

No. 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.

(For continuation of caption, see inside cover.)

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 EMILY LEY PAPER, INC., D/B/A SIMPLIFIED;
KILO BRAVA LLC; BAMBOLA LLC; ROKLAND LLC;
FIREDISC, INC.; THE GAME MANUFACTURERS ASSOC.;
AND THE NEW CIVIL LIBERTIES ALLIANCE
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS
IN NO. 24-1287 AND RESPONDENTS IN NO. 25-250**

John J. Vecchione
Counsel of Record
Andrew J. Morris
Markham S. Chenoweth
NEW CIVIL LIBERTIES ALLIANCE
4250 N. Fairfax Dr., Ste. 300
Arlington, VA 22203
Phone: (202) 869-5210
john.vecchione@ncla.legal
Counsel for Amici Curiae

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

Petitioners,

v.

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

Respondents.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTEREST OF AMICI CURIAE	1
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT	6
I. THE COURT SHOULD HOLD THAT THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT DOES NOT AUTHORIZE TARIFFS	6
A. IEEPA Does Not Contain the Language the Constitution and Tariff Statutes Use for Tariffs	6
B. “Regulate” Does Not Mean “Tariff”	15
II. JURISDICTION LIES IN THE DISTRICT COURT UNDER IEEPA, NOT IN THE COURT OF INTERNATIONAL TRADE BASED ON HTSUS MODIFICATIONS OR THE EXECUTIVE ORDERS	23
A. Because Jurisdiction and Merits Inquiries Overlap, this Court Should Interpret IEEPA to Decide Jurisdiction...	23
B. The Challengers’ Claims Arise out of IEEPA, and Not out of the HTSUS Modifications or the Executive Orders.....	25
1. This Action “Arises” Only out of IEEPA, Not the Executive Orders or HTSUS Modifications	27

2. The HTSUS Modifications and Executive Orders Are Not “Laws of the United States” in this Context.....	29
CONCLUSION	31

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Am. Air Parcel Forwarding Co. v. United States</i> , 515 F. Supp. 47 (Ct. Int'l Trade 1981)	27
<i>Bolivarian Republic of Venez. v. Helmerich & Payne Int'l Drilling Co.</i> , 581 U.S. 170 (2017).....	24
<i>Brownback v. King</i> , 592 U.S. 209 (2021).....	24
<i>Christianson v. Colt Indus. Operating Corp.</i> , 486 U.S. 800 (1988).....	27, 28
<i>City of New York v. FCC</i> , 486 U.S. 57 (1988).....	30
<i>Corley v. United States</i> , 556 U.S. 303 (2009).....	9
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018).....	9
<i>Exxon Mobil Corp. v. Allapattah Servs., Inc.</i> , 545 U.S. 546 (2005).....	22
<i>Feliciano v. Dep't of Transp.</i> , 145 S.Ct. 1284 (2025).....	16
<i>Fischer v. United States</i> , 603 U.S. 480 (2024).....	17

<i>Garland v. Aleman Gonzalez</i> , 596 U.S. 543 (2022).....	24
<i>Gibbons v. Ogden</i> , 22 U.S. (9 Wheat.) 1 (1824).....	20, 21
<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006).....	18
<i>Gully v. First Nat’l Bank</i> , 299 U.S. 109 (1936).....	27, 28
<i>INS v. Chadha</i> , 462 U.S. 919 (1983).....	14, 15
<i>K Mart Corp. v. Cartier, Inc.</i> , 485 U.S. 176 (1988).....	24, 25
<i>King v. Burwell</i> , 576 U.S. 473 (2015).....	9
<i>Lamie v. U.S. Trustee</i> , 540 U.S. 526, 538 (2004).....	9
<i>Learning Resources, Inc. v. Trump</i> , 784 F. Supp. 3d 209 (D.D.C. 2025).....	5, 6, 7, 14, 16, 28, 29
<i>Loper Bright Enters. v. Raimondo and Relentless, Inc. v. Dep’t of Com.</i> , 603 U.S. 369 (2024).....	9
<i>M’Culloch v. Maryland</i> , 17 U.S. (4 Wheat.) 316 (1819).....	4
<i>Medellín v. Texas</i> , 552 U.S. 491 (2008).....	30

<i>Merrell Dow Pharms., Inc. v. Thompson</i> , 478 U.S. 804 (1986).....	27
<i>Michael Simon Design, Inc. v. United States</i> , 609 F.3d 1335 (Fed. Cir. 2010).....	24
<i>Moore v. United States</i> , 602 U.S. 572 (2024).....	5
<i>Sprint Commc'ns, Inc. v. Jacobs</i> , 571 U.S. 69 (2013).....	24
<i>Steel Co. v. Citizens for a Better Env't</i> , 523 U.S. 83 (1998).....	23
<i>The Conqueror</i> , 166 U.S. 110 (1897).....	10
<i>United States v. Heinszen</i> , 206 U.S. 370 (1907).....	30, 31
<i>United States v. Yoshida Int'l, Inc.</i> , 526 F.2d 560 (C.C.P.A. 1975)	19
<i>Util. Air Regul. Grp. v. EPA</i> , 573 U.S. 302 (2014).....	10
<i>V.O.S. Selections, Inc. v. Trump</i> , 149 F.4th 1312 (2025).....	5, 6
<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001).....	18
<i>Yates v. United States</i> , 574 U.S. 528 (2015).....	17, 18

<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	30
---	----

Statutes

19 U.S.C. § 1862(a)	12
19 U.S.C. § 2132	14
19 U.S.C. § 2132(a)(3)(A)	12
19 U.S.C. § 2252(e)(2)(A)	13
19 U.S.C. § 2411	14
19 U.S.C. § 2411(c)(1)(B)	13
19 U.S.C. § 3004(c)(1)(C)	29, 30
28 U.S.C. § 1581(i)(1)(B)	25
28 U.S.C. § 1581(i)(1)(D)	25
50 U.S.C. § 1701(a)	8
50 U.S.C. § 1702(a)(1)(B)	8, 13, 17, 18
50 U.S.C. § 1706(b)	14
Anti-Smuggling Act of 1935, codified as amended at 19 U.S.C. §§ 1701, 1703-1706a, 1709-1711	19
International Emergency Economic Powers Act, Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (1977) ..	4, 13, 15, 19
Pub. L. 99-93, § 801, 99 Stat. 405, 448	15
Reciprocal Trade Agreements Act, Pub. L. No. 73-316, 48 Stat. 943 (1934)	12

Tariff Act of 1789, ch.2, 1 Stat 24	10
Tariff Act of 1790, ch. 35, 1 Stat. 145.....	11
Tariff Act of 1816, ch. 107, 3 Stat. 189 or 310	11
Tariff Act of 1828, ch. 55, 4 Stat. 270.....	11
Tariff Act of 1890, ch. 1244, 26 Stat. 567.....	11
Tariff Act of 1930, Pub. L. No. 71-361,46 Stat. 590.....	12
Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975)	12, 13
Trade Expansion Act, Pub. L. No. 87-794,76 Stat. 872, 877 (1962)	12
Other Authorities	
Daniel Webster, <i>Second Reply to Hayne, January 26 and 27, 1830,</i> in ROBERT C. BYRD, THE SENATE 1789-1989: CLASSIC SPEECHES 1830-1993, VOL. 3 (1994)	23
Eric R. Bolinder, <i>Seizing the Duty of Congress: The President's</i> <i>Unilateral Implementation of Tariffs is</i> <i>Unconstitutional,</i> 101 Ind. L.J. Supp. 1 (2025)	4

<i>Executive Orders,</i>	
The Am. Presidency Project (Oct. 15, 2025)	27
Fin Daniel Gomez & Anne Bryson,	
<i>Trump Sets Executive Order Record in First 100</i>	
<i>Days</i> , CBS News (Apr. 29, 2025, 7:02 AM)	27
H.R. Rep. No. 95-459 (1977)	20
<i>Letter from James Madison to Joseph C. Cabell</i>	
<i>(Sept. 18, 1828),</i>	
<i>in 9 THE WRITINGS OF JAMES MADISON 316</i>	
(Gaillard Hunt ed. 1910).....	23
Tom Campbell,	
<i>Presidential Authority to Impose Tariffs,</i>	
83 La. L. Rev. 595 (2023)	15
Constitutional Provisions	
U.S. Const. art. I, § 8, cl. 1	16
U.S. Const. art. I, § 8, cl. 3	16
U.S. Const. art. I, § 9, cl. 5	17

INTEREST OF AMICI CURIAE¹

Amici curiae are small businesses grievously harmed by the illegal tariffs imposed by the Executive Branch, an association of such businesses, and the New Civil Liberties Alliance, which represents these *amici* in original litigation against the tariffs. They include the Plaintiff in the first filed case in the country against the tariffs, *Emily Ley Paper, Inc., d/b/a Simplified v. Trump*, No. 3:25-cv-464-TKW-ZCB (N.D. Fla. Apr. 3, 2025). Simplified and its co-plaintiffs were transferred to the Court of International Trade (“CIT”) under the theory that the International Emergency Economic Powers Act (“IEEPA”) is a tariff statute with exclusive jurisdiction. The case is stayed there. FIREDISC, Inc. and its co-plaintiffs filed a case in Texas that was stayed when this Court granted *certiorari* in the instant matters. *FIREDISC, Inc. v. Trump*, No. 1:25-cv-011340DAE (W.D. Tex. July 21, 2025). *Amici* (or their clients or members) have all have paid the illegal tariffs and are poised to pay more. They collectively import from Australia, Bangladesh, China, Colombia, India, Italy, Morocco, the Philippines, Taiwan and Turkey. Many have cut back or delayed production. Unilateral tariff changes being made at the whim of a single actor undermines the ability of *amici* to make business plans for the future.

¹ Pursuant to Rule 37.6, no party’s counsel authored any part of this brief. No person or entity, other than *amici curiae* and their counsel, paid for the brief’s preparation or submission.

Emily Ley Paper, Inc, d/b/a Simplified, is a Florida corporation with its principal place of business in Pensacola, Florida. It sells premium planners, organizational tools, and home management products.

Kilo Brava LLC is a Florida limited liability company with its principal place of business in Sarasota, Florida. It designs and sells luxury loungewear, sleepwear, and swimwear.

Bambola LLC is a Florida limited liability company with its principal place of business in Sarasota, Florida. It sells luxury loungewear, sleepwear, and swimwear.

Rokland LLC is a Florida limited liability company with its principal place of business in Gainesville, Florida. It designs and distributes electronic products.

FIREDISC, Inc. is a Delaware corporation with its principal place of business in Katy, Texas. It manufactures and sells outdoor cooking products.

The Game Manufacturers Association (GAMA) is a nonprofit trade organization representing the vibrant and growing tabletop games industry in the United States. With approximately 1,500 member companies employing tens of thousands of workers—including creators, publishers, manufacturers, and retailers—GAMA champions their shared goal of expanding access to and engagement with board and card games in a \$10 billion domestic market.

The New Civil Liberties Alliance (“NCLA”), which represents *amici* in the underlying tariff lawsuits, is a

nonpartisan, nonprofit civil rights organization and public-interest law firm devoted to defending constitutional freedoms from the administrative state's depredations. Professor Philip Hamburger founded NCLA to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other advocacy.

SUMMARY OF THE ARGUMENT

In a flurry of Executive Orders, the President asserted the unprecedented authority to impose new tariffs on any imports, from any country, in any amount he chooses. The President has issued, postponed, and rescinded Executive Orders raising or lowering tariffs without notice, seemingly at whim. These Executive Orders have upended the tariff system that Congress designed and enacted over a course of decades. He has dressed the Executive Orders (the “Tariff Executive Orders”) in the guise of an “emergency” by citing the International Emergency Economic Powers Act, or “IEEPA,” Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (1977).

The President lacks the inherent authority to raise tariffs unilaterally, and IEEPA does not give it to him. Emergency or no, IEEPA does not authorize tariffs—it has nothing to do with them. “An unlimited power to tax involves, necessarily, a power to destroy.” *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 327 (1819). Congress did not in IEEPA confer such vast destructive power in one man, divesting itself of the power it has used longest of every power existing in Article I of the Constitution.² Whatever view of jurisdiction it takes, the Court should adopt the pure textualist and originalist approach of Judge

² See Eric R. Bolinder, *Seizing the Duty of Congress: The President’s Unilateral Implementation of Tariffs Is Unconstitutional*, 101 Ind. L.J. Supp. 1, 10 (2025) (arguing the Founders did not trust the tariff power to a unicameral legislature, much less one man).

Contreras in *Learning Resources, Inc. v. Trump*, 784 F. Supp. 3d 209, 223-230 (D.D.C. 2025), and the nearly *in pari materia* concurrence of the Federal Circuit in *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1340-47 (2025), and put a stake through the heart of this effort by the Executive Branch to arrogate Legislative Branch powers unto itself.

The text of the statute and the rules of statutory construction are so clear that this Court does not need to address the nondelegation doctrine, nor even the Major Questions Doctrine, to reject the Government’s arguments. “Regulate” pellucidly does not mean “tax,” “tariff,” “Impost” or “Duty.” But should the Court invoke those doctrines, it would find additional support to declare the Tariff Executive Orders and follow-on changes to the tariff schedules unlawful.

As IEEPA is not a tariff statute, and the *Learning Resources* Respondents had no claim “arising” from a tariff statute, the district court had jurisdiction.

The Court should hold that jurisdiction lies in the district court rather than the Court of International Trade. It should affirm the district court’s judgment on the grounds stated in that court’s opinion, 784 F. Supp. 3d at 223-230, and remand to the district court for nationwide relief as “duties, imposts, and excise taxes” “must be uniform throughout the United States.” *See Moore v. United States*, 602 U.S. 572, 583 (2024) (citing Art. 1, § 8, cl. 1). If the Court rules that jurisdiction lies in the Court of International Trade, it should affirm the Federal Circuit’s decision on the grounds stated in the concurrence, 149 F.4th at 1340-47, and remand with the same universal relief order.

ARGUMENT

I. THE COURT SHOULD HOLD THAT THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT DOES NOT AUTHORIZE TARIFFS

A. IEEPA Does Not Contain the Language the Constitution and Tariff Statutes Use for Tariffs

Upon petitions for a writ of *certiorari* before judgment by the Solicitor General and *Learning Resources*, this Court took the extraordinary step of granting those requests and addressing the question of whether IEEPA allows the President to issue ukases on tariffs.³ Despite the fact that other tariff cases are stayed across the country pending this Court's resolution of the issue, the Court already has the benefit of the views of 15 jurists,⁴ and all but four have struck these tariffs as unlawful. The best reading of the statutory text under its plain meaning and this Court's precedent is that IEEPA grants the President no tariff authority at all. *See Learning Resources*, 784 F. Supp. 3d at 230 (“[B]ecause IEEPA does not authorize the President to impose tariffs, the tariffs that derive from the Challenged Orders are *ultra vires*.”); *V.O.S. Selections*, 149 F.4th at 1340

³ While *V.O.S. Selections Inc. et al.* are “Respondents” and *Learning Resources et al.* are “Petitioners,” *amici* will refer to them collectively as “Challengers.”

⁴ Three judges in the CIT, 11 at the Federal Circuit and Judge Contreras of the U.S. District Court for the District of Columbia.

(Cunningham, J., concurring) (“While we agree with the majority that [IEEPA] does not grant the President authority to impose the type of tariffs imposed by the Executive Orders, we write separately to state our view that IEEPA does not authorize the President to impose any tariffs.”) (citations omitted). The District Court and the concurrence in the Federal Circuit most closely follow the text of IEEPA and this Court’s precedent and should guide the result here.

As the Challengers have ably described, IEEPA was a successor to the Trading with the Enemy Act (“TWEA”) and was passed to *lessen* Presidential power in emergencies. Br. for Private Respondents at 28, No. 25-250; Br. for State Respondents at 5, No. 25-250; Resp. Br. for Petitioner Learning Resources, Inc. at 42-44, No. 24-1287. Critically, the very power the Government asserts here was addressed by Congress *before* passing IEEPA. It passed § 122 of the Trade Act of 1974 in the wake of President Nixon’s actions. Section 122 authorizes the President to respond to balance-of-payments emergencies by imposing import surcharges, which it limits to 15 percent and 150 days. 19 U.S.C. § 2132(a). *See Learning Resources*, 784 F.Supp. 3d at 229. Congress needed to do nothing to ratify President Nixon’s surcharges if it really thought that the TWEA language provides that power. The Government’s argument is akin to positing that because Congress ratified President Lincoln’s prior suspension of *habeas corpus* upon returning to session in the Civil War, it has already approved any President’s subsequent suspension of *habeas corpus*. *See Habeas Corpus Suspension Act of 1863*, ch. 81, 12 Stat. 755 (1863).

Having already addressed the imposition of tariffs in response to balance-of-trade issues in 1975, Congress turned to addressing what a President's emergency powers should be in IEEPA.

IEEPA authorizes the President to take certain actions after declaring a national emergency because of an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States." 50 U.S.C. § 1701(a). The subparagraph at issue here, 50 U.S.C. § 1702, identifies the permitted actions. It authorizes the President to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit" certain transactions and property. 50 U.S.C. § 1702(a)(1)(B).

It then identifies the categories of transactions and property the authorized actions may address:

any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.

Id.

Conspicuously absent from this detailed paragraph is any reference to tariffs, imposts, duties or taxes. That glaring absence should defeat the President's assertions that IEEPA authorizes tariffs,

because statutory silence cannot be construed as a delegation of authority—as this Court very recently emphasized. See *Loper Bright Enters. v. Raimondo* and *Relentless, Inc. v. Dep’t of Com.*, 603 U.S. 369, 400 (2024). The courts will also not read absent words into a statute. *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (noting the canon against adding absent words to a statute and stating, “With a plain, nonabsurd meaning in view, we need not proceed in this way”).

In *King v. Burwell*, this Court explained “we must read the words [of a statute] in their context and with a view to their place in the overall statutory scheme [A court’s] duty, after all, is to construe statutes, not isolated provisions.” 576 U.S. 473, 486 (2015) (cleaned up). Here the “overall statutory scheme” must include Title 19 and its tariff delegations to the President. Otherwise, the Court risks making all of Title 19 superfluous, not just a portion of a statute. See *Corley v. United States*, 556 U.S. 303, 314 (2009) (“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” (cleaned up)).

Congress knows how to create a tariff statute and has done it for hundreds of years now. From the very first, Congress used certain specific language to impose or authorize tariffs. Those detailed provisions show that “when Congress wants to” allow the President to impose duties, imposts or tariffs, “it knows exactly how to do so.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 514 (2018) (Congress used specific language in prior statutes addressing the same subject matter).

IEEPA’s silence on tariffs contrasts with the specific references to “tariffs” and “duties” Congress has used in actual tariff statutes, showing that Congress “speak[s] clearly” when it authorizes tariffs. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). “By the very first act passed by [C]ongress in 1789, subsequent to an act for administering oaths to its own members, a duty was laid upon ‘goods, wares and merchandise,’ imported into the United States.” *The Conqueror*, 166 U.S. 110, 118 (1897). This statute, titled “An Act for laying a Duty on Goods, Wares, and Merchandises imported into the United States,” stated that “duties Shall be laid” on specified items. Tariff Act of 1789, ch. 2, § 1, 1 Stat 24. There is no older substantive action of Congress than issuing tariff statutes. Congress knew how to do it in 1789, and it did not lose that knowledge or ability in subsequent centuries.

Since 1789, Congress has continued to write tariff legislation using similar language, as the following examples show.

Year	Statute	Text
1789	Tariff Act of 1789, ch. 2, 1 Stat 24 ⁵	“ duties [shall] ... be laid.” (<i>Id.</i> § 1.)

⁵ Repealed by the Tariff Act of Aug. 10, 1790, ch. 39, § 1, 1 Stat. 180.

Year	Statute	Text
1790	Tariff Act of 1790, ch. 35, 1 Stat. 145, 180 ⁶	“ duties ... shall be levied” (<i>Id.</i> § 1.)
1816	Tariff Act of 1816, ch. 107, 3 Stat. 189 or 310	“there shall be levied ... the following duties ” (<i>Id.</i>)
1828	Tariff Act of 1828, ch. 55, 4 Stat. 270 ⁷ (the notorious Tariff of Abominations)	“there shall be levied ... the following duties ” (<i>Id.</i>)
1890	Tariff Act of 1890, ch. 1244, 26 Stat. 567 ⁸	“there shall be levied ... the rates of duty ” (<i>Id.</i>)

⁶ Amended by Tariff Act of 1824, ch. 136, 4 Stat. 25, and the Tariff Act of 1828, ch. 55, 4 Stat. 270.

⁷ Repealed by the Tariff of 1832, ch. 227, 4 Stat. 583, and the Compromise Tariff of 1833, ch. 55, 4 Stat. 629.

⁸ Superseded by the Wilson-Gorman Tariff Act of 1894, ch. 349, 28 Stat. 509.

Year	Statute	Text
1930	Tariff Act of 1930, Pub. L. No. 71-361, 46 Stat. 590 ⁹	”there shall be levied ... duties ” (Title I)
1934	Reciprocal Trade Agreements Act , Pub. L. No. 73-316, 48 Stat. 943 (1934) ¹⁰	“the President ... is authorized ... to proclaim ... duties ” (<i>Id.</i>)
1962	Trade Expansion Act , Pub. L. No. 87- 794, § 232, 76 Stat. 872, 877 (1962) (Amending Tariff Act of 1930)	“Prohibition on decrease or elimination of duties ” (19 U.S.C. § 1862(a))
1974	Trade Act of 1974, Pub. L. No. 93-618, § 122, 88 Stat. 1978, 1988 (1975) ¹¹	“proclaim ... import surcharge ... in the form of duties ” (19 U.S.C. § 2132(a)(3)(A))
1974	Trade Act of 1974, Pub. L. No. 93-618,	“ authorized [to] recommend ... any duty ”

⁹ Codified as amended at 19 U.S.C. ch. 4 (*e.g.*, at § 1202 *et seq.*).

¹⁰ Codified as amended at 19 U.S.C. § 1351(a)(1)(B).

¹¹ Codified as amended at 19 U.S.C. § 2132.

Year	Statute	Text
	§ 202, 88 Stat. 2013 (1975) ¹²	(19 U.S.C. § 2252(e)(2)(A))
1974	Trade Act of 1974, Pub L. No. 93-618, § 301, 88 Stat. 2042 (1975) ¹³	“may ... impose duties” (19 U.S.C. § 2411(c)(1)(B))
1977	IEEPA , 91 Stat. 1626. ¹⁴	“regulate ... importation or exportation of ... any property” (50 U.S.C. § 1702(a)(1)(B))

But as the last row above shows, in contrast to the tariff provisions found in Title 19 of the U.S. Code, meaningfully titled “Customs Duties,” Congress did nothing comparable to authorize tariffs in IEEPA. It did not even put IEEPA in the tariff portion of the U.S. Code. There is no reason at all the Congress that passed IEEPA would not have used those well-known and understood terms unless it did not want that power delegated to the President under that statute.

¹² Codified at 19 U.S.C. § 2252.

¹³ Codified at 19 U.S.C. § 2411.

¹⁴ Codified at 50 U.S.C. §§ 1701-1708.

The tariff laws also show that Congress has delegated tariff authority to the President only in discrete allocations, passing tariff statutes for targeted purposes. For example, 19 U.S.C. § 2132 permits certain tariffs to address trade deficits and § 301 of the 1974 Trade Act authorizes certain tariffs to address a country's specific violation of a trade agreement, 19 U.S.C. § 2411. The result is an integrated web of tariff statutes located in Title 19.

Also, in every statute granting tariff authority, Congress imposed procedural and other limits. *See* examples collected in *Learning Resources*, 784 F. Supp. 3d at 224-225. These statutes generally require fact-finding and other procedures by an agency such as the U.S. Trade Representative, the International Trade Commission, or the Department of Commerce. For examples of typical requirements in key tariff statutes, *see* Tom Campbell, *Presidential Authority to Impose Tariffs*, 83 La. L. Rev. 595, 614-16 (2023) (arguing IEEPA does not authorize tariffs).

Another reason the Court should interpret IEEPA under its ordinary and plain reading and refrain from the adventurism that the Government would invite is that the statute was implemented in 1977. It is replete with safeguards against Presidential overreach that rely on the "legislative veto." *See* 50 U.S.C. § 1706(b) (Congressional concurrent resolution can terminate an emergency declared under the National Emergencies Act). This Court struck down the legislative veto after this statute was enacted. *INS v. Chadha*, 462 U.S. 919, 957-58 (1983) (requiring bicameral presentment and overriding Presidential veto and ruling a "legislative veto"

unconstitutional).¹⁵ Given that some of the protections against executive overreach that Congress placed in the legislation have been stripped from it by subsequent judicial interpretation, an expansive reading of the statute is particularly dangerous and violative of separation of powers.

B. “Regulate” Does Not Mean “Tariff”

The fragile linchpin of the Government’s main argument that IEEPA allows the President to impose tariffs is the presence in § 1702(a)(1)(B) of the word “regulate” separated by many words but made closer by ellipses, and “importation.” *See, e.g.*, Pet. Br. at 31; *see, e.g.*, Brief for Prof. Chad Squitieri as Amicus Curiae Supporting Respondents in No. 24-1287 and Petitioners in No. 25-250 at 21, Nos. 24-1287 & 25-250 (2025). The Government argues that these words “clearly” authorize the President to impose tariffs. Pet. Br. at 23. Not so.

¹⁵ Under IEEPA, Congress originally reserved the right to terminate presidential national emergency declarations without presentment by concurrent resolution. § 207, 91 Stat. at 1628 (codified at 50 U.S.C. § 1706(b)). This provision became problematic after the Supreme Court held that legislative functions, such as legislative vetoes of executive authority, must follow the constitutional requirements of bicameralism and presentment. *Chadha*, 462 U.S. at 954-55. In response, Congress amended its veto provision to require joint resolution which provides for bicameralism and presentment before it revokes authority already delegated to the President. Pub. L. 99-93, § 801, 99 Stat. 405, 448 (codified at 50 U.S.C. § 1622(c)).

The Constitution erects the first formidable obstacle to this interpretation. It distinguishes between taxing and regulating, assigning those powers in separate clauses. The Taxing Clause, referring to tariffs as “imposts,” assigns the “Power To lay and collect Taxes, Duties, Imposts and Excises.” U.S. Const. art. I, § 8, cl. 1. The Commerce Clause assigns Congress the “Power ... To regulate Commerce with foreign Nations.” *Id.* cl. 3. If the power to “regulate” included the power to lay duties or imposts, the entire Taxing Clause would be surplusage. *See Feliciano v. Dep’t of Transp.*, 145 S.Ct. 1284, 1294 (2025) (applying canon against surplusage to reject government’s reading of statute).

Longstanding Congressional usage reflects this distinction. As the above historical table demonstrates, *see supra* at 10-13, Congress has used specific language since the Founding to impose or authorize tariffs, and has never used “regulate” to order or authorize tariffs. Here the practice of Congress from the very first to the present is to carefully delineate when it is imposing or authorizing tariffs.

Across this long history, the Government cannot identify a single statute in which Congress has used “regulate” to delegate authority to impose any kind of tax, much less a tariff. Indeed, that novel reading of “regulate” would create several unsolvable conflicts in IEEPA.

The Government’s reading of “regulate” would render IEEPA unconstitutional, as *Learning Resources* explained. 784 F. Supp. 3d at 227.

“[R]egulate” applies to “importation or exportation,” § 1702(a)(1)(B), but the Constitution prohibits taxes on exports. *See* U.S. Const. art. I, § 9, cl. 5 (“No Tax or Duty shall be laid on Articles exported from any State.”).

Reading “regulate” in context with its neighboring verbs, as the canon of *noscitur a sociis* requires, confirms this conclusion. It “teaches that a word is “given more precise content by the neighboring words with which it is associated.” *Fischer v. United States*, 603 U.S. 480, 487-488 (2024). *Yates v. United States*, 574 U.S. 528 (2015), illustrates the point. There the Court said

The words immediately surrounding “tangible object” in [Sarbanes-Oxley Act § 802, 18 U.S.C.] § 1519—“falsifies, or makes a false entry in any record [or] document”—also cabin the contextual meaning of that term. As explained in *Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995), we rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to “avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.” *Id.* at 575 (internal quotation marks omitted).

Id. at 543.

This canon weighs squarely against the imposition of duties under the statute. In IEEPA, the words immediately surrounding “regulate” describe

authorized actions that relate to economic sanctions: “investigate, block ... direct and compel, nullify, void, prevent or prohibit.” 50 U.S.C. § 1702(a)(1)(B). These neighboring words “cabin the contextual meaning,” *Yates*, 574 U.S. at 543, of “regulate” to the same meaning reflected in the Constitution, which does not include the power to tax. This list of steps IEEPA authorizes the President to take in “emergencies” is long and detailed but does not include any indication of collecting revenue domestically from Americans through a tariff. And these terms are nothing like “impost, duty or tariff.” This approach to statutory interpretation tracks the commonsense intuition that Congress would not ordinarily introduce a general term that renders meaningless the specific text accompanying it. The IEEPA Congress had no notion of using “regulate” in the sense the Government and its *amici* press upon the Court.

Nor would Congress make such a major grant of tariff authority by tucking a general term into a list of authorized actions, all relating to sanctions. Congress does not grant “broad and unusual authority through implicit delegation,” *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006), and it does not “hide elephants in mouseholes,” *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001).

In an emergency the President may prevent or seize goods or ships coming from hostile countries, but there is no cause to tariff them. Tariffing is different in kind from “investigating,” “prohibiting,” “blocking,” or any of the other words in IEEPA. Should hostile intent be demonstrated by a foreign power the President may want to prohibit a harmful good from

coming into the United States but there is no warrant for taxing Americans to do so. In the present case, the fentanyl duties on China, Mexico, and Canada, are a good example. If such things are coming into the country why would we only want to tax their entry rather than prohibit it? Even there, Title 19 allows an alternative. *See* Anti-Smuggling Act of 1935, codified as amended at 19 U.S.C. §§ 1701, 1703-1706a, 1709-1711.

Not only the language Congress chose but the legislative history supports this conclusion. After giving the President the power to address balance-of-payments emergencies, Congress enacted IEEPA two years later, 91 Stat. 1626, adopting language from TWEA in 50 U.S.C. § 1702(a)(1)(B). Legislative history demonstrates Congress understood that this language did not authorize tariffs. The House Report set out an exhaustive description of the powers IEEPA would grant the President but did not refer to tariffs or anything like them. H.R. Rep. No. 95-459, at 2 (1977). This omission powerfully rebuts the assertion that Congress understood IEEPA to authorize tariffs. The House Report also criticized the Nixon tariff as unauthorized by TWEA. *Id.* at 5 (describing tariff). Referring to the Nixon tariff and other presidential acts, the Report complained that TWEA had “become essentially an unlimited grant of authority for the President to exercise, at his discretion,” *id.* at 7. Nor does *United States v. Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975), indicate Congress understood that the language IEEPA adopted from TWEA authorized tariffs.

Learning Resources ably explains why in its merits brief. Learning Resources Br. at 41-43.

Gibbons v. Ogden does not relate at all to IEEPA, nor does it suggest that “regulate” includes the power to impose taxes or tariffs, as the Government contends. Pet. Br. 29. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).¹⁶ *Gibbons* concerns the national power to regulate commerce. It is not about the President’s ability to exercise tariff power. Chief Justice Marshall noted that the power to regulate was “entirely distinct from the right to levy taxes and imposts.” *Id.* at 201.

Chief Justice Marshall emphasized, it is “very clear, that” imposing duties is “a branch of the taxing power.” *Id.* at 201 (citing U.S. Const. art. I, § 8, cl. 1). “In a separate clause of the enumeration, the power to regulate commerce is given, as being entirely distinct from the right to levy taxes and imposts.” *Id.* The Court notes these two powers are “distinct from each other.” *Id.*

Chief Justice Marshall for the Court was interpreting the words “Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.” *Id.* at 189. When construing those words, the Court used a method of construction that if followed here would be fatal to the Government. In describing the word “commerce” it said:

¹⁶ Which Daniel Webster argued.

If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it.

Id. at 194.

That same analysis is fatal to the idea that “regulate” means something different within the same sentence of IEEPA. The Court also acknowledged that a duty might be for the purposes of regulation or revenue. *Id.* at 202. But the power to do either still resides in Congress and not the President under the Constitution. As a matter of statutory construction, the invitation to make “regulate” include taxing power would be disastrous for the separation of powers, and it would make every statute using the word “regulate” ripe for the sort of executive adventurism attempts this use of IEEPA.

The Court should not have its concerns allayed by the supposed limitation of the word “regulate” being somewhere near the word “importation.” Just as “regulate” being near the word “exportation” fails to prevent the Government, here, from maintaining an unprecedented power to tax with that one word, neither will the absence of the word “importation” stop the Executive from improperly using the word “regulate” to assert taxing power in another statute. This Pandora’s box must not be opened.

Finally, the extrinsic materials that the Government and its *amici* also cite carry little weight, even less than legislative history. See *Exxon Mobil*

Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005) (“the authoritative statement is the statutory text, not the legislative history or any other extrinsic material”). In any event, these materials do not suggest that Congress has ever used “regulate” to authorize tariffs or any taxation.

James Madison’s letter of 1828 does not aid the “regulate means tariff” argument. As explained both by Madison and Senator Daniel Webster in his famous Second Response to Hayne, Madison’s letter was not about whether Congress could impose duties or tariffs. *See Letter from James Madison to Joseph C. Cabell (Sept. 18, 1828)*, in 9 THE WRITINGS OF JAMES MADISON 316 (Gaillard Hunt ed. 1910); Daniel Webster, *Second Reply to Hayne, January 26 and 27, 1830*, in ROBERT C. BYRD, THE SENATE 1789-1989: CLASSIC SPEECHES 1830-1993, VOL. 3, 37, 56-57 n. 26 (1994) (explaining his change in his tariff position and citing Madison’s letter as an “impregnable” argument). As we have seen, legislating tariffs was the first substantive action Congress ever took. The argument for Madison and Webster was over whether Congress could impose a “protective” tariff for the purpose of shielding domestic manufacturers from foreign competition. According to Madison, that power of imposition came from the Power to “regulate” foreign commerce. Madison letter at 316. Madison did not claim that the Commerce Clause itself grants authority for protective tariffs. Rather, he argued that Congress may constitutionally impose tariffs that incidentally protect domestic manufacturers because they are a form of taxation on imports aimed at the public welfare. *See, e.g., id.* at

332 (“That the encouragement of Manufactures, was an object of the power to regulate trade, is proved by the use made of the power for that object, in the first session of the first Congress under the Constitution.”). As detailed above, Congress never has used the word “regulate” to order or authorize tariff legislation. Neither the Government nor any *amici* link Madison and Webster’s argument that protective tariffs were lawful with IEEPA when it was written, nor as Congress understood it in the 1970’s. That is because no such link exists.

II. JURISDICTION LIES IN THE DISTRICT COURT UNDER IEEPA, NOT IN THE COURT OF INTERNATIONAL TRADE BASED ON HTSUS MODIFICATIONS OR THE EXECUTIVE ORDERS

This Court has jurisdiction to rule that IEEPA does not authorize any tariffs, whether the Court concludes that original jurisdiction lies in the district court or the Court of International Trade. Under the better reading of 28 U.S.C. § 1581(i)(1)(B), however, jurisdiction lies in the district court.

A. Because Jurisdiction and Merits Inquiries Overlap, this Court Should Interpret IEEPA to Decide Jurisdiction

The Government’s argument that a court cannot determine its own jurisdiction when the merits and jurisdiction overlap is in error—and unpersuasive. Every court must validate its own jurisdiction before considering the merits. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (circuit courts); *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 77

(2013). This axiom applies even if the jurisdictional inquiry overlaps with the merits, as this Court has stressed. *See, e.g., Bolivarian Republic of Venez. v. Helmerich & Payne Int’l Drilling Co.*, 581 U.S. 170, 178 (2017) (to “answer the jurisdictional question,” courts “must inevitably decide some, *or all*, of the merits issues”) (emphasis added); *Brownback v. King*, 592 U.S. 209, 217 (2021) (where “the ‘merits and jurisdiction ... come intertwined[]’ ... a court can decide ‘all ... of the merits issues’ in resolving a jurisdictional question, or vice versa”).¹⁷

This Court endorsed this long-established approach in *K Mart Corp. v. Cartier, Inc.*, where it granted *certiorari* specifically “to resolve conflicts among the Courts of Appeals”—including between the D.C. Circuit and Federal Circuit—and “affirm[ed] ... that the *District Court* had jurisdiction.” 485 U.S. 176, 182 (1988). In that case the Court determined that the ordinary meaning of the word “embargoes”

¹⁷ The Government misreads *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022). There, the Supreme Court rejected plaintiffs’ proposed jurisdictional argument by adopting the “most natural interpretation” of the statutory text. *Id.* at 552. It then noted as one “additional” reason the plaintiffs’ proposed reading was inconsistent with the statute, that plaintiffs’ reading would create the unusual problem of requiring a court to “hold a trial” to determine jurisdiction, leading to the risk a court might then “reject[] the claim on the merits” and discover “it never had jurisdiction.” *Id.* at 554. The Court recognized that it “is of course true” that “it is common for jurisdictional inquiries and the merits to overlap.” *Id.* at 554 n.5. Likewise, in *Michael Simon Design, Inc. v. United States*, 609 F.3d 1335, 1341-42 (Fed. Cir. 2010), the court resolved jurisdiction at the outset, based on the statute’s plain text.

did not apply to the injunctive relief sought there by a trademark holder to exclude certain goods. *Id.* at 185. Just as in that case there was “no hint that Congress intended to depart from the ordinary meaning of ‘embargoes’” so as to give the CIT jurisdiction, *id.* at 190, there is no such hint here that Congress meant for the word “regulate” to depart from its ordinary meaning to mean “tax” instead.

B. The Challengers’ Claims Arise out of IEEPA, and Not out of the HTSUS Modifications or the Executive Orders

The Government cites § 1581(i)(1)(B), under which the CIT has jurisdiction if an action “arises out of a[] law of the United States providing for ... tariffs.” 28 U.S.C. § 1581(i)(1)(B)¹⁸; Pet. Br. 47.¹⁹ This provision governs here, the Government argues, on the theory that (1) this action “arises out of” the executive orders and HTSUS modifications that

¹⁸ The Government also contends (Pet. Br. 47) that the CIT has jurisdiction under § 1581(i)(1)(D), which provides jurisdiction over “any civil action ... that *arises* out of any *law* of the United States providing for ... administration and enforcement with respect to the matters referred to in” any preceding provision of § 1581(i)(1). 28 U.S.C. § 1581(i)(1)(D) (emphasis added). Like its other argument in this vein, this one fails because this action arises out of IEEPA and not from EO’s or HTSUS amendments and because neither EO’s nor HTSUS amendments are “law[s] of the United States.”

¹⁹ At no point did the Government have this theory of jurisdiction when it moved in the first filed case to transfer the *Emily Ley amici* to the CIT. The theory emerged in the CIT as the litigation proceeded, and is not discernible from the EO’s or the Government’s original filings.

implemented the IEEPA tariffs, and (2) those executive orders and HTSUS modifications qualify as “law[s] of the United States.” Pet. Br. 47-48. This theory fails both of § 181’s requirements for jurisdiction: (1) These cases do not “arise out of” the executive orders of their own force but only upon their invocation of IEEPA and not because of the resulting HTSUS modifications, and (2) those orders and modifications do not constitute “law[s]” in this context.

It is important the Court dismiss this theory, as it will no doubt otherwise be used again. This administration has issued more EO’s than any other in history at this point in an administration, and it will likely try to alter the HTSUS amendments again by similar legerdemain if this theory is not firmly rejected. See Fin Daniel Gomez & Anne Bryson, *Trump Sets Executive Order Record in First 100 Days*, CBS News, <https://www.cbsnews.com/news/trump-first-100-days-executive-order-record/> (Apr. 29, 2025, 7:02 AM) (most through 100 days); see also *Executive Orders*, The Am. Presidency Project, <https://www.presidency.ucsb.edu/statistics/data/executive-orders> (Oct. 15, 2025) (listing the second Trump Administration as averaging the second most executive orders per year).

As already explained, the Government’s argument that a court cannot determine its own jurisdiction when the merits and jurisdiction overlap is contrary to this Court’s rulings that courts must decide jurisdiction at the outset.

**1. This Action “Arises” Only out of
IEEPA, Not the Executive Orders
or HTSUS Modifications**

The Government’s theory fails the “arises out of” requirement because precedent interpreting that term shows that this action “arises” exclusively out of IEEPA. Courts identify the law(s) from which an action “arises” by focusing on the substantive law the court must interpret to decide the case.

Section 1331 is the source of the “arises” language in § 1581(i). *Am. Air Parcel Forwarding Co. v. United States*, 515 F. Supp. 47, 51 (Ct. Int’l Trade 1981). This Court explained that a claim “aris[es] under” 28 U.S.C. § 1331 only if federal law is an “essential” element of the claim and a “genuine and present controversy ... exist[s] with reference to it.” *Gully v. First Nat’l Bank*, 299 U.S. 109, 112-13 (1936). Similarly, addressing 28 U.S.C. § 1338(c), which grants district courts jurisdiction over civil actions “arising under” patent statutes, this Court stated that a claim “aris[es] under” the law that “create[d]” the claim, and which the court therefore must construe to decide that claim. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 808-09 (1988). As these cases show, a claim does not “arise” from every law that is one of the claim’s “ingredient[s].” *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 807 (1986).

When applied to the Challengers’ claims, these criteria point exclusively at IEEPA. The Challengers’

claims focus solely on whether IEEPA granted the President tariff authority. IEEPA is the *only* “substantive law under which the President acted,” *see Learning Resources*, 784 F. Supp. 3d at 222 n.4, the *only* law whose meaning is contested, and the *only* law this Court must interpret to decide the case. Clinching the point, IEEPA is the central and *only* thrust of the Government’s defenses of the IEEPA tariffs, and the *only* subject matter of the two decisions that have reached the merits of challenges to the IEEPA tariffs.

The Government ignores this focus on IEEPA and argues that these cases arise, not out of IEEPA, but out of the HTSUS and the executive orders modifying it or directing its modification. Pet. Br. 47-48. But neither meets the above governing criteria. This is not a close call, since no “genuine and present controversy ... exist[s]” about their meaning. *Gully*, 299 U.S. at 113. And the Court need not construe them to resolve the Challengers’ claims. *Christianson*, 486 U.S. at 808.

Only IEEPA meets the governing criteria. *Learning Resources* and *V.O.S. Selections* illustrate why. All three opinions in *V.O.S. Selections* and the district court’s opinion in *Learning Resources* analyze IEEPA in extensive detail, without a single page addressing any dispute about interpreting the executive orders or the HTSUS. The Government established and reiterated the same singular focus on IEEPA. Its merits brief focuses solely on the proper interpretation of IEEPA. Its Petition for a Writ of Certiorari likewise focuses solely on interpreting IEEPA, Pet. for Writ of Cert., *Trump v. V.O.S.*

Selections, Inc., No. 25-250 (Sep. 3, 2025); and its Motion to Expedite Consideration states at the outset that the subject matter of the case is “legal standing of the President’s tariffs under [IEEPA],” Motion to Expedite Consideration at 1, *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sep. 3, 2025). None of the Government’s submissions suggests the Court needs to interpret the executive orders—again, except for their reliance on IEEPA—or the HTSUS modifications. The executive orders and HTSUS modifications fail all of these tests because neither has any relevance to this case unless the Court decides that IEEPA authorizes tariffs. As the court in *Learning Resources* correctly held, the action arose under IEEPA because that statute is “the substantive law under which the President acted.” 784 F. Supp. 3d at 222 n.4.

2. The HTSUS Modifications and Executive Orders Are Not “Laws of the United States” in this Context

Even if the Government could meet that requirement, its theory still would fail because the executive orders and HTSUS modifications do not qualify as “law[s] of the United States.” Modifications to the HTSUS are “provisions of law” only if they are “*made ... by the President under authority of law.*” 19 U.S.C. § 3004(c)(1)(C) (emphasis added). But the President did not make the relevant modifications “under authority of law.” He lacked authority to make them because IEEPA does not grant him tariff power. Therefore, the HTSUS modifications do not rest on

any legal authority, and do not qualify as “provisions of law.” 19 U.S.C. § 3004(c)(1)(C).

The executive orders similarly fail to qualify as laws of the United States because an executive order not based on statutory authority is not a “law of the United States” within the meaning of 28 U.S.C. § 1581. “[T]he President’s power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The President cannot unilaterally create federal law, since it is a “fundamental constitutional principle that ‘[t]he power to make the necessary laws is in Congress; the power to execute in the President.’” *Medellín v. Texas*, 552 U.S. 491, 532 (2008) (cleaned up) (holding that a presidential memorandum lacking statutory authorization cannot create enforceable federal law). *See also City of New York v. FCC*, 486 U.S. 57, 63 (1988) (stating that “Laws of the United States” refers only to “federal statutes themselves and federal regulations that are properly adopted in accordance with statutory authorization”).

The IEEPA tariff executive orders lack that necessary foundation²⁰ because they wrongfully rely

²⁰ This Court’s rulings on Presidential authority to impose tariffs on the new territories of Puerto Rico and the Philippines are instructive in highlighting the President’s inability to impose tariffs without a Congressional grant of authority. In *United States v. Heinszen*, 206 U.S. 370 (1907), the Court acknowledged that tariffs the President imposed on the Philippines before Congress passed a tariff statute granting any such authority were illegal. *Id.* at 382. The President has no inherent tariff

on IEEPA for their status as law. And the Government fails to show that IEEPA authorizes the President to order tariffs. The executive orders therefore lack the statutory authority required to qualify as “laws.” Any contrary holding invites the Executive to wrongfully and unlawfully alter the HTSUS amendments and so strip Americans of the right to resist such action in their district courts.

CONCLUSION

The Court should hold that the President has no authority under IEEPA to impose any tariffs and that neither Executive Orders nor the HTSUS amendments strip district courts of jurisdiction. Should the Court find that the CIT had jurisdiction, it should still hold that IEEPA does not authorize the President to impose any tariffs on Americans.

Respectfully submitted,

/s/ John J. Vecchione

John J. Vecchione

Counsel of Record

Andrew J. Morris

Markham S. Chenoweth

NEW CIVIL LIBERTIES ALLIANCE

4250 N. Fairfax Dr., Suite 300

Arlington, VA 22203

Phone: (202) 869-5210

john.vecchione@ncla.legal

authority and the executive orders which emerge solely from his Article II powers cannot impose them. *Id.*

Counsel for Amici Curiae

October 24, 2025