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 PROFESSORS OF ADMINISTRATIVE LAW, SEPARATION OF POWERS, FOREIGN RELATIONS LAW, LEGISLATION AND THE REGULATORY STATE, AND TRADE LAW AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS IN 24-1287 AND RESPONDENTS IN 25-250

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Regulations

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are law professors who teach and write about administrative law, separation of powers, environmental law, foreign relations law, legislation and the regulatory state, and trade law. They have no interest in this case or the parties except in that capacity; this brief represents the individual views of *amici* and not necessarily the views of any institution with which they are affiliated. A list of *amici curiae* is provided in the Appendix.

SUMMARY OF THE ARGUMENT

The International Emergency Economic Powers Act of 1977 (IEEPA) delegated to the President enormous authority over foreign commerce, including the ability to "regulate[] . . . importation . . . [of] any property in which any foreign country or a national thereof has any interest." 50 U.S.C. § 1702(a)(1)(B). This brief addresses the second question in Case No. 25-250: Whether, if IEEPA authorized the tariffs President Trump imposed earlier this year, Congress unconstitutionally delegated legislative authority. The answer is yes.

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[1] In accordance with Rule 37.6, no counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Although Congress may delegate some of its power to the President, it cannot delegate its responsibility to set the fundamental policy of the law and make substantive judgments. Congress must make those decisions itself, and it may then "lay down by legislative act an intelligible principle" by which the executive branch shall "carry out [Congress's] purpose." *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 409 (1928). This requirement ensures that the Executive exercises power in the way Congress determined, and that the Judiciary can confirm the Executive complied with Congress's directives. This Court has twice applied this doctrine—in the depths of the Great Depression, when vigorous executive action was arguably most needed—to invalidate statutory provisions that contained overbroad delegations of legislative authority. *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935); *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935).

If the Court construes IEEPA to permit President Trump to impose the worldwide tariffs he set earlier this year, then it should rule that IEEPA transgresses constitutional constraints because Congress provided no intelligible principle for the exercise of that delegated tariff power.

To begin, the nondelegation doctrine applies with full force to statutes concerning the setting of tariffs or the regulation of foreign commerce—these are matters for Congress alone. It also makes no difference that the statutes contain delegations to the

President rather than another part of the Executive: the statutes invalidated in *Panama Refining* and *Schechter Poultry* also delegated authority to the President, but the Court did not hesitate to invalidate them.

IEEPA violates this Court's nondelegation doctrine. The underlying problem is the lack of enforceable standards not only for what constitutes a covered emergency, but also who can be a target, which locations can be targeted, what products or processes can be sanctioned, and how long the sanctions can exist without fresh statutory reauthorization. The Government indeed proffers a reading of IEEPA—as it must to justify the tariffs in this case—that would authorize the President to exercise *nearly all* of Congress' exclusive power to regulate foreign commerce, subject only to the President's (likely unreviewable) declaration of an "unusual and extraordinary threat" to national interests that has its source outside the United States. 50 U.S.C. §§ 1701(a), 1702(a)(1)(B). This amorphous, wide-ranging pass at a definition of a covered emergency provides no standard at all for the exercise of power. IEEPA is far less circumscribed than the delegations invalidated in *Panama Refining* and *Schechter Poultry*. The Constitution does not permit such "delegation running riot." *Schechter Poultry*, 295 U.S. at 553 (Cardozo, J., concurring).

Just over six years ago, three Justices explained that "[w]ithout the involvement of representatives from across the country or the demands of

bicameralism and presentment, legislation would risk becoming nothing more than the will of the current President." *Gundy* v. *United States*, 588 U.S. 128, 155 (2019) (Gorsuch, J., joined by Roberts, C.J., and Thomas, J., dissenting). Just so here.

ARGUMENT

I. Congress Cannot Delegate to the President Its Authority to Set Tariffs or Regulate Foreign Commerce.

A. The Nondelegation Doctrine Applies Fully to Statutes Governing Tariffs and Foreign Commerce.

1. The nondelegation doctrine reflects a fundamental aspect of the Constitution's design. The Constitution provides in the first sentence of Article I that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States," and in the first sentence of Article II that "[t]he executive Power shall be vested in a President of the United States of America." U.S. Const. art. I, § 1; art. II, § 1. That separation was key to safeguarding against the possibility of an "accumulation of all powers" "in the same hands," because under these provisions, as James Madison recognized, "[t]he magistrate in whom the whole executive power resides cannot of himself make a law." The Federalist No. 47, at 303–04 (I. Kramnick ed. 1987) (1788).

To be sure, "in our increasingly complex society, . . . Congress simply cannot do its job absent an ability

to delegate power to coordinate branches." *Mistretta* v. *United States*, 488 U.S. 361, 372 (1989). So recognizing, the Court has distinguished between permissible delegations and violations of the separation of powers by "ask[ing] whether Congress has set out an 'intelligible principle' to guide what it has given the agency to do." *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2491 (2025) (quoting *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 409 (1928)). The point is to ask whether Congress has legislated and exercised its enumerated powers, and entrusted the Executive to take care that *Congress's* (not the Executive's) policy be effectuated, or whether Congress instead has abdicated its legislative responsibilities and violated the separation of powers by failing to set the policy and to articulate legislative boundaries for Executive action.

2. Some commentators and the Government have suggested that these constitutional standards apply with lesser force when foreign affairs are implicated, but this Court has never so held, and it has supported relaxing the doctrine only when a delegation concerns matters also within the independent authority of the Executive.

In *United States* v. *Curtiss-Wright Export Corp.*, the Court considered a resolution of Congress providing that, should the President conclude "that the prohibition of the sale of arms . . . to those countries now engaged in armed conflict in the Chaco"—a region between Bolivia and Paraguay—"may contribute to the reestablishment of peace," then

"it shall be unlawful to sell[] . . . any arms . . . to the countries now engaged in that armed conflict." 299 U.S. 304, 312 (1936). The Court upheld the delegation.

In the ensuing years, some academics read *Curtiss-Wright* as "creat[ing] an exception to the [non]delegation doctrine" in foreign affairs. *E.g.*, David Schoenbrod, *The Delegation Doctrine: Could the Court Give It Substance?*, 83 Mich. L. Rev. 1223, 1289 (1985); *see* Michael Rappaport, *The Selective Nondelegation Doctrine and the Line Item Veto: A New Approach to the Nondelegation Doctrine and its Implications for* Clinton v. City of New York, 76 Tulane L. Rev. 265, 271 (2001) ("courts and commentators have generally assumed that the nondelegation doctrine does not apply to foreign and military affairs"). These scholars point to the Court's statement in *Curtiss-Wright* that delegations "within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." 299 U.S. at 320.[2]

That view misreads *Curtiss-Wright*. In dealing with the case before it, the Court applied standard

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[2] *Curtiss-Wright*'s purported relaxation of constitutional limits on delegation derived from a peculiar assertion about the source of the federal government's foreign affairs power, which it found to arise outside the Constitution. *See* 299 U.S. at 315–18. This assertion has been sharply criticized on historical and textual

nondelegation doctrine; it relied on the rationale of *Marshall Field & Co.* v. *Clark*, 143 U.S. 649 (1892), which did not rest on any foreign-policy exception even though that case dealt with tariffs. In other words, *Curtis-Wright* followed the nondelegation doctrine that "once Congress prescribes the rule governing private conduct, it may make the application of that rule depend on executive fact-finding." *Gundy* v. *United States,* 588 U.S. 128, 158–59 (2019) (Gorsuch, J., dissenting) (citing *Cargo of the Brig Aurora* v. *United States*, 11 U.S. (7 Cranch) 382, 388 (1813), and *Miller* v. *Mayor of New York*, 109 U.S. 385, 393 (1883)).

But Congress did set the policy and legislate a standard for the Executive to exercise delegated authority (banning arms sales in the Chaco conflict), while leaving it to the Executive to determine if the factual conditions were present for triggering the ban (would banning arms sales in the region contribute to establishing peace?). And the Court "never identified a textual basis" for a broad foreign-affairs exception. Curtis Bradley & Jack Goldsmith, *Foreign Affairs, Nondelegation, and the Major Questions Doctrine*, 172 U. Pa. L. Rev. 1743, 1754–55 (2024).

Since then, moreover, this Court has read *Curtiss-Wright* for the more textually supportable proposition

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grounds, see, *e.g.*, Michael D. Ramsey, *The Myth of Extraconstitutional Foreign Affairs Power*, 42 Wm. & Mary L. Rev. 379 (2000), and the Court has not substantially relied on it since.

that "there is a qualification for situations in which the recipient of a congressional authorization has independent authority relating to the subject of the authorization." *Id.* at 1762; *see, e.g.*, *United States* v. *Mazurie*, 419 U.S. 544, 556–57 (1975) (upholding delegation to a Native American tribe and citing *Curtiss-Wright* for the proposition that the nondelegation doctrine is "less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter"); *see also Gundy*, 588 U.S. at 170–71 (Gorsuch, J., dissenting); *Consumers' Research*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring). So the question is whether a delegation concerns a subject matter as to which the President has independent powers under Article II or elsewhere in the Constitution.

3. The authority to impose tariffs and to regulate foreign commerce is not among those fields where the Executive has substantial independent powers, meaning that the nondelegation doctrine applies with full force to statutes in those fields.

Article I explicitly "conferred upon Congress" "the plenary power" "'to lay and collect taxes, duties, imposts and excises.'" *Brushaber* v. *Union Pac. R. Co.*, 240 U.S. 1, 13–14 (1916) (quoting U.S. Const. art. I, § 8, cl. 1); *see* The Federalist No. 48, at 310 (J. Madison) ("the legislative department alone has

access to the pockets of the people").[3] Similarly, "[t]he Constitution expressly grants Congress, not the President, the power to 'regulate Commerce with foreign Nations.'" *Barclays Bank PLC* v. *Franchise Tax Bd. of Cal.*, 512 U.S. 298, 329 (1994) (quoting U.S. Const. art. I, § 8, cl. 3). That means the intelligible-principle test applies with full force here.

Precedent confirms that is so. The "intelligible principle" test itself originated in the context of a delegation of tariff authority. Pet. App. in 25-250, at 61a (citing *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394 (1928)). The Court should follow precedent and apply the "intelligible principle" standard to these tariffs.

B. The Nondelegation Doctrine Applies to Delegations to the President.

"The nondelegation doctrine comes from Article I's Vesting Clause." Brian Chen & Samuel Estreicher, *The New Nondelegation*, 102 Tex. L. Rev. 539, 542 (2024); *see also Gundy*, 588 U.S. at 135 (plurality opinion) ("Accompanying [the Constitution's] assignment of power to Congress is a bar on its further

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[3] At the Founding, a "duty" meant "any sum of money required by government to be paid on the importation . . . of goods," and an "impost" similarly meant a "tax laid by government on goods imported." 1 Noah Webster, *An American Dictionary of the English Language* (1828). From the Founding until the constitutionality of the income tax in 1913, tariffs were a major source of revenue for the federal government. *See, e.g.*, Bryan T. Camp, *A History of Tax Regulation Prior to the Administrative Procedure Act*, 63 Duke L.J. 1673 (2014).

delegation."). So it applies with full force to statutes containing delegations to the President as with other delegatees of congressional authority. Article I's "text permits *no* delegation of [legislative] powers." *Whitman* v. *Am. Trucking Assocs.*, 531 U.S. 457, 472 (2001) (emphasis added). And the Constitution draws no distinction based upon whether Congress delegates authority to the President or to an agency reporting to the President. Nor could it: "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that Laws be faithfully executed.'" *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 203 (2020).

Thus, this Court has scrutinized delegations of legislative authority to the President for conformity with the nondelegation doctrine: The two statutes that this Court invalidated under that doctrine concerned authority delegated to the President himself. *See Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 415 (1935) (striking down statute that "gives to the President an unlimited authority to determine the policy"); *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495, 537–38 (1935) ("Congress cannot delegate legislative power to the President to exercise an unfettered discretion").[4] The Court should do no less here.

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[4] It may be that delegations to independent agencies "raise substantial Article II issues," *Consumers' Research*, 145 S. Ct. at 2517 (Kavanaugh, J., concurring), but that does not limit the independent sweep of Article I's limits on legislative delegations.

II. IEEPA Violates the Nondelegation Doctrine.

A. IEEPA Does Not Provide an Intelligible Principle.

The intelligible-principle test has two parts: The Court must "assess[] whether Congress has made clear both [1] 'the general policy' that the agency must pursue and [2] 'the boundaries of [its] delegated authority.'" *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2491 (2025) (quoting *American Power & Light Co.* v. *SEC*, 329 U.S. 90, 105 (1946)). The International Emergency Economic Powers Act of 1977, Pub. L. No. 95-223, Tit. II, 91 Stat. 1626, 50 U.S.C. § 1701 *et seq*., flunks both parts of the test. It neither sets a cognizable general policy nor outlines the boundaries of delegated authorities.

First, IEPPA establishes no meaningful general policy. IEEPA allows the President to declare a national emergency by determining the existence of "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." 50 U.S.C. § 1701(a). This covers the waterfront, and indeed the Government so contends. Given the breadth of actions the president can take, discussed *infra*, IEEPA read literally delegates nearly all of Congress's powers. *See* U.S. Const. art. I, § 8, cls. 10–17 (national security); *id.*, cls. 3, 4, 10, 11 (foreign policy); *id.*, cls. 1–8 (economy). Nearly all of the Nation's most significant

challenges in the twenty-first century—terrorism, financial crises, pandemics, climate change, artificial intelligence—could fall in these categories. As a practical matter, IEEPA is essentially a grant of plenary legislative power to the President to regulate nearly *all* foreign commerce with the United States.

IEEPA's effective grant of authority over material aspects of the "economy" is particularly suspect. This Court requires Congress to give the executive "greater" "'guidance'" when an action "will 'affect the entire national economy' than when it addresses a narrow, technical issue." *Consumers' Research*, 145 S. Ct. at 2491 (quoting *Whitman*, 531 U.S. at 475). But IEEPA permits the regulation of "any unusual and extraordinary threat . . . [to the] economy of the United States." 50 U.S.C. § 1701(a). That is no statement of policy or anything remotely approximating an "intelligible principle."

Though IEEPA requires any threat to be "unusual and extraordinary," Congress left it up to the President to "declare[] a national emergency with respect to such threat." 50 U.S.C. § 1701(a).[5] IEEPA does not "define what constitutes a 'national emergency.'" Congressional Research Service, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* at 62 (Sept. 1, 2025)

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[5] Though a national emergency automatically terminates after one year, the President can extend it by so informing Congress. *See* 50 U.S.C. § 1622(d). Thus, the only congressional check on presidential action pursuant to IEEPA is a veto-proof majority in both Houses of Congress.

("CRS Report").[6] In the economic-sanctions area, presidents of both parties could easily regard any aspect of the Israel-Palestine conflict, or anything involving Iran, Iraq, or Russia, as unusual and extraordinary. Moreover, courts tend to give such determinations "considerable deference," since they lack relative institutional competence. Pet. App. in 22-250, at 86a–87a (Taranto, J., dissenting). Given the absence of enforceable definitional bounds, the specification of a "national emergency" as an "unusual and extraordinary" threat to U.S. interests, therefore, is not a meaningful statement of congressional policy.

Second, and more importantly, beyond the question of whether there is an emergency, there is no "intelligible standard" guiding the Executive's determinations of *how or to what extent* to exercise the delegated power. The Government says that there are boundaries in IEEPA's delegation, but these are illusory. "The language of IEEPA is sweeping and unqualified." *Dames & Moore* v. *Regan*, 453 U.S. 654, 671 (1981). The statute broadly allows the president to, *inter alia*, "investigate, block[,] . . . 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

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[6] Available at https://tinyurl.com/2n3yk55a.

or a national thereof has any interest." 50 U.S.C. § 1702(a)(1)(B).

Consider, for example, one subset of delegated authority, the power to "regulate . . . transactions involving[] any property in which any foreign . . . national . . . has any interest." Read literally, this language delegates to the President—in full—the entirety of one of Congress's enumerated powers, the regulation of foreign commerce. IEEPA provides no intelligible standard guiding the President's discretion as to the identity or location of the property or as to what the connection has to between the foreign national and the declared emergency, or as to the duration of the regulation or the underlying emergency. There are no limits to IEEPA's grant of authority. Commerce Clause doctrine has "declar[ed]" almost "everything economic," *Gonzales* v. *Raich*, 545 U.S. 1, 50 (2005) (O'Connor, J., dissenting), and today, "[t]he interconnectedness of the modern global economy has left few major transactions in which a foreign interest is not involved." CRS Report at 63.[7]

IEEPA's astounding breadth is further confirmed by the Treasury Department's Office of Foreign Assets Control's (OFAC) definition of the statutory term "property." OFAC has interpreted the term broadly to include all "services of any nature whatsoever,

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[7] *See also* Note, *The International Emergency Economic Powers Act: A Congressional Attempt to Control Presidential Emergency Power*, 96 Harv. L. Rev. 1102, 1111 (1983) ("the exemption of purely domestic transactions from the President's transaction controls seems to be a limitation without substance").

contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent." 31 C.F.R. § 510.323. Thus, as the Government would have it, IEEPA permits the President to unilaterally regulate contracts or services "of any nature whatsoever." *See* Br. for Appellees in *Van Loon* v. *Dep't of Treasury*, No. 23-50669, 2024 WL 1219987, at *24 (5th Cir. Mar. 13, 2024), (applying OFAC's definition of "property" to 50 U.S.C. § 1702(a)(1)(B)).

Thus, under just this one grant of authority in IEEPA, the President seemingly can "regulate virtually anything" in any manner, simply through the expedient of declaring an emergency. *Raich*, 545 U.S. at 58 (Thomas, J., dissenting). Plainly, permitting the President to do "anything that Congress may do within the limits of the commerce clause . . . is delegation running riot." *Schechter Poultry*, 295 U.S. at 553 (Cardozo, J., concurring).

Nor does any other ostensible statutory requirement amount to an "intelligible principle." For example, the U.S. Court of International Trade ("CIT") below discerned limits in IEEPA's stipulation that the tariff "authority granted to the President by section 1702 of this title may be exercised *to deal with* any unusual and extraordinary threat." 50 U.S.C. § 1701(a) (emphasis added). The CIT reasoned that this text requires "a direct link between an act and the problem it purports to address," while going on to rule that "there is no such association between the act of

imposing a tariff and the 'unusual and extraordinary threat[s]' the [tariffs] purport to combat." Pet. App. in 25-250, at 191a. Collecting customs duties, the court explained, "does not evidently relate to foreign government's efforts to arrest, seize, or detain, or otherwise intercept bad actors within their respective jurisdictions." *Id.* at 191a–192a (quotation marks omitted). The CIT's atextual interpretation is also unpersuasive; depending on the circumstances, tariffs can be an effective means of deterring illegal drug trafficking or other conditions thought to constitute a national emergency. But the point remains that even this atextual reading fails to salvage the statute because "to deal with" does not provide the "intelligible" standard necessary to avoid an abdication of legislative authority.

B. IEEPA's Broad Delegation Finds No Support in Precedent.

This Court's cases confirm IEEPA's flaws. It delegates more authority (with much less guidance) than the statutes the Court invalidated in *Panama Refining* and *Schechter Poultry*. And IEEPA is far less bounded than previous delegations the Court upheld.

1. To begin, consider the statute and presidential authority addressed in *Panama Refining*. That case concerned Section 9 of the National Industrial Recovery Act of 1933, Ch. 90, 48 Stat. 195 (NIRA), which "authorized [the President] to prohibit the transportation . . . of petroleum . . . in excess of the amount permitted to be produced or withdrawn from

storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State." 48 Stat. 195, 200, § 9(c). Acting under that authority, the President prohibited transportation of petroleum in excess of the amount permitted by state law. The Court held that NIRA's delegation "goes beyond [the Constitution's] limits": "Congress has declared no policy, has established no standard, has laid down no . . . requirement, no definition of circumstances and conditions in which the transportation is to be allowed or prohibited." *Panama Refining*, 293 U.S. at 430.

The Court addressed another of NIRA's delegations four months later in *Schechter Poultry*. Section 3 of NIRA permitted the President, at the request of a trade group, to "approve a code . . . of fair competition for [that group's] trade or industry," so long as the trade group is "truly representative" of its industry, and the code is "not designed to promote monopolies." 48 Stat. 195, 196, § 3(a). Any violation of a promulgated code "shall be deemed an unfair method of competition." *Id.* § 3(b). The President accordingly instituted a code of fair competition for the New York City-area live-poultry industry. *Schechter Poultry*, 295 U.S. at 523. And the Court held that NIRA's delegation was, again, unbounded: In this section too, the act "set[] up no standards, aside from the statement of the general aims," and thus "the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, [wa]s virtually unfettered." *Id.* at 541–42.

All of the deficiencies that the Court saw in NIRA are also present in IEEPA. In IEEPA, Congress "established no standard" for determining when a threat is "unusual and extraordinary," and "declared no policy" as to what the President should do in the face of such a threat. *Panama Refining*, 293 U.S. at 431. And IEEPA's broad delegations of legislative authority, 50 U.S.C. § 1702(a)(1)(B), render the President's power to "enact[] laws . . . virtually unfettered," *Schechter Poultry*, 295 U.S. at 542.

Moreover, IEEPA contains none of NIRA's limits, meager as they were. IEEPA is not limited to a single commercial product, such as petroleum, but instead reaches perhaps to the full scope of the foreign Commerce Clause. Nor does IEEPA address a particular problem perceived by Congress, such as unfair competition in the NIRA context; it covers any threat that the President may perceive "to the national security, foreign policy, or economy of the United States." And the Sections of NIRA addressed in *Panama Refining* and *Schechter Poultry* at least prescribed means—prohibiting transportation and defining unfair competition, respectively—to combat the identified problems, unlike the laundry list of powers IEEPA grants to the President.

2. Moreover, IEEPA is nothing like the tariff statutes that the Court has sustained against nondelegation challenges. In each case, the statute had a particular goal and delegated a specific authority. There is nothing like that here.

In *Marshall Field & Co.* v. *Clark*, the Court upheld the first statute delegating tariff authority. 143 U.S. 649 (1892). That statute expressed a general policy, "to secure reciprocal trade with countries producing . . . sugars, molasses, coffee, tea, and hides." *Id.* at 697–98. And it delegated authority with ascertainable boundaries, specifically "the power[] . . . to suspend[] . . . the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides," and "during such suspension duties shall be levied" at rates "Congress itself prescribed, in advance." *Id.* at 680, 692. This was no limitless transfer of Congress's plenary authority over tariffs and foreign-commerce regulation.

The Court next sustained a tariff statute in *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394 (1928). There again, unlike here, the statute established a congressional policy, "equaliz[ing]" the "costs of production of articles" produced in the United States "and of like or similar articles" produced in "competing foreign countries." *Id.* at 401. And it permitted the President, upon determining divergent costs of production in goods, to "increase[] or decrease[]" "any rate of duty provided in this act shown by said ascertained differences in such costs of production necessary to equalize the same," but only so long as "such rates of duty shall not exceed 50 per centum of the rates specified in title 1 of this act." *Ibid.* Again, there are no similar limits in IEEPA.

The Court most recently upheld a tariff statute in *Federal Energy Admin.* v. *Algonquin SNG, Inc.*, 426

U.S. 548 (1976). That statute, too, established a general principle: Congress's concern about "article[s] . . . being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." *Id.* at 559. It only permitted the President to "adjust the imports of such article" subject to "a series of specific factors to be considered by the President in exercising his authority." *Ibid.* The Court read this later provision to permit "the imposition of monetary exactions," including "license fees and duties." *Id.* at 562.

The IEEPA, as least as applied to the imposition of tariffs, is quite unlike the statutes upheld in *Marshall Field*, *J.W. Hampton*, and *Algonquin*. Its policy is to combat "extraordinary and unusual threat[s]" "to the national security, foreign policy, or economy of the United States," as the President may determine. It is not tied to establishing reciprocal trade in specific commodities, equalizing the costs of manufacturing production, or reducing the over-importation of goods into the United States. And the limits of the delegated plenary power over foreign commerce, including the imposition of tariffs until the unspecified threat subsides, are hardly ascertainable, unlike the authorities in the tariff statutes addressed before.

3. The Government's reliance on *Curtiss-Wright* is misplaced for at least two reasons—in addition to misreading that decision for the reasons stated above. First, to the extent it relied on the international context of the delegation, the Court in that case described the goals of the challenged legislation as

"entirely external to the United States," meaning that "its exclusive aim is to afford a remedy for a hurtful condition within foreign territory." 299 U.S. at 315. As the legislation reflected, and as the Court found, its sole purpose was to achieve peace in the war then existing between Bolivia and Paraguay. *Ibid.* In contrast, IEEPA's delegation of general tariff authority, if it exists, would not be "entirely external to the United States." Both the goals and effects of the President's tariffs operate substantially within the United States. Thus, even if *Curtiss-Wright*'s suggestion of relaxing the Constitution's limits on delegation for "entirely external" matters were viable, it is not applicable in this case.

Second, the legislation in *Curtiss-Wright* easily satisfied the constitutional requirements for valid delegations. The legislation delegated authority only with respect to a single matter, the "prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco" (Bolivia and Paraguay). *Id.* at 312. It conveyed Congress' goal of achieving peace in that conflict, authorizing the prohibition if the President, after consulting with foreign leaders, found that a prohibition "may contribute to the reestablishment of peace between those countries." *Ibid.* This narrow delegation, containing a specific goal of Congress with respect to a specific region, is entirely unlike the essentially unbounded delegation as to both goals and scope that the President claims to find in IEEPA.

* * *

It is apparent that Congress, in enacting IEEPA, recognized its continuing constitutional role over the matters subject to IEEPA; for that reason, Congress sought in a companion law to limit IEEPA's delegation of authority by prescribing that the President's authority "may not continue to be exercised under [IEEPA] if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act." 50 U.S.C. § 1706(b).

But the Court invalidated that legislative veto six years later, in *INS* v. *Chadha*, 462 U.S. 919, 959 (1983). And as Justice White explained in dissent in *Chadha*, that invalidation has forced Congress to "refrain from delegating" authority, "or in the alternative, to abdicate its law-making function to the executive branch." *Id.* at 968.

The Constitution, however, prohibits the latter course. Twice before, this Court invalidated overbroad delegations on the understanding that "[w]ithout the involvement of representatives from across the country or the demands of bicameralism and presentment, legislation would risk becoming nothing more than the will of the current President." *Gundy*, 588 U.S. at 155 (Gorsuch, J., dissenting). The Court should follow those precedents and hold that IEEPA violates the nondelegation doctrine.

CONCLUSION

The Court should hold that, if IEEPA authorizes the tariffs at issue, the statute effects an unconstitutional delegation of legislative authority.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

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