Nos. 24-1287 & 25-250

In the Supreme Court of the United States

LEARNING RESOURCES, ET AL.,
Petitioners,
v.

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

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

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

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the District of Columbia Circuit

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS IN 24-1287 AND THE RESPONDENTS IN 25-250

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QUESTIONS PRESENTED

Amicus will address the following question:

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

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

Cato Institute scholars have published extensive research on regulation and constitutional law. This case interests the Cato Institute because it concerns the legality of a contested exercise of executive power that threatens the separation of powers and economic liberty.

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Soon after taking office, President Trump issued a series of executive orders and proclamations imposing tariffs on imports from dozens of countries. These actions, interspersed with negotiations and responses from some of those countries, resulted in rapid increases and (partial) decreases in tariff rates. The President imposed a 10% tariff on most trading partners, and imports from China were singled out with a combined tariff rate of 145% (since reduced). Notably, the President's orders cite the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 *et seq*. ("IEEPA"), as a statutory basis for the President's unilateral imposition of additional—and fluctuating—tariffs.

IEEPA grants the President broad authority to block transactions involving Americans and foreign nationals, *see id*. § 1702(a)(1)(B), and Presidents have frequently invoked it to impose economic sanctions on foreign governments and foreign citizens. But the statute explicitly limits this authority to situations involving "an unusual and extraordinary threat" for which "a national emergency has been declared for purposes of this chapter," and the law provides that these powers "may not be exercised for any other purpose." *Id*. § 1701(b). "[T]o deal with any [such] threat," IEEPA continues, the President may "regulate . . . importation." *Id.* §§ 1701(a); 1702(a)(1)(B).

The President's novel use of IEEPA to impose tariffs, purportedly to combat illegal drug operations and trade imbalances, have imposed significant costs on thousands of American business owners who rely on imports. A group of states and businesses sued to enjoin the imposition of these tariffs, alleging violations of both IEEPA and the Constitution. The Court of International Trade (CIT) and the Federal Circuit agreed with V.O.S. Selections that IEEPA does not authorize the President's tariffs. This Court should affirm the Federal Circuit.

In doing so, the Court should "determine the best reading" of the statute and conclude that it prohibits the President from setting tariff rates. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The Constitution vests the power to impose tariffs solely in Congress. *See* U.S. CONST. art. I, § 8. The Cato Institute writes separately to provide historical context regarding IEEPA's purposes and the original understanding of Congress's constitutional authority to impose tariffs. For over a century, Congress exercised that power directly and in exhaustive detail, even during times of war and economic crisis. When Congress has chosen to delegate limited authority to the Executive to vary tariffs, it has done so explicitly and with clear statutory limits.

The government's reliance on IEEPA as a source of unilateral tariff authority breaks with this tradition and misreads the statute. IEEPA contains no reference to "tariffs" or "duties," and no President had cited it to impose tariffs in the nearly 50 years since its enactment—until now. Congress knows how to grant tariff-adjustment authority when it chooses to, as it did in the Tariff Act of 1922, the Tariff Act of 1930, the Trade Expansion Act of 1962, and the Trade Act of 1974. IEEPA, by contrast, was enacted to *limit* executive power, not expand it. Courts should not credit interpretations of vague emergency statutes that, for the first time in decades, are "discovered" to confer vast economic powers on the President.

The government's reading of IEEPA not only stretches the text beyond recognition but also undermines the Framers' designs for the separation of powers. Accepting the government's theory would mean that Congress, through ambiguous text and silence, can transfer sweeping legislative power to the President—a result this Court has cautioned against. "Courts expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." *West Virginia v. EPA*, 597 U.S. 697, 716 (2022) (cleaned up).

The Constitution, IEEPA's text, and over two centuries of consistent practice point in the same direction: the tariff power remains in the hands of Congress. The Court should reject the President's novel reading of IEEPA and affirm the Federal Circuit's decision below.

ARGUMENT

I. HISTORICAL PRACTICE CONFIRMS THAT TARIFF-SETTING IS A NONDELEGABLE LEGISLATIVE POWER.

The Constitution vests "[a]ll legislative powers" in the Congress. U.S. CONST. art. I, § 1. These legislative powers include the exclusive authority to set tariff rates. *Id*. § 8 (granting Congress the power "to lay and collect, taxes, duties, imposts and excises"). While early congressional practice is not dispositive, the practice of the First Congress is probative of the original meaning of a constitutional provision. *See*, *e.g.*, *Marsh v. Chambers*, 463 U.S. 783, 790 (1983) ("An act passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, . . . is contemporaneous and weighty evidence of its true meaning.") (internal quotation marks omitted).

It is therefore notable that the second law ever enacted by Congress—and signed by President George Washington—was a statute establishing detailed rates of tariffs. *See* Act of July 4, 1789, 1 Stat. 24. That law set detailed and exhaustive duties, such as one cent per pound of brown sugars, fifty cents per pair of boots, and a 12.5% ad valorem tax on all goods (except teas) imported from China or India. *Id*.

For generations, Congress zealously guarded its authority to set tariffs. For more than a century after the Framing, tariff legislation followed a familiar pattern: Congress would repeal its previous duties and replace them with new, specific rates and schedules. *See*, *e.g.*, Tariff Act of 1816, 3 Stat. 310; Tariff Act of 1832, 4 Stat. 583; Revenue Act of 1913, 30 Stat. 151. These statutes gave the President no discretion to modify duties. Where Congress authorized the President to administer and enforce customs laws, it carefully withheld any power to revise or adjust Congress's detailed tariff schedules.

Even during the crisis of the Civil War, Congress retained exclusive control over tariff rates. *See* Tariff Act of 1861, 12 Stat. 178 (detailed schedule of duties); Act of July 13, 1861, 12 Stat. 255–57 (delegating substantial wartime powers). While Congress granted the President considerable discretion to exercise his executive powers—like shutting down whole ports held by rebel forces—it did not authorize him to alter tariff rates. Even in wartime, when rebel forces controlled American territory, Congress did not concede its legislative tariff powers.[2]

In the late 19th and early 20th centuries, Congress began granting the Executive limited authority to negotiate trade agreements and to apply duties

[2] *See* Section III, *infra*, for a discussion of President Lincoln's wartime imposition of a "bonus" on traders and an explanation of why that episode provides no support for the government's position.

selectively based on foreign governments' conduct. But even then, Congress retained the core legislative function: it prescribed detailed duty schedules and permitted the President to activate or suspend them only under certain conditions. For example, the Tariff Act of 1883, 22 Stat. 488, banned cattle imports unless the Secretary of the Treasury found them free from disease. The Tariff Act of 1890, 26 Stat. 567, authorized the President to suspend free trade agreements and impose statutory duties if another nation's duties on American goods were "unequal and unreasonable." In each instance, the President could not set new rates at will; he could only trigger duties Congress had already prescribed. *See id.*

In short, for at least the first century of the Republic, Congress consistently set duty schedules and never relinquished its duty-setting power to the President. Nor, as far as we can tell, did Presidents assert any inherent or emergency power to set tariff rates,[3] even during wars, financial panics, and

[3] Strictly speaking, the government has no special "emergency powers"; it has only those powers enumerated in the Constitution. The Framers "knew what emergencies were, knew the pressures they engender for authoritative action, [and] knew, too, how they afford a ready pretext for usurpation." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 650 (1952) (Jackson, J., concurring). While it was "impossible to foresee or define the extent and variety of national exigencies" that might beset the country, THE FEDERALIST No. 23, at 132–33 (Alexander Hamilton) (Royal Classics ed. 2020) (capitalization normalized), the

depressions. This unbroken practice is important in determining the original meaning of a constitutional provision and the best interpretation of IEEPA. *See Marsh*, 463 U.S. at 790; *The Pocket Veto Case*, 279 U.S. 655, 689 (1929) ("Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional" issues of separation of powers.").

The reason for this longstanding practice is clear: Congress cannot vest duty-setting power—a legislative power—with the President, just as Congress cannot vest judicial power with the President or the Speaker of the House. *See* U.S. CONST. art. III, § 1 (vesting the judicial power "in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish"); *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406 (1922) ("[I]t is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power.").[4]

Framers equipped the three branches with enumerated powers to handle those emergencies.

[4] While modern practice is less probative in determining the original meaning of Congress's duty-setting power, recent history does not aid the President much. Even in the early- and mid-20th century, when Congress authorized the President to function as the principal actor in the formulation of trade policy, it constrained his discretion by reference to objective, if sometimes

II. IEEPA DOES NOT AUTHORIZE THE PRESIDENT TO MODIFY TARIFF RATES.

The Supreme Court recently reaffirmed a "judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment." *Loper Bright*, 603 U.S. at 391–92. The President's interpretation of IEEPA is not entitled to deference—rather, it is the duty of the courts to "determine the best reading" of a contested statute. *Id*. at 400. The best reading of IEEPA is that it provides the President no authority to unilaterally modify tariff schedules.

A. IEEPA Provides No Textual Support for Tariff Authority.

As this brief's historical survey, *supra*, demonstrates, Congress knows how to give the President discretion—within limits—to modify tariff rates. And Congress did so, for instance, in the Tariff Act of 1922, the Trade Act of 1974, and the Trade Expansion Act of 1962, the latter of which President Trump used in his first term when modifying tariffs. It is notable that in those statutes, Congress expressly identified "duty" or "duties" modification as a permissible policy tool for the President. *See* 19 U.S.C. § 2411(c)(1)(B) (permitting the U.S. Trade

vague or contested, standards. *See J.W. Hampton*, 276 U.S. at 409–11 (affirming the constitutionality of the Tariff Act of 1922, which authorized the Executive to vary tariffs to "equalize the . . . differences in costs of production" between the United States and another nation, but limited rate increases to 50% of existing rates).

Representative to "give preference to the imposition of duties over the imposition of other import restrictions"); 19 U.S.C. § 1821(a) (permitting the President to "enter into trade agreements" and "modif[y] . . . any existing duty"). In contrast, the relevant provisions in IEEPA make no mention of "duty," "duties," or "tariffs." *See* 50 U.S.C. § 1702.

This omission is fatal to the government's strained interpretation. "Courts expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." *West Virginia v. EPA*, 597 U.S. at 716 (cleaned up). Careful textual analysis is especially important in emergency power cases, as presidents often adopt an expansive view of what qualifies as an "unusual and extraordinary threat"—including domestic issues in countries halfway around the world.[5] Notably, this administration has declined to offer any limiting principle for its emergency declarations.[6]

The Supreme Court has also emphasized that Executive Branch interpretations "issued

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[5] *See*, *e.g.*, Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire, Exec. Order 13396 (Feb. 7, 2006) (declaring that violence in Cote d'Ivoire "constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States").

[6] Judge Restani offered the hypothetical as to whether a national peanut butter shortage might constitute an "unusual and extraordinary threat." The administration attorney replied, "it probably depends." Oral Argument at 1:09:25, *V.O.S.*

contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright*, 600 U.S. at 394. A telling signal that the government's interpretation is unsound is that, nearly 50 years after IEEPA's enactment, no President invoked it to impose tariffs—until now. It appears the government would have this Court believe that the President and his trade advisers, like Indiana Jones in the Raiders of the Lost Ark, found a valuable artifact—an unconditional delegation of legislative power—gathering dust in the depths of the U.S. Code. This Court has warned courts against rubber-stamping such Executive branch "discoveries" of new authority in decades-old statutes. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, . . . we typically greet its announcement with a measure of skepticism.") (internal quotation marks omitted).

This Court should reject the government's argument that, after 150 years, Congress silently

Selections, Inc. v. Trump, No. 1:25-cv-00066 (Ct. Intl. Trade May 13, 2025).

transferred to the President most of its immense duty-making powers through IEEPA's ambiguous language.

B. IEEPA's Origins Confirm That Tariff Authority Remains with Congress.

Finally, the government's position runs contrary to the purposes of IEEPA. In the 1970s, Congress undertook a long-overdue effort to rein in Presidents' unilateral actions in foreign trade and transactions. *See* Michael H. Salsbury, *Presidential Authority in Foreign Trade: Voluntary Steel Import Quotas from a Constitutional Perspective*, 15 VA. J. INT'L L. 179, 186 (1974) ("Since 1934, the President's authority to impose restrictions on foreign trade has been significantly curtailed by statute."). Congress codified IEEPA in 1977 to clarify and limit the executive branch powers that had metastasized under IEEPA's predecessor, the Trading with the Enemy Act of 1917. *See* Note, *The International Emergency Economic Powers Act: A Congressional Attempt to Control Presidential Emergency Power*, 96 HARV. L. REV. 1102, 1102 (1983).

Originally, Section 5(b) of the Trading with the Enemy Act of 1917 granted the President authority over Americans' transactions with foreign nationals only during wartime.[7] But within days of taking office,

[7] *See Stoehr v. Wallace*, 255 U.S. 239, 242 (1921) ("The Trading with the Enemy Act . . . is strictly a war measure, and finds its sanction in the constitutional provision, Art. I, § 8, cl. 11, empowering Congress 'to declare war, grant letters of marque and

President Franklin Roosevelt unilaterally invoked Section 5(b) in peacetime to respond to bank failures and the Depression.[8] A few days later, Congress ratified those actions and greatly expanded the scope of the President's powers under Section 5(b) to peacetime "emergencies" and transactions with any foreign citizen, ally or enemy. *See* Act of March 9, 1933, 48 Stat. 1, 1–2. Congress amended the Act again in the early days of war in December 1941, including new authority to "regulate . . . importation." *See* Act of Dec. 18, 1941, 55 Stat. 839, 839–40; codified at 50 U.S.C. § 4305(b)(3).

The Trading with the Enemy Act became (and, though amended, still is) an immensely powerful law, enabling Presidents to exercise sweeping, and at times authoritarian, powers. In the 1930s, the law was used to place banks under the supervision of the federal government and prohibit them from paying out gold to bank customers (the so-called "bank holiday"),[9] to compel all Americans to surrender all of their gold and gold certificates to their nearest bank,[10] and to impose national regulation of consumer credit in order to curb

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reprisal, and make rules concerning captures on land and water.'").

[8] Oct. 6, 1917, ch. 106, § 5, 40 Stat. 415, codified, as amended, at 50 U.S.C. § 4305. *See also The International Emergency Economic Powers Act*, *supra*, at 1102.

[9] Reopening Banks, Exec. Order No. 8773 (1933).

[10] Forbidding the Hoarding of Gold Coin, Gold Bullion and Gold Certificates, Exec. Order No. 6102 (1933).

inflation.[11] The Roosevelt administration even invoked the Act in wartime to censor all news, mail, and communications from abroad—including "[r]umors which might render aid and comfort to the enemy" and "[a]ny other matter whose dissemination might directly or indirectly . . . disparage the foreign relations of the United States or the United Nations." U.S. Censorship Regulations, 8 Fed. Reg. 1644–46 (Feb. 5, 1943).

Later Presidents used the Trading with the Enemy Act in trade policy. In his final days in office in 1968, President Lyndon Johnson issued an executive order to halt and supervise capital transfers abroad in order to improve the nation's "balance of payments position." Governing Certain Capital Transfers Abroad, Exec. Order 11387 (1968). His successor, President Nixon, relied on the Act in August 1971 to impose a 10% tariff on imports to improve America's balance of payments as the U.S. withdrew from the gold standard. Imposition of Supplemental Duty for Balance of Payments Purposes, Proclamation 4074 (Aug. 15, 1971).[12]

In response to these unilateral actions in trade policy, Congress moved to clarify and restrict

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[11] Regulation of Consumer Credit, Exec. Order No. 8843 (1941).

[12] Those tariffs were terminated by proclamation three months later. *See* Termination of Additional Duty for Balance of Payments Purposes, Proclamation 4098 (Dec. 20, 1971). The United States Court of Customs and Patent Appeals held that the

presidential authority. In the Trade Act of 1974, Congress provided express and narrow authority to address balance-of-payments issues in trade. See 19 U.S.C. § 2132. Three years later, Congress passed IEEPA to constrain the President even further. As one contemporaneous account explained, IEEPA's "primary purpose . . . [was] to revise the Trading With the Enemy Act of 1917 (TWEA), and thus to restrict presidential authority to respond to emergencies related to international economic transactions." Mary M.C. Bowman, *Presidential Emergency Powers related to International Economic Transactions*, 11 VAND. L. REV. 515, 515 (1978).

It is thus ironic—and legally untenable—for a President to invoke IEEPA for tariff-setting authority that no President has ever claimed. Even President Franklin Roosevelt—who had an expansive theory of presidential power and governed during an economic depression and a global war—never used IEEPA's more powerful predecessor, the Trading with the Enemy Act and its "regulate . . . importation" provision, to modify tariffs. Courts should not require Congress to play legislative whack-a-mole and respond specifically to every claimed emergency a President

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imposition of duties was a valid exercise of the authority delegated to the President by section 5(b) of the Trading with the Enemy Act (TWEA). *See United States v. Yoshida Int'l, Inc.*, 526 F.2d 560 (Ct. Cust. & Pat. App. 1975); *Alcan Sales v. United States*, 534 F.2d 920 (Cust. & Pat. App. 1976), *cert. denied*, 429 U.S. 986 (1976).

might use to usurp Congress's powers. The text of the Constitution is clear that duty-setting is a legislative power, and the history of tariffs and "emergency power" legislation like IEEPA confirms that Congress provided no authority to the President to unilaterally impose tariffs.

III. THE EXECUTIVE'S POWER TO LEVY DUTIES IN WAR IS NO PRECEDENT FOR TARIFFS IN PEACE.

The question here is whether Congress, by using the phrase "regulate . . . importation" in IEEPA, intended to incorporate the law-of-war understanding that phrase may have carried under the Trading with the Enemy Act. Although some have suggested that it did, the historical record and this Court's separation of powers precedents point in the opposite direction. Namely, Professor Bamzai's brief in support of neither party offers valuable scholarly background that this Court should consider. His central contention is that "the use of . . . a 'tax' or 'fee' remains an appropriate method by which the executive branch may 'regulate . . . importation' under the IEEPA today." Bamzai Amicus Br. 28. He concedes, however, that "the meaning of the modern statute cannot be entirely free of doubt," *id*. at 27, and we respectfully submit that importing—so to speak—law-of-war concepts into IEEPA is indeed a doubtful enterprise.

To begin with, the historical precedents that Professor Bamzai references do not support the claim that "regulate . . . importation" authorizes peacetime tariffs. In each instance—the Mexican-American War, the Civil War, and the Spanish-American War—the exaction arose during a U.S. military occupation or blockade and reflected the *conqueror's right in international law* to exercise civil law authority *in hostile or insurrectionary territory*. The tariffs here, by contrast, regulate commerce at U.S. ports in peacetime. We address Professor Bamzai's three precedents in turn.

First, during the Mexican-American War, President Polk authorized the imposition of duties on ships arriving at Tampico—then a Mexican port occupied by the U.S. military. *Fleming v. Page*, 50 U.S. 603, 614 (1850). This Court upheld the President's authority because Tampico was an enemy port under military control and the duties "were nothing more than contributions levied upon the enemy." *Id.* at 616. They were not an exercise of the taxing power nor a delegation from Congress, but action taken under the law of nations. *Id.* at 615 ("For, by the laws and usages of nations, conquest is a valid title, while the victor maintains the exclusive possession of the conquered country."). A few years later, the Court affirmed that the "power to impose duties on imports and tonnage" at conquered and occupied ports is an exercise of the "belligerent rights of a conqueror." *Cross v. Harrison*, 57 U.S. 164, 190 (1853).

Second, President Lincoln's exactions during the Civil War bear somewhat closer resemblance to the present controversy. *See Hamilton v. Dillin*, 88 U.S. 73

(1874). There, the U.S. miliary imposed a four-cent-per-pound fee on cotton from rebel Tennessee. But the Court rejected the argument "that Nashville, being within the National lines, was not hostile territory." *Id.* at 94. The Court expressly held that the fee was "not imposed in the exercise of the taxing power, but of the war power of the government." *Id.* at 74. The fees were lawful only because they applied to territories "in a state of insurrection" where "the condition of hostility remained." *Id.* at 95.

Moreover, the *Hamilton* Court's careful and repeated description of the Civil-War exaction as a "bonus"—a term found nowhere in the Constitution—confirms its unease with treating such wartime exactions as duties or taxes. *See id.* at 91–93, 97 (characterizing the exaction as a "bonus"). This Court distinguished the bonus from the Article I power "to lay and collect taxes, duties, imposts, and excises," holding that the power to impose a bonus "does not belong to the same category as the power to levy and collect taxes, duties, and excises." *Id.* at 97.

Third, Professor Bamzai cites President McKinley's imposition of tariffs "upon the occupation of any forts and places in the Philippine Islands." *Lincoln v. United States*, 197 U.S. 419, 428 (1905). As he notes, this was a wartime measure and the President's authority to impose duties "expired on the treaty of peace." Bamzai Amicus Br. 15; *see Lincoln*, 197 U.S. at 427–28. President McKinley's tariffs at the port of Manila therefore offer no support for the notion that, during peacetime, the President may set tariff rates at domestic ports.

Each example Professor Bamzai invokes thus involved the President acting as temporary sovereign under international law—not as a domestic regulator under a peacetime statute.

The peacetime-wartime understanding governed the Trading with the Enemy Act. As this Court later observed, the Act "is strictly a war measure and finds its sanction in . . . the power to declare war." *Stoehr*, 255 U.S. at 242. Congress added authority to "regulate . . . importation" to the Act only days after the Pearl Harbor attack. First War Powers Act of 1941, Pub. L. No. 77-354, § 301, 55 Stat. 838, 839. And, as noted *supra*, President Roosevelt never used that importation regulation authority to set tariff rates at domestic ports.

So when Congress later codified that language in IEEPA for non-war national emergencies, it did so against a wholly different constitutional backdrop. Moreover, the terms within the Trading with the Enemy Act were later employed—both in statute and in practice—in novel and sometimes idiosyncratic ways, as presidents and executive agencies departed from many nineteenth-century common-law and international-law norms.[13]

Finally, extending the TWEA's wartime conception of "regulate . . . importation" to authorize uncapped tariff rates in peacetime would erase the boundary between the President's (contested) law-of-war powers and the tariff power reserved to Congress. This Court should reject a simple equivalence between the TWEA's "regulate . . . importation" and IEEPA's use of the same phrase. Such equivalence would suggest that, in 1977, Congress quietly gave the President the law-of-war right of a conqueror over the ports of Long Beach, Charleston, and Seattle—akin to the President Lincoln's authority over occupied Nashville or President McKinley's over occupied Manila. The administration's interpretation fails on statutory grounds alone; but accepting it would also conflate the Congress's Article I tariff power and the conqueror's right to temporarily impose civil government on hostile territory. That is a delegation and separation

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[13] *See*, *e.g.*, Samuel Anatole Lourie, *"Enemy" Under the Trading with the Enemy Act and Some Problems of International Law*, 42 MICH. L. REV. 383, 385, 388, 400 (1943) (noting that the U.S. government has treated the Act's definitions flexibly because "the exigencies of modern total warfare do not permit rigid adherence to legal fictions or notions . . . or even to legal rules drafted . . . to meet the ideas and conditions prevailing before World War I").

of powers issue that this Court has never countenanced.

CONCLUSION

For the foregoing reasons, and those stated by V.O.S. Selections, the Court should affirm the decision of the Federal Circuit.

Respectfully submitted,

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