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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE CONSUMER TECHNOLOGY ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

CONSTITUTIONAL AND STATUTORY PROVISIONS

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files briefs as *amicus curiae* in cases, like this one, raising issues of concern to the Nation's business community—and few have greater import to that community than the question here.

The Consumer Technology Association (CTA) is North America's largest technology trade association. CTA's members are the world's leading innovators—from startups to global brands—helping support more than 18 million American jobs. International trade is vital to the consumer technology sector. CTA's members rely on global supply chains that are intricate and often take decades to develop. CTA therefore frequently advocates in court and before Congress to promote fair and sustainable trade practices, as well as other significant legal issues for the consumer technology industry.

This case presents questions of paramount importance to the business community concerning the

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

scope of authority granted under the International Emergency Economic Powers Act (IEEPA), no matter the President or claimed emergency. The current administration's use of IEEPA to impose virtually unbounded tariffs is not only unprecedented but is causing irreparable harm to *amici*'s members—increasing their costs, undermining their ability to plan for the future, and in some cases, threatening their very existence. *Amici* are uniquely positioned to explain why the tariffs imposed under IEEPA exceed the President's congressionally delegated authority and impact the business community.

INTRODUCTION AND SUMMARY OF ARGUMENT

For the first time, a President has claimed authority under IEEPA to issue tariffs on any country, in any amount, and for any duration. Yet IEEPA does not mention "tariffs" or any other type of "duty." And it lacks the language—and limits—that Congress has used in other statutes that expressly authorize the President to impose tariffs. If Congress wanted to empower the President to unilaterally impose tariffs of virtually unlimited size, scope, and duration—a power to essentially reshape the entire U.S. economy—it would have said so.

As businesses know full well, tariffs operate as a tax on goods that is paid by American businesses and, ultimately, consumers. Because the Framers understood firsthand that the power to tax is the power to destroy, the Constitution vests the taxing power—including the tariff power—in Congress. And Congress has always exercised that power carefully. When it has delegated tariff power to the President in other statutes, Congress has done so explicitly, and

subject to specific limits. Imputing an essentially unbounded tariff power into IEEPA not only would render these express delegations of tariff authority superfluous, but also hand the Executive unprecedented authority to upend the domestic economy through taxation. Concluding that Congress implicitly granted the President such an awesome power in IEEPA defies common sense.

The Administration's claim that IEEPA touches on foreign affairs does not change the answer to this statutory question or override the well-established principle that Congress does not delegate matters of vast economic and political consequence without saying so. Because tariffs are taxes, they are an exclusively legislative prerogative and thus fall outside of any Article II foreign-policy powers. Moreover, Congress already balanced national-security and trade considerations in drafting IEEPA. There is no reason to interpret IEEPA in a different manner than other statutes. Foreign-affairs backdrop provides context but does not change the meaning of words. Inferring the sweeping tariff power asserted by the President from IEEPA's use of "regulate"—a word of almost infinite elasticity in the hands of a government actor—would flatly contradict the approach this Court has taken in other "major questions" cases and undermine the major questions doctrine as a neutral principle of statutory construction protecting the separation of powers.

It would also create serious practical consequences for American businesses, employees, and consumers. As a result of the President's sweeping tariffs, businesses have been forced to raise prices, freeze hiring, and postpone investments—risking damage to their reputations and market share. Small

businesses—collectively responsible for a third of the total value of imported goods—are especially vulnerable. Because they typically operate with tight profit margins and limited financial flexibility, even a modest increase in tariffs can have a profound impact on their bottom line. Many businesses now face the difficult choice of raising prices, absorbing the added costs and reducing profits, or cutting back on inventory and personnel. For some businesses, the decision on how to respond to tariffs is existential. And for all businesses and investors, the President's claimed authority to impose, modify, pause, and remove tariffs under IEEPA at the drop of a hat is resulting in chaos and uncertainty.

This threat transcends administrations and the politics of the moment. If this President is permitted to invoke IEEPA to impose unlimited tariffs to deal with the asserted "national emergencies" of trade deficits and drug trafficking, then future ones will have similarly expansive authority to impose worldwide tariffs based on their own objectives. It is not hard to imagine another administration declaring that its own political priorities—say, climate change—constitute a "national emergency," and then invoking IEEPA to impose unlimited tariffs on American businesses in pursuit of this agenda. Upholding the unprecedented tariff authority asserted here would improperly transfer the tariff power from Congress to the President, without any meaningful limits on its exercise. The Court should reject this untenable invocation of IEEPA.

ARGUMENT

I. THERE IS NO HISTORICAL BASIS FOR THE PRESIDENT'S UNBOUNDED TARIFFS

The President claims that IEEPA grants him a tariff power "unbounded in scope, amount, and duration." Pet.App.42a (No. 25-250 decision below). That claim is unprecedented. Because the power to tax is the power to destroy, the Constitution vests that power in Congress alone. Accordingly, Congress has only delegated that power subject to strict statutory guardrails. By contrast, the boundless authority the government claims under IEEPA would amount to an unconstitutional delegation of Congress's legislative power to the Executive.

A. The Constitution Vests The Tariff Power Exclusively In Congress

The Constitution vests the tariff power in the federal Legislature. Article I provides that "Congress shall have Power" not only to "regulate Commerce with foreign Nations," but also to "lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, § 8, cls. 1, 3. Tariffs are part of those "legislative Powers" to tax. *Id.* § 1; *see Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 201 (1824). Consequently, the tariff power "belongs to the legislative branch, and to no other." *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2496 (2025); *see New Orleans Water-Works Co. v. Louisiana Sugar-Refin. Co.*, 125 U.S. 18, 31 (1888).

The Framers recognized sound reasons for this structural design. Not least among them is that "the power to tax involves the power to destroy." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819). A tax is "capable of arresting" and "prostrating" whole industries or even governments.

Id. at 432. "The legislature of the Union alone" contains the representation necessary to "be trusted by the people with [that] power." *Id.* at 431. This explains why all tax legislation—including tariffs—must originate in the House of Representatives. U.S. Const. art. I, § 7, cl. 1. "[T]he Chamber that is more accountable to the people should have the primary role in raising revenue." *United States v. Munoz-Flores*, 495 U.S. 385, 395 (1990); *see Consumers' Rsch.*, 145 S. Ct. at 2525-26 (Gorsuch, J., dissenting). This careful allocation of the taxation power is just one example of how the Framers sought to protect individual liberty by separating power and thereby "reducing . . . the overgrown prerogatives of the other branches." *The Federalist* No. 58, at 394 (James Madison) (Jacob E. Cooke ed., 1961).

B. Congress And This Court Have Carefully Limited The Delegation Of Tariff Power

Congress has delegated its tariff authority to the President on occasion. But in keeping with its constitutional prerogative, Congress has imposed substantive and procedural guardrails on the exercise of the tariff power whenever making that delegation.

For example, the Tariff Act of 1930 explicitly authorizes the President to "declare new or additional duties" on imports, but only after "he shall find as a fact that [a foreign] country . . . [d]iscriminates . . . against the commerce of the United States." 19 U.S.C. § 1338(a). And the Trade Expansion Act of 1962, which the President has previously relied on to impose sector-specific tariffs, commands that the Secretary of Commerce must find the affected imports threaten national security; the President must concur with that finding within 90 days; the adjustment

action must occur within 15 days of the concurrence; and the President must explain his decision to Congress. *Id.* § 1862(c)(1)-(2).

Likewise, the various tariff powers authorized by the Trade Act of 1974 are subject to highly specific conditions. Section 122 permits the President to impose "temporary import surcharges" to "deal with large and serious . . . balance-of-payments deficits," but caps those tariffs at 15% and limits their duration to 150 days unless extended by Congress. *Id.* § 2132(a). Section 201 provides that tariffs intended to "safeguard" a domestic industry must first require an investigation by the International Trade Commission, consideration of the industry's positive adjustment measures and plans, a report finding a serious injury under economic factors set forth in the statute, and Presidential action within 60 days of that report. *Id.* § 2253(a)-(f). These safeguard tariffs may not increase an existing tariff rate by more than 50% and must be phased out within several years. *Id.* §§ 2253(e), 2254(c). Finally, Section 301 of the Act allows the President to direct the U.S. Trade Representative to impose duties in response to unfair trade practices only following an investigation, consultation with the foreign country, publication of the supporting factual findings, and a period of public comment. *Id.* §§ 2411-14.

This Court has long relied on these statutory guardrails to uphold limited delegations of tariff power. In *J.W. Hampton, Jr., & Co. v. United States*, for instance, the Court specifically noted that the "'increases or decreases in any rate of duty'" authorized by the Tariff Act first required an investigation by the U.S. Tariff Commission of certain enumerated considerations, along with "'public

notice'" and "'hearings'" for interested parties "'to be present, to produce evidence, and to be heard.'" 276 U.S. 394, 401-02 (1928). The statute also specified the exact tariff levels that could be imposed on particular products. Pub. L. No. 67-318, § 1, 42 Stat. 858, 858-934 (1922). These limits validated the careful delegation of tariff power to the President by ensuring that he would follow the "policy and plan" of Congress. *Hampton*, 276 U.S. at 405.

Decades later, the Court reached the same conclusion with respect to import license fees under the Trade Expansion Act of 1962, and for the same reasons. *FEA v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976). That Act similarly included "clear preconditions to Presidential action," a "series of specific factors to be considered by the President," and limits on adjusting imports only as "necessary" to mitigate designated national-security threats. *Id.* at 559. The Court held that "the leeway that the statute [gave] the President" was "far from unbounded" and therefore a permissible delegation. *Id.*[2]

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[2] The government's nineteenth-century cases are of a piece. *See* U.S. Br. 45 (citing *Cargo of the Brig Aurora v. United States*, 11 U.S. (7 Cranch) 382 (1813), and *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892)). Each involved a conditional statute where Congress itself fixed the details of a tariff policy, leaving the President only to determine the existence of a factual condition that would trigger Congress's predetermined consequences. In *Aurora*, for example, the Court upheld a statute making the operation of Congress's trade restrictions on Britain and France dependent on a presidential proclamation of one fact: whether those nations had "'cease[d] to violate the neutral commerce of the United States.'" 11 U.S. (7 Cranch) at 383-84. Likewise, in *Marshall Field*, Congress itself "prescribed" the tariff rates and merely authorized the President to impose them upon finding that a foreign country had levied "reciprocally

C. No President Has Asserted The Unbounded Tariff Power Claimed Here

As is usually the case, history is instructive. And, here, it is "'telling that [no President], in [IEEPA's] half century of existence,' had []ever relied on its authority" to impose tariffs. *West Virginia v. EPA*, 597 U.S. 697, 722 (2022) (quoting *National Fed'n of Indep. Bus. v. Department of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 119 (2022)). That is not for a lack of opportunity—Presidents have declared 88 national emergencies during that period, 77 under IEEPA. Christopher A. Casey, Jennifer K. Elsea & Liana W. Rosen, Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, at 18-20 (Sept. 1, 2025).

Nor have Presidents hesitated to use the powers that IEEPA expressly grants—they have prohibited transactions with and frozen property of foreign actors ranging from drug kingpins to terrorists to entire countries. *See id.* at 30-31, 69-106. In response to the Iranian hostage crisis, President Carter "blocked the removal or transfer of 'all property and interests in property of the Government of Iran.'" *Dames & Moore v. Regan*, 453 U.S. 654, 662 (1981). Yet tariffs were *never* deployed under IEEPA until the President purported to discover that power here.

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unequal and unreasonable" duties on American agricultural products. 143 U.S. at 680, 692-94. In sustaining that delegation, the Court stressed that the President exercised "no discretion"—he simply "ascertained the existence of a particular fact" on which Congress had made the law's operation depend. *Id.* at 693. None of these cases suggests that the President may impose tariffs at whatever rate he chooses in his own discretion.

Instead, past Presidents who imposed tariffs did so pursuant to other statutes—and subject to the essential guardrails that IEEPA lacks. In 2002, for example, President Bush imposed "safeguard tariffs" on certain steel imports by invoking Section 201 of the Trade Act of 1974, but only after satisfying each of its procedural requirements. *Proclamation 7529—To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products*, 116 Stat. 3184, 3184-87 (Mar. 5, 2002). In 2009, President Obama used the same statute to impose safeguard tariffs on car tires from China, also adhering to the statutory parameters. *Proclamation 8414—To Address Market Disruption From Imports of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China*, 74 Fed. Reg. 47861 (Sept. 14, 2009). And President Trump in his first term waited to issue new steel tariffs until the Secretary of Commerce had duly found current import levels to threaten national security and recommended an adjustment to reduce those imports, citing the Trade Expansion Act of 1962. *Proclamation 9705—Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11625, 11625-26 (Mar. 8, 2018).

The Administration states that "IEEPA and the [National Emergencies Act] impose limits." U.S. Br. 32. But none of the provisions the government cites impose limits *on the tariff power* the President claims that IEEPA provides. One sets the default length of emergencies to a year—which is not a meaningful limit because Presidents can (and routinely do) simply renew emergencies each year. 50 U.S.C. § 1622. Another forbids the President from regulating certain humanitarian donations, ordinary travel luggage, and information—none of which

impacts the sweeping tariffs here. *Id.* § 1702(b)-(c). The remainder are simply reporting requirements. *Id.* §§ 1641, 1703. Meanwhile, the Administration disclaims any "additional" limits on the tariff power itself as "atextual," U.S. Br. 32, and specifically argued below that "'there is no limit on the cap of the tariff in IEEPA,'" Pet.App.34a.

Thus, the Administration's premise that the current tariffs are grounded in history and precedent is flat wrong: Until now, no President ever asserted the unbounded tariff power claimed here.[3]

II. IEEPA DOES NOT AUTHORIZE THE SWEEPING TARIFF POWER ASSERTED

A. IEEPA's Text Does Not Authorize Any Tariffs, Much Less The Unlimited Tariff Power Asserted By The President Here

Without express language authorizing the President to impose a "tariff" or "duty" under IEEPA, the Administration asks this Court to read that power into the word "regulate." Doing so would defy longstanding principles of statutory interpretation and the fact that Congress vested the taxing power in Congress, provide an end-run around the important limits Congress crafted when delegating tariff and other powers to the President in other statutes, and open a door for the Executive Branch to unilaterally impose a variety of taxes on the American public. This Court should reject that approach.

The text of IEEPA does not expressly delegate any authority to the President to impose tariffs—let alone tariffs of unbounded rate, duration, or target. *See* 50

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[3] That includes President Nixon. The tariffs he imposed were of limited rates, scope, and duration. *See infra* at 17.

U.S.C. § 1702. In a qualifying emergency, IEEPA authorizes the President to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit" importation or exportation. *Id.* § 1702(a)(1)(B). Absent from that list is tariffs, duties, or any other tax. That omission—particularly when read against the backdrop of the many specific acts IEEPA *does* authorize—is compelling textual evidence that Congress intentionally chose not to authorize tariffs.

Contrary to the Administration's arguments, an unbounded tariff power cannot be implied from IEEPA's authorization to "regulate . . . importation . . . of . . . any property." *Id.* "Regulate" is a word of virtually unlimited elasticity, especially in the hands of a government entity. It means "to control . . . through the implementation of rules," *Regulate*, *Black's Law Dictionary* (12th ed. 2024), "[t]o direct by rule or restriction" or "to subject to governing principles or laws," *Regulate*, *Black's Law Dictionary* (5th ed. 1979, Westlaw). Read literally, it would apply to essentially *anything* a government does "by rule or restriction." Today it is tariffs, but if the government's position prevails here, an administration could claim the power to do virtually *anything* with the aim of impacting the importation of property—for example, detaining individuals bearing imports at legal ports of entry. This reading of "regulate" would also render superfluous the long list of acts that Congress included in the same clause.

Instead, Congress's inclusion of "regulate" must be read in context and against the background principle that Congress generally does not hide elephants in mouseholes. In particular, the terms surrounding "regulate" in IEEPA, like "investigate" and "block," 50

U.S.C. § 1702(a)(1)(B), give that term "'more precise content,'" *Fischer v. United States*, 603 U.S. 480, 487 (2024). In both ordinary usage and statutory context, the power to "regulate" imports under IEEPA is best understood only as the ability to place limits or requirements on them—for example, by imposing sanctions, setting quotas, requiring inspections, or other acts effectuating the terms of Section 1702. Historical practice bears that out. For half a century, every presidential action under IEEPA involved more targeted import restrictions such as country-specific embargoes, "asset freezes," or "prohibitions on unlicensed transactions directed to foreign countries, entities, and individuals"—never the imposition of general tariffs on all imports. Christopher T. Zirpoli, Cong. Rsch. Serv., R48435, *Congressional and Presidential Authority to Impose Tariffs*, at 20 (2025).

That reading also fits the statute's design. After all, it would be strange to read a statute designed for "unusual and extraordinary threat[s]" as conferring a general power to impose tariffs on *all* imports. 50 U.S.C. § 1701. Global tariffs are the stuff of long-term trade policy, not emergency management. By contrast, short-term measures like embargoes naturally fit into IEEPA's emergency framework, directed at a specific danger. Nothing in IEEPA's text or purpose suggests Congress meant to allow the President to conduct long-term trade policy through a grant of crisis-management authority.

The Administration's reading is particularly implausible given the constitutional source of the taxation power. "Taxation is a legislative function, and Congress . . . is the sole organ for levying taxes . . . ." *National Cable Television Ass'n v. United States*, 415 U.S. 336, 340 (1974). The Constitution

does not permit Congress to silently and indiscriminately delegate away that "'most important . . . authorit[y].'" *Consumers' Rsch.*, 145 S. Ct. at 2525-26 (Gorsuch, J., dissenting) (alterations in original). Nor is there any basis to assume that Congress would freely—and silently—give away such a core Article I power, even if it could.

The President cites dictionaries to show that the "ordinary meaning" of "regulate" is expansive enough to cover tariffs. That argument proves far too much—it would mean Congress has unknowingly granted countless federal agencies the power to impose taxes. *See, e.g.*, 15 U.S.C. § 78k(a)(2)(A) (granting SEC power to "regulate" "transactions on a national-securities exchange"); 21 U.S.C. § 360bbb-2(a) (granting FDA authority to "regulate" any "drug, biological product, device, or combination product"); 42 U.S.C. § 7412(d) (granting EPA authority to regulate emissions standards). In other contexts, *no one* thinks "regulate" encompasses a taxation power. Nor is "regulate" a common way of referring to tariffs. The Constitution itself distinguishes between regulating goods and taxing them—a superfluity under the Administration's interpretation. *Compare* U.S. Const. art. I, § 8, cl. 1, with *id.* § 8, cl. 3.

The President contends that taxes are not a "traditional" means of regulation in other contexts. U.S. Br. 31-32. But nor were tariffs a traditional means of "regulation" under IEEPA; as noted, IEEPA historically has been invoked only to block transactions with specific countries or involving specific goods—never to impose across-the-board tariffs. *See supra* at 13. The President only "discovered" that power this year, 50 years and 10 Presidents after the enactment of IEEPA. Congress's

"traditional" approach—evidenced in many statutes—is to delegate tariffs expressly and subject to guardrails. *Supra* at 6-8 & n.2. Until now, the Executive has respected those limits. If this Court holds that IEEPA's use of "regulate" authorizes tariffs, then it is hard to see why enterprising (and cash-strapped) agencies could not discover a latent taxation power from other statutes using "regulate."

Against the weight of that text, structure, and history, the President points to a lone lower-court decision, *United States v. Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975), in which the Court of Customs and Patent Appeals upheld President Nixon's imposition of universal, albeit time-limited tariffs to address a balance-of-payments crisis, under the Trading with the Enemy Act of 1917 (TWEA)—a source of authority that the President notably did not invoke in the Proclamation imposing the tariffs, but rather his lawyers introduced post hoc in the ensuing litigation. *See Proclamation 4074—Imposition of Supplemental Duty for Balance of Payments Purposes*, 36 Fed. Reg. 15,724, 15,724 (Aug. 17, 1971). But *Yoshida* cannot bear the weight that the government places on it.

Indeed, this Court does not assume that Congress incorporated a judicial interpretation of language unless "a term's meaning was 'well-settled'" before the statute's adoption, *Kemp v. United States*, 596 U.S. 528, 539 (2022), and it has declined to apply the old-soil canon even when this Court had repeatedly construed "the same language" in different statutes, *United States v. Wong*, 575 U.S. 402, 412-13 (2015). A single lower-court decision is hardly soil, much less *old* soil, that supports such a reading by implication. That is particularly true here, where *Yoshida* had

reversed the Customs Court's holding that the word "regulate" in TWEA does *not* authorize the imposition of tariffs. *See Yoshida Int'l, Inc. v. United States*, 378 F. Supp. 1155, 1171-73 (Cust. Ct. 1974). The meaning of the statute was anything but settled.[4]

Nor is there any basis for this Court to double down on *Yoshida*'s interpretation of TWEA, which is outdated and unsound. The court failed to engage in any meaningful textual scrutiny of TWEA or discussion of the constitutional distinction between regulation and taxation. Instead, the court read TWEA expansively based on the purposive notion that a President needed flexibility to respond to national emergencies—and the fact that in 1971, "no [other] act" provided the "procedures for dealing with . . . a balance of payments problem"—regardless whether TWEA expressly authorized the particular "tool" to do so. *Yoshida*, 526 F.2d at 573-74, 578. This Court has since rejected this purposive mode of statutory interpretation, and there is no reason for

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[4] Most members of this Court reject reliance on legislative history to discern the meaning of statutes. For those who find it relevant, the sole reference to *Yoshida* in IEEPA's legislative history indicates that Congress did *not* intend to grant the unlimited tariff power the President asserts. The House Report mentions the case as an example of *Executive overreach*. *See* H.R. Rep. No. 95-459, at 5 (1977) (noting that the government invoked TWEA in the *Yoshida* litigation to defend President Nixon's tariffs); *id.* at 7 (explaining that the "need for this legislation is apparent from" examples like *Yoshida* where Presidents treated TWEA as "an unlimited grant of authority"). As for TWEA, on which IEEPA was supposedly based, there is not "'even a glimmer of a suggestion that Congress ever intended—or even considered—[TWEA and its reference to 'regulate'] as a vehicle for delegating any of its tariff-making authority.'" *Yoshida*, 526 F.2d at 571.

this Court to drink from that well here. *Cf. Alexander v. Sandoval*, 532 U.S. 275, 287 (2001) (refusing to "revert . . . to the understanding of private causes of action that held sway 40 years ago when Title VII was enacted" in considering question anew).

Accordingly, there is no basis to conclude that Congress adopted *Yoshida*'s stand-alone interpretation of "regulate." But even assuming it had, it would not justify the unbounded power the President claims. President Nixon's tariffs were expressly temporary, applied only to goods already covered by Congress's tariff schedules (but that had previously benefitted from tariff concessions), and were set at rates that did not exceed Congress's original statutory maximums. *Yoshida*, 526 F.2d at 567-68, 577. Indeed, in construing the authority granted by TWEA, the *Yoshida* court itself emphasized that President Nixon's tariffs were a "*limited* surcharge, as 'a *temporary* measure' . . . which is quite different from 'imposing whatever tariff rates he deems desirable.'" *Id.* at 577-78 (emphasis added). And the court cautioned that its decision to uphold President Nixon's "specific surcharge" should not be read to "approve in advance any future surcharge of a different nature." *Id.* at 577. Thus, even if one assumed an unstated intent to bake *Yoshida* into IEEPA, *Yoshida*, by its terms, does not authorize the sweeping power claimed here.

Further underscoring the limited reach of the *Yoshida* ruling, the court also explained that, following President Nixon's 1971 tariffs, Congress had specifically authorized trade-imbalance tariffs in Section 122 of the Trade Act of 1974, and the court emphasized that any such tariff "imposed after [Section 122] must, of course, comply with the statute

now governing such action." *Id.* at 582 n.33. The tariffs at issue in this case, of course, do not.

B. Congress Would Not Have Delegated Unbounded Tariff Power By Implication

The tariff authority that the President claims from IEEPA's use of the word "regulate" would allow the Executive to reshape nearly every aspect of the American economy at will. That is further reason to reject his claim: If Congress had intended to grant a tax power of such breathtaking economic and political significance in IEEPA, it surely would have said so.

As this Court has repeatedly explained in similar contexts, we "expect Congress to speak clearly if it wishes" to delegate "decisions of vast 'economic and political significance.'" *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson*, 529 U.S. 120, 160 (2000)). That expectation (sometimes called the major questions doctrine or canon) reflects "commonsense principles of communication" as well as "our constitutional structure"—both of which suggest Congress will generally "make the big-time policy calls itself, rather than pawning them off to another branch." *Biden v. Nebraska*, 600 U.S. 477, 514-15 (2023) (Barrett, J., concurring); *see West Virginia*, 597 U.S. at 723. Thus, when a President assumes broad and heretofore unrecognized power without express authorization, courts should "'hesitate before concluding that Congress' meant to confer such authority." *West Virginia*, 597 U.S. at 700 (quoting *Brown & Williamson*, 529 U.S. at 159). After all, as Justice Scalia put it, Congress "does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001).

The tariffs here present an even more expansive assertion of Executive authority, with an even greater economic impact, than in prior cases that rejected similarly tenuous claims based on broad terms, including emergency powers. *See Biden*, 600 U.S. at 502 (around $500 billion); *Alabama Ass'n of Realtors v. Department of Health & Human Servs.*, 594 U.S. 758, 764 (2021) (around $50 billion); *West Virginia*, 597 U.S. at 714-15, 724 (billions in compliance costs and one trillion in reduced GDP). Here, the financial impact of the President's tariffs—estimated at *$5.2 trillion* over the next ten years—dwarfs that of the challenged assertions of executive power in these cases. *The Economic Effects of President Trump's Tariffs* at 1-2, Penn Wharton Budget Model (Apr. 10, 2025), https://tinyurl.com/yafjybna.

The impact of the tariffs will rattle almost every corner of the American economy and life, from large manufacturers to small businesses to everyday workers and consumers. *See* Part III, *infra*. In economic and practical effect, the sweeping tariff authority that the President has claimed here is the elephant of elephants. There is surpassing need, accordingly, for "'clear congressional authorization.'" *West Virginia*, 597 U.S. at 723.

The President's arguments in this case underscore the point. After the oral argument below, the President filed a letter with the Federal Circuit stating: "One year ago, the United States was a dead country, and now, because of the [President's tariffs], America is a strong, financially viable, and respected country again." CAFC ECF No. 154. And he warned that invalidating the tariffs "could lead to financial ruin." *Id.* In other words, the President urged the court to uphold his tariff decisions *because of* their

vast economic and political significance. Yet it is precisely that significance which demands an unambiguous authorization from Congress.

Some might agree with the President and others not, but the point is that "'[a] decision of such magnitude and consequence' on a matter of '"earnest and profound debate across the country"' must 'res[t] with Congress itself.'" *Biden*, 600 U.S. at 504 (second alteration in original). Adopting the President's approach here, by contrast, would invite future administrations to bring their major policy arguments to the Court rather than Congress.

It is all the more remarkable that the President has claimed an "extravagant statutory power over the national economy," *Utility Air*, 573 U.S. at 324, through an implied authority *to tax*. The authority to "levy[] taxes," Chief Justice Marshall explained, is "a great substantive and independent power[] which cannot be implied as incidental to other powers," such as the power to regulate commerce with foreign nations. *McCulloch*, 17 U.S. (4 Wheat.) at 411. And because Congress is "the sole organ for levying taxes," it would be an especially "sharp break with our traditions to conclude that Congress had bestowed on [the President] the taxing power." *National Cable Television Ass'n*, 415 U.S. at 340-41.

An unlimited tariff power governing goods originating from across the world far exceeds "what Congress could reasonably be understood to have granted" in authorizing the President to "regulate" certain imports, *West Virginia*, 597 U.S. at 724—even assuming such an awesome power could be delegated in such a limitless fashion to begin with.

C. IEEPA's Overlap With Foreign Affairs Does Not Change Its Natural Meaning

The President argues that the practical expectations underlying the major questions doctrine are nullified because IEEPA "addresses foreign-policy emergencies." U.S. Br. 35. The foreign-policy backdrop provides context, but "[t]he Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015). And the major questions doctrine "is not an on-off switch that flips when a critical mass of factors is present—again, it simply reflects 'common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude.'" *Biden*, 600 U.S. at 521 (Barrett, J., concurring) (quoting *Brown & Williamson*, 529 U.S. at 133). That common-sense principle stems from the fact that certain issues are so consequential, not whether a statute involves domestic or foreign affairs.

This Court has not categorically exempted statutes addressing foreign affairs from that common-sense approach, and for good reason. If it had, Presidents could easily drum up foreign-affairs purposes to implement policies otherwise beyond their power. A President, for example, could declare a global climate change emergency and then seek to overhaul regulation of fossil fuels, as in *West Virginia*, or claim that student loans should be forgiven to promote global competitiveness, as in *Biden*. Adopting a foreign-affairs exception to the major questions doctrine would spell the end of the doctrine as a useful tool of statutory construction.

Nor is there any foreign-affairs exception to the standard tools for reading statutes. "[A] gap or ambiguity in a statute does not relieve a court of its prior duty to interpret the statute in order to 'define the boundaries of the zone of indeterminacy' in which the Executive is authorized to act. And in performing that interpretive duty, the Court does *not* defer to the Executive . . . ." *Al-Bihani v. Obama*, 619 F.3d 1, 45 (D.C. Cir. 2010) (Kavanaugh, J., concurring in the denial of rehearing en banc).

As members of this Court have explained, a statute's connection to foreign affairs can *inform* (not control) an assessment of the President's authority in two ways. First, because the Constitution grants the President some "independent powers" in foreign policy, he may have "concurrent authority" with Congress over certain actions. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). Second, a foreign-affairs connection can, like other common-sense considerations, provide "part of the context" for understanding what Congress intended in a particular statutory delegation. *Biden*, 600 U.S. at 515, 520 (Barrett, J., concurring).

Here, however, the President's tariffs are neither constitutionally nor contextually supported. As explained, the Constitution vests the tariff power in Congress; there is no independent, Article II authority to impose tariffs. That makes tariffs totally unlike, say, the negotiation of treaties, where "the President alone has the power to speak or listen as a representative of the nation." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936).

Nor do tariffs fall within a "zone of twilight," *Youngstown*, 343 U.S. at 637 (Jackson, J.,

concurring), where the President may exercise his own Article II authority and "Congress specifies limits on the President when it wants to restrict [that] Presidential power," *Consumers' Rsch.*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring). Instead, the President lacks Article II authority to impose tariffs and courts presume that Congress has *not* delegated the taxation power. *Nat'l Cable Television Ass'n*, 415 U.S. at 340-41. That presumption reflects taxation's "power to destroy," which the Framers entrusted to the "legislature of the Union alone." *McCulloch*, 17 U.S. (4 Wheat.) at 430-31. There is no constitutional basis, therefore, for assuming that Congress intended to permit a tariff power in IEEPA. In fact, the separation of powers counsels the opposite.

The broader context of the relationship between tariffs and foreign affairs counsels the same conclusion. Historically, Congress has shared its power with the President only by express and strictly limited statutory delegations. *Supra* at 6-8 & n.2. Those delegations include measures authorized to deal with foreign-affairs concerns invoked by the President here, like national security and balance-of-payments problems. 19 U.S.C. §§ 1862(c), 2132(a). Yet the President has ignored those statutes (and guardrails) and opted to impose his tariffs under a reading of IEEPA that provides him unbounded authority. In *Youngstown* terms, "Congress has not left [tariffs] an open field but has covered it by . . . statutory policies inconsistent with this [set of tariffs]." 343 U.S. at 639 (Jackson, J., concurring). The common-sense inference underlying the major questions doctrine—that Congress would say something expressly if it meant to delegate a power of such vast economic and political consequence to the

Executive Branch—not only holds firm, but is reinforced by statutory context here.

Some members of this Court have criticized the major questions doctrine as a tool of statutory construction. But to date it has had the virtue of providing a consistent and neutral principle across Administrations. *See Biden,* 600 U.S. at 505 ("experience shows that major questions cases 'have arisen from all corners of the administrative state'"). Inventing an exception to that principle here—in a case involving an unbounded tariff power that far exceeds in economic and practical effect the power asserted in this Court's prior major questions cases—would seriously compromise the doctrine's utility as a neutral principle of statutory construction.

D. The President Retains Other Broad Emergency Powers Under IEEPA

This does not leave IEEPA toothless. Properly construed, IEEPA still provides the President with robust powers to address foreign emergencies.

IEEPA gives the President a powerful toolkit to address economic emergencies. Most relevant to this case, the President can "investigate, block . . . , regulate, direct and compel, nullify, void, prevent or prohibit" the "importation or exportation of" foreign property. 50 U.S.C. § 1702(a)(1)(B). These blocking powers "put control of foreign assets in the hands of the President," *Propper v. Clark*, 337 U.S. 472, 493 (1949), to "serve as a 'bargaining chip' . . . when dealing with a hostile country," *Dames & Moore*, 453 U.S. at 673. In addition, IEEPA authorizes the President to "investigate, regulate, or prohibit" transactions in foreign exchange, foreign credit transfers, and the import or export of currency and

securities, 50 U.S.C. § 1702(a)(1)(A); and, in the event of armed hostilities against the United States, to confiscate any property of foreign entities involved in those hostilities, and to dispose of it however serves the interests of the United States, *id.* § 1702(a)(1)(C).

These powers are effective and versatile. Presidents have used them to halt human-rights abuses, disrupt transnational criminal organizations, fight terrorism, and protect vital U.S. infrastructure. *See* Casey, Elsea & Rosen, *supra*, at 30-31. Property frozen under IEEPA has been used to support opposition governments to illegitimate regimes, to provide humanitarian relief, and to compensate American victims of terrorism. *Id.* at 32-39.

This Court has correctly permitted the President to freely exercise IEEPA's enumerated powers. In *Dames & Moore*, for instance, the President had invoked IEEPA to annul judicial attachments of Iranian assets and to direct banks to transfer Iranian assets to the Federal Reserve Bank of New York. 453 U.S. at 664-66. The Court upheld that action, explaining that it was authorized by the "congressional grant of power" in that statute to "'transfer,' 'compel,' or 'nullify'" the "'right[s]'" and "'privilege[s]'" in foreign property. *Id.* at 669-74 (quoting 50 U.S.C. § 1702(a)(1)(B)).

The Court also upheld the President's settlement of related claims, which it acknowledged was not covered by IEEPA, but only because it concluded that Congress had "acquiesced in the President's action." *Id.* at 688. Congress has not acquiesced in the sweeping tariff power at issue here. To the contrary, when Congress has delegated tariff power, it has done so only in discrete and carefully limited measures. *Supra* at 6-8 & n.2. But as in *Dames & Moore*, other

(non-tax) tools of foreign policy may be within the President's powers if supported by congressional acquiescence. 453 U.S. at 675-88.

Invalidating the President's unlawful tariffs here will not leave him empty-handed in the face of emergencies. The President retains other potent tools under IEEPA, as well as his powers under other statutes and his inherent or concurrent constitutional powers. As noted, those other statutes include duly delegated authority to impose tariffs in response to concerns related to national security, trade imbalances, and other issues. And, of course, the President can always ask Congress to enact additional authority in a proper delegation, rather than discovering it in 50-year-old statutes.

III. THE TARIFFS ARE CREATING IMMENSE ECONOMIC DAMAGE AND UNCERTAINTY

The vast economic consequences of the tariffs for businesses across the country underscore why it is unreasonable to assume that Congress silently authorized the President to impose sweeping tariffs.

A. The President's tariffs represent one of the largest tax increases in recent U.S. history, literally trillions of dollars. The price increases caused by tariffs are expected to cost the average American household $2,400 annually. *State of U.S. Tariffs: September 26, 2025*, Budget Lab at Yale (Sept. 26, 2025), https://tinyurl.com/3up8jthu. And because tariffs are a regressive tax, they hit the poorest Americans hardest—reducing disposable income of the bottom-decile household by 3.6 percent. *Id.*

Tariffs thus increase costs for American businesses. For example, following the President's April 2 tariff announcement, the total direct tariff cost

to midsize firms in the U.S. grew more than sixfold to $187.7 billion. Chris Wheat et al., *Exposure to tariffs for midsize firms by metro area* at 4, JPMorganChase Institute (July 2025), https://tinyurl.com/yc2sb8pv. These increased costs will ripple throughout the economy. Economists conservatively predict that the tariffs will reduce U.S. GDP by 0.8 percent (approximately $240 billion) and reduce market income by 1.4 percent (approximately $420 billion) in 2026—and that does not include the effects of any foreign retaliation for the tariffs (adding more costs). *See* Erica York & Alex Durante, *Trump Tariffs: Tracking the Economic Impact of the Trump Trade War*, Tax Foundation, https://tinyurl.com/27swf4un (last updated Oct. 10, 2025). Even at the margins, such increased costs can make a huge difference. It is forecasted that some 820,000 jobs will be lost. *Id.*

The tariffs are particularly damaging to American manufacturing. Approximately 56% of all U.S. imports are raw materials, components, and capital goods used by domestic manufacturers—many of which cannot practicably be obtained domestically. John G. Murphy, *How Broad-Based Tariffs Put U.S. Growth, Prosperity at Risk*, U.S. Chamber of Com. (Mar. 27, 2025), https://tinyurl.com/47nbbpwz. Due to the new tariffs, American manufacturers face higher prices for raw materials than their foreign competitors, destroying any comparative advantage the tariffs were allegedly meant to create. Meanwhile, the tariffs have reduced foreign demand for American exports, as some countries have implemented retaliatory tariffs of their own and as foreign consumers have chosen alternatives to U.S. goods. Those retaliatory tariffs affect $223 billion of

U.S. exports and are expected to eliminate an additional 141,000 jobs. York & Durante, *supra*.

Small businesses will suffer the greatest harm. *See* Neil Bradley, *Small Businesses, Big Burden: The Cost of Tariffs*, U.S. Chamber of Com. (May 20, 2025), https://www.uschamber.com/small-business/small-businesses-big-burden-the-cost-of-tariffs. Because small businesses operate with tight profit margins and limited financial flexibility, even a small increase in tariffs can profoundly affect their bottom line. *'A matter of survival': Small Businesses Speak Out on Tariffs*, U.S. Chamber of Com. (updated Oct. 1, 2025), https://tinyurl.com/yj58vtty. Many small businesses will be forced to raise prices or compromise quality. As Adam Fazackerley, co-founder of a Virginia drawstring organizer company, put it, "[i]ncreasing tariffs ha[s] done nothing but hurt our ability to plan and grow." *Id.* And Beth Benike, owner of a baby products company, has had to "cash[] in [her] retirement fund to keep the business afloat." *Id.* Other businesses have reported that they are already "seeing customers delay or cancel projects" because of tariff-related price increases. *Id.* After Elana Gabrielle, another small-business owner, had to pay "over $1,000" in IEEPA tariffs on an $8,400 order, she wondered if, with her "already small margins," she could continue offering her "goods at the [same] quality and price." *Id.*

The prospect of retaliation at any time is also particularly concerning to American small businesses that rely heavily on international consumers. Chris Pence, president of a pottery company, noted that "[d]ue to the tariffs and hostile attitude towards Canada, our Canadian customers are no longer interested in working with us." *Id.* Pence's company

has "lost all of [its] market share in Canada and had to downsize [its] business as a result." *Id.*

B. These harms to American businesses are exacerbated by the confusion and uncertainty created by the unlimited, unilateral nature of the President's asserted IEEPA tariff authority, which has created a constant state of flux over the tariffs.

When Congress expressly authorizes tariffs, it also imposes boundaries—on their duration, amount, and the like—to ensure stability. But the President's claimed IEEPA authority contains no such limits. At whim, he has increased, decreased, suspended, or reimposed tariffs, generating the perfect storm of uncertainty. Following the President's spate of tariff announcements, the Economic Policy Uncertainty Index has shattered records, revealing greater trade uncertainty in recent months than at any point during the COVID-19 pandemic. *See* Economic Policy Uncertainty Index, https://tinyurl.com/2swyhjej (last visited Oct. 21, 2025). Such uncertainty depresses demand, as both businesses and consumers adopt a wait-and-see approach, postponing capital investments and withholding purchases. Masayuki Morikawa, *Trump tariff policy, uncertainty, and the role of economics*, VoxEU (June 14, 2025), https://tinyurl.com/ytm26y4h.

Making matters worse, the President has invoked IEEPA not just to impose new tariffs but also to alter longstanding trade practices, including the use of duty drawback and foreign trade zones—adding to the uncertainty. *See* The White House, *Imposing Duties to Address the Flow of Illicit Drugs Across our Northern Border* (Feb. 1, 2025); Exec. Order No. 14,257, 90 Fed. Reg. 15041 (Apr. 2, 2025).

This uncertainty is crippling, especially for small businesses trying to stay afloat. And it is all the more reason why it is unlikely that Congress would delegate to the President an unlimited tariff authority, especially in light of the careful limits on the tariff authority Congress has explicitly delegated in other statutes and at other times.

* * * * *

The irreparable harms already suffered by American businesses large and small underscore the vast economic consequences of the President's tariffs. And it is precisely those consequences that cry out for serious legislative debate and clear statutory language before they may be unleashed.

CONCLUSION

The Federal Circuit's decision should be affirmed.

Respectfully submitted,

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