

Nos. 24-1287 & 25-250

IN THE
Supreme Court of the United States

LEARNING RESOURCES, INC., ET AL.,
Petitioners,

v.
DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Respondents.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,

v.
V.O.S. SELECTIONS, INC. ET AL.,
Respondents.

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

**BRIEF *AMICUS CURIAE* FOR NATIONAL
SECURITY OFFICIALS SUPPORTING
PETITIONERS IN NO. 24-1287 AND
RESPONDENTS IN NO. 25-250**

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TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI</i>	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT	7
I. THE CONSTITUTION GIVES CONGRESS THE POWER TO IMPOSE TARIFFS	7
II. SINCE 1789, CONGRESS HAS EXERCISED THE TARIFF POWER ITSELF OR DELEGATED IT WITH STRICT LIMITS	9
III. IEEPA PROVIDES THE PRESIDENT WITH A FLEXIBLE TOOL TO ADDRESS NATIONAL SECURITY THREATS, BUT NOT THE POWER TO IMPOSE TARIFFS	13
A. History Informs the Proper Reading of IEEPA’s Text.....	13
B. IEEPA Does Not Delegate a Tariff- Setting Power	16
C. Presidents’ Consistent Implementation of the Statute Confirms That IEEPA Does Not Empower Presidents To Impose Tariffs	24

TABLE OF CONTENTS
(continued)

	Page
IV. CASTING IEEPA AS A NEW TRADE- NEGOTIATING AUTHORITY UNDERCUTS THE POWER OF SANCTIONS TO FOSTER GLOBAL ALIGNMENT WITH U.S. POLICY GOALS	27
CONCLUSION.....	29
APPENDIX A: List of <i>Amici Curiae</i>	1a

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023)	13, 21, 22, 24
<i>FCC v. Consumers' Rsch.</i> , 145 S. Ct. 2482 (2025)	21, 23
<i>Gibbons v. Ogden</i> , 22 U.S. (9 Wheat.) 1 (1824)	9, 20
<i>King v. Burwell</i> , 576 U.S. 473 (2015)	23
<i>Nat'l Cable Television Ass'n, Inc. v. United States</i> , 415 U.S. 336 (1974) (NCTA).....	9, 23
<i>Niz-Chavez v. Garland</i> , 593 U.S. 155 (2021)	16
<i>The Aurora v. United States</i> , 11 U.S. (7 Cranch) 382 (1813)	14
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022)	21
Constitutional Provisions	
U.S. Const. art. I, § 8.....	8, 17
U.S. Const. art. I, § 10.....	8
Statutes	
19 U.S.C. § 1862	11
19 U.S.C. § 2191	11

TABLE OF AUTHORITIES
(continued)

	Page(s)
19 U.S.C. § 2411	12
19 U.S.C. § 2412	12
19 U.S.C. § 2413	12
50 U.S.C. § 1701(b).....	1, 4
50 U.S.C. § 1702(a)(1)(A)	4, 18
50 U.S.C. § 1702(a)(1)(B)	17, 20, 22, 25
50 U.S.C. § 1702(a)(1)(C)	25
Act of Aug. 10, 1790, ch. 39, 1 Stat. 180.....	17
Act of July 4, 1789, ch. 2, 1 Stat. 24	9
Act of June 12, 1934, ch. 474, 48 Stat. 943	10
Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114- 26, 129 Stat. 320	12
International Emergency Economic Powers Act, Pub. L. No. 95-223, 91 Stat. 1625 (1977).....	15
National Emergencies Act, Pub. L. No. 94-412, 90 Stat. 1255 (1976).....	15
Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978.....	11, 12, 16, 19
Trade Expansion Act of 1962, Pub. L. No. 87- 794, 76 Stat. 872	11, 16
Trading With the Enemy Act, Pub. L. No. 65- 91, 40 Stat. 411 (1917).....	14, 18

TABLE OF AUTHORITIES
(continued)

	Page(s)
Regulations	
31 C.F.R. § 500.201 (2007)	17
31 C.F.R. § 501.801	18
31 C.F.R. § 515.201	17
31 C.F.R. § 535	18
31 C.F.R. § 589.201	17, 26
31 C.F.R. § 589.207	26
31 C.F.R. § 589.208	26
Exec. Order No. 12,978, 60 Fed. Reg. 54579 (Oct. 25, 1995)	25
Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 23, 2001)	25
Exec. Order No. 13,818, 82 Fed. Reg. 60839 (Dec. 20, 2017)	25
Exec. Order No. 13,873, 84 Fed. Reg. 22689 (May 15, 2019)	26
Exec. Order No. 14,065, 87 Fed. Reg. 10293 (Feb. 21, 2022)	26
Exec. Order No. 14,193, 90 Fed. Reg. 9113 (Feb. 1, 2025)	21
Exec. Order No. 14,194, 90 Fed. Reg. 9117 (Feb. 1, 2025)	21
Exec. Order No. 14,195, 90 Fed. Reg. 9121 (Feb. 1, 2025)	21

TABLE OF AUTHORITIES
(continued)

	Page(s)
Exec. Order No. 14,257, 90 Fed. Reg. 15041 (Apr. 2, 2025)	21
Proclamation 4074, 85 Stat. 926 (Aug. 15, 1971) ...	15
 Other Authorities	
<i>About OFAC</i> , U.S. Dep’t of Treas.	14
Brock R. Williams, <i>Trade Promotion Authority and the Role of Congress in Trade Policy</i> , Cong. Rsch. Serv. (2015)	11
Christopher A. Casey & Jennifer K. Elsea, <i>The International Emergency Economic Powers Act: Origins, Evolution, and Use</i> , 15, Cong. Rschr. Serv. (2024)	17
D. Andrew Austin, <i>Tariffs and Federal Finances: A Thumbnail History</i> , Cong. Resch. Serv. (Jan. 10, 2025)	10
General Agreement on Tarrifs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194	10
H.R. Rep. No. 95-459 (1977)	15, 16
Jeff Cox, <i>Tariff Costs to Companies This Year to Hit \$1.2 Trillion, With Consumers Taking Most of the Hit</i> , S&P Says, CNBC (Oct. 16, 2025)	22
Jonathan Levy, <i>Ages of American Capitalism</i> (2022)	10
Max Farrand, <i>The Records of the Federal Convention of 1787</i> (1966)	7, 8

TABLE OF AUTHORITIES
(continued)

	Page(s)
Nicholas Parrillo, <i>Foreign Affairs, Nondelegation, and Original Meaning: Congress’s Delegation of Power to Lay Embargoes in 1794</i> , 172 U. Pa. L. Rev. 1803 (2024)	14
Office of Spokesperson, Fact Sheet, <i>Sanctioning Entities Trading in Iranian Petroleum and Petrochemicals</i> , Dep’t of State (Oct. 9, 2025)	25
Robert A. Pastor, <i>Congress and the Politics of U.S. Foreign Economic Policy 1929-1976</i> (1980)	10
Roger Lowenstein, <i>Ways and Means</i> (2022)	10
<i>Sanctions Programs and Country Information</i> , U.S. Dep’t of Treas.....	18
Stanley Elkins & Eric McKittrick, <i>The Age of Federalism</i> (1993)	10
<i>The Debates in the Several State Conventions on the Adoption of the Federal Constitution</i> (Jonathan Elliot ed., 2d ed. 1836)	7, 8
<i>The Federalist</i> No. 41 (James Madison) (Jacob E. Cooke ed., 1961)	7
<i>The Federalist</i> No. 48 (James Madison) (Jacob E. Cooke ed., 1961)	8
U.S. Int’l Trade Comm’n, <i>The Economic Effects of Significant U.S. Import Restraints</i> (6th update 2009)	11

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>United States Statutes</i> , U.S. Dep't of Treas.	19
<i>US Will Impose Additional 100% Tariff on Chinese Imports from November, Trump Says</i> , Reuters (Oct. 10, 2025)	21

INTEREST OF *AMICI*¹

Amici are individuals who have served in senior positions in the federal government with responsibilities for national and economic security matters. From their government service and extensive other professional experiences, all *amici* have been involved in developing, implementing, and advising government officials and private-sector parties on financial sanctions, trade embargoes, and other regulations implemented pursuant to the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*).

IEEPA is the fundamental legal authority underlying most U.S. economic sanctions programs implemented since its enactment. In *amici*'s experience, IEEPA is a vital tool that Presidents can use flexibly to respond to discrete threats to the country's national and economic security without use of military force. And when the President invokes IEEPA to address an emergency threat, other nations apprehend the threat's seriousness. The effectiveness of IEEPA-based measures is frequently enhanced by deploying sanctions in concert with U.S. allies—not against them—and in close consultation with Congress. The reach of sanctions is amplified by voluntary measures undertaken globally by foreign institutions and governments that wish to follow the lead of the United

¹ Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, other than *amici* or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

States in dealing with bad actors, for both legal compliance and reputational reasons, even when U.S. regulations do not directly apply to them. The misuse of IEEPA for trade disputes threatens to weaken the statute's influence by diluting international respect for the leading sanctions statute and by pushing countries to reduce their reliance on the U.S. financial system, U.S. technology, and other sources of U.S. strength that have long made IEEPA so powerful.

In IEEPA, Congress gave the President the ability to be nimble in the national security sphere by taking certain actions to constrain and pressure foreign threats to the United States. IEEPA was not enacted as a revenue-raising authority or to address unfair trade practices, which Congress addressed in other contemporaneous statutes. The President's recent invocation of IEEPA to impose the largest increase in U.S. tariffs since the 1930s, and then to engage in ad hoc negotiations with other nations to reduce the declared tariffs, purports to exercise power the President does not have under this law.

The Constitution vests Congress with authority over the imposition of tariffs and other taxes and the regulation of foreign commerce. Those authorities remain in the domain of the Legislative Branch except to the extent that Congress has clearly delegated them to the Executive. Nothing in IEEPA authorizes the imposition of taxes by the Executive, because Congress never intended for IEEPA to be a blunt-force trade-negotiating tool.

Amici respectfully submit this brief to explain how Presidents of both political parties have used IEEPA consistent with the specific delegation of authority in

that statute, and why the invocation of IEEPA to impose broad tariffs on dozens of countries unrelated to a specific, identified threat to the U.S. national security, foreign policy, or economy frustrates the national security goals of the statute.

A full list of *amici* appears in Appendix A.

SUMMARY OF ARGUMENT

The President is claiming unauthorized power to impose tariffs under IEEPA. Article I, Section 8 of the Constitution assigns to the Legislative Branch plenary authority to impose taxes, tariffs and other duties on imported goods, and to regulate foreign commerce. For well over a century after the Founding, Congress directly legislated tariffs, and Presidents submitted proposals for embargoes, commercial treaties, and other exercises in regulating foreign commerce to Congress for approval. Beginning in the 1930s, Congress adopted a policy objective of reducing tariffs and other trade barriers on a mutual and reciprocal basis through bilateral and multilateral negotiations. This national policy, supported by Presidents of both major political parties, became a pillar of the post-World War II international security framework by fostering ever greater economic ties between the United States and other nations—U.S. military allies foremost among them.

Congress has always made clear when and under what conditions the Executive could implement changes to U.S. trade regulations, including statutory tariff rates. Since the Trade Act of 1974, through successive delegations of trade-negotiating authority, Congress has invariably reserved the right to approve

any agreement negotiated by the President to reduce tariffs or to address other trade regulations. Enacted barely three years after the 1974 Trade Act, IEEPA makes no mention of tariff-setting and there is no evidence at all that Congress intended IEEPA to encompass such a massive delegation of its Article I powers.

IEEPA serves a different purpose. Congress granted the President certain enumerated powers to deal with emergency-level foreign threats to the United States. Emphasizing its limited delegation of authority, Congress instructed that IEEPA powers “may only be exercised” to deal with “unusual and extraordinary” foreign threats, and “may not be exercised for any other purpose.” 50 U.S.C. § 1701(b).

To further that purpose, IEEPA empowers the Executive to “investigate, regulate, or prohibit” various financial and other transactions involving property interests of a targeted person or country. *Id.* § 1702(a)(1)(A). But the authority to “regulate” does not encompass taxation, in light of the plain meaning of “regulate,” its ordinary usage in this setting, its context in the statute, and the relevant history—including the consistent manner in which the statute has been invoked over the past 50 years.

Dating from the 1917 Trading With the Enemy Act (TWEA), IEEPA’s predecessor statute, a central focus of economic sanctions has been freezing and thereafter controlling the disposition of interests in property within U.S. jurisdiction that are attributable to a target of the sanctions. More recently, to reach a wide variety of other transactions, Presidents have deployed sanctions ranging from trade embargoes to “secondary” sanctions applicable to third parties who

enable circumvention by targets of the sanctions. In IEEPA, the term “regulate” gives the President the necessary authority to administer these controls.

The broader history of congressional actions that define and implement U.S. regulation of international trade reinforces why IEEPA is not that kind of action. Congress has enacted many laws authorizing the President to negotiate tariff and other trade agreements under specific conditions and limitations. Congress also has enacted multiple authorities for the President to take actions to address a broad range of specific economic emergencies and national security threats. Some of these laws authorize tariffs as a remedial measure available to the President. But not IEEPA: The statute includes none of the language or processes that Congress has consistently used when delegating its Article I tariff-setting authority to the Executive, and there is no hint in the statute or legislative history that it was intended to raise revenue. Using IEEPA to impose taxes improperly shortcuts the careful processes and thresholds Congress has adopted to cabin delegated tariff authority. And for authority not already granted, a President must turn to Congress.

IEEPA rightly provides Presidents a great deal of flexibility in responding to international crises. But it does not disrupt the division of responsibility—and the cooperation between the Legislative and Executive Branches on matters affecting foreign trade and commerce—that has been vital to advancing the country’s international economic interests and preserving its security. Congress enacted IEEPA in response to

presidential *overreach*. In the succeeding five decades, Presidents have implemented IEEPA (along with other related statutory authorities) to devise numerous tools to address varied international threats to U.S. national security and foreign policy—but not tariffs, and not for purposes of effecting fundamental changes in U.S. trade policy.

Stretching IEEPA beyond its plain, historical meaning to authorize the unilateral imposition of new tariffs would not just overturn the constitutional balance of powers. It would also impair the effectiveness of current and future sanctions programs. The power of U.S. sanctions is substantially amplified when the United States is able to persuade foreign nations and private actors to impose complementary restrictions of their own, and otherwise to support the U.S. initiative. This vital multiplying effect would be compromised if the United States effectively reneges on multilateral tariff agreements with the very allies it relies upon to help reinforce its sanctions efforts under IEEPA and related statutes, undermining the ability of the United States to address serious national security threats.

Further, in the experience of *amici*, foreign governments, financial institutions, and companies have accorded IEEPA sanctions programs meaningful deference because it is known to reflect serious U.S. national security and foreign policy concerns. If IEEPA becomes another trade statute, that deference will be undermined.

Based on their decades of experience working on national and international economic security matters,

as well as IEEPA sanctions regimes, *amici* are convinced that IEEPA does not include a tariff-setting power, and to read such power into IEEPA will compromise its effectiveness when the United States in the future faces truly “unusual and extraordinary” threats to its national security and foreign policy objectives—as surely will arise. *Amici* therefore respectfully urge this Court to affirm the rulings below.

ARGUMENT

I. THE CONSTITUTION GIVES CONGRESS THE POWER TO IMPOSE TARIFFS

Delegates to both the Constitutional Convention and the ratifying conventions agreed that the national government should have the power to impose tariffs and other taxes. *See, e.g.*, 1 Max Farrand, *The Records of the Federal Convention of 1787*, at 197, 342 (1966); 2 *id.* at 277; *The Federalist* No. 41, at 276 (James Madison) (Jacob E. Cooke ed., 1961); 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 191 (Jonathan Elliot ed., 2d ed. 1836). Raising revenue was, among other things, necessary to wage war. As James Madison put it, “[t]he power of levying and borrowing money” is “the sinew of that which is to be exerted in the national defence.” *The Federalist* No. 41, at 276.

But the Founding generation suffered abuses of the power to tax. They were cognizant of the potentially far-reaching political and economic impacts flowing from tariffs and other taxes. They thus sought to place that power with the branch most representative of and answerable to the people, concluding that “the legislative department alone” should

have “access to the pockets of the people.” *The Federalist* No. 48, at 334 (James Madison); see 2 Elliot, *supra*, at 195 (Oliver Ellsworth: “[D]oes it follow, because it is dangerous to give the power of the sword and purse to an hereditary prince,” that “it is dangerous to give it . . . to Congress, which is your Parliament—to men appointed by yourselves, and dependent upon yourselves?”). As the Constitution took shape, there was no doubt that *Congress* would be the proper body to control tariff policy. See 2 Farrand, *supra*, at 135 (providing in the Pinckney Plan that Congress “shall have the exclusive Power of regulating Trade and levying Imposts”); 1 Farrand, *supra*, at 243 (providing in the New Jersey Plan that Congress would be “authorized to pass acts for raising a revenue, by levying a duty or duties on all [imported] goods or merchandizes of foreign growth or manufacture”).

The Constitution’s text implements the Framers’ intent. The authority to impose “taxes, duties, imposts and excises” is the very first power that the Constitution grants to Congress in Article I, Section 8. U.S. Const. art. I, § 8, cl. 1. The Framers also gave Congress the power “[t]o regulate commerce with foreign nations.” U.S. Const. art. I, § 8, cl. 3.² The Tax-

² The Constitution also vests tariff authority in Congress vis-à-vis the states, providing that “[n]o state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws,” U.S. Const. art. I, § 10, cl. 2, and that “all such [state tariff] laws shall be subject to the revision and control of the Congress,” *id.*

ing Clause gives Congress plenary authority to determine whether, when, and how to set import tariffs. And as the text of the Constitution reflects, the power to “regulate commerce” has always meant something distinct. *See, e.g., Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 201 (1824) (holding that “the act of laying ‘duties or imposts on imports or exports’” is “a branch of the taxing power” rather than of “the power to regulate commerce”).

The President has broad constitutional authority in the field of foreign affairs, including to negotiate tariff agreements with other nations. But “[t]axation is a legislative function.” *Nat’l Cable Television Ass’n, Inc. v. United States*, 415 U.S. 336, 340 (1974) (*NCTA*). The Framers ensured that “Congress,” not the President, “is the sole organ for levying taxes”—including tariffs. *Id.* The President cannot unilaterally implement changes to congressionally approved tariffs without a legislative act of Congress.

II. SINCE 1789, CONGRESS HAS EXERCISED THE TARIFF POWER ITSELF OR DELEGATED IT WITH STRICT LIMITS

From the early days of the Republic, Congress understood that managing trade relations was an important part of American foreign policy and national security. One of Congress’s first major pieces of legislation, the Tariff Act of 1789, imposed a precise list of tariffs on a wide range of imported goods—from “ten cents” a gallon on “all distilled spirits of Jamaica proof” to a “twelve and a half per centum ad valorem” tariff on various goods “imported from China or India.” Act of July 4, 1789, ch. 2, § 1, 1 Stat. 24, 25-26; *see generally id.* §§ 1-5, 1 Stat. at 24-27. From 1789

through the Tariff Act of 1930, Congress directly set U.S. tariff rates through legislation. See D. Andrew Austin, *Tariffs and Federal Finances: A Thumbnail History* 3, Cong. Resch. Serv. (Jan. 10, 2025), https://www.congress.gov/crs_external_products/IN/PDF/IN12482/IN12482.2.pdf. Even during times of crisis, Presidents consistently submitted proposals for embargoes, commercial treaties, and other exercises in regulating foreign commerce to Congress for approval. See, e.g., Stanley Elkins & Eric McKittrick, *The Age of Federalism* 389-92 (1993) (President Washington); Jonathan Levy, *Ages of American Capitalism* 91 (2022) (Presidents Jefferson and Madison); Roger Lowenstein, *Ways and Means* 45-46, 52-53 (2022) (President Lincoln).

Starting in the 1930s, Congress began selectively delegating tariff-negotiating authority to the Executive Branch. In the Reciprocal Trade Agreements Act (RTAA) in 1934, Act of June 12, 1934, ch. 474, 48 Stat. 943, Congress authorized the President to negotiate and implement reciprocal tariff concessions without further legislative action, but required periodic renewal to preserve congressional control. See Robert A. Pastor, *Congress and the Politics of U.S. Foreign Economic Policy 1929-1976* 87, 89, 92 (1980). Pursuant to this authority, the Truman Administration led negotiations that culminated in the 1947 General Agreement on Tariffs and Trade (GATT), which established a multilateral framework for nondiscriminatory, rules-based trade. See GATT, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

Through successive renewals of the RTAA, the United States joined four additional rounds of GATT

negotiations between 1949 and 1962, continuing the reciprocal tariff-reduction process that drove average U.S. tariff rates from Depression-era highs toward single digits. See Brock R. Williams, *Trade Promotion Authority and the Role of Congress in Trade Policy* 2-3, Cong. Rsch. Serv. (2015), https://www.congress.gov/crs_external_products/RL/PDF/RL33743/RL33743.52.pdf; U.S. Int’l Trade Comm’n, *The Economic Effects of Significant U.S. Import Restraints* 59 (6th update 2009). Congress then enacted the Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 872, which renewed negotiating authority under the GATT. Notably, Section 232 of the 1962 Act authorized the Secretary of Commerce to investigate whether specific imports threaten national security, and if so, to recommend that the President “adjust” those imports by imposing or modifying tariffs or other restrictions. See *id.* § 232, 76 Stat. at 877 (codified as amended at 19 U.S.C. § 1862).

The Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978—passed only three years before IEEPA—marked a structural turning point in the interbranch approach to trade. Before the Tokyo Round of GATT negotiations, Congress replaced the RTAA’s pattern of serial extensions with a modern model of conditional and time-limited authority—known as “fast-track” or Trade Promotion Authority.³ These proce-

³ Through the fast-track model, Congress set detailed negotiating objectives and modified the rules of procedure in each body to ensure expedited consideration and an up-or-down vote without amendment. See *id.* § 151, 88 Stat. at 2001-04 (codified as amended at 19 U.S.C. § 2191).

dures provided the framework for subsequent bilateral and multilateral trade agreements until 2021, when Congress let the “fast-track” authority lapse. *See* Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114-26, § 103(c)(1)(A), 129 Stat. 320, 336 (limiting TPA coverage to agreements “entered into before July 1, 2021”). There is no current authorization to conduct general tariff negotiations with the benefit of fast-track procedures.

Section 301 of the 1974 Trade Act empowered the President, acting through the U.S. Trade Representative, to address foreign trade practices that violate agreements or unfairly burden U.S. commerce—but only after public notice, hearings, and formal determinations. *See* Trade Act of 1974, §§ 301-303, 88 Stat. at 2041-43 (codified as amended at 19 U.S.C. §§ 2411-2413).

The legacy of the past 90 years of trade legislation makes clear several important points regarding congressional delegation of tariff setting power to the Executive:

1. Multiple specific authorities empower the President to set tariffs to address various economic and national security threats, and to enforce trade agreements.
2. These authorities operate under various time limits and limitations in scope.
3. No statute currently authorizes the President to impose indefinite tariffs unilaterally either to redress trade imbalances or to implement increased tariffs to which a trading partner has agreed, or to deal

with any emergencies declared under the National Emergencies Act, whatever the basis of such a declaration may be.

III. IEEPA PROVIDES THE PRESIDENT WITH A FLEXIBLE TOOL TO ADDRESS NATIONAL SECURITY THREATS, BUT NOT THE POWER TO IMPOSE TARIFFS

Reading IEEPA to authorize taxation “is inconsistent with [both] the statutory language and past practice under the statute.” *Biden v. Nebraska*, 600 U.S. 477, 501 (2023). Unlike the many tariff-related laws that preceded it, IEEPA does not reference tariff-setting or otherwise indicate that Congress intended to delegate its Article I taxing powers. Consistent with its text, Presidents have invoked IEEPA’s several economic powers to address international crises by prohibiting various kinds of transactions and by blocking assets, but never by imposing tariffs. This Court can safely read IEEPA in keeping with the nation’s historical understanding of its terms and without impinging on the President’s ability to respond forcefully and effectively to events threatening U.S. national security.

A. History Informs the Proper Reading of IEEPA’s Text.

IEEPA was enacted against a long line of statutes granting the President certain powers regarding embargoes, sanctions, and other economic measures commonly used in foreign affairs. Tariffs have never been a part of these statutes.

1. This history begins in 1794. After initially enacting a series of short-term embargoes due to heightened tensions with Britain, Congress authorized President Washington to make decisions regarding the embargo for a period of five months while Congress was out of session. *See generally* Nicholas Parrillo, *Foreign Affairs, Nondelegation, and Original Meaning: Congress’s Delegation of Power to Lay Embargoes in 1794*, 172 U. Pa. L. Rev. 1803 (2024). Later, when Congress passed the Non-Intercourse Act in 1809 to establish an embargo on trade with Britain and France but allow trade with other countries, Congress authorized the President to terminate the embargo against either country. This Court upheld that delegation in *The Aurora v. United States*, 11 U.S. (7 Cranch) 382 (1813). During the Civil War, “Congress approved a law which prohibited transactions with the Confederacy, called for the forfeiture of goods involved in such transactions, and provided a licensing regime under rules and regulations administered by Treasury.” *About OFAC*, U.S. Dep’t of Treas., <https://ofac.treasury.gov/about-ofac>. None of these delegations gave the President any power to change the tariff rates levied on imported goods.

Enacted during World War I, the TWEA authorized the President to freeze assets—*i.e.*, to block access to property owned by enemy aliens. TWEA, Pub. L. No. 65-91, §§ 3(a), 6, 9, 40 Stat. 411, 412, 415, 419-20 (1917). It also authorized embargoes against countries that were declared enemies during the war. *Id.* § 11, 40 Stat. at 422-23. But it said nothing about tariffs, and for the next 50 years, in times of crisis and

times of peace, no President imposed tariffs under the TWEA.

In 1971, President Nixon cited a balance-of-payments crisis to declare a national emergency and impose global, across-the-board 10% “additional duties” on imports. Proclamation 4074, 85 Stat. 926 (Aug. 15, 1971). President Nixon did not cite the TWEA as authority for his action; he instead invoked the 1930 Tariff Act and the 1962 Trade Expansion Act. *Id.* But the TWEA was “cited later by the Government in response to a suit brought in Customs Court . . . challenging the surcharge.” H.R. Rep. No. 95-459, at 5 (1977).

Out of concern about the use and abuse of the TWEA, Congress passed the National Emergencies Act (NEA) in 1976. *See id.* at 6. The NEA ended all still-existing presidentially-declared national emergencies and imposed new procedural requirements for invoking emergency powers. Pub. L. No. 94-412, §§ 101-401, 90 Stat. 1255-57. Congress then amended the TWEA to limit its future application to cases of declared war, and it enacted IEEPA to authorize a more limited version of the emergency powers in non-war scenarios that the TWEA had authorized. *See* H.R. Rep. No. 95-459, at 10; Pub. L. No. 95-223, §§ 102, 201-205, 91 Stat. 1625-28 (1977).

Congress designed IEEPA to tighten the reins on the President’s emergency powers, not to ratify support for President Nixon’s import surcharge, or to otherwise convey an unprecedented, unilateral power to alter tariffs that Congress had previously approved. Certainly, IEEPA maintained significant flexibility for the President to address international crises. But

Congress believed that, “through usage and amendment, section 5(b) [of the TWEA] ha[d] become essentially 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. IEEPA was Congress’s fix for this unintended arrogation of authority.

B. IEEPA Does Not Delegate a Tariff-Setting Power.

IEEPA was not intended to be a tariff authority, and does not include any of the text—or substantive and procedural limitations—that Congress has consistently used when delegating authority relating to tariffs. Read in light of Congress’s extensive and consistent practice of delegating tariff-setting authority using specific wording, and the particular history leading to IEEPA’s passage, the word “regulate” as used in IEEPA does not cede any of Congress’s tariff authority to the Executive Branch.

1. When “interpreting this or any statute,” this Court “do[es] not aim for ‘literal’ interpretations,” nor does it “seek to indulge efforts to endow the Executive Branch with maximum bureaucratic flexibility.” *Niz-Chavez v. Garland*, 593 U.S. 155, 168 (2021). Instead, it “simply seek[s] the law’s ordinary meaning,” based on sources of meaning ranging from “grammar and dictionary definitions” to “statutory structure and history.” *Id.* at 168-69.

In IEEPA, Congress did not use any of the words it has consistently employed for over two centuries regarding matters of import taxation, such as “tariff,”

“duty,” or “impost.” *See, e.g.*, Act of Aug. 10, 1790, ch. 39, § 6, 1 Stat. 180, 182 (“duties and imposts”); Trade Expansion Act of 1962, § 232(a), 76 Stat. at 877 (“duty”); Trade Act of 1974, § 101(c)(1), 88 Stat. at 1982 (discussing alteration of “Tariff Schedules”). These are words that accord with those used in the Taxing Clause of the Constitution. *See* U.S. Const. art. I, § 8, cl. 1.

IEEPA instead uses other words that signify other powers: “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit.” 50 U.S.C. § 1702(a)(1)(B). The meaning of “regulate” in that context, as applied to imports and exports, is illuminated by the statutory history. IEEPA continued (but narrowed) the authority that its predecessor, the TWEA, granted the President to impose sanctions and embargoes. Every sanctions program promulgated since 1950 has followed the same basic regulatory template. Sanctions begin with a “blocking” mandate: a prohibition on transactions involving property, such as bank accounts, in which a targeted foreign person holds an interest. *See, e.g.*, 31 C.F.R. § 500.201 (2007) (North Korea); *id.* § 515.201 (2025) (Cuba); *id.* § 589.201 (Russia). Those mandates are then followed by prohibitions on other types of transactions to effect the purposes of the particular program. Between the 1950 North Korea sanctions and early 2024, Presidents invoked TWEA and IEEPA authority to implement over 70 sanctions programs using this blocking-plus-transactions control template. *See* Christopher A. Casey & Jennifer K. Elsea, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 6, 15,

Cong. Rsch. Serv. (2024), https://www.congress.gov/crs_external_products/R/PDF/R45618/R45618.16.pdf; *Sanctions Programs and Country Information*, U.S. Dep’t of Treas., <https://ofac.treasury.gov/sanctions-programs-and-country-information>.

These economic sanctions programs all are administered by the appropriately named “Office of Foreign Assets Control” (OFAC), a unit of the Department of the Treasury, in conjunction with other agencies. OFAC cannot manage blocked property, or handle the countless types of transactions and individual situations that arise under a normal sanctions program, without issuing regulations. Most obviously, such regulations establish the basic legal scope of a program and its rules of the road. *See, e.g.*, 31 C.F.R. part 535 (regulating Iran sanctions regime). But maintaining a workable sanctions program requires OFAC to be able to issue general and specific licenses to enable lawful uses of what otherwise might be sanctionable property. *See, e.g.*, TWEA, § 3(a), 40 Stat. at 412 (prohibiting trade “except with the license of the President”); 31 C.F.R. § 501.801 (describing procedures for general and specific licenses). These licensing actions could not be undertaken without authority to “regulate,” as both the TWEA and IEEPA recognize. *See* 50 U.S.C. § 1702(a)(1)(A) (stating that “the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise . . . regulate” certain foreign transactions); TWEA, § 3(c), 40 Stat. at 413 (enabling people to trade if they “shall obtain the license or consent of the President, under such rules and regulations, and with

such exemptions, as shall be prescribed by the President”). “Regulate,” in this context, plainly means the authority to block property interests and to regulate transactions involving targets of the sanctions.⁴

The government’s attempt to recast the word “regulate” conflicts not only with the history of sanctions law, but also with Congress’s long record of using specialized words when legislating tariff authorities. The Trade Act of 1974, for instance, authorizes the President to issue “regulation[s]” to administer some of the statute’s provisions, *e.g.*, § 203(g)(1), 88 Stat. at 2017. But where the law grants the President power to impose tariffs it employs tariff-specific words. *See, e.g., id.* §§ 101 (“duties”), 301(a)(4)(B) (“impose duties”), 88 Stat. at 1982, 2042.

Congress’s more specific references to tariffs in the 1974 Trade Act make it particularly implausible that the word “regulate” in IEEPA includes tariff-setting authority. In the Trade Act, Congress carefully prescribed the conditions under which the Executive could negotiate tariff changes, *id.* §§ 101, 102(b)-(d), 88 Stat. at 1982-83, and subjected tariff agreements to congressional approval, *id.* § 102(d)-(e), 88 Stat. at 1983. Congress passed the Trade Act only one year before taking up the proposed legislation that became IEEPA. Given the care with which Congress circumscribed the President’s tariff-alteration authority in

⁴ OFAC lists at least 40 statutory authorities related to sanctions programs that it administers, in addition to IEEPA and the TWEA. OFAC cautions that it “is not an exhaustive list.” *United States Statutes*, U.S. Dep’t of Treas., <https://ofac.treasury.gov/additional-ofac-resources/ofac-legal-library/united-states-statutes> (last visited Oct. 22, 2025).

the Trade Act, it is inconceivable that Congress would then incorporate into IEEPA an authority to impose tariffs on any or every country at any rate and for any length of time the President chooses, in his absolute discretion, without saying as much in the statutory text.

Likewise, history teaches that IEEPA's authorization of embargoes (or related concepts, like import quotas) does not mean that it authorizes tariffs. *Contra* U.S. Br. 29. As this Court explained in *Gibbons*, embargoes are a regulation of "navigation" and thus fall within Congress's power to "regulate commerce," 22 U.S. (9 Wheat.) at 192-93, while "the act of laying 'duties or imposts on imports'" is "a branch of the taxing power," which is "distinct" from the power to regulate commerce, *id.* at 201. Evidencing this distinction, Congress included the power to declare embargoes in the TWEA's text, but not authority to impose tariffs. *See supra* at 14-15.

The conceptual distinction between embargoes and tariffs traces back to the Founding (and earlier), as demonstrated both by this Court's discussion in *Gibbons* and by Congress's separate treatment of the two powers in early statutes. *See supra* at 14. But one need not rely on the word "regulate" to know that IEEPA allows for embargoes, because Section 1702 separately authorizes the President to "prevent or prohibit" the "importation" of property. 50 U.S.C. § 1702(a)(1)(B).

3. What the statutory text and history make plain, the major questions doctrine confirms. This Court has held that in "extraordinary cases," "the history and the breadth of the authority that [the President]

has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (internal quotations omitted). The major questions doctrine reflects “the commonsense interpretive maxim that Congress does not usually ‘hide elephants in mouseholes’ when granting authority to the President.” *FCC v. Consumers’ Rsch.*, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring).⁵

In this case, “the economic and political significance of the [President’s] action is staggering by any measure.” *Nebraska*, 600 U.S. at 502 (internal quotation marks omitted). The President already has imposed new tariffs, often by high double-digit percentages, on nearly every country in the world. *See, e.g.*, Exec. Order No. 14,257, 90 Fed. Reg. 15041 (Apr. 2, 2025) (imposing a 10% universal tariff plus additional country-specific tariffs ranging from 11% to 50%); Exec. Order No. 14,193, 90 Fed. Reg. 9113 (Feb. 1, 2025) (raising tariffs on Canada); Exec. Order No. 14,194, 90 Fed. Reg. 9117 (Feb. 1, 2025) (Mexico); Exec. Order No. 14,195, 90 Fed. Reg. 9121 (Feb. 1, 2025) (China). In some cases, those tariffs have been modified or postponed, while in multiple other instances the President has threatened still further tariff increases. *See, e.g., US Will Impose Additional 100% Tariff on Chinese Imports from November, Trump Says*, Reuters (Oct. 10, 2025),

⁵ That IEEPA delegates to the President directly makes no difference, because “[d]elegations to executive officers and agencies are *de facto* delegations to the President.” *Id.* at 2512 n.1.

<https://www.reuters.com/world/china/us-will-impose-additional-100-tariff-chinese-imports-november-trump-says-2025-10-10>. One recent analysis by Standard & Poor’s found that these tariffs likely will cost global business over \$1.2 trillion in 2025, “with most of the cost being passed onto consumers.” Jeff Cox, *Tariff Costs to Companies This Year to Hit \$1.2 Trillion, With Consumers Taking Most of the Hit, S&P Says*, CNBC (Oct. 16, 2025), <https://www.cnbc.com/2025/10/16/tariff-costs-to-companies-this-year-to-hit-1point2-trillion-with-consumers-taking-most-of-the-hit-sp-says.html>. This potential impact is over twenty times “the ‘economic impact’ that [this Court] found significant in concluding that an eviction moratorium . . . triggered analysis under the major questions doctrine,” and over twice the economic impact of President Biden’s student loan forgiveness program. *Nebraska*, 600 U.S. at 502-03.

But this is just the tip of the iceberg in terms of the impact the government’s proffered reading of IEEPA could have. IEEPA’s power to “regulate” applies far beyond just “importation” of goods. 50 U.S.C. § 1702(a)(1)(B). As shown by the breadth of OFAC regulations, IEEPA empowers the President to regulate almost any type of transaction involving a target party or party’s property interest, even where such an interest was acquired before the effective date of applicable sanctions. *Id.* Reading “regulate” in IEEPA to include taxation, then, would grant the President essentially unbounded authority to tax all property and transactions that are within the jurisdictional reach of the sanctions. Such a power would be all the more sweeping and dangerous if this Court also were

to find—as the government urges—that a President’s declaration of a national emergency and determination that a circumstance amounts to an “unusual and extraordinary threat” are political questions outside the scope of judicial review. *See* U.S. Br. 41-42.

Further, there is no textual or other basis in Section 1702 of IEEPA by which to conclude that Congress authorized the renegotiation of scores of trade agreements after first imposing tariffs as a negotiating tactic, and then presumably declaring final rates—on a country-by-country basis—derived from those negotiations. The word “regulate” in IEEPA cannot plausibly bear this weight, a proposition that triggers precisely the sort of “elephants in mouseholes” concern that the major questions doctrine is designed to combat. *Consumers’ Rsch.*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring).

Nor does it matter here whether the major questions doctrine is inapplicable to foreign policy, U.S. Br. 34-35, because the relevant question is whether Congress has delegated its *taxing* powers. *See* Part I, *supra*. That is an area in which this Court has long applied a major-questions or clear-statement-rule doctrine. *See, e.g., King v. Burwell*, 576 U.S. 473, 485 (2015) (applying major questions doctrine and refusing to defer to agency’s view of scope of Affordable Care Act’s “tax credits”). Indeed, only two years before Congress began debating IEEPA, this Court held that “[i]t would be such a sharp break with our traditions to conclude that Congress had bestowed on a federal agency the taxing power that” the Court interpreted a statute “narrowly as authorizing not a ‘tax’

but a ‘fee’” for receiving voluntary government benefits. *NCTA*, 415 U.S. at 341.

Because “[t]he basic and consequential tradeoffs inherent in a” near-limitless tariff authority “are ones that Congress would likely have intended for itself,” the government must “point to clear congressional authorization to justify” the President’s tariffs. *Nebraska*, 600 U.S. at 506 (internal quotations omitted). It cannot. To be sure, Congress has enacted many laws since the 1790s authorizing the President to address economic emergencies and national security threats. But, acutely aware of its Article I, Section 8 powers, Congress has carefully delimited its delegation of those powers to the President. For nearly a century, Congress has spoken consistently and unambiguously when it has granted the President tariff-setting authority. *See* Part II, *supra*. Against this backdrop, it defies reason to contend that hidden in IEEPA’s grant of power to “regulate” imports is a previously unrecognized delegation of tariff-setting authority.

C. Presidents’ Consistent Implementation of the Statute Confirms That IEEPA Does Not Empower Presidents To Impose Tariffs.

For nearly 50 years, Presidents of both major political parties have invoked IEEPA consistent with the statute’s intended purpose to address discrete threats to U.S. national security or foreign policy. But also in alignment with IEEPA’s text, none of these actions have involved tariffs.

As discussed above, Presidents’ past uses of IEEPA have focused on controlling assets of and transactions involving targeted nations and persons. Particularly since the 1990s, the scope and use of sanctions have continually evolved in breadth and complexity. For example, Presidents implemented “secondary sanctions” to discourage nationals of third-party nations from engaging in transactions outside of U.S. jurisdiction that contravene the objectives of the sanctions. *E.g.*, Office of Spokesperson, Fact Sheet, *Sanctioning Entities Trading in Iranian Petroleum and Petrochemicals*, Dep’t of State (Oct. 9, 2025), <https://www.state.gov/releases/office-of-the-spokesperson/2025/10/sanctioning-entities-trading-in-iranian-petroleum-and-petrochemicals> (announcing secondary sanctions against “approximately 40 individuals, entities, and vessels” that “have been involved in the trade of Iranian petroleum and petrochemical products”). In addition to targeting countries, Presidents have applied primary sanctions programs to categories of *persons*—for instance, by sanctioning terrorist organizations, *e.g.*, Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 23, 2001), drug traffickers, *e.g.*, Exec. Order No. 12,978, 60 Fed. Reg. 54579 (Oct. 25, 1995), and human rights violators, *e.g.*, Exec. Order No. 13,818, 82 Fed. Reg. 60839 (Dec. 20, 2017).

Besides expanding the range of transaction controls devised under IEEPA’s core authorities, Presidents may also turn to numerous other tools distinctly authorized by IEEPA, such as imposing embargoes or import/export quotas. *See* 50 U.S.C. § 1702(a)(1)(B);

supra at 17. And in case of “armed hostilities” or foreign attack, the President also has the power to confiscate property for the benefit of the United States. 50 U.S.C. § 1702(a)(1)(C).

The breadth of IEEPA’s authority is shown, for example, by the sanctions announced in response to Russia’s 2014 invasion of the Crimean territory within Ukraine. Through OFAC regulations, the United States imposed a trade and investment embargo, banning all imports from, and exports to or investment in, the invaded region. 31 C.F.R. §§ 589.207-.208. President Obama also issued executive orders that froze the assets of individuals involved in either various activities threatening Ukraine or various sectors of the Russian economy. *Id.* § 589.201(a)(1)-(5). President Biden dramatically expanded the scope of these restrictions, including by issuing multiple new Executive Orders, after Russia’s invasion of Ukraine in 2022. *See* Exec. Order No. 14,065, 87 Fed. Reg. 10293 (Feb. 21, 2022). And in 2019, President Trump invoked IEEPA to establish an Information Communications Technology Security program to limit use of foreign telecommunications technology. Exec. Order No. 13,873, 84 Fed. Reg. 22689 (May 15, 2019).

In short, IEEPA provides the President with many far-reaching powers to deal with threats to U.S. national security and foreign policy objectives. Its consistent interpretation by Presidents for five decades confirms that the statute does not grant the power to tax property or commerce in the form of tariffs.

IV. CASTING IEEPA AS A NEW TRADE-NEGOTIATING AUTHORITY UNDERCUTS THE POWER OF SANCTIONS TO FOSTER GLOBAL ALIGNMENT WITH U.S. POLICY GOALS

IEEPA lends the vital backbone to the Executive Branch’s ability to respond quickly, nimbly, and effectively to truly “unusual and extraordinary” national emergencies. Its strength derives in part from the fact that foreign governments, financial institutions, and multinational companies view an IEEPA-issued Executive Order as an emergency measure, signaling the most serious U.S. national security concerns. The novel application of the statute urged here risks undermining the ability of this President and future Presidents to use IEEPA, as Congress intended, to address foreign policy crises.

When the United States announces sanctions under IEEPA, foreign actors take heed in ways that are not necessarily compelled by the U.S. rules—because U.S. jurisdiction does not apply—but that have the effect of greatly augmenting the sanctions’ impacts. For example, although not legally required, a foreign bank may implement measures to ensure compliance with U.S. sanctions regulations just as a U.S. bank would do. In other cases, the foreign bank may not prohibit all transactions that are prohibited in respect of U.S. banks, but it will implement a system to screen the names and accounts of sanctioned parties to enable enhanced due diligence before a flagged transaction is permitted. Another response by a company may be to refuse to establish new accounts or enter into new contracts with a party sanctioned by the

United States, without terminating arrangements pre-dating the sanctions. Similarly, foreign governments may decide not to implement sanctions in line with the United States, but nevertheless take steps to prevent companies within their jurisdiction from “backfilling” business or investments that U.S. firms must exit because of U.S. sanctions.

All of these steps magnify the pressure on U.S. adversaries, helping to ameliorate threats and to advance U.S. national security goals. But if IEEPA is opened to Presidents for use as a more convenient way to levy tariffs (especially against allied countries), then foreign governments and companies will come to view the law as a ready tool to invoke punitive economic measures against them for reasons having nothing to do with cooperating to face threats shared with the United States. If other countries come to view IEEPA as a trade measure, it will become a source of friction—not a signal of an emergency inviting cooperation. The resonance of IEEPA-sanctions executive orders to foreign audiences will be diluted in a way that undermines U.S. national security goals.

This highly foreseeable consequence poses profound economic and foreign policy ramifications that would frustrate, not serve, Congress’s goals in enacting IEEPA. Those adverse consequences reinforce what the statute’s text and history make plain: In IEEPA, Congress did not delegate its authority to determine when and how tariffs may be imposed.

CONCLUSION

For the foregoing reasons, this Court should affirm the rulings below.

Respectfully submitted,

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October 24, 2025

APPENDIX

APPENDIX A: List of <i>Amici Curiae</i>	1a
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APPENDIX A
LIST OF *AMICI CURIAE*⁶

David S. Cohen

Acting Director of the Central Intelligence Agency
(2021)

Deputy Director of the Central Intelligence Agency
(2021-2025, 2015-17)

Under Secretary of the Treasury for Terrorism and
Financial Intelligence (2011-2015)

Assistant Secretary of the Treasury for Terrorist Fi-
nancing (2009-2011)

Jonathan Finer

Principal Deputy National Security Advisor (2021-
2025)

Avril Haines

Director of National Intelligence (2021-2025)

Principal Deputy National Security Advisor (2015-
2017)

Deputy Director of the Central Intelligence Agency
(2013-2015)

Theodore W. Kassinger

Deputy Secretary of Commerce (2004-2005)

General Counsel, Department of Commerce (2001-
2004)

⁶ Former governmental positions are provided for identifica-
tion purposes only. *Amici* join this brief in their individual ca-
pacities; the views expressed in this brief do not reflect the views
of the institutions with which *amici* are or have been affiliated.

Jacob J. Lew

Secretary of the Treasury (2013-2017)

White House Chief of Staff (2012-2013)

Director of the Office of Management and Budget
(1998-2001)

Jake Sullivan

National Security Advisor (2021-2025)

National Security Advisor to the Vice President
(2013-2014)

Director of Policy Planning, Department of State
(2011-2013)

Adam Szubin

Acting Under Secretary of the Treasury for Terror-
ism and Financial Intelligence (2015-2017)

Director, Office of Foreign Assets Control, Depart-
ment of the Treasury (2006-2015)

Kevin J. Wolf

Assistant Secretary of Commerce for Export Admin-
istration (2010-2017)