No. 25-250

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
V.O.S. SELECTIONS, INC., ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF FOR STATE RESPONDENTS

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QUESTIONS PRESENTED

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.

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BRIEF FOR STATE RESPONDENTS

Congress, not the President, has the "Power To lay and collect Taxes, Duties, Imposts and Excises." U.S. Const., Art. I, § 8, cl. 1. But petitioners argue that the International Emergency Economic Powers Act (IEEPA) grants the President the power to impose tariffs on any country, at any rate, and for however long he likes. The President's chaotic implementation of that purported authority, which changed by the day and wreaked havoc on capital markets and the economy, illustrates both the breadth of powers that the President claims and the danger of unlimited authority in this domain.

The en banc Federal Circuit, like every other court that has addressed the question, correctly held that IEEPA does not authorize any of the tariffs the state respondents challenged. But the issue is undoubtedly of great national importance. Thus, although the Federal Circuit got it right—and although the petition is littered with inaccuracies, hyperbole, and citations to material outside the summary judgment record—the state respondents agree that this Court should grant expedited review. *Cf. Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2571 (2025) (Kavanaugh, J., concurring) ("One of this Court's roles, in justiciable cases, is to resolve major legal questions of national importance and ensure uniformity of federal law."). The Court should take this opportunity to resolve definitively the straightforward

question of statutory interpretation presented here. And it should affirm.

Because of the agreement among the parties that certiorari is warranted and our stipulation to an expedited briefing schedule on the merits, the state respondents do not argue the merits in full at this time. But a brief outline of the arguments may help the Court understand the scope of the questions presented.

1. The state respondents' case challenges two sets of tariffs that the President imposed earlier this year. The first set is what the Federal Circuit called the "Reciprocal Tariffs," which the President imposed on nearly every country to address what he characterized as "Large and Persistent" trade deficits. Pet. App. 7a, 67a. The second set is what the Federal Circuit called the "Trafficking Tariffs," which the President imposed on Mexico, Canada, and China, purportedly to address drug smuggling and other criminal activity. Pet. App. 4a–5a. The President relied on IEEPA as the source of authority to impose both tariffs. Pet. App. 6a, 8a.

2. IEEPA does not authorize either set of tariffs, if it authorizes tariffs at all. During a declared national emergency, IEEPA grants the President the power to "regulate" the "importation or exportation" of "any property in which any foreign country or a national thereof has any interest." 5 U.S.C. § 1702(a). Petitioners argue that "regulate" in this context includes the power to impose tariffs—that is, the power to tax. *See Gibbons v. Ogden*, 22 U.S. (9 Wheat) 1, 201 (1824) ("[T]he act of laying 'duties or imposts on imports' … is

considered as a branch of the taxing power."). But petitioners cannot identify *any* other statute in the United States Code that uses the word "regulate" to authorize taxes or tariffs. Not one.

The closest petitioners can find is the statutory phrase "adjust the imports" in Section 232 of the Trade Expansion Act of 1962, which this Court construed to permit licensing fees. *See Federal Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 571 (1976). But there are at least three key differences between Section 232 and IEEPA. First, Section 232 uses the term "adjust," not "regulate." Second, Section 232 refers explicitly to "the duty … on any article," 19 U.S.C. § 1862(a), which provides context for the meaning of "adjust" in a following subsection. IEEPA does not mention duties. Third, *Algonquin* relied in large part on unusually clear legislative history showing that Congress believed that the provision would authorize the President to impose "tariffs." 426 U.S. at 563–64. IEEPA has no comparable legislative history.

Even if "regulate" *could* mean "tax" in some contexts, principles of statutory construction like the major questions doctrine and constitutional avoidance confirm that it does not in *this* context. *See Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring) (explaining that the major questions doctrine is rooted in "the importance of *context*") (emphasis in original). The President's invocation of IEEPA to impose the tariffs at issue here goes even further than other "almost unlimited" exercises of authority that

this Court has disapproved in recent years. *See Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 126 (2022) (Gorsuch J., concurring). Once again, the President "claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy"—or, in this case, the world economy. *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (cleaned up). Yet the history, breadth, and economic and political significance of the President's actions provide "reason to hesitate before concluding that Congress meant to confer such authority." *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (cleaned up).

As in those cases, IEEPA's use of the word "regulate" is "a wafer-thin reed on which to rest" the sweeping authority that the President claims. *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 594 U.S. 758, 765 (2021). The U.S. imports more than $4 trillion of goods annually, representing 14 percent of the U.S. economy. Pet. App. 37a. Under petitioners' reading of IEEPA, Congress delegated to the President the authority to impose tariffs of any amount, and for any length of time, on all of that trade. Whatever else might qualify as a decision of "vast economic and political significance," *Utility Air Regul. Grp.*, 573 U.S. at 324, across-the-board taxes on large swaths of the economy fit the bill. And the principle of constitutional avoidance reinforces that conclusion, because the nondelegation doctrine requires Congress to give "greater" guidance when, as here, executive action "will affect

the entire national economy." *FCC v. Consumers' Research*, 145 S. Ct. 2482, 2491 (2025).

Petitioners are wrong to claim that the Federal Circuit's holding is "textually incoherent" merely because it leaves open the possibility that IEEPA would allow more modest tariffs. Pet. 24. This Court could conclude, as the state respondents have argued and as the concurrence below agreed, that "IEEPA does not authorize the President to impose any tariffs." Pet. App. 48. But this Court need not decide that question to affirm the majority's narrower but still textually coherent holding.

Just like the statutory term "modify" in *Biden v. Nebraska* meant "modest" rather than transformational adjustments to the laws governing student loans, 600 U.S. at 495, the term "regulate" (assuming it allows tariffs at all) connotes at most modest changes to the tariffs schedule, but not unlimited authority to rewrite it. Indeed, petitioners' cherry-picked dictionary definition for "regulate"—"adjust," *see* Pet. 19—has precisely that connotation. *Webster's Third New International Dictionary* 23 (unabridged ed. 2002) (note on synonyms for "adapt" explaining that to "adjust" usually suggests "no significant alteration or modification but rather a bringing into a correspondence or harmony, prearranged or clearly possible but not quite achieved previously"). The Federal Circuit's holding might allow

revenue-raising measures in edge cases, but this case is not close: Petitioners have taxed, not regulated.

3. Furthermore, this Court can affirm the Federal Circuit's decision on at least three alternative grounds presented by the state respondents below, including the bases for the Court of International Trade's ruling. Pet. App. 177a–181a, 190a–194a.

First, with respect to the Reciprocal Tariffs, the power to "regulate … importation"—even if it allows tariffs generally—does not include the power to exceed the limits Congress set in Section 122 of the Trade Act of 1974. Section 122 provides that "[w]henever fundamental international payment problems require special import measures to restrict imports … to deal with large and serious United States balance-of-payments deficits," the President "shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress) … a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties." 19 U.S.C. § 2132(a). The statute directly addresses the President's authority to impose tariffs to deal with "large and serious" trade deficits, and it limits the tariffs to 15 percent and 150 days. Nothing in IEEPA purports to override those limits.

That conclusion does not depend on the proposition that Section 122 "displaces" IEEPA. Pet. 27. Rather, it harmonizes the general grant of emergency authority in IEEPA with the specific limits for one type of emergency in Section 122. *See, e.g.*, *Pittsburgh & Lake Erie R. Co. v. Ry. Labor Executives' Ass'n*, 491 U.S. 490, 510

(1989) (observing that "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective"). That understanding comports with Congress's intent for IEEPA to cover "unforeseen contingencies"—not problems that Congress had addressed in other statutes. H.R. Rep. No. 95-459, at 10 (1977).

Second, the Reciprocal Tariffs also violate IEEPA's separate requirement that its powers be used only to deal with an "unusual and extraordinary threat." 50 U.S.C. § 1701. Trade deficits are not "unusual" because, as the President stated in imposing the Reciprocal Tariffs, "annual U.S. goods trade deficits" are "persistent." Exec. Order No. 14,257, 90 Fed. Reg. at 15,041. "Persistent" is the opposite of "unusual." *See City of Grants Pass v. Johnson*, 603 U.S. 520, 543 (2024) (concluding that a city's fines for unauthorized camping were not "unusual" because "similar punishments have been and remain among 'the usual mode[s]' for punishing offenses throughout the country"). Nor are trade deficits "extraordinary" when Congress anticipated them and provided the President ordinary tools of trade law in Title 19, such as Section 122, to address them.

Finally, the Trafficking Tariffs violate IEEPA's requirement that emergency economic powers "may only be exercised to deal with" certain threats and not "for any other purpose." 50 U.S.C. § 1701(b). The tariffs are not targeted at fentanyl or related products or any

aspect of illicit drug trafficking, immigration, or crime more generally. They apply to almost all goods imported from the affected nations, regardless of whether any particular good has a reasonable connection to fentanyl trafficking or any of those other bases. Petitioners contend that the tariffs deal with those problems "indirectly through leverage," Pet. 28, but that does not satisfy IEEPA's requirement. *See* Pet. App. 191a–194a (explaining the point). Taxing tomatoes does not "deal with" fentanyl. If that is dealing with the threat of traffickers, then anything is.

CONCLUSION

This Court should grant certiorari and expedite briefing and argument.

Respectfully submitted,

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