No. 25-250

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,
PETITIONERS

v.

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

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR PRIVATE RESPONDENTS

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RULE 29.6 STATEMENT

The full names of every party represented by us are V.O.S. Selections, Inc.; Plastic Services and Products, LLC, dba Genova Pipe; MicroKits, LLC; FishUSA, Inc.; and Terry Precision Cycling, LLC. None has any parent corporations, and no publicly held companies own 10 percent or more of the stock of any party represented by us.

MEMORANDUM FOR PRIVATE RESPONDENTS

Private Respondents acquiesce in the petition for certiorari, raising the following questions:

1. Whether the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626, authorizes the tariffs imposed by President Trump pursuant to the national emergencies declared or continued in Proclamation 10,886 and Executive Orders 14,157, 14,193, 14,194, 14,195, and 14,257, as amended.

2. If IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President.

REASONS FOR ACQUIESCENCE IN THE PETITON FOR CERTIORARI

This case of undoubted importance requires resolution by this Court. For the first time in American history, the President of the United States has imposed massive tariffs on American importers of goods from every country in the world, on a permanent (though ever-shifting) basis, in amounts far exceeding the tariff schedules enacted by Congress, and in disregard of the numerous statutes in which Congress has delegated tariff authority that is both narrower and subject to intelligible and judicially enforceable limits that these tariffs violate.

The unlawful tariffs are inflicting profound harms on Private Respondents, each of which is a small business suffering severe economic hardships as a result of the price increases and supply chain interruptions caused by the tariffs. As one of the Respondents has

explained, these impacts are "not survivable for a business of its size." D. Ct. Dkt. 10 at 67.

Because of the importance of the issues and the harms that Respondents are experiencing every day the unlawful tariffs are in place, Respondents acquiesce in the government's petition for certiorari and its motion for expedited consideration. Moreover, in the interest of facilitating the Court's prompt resolution of this case and a speedy end to the tariffs, Respondents are filing this short acquiescence within 36 hours of the government's petition for certiorari. But Respondents' acquiescence should not be mistaken for agreement with any of the arguments in the government's petition. As Respondents explained in detail in their briefing below, the tariffs are unlawful for multiple reasons, the government's arguments to the contrary are flawed, and invalidating these tariffs will not deprive the President of the ability to impose other tariffs and negotiate lawful trade agreements under the numerous statutes that Congress has enacted for that purpose. Certiorari should thus be granted, and the Federal Circuit's decision should be affirmed—swiftly.

1. It is bedrock constitutional law—the very first clause of the section setting forth congressional powers—that Congress, not the President, has authority over all taxes on the American people, including "Duties" and "Imposts"—*i.e.*, tariffs. U.S. Const. Art. I, § 8, Cl. 1. In every statute delegating discretion to the President to set tariff rates, Congress has imposed strict procedural, temporal, and substantive limits. It has never ceded its tariff authority *carte blanche*.

In imposing these tariffs, the President invoked the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 *et seq.*—a law that makes

no mention of tariffs, is expressly limited to "unusual" and "extraordinary" threats, and directs that it cannot be used "for any other purpose." *Id.* § 1701. Yet the President's official declarations themselves repeatedly describe the current trade deficit as "persistent"—the very antithesis of "unusual" and "extraordinary." Indeed, the trade deficit has persisted since the early 1970s (and many years before then), with little change over time. And the President has trumpeted the tariffs, even in the government's petition in this Court, as generating billions of dollars in revenue—a purpose patently outside IEEPA's purview.

The government's case rests entirely on the notion that the phrase "regulate *** * *** importation" in IEEPA constitutes a boundless power to impose tariffs on the American people whenever the President wants, at whatever level he wants, for whatever countries and products he wants, and for as long as he wants, merely by declaring that longstanding U.S. trade deficits are a national "emergency" and an "unusual and extraordinary threat"—assertions the government claims are effectively unreviewable. There are no limits. Such a reading of IEEPA plainly runs afoul of the major questions doctrine, as it self-evidently has "vast 'economic and political significance'" yet lacks clear and explicit authorization from Congress. *Util. Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 324 (2014) (citations omitted). Here, the statute is silent—unless one pumps into the word "regulate"—which occurs in hundreds of statutes—the authority to "tax," which would give the President overnight the power to tax every corner of the economy that is subject to regulation. It's elephants in mouseholes all over again.

Indeed, if IEEPA were interpreted in such an unbounded fashion, it would constitute an

unconstitutional delegation of congressional power far exceeding any delegation that has reached this Court since 1935. Just weeks ago, the Court upheld a statute allowing the executive to impose "contributions" (*i.e.*, taxes) against a nondelegation challenge only because it set a "ceiling" and "floor" on the tax rates. *FCC* v. *Consumers' Research*, 606 U.S. —, 145 S. Ct. 2482, 2502 (2025). IEEPA sets neither. The government's extravagant interpretation is an implausible reading of Congress's trade statutes, and it would be blatantly unconstitutional if it were adopted.

Further, even if IEEPA could be read to delegate some tariff authority, Section 122 of the Trade Act establishes that IEEPA does not authorize the President to impose *these* tariffs. Section 122 outlines what the President "shall" do upon concluding that a "large and serious United States balance-of-payments deficit[]" requires imposing "special import measures." 19 U.S.C. § 2132(a). It also strictly limits that tariff authority: The President cannot increase tariffs more than 15%, and the tariffs cannot last longer than five months without congressional approval. *Ibid.* Section 122, not IEEPA, governs where—as here—the President imposes tariffs in response to trade deficits. Yet the President blew past Section 122's guardrails: 50 of the 57 reciprocal tariffs exceed Section 122's 15% cap, and all apply indefinitely.

2. As the Petition explains, the President is currently wielding this authority in international negotiations and imposing hundreds of billions of dollars in taxes on American importers, including the Private Respondents. Yet none of this is necessary to achieve sensible trade relationships, as Congress has already enacted numerous statutes to accomplish precisely that goal and Presidents since the Founding have

worked within the limits set by Congress. Moreover, while the government's claims of harm are exaggerated, Respondents' are not. As their declarations confirm, the tariffs are already, by delaying hiring and manufacturing, disrupting American businesses—to the ultimate detriment of companies, workers, and consumers. *E.g.*, D. Ct. Dkt. 10 at 55-56.

Repeated decisions by the lower courts have not dissuaded the government from imposing the unilateral tariffs that work these harsh consequences. This Court's review is thus essential, and its final word is needed urgently.

Respectfully submitted,

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