Nos. 24-1287 and 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 *AMICUS CURIAE* BRB MANAGEMENT, LLC IN SUPPORT OF PETITIONERS IN 24-1287 AND RESPONDENTS IN 25-250

PHILIP J. DE KOSTER
Counsel of Record
JOHN G. DE KOSTER
DE KOSTER & DE KOSTER, PLLC
1102 Main Street
Hull, Iowa 51239-0801
(712) 439-2511
philip@dekosterlaw.com

Counsel for Amicus Curiae

120736

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES:

INTEREST OF THE *AMICUS CURIAE*[1]

The amicus curiae, BRB Management, LLC, is a small business that operates retail stores directly affected by tariffs and related trade policies. It has a strong interest in ensuring that the scope of presidential tariff authority is clearly defined and limited by law and in maintaining a stable and predictable tax and regulatory environment. While reviewing the record, amicus observed that a significant statutory question – the meaning and applicability of IEEPA's limitation to property "in which any foreign country or a national thereof has any interest" – was raised but not adequately developed. Amicus files to provide focused analysis of that provision and its implications for the separation of powers between Congress and the Executive. Amicus submits this brief to assist the Court in construing the law consistently with those constitutional principles.

SUMMARY OF ARGUMENT

The parties and other amici dispute whether IEEPA's phrase "regulate…importation" authorizes the President to impose tariffs, whether any such delegation of Congress's exclusive tariff authority is clear, and whether, if so, it is constitutional.

Amicus's argument, which has been raised but not fully developed in lower proceedings, is simpler: Section

1. Pursuant to Rule 37.6, amicus states that no party, counsel for any party, or any person other than amicus and its counsel authored this brief or made any monetary contribution for its preparation or submission.

1702(a)(1)(B) of IEEPA cannot authorize tariffs because its authority applies only to property in which a foreign country or foreign national has an interest, and most imported property has no such foreign interest at the time tariffs attach.

The government has urged an expansive interpretation of "any interest" drawn from lower-court cases involving terrorist groups and sanctioned nations. But those cases involved substantial, presently-existing foreign interests in the blocked property and cannot justify reading IEEPA to cover prior, incidental, or contingent ties in the tariff context. This construction would grant powers so broad as to render the statute unconstitutional.

At the point when tariff liability attaches – entry of goods into the United States – ownership ordinarily already has passed to American buyers. Most tariffed property therefore lacks the foreign interest necessary to fall within IEEPA's reach.

Although a minority of imported property may be foreign-owned, a tariff regime based on the nationality of each item's ownership is unprecedented and nearly unadministrable. The Court need not decide how such a regime might work in theory, however, because the challenged Executive Orders impose tariffs on substantially all imported property, including that already owned by Americans, which Section 1702(a)(1)(B) does not authorize.

IEEPA grants the President broad emergency powers over foreign-owned property but no powers over the property of U.S. citizens. This fundamental foundation is key to understanding the statute and makes clear that IEEPA cannot authorize the tariffs imposed by the challenged Executive Orders.

Finally, though the parties have not raised or briefed the issue, at least one amicus for the Government urges the Court to sustain these tariffs under Section 338 of the Smoot-Hawley Tariff Act if it finds that IEEPA does not authorize their imposition. But Section 338 cannot plausibly serve as a general license for the President to impose tariffs, both because the statute was not written to delegate plenary tariff authority to the President and because reading the statute in a way that renders its limitations irrelevant would raise grave nondelegation concerns.

ARGUMENT

I. IEEPA Applies Only to Property with a Foreign Interest.

IEEPA, found in Chapter 35 of Title 50 of the United States Code, provides, in part, that the President may:

> investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, *any property in which any foreign country or a national thereof has any interest* by any person, or with respect to any property,

> subject to the jurisdiction of the United States.
> 50 U.S.C. § 1702(a)(1)(B) (emphasis added)

The emphasized phrase – "any property in which any foreign country or a national thereof has any interest" – is not incidental. It is the object of the sentence, the authorized object of the listed actions, and the key limitation that prevents IEEPA from functioning as a general police power over purely domestic property.

Despite this, due to the rather dense construction of the statute, it could be tempting to misunderstand the statute to read instead in the disjunctive, with the final "or" separating *two* authorized objects: "any property in which any foreign country or a national thereof has any interest by any person" or "any property, subject to the jurisdiction of the United States." *See id.* But that parsing makes the first branch of the disjunctive nearly unintelligible: what does it mean for a foreign country or national to have an interest "by any person"? The final phrase – "*by any person, or with respect to any property, subject to the jurisdiction of the United States*" – only makes sense if read together as part of a single jurisdictional tail. Splitting it from the remainder of the section creates not only overbreadth but also incoherence.

Additional clarity is gained by comparing sub-paragraph (B) of section 1702(a)(1) with sub-paragraph (A) of the same section, which similarly authorizes the President to do the following:

> investigate, regulate, or prohibit–
>
> (i) any transactions in foreign exchange,

> (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof, or
>
> (iii) the importing or exporting of currency or securities,
>
> *by any person, or with respect to any property, subject to the jurisdiction of the United States.*

50 U.S.C. § 1702(a)(1)(A) (emphasis added).

The "jurisdictional tail" in subparagraph (A) is identical to that in subparagraph (B). No one disputes that subparagraph (A) requires a foreign-interest nexus. The two subsections are drafted in parallel, each with a catalog of possible objects followed by the same jurisdictional tail. To treat subparagraph (B) differently, reading the tail as if it created a freestanding category of "any property, subject to the jurisdiction of the United States," would violate basic rules of grammar and longstanding principles of statutory construction.

The statute's text points in only one direction—that the jurisdictional tail must be read as a cohesive unit. Even though that is an undisputable conclusion, it is instructive to consider the consequences of the contrary reading. The contrary reading would create a freestanding category of purely domestic property subject to the full control of the President. Such a broad reading would sever the foreign-interest limitation entirely and convert IEEPA into a general police-power statute, empowering the President to control the use, transfer, or even possession of any property located in the United States.

Consider that, under a reading which separates "any property, subject to the jurisdiction of the United States" from the remainder of the subparagraph, the following sentences would be textually valid constructions of the statute:

> The President may direct and compel any transfer with respect to any property, subject to the jurisdiction of the United States.
>
> The President may void any acquisition with respect to any property, subject to the jurisdiction of the United States.
>
> The President may prevent or prohibit exercising any right with respect to any property, subject to the jurisdiction of the United States.

These substitutions are not exaggerations or strained interpretations. They are clear readings of the statutory text if the erroneous parsing is adopted; they simply follow from substituting alternate verbs and objects other than "regulate…importation" in the same operative clause. Further, each sentence would give the President authority equivalent to a general power to control the entire domestic economy, which is constitutionally impermissible.

This Court has never approved a delegation to the Executive of an unbounded legislative power. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537–38 (1935); *see also Panama Refining Co. v. Ryan*, 293

U.S. 388, 430 (1935). Nor has it sanctioned the conferral upon the national government of a general police power "retained by the States." *United States v. Lopez*, 514 U.S. 549, 566–67 (1995). Because the police power remains solely with the states, Congress cannot delegate it to the Executive.

This limitation appears to be common ground. In its merits brief, the government repeatedly acknowledges that the statute applies only to property with a foreign nexus, describing IEEPA and its predecessor statute as granting power only over "foreign goods." (Gov't. Br. 3, 13, 23.)

In the end, the statute, properly read, empowers the President to take a wide range of actions but only with respect to transactions involving property with a foreign interest. It does not empower him to regulate purely domestic property without any foreign nexus; this key limitation in the plain language of the statute prevents IEEPA from collapsing into a general police power the Constitution withheld from Congress. *See Lopez,* 514 U.S. at 566.

II. The Foreign Interest Must Be a Real and Present Property Interest.

Once the statute is read properly to apply only to property in which a foreign country or national "has any interest," the scope of that phrase must be understood.

The statute provides that its powers extend only to property in which a foreign country "has" an interest. Congress did not say "has had," "may acquire," "will have," or "desires to have." By its plain terms, the interest must be present and existing at the moment the statute operates. Even the regulations interpreting the statute do not claim authority to regulate a past interest. *See, e.g.,* 31 C.F.R. § 558.310. Reading "has" to encompass past or hypothetical interests would deprive the word of any limiting force and collapse the statute's boundary into meaninglessness.

Congress itself confirmed that distinction within the same statute. The very next subsection authorizes the President to require recordkeeping "relative to any property in which any foreign country or any national thereof *has or has had* any interest." 50 U.S.C. § 1702 (a)(2) (emphasis added). Congress thus demonstrated that it knew how to reach both present and former interests when it wished to do so. *See also Gundy v. U.S.*, 139 S. Ct. 2116, 2127 (2019) (plurality op.) (noting that the Court looks "to Congress's choice of verb tense to ascertain a statute's temporal reach" (citations omitted)). By contrast, Section 1702(a)(1)(B) lacks the phrase "has had" and limits the President's power to property in which a foreign country or national "has" an interest. 50 U.S.C. § 1702(a)(1)(B). The omission is significant. *See Gundy*, 139 S.Ct. at 2126 (citing numerous authorities requiring that statutes be read as a whole and in context). Congress confined the operative authority to existing, not bygone, interests. Reading "has" to encompass what Congress elsewhere described as "has had" would erase that temporal boundary, which exists in the plain language of the statute.

Although the government has not repeated the point in its merits brief here, it pressed the argument below, asserting in its Federal Circuit reply brief that:

> The phrase "any interest" extends beyond possessory interests. In *Holy Land Foundation v. Ashcroft*, for example, the D.C. Circuit held that IEEPA allowed the government to block the assets of an organization that raised funds for Hamas, even though Hamas had no "legally protected" interest in the funds, because Hamas had an interest in obtaining such funds *in the future*. (Gov't C.A. Fed. Cir. Reply Br. at 10 (emphasis added; citations omitted).)

That paraphrase misstates the holding of *Holy Land Foundation*. *Holy Land Foundation v. Ashcroft*, 333 F.3d 156, 162–63 (D.C. Cir. 2003). The D.C. Circuit did not hold that speculative or future interests suffice. *Id.* It upheld the blocking of funds because Hamas was the present intended beneficiary of those very funds – it had an operative interest in them at the moment of the blocking. *Id.* at 163.

While the *Holy Land Foundation* court did not require that "any interest" be a legally enforceable, strict property-law interest, it did not dispense with the requirement that the present interest actually exist. *Holy Land Foundation*, 333 F.3d at 163. The D.C. Circuit instead held that an equitable or beneficial interest – such as Hamas's contemporaneous benefit from funds being raised and transmitted for its use – was sufficient. *Id.*; *see also Global Relief Foundation, Inc. v. O'Neill*, 315 F.3d 748, 753 (7th Cir. 2002) (requiring a present foreign interest). That holding does not help the government here. A foreign exporter's extinguished ownership of goods that it has already sold is neither equitable nor beneficial. It is simply past.

The government continues:

> Foreign firms that sell merchandise to domestic importers have a similarly obvious interest in the merchandise they *are selling*, regardless of whether they own a particular item at the point when tariffs are collected on it. (Gov't C.A. Fed. Cir. Reply Br. at 10 (emphasis added).)

The government quietly shifts to the present tense here, asserting that such firms have an "interest in the merchandise they are selling." But tariffs are collected only after the sale and transfer of title for most shipments. By the time the goods reach U.S. customs, the foreign seller no longer *is selling* anything; it *has sold* the goods and relinquished its interest in them. *See infra* Part III.

Nor is it clear what the government means by this supposed "obvious" interest. If the term encompasses the foreign seller's ongoing commercial hopes, when does that interest end? Does it persist while the imported goods sit on a retailer's shelf? After a consumer has bought them and taken them home? In that view, every imported product in the United States would remain forever subject to a foreign "interest." Such an interpretation would place every store shelf and household purchase within the reach of the President's extraordinary powers and is patently unconstitutional. *See, e.g. West Virginia v. EPA*, 142 S. Ct. 2587, 2621 (2022) (Gorsuch, J., concurring) (The executive branch must have "clear congressional authorization when it seeks to regulate 'a significant portion of the American economy.'")

The adjective "obvious" does not make that result any less implausible. It merely substitutes assertion for analysis, avoiding the question whether the supposed interest is real and present within the meaning of the statute.

To accept the government's interpretation would stretch "has" to mean "has had," "might someday have," or "desires to have." Such a reading would render Section 1702(a)(1)(B)'s temporal limitation meaningless. The Court strenuously avoids construing a statute in this way. *See, e.g. Duncan v. Walker*, 583 U.S. 167, 174 (2001) (recognizing the "cardinal principle of statutory construction" to give effect to every word and to avoid a reading which renders words as "superfluous, void, or insignificant (citations omitted)). Congress chose the present tense for a reason; the interest must be present and existing, not theoretical or aspirational. *See* 50 U.S.C. § 1702(a)(1)(B).

Extending "any interest" to include incidental and attenuated relationships, such as contingent liens, insurance policies, and contractual expectancies, would transform IEEPA from an emergency sanctions tool into a general police power over a wide swath of domestic property with only incidental foreign ties. IEEPA does not sweep this broadly; simply because property has a connection to a foreign government or economy does not put it under IEEPA's reach. *See Global Relief Foundation*, 315 F.3d at 753 (finding that claims against Iran owned by U.S. Citizens and benefiting U.S. Citizens were outside IEEPA's scope). Under Section 1702(a)(1)(B), the President may "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent, or prohibit" any of the enumerated activities "with respect to" that property. If the government's broad reading of "any interest" is correct, then the President could take any of the listed actions against property with even the most attenuated, theoretical, or aspirational foreign interest. A foreign government that merely permits SpaceX to operate Starlink within its borders—or even a foreign national who regularly shops on Amazon—could be said to have "interests" in those companies, potentially bringing their entire operations within IEEPA's reach. A U.S. home with a securitized mortgage held by a foreign investor would qualify, as would a U.S. business insured through Lloyd's of London. Even a company with a single foreign shareholder could be covered. That construction would collapse the foreign-interest requirement altogether and produce startling results, such as:

> The President may nullify any transactions involving any business insured by Lloyd's of London.
>
> The President may direct and compel any transfer of any home with a securitized mortgage that has been sold to a foreign investor.
>
> The President may prevent or prohibit any dealing in any corporation with any foreign shareholders.

These are only a few of the potential permissible applications of Section 1702(a)(1)(B) if "any interest" includes every incidental lien, policy, or share as the government contends.

The more natural reading is that "any interest" refers to an active, present stake in the property itself: ownership, possession, or other cognizable rights, such as those noted in *Holy Land*. *See Holy Land Foundation*, 333 F.3d at 162–63 (describing a direct beneficial right as an "interest"). Past, incidental, or speculative stakes cannot suffice. Only such an understanding gives the foreign-interest limitation coherent meaning and avoids transforming IEEPA into a general license for presidential regulation of the entire American economy.

III. Most Imported Property Is Domestically Owned with No Real, Present Foreign Interest When Tariffs Attach.

Customs law makes clear that liability for duties attaches upon importation. "The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the United States…." 19 C.F.R. § 141.1(b)(1). "Importation," in turn, is defined as the arrival of goods within the United States with intent to unload. For merchandise imported other than by vessel, it is "the date on which the merchandise arrives within the Customs territory of the United States." 19 C.F.R. § 101.1 (defining date of importation). For vessel shipments, it is "the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise." *Id.*

At that same point of importation, entry occurs and estimated duties must be deposited. *See* 19 U.S.C. § 1505(a) ("The importer of record shall deposit … at the time of entry … the amount of duties and fees estimated to be payable"); 19 C.F.R. § 141.101 (requiring that estimated duties be deposited when the entry documentation or the entry summary documentation is filed).

Thus, liability attaches upon importation, and payment is due at entry. Because importation is defined as arrival at the border with intent to unload, the obligation to pay tariffs arises at the point of entry itself.

At the point of entry, imported property is ordinarily owned by the American importer. International sales are typically governed by standardized trade terms known as Incoterms, which have been incorporated into the U.N. Convention on Contracts for the International Sale of Goods. *St. Paul Guardian Ins. Co. v. Neuromed Med. Sys. & Support, GmbH*, No. 00-9344, 2002 WL 465312, at *3–4 (S.D.N.Y. Mar. 26, 2002). Under the common terms, risk of loss ordinarily shifts to the buyer before the goods reach the United States. For example, under FOB ("Free on Board") and CIF ("Cost, Insurance, and Freight"), risk passes once the goods are loaded on board at the foreign port; under CIP ("Carriage and Insurance Paid To"), when the seller delivers the goods to the carrier abroad; and under EXW ("Ex Works"), even earlier, at the seller's premises. *See id.* at *3–4 (under CIF, "the seller delivers when the goods pass the ship's rail in the port of shipment"); *see also* Black's Law Dictionary (8th ed. 2004) (defining the quoted terms); International Chamber of Commerce, Incoterms 2020 (2019). Title, the primary ownership interest, is governed by the sales contract. In many cases, consistent with U.C.C. § 2-401(2), title passes upon delivery to the carrier abroad, though parties may agree to postpone transfer until payment or another specified event. *See* U.C.C. § 2-401(2) (2012). Financing arrangements may also create liens or security interests, often in favor of the importer's bank. But in the ordinary course, by the time the goods reach a U.S. port and tariff liability attaches, they are owned by the U.S. importer, not the foreign seller.

The litigation record reflects the same understanding. The D.C. Circuit, below, recognized that imported property is generally domestically owned before entry. *Learning Resources, Inc. v. Trump*, No. 1:25-cv-1248, slip op. at 22–23 (D.D.C. May 29, 2025). The State plaintiffs in the Federal Circuit emphasized that the foreign interest ends, if one exists at all, before the property is imported. State Pls.-Appellee's C.A. Br. at 38-39. In neither case did the government dispute the factual premise, arguing only that "any interest" should be construed broadly. *See* Gov't C.A. Fed. Cir. Reply Br. at 10.

Thus, when tariff liability attaches, imported property is ordinarily owned by U.S. importers. The only remaining question is whether any other "foreign interest" could exist at that moment. Some might suggest that a foreign shipping carrier's temporary custody of goods in transit might constitute "any interest." But that cannot be a property interest or a "foreign interest" within the meaning of IEEPA; once risk of loss and title have passed to U.S. buyers, the carrier's role is purely contractual, not proprietary. The carrier holds the goods only as bailee; it has no beneficial, equitable, or proprietary stake – no "interest" in the property at all.

Others might point to an insurance policy issued by a foreign carrier. But treating an insurer's contingent obligation as a property "interest" would extend IEEPA to nearly every insured asset in the United States, since countless domestic businesses carry coverage or reinsurance from foreign firms such as Lloyd's of London.

In short, by the time most imported goods cross the border and tariff liability arises, no foreign country or national "has any interest" in them within the meaning of IEEPA.

IV. IEEPA Does Not Authorize the Challenged Executive Orders.

Tariffs have always been imposed uniformly on articles of commerce. A system that taxed two identical shipments of goods differently depending solely on the nationality of the owner would be unprecedented and nearly unadministrable, requiring Customs to determine, shipment by shipment and even article by article, whether title had already passed to an American buyer before entry. That implausibility is itself strong evidence that Congress did not design IEEPA as a tariff statute.

The Court need not decide how such a regime might function in theory. It suffices to hold that the challenged Executive Orders cannot stand: they impose tariffs on property already owned by Americans, which the clear statutory text of IEEPA does not authorize.

This reading of the statute does not deny effect to IEEPA's reference to "importation." Section 1702(a)(1)(B) authorizes the President to take a broad range of actions—blocking, regulating, prohibiting, and more—against a listed set of activities: "acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation." 50 U.S.C. § 1702(a)(1)(B). The limitation is that these powers apply only when the activities involve foreign-owned property. "Importation" thus serves the same function as "exportation" or "transfer": it makes clear that the President's emergency powers extend to foreign-owned property whether the property is moving into or out of the United States or located within it.

Again, IEEPA's extraordinary reach must be read in context with its key limitation, the need for a foreign interest in the property. Giving the necessary substance to that limitation is sufficient both to decide this case and to keep the statute within the bounds of the Constitution.

V. The Smoot-Hawley Tariff Act Does Not Support the Authority Claimed.

The Court should hold that IEEPA does not authorize the tariffs in the challenged executive orders. Unfortunately, doing so may not entirely end the President's usurpation of Congress's tariff power.

If the government's IEEPA argument fails, public statements suggest the Administration contemplates attempting to reissue the tariffs under Section 338 of the Smoot–Hawley Tariff Act of 1930. The government has not raised the issue, but amicus America First Policy Institute urges the Court to sustain the tariffs at issue under that statute. (*See* Brief Amicus Curiae for America First Policy Institute.)

Section 338 of the Smoot–Hawley Tariff Act cannot plausibly serve as a general license for the President to impose tariffs. By its terms, it applies only after the President finds that a foreign country "discriminates in fact" against U.S. commerce and authorizes him to respond with respect to that country's goods. The provision thus contemplates a narrow, retaliatory measure triggered by a concrete act of foreign discrimination, not an open-ended power to reset the Nation's tariff schedule. Nothing in its text or structure authorizes global or permanent duties, and no President in the nearly one hundred years since its enactment has read it to grant that authority. *See, e.g. West Virginia*, 142 S. Ct. at 2610 ("'just as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it is equally significant in determining whether such power was actually conferred.'"(quoting *FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941)); *see also id.* at 2623 (Gorsuch, J., concurring) (recognizing that a "long-held Executive Branch interpretation…is entitled to some weight). But if Section 338 were construed to give the President plenary authority to impose tariffs whenever and however he chooses outside the guidelines of the statute, it would create significant nondelegation concerns, similar to those raised in this matter regarding IEEPA.

Section 338 authorizes the President, "when he finds that the public interest will be served," to proclaim new or additional duties on imports from any country that "discriminates in fact" or imposes "unreasonable" charges or restrictions. 19 U.S.C. § 1338(a). Reading that language to provide complete discretion to the President would leave as its only constraint a ceiling of fifty percent ad valorem. There would be no intelligible principle limiting his actions.

Such standardless power cannot be reconciled with this Court's precedents. In *Panama Refining Co.* and *A.L.A. Schechter Poultry*, delegations failed because Congress gave the President no guidance about when or how much to regulate. *See* 293 U.S. at 432–33; 295 U.S. at 537–39 (holding "Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade…"). Section 338 would suffer the same defect under this reading; it would transfer the quintessential legislative power to "lay and collect Duties" to the Executive without any intelligible principle to guide him. *See id.*; *see also Gundy*, 139 S. Ct. at 2123 (plurality op.); *West Virginia*, at 2609.

Nor would the fifty-percent ceiling rescue the Smoot-Hawley delegation of authority to the executive. A numerical cap limits only the amount collected, not the discretion to decide why, against whom, or when to act. In other words, the numerical cap does not provide the required "intelligible principle." *See FCC v. Consumers' Research*, 606 U.S. ____, No. 24-354, slip op. at 18 (U.S. June 27, 2025). This Court dismissed the notion that "a revenue-raising statute … with a numeric limit … will always pass muster, even if it effectively leaves an agency with boundless power," calling that view one that "does nothing to vindicate the nondelegation doctrine or, more broadly, the separation of powers." *Id.* at 19. Section 338's fifty-percent ceiling proves the point: a global tariff of that magnitude would have consequences on par with the $5 trillion hypothetical the Court used to illustrate the absurdity of relying on a numeric limit alone. *See id.* at 18. The number constrains the size of the exaction, not the policy discretion to impose it. That is no intelligible principle at all. *See id.* at 11 (requiring greater "guidance" when an action would affect "the entire national economy.")

The Court should avoid a decision on the issue of whether the tariffs could be supported under Section 338, as the issue has not been fully briefed or argued by the parties. However, allowing the President to simply reissue the tariffs under a law that has never been read to grant the authority the President claims is also no solution. Allowing illegal tariffs to remain in force while the government searches in vain for support under an alternative statutory scheme only continues to abrogate the Constitution's clear vesting of the power to impose tariffs with Congress, not the President. *See* U.S. Const. art. I, § 8, cl. 1.

CONCLUSION

The judgments below should be affirmed because neither IEEPA nor any other statute provide support for the imposition of the challenged tariffs.

Respectfully submitted,

Philip J. De Koster
Counsel of Record
John G. De Koster
De Koster & De Koster, PLLC
1102 Main Street
Hull, Iowa 51239-0801
(712) 439-2511
philip@dekosterlaw.com

Counsel for Amicus Curiae

October 23, 2025