

No.

---

**In The  
Supreme Court of the United States**

---

LEARNING RESOURCES, INC., ET AL.,

*Petitioners,*

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,  
IN HIS OFFICIAL CAPACITY, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI BEFORE  
JUDGMENT TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

---

**PETITION FOR A WRIT OF CERTIORARI  
BEFORE JUDGMENT**

---

Pratik A. Shah  
*Counsel of Record*  
James E. Tysse  
Matthew R. Nicely  
Daniel M. Witkowski  
Kristen E. Loveland  
AKIN GUMP STRAUSS  
HAUER & FELD LLP  
2001 K Street NW  
Washington, DC 20006  
202-887-4000  
pshah@akingump.com

---

*Counsel for Petitioners*

---

## QUESTION PRESENTED

The International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* (“IEEPA”) permits the President, upon a valid emergency declaration, to “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, 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[.]” *Id.* § 1702(a)(1)(B). Until now, no President in IEEPA’s nearly 50-year history has ever invoked it to impose tariffs—let alone the sweeping worldwide tariffs imposed pursuant to the executive orders challenged here.

The question presented is:

Whether IEEPA authorizes the President to impose tariffs.

## **PARTIES TO THE PROCEEDINGS**

Petitioners (Plaintiffs-Appellees below) are Learning Resources, Inc., and hand2mind, Inc.

Respondents (Defendants-Appellants below) are Donald J. Trump, President of the United States, in his official capacity; Kristi Noem, Secretary of the Department of Homeland Security, in her official capacity; United States Department of Homeland Security; Scott Bessent, Secretary of the Treasury, in his official capacity; United States Department of the Treasury; Howard W. Lutnick, Secretary of Commerce, in his official capacity; United States Department of Commerce; Pete Flores, Acting Commissioner of Customs & Border Protection, in his official capacity; United States Customs and Border Protection; Jamieson Greer, U.S. Trade Representative, in his official capacity; and Office of the United States Trade Representative.

**RULE 29.6 STATEMENT**

Petitioners Learning Resources, Inc. and hand2mind, Inc. are private, family-owned corporations. Learning Resources, Inc. and hand2mind, Inc. have no parent corporation or publicly held corporation that owns 10% or more of either entity's stock.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDINGS.....	ii
RULE 29.6 STATEMENT .....	iii
INTRODUCTION.....	1
OPINIONS BELOW .....	2
JURISDICTION .....	2
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS .....	2
STATEMENT OF THE CASE .....	3
A. Background .....	3
1. <i>The Constitution grants Congress the exclusive power to set tariff policy</i> .....	3
2. <i>The International Emergency Economic Powers Act</i> .....	4
3. <i>The President bypasses Congress to impose tariffs through IEEPA</i> .....	7
4. <i>IEEPA tariffs will have major economic and political consequences</i> .....	10
5. <i>IEEPA tariffs are putting Petitioners' businesses at risk</i> .....	13
B. Procedural History .....	14
C. The Court of International Trade Actions .....	16

REASONS FOR GRANTING THE WRIT .....	17
I. This Court Should Grant Review To Determine Whether IEEPA Authorizes Tariffs .....	18
II. This Court Should Grant Review Now To Decide An Issue Of Paramount Importance .....	26
CONCLUSION .....	33
APPENDIX	
Order Denying Defendants’ Motion to Transfer Venue; Granting Plaintiffs’ Motion for a Preliminary Injunction of the U.S. District Court for the District of Columbia (May 29, 2025) .....	1a
Memorandum Opinion Denying Defendants’ Motion to Transfer Venue; Granting Plaintiffs’ Motion for a Preliminary Injunction of the U.S. District Court for the District of Columbia (May 29, 2025).....	3a
Order Granting Defendants’ Motion to Stay of the U.S. District Court for the District of Columbia (June 3, 2025) .....	44a
50 U.S.C. § 1701 .....	46a
50 U.S.C. § 1702 .....	47a
Declaration of Richard Woldenberg in Support of Plaintiffs’ Motion for a Preliminary Injunction filed in the U.S. District Court for the District of Columbia (April 24, 2025) .....	52a

Transcript of Motion Hearing Held Before the Honorable Rudolph Contreras United States District Judge (May 27, 2025) .....	73a
--	-----

## TABLE OF AUTHORITIES

### CASES:

<i>A.L.A. Schechter Poultry &amp; Panama Refining Co. v. Ryan,</i> 293 U.S. 388 (1935) .....	23
<i>Biden v. Nebraska,</i> 600 U.S. 477 (2023) .....	17, 23, 27
<i>BP P.L.C. v. Mayor &amp; City Council of Baltimore,</i> 141 S. Ct. 1532 (2021) .....	25
<i>Camreta v. Greene,</i> 563 U.S. 692 (2011) .....	32
<i>Cochise Consultancy, Inc. v. United States ex rel. Hunt,</i> 587 U.S. 262 (2019) .....	24
<i>Consumers Union of U.S., Inc. v. Kissinger,</i> 506 F.2d 136 (D.C. Cir. 1974) .....	4
<i>Department of Com. v. New York,</i> 588 U.S. 752 (2019) .....	27
<i>Department of Educ. v. Brown,</i> 600 U.S. 551 (2023) .....	27
<i>Gibbons v. Ogden,</i> 22 U.S. (9 Wheat) 1 (1824) .....	19



<i>Industrial Union Dep't, AFL-CIO v. American Petroleum Inst., 448 U.S. 607 (1980) .....</i>	23
<i>K Mart Corp. v. Cartier, Inc., 485 U.S. 176 (1988) .....</i>	31
<i>Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) .....</i>	23
<i>Mistretta v. United States, 488 U.S. 361 (1989) .....</i>	32
<i>National Fed'n of Indep. Bus. v. Department of Lab., Occupational Safety &amp; Health Admin., 595 U.S. 109 (2022) .....</i>	23
<i>National Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012) .....</i>	20, 21
<i>United States v. Nixon, 418 U.S. 683 (1974) .....</i>	32
<i>United States v. Texas, 599 U.S. 670 (2023) .....</i>	27
<i>United States v. United Mine Workers of Am., 330 U.S. 258 (1947) .....</i>	32
<i>United States v. Yoshida Int'l, Inc., 526 F.2d 560 (C.C.P.A. 1975) .....</i>	16, 24, 25, 26

<i>V.O.S. Selections, Inc. v. United States</i> , --- F. Supp. 3d ---, No. 25-00066, 2025 WL 1514124 (Ct. Int'l Trade May 28, 2025) .....	16, 17
<i>Whole Woman's Health v. Jackson</i> , 595 U.S. 30 (2021) .....	27
<i>Wilson v. Girard</i> , 354 U.S. 524 (1957) .....	32
<i>Yates v. United States</i> , 574 U.S. 528 (2015) .....	22
<i>Yoshida Int'l Inc. v. United States</i> , 378 F. Supp. 1155 (Cust. Ct. 1974).....	24
<i>Youngstown Sheet &amp; Tube Co. v. Sawyer</i> , 343 U.S. 937 (1952) .....	32
<b><u>CONSTITUTION AND STATUTES:</u></b>	
U.S. CONST.	
art. I, § 8, cl. 1.....	2, 3, 19
art. I, § 8, cl. 3.....	2, 19
art. I, § 9, cl. 5.....	24
art. II, § 3.....	4
2 U.S.C.	
§ 622(8)(B)(1) .....	21
15 U.S.C.	
§ 78k(a)(2) .....	20

16 U.S.C.	
§ 460bbb-9(a) .....	21
19 U.S.C.	
§ 1338(a) .....	4
§ 1862.....	4
§ 2132(a) .....	4, 21
§ 2253.....	4
§ 2411.....	4
§ 2411(c).....	21
§ 2412.....	4
§ 2413.....	4
§ 2414.....	4
§ 2415.....	4
§ 2416.....	4
§ 2417.....	4
§ 2418.....	4
§ 2419.....	4
21 U.S.C.	
§ 360bbb-2(a) .....	20
28 U.S.C.	
§ 1254(1) .....	2, 32
§ 1292(a)(1) .....	2
§ 1581(i)(1).....	14, 31
§ 2101(e).....	2, 32
49 U.S.C.	
§ 40117(j) .....	21
50 U.S.C.	
§ 1701(a) .....	4
§ 1702(a)(1)(B) .....	5, 7, 22, 24

Pub. L. No. 95-223 Title II, 91 Stat. 1626  
(1977) ..... 3

Securities Exchange Act of 1934, Pub. L. No.  
73-291, § 11(a)(1), 48 Stat. 881, 891 ..... 20

**OTHER AUTHORITIES:**

*‘A matter of survival’: Small Businesses  
Speak Out on Tariffs*, U.S. CHAMBER OF  
COM. (last updated: June 6, 2025) ..... 12

Berkowitz, Ben, *The only trade certainty is  
uncertainty*, AXIOS (June 13, 2025) ..... 9, 12

Bharade, Aditi, *Trump said he will set  
unilateral ‘take it or leave it’ tariffs on  
trading partners in the next 2 weeks*,  
BUS. INSIDER (June 12, 2025)..... 10

Boehm, Eric, *Peter Navarro Says Tariffs  
Will Be a \$6 Trillion Tax Increase, but  
Also a Tax Cut*, REASON MAG. (Mar. 31,  
2025) ..... 11

CASEY, CHRISTOPHER A. ET AL., CONG. RSCH.  
SERV., R45618, THE INTERNATIONAL  
EMERGENCY ECONOMIC POWERS ACT:  
ORIGINS, EVOLUTION, AND USE (2024)..... 22

Chang, Agnes, et al., *How Much Are Tariffs  
on Chinese Goods? It’s Trickier Than You  
Think*, N.Y. TIMES (Apr. 12, 2025)..... 9

China Trade Summary, OFF. OF THE U.S. TRADE REPRESENTATIVE, (last visited June 11, 2025) .....	10
Collins, Michael, ‘ <i>Two Dolls Instead of 30</i> ’: <i>Trump Acknowledges Prices Will Force Consumers to Cut Back</i> , USA TODAY (Apr. 30, 2025) .....	12
Eadicicco, Lisa, <i>Small businesses struggle under Trump’s tariff whiplash: I’m so angry that my own government has done this to me</i> , CNN (June 1, 2025) .....	29
Exec. Order No. 13,219, <i>Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans</i> , 66 Fed. Reg. 34,777 (Jun. 26, 2001) .....	6
Exec. Order No. 13,581, <i>Blocking Property of Transnational Criminal Organizations</i> , 76 Fed. Reg. 44,757 (Jul. 24, 2011) .....	6
Exec. Order No. 14,195, <i>Imposing Duties to Address the Synthetic Opioid Supply Chain in the People’s Republic of China</i> , 90 Fed. Reg. 9,121 (Feb. 1, 2025) .....	7
Exec. Order No. 14,228, <i>Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China</i> , 90 Fed. Reg. 11,463 (Mar. 3, 2025) .....	7

Exec. Order No. 14,256, <i>Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China as Applied to Low-Value Imports</i> , 90 Fed. Reg. 14,899 (Apr. 2, 2025) .....	7
Exec. Order No. 14,257, <i>Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits</i> , 90 Fed. Reg. 15,041 (Apr. 2, 2025) .....	8
Exec. Order No. 14,259, <i>Amendment to Reciprocal Tariffs and Updated Duties as Applied to Low-Value Imports From the People’s Republic of China</i> , 90 Fed. Reg. 15,509 (Apr. 8, 2025) .....	8
Exec. Order No. 14,266, <i>Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment</i> , 90 Fed. Reg. 15,625 (Apr. 9, 2025) .....	8, 9
Exec. Order No. 14,298, <i>Modifying Reciprocal Tariff Rates To Reflect Discussions With the People’s Republic of China</i> , 90 Fed. Reg. 21,831 (May 12, 2025) .....	9

<i>Fact Sheet: President Donald J. Trump Restores Section 232 Tariffs, THE WHITE HOUSE (Feb. 11, 2025)</i> .....	26
Goldman, David & Elisabeth Buchwald, <i>Trump’s tariffs will probably plunge the global economy into recession this year, JPMorgan analysts says, CNN (Apr. 2, 2025)</i> .....	27
Gressman, Eugene et al., <i>Supreme Court Practice</i> 87 (9th ed. 2007).....	32
H.R. REP. NO. 95-459 (1977) .....	25
IRWIN, DOUGLAS A., CLASHING OVER COMMERCE: A HISTORY OF U.S. TRADE POLICY (2017) .....	3, 4
<i>Memorandum on the Actions by the United States Related to the Section 301 Investigation, 2018 DAILY COMP. PRES. Doc. 1 (Mar. 22, 2018)</i> .....	26
<i>OECD Economic Outlook, Volume 2025 Issue 1: United States, OECD (June 3, 2025)</i> .....	13
Peck, Emily, <i>Midsized businesses struggle with high tariff costs, AXIOS (June 12, 2025)</i> .....	12

Picchi, Aimee, <i>Trump reveals these 2 new types of tariffs on what he calls “Liberation Day,”</i> CBS NEWS (Apr. 2, 2025) .....	10, 27
Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 8, 2018) .....	26
Rappeport, Alan et al., <i>White House Revives Trade Spat With Fresh Attacks on China,</i> N.Y. TIMES (May 30, 2025).....	9
Reddy, Sudeep, <i>Reality Check: What Trump’s Supposed Retreat Really Means in a Historic Trade War,</i> POLITICO (Apr. 10, 2025).....	27
<i>Regulate,</i> THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 943 (6th ed. 1976).....	20
Rubin, Richard, <i>Bessent Says Tariff Revenue Could Reach \$600 Billion Annually,</i> WALL ST. J. (Apr. 4, 2025).....	11
Schulz, Bailey, <i>Trump is rolling out more tariffs this month. Where does the tariff money go?,</i> USA TODAY (Apr. 4, 2025).....	11
<i>State of U.S. Tariffs: May 12, 2025,</i> THE BUDGET LAB (May 12, 2025) .....	12
SUP. CT. R. 11.....	17, 26



Swanson, Ana, <i>U.S. Trade Deficit Hit Record in 2024 as Imports Surged</i> , N.Y. TIMES (Feb. 5, 2025) .....	10
<i>Tariff</i> , RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1454 (1973).....	20
U.S. Customs and Border Protection, <i>Trade Statistics</i> (last visited June 16, 2025).....	11
York, Erica & Alex Durante, <i>Trump Tariffs: Tracking The Economic Impact of the Trump Trade War</i> , THE TAX FOUND. (June 2, 2025) .....	11, 12, 13

## INTRODUCTION

Asserting authority under the International Emergency Economic Powers Act (“IEEPA”), the President with the stroke of a pen increased the Nation’s effective tariff rate tenfold to the highest it has been in more than a century. No President in IEEPA’s history has relied on that law to issue *any* tariff. Yet the current Administration has used it to impose sweeping tariffs to reshape the national economy and global trade policy, raising taxes on Americans by hundreds of billions of dollars.

IEEPA does not give the President such unilateral power. Indeed, it does not give the President any tariffing power whatsoever, as every presidential administration until this one has understood. Both courts to have adjudicated the merits—the federal district court below and a three-judge panel of the Court of International Trade (“CIT”)—have now declared the IEEPA tariffs unlawful on two different grounds. But as of last week, both lower court injunctions have been stayed pending appeal. Even as these punishing tariffs cause American businesses and consumers to bleed billions of dollars each month, there will be no relief any time soon.

This case indisputably presents a question of paramount importance: whether IEEPA authorizes tariffs. That pure question of law, implicating core separation-of-powers concerns, is in fact the only merits question that the government believes courts have the power to answer. It will inevitably fall to this Court to resolve it definitively.

In light of the tariffs’ massive impact on virtually every business and consumer across the Nation, and the unremitting whiplash caused by the unfettered tariffing power the President claims, challenges to the IEEPA tariffs cannot await the normal appellate process (even on an expedited timeline). There is ample reason for this Court to grant certiorari before judgment now so this case can be briefed over the summer and argued as soon as possible.

### **OPINIONS BELOW**

The opinion of the district court, App., *infra*, 3a-43a, is reported at 2025 WL 1525376. The district court’s order staying its injunction, App., *infra*, 44a-45a, is unreported.

### **JURISDICTION**

The order of the district court was entered on May 29, 2025, and was immediately appealable pursuant to 28 U.S.C. § 1292(a)(1). App., *infra*, 1a-2a. Respondents noticed an appeal to the U.S. Court of Appeals for the D.C. Circuit on May 30, 2025, which was docketed the same day. The Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 2101(e).

### **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

Article I, Section 8 of the United States Constitution states

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United

States; but all Duties, Imposts and Excises shall be uniform throughout the United States[.]

Cl. 1.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

Cl. 3.

The relevant provisions of IEEPA, Title II of Pub. L. No. 95-223, 91 Stat. 1626 (1977), are reproduced in the appendix to this petition. App., *infra*, 46a-51a.

## STATEMENT OF THE CASE

### A. Background

#### 1. *The Constitution grants Congress the exclusive power to set tariff policy*

The imposition of tariffs is a distinctly legislative power that the Constitution assigns to Congress. U.S. CONST. art. I, § 8, cl. 1 (granting Congress the “[p]ower [t]o lay and collect Taxes, Duties, Imposts, and Excises”). Congress is thus “the principal venue in which trade policy is determined.” DOUGLAS A. IRWIN, *CLASHING OVER COMMERCE: A HISTORY OF U.S. TRADE POLICY* 2 (2017). Presidents may “demand, protest, denounce, and complain all they want,” but existing trade policy will not change absent a “majority in Congress.” *Id.* Because the Constitution vests the power to impose duties with Congress, the President’s ability to impose or alter tariffs is limited to circumstances where Congress provides specific authorization.

Congress has done so in a series of statutory enactments, all codified under Title 19 of the U.S. Code, which governs “Customs Duties” and carefully constrains the President’s authority. *See* 19 U.S.C. §§ 1338(a), 1862, 2132(a), 2253, 2411-2419. For example, Section 122 of the Trade Act of 1974 authorizes the President to impose “duties” “not to exceed 15 percent ad valorem \*\*\* on articles imported into the United States” in order “to deal with large and serious United States balance-of-payments deficits,” but those tariffs expire after 150 days unless Congress enacts legislation to extend them. 19 U.S.C. § 2132(a).

Those discrete and delimited statutory authorizations illustrate the President’s circumscribed role with respect to tariffs. The President has no independent power under Article II of the Constitution to set tariffs, and Congress “retains ultimate authority over trade policy.” IRWIN, *supra*, at 21. If Congress in a statute has lawfully authorized the President to make decisions regarding tariffs, he may exercise that power under his duty to “take Care that the Laws be faithfully executed.” U.S. CONST. art. II, § 3. But absent such an authorization, “the President could not increase or decrease tariffs.” *Consumers Union of U.S., Inc. v. Kissinger*, 506 F.2d 136, 142-143 (D.C. Cir. 1974).

## 2. *The International Emergency Economic Powers Act*

Under 50 U.S.C. § 1701(a), when the President declares a national emergency pursuant to the National Emergencies Act with respect to an “unusual and extraordinary threat” that has its source outside

the United States, the President may use the powers granted in § 1702 to “deal with” that threat. Section 1702 provides, in relevant part, that the President may

investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, 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[.]

50 U.S.C. § 1702(a)(1)(B).

Since its enactment in 1977, Presidents have invoked IEEPA to address specific threats by specific countries and persons. To “deal with” those threats, Presidents have imposed different types of sanctions or remedies. Certain IEEPA-based executive orders have targeted the policies and actions of specific foreign governments and resulted in the imposition of comprehensive sanctions against countries or regions, which generally prohibit virtually all economic relations between U.S. persons and the targeted

jurisdiction.<sup>1</sup> Presidents have also sanctioned categories of foreign “persons,” which may include groups, political parties, terrorist organizations, corporations, and individuals. Some IEEPA actions have focused on persons in identified geographical areas (*e.g.*, the Western Balkans),<sup>2</sup> while others have focused on foreign persons engaged in activities creating emergency conditions regardless of nationality or geographic location.<sup>3</sup> Such sanctions have blocked access to assets for designated persons, prevented their utilization of U.S. financial systems or credit, denied visas to or excluded the designated persons from the United States, or prohibited U.S. persons from engaging in transactions with the designated persons.

Before February 1, 2025, however, no President had ever invoked IEEPA to impose a single tariff or duty on goods in the statute’s nearly 50-year history.

---

<sup>1</sup> Currently, the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) maintains comprehensive sanctions, in part based on IEEPA, against Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk Regions of Ukraine.

<sup>2</sup> *E.g.*, Exec. Order No. 13,219, *Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans*, 66 Fed. Reg. 34,777 (Jun. 26, 2001).

<sup>3</sup> *E.g.*, Exec. Order No. 13,581, *Blocking Property of Transnational Criminal Organizations*, 76 Fed. Reg. 44,757 (Jul. 24, 2011).

### 3. *The President bypasses Congress to impose tariffs through IEEPA*

President Trump, through a series of executive orders, has repeatedly bypassed Congress to impose tariffs unilaterally under IEEPA. With the stroke of a pen, he has dramatically changed United States tariff policy while all but admitting that none of the 4,732 sections in Title 19 of the U.S. Code—the title governing customs duties—allows him to do so.

The China Trafficking IEEPA Orders: On February 1, 2025, the President issued an executive order imposing 10% tariffs on China pursuant to “section 1702(a)(1)(B) of IEEPA.” Exec. Order No. 14,195, *Imposing Duties to Address the Synthetic Opioid Supply Chain in the People’s Republic of China*, § 1, 90 Fed. Reg. 9,121, 9,122 (Feb. 1, 2025). That order asserted that China had “fail[ed] to stem the ultimate source of many illicit drugs distributed in the United States.” *Id.* at 9,121. Roughly one month later, the President raised the tariffs from 10% to 20% based on his determination that China “ha[d] not taken adequate steps to alleviate the illicit drug crisis through cooperative enforcement actions.” Exec. Order No. 14,228, *Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China*, § 1, 90 Fed. Reg. 11,463, 11,463 (Mar. 3, 2025). Then, a month after that, he ordered the elimination of duty-free *de minimis* treatment for goods subject to these tariffs, ignoring a congressionally enacted statutory program that had permitted duty exemptions for imported goods valued at less than \$800. Exec. Order No. 14,256, *Further*



*Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China as Applied to Low-Value Imports*, 90 Fed. Reg. 14,899 (Apr. 2, 2025).

The 20% trafficking tariff on goods from China, along with additional tariffs described below, remains in force.

The Reciprocal IEEPA Orders: On April 2, 2025, the President took an even more dramatic step under IEEPA, imposing on virtually *all* trading partners “reciprocal” tariffs consisting of (i) a 10% universal tariff, and (ii) an additional and higher country-specific tariff ranging from 11% to 50%. Exec. Order No. 14,257, *Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits*, 90 Fed. Reg. 15,041 (Apr. 2, 2025). Then, on April 8, 2025, the President responded to retaliatory tariffs from China by raising the country-specific tariff rate on China by *50 percentage points*—from 34% to 84%. Exec. Order No. 14,259, *Amendment to Reciprocal Tariffs and Updated Duties as Applied to Low-Value Imports From the People’s Republic of China*, 90 Fed. Reg. 15,509 (Apr. 8, 2025). The very next day, April 9, 2025, the President suspended for 90 days the additional country-specific tariff on all countries except for China, for which he raised the “reciprocal” tariff again, this time from 84% to 125%. Exec. Order No. 14,266, *Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment*, §§ 2, 3, 90 Fed. Reg. 15,625, 15,626 (Apr. 9, 2025). Meanwhile, the 20% ad valorem tariff on

imports from China remained in place, such that most imports from China faced a minimum 145% IEEPA tariff. *Id.*<sup>4</sup>

Starting May 14, 2025, President Trump paused the country-specific “reciprocal” tariff on China for a period of 90 days. Exec. Order No. 14,298, *Modifying Reciprocal Tariff Rates To Reflect Discussions With the People’s Republic of China*, 90 Fed. Reg. 21,831 (May 12, 2025). The universal 10% tariff on China and 20% trafficking tariff on China were kept in place. On May 30, 2025, President Trump suggested trade talks with China had broken down, posting on Truth Social that China “HAS TOTALLY VIOLATED ITS AGREEMENT WITH US” and “So much for being Mr. NICE GUY!”<sup>5</sup> Then, just last week, the United States and China appeared to reach a new deal. But within 12 hours of its announcement, its staying power was put into question by reports that China had agreed to approve its rare earth export licenses for just six months at a time.<sup>6</sup> That same day, President Trump

---

<sup>4</sup> Agnes Chang, et al., *How Much Are Tariffs on Chinese Goods? It’s Trickier Than You Think*, N.Y. TIMES (Apr. 12, 2025), <https://www.nytimes.com/interactive/2025/04/12/business/economy/china-tariff-product-costs.html>.

<sup>5</sup> Alan Rappeport et al., *White House Revives Trade Spat With Fresh Attacks on China*, N.Y. TIMES (May 30, 2025), <https://www.nytimes.com/2025/05/30/us/politics/trump-china-trade.html>.

<sup>6</sup> Ben Berkowitz, *The only trade certainty is uncertainty*, AXIOS (June 13, 2025), <https://www.axios.com/2025/06/13/trump-tariffs-uncertainty>.

also informed reporters of his plans to impose new tariffs on other trading partners.<sup>7</sup>

4. *IEEPA tariffs have major economic and political consequences*

As the President himself declared, his tariffs dramatically alter the trade and tariff policies developed by Congress over the last century. The President thus described the day he announced the IEEPA reciprocal tariffs orders as “one of the most important days in American history.”<sup>8</sup>

The financial impact cannot be overstated. The United States imports trillions of dollars of goods every year.<sup>9</sup> In 2024, the United States imported \$439 billion in goods from China alone.<sup>10</sup> Administration officials (including the President) and outside experts

---

<sup>7</sup> Aditi Bharade, *Trump said he will set unilateral ‘take it or leave it’ tariffs on trading partners in the next 2 weeks*, BUS. INSIDER (June 12, 2025), <https://www.businessinsider.com/trump-unilateral-take-it-or-leave-it-tariffs-coming-soon-2025-6>.

<sup>8</sup> Aimee Picchi, *Trump reveals these 2 new types of tariffs on what he calls “Liberation Day,”* CBS NEWS (Apr. 2, 2025), <https://www.cbsnews.com/news/liberation-day-trump-tariffs-explained/>.

<sup>9</sup> Ana Swanson, *U.S. Trade Deficit Hit Record in 2024 as Imports Surged*, N.Y. TIMES (Feb. 5, 2025) (United States imported \$4.1 trillion in goods and services in 2024), <https://www.nytimes.com/2025/02/05/business/economy/us-trade-deficit-2024-record.html>.

<sup>10</sup> China Trade Summary, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china> (last visited June 11, 2025).

alike estimate the IEEPA tariffs will raise hundreds of billions (if not trillions) of dollars in revenue.<sup>11</sup>

The IEEPA tariffs increase many times over what the United States would expect to collect in tariffs in their absence. *See* U.S. Customs and Border Protection, *Trade Statistics* (in 2024, CBP collected \$88 billion dollars in tariffs).<sup>12</sup> This money is not paid by foreign governments; it is paid primarily by American businesses (and ultimately American consumers) and equates to the largest peacetime tax increase in U.S. history.<sup>13</sup> All told, the newly imposed tariffs are projected to amount to an average tax

---

<sup>11</sup> Bailey Schulz, *Trump is rolling out more tariffs this month. Where does the tariff money go?*, USA TODAY (Apr. 4, 2025), <https://www.usatoday.com/story/money/2025/04/03/trump-tariffs-where-will-money-go/82792578007/>; Richard Rubin, *Bessent Says Tariff Revenue Could Reach \$600 Billion Annually*, WALL ST. J. (Apr. 4, 2025), <https://www.wsj.com/livecoverage/stock-market-tariffs-trade-war-04-04-2025/card/bessent-says-tariff-revenue-could-reach-600-billion-annually-QJfDGCPYDY1C72Ljg1pt>; Erica York & Alex Durante, *Trump Tariffs: Tracking The Economic Impact of the Trump Trade War*, THE TAX FOUND. (June 2, 2025), <https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/>.

<sup>12</sup> <https://perma.cc/D3HR-JD4Y> (last visited June 16, 2025).

<sup>13</sup> Eric Boehm, *Peter Navarro Says Tariffs Will Be a \$6 Trillion Tax Increase, but Also a Tax Cut*, REASON MAG. (Mar. 31, 2025), <https://reason.com/2025/03/31/peter-navarro-says-tariffs-will-be-a-6-trillion-tax-increase-but-also-a-tax-cut/>.

increase of \$1,200-\$2,800 per American household in 2025.<sup>14</sup>

The IEEPA tariffs are causing enormous uncertainty and financial distress for American businesses. “[W]ith trade policy living on three-to-six-month cycles[,] \*\*\* business planning [is] a nightmare.”<sup>15</sup> “Indexes that measure trade policy uncertainty are almost literally off the charts, and surging again after a brief respite last month.”<sup>16</sup> Middle market firms are seeing declines in gross revenue and net earnings, and a 20% drop in capital expenditures.<sup>17</sup> And smaller businesses are being pummeled to the brink of bankruptcy.<sup>18</sup>

Many products will become more expensive for everyday American consumers who are already struggling with the effects of high inflation. Other consumer products will simply disappear from shelves. See Michael Collins, *‘Two Dolls Instead of 30’: Trump Acknowledges Prices Will Force Consumers to*

---

<sup>14</sup> York & Durante, *supra* note 11; *State of U.S. Tariffs: May 12, 2025*, THE BUDGET LAB (May 12, 2025), <https://budgetlab.yale.edu/research/state-us-tariffs-may-12-2025>.

<sup>15</sup> Berkowitz, *supra* note 6.

<sup>16</sup> *Id.*

<sup>17</sup> Emily Peck, *Midsized businesses struggle with high tariff costs*, AXIOS (June 12, 2025), <https://www.axios.com/2025/06/12/trump-tariffs-inflation-businesses>.

<sup>18</sup> *E.g.*, *‘A matter of survival’: Small Businesses Speak Out on Tariffs*, U.S. CHAMBER OF COM. (last updated: June 6, 2025), <https://www.uschamber.com/small-business/american-workers-businesses-consumers-trade-tariffs>.

*Cut Back*, USA TODAY (Apr. 30, 2025)<sup>19</sup> (President: “You know, somebody said, ‘Oh, the shelves are going to be open.’” “Well, maybe the children will have two dolls instead of 30 dolls” and “maybe the two dolls will cost a couple of bucks more than they would normally.”). The IEEPA tariffs are projected to reduce GDP by 0.6 percent or more.<sup>20</sup>

Varying estimates aside, all agree that the President’s IEEPA orders will fundamentally alter the American economic landscape.

#### 5. *IEEPA tariffs are putting Petitioners’ businesses at risk*

Petitioners are family-owned businesses, now in their fourth generation, that have created and sold over 2,000 hands-on educational toys and products for children. Their award-winning products are found in toy closets and classrooms across the country. With the mission to “bring learning to life,” Petitioners seek to help younger children develop verbal, counting, and

---

19

<https://www.usatoday.com/story/news/politics/2025/04/30/trump-china-tariffs-toys/83372961007/>.

<sup>20</sup> York & Durante, *supra* note 11; *OECD Economic Outlook, Volume 2025 Issue 1: United States*, OECD (June 3, 2025) (anticipating a slow in GDP growth from 2.8% to 1.5% in 2026 due in part to “the substantial increase in the effective tariff rate on imports and retaliation from some trading partners” and “high economic policy uncertainty”), [https://www.oecd.org/en/publications/2025/06/oecd-economic-outlook-volume-2025-issue-1\\_1fd979a8/full-report/united-states\\_c69a8d2f.html#indicator-d1e10109-e43cfd16fc](https://www.oecd.org/en/publications/2025/06/oecd-economic-outlook-volume-2025-issue-1_1fd979a8/full-report/united-states_c69a8d2f.html#indicator-d1e10109-e43cfd16fc).

fine motor skills, and introduce older children to science, technology, engineering, and math.

Although distinct legal entities, Petitioners are under common control and share certain employees, a single line of credit, and a single supply chain department. App., *infra*, 53a. Today, Petitioners employ over 500 people in the United States, with offices in Vernon Hills, Illinois; Torrance, California; and Amherst, New York. *Id.* at 53a-54a. Petitioners develop their products in the United States and perform some manufacturing and assembly domestically, but outsource most manufacturing to factories in other countries, including (but not limited to) China, Taiwan, Korea, Vietnam, Thailand, and India. *Id.*

Because Petitioners import directly from China (as well as other countries affected by the challenged orders), the district court found the IEEPA tariffs “pose an existential threat to [Petitioners’] businesses.” App., *infra*, 37a. The tariff rates “are so high as to effectively prevent importation” from China. *Id.* at 55a. Attempting to pay the tariffs in 2025 would cost Petitioners \$100 million in cash expenditures, compared with just \$2.3 million in 2024—a *44-fold increase*. *Id.* at 56a-57a. Unsurprisingly, Petitioners are bracing for large year-over-year sales declines. *Id.* at 58a-59a.

## **B. Procedural History**

On April 22, 2025, Petitioners brought suit challenging the President’s authority to issue the IEEPA tariffs. Respondents moved to transfer the case to the CIT pursuant to 28 U.S.C. § 1581(i)(1),

which gives that court exclusive jurisdiction over “any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for \*\*\* tariffs[.]” Petitioners moved for a preliminary injunction and opposed transfer on the ground that IEEPA is not a “law of the United States providing for \*\*\* tariffs.”

On May 29, after full briefing and a hearing on both motions, the district court granted Petitioners a preliminary injunction, finding they had shown both a likelihood of success and irreparable harm. On the former, the district court held that IEEPA does not authorize the President “to unilaterally impose, revoke, pause, reinstate, and adjust tariffs to reorder the global economy,” App., *infra*, 4a—meaning both that the district court had jurisdiction and the challenged IEEPA tariffs were unlawful. On the latter, the district court determined that not only were the tariffs irreparably harming Petitioners, but they posed “an existential threat to [Petitioners’] businesses.” *Id.* at 37a. The court further found that the balance of harms and public interest weighed in Petitioners’ favor, especially considering that Petitioners sought a tailored injunction applicable only to themselves. Finally, the court entered an administrative stay of 14 days to allow Respondents to seek further review. *Id.* at 43a.

On May 30, Respondents filed a notice of appeal. On June 2, Respondents filed motions to stay the preliminary injunction in both the district court and the D.C. Circuit. The following day, without seeking a response from Petitioners, the district court stayed its



injunction “pending disposition of the pending appeal before the United States Court of Appeals for the District of Columbia Circuit.” App., *infra*, 45a. In the D.C. Circuit, Respondents then moved to withdraw their stay motion as moot (which the court granted), and Petitioners sought—over Respondents’ objection—to align their appeal schedule with that set by the Federal Circuit in the parallel CIT cases discussed next. See Pet’rs Mot. to Govern 2, *Learning Resources, Inc. v. Trump*, No. 25-5202 (D.C. Cir. June 12, 2025). (The D.C. Circuit has not ruled as of this morning’s printer deadline.)

### **C. The Court of International Trade Actions**

As this litigation unfolded in district court, the CIT concurrently considered challenges to the IEEPA tariffs. The government insisted IEEPA was a “law of the United States providing for \*\*\* tariffs” because the Court of Customs and Patent Appeals (“CCPA”)—a predecessor to the Federal Circuit—had concluded that language in the Trading with the Enemy Act (“TWEA”), later adopted in IEEPA, authorized tariffs. Defs’ Mot. to Transfer 8, *Learning Resources, Inc. v. Trump*, No. 1:25-cv-01248-RC (D.D.C. Apr. 24, 2025), ECF No. 8; see *United States v. Yoshida Int’l, Inc.* (*Yoshida II*), 526 F.2d 560 (C.C.P.A. 1975).

The CIT issued a decision concluding the IEEPA tariffs are unlawful. *V.O.S. Selections, Inc. v. United States*, --- F. Supp. 3d ---, No. 25-00066, 2025 WL 1514124 (Ct. Int’l Trade May 28, 2025). Using *Yoshida II* as a guide, the CIT concluded that, assuming IEEPA authorizes some tariffs, it does not

authorize *these* tariffs. Specifically, the court reasoned that IEEPA does not authorize the President’s reciprocal tariffs because IEEPA does not permit the imposition of tariffs to address balance-of-payments deficits outside the limits of Section 122 of the Trade Act, and that IEEPA does not authorize the President’s trafficking tariffs because those tariffs do not directly address the problem identified and instead aim only to gain leverage over other countries. *Id.* at \*15, \*19-21.

On June 10, after an initial administrative stay, the Federal Circuit granted a stay pending appeal of the CIT’s nationwide injunction.

### **REASONS FOR GRANTING THE WRIT**

This case presents a question of “imperative public importance”: Whether IEEPA authorizes the President to impose tariffs—and thereby unilaterally reshape the national economy and global trade policy. SUP. CT. R. 11. This Court has recently granted certiorari before judgment in cases of similar national importance and “staggering” economic and political significance. *E.g., Biden v. Nebraska*, 600 U.S. 477, 489, 502 (2023).

This Court should grant certiorari to decide that dispositive legal question *now*. It is the sole merits issue that the government contends courts can adjudicate in this litigation, and one that will inevitably fall to this Court to resolve definitively. The IEEPA tariffs are having a massive impact on virtually every business that relies on imports, many of whom (like Petitioners) are now facing an existential crisis. The tariffs are also subjecting

Americans to a tax hike in the hundreds of billions of dollars annually. And with IEEPA tariffs added and subtracted at will, with virtually no notice, they are making it impossible for American businesses to plan amid paralyzing uncertainty throughout the American economy. With the lower courts' injunctions stayed, these harms are only multiplying.

IEEPA does not give the President the vast power he has seized. IEEPA does not mention the word "tariff" or "tax," and no other President in its nearly 50-year history has ever relied on it for tariffing power. Respondents locate the power to tariff in the phrase "regulate \*\*\* importation." But the Constitution, this Court, Congress, and every Presidential administration until this one have all treated the power to regulate as categorically distinct from the power to tax or tariff. Our country cannot wait any longer for this Court to resolve the vital question presented once and for all.

# **I. This Court Should Grant Review To Determine Whether IEEPA Authorizes Tariffs**

The district court below held the IEEPA tariffs are unlawful because IEEPA is not a statute that provides for tariffs. That answer was the correct one, but it is this Court that must ultimately decide the issue. Though it is one of imperative importance, the question involves straightforward statutory interpretation.

1. There is no dispute that the only conceivable textual hook in IEEPA for the power to tariff is the power to "regulate \*\*\* importation." App., *infra*, 22a.

The key question, then, is whether those words—in light of plain meaning, context, history, and constitutional principles—should be construed to encompass the power to tariff. As the district court held, the answer is no.

The Constitution separates the “[p]ower [t]o lay and collect Taxes, Duties, Imposts, and Excises” and the power to “regulate” foreign commerce into separate clauses. *See* U.S. CONST. art. I, § 8, cls. 1 and 3. Chief Justice Marshall early on confirmed the distinction between the powers to tax and regulate, describing the two grants as “not \*\*\* similar in their terms or their nature.” *Gibbons v. Ogden*, 22 U.S. (9 Wheat) 1, 198-199 (1824). Hence, when Congress has delegated the power to impose tariffs to the Executive Branch, it always has done so expressly—as codified throughout Title 19 of the United States Code (governing “Customs Duties”). And when Congress has given the Executive Branch the generic power to “regulate” (including to regulate foreign commerce), it has never thereby delegated the power to tax. Tellingly, until now, no President has ever relied on a power to “regulate \*\*\* importation” to impose tariffs. All prior Presidents rightly understood that Congress does not hide vast tariffing power in language the Constitution, the Supreme Court, Congress, and longstanding Executive Branch practice have all considered definitionally distinct.

Plain meaning, consistent with the Constitution’s express delineation, supports the distinction between “regulate” and “tariff.” To regulate something means to “[c]ontrol by rule’ or ‘subject to restrictions.”

*Regulate*, THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 943 (6th ed. 1976). To tariff means to impose “duties or customs \*\*\* on imports or exports.” *Tariff*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1454 (1973). In other words, a tariff is a tax and “the essential feature of any tax” is that “[i]t produces at least some revenue[.]” *National Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 564 (2012).

Respondents have not cited a single other statute where the power to “regulate” has been understood as authority to tax or tariff. The Securities and Exchange Commission has had the power to “regulate” certain “transactions on a national securities exchange” for nearly a century. 15 U.S.C. § 78k(a)(2); *see also* Securities Exchange Act of 1934, Pub. L. No. 73-291, § 11(a)(1), 48 Stat. 881, 891 (“The Commission shall prescribe \*\*\* rules and regulations \*\*\* to *regulate* or prevent floor trading by members of national securities exchanges.” (emphasis added)). Yet the SEC has never thereby asserted a power to tax such transactions. Nor has the Food and Drug Administration claimed the power to tax any “drug, biological product, device, or \*\*\* combination product” based on that agency’s authority to “regulate” such products. 21 U.S.C. § 360bbb-2(a). “When a statute authorizes an agency to promulgate regulations on a topic, the agency can implement rules or restrictions relating to that topic” but it cannot “use its standard regulatory powers to raise revenue by imposing fees, tariffs, or taxes.” App., *infra*, 28a-29a.

It is no surprise that when Congress does seek to address the authority to regulate and the authority to tax in a single provision, it names the two as individually distinct powers. *See, e.g.*, 49 U.S.C. § 40117(j) (state actors may not “*tax, regulate, or prohibit* \*\*\* the imposition or collection of a passenger facility charge or the use of the revenue from the passenger facility charge” (emphasis added)); 16 U.S.C. § 460bbb-9(a) (specifying state still had power “to *tax* \*\*\* private property on the lands and waters included in the recreation area, or to *regulate* the private lands within the recreation area” (emphases added)); *see also* 2 U.S.C. § 622(8)(B)(1) (“government-sponsored enterprise” does not have “power to tax *or* to regulate interstate commerce” (emphasis added)).

When Congress has authorized the President or an agency to exercise tariff power, moreover, it has used unmistakable language to grant that authority (in Title 19). For example, Section 122 of the Trade Act of 1974 authorizes the President to impose an “import surcharge \*\*\* in the form of *duties* \*\*\* on articles imported into the United States” to “deal with large and serious United States balance-of-payments deficits.” 19 U.S.C. § 2132(a) (emphasis added). And Section 301 of the Trade Act of 1974 authorizes the United States Trade Representative—who serves under the President—to “impose *duties* or other import restrictions on the goods of” a foreign country in specified circumstances. 19 U.S.C. § 2411(c) (emphasis added).

To be sure, the purpose of taxation can sometimes be viewed broadly as a “regulat[ory]” tool. *Cf. Sebelius*,

567 U.S. at 564 (individual mandate constitutional under power to tax but not regulate commerce). But for all the reasons explained, that does not change the fundamental character of tariffs as a tax—a power Congress must delegate more explicitly.

No such delegation exists in IEEPA. The power to “regulate \*\*\* importation” is best understood as giving the President the power to limit the quantity or quality of products through, for instance, licensing schemes or sanctions—*i.e.*, IEEPA’s actual historical purview. See App., *infra*, 24a-25a; see generally CHRISTOPHER A. CASEY ET AL., CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE (2024). The verbs surrounding “regulate” in Section 1702(a)(1)(B)—“investigate,” “direct,” “compel,” “nullify,” “void,” “prevent,” and “prohibit”—confirm that Congress did not bury the power to raise revenue in the power to regulate. See *Yates v. United States*, 574 U.S. 528, 543 (2015) (“[W]e 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.” (internal quotation marks omitted)); App., *infra*, 28a-29a. No power conferred in Section 1702 indicates Congress intended to delegate the power to tax in IEEPA.

Historical practice confirms IEEPA does not delegate the power to tariff. “In the five decades since IEEPA was enacted, no President until now has ever invoked the statute—or its predecessor, TWEA—to

impose tariffs.” App., *infra*, 27a; see *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (“[T]he longstanding practice of [Defendants] \*\*\* can inform a court’s determination of what the law is.” (internal quotation marks and alteration omitted)). And “[e]very time Congress [has] delegated the President the authority to levy duties or tariffs in Title 19 of the U.S. Code, it established express procedural, substantive, and temporal limits on that authority.” App., *infra*, 24a. Yet the President now claims “a virtually unrestricted tariffing power under IEEPA,” *id.* at 26a, implicating a “major question,” *Nebraska*, 600 U.S. at 504-506. “This lack of historical precedent, coupled with the breadth of authority that the [President] now claims, is a telling indication that the [tariffs] extend[] beyond the [President’s] legitimate reach.” *National Fed’n of Indep. Bus. v. Department of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 119 (2022) (internal quotation marks omitted).

Indeed, if Congress did delegate to the President unfettered and unreviewable discretion to remake the national and global economies by imposing tariffs of any size or reach (as Respondents argued below), there would be serious non-delegation concerns. See, e.g., *Industrial Union Dep’t, AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 646 (1980) (plurality op.) (rejecting statutory construction that would “make such a sweeping delegation of legislative power that it might be unconstitutional under the Court’s reasoning in” *A.L.A. Schechter Poultry & Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) (internal quotation marks omitted)). And other constitutional problems would arise. Although the Constitution



prohibits export taxes, U.S. CONST. art. I, § 9, cl. 5, IEEPA gives the President the power to “regulate \*\*\* importation *or exportation*.” App., *infra*, 30a (citing 50 U.S.C. § 1702(a)(1)(B) (emphasis added)). If “regulate” included the power to tariff, then IEEPA would be unconstitutional with respect to half that clause. See *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (“In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning.”). This Court should construe IEEPA to avoid those constitutional concerns, *i.e.*, as excluding the power to levy tariffs.

2. Respondents’ contrary arguments rely substantially on *Yoshida II*, a 1975 decision from the CCPA interpreting the President’s authority under TWEA. That decades-old decision is unpersuasive and cannot justify any assertion of tariffing power under IEEPA.

*Yoshida II* addressed President Nixon’s imposition of a 10% surcharge on imported goods in the summer of 1971. 526 F.2d at 567. Although the President’s proclamation did not cite it, the Department of Justice later relied on TWEA in defending a challenge to the surcharge. *Yoshida Int’l Inc. v. United States* (*Yoshida I*), 378 F. Supp. 1155, 1157 (Cust. Ct. 1974). In reversing a three-judge Customs Court panel holding that “regulate” did not empower the President to impose tariffs, *see id.* at 1172, the CCPA relied on now-outdated reasoning to conclude that “the primary implication of an emergency power is that it should be effective to deal with a national emergency successfully” and

“regulate” thus must encompass the power to tariff, 526 F.2d at 573. Rather than analyze TWEA’s list of specific powers, the CCPA simply noted that the statute’s grant of authority was “broad indeed.” *Id.*

In 1977, Congress enacted IEEPA, which gave the President certain emergency powers in peacetime. Respondents have argued that Congress must have intended to ratify *Yoshida II* because Congress was aware of the decision when it carried some of TWEA’s language—including “regulate \*\*\* importation”—into IEEPA. But the only passing reference to *Yoshida II* appears in a background section of a House Committee markup drawn from a memorandum drafted by the Department of Justice—a section that also cited *Yoshida I*’s contrary holding and the fact that President Nixon had never invoked TWEA. *See* H.R. REP. NO. 95-459, at 3 & n.6, 5 (1977). There is no indication that Congress intended to adopt *Yoshida II*’s holding, and a single decision by a lower court construing a statute that conflicts with the only other decision on the topic is not the type of “settled precedent” that gives rise to a presumption of ratification. *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1541 (2021) (“It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of judicial consensus so broad and unquestioned that we must presume Congress \*\*\* endorsed it.” (internal quotation marks omitted)).

Moreover, in the interim, Congress (at President Nixon’s request) had enacted the Trade Act of 1974, including Section 122, which specifically authorized

the surcharges President Nixon imposed. *See App., infra*, 34a-35a. Even *Yoshida II* questioned the continued validity of its own reasoning in Section 122's wake. *See* 526 F.2d at 582 n.33. That superseding event puts to bed any argument that Congress ratified *Yoshida II*.

Every President accordingly has understood that IEEPA is not a source of tariff-imposing authority. Where Presidents (including, until recently, President Trump) have imposed tariffs, they have done so through laws other than IEEPA. For example, the President has repeatedly relied on other actual tariff laws to impose tariffs on China, steel, and aluminum, including in his second Term. *See, e.g., Fact Sheet: President Donald J. Trump Restores Section 232 Tariffs*, THE WHITE HOUSE (Feb. 11, 2025) (relying on Section 232 of the Trade Expansion Act of 1962);<sup>21</sup> Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 8, 2018) (same); *Memorandum on the Actions by the United States Related to the Section 301 Investigation*, 2018 DAILY COMP. PRES. DOC. 1 (Mar. 22, 2018) (imposing tariffs on China under Section 301 of the Trade Act of 1974).<sup>22</sup>

## **II. This Court Should Grant Review Now To Decide An Issue Of Paramount Importance**

Whether the President has authority to impose tariffs under IEEPA is of such imperative importance that it warrants review *now*. SUP. CT. R. 11. The

---

<sup>21</sup> <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-section-232-tariffs/>.

<sup>22</sup> <https://perma.cc/H2NS-QNPQ>.

President announced the reciprocal IEEPA tariffs in the Rose Garden, calling it “one of the most important days in American history.”<sup>23</sup> It was indeed a consequential one: According to an analysis by JP Morgan, that round of tariffs alone “would hike taxes on Americans by \$660 billion a year, the largest tax increase in recent memory by a longshot,” and “cause prices to surge” by “adding 2% to the Consumer Price Index.”<sup>24</sup> Since the beginning of the year, the tariff onslaught has caused “the nation’s overall average effective tariff rate” to jump from “2.5 percent” to “around 27 percent”—more than a *tenfold* increase, and “the highest for the U.S. in more than a century.”<sup>25</sup> In recent terms, this Court has granted certiorari before judgment to allow prompt review in cases of similarly (or less) far-reaching political and economic importance. *See, e.g., Department of Educ. v. Brown*, 600 U.S. 551, 556 (2023); *Nebraska*, 600 U.S. at 489; *United States v. Texas*, 599 U.S. 670, 675 (2023); *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 35 (2021); *Department of Com. v. New York*, 588 U.S. 752, 766 (2019).

---

<sup>23</sup> Picchi, *supra* note 8.

<sup>24</sup> David Goldman & Elisabeth Buchwald, *Trump’s tariffs will probably plunge the global economy into recession this year, JPMorgan analysts says*, CNN (Apr. 2, 2025), <https://www.cnn.com/business/live-news/tariffs-trump-news-04-02-25#cm90qyswp001x3b6nd1mkndo5>.

<sup>25</sup> Sudeep Reddy, *Reality Check: What Trump’s Supposed Retreat Really Means in a Historic Trade War*, POLITICO (Apr. 10, 2025), <https://www.politico.com/news/magazine/2025/04/10/tariff-reality-check-trump-retreat-00285270>.

Throughout this litigation, Respondents have emphasized the “significance of these issues.” Defs’ Mot. for Stay 4, *Learning Resources, Inc. v. Trump*, No. 1:25-cv-01248-RC (D.D.C. June 2, 2024), ECF No. 41. Respondents submitted to the district court declarations from no less than four Cabinet members—the Secretary of State, Secretary of the Treasury, Secretary of Commerce, and U.S. Trade Representative—to highlight the consequential nature of the question presented. App., *infra*, 41a-42a. And the Federal Circuit recognized that the related cases pending there “present issues of exceptional importance.” Order 3, *V.O.S. Selections, Inc. v. United States*, No. 25-1812 (Fed. Cir. June 10, 2025), ECF No. 51. Only this Court can rule with the necessary authority to resolve them.

Petitioners also need swift and conclusive resolution. The district court recognized the significant “irreparable harm” that Petitioners face—indeed, the “existential threat to their businesses.” App., *infra*, 37a; *see id.* at 38a-39a (rejecting government’s argument that such “harms are speculative and conclusory”). “And because their financial recovery is limited to the value of any tariffs they wrongly pay, [Petitioners] will not be able to recover lost profits, lost customers, or the additional costs of finding replacements for high-tariff imports.” *Id.* at 38a-39a (internal quotation marks, citation, and alteration omitted). Those are akin to the escalating harms suffered by small businesses around the

country.<sup>26</sup> Because the lower courts' injunctions have been stayed, these nationwide harms will mount until this Court finally settles the matter.

The wide-ranging constellation of amici supporting challenges to the IEEPA tariffs underscores their exceptional and pressing nature. Those amici include a group of constitutional scholars and public servants from across the political spectrum, including Steven G. Calabresi, Richard A. Epstein, Harold Hongju Koh, Michael W. McConnell, Michael B. Mukasey, Peter J. Wallison, and Philip Zelickow.<sup>27</sup> They also include the CATO Institute;<sup>28</sup> the Institute for Policy Integrity at New York University School of

---

<sup>26</sup> Lisa Eadicicco, *Small businesses struggle under Trump's tariff whiplash: 'I'm so angry that my own government has done this to me'*, CNN (June 1, 2025), <https://www.cnn.com/2025/06/01/business/small-businesses-struggle-under-trumps-tariffs>.

<sup>27</sup> *Amici* Brief of Former Senators, Attorney General, Federal Judges, and Scholars, *Learning Resources, Inc. v. Trump*, No. 1:25-cv-01248-RC (D.D.C. May 7, 2025), ECF No. 19-1.

<sup>28</sup> *Amicus* Brief of the CATO Institute, *Emily Ley Paper, Inc. v. Trump*, No. 3:25-cv-00464-TKW-ZCB (N.D. Fla. May 12, 2025), ECF No. 27-1.

Law;<sup>29</sup> the Brennan Center for Justice;<sup>30</sup> and many members of the U.S. Senate and House.<sup>31</sup>

According to Respondents, the central question—whether IEEPA authorizes tariffs—is the only question courts have the power to decide. *Compare* App., *infra*, 97a-98a (“[W]e agree with the plaintiffs that the Court can review the threshold statutory question of whether IEEPA authorizes tariffs[.]”), *with* App., *infra*, 98a-99a (arguing political question doctrine precludes courts from reviewing whether the IEEPA tariffs address an “unusual and extraordinary threat” or are an appropriate means to their ends). That question is well ventilated in the district court’s thorough opinion and the ample briefing to date across multiple cases.

Addressing that central question now has the added benefit of simultaneously resolving the principal merits issue and disposing of a jurisdictional question that has split the courts: whether the federal district courts have jurisdiction (because IEEPA does *not* provide for tariffs) or whether the CIT has

---

<sup>29</sup> *Amicus* Brief of the Institute for Policy Integrity at New York University School of Law, *V.O.S. Selections, Inc. v. Trump*, No. 1:25-cv-00066-GSK-TMR-JAR (Ct. Int’l Trade May 8, 2025), ECF No. 39-1.

<sup>30</sup> *Amicus* Brief of the Brennan Center for Justice, *California v. Trump*, No. 3:25-cv-03372-JSC (N.D. Cal. May 20, 2025), ECF No. 33-1.

<sup>31</sup> *Amici* Brief of 33 Members of the United States Senate, *V.O.S. Selections, Inc. v. Trump*, No. 25-1812 (Fed. Cir. June 9, 2025), ECF No. 49; *Amici* Brief of 148 Members of Congress, *Oregon v. Trump*, No. 1:25-cv-00077-GSK-TMR-JAR (Ct. Int’l Trade May 16, 2025), ECF No. 40.

jurisdiction (because IEEPA does provide for tariffs). *See* 28 U.S.C. § 1581(i)(1) (giving the CIT jurisdiction over “any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for \*\*\* tariffs”). This case is thus similar to *K Mart Corp. v. Cartier, Inc.*, where the Court granted certiorari in a case arising from the U.S. District Court for the District of Columbia in order to resolve “both the jurisdictional issue” under Section 1581(i) “and the merits,” with this Court ultimately concluding jurisdiction lay in the district court rather than the CIT. 485 U.S. 176, 182 (1988). This Court should not delay clarifying jurisdiction any more than it should delay resolving the merits.

Respondents have in fact already conceded that, at some point, a writ of certiorari before judgment may be necessary. *See* Resp. Mot. to Govern 5, *Learning Resources, Inc. v. Trump*, No. 25-5202 (D.C. Cir. June 13, 2025). There is no reason to delay. The costs of waiting for full merits opinions from the D.C. Circuit or from the Federal Circuit in the CIT cases (where no appeal brief has yet been filed) far outweigh any benefits. Granting certiorari now will allow the Court to order briefing to be completed in advance of this Court’s first argument session for the October 2025 Term—or even for a special early sitting in September.

Finally, the fact that Petitioners prevailed in the district court poses no bar to granting certiorari before judgment, either as a statutory or constitutional matter. This Court may review cases “in the courts of appeals” upon a petition for certiorari before judgment



by “*any party* to any civil or criminal case.” 28 U.S.C. § 1254(1) (emphasis added); *see also* 28 U.S.C. § 2101(e) (“An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.”). That language “covers petitions brought by litigants who have prevailed, as well as those who have lost, in the court below.” *Camreta v. Greene*, 563 U.S. 692, 700 (2011) (citing Eugene Gressman et al., *Supreme Court Practice* 87 (9th ed. 2007)).<sup>32</sup> Moreover, it is beyond doubt that this case presents a live case or controversy: Respondents’ appeal seeking reversal is pending in the D.C. Circuit, and the serious harms the district court found Petitioners are suffering from the IEEPA tariffs remain acute and ongoing (particularly in light of the stay of the district court’s injunction). There is thus no impediment to—and uniquely compelling reasons in favor of—this Court’s immediate review.

---

<sup>32</sup> This Court has granted review of petitions filed by prevailing parties on numerous occasions. *See, e.g., Mistretta v. United States*, 488 U.S. 361, 371 (1989) (granting petitions of both *Mistretta* and *United States* where district court ruled in favor of *United States* on constitutionality of federal sentencing guidelines); *United States v. Nixon*, 418 U.S. 683, 689-690 (1974) (granting petition of *United States* where district court denied President Nixon’s motions regarding subpoena issued by *United States*); *see also, e.g., Wilson v. Girard*, 354 U.S. 524, 526 (1957); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 937, 937 (1952) (per curiam); *United States v. United Mine Workers of Am.*, 330 U.S. 258, 269 (1947).

**CONCLUSION**

The petition for a writ of certiorari before judgment should be granted.

Respectfully submitted.

Pratik A. Shah  
*Counsel of Record*  
James E. Tysse  
Matthew R. Nicely  
Daniel M. Witkowski  
Kristen E. Loveland  
AKIN GUMP STRAUSS  
HAUER & FELD LLP

*Counsel for Petitioners*

June 17, 2025