

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 FORMER SENIOR MILITARY,
NATIONAL SECURITY, AND FOREIGN POLICY
GOVERNMENT OFFICIALS AS AMICI CURIAE
IN SUPPORT OF PETITIONERS IN NO. 24-1287
AND RESPONDENTS IN NO. 25-250**

SONIA MITTAL
PETER GRUBER RULE
OF LAW CLINIC
YALE LAW SCHOOL
127 Wall Street
P.O. Box 208215
New Haven, CT 06520
sonia.mittal@YLSCLinics.org

JACOB W. BUCHDAHL
Counsel of Record
JILLIAN S. HEWITT
SUSMAN GODFREY LLP
One Manhattan West,
50th Floor
New York, NY 10001
(212) 336-8330
jbuchdahl@susmangodfrey.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iv
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. The President May Exercise IEEPA Authority Only Pursuant to an “Unusual and Extraordinary” National Emergency.....	4
A. IEEPA Imposes Clear Statutory Conditions That Restrict Presidential Emergency Powers.....	5
B. The Legislative Histories of the NEA and IEEPA Confirm Congress Intended These Conditions to Be Meaningful Constraints, Not Mere Formalities	8
1. The NEA Was Designed to Cabin Executive Emergency Authority	8
2. Congress Enacted IEEPA to Limit the President’s Use of Emergency Economic Powers	10

Table of Contents

	<i>Page</i>
II. Courts Can and Should Review Invocations of IEEPA	11
A. The Text of IEEPA Provides Manageable Standards That Demand Judicial Review as a Normal Exercise of Statutory Interpretation	12
B. The Political Question Doctrine Does not Render IEEPA Threat Determinations Nonjusticiable	16
III. The Record Here Shows That The Threats Asserted by the President Were Neither Unusual Nor Extraordinary, and Thus His Invocations of IEEPA Were Unlawful, and His Imposition of Tariffs Was Ultra Vires	18
A. The Trade Deficit and the International Response to Opioid Trafficking Are Neither Unusual Nor Extraordinary Threats Within the Meaning of IEEPA	18
B. Separately, the Tariffs Are Also <i>Ultra Vires</i> Because IEEPA Was Invoked on Pretextual Grounds	22

Table of Contents

	<i>Page</i>
C. Because the Threats Are Not Unusual and Extraordinary, the Court Must Strike the Tariffs Down as <i>Ultra Vires</i> . . .	27
CONCLUSION	31
APPENDIX A — LIST OF AMICI CURIAE	1a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Abbott Laboratories v. Gardner</i> , 387 U.S. 136 (1967).....	15
<i>Arizona v. Mayorkas</i> , 143 S.Ct. 1312 (2023)	30
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002).....	13
<i>Baker v. Carr</i> , 369 U.S. 186 (1962).....	14, 16, 17
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023).....	14
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008).....	28
<i>Calvary Chapel Dayton Valley v. Sisolak</i> , 140 S. Ct. 2603 (2020).....	14
<i>Chastleton Corp. v. Sinclair</i> , 264 U.S. 543 (1924).....	17
<i>Department of Commerce v. New York</i> , 588 U.S. 752 (2019).....	7, 24, 29
<i>Dolan v. U.S. Postal Serv.</i> , 546 U.S. 481 (2006).....	12

Cited Authorities

	<i>Page</i>
<i>El-Shifa Pharm. Indus. Co. v. United States</i> , 607 F.3d 836 (D.C. Cir. 2010)	16
<i>Ex parte Milligan</i> , 71 U.S. (4 Wall) 2 (1866)	28
<i>Filtration Dev. Co. v. United States</i> , 60 Fed. Cl. 371 (Fed. Cl. 2004)	13
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	13
<i>Hamdi v. Rumsfeld</i> , 542 U.S. 507 (2004)	14
<i>Home Bldg. & Loan Ass’n v. Blaisdell</i> , 290 U.S. 398 (1934)	14
<i>Immigration & Naturalization Serv. v. Chadha</i> , 462 U.S. 919 (1983)	9
<i>Japan Whaling Association v.</i> <i>American Cetacean Society</i> , 478 U.S. 221 (1986)	12
<i>Korematsu v. United States</i> , 323 U.S. 214 (1944)	28
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	13

Cited Authorities

	<i>Page</i>
<i>Magana-Magana v. Bondi</i> , 129 F.4th 557 (9th Cir. 2025)	13
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)	12
<i>Martin v. Mott</i> , 25 U.S. (12 Wheat.) 19 (1827)	14
<i>Mitchell v. Harmony</i> , 54 U.S. (13 How.) 115 (1851)	28
<i>Panama Refining Co. v. Ryan</i> , 293 U.S. 388 (1935)	23
<i>Perrin v. United States</i> , 444 U.S. 37 (1979)	13
<i>Regan v. Wald</i> , 468 U.S. 222 (1984)	6, 10
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	13
<i>Ross v. Blake</i> , 578 U.S. 632 (2016)	11
<i>Stark v. Wickard</i> , 321 U.S. 288 (1944)	12

Cited Authorities

	<i>Page</i>
<i>Sterling v. Constantin</i> , 287 U.S. 378 (1932).....	17, 27, 28
<i>Stone v. INS</i> , 514 U.S. 386 (1995).....	11
<i>Thunder Basin Coal Co. v. Reich</i> , 510 U.S. 200 (1994).....	15
<i>Touby v. United States</i> , 500 U.S. 160 (1991).....	6
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2025).....	18
<i>Trump v. Hawaii</i> , 585 U.S. 667 (2018).....	6, 24
<i>United States v. Chemical Found.</i> , 272 U.S. 1 (1926).....	23
<i>United States v. Dhafir</i> , 461 F.3d 211 (2d Cir. 2006)	6
<i>United States v. Yoshida Int’l</i> , 526 F.2d 560 (C.C.P.A. 1975).....	5, 29
<i>V.O.S. Selections v. Trump</i> , 149 F.4th 1312 (Fed. Cir. 2025).....	17, 19

Cited Authorities

	<i>Page</i>
<i>V.O.S. Selections, Inc. v. United States</i> , 772 F. Supp. 3d 1350 (Ct. Int'l Trade 2025) . . .	15, 20
<i>Webster v. Doe</i> , 486 U.S. 592 (1988)	6-7
<i>Wisc. Cent. Ltd. v. United States</i> , 585 U.S. 274 (2018)	13
<i>Yakus v. U.S.</i> , 321 U.S. 414 (1944)	13
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	9, 27, 28, 29
<i>Zivotofsky ex rel. Zivotofsky v. Clinton</i> , 566 U.S. 189 (2012)	12, 16
<i>Zivotofsky ex rel. Zivotofsky v. Kerry</i> , 576 U.S. 1 (2015)	16
 Constitutional Provisions	
U.S. Const. art. I, § 8	29
U.S. Const. art. II, § 3.	22

Cited Authorities

	<i>Page</i>
Statutes	
8 U.S.C. § 1182(f)	6
21 U.S.C. § 2301 (2019)	21
22 U.S.C. § 2778(h)	15
50 U.S.C. § 1621 <i>et seq.</i>	2
50 U.S.C. § 1621	5
50 U.S.C. § 1621(a)	9
50 U.S.C. § 1631	5
50 U.S.C. § 1701	6, 7, 10
50 U.S.C. § 1701 <i>et seq.</i>	2
50 U.S.C. § 1701(a)	3, 5, 6, 11, 22, 30
50 U.S.C. § 1701(b)	7
50 U.S.C. § 1702(a)(1)	6
50 U.S.C. § 1703(b)(1)-(2)	7
50 U.S.C. § 4565(e)(1)	15

Cited Authorities

	<i>Page</i>
National Emergencies Act, Pub. L. No. 94-412, § 202(a), 90 Stat. 1255 (1976) . . .	9
Trade Act of 1974, Pub. L. No. 93-617, § 122, 88 Stat. 1978 (1975)	20
Executive Orders	
Exec. Order No. 12170, 44 Fed. Reg. 65729 (Nov. 15, 1979)	30
Exec. Order No. 12532, 50 Fed. Reg. 36861 (Sept. 9, 1985)	30
Exec. Order No. 13310, 68 Fed. Reg. 44853 (July 28, 2003)	30
Exec. Order No. 13466, 73 Fed. Reg. 36787 (June 26, 2008)	30
Exec. Order No. 14059, 86 Fed. Reg. 71549 (Dec. 17, 2021)	21
Exec. Order No. 14105, 88 Fed. Reg. 54,867 (Aug. 11, 2023)	30
Exec. Order No. 14193, 90 Fed. Reg. 9113 (Feb. 1, 2025)	20
Exec. Order No. 14194, 90 Fed. Reg. 9117 (Feb. 1, 2025)	20

Cited Authorities

	<i>Page</i>
Exec. Order No. 14195, 90 Fed. Reg. 9121 (Feb. 1, 2025).....	20, 26
Exec. Order No. 14200, 90 Fed. Reg. 9277 (Feb. 5, 2025)	27
Exec. Order No. 14257, 90 Fed. Reg. 15041 (Apr. 2, 2025).....	19
Exec. Order No. 14326, 90 Fed. Reg. 37963 (Aug. 6, 2025)	24

Other Authorities

ABC News, ‘ <i>We Launched a Drug War, Not a Trade War</i> ’: <i>Trump’s Top Economic Adviser</i> , ABC News (Mar. 9, 2025) https://abcnews.go.com/Politics/launched-drug-war-trade-war-kevin-hassett/story?id=119591828 [https://perma.cc/4TPV-JE5L].....	27
David J. Bier, <i>US Citizens Were 80 Percent of Crossers With Fentanyl at Ports of Entry From 2019 to 2024</i> , CATO Institute (Aug. 8, 2024) https://www.cato.org/blog/us-citizens-were-80-crossers-fentanyl-ports-entry-2019-2024 [https://perma.cc/DHW6-Q742].....	25-26
<i>Black’s Law Dictionary</i> (5th ed. 1979).....	13

Cited Authorities

	<i>Page</i>
Elisabeth Buchwald & Kevin Liptak, <i>Trump Announces 90-Day Pause on ‘Reciprocal’ Tariffs With Exception of China</i> , CNN (Apr. 9, 2025) https://www.cnn.com/2025/04/09/business/reciprocal-tariff-pause-trump [https://perma.cc/ZG9D-MU26]	25
CFR Editors, <i>The U.S. Trade Deficit: How Much Does It Matter?</i> , Council on Foreign Relations (Apr. 23, 2025), https://www.cfr.org/backgrounders/us-trade-deficit-how-much-does-it-matter [https://perma.cc/UN2A-GVDX]	19
Comm. on Gov’t Operations & the Special Comm. on Nat’l Emergencies & Delegated Emergency Powers, <i>National Emergencies Act (Pub. L. 94-412) Source Book: Legislative History, Texts, and Other Documents</i> (1976) (statement of Sen. Charles Mathias)	8, 10
Declaration of Independence (U.S. 1776)	29
Drug Enf’t Agency, <i>2025 National Drug Threat Assessment</i> (2025)	22, 25, 26
Ryan Goodman, et al., <i>The ‘Presumption of Regularity’ in Trump Administration Litigation</i> , Just Security (Oct. 15, 2025) https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/ [https://perma.cc/6JLP-WPHU]	23

Cited Authorities

	<i>Page</i>
Michael Green, Cong. Rsch. Serv., R46577, <i>National Emergencies Act: Expedited Procedures in the House and Senate</i> (2025)	9
H.R. Rep. No. 94-238 (1975).....	9
H.R. Rep. No. 95-459	10, 11, 19, 20
Joanna R. Lampe, Cong. Rsch. Serv. LSB11343, <i>HALT Fentanyl Act Permanently Controls Fentanyl-Related Substances</i> (July 29, 2025).....	21
Scott Lincicome & Alfredo Carrillo Obregon, <i>Please Stop Calling Them “Reciprocal” Tariffs</i> , Cato Institute (Aug. 14, 2025), https://www.cato.org/blog/please-stop-calling-them-reciprocal-tariffs [https://perma.cc/V9E4-VJMQ]	24
Amanda Macias, <i>Trump Calls Tariff Windfall ‘So Beautiful to See’ as Cash Sails In</i> , Fox Business (Aug. 11, 2025) https://www.foxbusiness.com/politics/trump-calls-tariff-windfall-so-beautiful-see-cash-sails [https://perma.cc/X9Z6-J428]	24-25
Brian Mann, <i>The Pipeline of Deadly Fentanyl Into the U.S. May Be Drying Up, Experts Say</i> , NPR (Oct. 1, 2024), https://www.npr.org/2024/09/30/nx-s1-5124997/fentanyl-overdose-opioid-btmps-drug-cartel-xylazine-tranq-mexico-china [https://perma.cc/JB9R-79TT]	21

Cited Authorities

	<i>Page</i>
Peter Navarro, <i>The Case for Fair Trade in Mandate for Leadership: The Conservative Promise</i> (Paul Dans & Steven Groves eds., 2023)	27
Note, <i>The Presumption of Regularity in Judicial Review of the Executive Branch</i> , 131 Harv. L. Rev. 2431 (2018)	23
President’s Message to Joint Session of Congress on the State of the Union, <i>American Presidency Project</i> (Mar. 4, 2025) https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-4 [https://perma.cc/NE7Z-RA7W]	26
Shalev Roisman, <i>Presidential Factfinding</i> , 72 VAND. L. REV. 825 (2019)	22, 23
S. Rep. No. 93-1170 (1974)	8, 9
S. Rep. No. 94-1168 (1976)	5, 9
Trading with the Enemy Reform Legislation: Markup Before the Subcomm. on Int’l. Econ. Policy & Trade of the House Comm. on Int’l Relations, 95th Cong. 113 (1977)	10
Donald J. Trump (@realDonaldTrump), Truth Social (July 10, 2025), https://truthsocial.com/@realDonaldTrump/posts/114831716625825473 [https://perma.cc/X3PK-HPHT]	26

Cited Authorities

	<i>Page</i>
Donald J. Trump (@realDonaldTrump), Truth Social (July 12, 2025), https://truthsocial.com/@ realDonaldTrump/posts/114840265771030416 [https://perma.cc/D2ZP-K4EX].....	26

INTEREST OF AMICI CURIAE¹

Amici curiae are 13 former U.S. government officials who have addressed the full range of national emergencies. Most are former senior American military, national security, and foreign policy officials who served the United States around the world, including in numerous conflict zones. They were key decision-makers in many of the most sensitive national security challenges and emergencies our country has faced. Some served in top leadership roles in the Department of Justice, addressing questions of statutory interpretation like those presented here.

Many amici dedicated their careers to public service in the military or in the senior civil service, regardless of which party controlled the White House. Others were senior appointees in Republican or Democratic administrations. Amici have collectively dedicated decades to advancing the national security interests of the United States in Executive Branch positions.

In Washington, amici served in senior national security positions, and in dozens of other critical foreign policy and national security roles. Those include such roles focused on U.S. trade policy and economic security as General Counsel to the Office of Management and Budget and Head of Import Administration at the Department of Commerce.

1. The full list of amici is set forth in Appendix A to this brief. No counsel for a party to this case authored this brief in whole or in part, no party or counsel for a party contributed money that was intended to fund preparing or submitting this brief, and no person other than amici or their counsel contributed money that was intended to fund the preparation or submission of this brief.

Given their deep breadth of experience and knowledge, amici fully recognize that the President must have broad powers to deal with national emergencies in the areas of foreign affairs and national security. At the same time, they recognize that the mere assertion by a President that a national emergency exists does not make it so. The President must exercise emergency powers in accordance with the law and the limits of legitimate executive authority. When called upon, the Judiciary can and should assess whether the President in fact has done so.

Amici submit that, in their long experience, the challenged national emergencies that the President has declared to impose tariffs under the International Emergency Economic Powers Act (IEEPA) are not unusual and extraordinary threats within the meaning of the statute. The President thus acts *ultra vires* when he seeks to invoke those claimed, pretextual emergencies to exercise the authority Congress delegated under IEEPA.

SUMMARY OF ARGUMENT

The International Emergency Economic Powers Act grants the President specified powers to meet certain defined types of threats, 50 U.S.C. § 1701 *et seq.*, in circumstances where the President has first declared a national emergency pursuant to the National Emergencies Act (NEA). 50 U.S.C. § 1621 *et seq.*

Amici do not address whether IEEPA delegates the tariff power to the President, or whether, if so, the Constitution permits such a broad delegation. Instead, drawing upon their extensive governmental experience, amici assert only that when the President seeks to invoke

emergency powers under the NEA and IEEPA, he must do so within the constraints imposed by Congress.

To exercise the NEA's and IEEPA's powers lawfully, the President must declare a national emergency based on an "unusual and extraordinary threat," originating "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). These are restrictions on the Executive's use of emergency powers, not a general license to exercise such powers.

Indeed, the text, structure, and legislative history of both the NEA and IEEPA exude distrust of, not blind deference to, presidential invocations of emergencies. To end decades of emergency rule by the Executive, and to restore the constitutional balance that had been eroded by that long emergency rule, Congress enacted the NEA and IEEPA to cabin presidential authority to make emergency invocations. Congress made clear in that legislation that the President may wield emergency powers only in response to threats that *actually* exist. Moreover, Congress has further specified in IEEPA that only certain *types* of threats—those that are both "unusual and extraordinary"—permit the President to use the emergency powers granted thereunder. 50 U.S.C. § 1701(a).

Thus, federal courts must, when called upon to do so, review presidential invocations of IEEPA to determine whether they meet the preconditions set by Congress. The issue raised here is quintessentially one that courts can and should review: whether the requirements for invoking the NEA and IEEPA have been met. As Congress has

recognized, statutorily defining when the President may invoke emergency powers is critical to the security of our constitutional system. And as this Court made clear in *Youngstown*, Presidents are subject to checks and balances even in the context of national emergencies.

Here, those preconditions have not been met. The tariffs at issue were premised on the alleged threats posed by the trade deficit and lack of international cooperation on opioid trafficking. But these are persistent, longstanding issues, not “unusual and extraordinary” threats. Moreover, the invocation of these threats was pretextual, not legitimate, because the President in fact was seeking not to address the alleged threats he invoked, but rather, to accomplish other goals through the tariffs he imposed. Thus, for both independent reasons, the President’s invocations of the NEA and IEEPA do not meet the standards set by Congress, and the Court must strike down these actions as not in accordance with law and therefore *ultra vires*.

ARGUMENT

I. The President May Exercise IEEPA Authority Only Pursuant to an “Unusual and Extraordinary” National Emergency.

The International Emergency Economic Powers Act grants the President economic powers to respond to certain types of threats to the United States. The President can exercise these authorities, however, only if he has declared a national emergency pursuant to the National Emergencies Act and has met the statutory conditions specified in IEEPA. While courts have afforded

Presidents deference in determining what constitutes an emergency, “[t]he mere incantation of ‘national emergency’ cannot, of course, sound the death-knell of the Constitution,” nor can it erase statutory constraints on delegated powers. *United States v. Yoshida Int’l*, 526 F.2d 560, 583 (C.C.P.A. 1975). IEEPA and the NEA impose substantive and procedural limitations on presidential emergency powers. Indeed, both statutes’ text, structure, and legislative history exhibit congressional distrust of, not blind deference to, presidential invocations of emergencies, and so meaningfully limit presidential authority to make such invocations.

A. IEEPA Imposes Clear Statutory Conditions That Restrict Presidential Emergency Powers.

IEEPA grants the President certain economic powers when—and only when—the specific statutory conditions Congress prescribed are satisfied. To invoke IEEPA’s authority, the President must first declare a national emergency pursuant to the NEA. 50 U.S.C. §§ 1621, 1701(a). Under the NEA, “no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act.” 50 U.S.C. § 1631. Thus, many emergency statutes, like IEEPA, that grant the President “extraordinary powers” set out the substantive requirements for what qualifies as an emergency. S. Rep. No. 94-1168, at 3 (1976); see *Feliciano v. Dep’t of Transp.*, 145 S.Ct. 1284, 1295 (“A number of statutes tie a governmental power or duty to the existence of some ongoing national emergency.”).

IEEPA textually limits the exercise of the President’s emergency economic powers under the statute to “the times and to the extent specified in” Section 1701. 50 U.S.C. § 1702(a)(1). Section 1701 in turn sets four mandatory requirements: there must be “a national emergency with respect to” (1) a “threat” that is (2) “unusual and extraordinary;” (3) directed at “the national security, foreign policy, or economy of the United States;” and (4) originating “in whole or substantial part outside the United States[.]” 50 U.S.C. § 1701(a). This section thus “meaningfully constrains the [President’s] discretion,” *United States v. Dhafir*, 461 F.3d 211, 216 (2d Cir. 2006) (quoting *Touby v. United States*, 500 U.S. 160, 166 (1991)) (brackets in original), and the President must satisfy each of its elements to access IEEPA powers. *See Regan v. Wald* 468 U.S. 222, 227–28 (1984) (noting that IEEPA defines the conditions required to exercise its emergency powers). Consequently, even a genuine “threat” to U.S. national security from abroad does not permit the President to invoke IEEPA unless that threat is both “unusual and extraordinary.”

Through Section 1701’s objective statutory criteria, IEEPA cabins discretion, rather than granting it without limit. When Congress intends to grant the President broad decision-making authority, it generally does so with unmistakable language. In *Trump v. Hawaii*, for example, the Court held that 8 U.S.C. § 1182(f) “exudes deference to the President in every clause” because it repeatedly uses phrases like “shall deem” and “may deem” and authorizes the President to act “whenever the President finds” certain conditions exist. 585 U.S. 667, 684 (2018). Similarly, in *Webster v. Doe*, the Court found broad executive discretion where the statute permitted the

Central Intelligence Agency Director to act “whenever” he “shall deem” the action “necessary or advisable.” 486 U.S. 592, 594, 600 (1988). By contrast, Section 1701 contains no such deferential language. Instead, it conditions the exercise of authority on whether the powers exercised actually “deal with an unusual and extraordinary threat” and prohibits their use “for any other purpose.” 50 U.S.C. § 1701(b). This formulation ties presidential authority to the actual existence of defined statutory predicates, not to the President’s subjective determination or mere assertion that those predicates exist.

IEEPA’s statutory scheme confirms that Section 1701’s conditions serve as substantive constraints, not grants of unlimited discretion. As this Court noted in *Department of Commerce v. New York*, “disclos[ing] the basis” of an action is required “to permit meaningful judicial review.” 588 U.S. 752, 780 (2019). The statute here requires the President to report to Congress not merely that he declared an emergency but also: (1) “the circumstances which necessitate such exercise of authority;” and (2) “why the President believes those circumstances constitute an unusual and extraordinary threat[.]” 50 U.S.C. § 1703(b) (1)-(2). This demand for reasoned justification underscores Congress’s intent that invocations of IEEPA withstand external scrutiny rather than resting on mere assertion. To ensure that executive justifications for official decisions are not “contrived” and pretextual, this Court has required that the Executive “*offer genuine justifications for important decisions . . . that can be scrutinized by courts and the interested public.*” *Dep’t of Commerce v. New York*, 588 U.S. at 785 (emphasis added).

B. The Legislative Histories of the NEA and IEEPA Confirm Congress Intended These Conditions to Be Meaningful Constraints, Not Mere Formalities.

1. The NEA Was Designed to Cabin Executive Emergency Authority.

Congress enacted the NEA in 1976 to restore the separation of powers eroded by decades of unchecked executive emergency authority. The statute responded to Congress’s concern that “our Constitutional government ha[d] been weakened by 41 consecutive years of emergency rule” and that “[a]ggressive presidents, permissive Congresses, and a long series of successive crises” eroded “the structure of divided powers.” S. Rep. No. 93-1170, at 1, 3 (1974). Members of Congress identified unwarranted judicial deference as furthering this constitutional erosion. Courts had declined to review executive invocations of emergency powers, especially under IEEPA’s precursor, the Trading With the Enemy Act (TWEA), thereby allowing the President to declare national emergencies “at his discretion in peacetime without termination dates.” Comm. on Gov’t Operations & the Special Comm. on Nat’l Emergencies & Delegated Emergency Powers, *National Emergencies Act (Pub. L. 94-412) Source Book: Legislative History, Texts, and Other Documents* 16 (1976) (statement of Sen. Charles Mathias) (introducing the resolution that established a special committee on presidential emergency powers) [hereinafter “*NEA Source Book*”].

Accordingly, the NEA now imposes “carefully constructed legal safeguards,” to ensure the President exercises emergency powers “*only when emergencies*

actually exist.” S. Rep. No. 94-1168, at 2 (1976) (emphasis added). To guard against abuse, the NEA “lodge[s]” control of emergency powers “elsewhere than in the Executive who exercises them.” S. Rep. No. 93-1170, at 5 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 652 (1952) (Jackson, J., concurring)). Those safeguards include: (1) a requirement to notify Congress of any emergency declaration, (2) expedited procedures for a joint congressional resolution terminating a national emergency,² and (3) substantive limitations on what constitutes a valid emergency. 50 U.S.C. § 1621(a); Michael Green, Cong. Rsch. Serv., R46577, *National Emergencies Act: Expedited Procedures in the House and Senate* 6-13 (2025). The Act does not define what constitutes an emergency—largely because Congress feared providing a general definition would not sufficiently constrain the President.³ Instead, the specific requirements appear in “the various statutes which give [the President] extraordinary powers.” S. Rep. 94-1168, at 3. Together, these measures “seek[] to restore the constitutional

2. The NEA originally contained a legislative veto for declared emergencies, which Congress expected would serve as a major check on the President’s emergency powers. National Emergencies Act, Pub. L. No. 94-412, § 202(a), 90 Stat. 1255 (1976). The Supreme Court struck down this type of mechanism, however, in *Immigration & Naturalization Serv. v. Chadha*. 462 U.S. 919, 959 (1983).

3. An early version of the NEA required the President, before declaring an emergency, to find that the emergency “is essential to the preservation, protection and defense of the Constitution or to the common defense, safety or well being of the territory or people of the United States.” H.R. Rep. 94-238 at 5 (1975). Congress dropped this requirement as being too broad. S. Rep. 94-1168, *supra*, at 3.

balance between the Presidency and the Congress . . . [by] restoring to Congress its full constitutional authority to regulate commerce, and [] clearly defin[ing] a national emergency.” *NEA Source Book, supra*, at 14 (statement of Sen. Mathias).

2. Congress Enacted IEEPA to Limit the President’s Use of Emergency Economic Powers.

Congress enacted IEEPA one year after the NEA to remedy specific abuses under TWEA. Adopted in 1917, TWEA granted the President sweeping economic powers first during wartime and later in peacetime emergencies. By the 1970s, Congress found that TWEA had become “an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review.” H.R. Rep. No. 95-459, at 7. Congress found that this de facto unlimited delegation had arisen because the statute appeared to authorize the President to invoke TWEA subject to “no criteria at all.” H.R. Rep. No. 95-459, at 8. This absence of substantive limits allowed Presidents to declare permanent emergencies in situations that “by no commonsense application of the term could . . . be called an emergency.” *Wald*, 468 U.S. at 248 (Blackmun, J., dissenting) (quoting Trading with the Enemy Reform Legislation: Markup Before the Subcomm. on Int’l. Econ. Policy & Trade of the House Comm. on Int’l Relations, 95th Cong. 113 (1977)).

Congress remedied this defect by amending TWEA and adopting IEEPA’s Section 1701. “When Congress amends legislation,” as it did through Section 1701,

“courts must ‘presume it intends [the change] to have real and substantial effect.’” *Ross v. Blake*, 578 U.S. 632, 641–42 (2016) (quoting *Stone v. INS*, 514 U.S. 386, 397 (1995)) (brackets in original). Here, Congress intended that peacetime emergencies must be both “unusual and extraordinary.” 50 U.S.C. § 1701(a). Congress emphasized that IEEPA’s “main” substantive restriction on presidential discretion “stems from a recognition that 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 (emphasis added). Accordingly, “[a] state of national emergency should not be a normal state of affairs,” and emergency authorities may be employed only with respect “to a specific set of circumstances which constitute a real emergency, and for no other purpose.” *Id.* Thus, the “unusual and extraordinary” requirement limits emergencies under IEEPA to “rare,” “brief,” and “imminent” dangers—not the “normal,” “ongoing,” or chronic circumstances that had increasingly constituted pretextual “emergencies” under TWEA.

II. Courts Can and Should Review Invocations of IEEPA.

The language of IEEPA specifies clear standards defining the threat circumstances that justify its invocation. These criteria supply precise benchmarks—an “unusual and extraordinary threat” to U.S. national security, foreign policy, or economy originating outside the United States—that courts can readily interpret and apply. 50 U.S.C. § 1701(a). Because these statutory predicates are concrete and judicially manageable, assessing whether they have been fulfilled constitutes a straightforward question of statutory interpretation, not

a political judgment insulated from judicial review. As this Court articulated in *Japan Whaling Association v. American Cetacean Society*, “it goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts.” 478 U.S. 221, 230 (1986).

A. The Text of IEEPA Provides Manageable Standards That Demand Judicial Review as a Normal Exercise of Statutory Interpretation.

When a case turns on whether an action adheres to the bounds of a statutory grant of authority, such a question of statutory interpretation falls squarely within the judiciary’s role to “say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Accordingly, where the courts merely apply law to facts—where they are asked only to “careful[ly] examin[e] the textual, structural, and historical evidence”—such claims are justiciable. *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012). “The responsibility of determining the limits of statutory grants of authority . . . is a judicial function entrusted to the courts by Congress[.]” *Stark v. Wickard*, 321 U.S. 288, 310 (1944). Far from intruding into the policy discretion of the political branches, such statutory interpretation constitutes “a familiar judicial exercise.” *Zivotofsky*, 566 U.S. at 196.

IEEPA provides clear criteria that threats must meet for the President to exercise the powers delegated by the statute. It requires threats to be “extraordinary and unusual”—terms whose meaning are well-settled.⁴

4. “Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute[.]” *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006).

While the “views of the Executive Branch [can] inform the interpretation” of these terms, they cannot supersede “the judgment of the Judiciary.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 388 (2024). Indeed, courts have frequently construed these terms in a variety of contexts. This Court’s Eighth Amendment jurisprudence is replete with cases evaluating whether particular punishments are not just cruel, but also “unusual.”⁵ Similarly, courts have interpreted the phrase “unusual and compelling urgency” in a military procurement statute to require time-bounded, not indefinite, exigency. *See Filtration Dev. Co. v. United States*, 60 Fed. Cl. 371, 380–84, 387–88 (Fed. Cl. 2004). And “courts routinely determine whether ‘extraordinary circumstances’ exist.” *See Magana-Magana v. Bondi*, 129 F.4th 557, 570 (9th Cir. 2025).

This interpretation also must be “consistent with their ‘ordinary meaning . . . at the time Congress enacted the statute.’” *Wisc. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)). Around the time Congress enacted IEEPA, “extraordinary” meant “beyond or out of the common order or rule; not usual, regular, or of a customary kind; remarkable; uncommon; rare.” *See* Extraordinary, *Black’s Law Dictionary* (5th ed. 1979). The term “unusual” similarly denoted “uncommon; not usual, rare.” *See* Unusual, *Black’s Law Dictionary* (5th ed. 1979). As demonstrated above, Congress intended “unusual” and “extraordinary” to have no other meaning.

5. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 316 (2002) (holding that capital punishment of intellectually disabled individuals is “truly unusual” based on its infrequency of application); *Roper v. Simmons*, 543 U.S. 551, 576–78 (2005) (determining whether U.S. capital punishment of juveniles was “unusual” among nations); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (finding sentences of life without parole for juvenile nonhomicide offenders constitute “cruel and unusual” punishment due to the sentence’s severity and the offenders’ limited culpability).

As this Court has previously affirmed, where standards prescribed by an act “are sufficiently definite and precise,” they enable “the courts . . . to ascertain whether the [executive official] . . . has conformed to those standards.” *Yakus v. U.S.*, 321 U.S. 414, 426 (1944); *see also Biden v. Nebraska*, 600 U.S. 477, 506–7 (2023) (distilling statutory terms’ meaning using ordinary tools of statutory interpretation constitutes proper judicial exercise). Because IEEPA provides “clearly definable criteria,” courts can and should review emergency declarations under the statute as a proper exercise of statutory interpretation. *Baker v. Carr*, 369 U.S. 186, 214 (1962).

As demonstrated above, a President’s emergency declaration under IEEPA is not statutorily committed to presidential discretion. The text of IEEPA does not “give[] a discretionary power to [the President], to be exercised by him upon his own opinion of certain facts,” such that he is “the sole and exclusive judge of the existence of those facts.” *Martin v. Mott*, 25 U.S. (12 Wheat.) 19, 31–32 (1827). Instead, the President’s IEEPA power flows from, and is cabined by, Congress via statute. Mere assertion that there is an “emergency” is not enough. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (war is not a “blank check for the President”). Rather, the statutory limitations imposed on the President’s exercise of emergency powers “have always been, and always will be, the subject of close examination under our constitutional system.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 426 (1934). Allowing “[o]verly broad judicial deference” in the face of emergency powers is a recurrent error, and history warns against “an unduly deferential judicial approach.” *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2615 (2020) (Kavanaugh, J., dissenting).

Furthermore, when Congress passes legislation, courts presume that the statute permits judicial review of executive action taken under the law. *See, e.g., Abbott Laboratories v. Gardner*, 387 U.S. 136, 140–41 (1967). Whether Congress intended to bar “judicial review is determined from the statute’s language, structure, and purpose, its legislative history . . . and whether the claims can be afforded meaningful review.” *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994) (internal citations omitted). Nothing in the text or legislative history of IEEPA suggests that Congress intended to *preclude* review of emergency determinations under the statute. In fact, when Congress intends to bar such review, it does so explicitly. *See, e.g., Arms Export Control Act*, 22 U.S.C. § 2778(h) (“The designation by the President . . . shall not be subject to judicial review.”); *Defense Production Act*, 50 U.S.C. § 4565(e)(1) (“The actions of the President . . . and the findings of the President . . . shall not be subject to judicial review.”).

Accordingly, courts may evaluate whether the Executive has exceeded the scope of the statute’s prescribed authority by interpreting the statute and applying it to the facts underlying the emergency declaration. Here, the Court can construe the standards for invoking IEEPA “just as it ‘manages’ the standards for any other statutory enactment that constrains independent executive action.” *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1378 (Ct. Int’l Trade 2025).

B. The Political Question Doctrine Does not Render IEEPA Threat Determinations Nonjusticiable.

Doctrines of nonjusticiability likewise do not bar judicial review under IEEPA, despite the statute’s foreign affairs focus. Even in the foreign affairs context, the Court has repeatedly confirmed statutory interpretation as a proper and traditional judicial function. As this Court made clear in *Baker*, “[i]t is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” 369 U.S. at 211. The Executive remains subject to “the ordinary controls and checks” of government even where “foreign affairs are at issue.” *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015). The Judiciary’s duty to interpret statutes—here to determine whether a declared emergency satisfies IEEPA’s statutory criteria—does not amount to “supplant[ing] a foreign policy decision of” the Executive. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012).

Presidential emergency declarations under IEEPA do not constitute political questions exempt from judicial scrutiny. The political question doctrine provides a narrow exception to courts’ jurisdiction that applies in limited circumstances, such as when there exists a “textually demonstrable constitutional commitment of the issue to a coordinate political department” or “a lack of judicially discoverable and manageable standards for resolving it,” neither of which is true here. *Baker*, 369 U.S. at 217. Indeed, “[t]he Supreme Court has never applied the political question doctrine in a case involving alleged *statutory* violations.” *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 856 (D.C. Cir. 2010) (Kavanaugh, J., concurring) (emphasis in original).

Likewise, the nexus of a case’s subject matter with foreign affairs does not categorically preclude judicial review but instead requires a “discriminating inquiry into the precise facts and posture of the particular case.” *Baker*, 369 U.S. at 217. That inquiry permits judicial intervention where there is an “obvious mistake,” *id.* at 214, a “manifestly unauthorized exercise of power,” *id.* at 217, or an action outside the “permitted range of honest judgment” within which executive discretion may operate, *Sterling v. Constantin*, 287 U.S. 378, 399 (1932). Adopting the political question doctrine to preclude judicial review of presidential emergency declarations under IEEPA would undermine congressional authority by rendering Congress’s clear statutory criteria meaningless and unenforceable.

This Court has held that the Judiciary may assess whether “[a] law depending upon the existence of an emergency” remains operational “if the emergency ceases,” because the “Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared.” *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547 (1924). Thus, even when a President’s threat determination enjoys a “very strong protection of presidential discretion,” courts can and should still police the statutory boundary. *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1359 (Fed. Cir. 2025) (Taranto, J., dissenting). Significantly, both the Court of International Trade, in its initial ruling, and the dissenters in the Federal Circuit confirmed that this protection of presidential discretion does *not* preclude judicial review for abuse of that discretion regarding IEEPA’s substantive boundaries. *Id.* at 1358-59 (“[W]e are not prepared to say that compliance with the unusual-and-

extraordinary-threat requirement is wholly unreviewable, as a political question or otherwise.”). Indeed, “[o]ne of this Court’s roles, in justiciable cases, is to resolve major legal questions of national importance and ensure uniformity of federal law,” including on novel executive action. *Trump v. CASA, Inc.*, 606 U.S. 831, 876 (2025) (Kavanaugh, J., concurring).

III. The Record Here Shows That The Threats Asserted by the President Were Neither Unusual Nor Extraordinary, and Thus His Invocations of IEEPA Were Unlawful, and His Imposition of Tariffs Was Ultra Vires.

As demonstrated above, IEEPA can be invoked only if there is an “unusual and extraordinary” threat. But the threats asserted by the President to justify imposing tariffs under IEEPA—trade deficits and certain foreign governments’ alleged failure to take greater domestic enforcement action on opioids—are longstanding, persistent issues that do not meet that statutory requirement. Moreover, the imposition of tariffs here was *ultra vires* for a separate and independent reason: by his own admission, the President imposed tariffs not to address these alleged threats, but to accomplish different ends, and so his invocation of these threats was pretextual.

A. The Trade Deficit and the International Response to Opioid Trafficking Are Neither Unusual Nor Extraordinary Threats Within the Meaning of IEEPA.

This case challenges two kinds of tariffs imposed under IEEPA—global reciprocal tariffs and narcotics

trafficking tariffs⁶— neither of which rests on the kind of “unusual and extraordinary” threat that IEEPA requires.

To impose global reciprocal tariffs, President Trump declared a national emergency over the U.S. trade deficit. He found that “*underlying conditions . . . as indicated by large and persistent annual U.S. goods trade deficits, constitute an unusual and extraordinary threat to the national security and economy of the United States.*” Exec. Order No. 14257, 90 Fed. Reg. 15041 (Apr. 2, 2025) (emphasis added).

Whether or not the trade deficit is a “threat,” amici assert, based on their lengthy government experience, that the long-standing existence of a trade deficit is clearly not an “unusual and extraordinary” threat within the meaning of IEEPA. As the President’s own declaration concedes, the U.S. trade deficit is a “persistent” condition that has not only existed for more than fifty years, but in fact, *predates IEEPA’s passage*. CFR Editors, *The U.S. Trade Deficit: How Much Does It Matter?*, Council on Foreign Relations (Apr. 23, 2025), <https://www.cfr.org/backgroundunder/us-trade-deficit-how-much-does-it-matter> [<https://perma.cc/UN2A-GVDX>]. It represents precisely the kind of persistent, long-standing “normal, ongoing problems” that Congress considered insufficient to meet IEEPA’s emergency criteria. H.R. Rep. No. 95-459 at 10.

The existence of other legislation that specifically addresses presidential power to respond to trade deficits

6. Amici use the term “reciprocal tariffs” and “trafficking tariffs” not as normative assessments of what the tariffs respond to, but because the Federal Circuit adopted these terms. *V.O.S. Selections*, 149 F.4th at 1319-21.

reinforces this point. While Congress revised and limited the President’s economic emergency powers by adopting the NEA and IEEPA, Congress separately delegated to the President the power to address “balance-of-payment deficits” through tariffs in a *non-emergency statute*. Trade Act of 1974, Pub. L. No. 93-617, § 122, 88 Stat. 1978 (1975). Thus, the trade deficit is plainly neither unusual nor extraordinary; rather than constituting an “unforeseen contingenc[y],” it involves circumstances that Congress foresaw and addressed through non-emergency legislation. H.R. Rep. No. 95-459 at 10; *see also V.O.S. Selections*, 772 F.Supp.3d at 1375 (“Section 122 indicates that even ‘large and serious United States balance-of-payments deficits’ do not necessitate the use of emergency powers” (citation omitted)). As such, the trade deficit does not meet IEEPA’s requirements.

To impose the opioid trafficking tariffs challenged in this case, President Trump declared emergencies over the flow of illegal opioids into the United States from Canada, China, and Mexico. Exec. Order No. 14193, 90 Fed. Reg. 9113 (Feb. 1, 2025); Exec. Order No. 14194, 90 Fed. Reg. 9117 (Feb. 1, 2025); Exec. Order No. 14195, 90 Fed. Reg. 9121 (Feb. 1, 2025). Specifically, President Trump declared these governments’ alleged failure to take domestic law enforcement actions constituted unusual and extraordinary threats that warranted emergency action. Exec. Order No. 14193, § 1(a).

Amici do not dispute that the trafficking of illicit drugs can threaten U.S. national security. But here again, Congress has spoken precisely to this issue and indicated how it should be addressed in this context. In a Sense of Congress resolution during the first Trump

Administration, Congress stated that “the United States should apply economic and other financial sanctions to *foreign traffickers of illicit opioids* to protect the national security, foreign policy, and economy of the United States.” Fentanyl Sanctions Act, Pub. L. No. 116-92, § 7202, 133 Stat. 2262 (codified at 21 U.S.C. § 2301) (2019) (emphasis added). President Biden then implemented this legislation through IEEPA. Exec. Order 14059, 86 Fed. Reg. 71549 (Dec. 17, 2021) (targeting fentanyl traffickers).

The Fentanyl Sanctions Act made clear that Congress intended that financial sanctions be applied against traffickers, not foreign countries. In particular, while the Act called upon “China [to] follow through on full implementation of the new [Chinese] regulations, adopted May 1, 2019, to treat all fentanyl analogues as controlled substances,” Congress nowhere suggested that sanctions under IEEPA would become appropriate if China did not act. 21 U.S.C. § 2301.⁷

Indeed, given that the prior Administration already imposed sanctions to address fentanyl trafficking, the burden falls on the current Administration to establish that the opioid threat had since increased so as to make

7. In fact, China has not only implemented those analogue regulations—regulations that even the United States lacked—but also has taken other steps to address fentanyl trafficking. Brian Mann, *The Pipeline of Deadly Fentanyl Into the U.S. May Be Drying Up, Experts Say*, NPR (Oct. 1, 2024), <https://www.npr.org/2024/09/30/nx-s1-5124997/fentanyl-overdose-opioid-btmpps-drug-cartel-xylazine-tranq-mexico-china> [<https://perma.cc/JB9R-79TT>]; Joanna R. Lampe, Cong. Rsch. Serv. LSB11343, *HALT Fentanyl Act Permanently Controls Fentanyl-Related Substances* (July 29, 2025).

it a *new* “unusual and extraordinary” threat with respect to each country subjected to new U.S. tariffs. 50 U.S.C. § 1701(a). But the Administration’s own statistics show that the opposite is the case. The Drug Enforcement Administration (DEA) found that in the 12-month period ending October 2024, drug overdose deaths declined by 25 percent compared to the same 12-month period in the prior year—“the largest 12-month reduction in drug overdose deaths ever recorded.” Drug Enf’t Agency, *2025 National Drug Threat Assessment* 5 (2025). Thus, the DEA concluded, while “the threat *remains* grave,” the “trend is hopeful” and “demonstrat[es] positive momentum in the fight against these drugs and the organizations trafficking them.” *Id.* (emphasis added). In the Administration’s own words, not only is there no “unusual or extraordinary” threat here, but whatever threat previously existed appears to be diminishing.

B. Separately, the Tariffs Are Also *Ultra Vires* Because IEEPA Was Invoked on Pretextual Grounds.

These tariffs are also unlawful because the grounds on which the President invoked IEEPA were pretextual. The President’s duty to declare only emergencies that satisfy statutory conditions derives, in part, from his affirmative constitutional obligation to “faithfully” execute the laws. U.S. Const. art. II, § 3. The Take Care Clause “provides strong textual support” for the notion that “the President has a constitutional duty to be honest and engage in reasonable inquiry in finding facts that serve as predicates for exercises of power.” Shalev Roisman, *Presidential Factfinding*, 72 VAND. L. REV. 825, 854, 886 (2019). Faithful execution of this constitutional duty

prohibits the President from using pretextual bases as a predicate for exercising executive authority.

Thus, when “a statute requires the President to find certain facts as a predicate to exercising power”—as when IEEPA requires the President to establish that a threat is unusual and extraordinary—“such factfinding is part of the ‘execution’ of the Law that must be done ‘faithfully,’” not pretextually. *Id.* at 855. “[I]f the President exercises authority contingent on finding facts, and those facts are found dishonestly or arbitrarily, then the President does not have authority to act at all.” *Id.* at 858. As Justice Cardozo described, “[i]f legislative power is delegated subject to a condition, it is a requirement of constitutional government that the condition be fulfilled. In default of such fulfilment, there is in truth no delegation, and hence no official action”—and the executive action becomes *ultra vires*. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 448 (1935) (Cardozo, J. dissenting).

The presumption that the Executive has acted with procedural regularity and for bona fide, non-pretextual reasons is not iron-clad. See Ryan Goodman, et al., *The ‘Presumption of Regularity’ in Trump Administration Litigation*, Just Security (October 15, 2025) <https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/> [<https://perma.cc/6JLP-WPHU>]; Note, *The Presumption of Regularity in Judicial Review of the Executive Branch*, 131 Harv. L. Rev. 2431, 2433-34 (2018). A court may decline to apply the presumption of regularity when confronted with “clear evidence” that officials have not properly discharged their duties, such as by acting pretextually. *United States v. Chemical Found.*, 272 U.S. 1, 14-15 (1926). That

presidential, rather than agency, action is in question does not prohibit such inquiry. In examining presidential action, this Court has affirmed that it can and will consider external evidence to determine whether “the Government has set forth a sufficient national security justification to survive rational basis review” or whether it acted pretextually. *Trump v. Hawaii*, 585 U.S. at 705, 710.

Here, the invocation of IEEPA “cannot be adequately explained in terms of” the President’s declared threats. *Dep’t of Commerce v. New York*, 588 U.S. at 783. Instead, “[s]everal points, considered together, reveal a significant mismatch between the decision the [President] made and the rationale he provided.” *Id.*

Objective facts and the Administration’s own actions suggest the President imposed “reciprocal” tariffs for a purpose other than responding to the alleged trade deficit “emergency.” First, the tariffs were not “reciprocal.” In fact, “in the vast majority of cases—and for all major US import sources and free trade agreement (FTA) partners,” the President’s actions under IEEPA “set[] US tariffs at rates much higher than those foreign governments apply to American goods.” Scott Lincicome & Alfredo Carrillo Obregon, *Please Stop Calling Them “Reciprocal” Tariffs*, Cato Institute (Aug. 14, 2025), <https://www.cato.org/blog/please-stop-calling-them-reciprocal-tariffs> [<https://perma.cc/V9E4-VJMQ>]. Second, the Executive has provided shifting justification for the “reciprocal” tariffs, including raising revenue. Amanda Macias, *Trump Calls Tariff Windfall ‘So Beautiful to See’ as Cash Sails In*, Fox Business (Aug. 11, 2025) <https://www.foxbusiness.com/politics/trump-calls-tariff-windfall-so-beautiful-see-cash-sails> [<https://perma.cc/>

X9Z6-J428]. Third, the President almost immediately suspended, except as to China, imposition of these tariffs following a negative stock market reaction and emphasized the necessity of “flexibility,” which belies any argument that the trade deficit is truly an “emergency” requiring immediate action. Elisabeth Buchwald & Kevin Liptak, *Trump Announces 90-Day Pause on ‘Reciprocal’ Tariffs With Exception of China*, CNN (Apr. 9, 2025) <https://www.cnn.com/2025/04/09/business/reciprocal-tariff-pause-trump> [<https://perma.cc/ZG9D-MU26>]. Finally, after an additional extension, the President stated that he subjected trading partners to tariffs even if they proposed terms that addressed trade imbalances but still “failed to align sufficiently with the United States on economic and national-security matters.” Exec. Order 14326, 90 Fed. Reg. 37963 (Aug. 6, 2025).

The trafficking tariffs are no less pretextual. The Administration’s own assessments, as noted above, belie both the suggestion that the opioid threat is increasing, and that the three countries targeted are not taking steps to address this issue. Earlier this year, the DEA reported that it has found numerous indicators that “the government of China is controlling more fentanyl precursors to comply with recent updates to the United Nations counternarcotics treaty”—so much so that Mexican cartels are experiencing difficulties in sourcing fentanyl precursors from China. Drug Enf’t Agency, *supra*, 23. Likewise, U.S. Customs and Border Protection (CBP) statistics show that 80 percent of all individuals arrested bringing fentanyl into the United States across the Southwest Border are not Canadian, Chinese, or Mexican nationals, but rather U.S. citizens. David J. Bier, *US Citizens Were 80 Percent of Crossers With Fentanyl at*

Ports of Entry From 2019 to 2024, CATO Institute (Aug. 8, 2024) <https://www.cato.org/blog/us-citizens-were-80-crossers-fentanyl-ports-entry-2019-2024> [<https://perma.cc/DHW6-Q742>]. The claim that Canada is a major source of fentanyl is particularly disingenuous: the DEA’s own statistics show only 0.2 percent of the fentanyl arriving at the U.S. border came from Canada in 2024. Drug Enforcement Agency, *supra*, 22.

Moreover, as with the “trade deficit” tariffs, the public record demonstrates that other priorities motivated the President’s fentanyl tariffs and that these “threats” were invoked only as a smokescreen. In describing why these countries’ supposed “failure to act” regarding fentanyl had become a national emergency under IEEPA, the President cited his America First Trade Policy. *See, e.g.*, Exec. Order No. 14195. Just weeks after imposing these tariffs, the President declared, “[t]ariffs are about making America rich again.” President’s Message to Joint Session of Congress on the State of the Union, *American Presidency Project* (Mar. 4, 2025) <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-4> [<https://perma.cc/NE7Z-RA7W>]. The President also published letters he sent to the heads of state of these countries, which emphasize that the main reason for the President’s tariffs is not their alleged role in the fentanyl trade, but rather trade deficits and barriers, as well as the countries’ overall relationships with the United States. Donald J. Trump (@realDonaldTrump), Truth Social (July 12, 2025), <https://truthsocial.com/@realDonaldTrump/posts/114840265771030416> [<https://perma.cc/D2ZP-K4EX>]; Donald J. Trump (@realDonaldTrump), Truth Social (July 10, 2025), <https://truthsocial.com/@realDonaldTrump/posts/114831716625825473> [<https://perma.cc/X3PK-HPHT>].

That trade policy is the actual “threat” underlying the IEEPA invocation here is so obvious that the Trump Administration felt compelled to insist it had “launched a drug war, not a trade war.” ABC News, ‘*We Launched a Drug War, Not a Trade War*’: *Trump’s Top Economic Adviser*, ABC News (Mar. 9, 2025) <https://abcnews.go.com/Politics/launched-drug-war-trade-war-kevin-hassett/story?id=119591828> [<https://perma.cc/4TPV-JE5L>]. But that insistence is undercut not only by the facts set out above, but also by the President’s use of these “emergency” trafficking tariffs to *remove* congressionally created de minimis exemptions for Chinese goods, a long-standing *trade* priority for the Administration. Exec. Order 14200, 90 Fed. Reg. 9277 (Feb. 5, 2025); *see also* Peter Navarro, *The Case for Fair Trade in Mandate for Leadership: The Conservative Promise* 765, 789 (Paul Dans & Steven Groves eds., 2023).

Against this evidence, the claims that the IEEPA was invoked here based on an unusual or extraordinary threat posed by trade deficits or opioids are plainly manufactured. The tariffs can be understood only as “pretext[s] for usurpation” of the constitutional balance of powers and IEEPA’s statutory criteria. *Youngstown*, 343 U.S. at 650 (Jackson, J., concurring).

C. Because the Threats Are Not Unusual and Extraordinary, the Court Must Strike the Tariffs Down as *Ultra Vires*.

The Executive cannot conclusively support emergency action by “mere executive fiat.” *Sterling*, 287 U.S. at 400. “It is the emergency that gives the right” to act in this instance, “and the emergency must be shown to exist before

the [action] can be justified.” *Id.* at 401 (quoting *Mitchell v. Harmony*, 54 U.S. (13 How.) 115, 134 (1851)).

To defer to the President’s assertions that ordinary states of affairs and transparently pretextual claims constitute unusual and extraordinary threats would allow the Executive to wield emergency powers contrary to Congress’s intent. Congress passed the NEA and IEEPA to constrain, not expand, presidential emergency powers. If trade deficits and the international response to fentanyl trafficking—which the Administration admits are long-standing issues—qualify as “emergencies” under Section 1701, then almost any other longstanding policy challenge or priority could be cited to grant the President extraordinary powers, based on a similarly pretextual emergency declaration. So abused, IEEPA would cease to function, as Congress intended, as a tool to address only “unusual and extraordinary” threats, and would instead become “a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” *Korematsu v. United States*, 323 U.S. 214, 246 (Jackson, J., dissenting).

The Framers “knew what emergencies were . . . [and] how they afford a ready pretext for usurpation,” and putting aside a narrow exception for habeas corpus, “they made no express provision for extraordinary exercise of authority because of a crisis.” *Youngstown*, 343 U.S. at 650 (Jackson, J., concurring). Instead, “[t]he Constitution of the United States is a law for rulers and people, equally in war and in peace[.]” *Ex parte Milligan*, 71 U.S. (4 Wall) 2, 120 (1866). Its duties and obligations, including the President’s obligation to faithfully execute the laws, “are designed to survive, and remain in force, in extraordinary times.” *Boumediene v. Bush*, 553 U.S. 723, 798 (2008). Under all stated statutory criteria, amici submit that the

alleged national security threats at issue here are not unusual and extraordinary. This Court should not allow textual statutory criteria to be twisted out of shape to create a “talisman enabling the President to rewrite the tariff schedules” and usurp the Legislature’s exclusive foreign commerce, tariff, and taxation powers. *Yoshida*, 63 C.C.P.A. at 35; U.S. Const. art. I, § 8.

Accepting unlawful and pretextual emergency declarations would dangerously disrupt the constitutional balance between the legislative and executive branches by removing congressional restraints on delegated powers. The Constitution creates a system of shared powers and checks and balances precisely to ensure that no one branch, including the Executive, exercises too much power.⁸ Instead of emergency powers addressing genuine emergencies, as Justice Jackson presciently observed in *Youngstown*, “[w]e may also suspect that [the Framers] suspected that emergency powers would tend to kindle emergencies.” 343 U.S. at 650 (Jackson, J., concurring).

Striking down the President’s actions on these grounds would not “open[] a Pandora’s box of pretext-based” or other challenges to national emergencies. *Dep’t of Commerce*, 588 U.S. at 798 (Thomas, J., concurring in part, dissenting in part). The Court need not address clear, paradigmatic emergencies where the President’s

8. “The example of such unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence[.]” *Youngstown*, 343 U.S. at 641 (Jackson, J., concurring); *see also* Declaration of Independence (U.S. 1776) (“cutting off our Trade with all parts of the world . . . imposing Taxes on us without our Consent”).

invocation of IEEPA was squarely within the statute’s intended scope and where emergencies were based on objectively ascertainable facts about “unusual and extraordinary” threats. 50 U.S.C. § 1701(a); *see, e.g.*, Exec. Order No. 12170, 44 Fed. Reg. 65729 (Nov. 15, 1979) (Iranian hostage crisis); Exec. Order No. 13310, 68 Fed. Reg. 44853 (July 28, 2003) (Burmese junta’s repression and abuses); Exec. Order No. 13466, 73 Fed. Reg. 36787 (June 26, 2008) (North Korean nuclear threat). Where the President has invoked IEEPA to deal with longer-term issues, he has done so because developments had elevated those longstanding problems to become “unusual and extraordinary” threats. *See, e.g.*, Exec. Order No. 14105, 88 Fed. Reg. 54,867 (Aug. 11, 2023) (invocation based on rapid advances in technology). Thus, the Government is mistaken in suggesting that President Reagan’s declaration of an emergency with respect to South Africa demonstrates that a threat need not be novel to be an emergency. Gov’t Opening Br. at 43. To the contrary, the President acted there because of actions taken by the United Nations. Exec Order. No. 12532, 50 Fed. Reg. 36861 (Sept. 9, 1985).

But where, as here, the President asserts novel powers that sit within the heartland of Congress’s constitutional authority, without any unusual or extraordinary threat, the Court can inquire into the emergency and, where it does not meet the congressional standard, strike it down as not in accordance with law. As Justice Gorsuch recently warned, “one can hope that the Judiciary will not soon again allow itself to be part of the problem by permitting . . . rule by indefinite emergency edict[,] [which] risks leaving all of us with a shell of a democracy.” *Arizona v. Mayorkas*, 143 S.Ct. 1312, 1316 (2023) (Statement of Gorsuch, J.).

CONCLUSION

The President may invoke emergency powers under IEEPA only pursuant to the conditions specified by Congress. Specifically, there must be a national emergency based on an “unusual and extraordinary threat.” Due deference to the President’s judgment cannot override this Court’s duty to determine questions of statutory interpretation, nor can it allow the constitutional separation of powers to devolve into executive unilateralism. Where, as here, the President has failed to meet statutory standards—and also has sought to invoke IEEPA on a pretextual basis for reasons other than those he has cited—the Court must strike down the actions as not in accordance with law and therefore *ultra vires*.

For all the foregoing reasons, Amici submit that this Court should rule in favor of petitioners in no. 24-1287 and respondents in no. 25-250 in this consolidated case.

Respectfully submitted,

SONIA MITTAL
PETER GRUBER RULE
OF LAW CLINIC
YALE LAW SCHOOL
127 Wall Street
P.O. Box 208215
New Haven, CT 06520
sonia.mittal@YLSCLinics.org

JACOB W. BUCHDAHL
Counsel of Record
JILLIAN S. HEWITT
SUSMAN GODFREY LLP
One Manhattan West,
50th Floor
New York, NY 10001
(212) 336-8330
jbuchdahl@susmangodfrey.com

Counsel for Amici Curiae

APPENDIX

APPENDIX A — LIST OF AMICI CURIAE

1. **John B. Bellinger III:** Legal Adviser, U.S. Department of State (2005-2009); Senior Associate Counsel to the President and Legal Adviser, National Security Council (2001-2005)
2. **Gregory Craig:** Counsel to the President (2009-2010); Assistant to the President and Special Counsel (1998-1999)
3. **Ambassador Nancy H. Ely-Raphel:** Senior Advisor to the Secretary of State (2001-2003); U.S. Ambassador to Slovenia (1998-2001)
4. **Conrad K. Harper:** Legal Adviser, U.S. Department of State (1993-1996)
5. **General Michael Hayden:** Director of the Central Intelligence Agency (2006- 2009); Principal Deputy Director of National Intelligence (2005-2006); Director of National Security Agency (1999-2005)
6. **Gary Horlick:** Deputy Assistant Secretary and Head of Import Administration, Department of Commerce (1981-1983)
7. **Peter Keisler:** Acting Attorney General (2007); Assistant Attorney General (Civil) (2003-2007)
8. **Alan Kreczko:** Legal Adviser, National Security Council (1992-1997)

Appendix A

9. **Judge J. Michael Luttig:** Federal Circuit Judge, United States Court of Appeals, Fourth Circuit (1991-2006); Assistant Attorney General OLC (1990-1991)
10. **Ambassador Thomas R. Pickering:** U.S. Ambassador to United Nations (1989-1992); U.S. Ambassador to Russia (1993-1996); U.S. Ambassador to India (1993-1996); U.S. Ambassador to Israel (1985-1988); U.S. Ambassador to Jordan (1974-1978); Undersecretary of State for Political Affairs (1997-2000)
11. **Alan Charles Raul:** Associate Counsel to President Reagan (1986-1988); General Counsel, Office of Management and Budget (1988-1989); Vice Chairman of the Privacy and Civil Liberties Oversight Board (2006-2008)
12. **Nicholas Rostow:** General Counsel and Senior Policy Adviser to the U.S. Permanent Representative to the United Nations (2001-2005); Special Assistant to the President for National Security Affairs and Legal Adviser, National Security Council (1987-1993)
13. **Wendy Sherman:** Deputy Secretary of State (2021-2023); Undersecretary for Political Affairs, U.S. Department of State (2011-2015)