited tariffing authority like Section 122. IEEPA requires that its powers be used only “to deal with an unusual and extraordinary threat” and not “for any other purpose.” 50 U.S.C. § 1701. The trade tariffs do not deal with an “unusual and extraordinary threat,” because—especially in light of Section 122—trade deficits are neither “unusual” nor “extraordinary.”

“Unusual” and “extraordinary” are familiar terms. “Unusual” means “out of the ordinary” or “exceptional.” WEBSTER'S, *supra*, at 2514 (defining “unusual”). “Extraordinary,” in the context of laws, means “of, relating

to, or having the nature of a proceeding or action not normally required by law or not prescribed for the regular administration of the law” or “of, relating to, or having the nature of an occurrence ([such] as an accident or casualty) or risk of a kind other than what ordinary experience or prudence would foresee.” *Id.* at 807.

Both of those terms have discernable meanings that courts are fully capable of enforcing. When IEEPA requires that the threat be “unusual,” it means at least that it involves circumstances that are rare, and when it requires that the threat be “extraordinary,” it means at least that it involves circumstances that are not addressed in existing legislation because Congress could not reasonably have foreseen them. *See* H.R. Rep. No. 95-459, at 10 (IEEPA is intended to address “unforeseen contingencies”). In other words, to the extent IEEPA authorizes the President to impose tariffs at all, it does so only in circumstances that are rare and not already covered by another, ordinary tariff statute.

The trade tariffs do not satisfy either requirement. Trade deficits are not “unusual” because, as the President stated in imposing tariffs, “annual U.S. goods trade deficits” are “persistent.” Exec. Order No. 14,257, 90 Fed. Reg. at 15,041; *see also* CAFC Doc. 148 at 215 (Hines Decl.) (noting that “[t]he United States has run persistent current account deficits since the mid-1970s”). “Persistent” is the opposite of “unusual.” *See* WEBSTER’S, *supra* at 1686 (defining “persistent” as

“existing for a long or longer than usual time or continuously”).

As Congress explained when it enacted IEEPA, “emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems.” H.R. Rep. No. 95-459, at 10; *see also Emergency Controls on International Economic Transactions*, *supra*, at 175 (Chairman Bingham suggesting that “unusual” be added to “extraordinary” to emphasize that authority should be used only for an “unusual problem”); *cf. City of Grants Pass v. Johnson*, 603 U.S. 520, 543 (2024) (concluding that a city’s fines for unauthorized camping were not “unusual” because “similar punishments have been and remain among ‘the usual mode[s]’ for punishing offenses throughout the country”); *Harmelin v. Michigan*, 501 U.S. 957, 976 (1991) (noting that “unusual” means “such as [does not] occur in ordinary practice”).

Nor are trade deficits or their consequences “extraordinary” when Congress anticipated them and gave the President ordinary tools of trade law in Title 19, such as Section 122, to address them. The same can be said for other trade problems addressed in Title 19. For instance, if the International Trade Commission makes a finding of “serious injury, or the threat thereof, to a domestic industry” caused by the importation of an article, Congress has allowed the President to “proclaim an increase in, or the imposition of, any duty on the imported article.” 19 U.S.C. § 2253(a)(1), (3). Hence, if imports are causing “serious injury” to a

particular sector of the economy, it is not an “extraordinary” threat based on “unforeseen contingencies” but a “normal, ongoing problem[]” for which ordinary legislation already provides the solution. H.R. Rep. No. 95-459, at 10. Or, to take another example, if the U.S. Trade Representative determines that another country’s policies or practices are violating a trade agreement or unjustifiably “burden[ing] or restrict[ing] United States commerce,” the Trade Representative, “subject to the specific direction” of the President, must take action that may include “impos[ing] duties or other import restrictions.” 19 U.S.C. § 2411(a), (c)(1)(B). Those circumstances—harms to domestic industries or unfair trade practices—are again “normal, ongoing problems” for which Congress has provided specific tools and procedures.

To those points, defendants respond primarily by relying on self-serving statements that were never included in the CIT’s record on summary judgment. Br. 2–3, 41–42 (relying on sworn statements of four Cabinet-level officials). None of those statements is properly before the Court. On summary judgment in the CIT, the State plaintiffs submitted extensive evidence, including declarations from fact and expert witnesses. But even after the CIT directed defendants to file a responsive statement of facts, defendants submitted no evidence and relied on assertions from the Executive Orders themselves. *See* CAFC Doc. 61-1, at 53, 58–59. Defendants cannot backfill that evidentiary gap now by relying on declarations submitted on appeal or

in support of a motion to stay the judgment pending appeal.

Regardless, defendants do not offer any contrary definitions of “unusual” or “extraordinary.” *See* Br. 42. Instead, they claim that “the President’s determinations in this area are not amenable to judicial review.” Br. 42. But that argument conflates an “emergency” declaration with the identification of an “unusual and extraordinary” threat. A President does not declare only an “emergency” under IEEPA, as defendants suggest. Br. 42. Rather, the President must also identify an “unusual and extraordinary threat” arising from an emergency. 50 U.S.C. § 1701(a). Defendants’ conflation of those distinct requirements makes much of their argument beside the point. Even if courts do not ordinarily second-guess a Presidential declaration of an emergency, courts still have a role to play in determining whether IEEPA’s “unusual and extraordinary threat” requirement is satisfied. *See McLaughlin Chiropractic Assocs.*, 606 U.S. at 155–56 (“[U]nless there is persuasive reason to believe” that Congress intended to preclude judicial review, the courts will review the executive’s compliance with statutory limits.”); *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (explaining that there is no political question when “the Judiciary must decide [which] interpretation of the statute is correct”); *see also* 50 U.S.C. § 1702(c)

(contemplating judicial review of determinations under IEEPA).

Any other interpretation would make surplusage of the “unusual and extraordinary threat” requirement. Defendants suggest that the Court must accept that surplusage because IEEPA is needed to respond to “longstanding” threats. Br. 43. Yet the very examples they cite show why they are wrong. Each involved presidential actions that were based not on IEEPA alone, but also on other statutes that do not include the unusual-and-extraordinary requirement. The action regarding trade with apartheid South Africa relied on—among other statutes—22 U.S.C. § 287c, which grants the President authority to implement U.N. Security Council sanctions. Executive Order No. 12,532, 50 Fed. Reg. 36,861 (Sept. 9, 1985). The sanctions on human rights abusers relied in part on the Global Magnitsky Human Rights Accountability Act, which expressly states that “[t]he requirements of section 202 of the International Emergency Economic Powers Act (50 U.S.C. 1701)—in other words, the “unusual and extraordinary” requirement—“shall not apply for purposes of this section.” 22 U.S.C. § 10102(b)(2)(B); *see* Executive Order No. 13,818, 82 Fed. Reg. 60,839 (Dec. 20, 2017). In fact, provisions like that confirm yet again that Congress intended the “unusual and extraordinary” requirement to place meaningful limits on the

President's authority unless Congress expressly lifts those limits.

3. The trafficking tariffs do not “deal with” the identified threats.

The trafficking tariffs run afoul of another of IEEPA's express requirements for presidential action. IEEPA specifies that the power it grants the President “may only be exercised to deal with an unusual and extraordinary threat” and “may not be exercised for any other purpose.” 50 U.S.C. § 1701(b). In other words, even when the President has declared a national emergency based on an unusual and extraordinary foreign threat, the President's response must be targeted only to deal with that threat.

The statute's emphasis of that point is significant. It includes a separate subsection (b) reiterating that that power conferred in subsection (a)—the power to “deal with” certain threats—may “only” be exercised for that purpose and “not ... for any other purpose.” That arguably redundant repetition suggests that Congress regarded the “deal with” requirement as a substantive and important limit on the authority it was granting. See *Emergency Controls on International Economic Transactions*, *supra*, at 184 (explaining that “there would have to be some relationship between the circumstances and the authorities that are exercised” and that “[t]he declaration of a national emergency

does not give the President the right to do whatever he wants”).

The CIT correctly found that there is a mismatch between the President’s implementation of across-the-board tariffs on Canada, Mexico, and China and the problems—drug trafficking and other crime—that the tariffs purport to address. Pet. App. 191a–95a. The tariffs are not targeted at fentanyl or related products or any aspect of illicit drug trafficking or crime more generally. *Cf.* Exec. Order No. 14,059, 86 Fed. Reg. 71,549 (Dec. 17, 2021) (imposing sanctions on foreign persons involved in the global illicit drug trade). Rather, the trafficking tariffs apply to almost all goods imported from the affected nations, regardless of whether any particular good has a reasonable connection to fentanyl trafficking or other crime. And the costs the tariffs impose are not directly targeted at traffickers or the foreign governments that the President thinks need to do more to stop them. The costs fall on importers.

Defendants do not contest that there is a mismatch between the ends and means in the President’s imposition of the trafficking tariffs. Instead, they argue that the tariffs “deal with” the identified threats because they give the President a “bargaining chip” in negotiations with other countries. Br. 40. But mere leverage is not enough to satisfy IEEPA’s requirement that the statute be used only to deal with the stated threat, and not “for any other purpose.” 50 U.S.C. § 1701(b). To conclude otherwise would essentially read the “deal with” and “not ... for any other purpose” requirements

out of IEEPA. See *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (noting that it is a court’s “duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section, as the Government’s interpretation requires”) (cleaned up).

Defendants’ own example proves the point. Br. 40. Taking away a teenager’s car keys “deals with” their failure to do chores because it prevents them from doing something else with the time that could be spent on chores. True, it may *also* create leverage, but the sanction deals with the issue by directly influencing the behavior of the target. The trafficking tariffs—which are imposed on American companies and consumers—are more like taking away the older sibling’s car keys because a younger sibling failed to do their chores. That does not deal with the problem of undone chores; it just tries to get someone else—the older sibling—to deal with it.

Dames & Moore v. Regan, 453 U.S. 654 (1981), does not suggest otherwise. There, the Court upheld the President’s use of IEEPA to nullify attachments and order the transfer of claims against Iranian property as part of the resolution of the hostage crisis. *Id.* at 666, 674. It did not discuss the “deal with” requirement of IEEPA, which apparently was not contested—and for good reason: The property at issue in that case was property of the Government of Iran and its instrumentalities. *Id.* at 662–63. *Dames & Moore* thus did not involve, as this case does, the use of IEEPA to attempt to

create leverage with a foreign government by imposing economic consequences on American companies and consumers with collateral impacts across the world.

Nor does the Court lack “judicially manageable standards” to determine whether tariffs “deal with” trafficking via an attenuated chain of causation. Br. 42. Attenuation is a familiar concept. When assessing causation for purposes of Article III standing, for example, courts must “rule[] out attenuated links—that is, where the government action is so far removed from its distant (even if predictable) ripple effects that the plaintiffs cannot establish Article III standing.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024). That bars some parties from suing, say, the IRS for granting tax exemptions to organizations whose practices harm the parties, even though the denial of tax exemptions would give them leverage to stop those practices. *Allen v. Wright*, 468 U.S. 737 (1984) (racially discriminatory schools); *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26 (1976) (hospitals that provide only emergency room services to indigents). If that sort of leverage theory is too attenuated for Article III standing, it is too attenuated for a statute that requires that the action “deal with” the identified threat.

To reach that conclusion, this Court need not reject defendants’ arguments that the President should get “substantial deference” in determining what actions “deal with” a particular threat. Br. 40. Even under a deferential standard of review, the trafficking tariffs do not pass muster because of the mismatch between

means and ends. Taxing tomatoes does not “deal with” fentanyl. If that is dealing with the threat of traffickers, then anything is.

CONCLUSION

The judgment of the Court of Appeals for the Federal Circuit should be affirmed.

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