

Nos. 24-1287 & 25-250

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IN THE  
**Supreme Court of the United States**

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LEARNING RESOURCES, INC., ET AL., *Petitioners*,

v.

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

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

v.

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

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

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**BRIEF OF AMICUS CURIAE THE BRENNAN  
CENTER FOR JUSTICE IN SUPPORT OF  
PETITIONERS IN NO. 24-1287  
AND RESPONDENTS IN NO. 25-250**

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## INTEREST OF AMICUS CURIAE

Amicus curiae the Brennan Center for Justice at NYU School of Law<sup>1</sup> (“the Brennan Center”) is a not-for-profit, non-partisan think tank and public interest law institute that seeks to improve systems of democracy and justice. The Brennan Center has conducted extensive research on, analysis of, and public education regarding the National Emergencies Act of 1976 (NEA), the International Emergency Economic Powers Act (IEEPA), and the president’s emergency powers more generally. In this brief, we explain why the president’s emergency declarations and invocations of IEEPA for the purpose of imposing worldwide tariffs are contrary to the original purpose of both the NEA and IEEPA, why this Court is empowered to intervene, and how failure to intervene could open the door to presidential misuse of dozens of highly potent emergency powers.

## SUMMARY OF THE ARGUMENT

Emergency powers have a narrow and specific function in our constitutional system. They are meant to provide presidents with a temporary boost in power to deal with sudden, unforeseen crises that require immediate action. They present a significant temptation, however, as they offer a potential means to short-circuit the normal policymaking process in non-emergency circumstances. A pattern of such conduct in the mid-twentieth century led Congress to enact the NEA and IEEPA.

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<sup>1</sup> This brief does not purport to convey the position, if any, of New York University School of Law. No counsel for any party authored this brief in whole or in part, and no person other than amicus curiae and counsel made a financial contribution to its preparation or submission.

The NEA was intended to rein in presidential use of statutory emergency powers. Although Congress did not define “national emergency,” the statute’s history makes clear that Congress did not provide an affirmative grant of limitless discretion to the president and that it expected the limits contained within specific emergency powers to be scrupulously observed and enforced. Congress similarly enacted IEEPA to cabin the president’s authority—namely, the authority to regulate economic transactions in response to peacetime emergencies. In addition to predicated the exercise of such powers on a declaration of national emergency, Congress specified that the emergency must constitute an “unusual and extraordinary threat” to the country’s national security, foreign policy, or economy, and narrowed the powers available under the law. Congress thus sought to prevent the use of IEEPA to engage in the type of routine policymaking that is and should be governed by non-emergency authorities.

President Trump’s declaration of a national emergency and invocation of IEEPA to impose tariffs contravene the statutory scheme envisioned and enacted by Congress in multiple ways. First, President Trump has declared an emergency where none exists, violating the cardinal principal behind the NEA’s enactment. Although courts rarely review the determinations of the political branches regarding the existence of emergencies, judicial review is appropriate where, as here, the president’s actions fall outside even a broad band of permitted discretion. Second, President Trump invoked IEEPA in the absence of an “unusual and extraordinary” threat to the U.S. national security, foreign policy, or economy, a criterion that Congress intended as a critical

safeguard against abuse. Third, given Congress’s goal of circumscribing presidential use of emergency powers, IEEPA should not be construed to authorize tariffs absent clear congressional intent to do so. The text and legislative history of the statute evince no such clear intent; indeed, they indicate the opposite. Finally, in using IEEPA to impose tariffs without an emergency, an “unusual and extraordinary” threat, or clear authorization in the law, President Trump is bypassing an extensive legislative framework governing the president’s imposition of tariffs—a result that the NEA and IEEPA were intended to prevent.

Allowing the president’s actions to stand could have far-reaching consequences beyond this case. It would give presidents a green light to use emergency powers as a means of evading the authority of Congress. The Brennan Center has catalogued 137 such powers that become available when the president declares a national emergency, including many that are highly susceptible to abuse. This Court should therefore intervene to stop this abuse of emergency power and to prevent similar abuses from becoming the norm.

## **ARGUMENT**

### **I. Congress Enacted the NEA and IEEPA to Circumscribe Presidential Use of Emergency Powers.**

The plaintiffs in these consolidated cases challenge a raft of executive orders (“Executive Orders”) relying on IEEPA, a statute creating a specific set of emergency economic powers, to impose tariffs on nearly every nation in the world. The lower courts

properly concluded that the plain language of IEEPA forecloses the president's actions. To the extent there is any ambiguity, however, the combined legislative history of the NEA and IEEPA strongly favors the same conclusion. *See Bostock v. Clayton County*, 590 U.S. 644, 674 (2020) ("Members of this Court have consulted legislative history when interpreting *ambiguous* statutory language."). That history makes clear that the NEA and IEEPA were enacted to circumscribe the president's use of statutory emergency powers and underscores the importance of strictly construing those powers' limits, particularly where the use of emergency powers would circumvent non-emergency laws.

#### **A. Congress's Role in Authorizing and Regulating the President's Exercise of Emergency Powers.**

Emergency powers play a unique role in our country's constitutional system. By definition, emergencies are sudden and unexpected, and they require immediate action. *See infra* Part II.A. Because they are sudden and unexpected, Congress may not be able to enact authorities in advance that are tailored to address them. And as a deliberative bicameral body, Congress is ill-suited to act with the necessary immediacy once an emergency has occurred. Emergency powers thus are designed to grant the president extraordinary legal leeway to respond to crises that Congress could not have foreseen and that are moving too fast or too unpredictably for Congress to address after the fact. *See Restoring Congressional Oversight over Emergency Powers: Exploring Options to Reform the National Emergencies Act: Hearing Before the S. Comm. on Homeland Sec. &*

*Governmental Affs.*, 118th Cong. 3–5 (2024) (statement of Elizabeth Goitein, Brennan Center for Justice), <https://perma.cc/4TJL-3QTR>; see generally John Ferejohn & Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 Int'l J. Const. L. 210 (2004).

Unlike most other countries' constitutions, the U.S. Constitution does not provide the president with express emergency powers. Compare U.S. Const. art. II with Comparative Constitutions Project, *Constitutions Database*, <https://perma.cc/GER8-2YPX> (database search reflecting that at least 160 countries' constitutions have provisions for emergency rule). Accordingly, since the country's founding, presidents have relied on Congress to provide them with enhanced authorities for emergency situations.<sup>2</sup> Throughout the nineteenth and early twentieth centuries, Congress periodically enacted laws giving presidents standby authorities that they could use during military, economic, or labor crises. See L. Elaine Halchin, Cong. Rsch. Serv., 98-505, *National Emergency Powers* 4–5 (2021), <https://perma.cc/NK3V-DLFF>.

Beginning in World War I, a new procedure for invoking statutory emergency powers emerged.

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<sup>2</sup> Presidents have, on occasion, claimed that the Constitution gives them broad *inherent* powers to take emergency action without congressional authorization. The Supreme Court has not endorsed such a reading, see, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587–89 (1952) (rejecting President Truman's claim of inherent constitutional authority to seize control of steel mills during the Korean War), and it finds little support in constitutional history, see Saikrishna Bangalore Prakash, *The Imbecilic Executive*, 99 Va. L. Rev. 1361, 1366–68, 1425 (2013).

Presidents would declare a national emergency, which would give them access to statutory authorities that otherwise lay dormant. *See id.* at 5. That practice continues today. Until the enactment of the NEA, however, there was no overarching statute regulating it, little transparency or congressional oversight with respect to presidents' use of emergency powers, and nothing to prevent states of emergency from lingering indefinitely.

### **B. The Origins and Purpose of the NEA.**

In the 1970s, several scandals involving executive branch overreach prompted Congress to investigate the exercise of executive power and to enact several laws aimed at reasserting Congress's role as a check on executive authority. *See generally* Thomas E. Cronin, *A Resurgent Congress and the Imperial Presidency*, 95 Pol. Sci. Q. 209 (1980). It was in this context that the Senate formed the Special Committee on National Emergencies and Delegated Emergency Powers (the "Special Committee") to examine presidential use of emergency powers. *See* S. Res. 242, 93d Cong. (1974); Halchin, *supra*, at 7–8.

The Special Committee was alarmed by what it found. Several clearly outdated emergency declarations remained on the books, in effect creating "virtually permanent states of emergencies." 120 Cong. Rec. S15784–94 (daily ed. Aug. 22, 1974) (statement of Sen. Frank Church), *reprinted in* S. Comm. on Gov't Operations & Spec. Comm. on Nat'l Emergencies & Delegated Emergency Powers, 94th Cong., *The National Emergencies Act (Public Law 94-412), Source Book: Legislative History, Text, and Other Documents* 73 (Comm. Print 1976) [hereinafter *NEA Source Book*]. These outdated declarations

continued to unlock emergency powers despite the fact that “[l]egislation intended for use in crisis situations is by its nature not well suited to normal, day-to-day Government operations.” 121 Cong. Rec. H8325–41 (daily ed. Sept. 4, 1975) (statement of Rep. Peter W. Rodino), *reprinted in NEA Source Book, supra*, at 244. The committee warned that the proliferation of emergency powers readily available to presidents had created a “dangerous state of affairs.” S. Rep. No. 94-922, at 1 (1976), *reprinted in NEA Source Book, supra*, at 33. It counted more than 470 statutory provisions that delegated extraordinary authority to the executive branch in times of national emergency, allowing the president to:

seize property and commodities, organize and control the means of production, call to active duty 2.5 million reservists, assign military forces abroad, seize and control all means of transportation and communication, restrict travel, and institute martial law, and, in many other ways, manage every aspect of the lives of all American citizens.

S. Rep. No. 93-1170, at 1–2 (1974), *reprinted in NEA Source Book, supra*, at 19–20.

The Special Committee’s work culminated in the introduction and passage of the NEA. *See* National Emergencies Act, Pub. L. No. 94-412, 90 Stat. 1255 (1976) (codified as amended at 50 U.S.C. §§ 1601–51). The purpose of the law, evident in every facet of its legislative history, was to limit presidential use of emergency powers. As summarized by the committee in urging passage of the Act:

While much work remains, none of it is more important than passage of the [NEA]. Right now, hundreds of emergency statutes confer enough authority on the President to rule the country without reference to normal constitutional process. Revelations of how power has been abused by high government officials must give rise to concern about the potential exercise, unchecked by the Congress or the American people, of this extraordinary power. The [NEA] would end this threat and insure that the powers now in the hands of the Executive will be utilized only in time of genuine emergency and then only under safeguards providing for Congressional review.

S. Rep. No. 94-922, at 18, *reprinted in NEA Source Book, supra*, at 50. The law included several provisions designed to assert a stronger and more active role for Congress in deciding whether states of emergency should continue. Most notably, it allowed Congress to terminate presidentially declared states of emergency at any time through a concurrent resolution (known in this context as a “legislative veto” because it would take effect without presentment to the president). *See* National Emergencies Act § 202, 90 Stat. at 1255.<sup>3</sup>

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<sup>3</sup> This Court subsequently held that legislative vetoes are unconstitutional. *See INS v. Chadha*, 462 U.S. 919, 954–55 (1983). Congress thus replaced the concurrent resolution mechanism with one for joint resolutions, which must be signed into law by the president. *See* Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, § 801, 99

The NEA does not include a definition of “national emergency.” However, the relevant committee report—the most salient type of legislative history for understanding congressional intent—makes clear that this omission was not intended as a grant of limitless discretion to the president. *See Eldred v. Ashcroft*, 537 U.S. 186, 209 n.16 (2003) (“In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill, which represent the considered and collective understanding of those Members of Congress involved in drafting and studying proposed legislation.” (alterations and internal quotation marks omitted)); 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 48:6 (7th ed.), Westlaw (database updated April 2025) (collecting cases and noting that if a statute is ambiguous, “courts generally view committee reports as the most persuasive indicia of legislative intent” (internal quotation marks

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Stat. 405, 448 (1985) (codified at 50 U.S.C. § 1622(a)(1)). This development greatly weakened the effectiveness of the NEA as a check on presidential authority, as Congress in most cases will need a veto-proof supermajority to terminate an emergency declaration. *See Restoring Congressional Oversight over Emergency Powers: Exploring Options to Reform the National Emergencies Act: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affs.*, *supra*, at 8 (statement of Elizabeth Goitein, Brennan Center for Justice). The lack of a ready means for Congress to terminate emergency declarations, as originally envisioned in the law, makes it even more important for the judiciary to fulfill its own responsibility to adjudicate the meaning of the law in a manner consistent with congressional intent. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (recognizing the judiciary’s obligation “to independently interpret” statutes “and effectuate the will of Congress subject to constitutional limits”).

omitted)). An earlier draft of NEA legislation authorized the president to declare a national emergency “[i]n the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States.” S. 977, 94th Cong. § 201(a) (1975). One committee report, referring to a nearly identical definition in a prior version of the bill, had noted that it was “deliberately cast in broad terms that makes it clear that a proclamation of a state of national emergency requires a grave national crisis.” S. Rep. No. 93-1193, at 2 (1974), *reprinted in NEA Source Book, supra*, at 96. The Senate Committee on Government Operations removed the language, not because it was too limiting, but because the committee believed it was too broad. As stated in the committee’s report:

[F]ollowing consultations with several constitutional law experts, the committee concluded that section 201(a) is overly broad, and might be construed to delegate additional authority to the President with respect to declarations of national emergency. In the judgment of the committee, the language of this provision was unclear and ambiguous and might have been construed to confer upon the President statutory authority to declare national emergencies, other than that which he now has through various statutory delegations.

The Committee amendment clarifies and narrows this language. The Committee decided that *the definition of when a*

*President is authorized to declare a national emergency should be left to the various statutes which give him extraordinary powers.* The [NEA] is not intended to enlarge or add to Executive power. Rather the statute is an effort by the Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers conferred upon him by other statutes.

S. Rep. No. 94-1168, at 3 (1976), *reprinted in NEA Source Book, supra*, at 292 (emphasis added).

The committee’s solution proved to be flawed, as most statutes in place today that confer power on the president during national emergencies do not include criteria beyond the issuance of the declaration. *See A Guide to Emergency Powers and Their Use*, Brennan Ctr. for Just. (July 1, 2025), <https://perma.cc/QQ43-9TVE>. It is nonetheless significant that Congress believed even a definition limiting national emergencies to grave national crises would be “overly broad.” S. Rep. No. 94-1168, at 3, *reprinted in NEA Source Book, supra*, at 292. The notion that Congress intended the NEA as an affirmative delegation of unlimited discretion—one that would allow the president to use emergency powers at will rather than of necessity—is contradicted by this and every other aspect of the legislative history. Moreover, where statutes granting emergency powers *do* include criteria beyond the mere declaration of an emergency, this legislative history underscores the importance of strictly interpreting and enforcing those limitations.

### C. The Origins and Purpose of IEEPA.

Enacted one year after the NEA and in response to the same concerns over executive branch overreach, IEEPA was Congress’s attempt to rein in presidential power to take emergency economic action. In particular, Congress was responding to abuses of the Trading with the Enemy Act of 1917 (TWEA). *See* 24-1287 Pet. App. 4a–5a; 25-250 Pet. App. 15a–18a, 29a–30a. TWEA originally authorized the president to take economic measures against enemy nations, such as blocking enemy property, during times of war. *See* Andrew Boyle, Brennan Ctr. for Just., *Checking the President’s Sanctions Powers* 5 (2021), <https://perma.cc/NWD2-VS8K>. In 1933, however, after President Roosevelt invoked TWEA to declare a national bank holiday, *see* Proclamation No. 2039, 48 Stat. 1689 (Mar. 6, 1933), Congress hastily amended it to apply during national emergencies as well as wartime, *see* Emergency Banking Relief Act, ch. 1, § 2, 48 Stat. 1, 1–2 (1933).<sup>4</sup> In doing so, “Congress recognized that it was conferring unusual powers on the President which were justified by the g[r]avity of the situation which the country faced, but which should not normally be available to Presidents in peacetime.” H.R. Rep. No. 95-459, at 4 (1977).

The NEA originally exempted TWEA from its ambit. Because a small number of emergency powers,

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<sup>4</sup> The government states that Congress amended TWEA to extend to national emergencies in 1941. *See* Gov’t Br. 13. In fact, that amendment retained the “national emergency” language added in 1933, *see* Emergency Banking Relief Act § 2, and provided additional authority to take many of the specific economic actions that are now a part of IEEPA, *see* 50 U.S.C. § 1702(a)(1)(B); First War Powers Act, 1941, ch. 593, § 301, 55 Stat. 838, 839–40.

including TWEA, were in regular use, Congress temporarily excluded them “to allow for a careful study of how to revise them in accordance with the intent of the [NEA] without disrupting policies currently in effect under their authority.” *Id.* at 6–7. The resulting inquiry, conducted by the committees of jurisdiction in both chambers, confirmed that “[s]uccessive Presidents ha[d] seized upon” TWEA’s open-ended language to turn it “through usage, into something quite different from what was envisioned in 1917.” *Id.* at 8–9; *see also* Boyle, *supra*, at 5. Indeed, TWEA had “become essentially an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review.” H.R. Rep. No. 95-459 at 7. The law’s emergency authorities had “in effect become routine authorities used to conduct the day-to-day business of the Government.” 123 Cong. Rec. 424 (1977) (statement of Rep. Jonathan B. Bingham, Chairman, Subcomm. on Int’l Econ. Pol’y & Trade of the H.R. Comm. on Int’l Rels.).

In response to these findings, Congress amended TWEA to once again limit its application to instances where Congress had declared war. Act of Dec. 28, 1977, Pub. L. No. 95-223, § 101(a), 91 Stat. 1625, 1625 (codified at 50 U.S.C. § 4305(b)(1)); *see* H.R. Rep. No. 95-459, at 10. At the same time, Congress promulgated a new statute—IEEPA—to provide for a more constrained set of economic powers during peacetime emergencies. Pub. L. No. 95-223, §§ 201–208, 91 Stat. 1625, 1626–29 (1977) (codified as amended at 50 U.S.C. §§ 1701–1710).

Congress intended the powers conferred under IEEPA to be subject to significant “substantive restrictions.” H.R. Rep. No. 95-459, at 10. The first such restriction was the high bar to invoking the statute. Congress perceived the requirement of declaring a national emergency to be a significant limitation, given that “emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems.” *Id.* Even so, Congress added a further constraint, providing that IEEPA’s authorities may be used only to deal with an “unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.” 50 U.S.C. § 1701(a). This language is one of the primary distinctions between IEEPA and the corresponding provisions of TWEA, and thus a critical aspect of Congress’s attempt to ensure that presidents would not invoke IEEPA in the absence of real emergencies.

In addition, the authorities provided under IEEPA were “limited to the regulation of international economic transactions” and were “more restricted than those available during time of war.” H.R. Rep. No. 95-459, at 10–11. IEEPA specifies a list of powers that the president may exercise over property or transactions under U.S. jurisdiction in which a foreign nation or person has any interest. *See* 50 U.S.C. § 1702(a)(1)(B). Neither that list nor the legislative history includes any mention of the imposition of tariffs.

Finally, IEEPA includes procedural requirements to facilitate strong congressional oversight. The president must consult with Congress “in every

possible instance” before invoking IEEPA and must submit reports to Congress on a regular basis. 50 U.S.C. § 1703(a)–(c). Furthermore, because IEEPA’s powers are exercised pursuant to a national emergency declaration, Congress may block the use of those powers by terminating the declaration on which the IEEPA invocation relies. 50 U.S.C. § 1622(a)(1).

In short, the legislative history of IEEPA—like that of the NEA—reflects a resolute focus on restricting presidential use of emergency powers and ensuring that the law is not used as a substitute for non-emergency legislation.

## **II. The Executive Orders Are Contrary to Congress’s Intent in Enacting the NEA and IEEPA.**

The purpose and design of the NEA and IEEPA demonstrate that the president does not have unlimited discretion to declare national emergencies where none exist; that limitations contained within statutes that are available during national emergencies, such as IEEPA, should be strictly construed and enforced; that such statutes should not be read to include powers not clearly granted; and that emergency powers may not be used to displace applicable non-emergency laws absent a genuine emergency and clear authorization. The Executive Orders collectively violate these core aspects of the NEA and IEEPA, and this Court has both the

authority and the responsibility to enjoin the violation.

**A. The President Acted Outside a Permissible Range of Discretion in Declaring a National Emergency.**

Gesturing to the political question doctrine, the government contends that a president's determination that an emergency exists is "not amenable to judicial review." Gov't Br. 42. Not so.

To be sure, such determinations might ordinarily be afforded substantial deference. *See, e.g., United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 579 (C.C.P.A. 1975) (noting that the existence of a national emergency "*normally*" presents a "political question[]" more appropriate for a political branch of government than for the judiciary (emphasis added)). The political question doctrine, however, does not bar judicial intervention when a "discriminating inquiry into the precise facts and posture of the particular case" reveals an "obvious mistake" or "manifestly unauthorized exercise of power." *Baker v. Carr*, 369 U.S. 186, 214, 217 (1962); *accord Sterling v. Constantin*, 287 U.S. 378, 399 (1932) (acknowledging "a permitted range of honest judgment" in which executive discretion may be exercised). Claims of emergency are not exempt from this rule. This Court has recognized, for instance, that the judiciary may determine whether "[a] law depending upon the existence of an emergency" remains valid "if the emergency ceases." *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547 (1924); *see also id.* ("[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared.").

These cases present just such an instance. Above all else, what emerges from the legislative histories of the NEA and IEEPA is that Congress intended to authorize the use of emergency powers to address true emergencies only, and *not* ordinary problems that presidents mislabel as emergencies. Although Congress did not define “emergency” in either statute, there are ample indications of how Congress understood the term—and, in particular, what should *not* qualify as an emergency under these laws. As described in Part I, Congress believed that genuine emergencies are “rare and brief, and are not to be equated with normal, ongoing problems.” H.R. Rep. No. 95-459, at 10.

Even without these indications, the word “emergency” is not a cipher; it has a well-understood definition. When Congress passed the NEA and IEEPA, the term “emergency” was defined, as it is today, as a sudden, unforeseen circumstance that requires an immediate response. *See Emergency*, Webster’s New Collegiate Dictionary 372 (9th ed. 1976) (“[A]n unforeseen combination of circumstances or the resulting state that calls for immediate action.”); *Emergency*, American Heritage Dictionary 427 (1st ed. 1969) (“A situation or occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action.”). The government ignores the ordinary meaning of “emergency,” contending that “nothing in the NEA or IEEPA precludes emergencies resulting from ‘longstanding’ threats.” Gov’t Br. 43. But “[t]his Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock*, 590 U.S. at 654. Because there is no evidence that Congress intended “emergency” to

have a specialized meaning in this context—and, indeed, there is evidence that Congress intended to *prevent* the use of emergency authorities to address “ongoing problems,” H.R. Rep. No. 95-459, at 10—this Court should interpret the term in keeping with its ordinary meaning. *See Feliciano v. Dep’t of Transp.*, 605 U.S. \_\_\_, 145 S. Ct. 1284, 1291 (2025).

The “emergency” cited as the basis for most of the challenged tariffs<sup>5</sup> is “persistent annual U.S. goods trade deficits” and “structural imbalances in the global trading system.” Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,041 (Apr. 2, 2025). A “persistent” set of circumstances, however, is neither sudden nor unforeseen. To the contrary, a “persistent” and “structural” problem is the very definition of a “normal, ongoing” problem, which Congress believed should *not* trigger emergency powers. *See* H.R. Rep. No. 95-459, at 10. Trade imbalances with other nations are indeed commonplace, as the challenged Executive Order affirms, and have been so for decades. *See U.S. Trade Balance*, Macrotrends, <https://perma.cc/V2VG-SZBT>. Nor is it the case that such imbalances have become suddenly, unexpectedly worse. To the contrary, as a percentage of the U.S. gross domestic product, the nation’s overall trade imbalance is significantly less today than it was twenty years ago. *See id.* Congress passed the NEA and IEEPA precisely to prevent presidents from using

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<sup>5</sup> Because Plaintiffs V.O.S. *et al.* do not challenge the Executive Orders that are specific to Canada, Mexico, and China, and Plaintiffs Oregon *et al.* and Learning Resources *et al.* do not address whether the circumstances underlying those orders constitute an “emergency” or an “unusual and extraordinary threat,” this brief does not reach those questions.

emergency powers to address such longstanding and widespread issues.

Similarly, this Court need not blindly defer to the government’s eleventh-hour attempt to reframe the supposed “emergency” as a manufacturing shortfall resulting from an economic “tipping point” brought on by decades of trade of imbalances. *See Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019) (noting that even where the Court’s “review is deferential, . . . we are not required to exhibit a naiveté from which ordinary citizens are free” (internal quotation marks omitted)). Nothing in the Executive Order hints at a sudden and recent “tipping point” creating a new crisis in manufacturing. That new claim is contradicted by the government’s own data, which show that the output and value of American manufacturing have been at or near record highs for the past several years. *See* U.S. Bureau of Lab. Stat., *Manufacturing Sector: Real Sectoral Output for All Workers*, Fed. Rsrv. Bank of St. Louis, <https://perma.cc/PQV8-E24Q>; U.S. Bureau of Econ. Analysis, *Real Value Added by Industry: Manufacturing*, Fed. Rsrv. Bank of St. Louis, <https://perma.cc/NYD5-QQ42>.

President Trump’s behavior following the issuance of the Executive Orders further undermines any claim of “emergency.” By definition, an emergency—particularly one posing an “unusual and extraordinary threat”—requires immediate action. Yet President Trump has repeatedly pulled back from imposing the full tariffs authorized by his Executive Orders. *See* Chad P. Bown, Peterson Inst. for Int’l Econ., *Trump’s Trade War Timeline 2.0: An Up-to-Date Guide* (Oct. 17, 2025), <https://perma.cc/KK8A->

337K. A circumstance that can be addressed on the president’s chosen timeline is not an emergency.

Whatever forbearance courts might ordinarily show in lawsuits challenging declarations of national emergency, the president’s actions in this case exceed the “permitted range of honest judgment” in which presidents may act without judicial review in areas normally committed to executive discretion. *Sterling*, 287 U.S. at 399. In determining that decades-long, entrenched trade relationships constitute an “emergency,” President Trump has made an “obvious mistake” and has acted in a manner “manifestly unauthorized” by law. *Baker*, 369 U.S. at 214, 217.

**B. Longstanding Trade Imbalances Do Not  
Constitute an “Unusual and  
Extraordinary Threat.”**

This Court has ample authority to review whether IEEPA’s criterion of an “unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States,” 50 U.S.C. § 1701(a), has been met. Although some courts have held that IEEPA invocations implicate the political question doctrine, *see, e.g., Beacon Prods. Corp. v. Reagan*, 633 F. Supp. 1191, 1194–95 (D. Mass. 1986), every judge to have reached the issue in the cases now before this Court has correctly rejected this argument, *see* 25-250 Pet. App. 183a–90a (unanimous three-judge panel of the Court of International Trade); *id.* at 86a–88a (dissenting opinion of Judge Taranto, joined by three additional Federal Circuit judges); *see also Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 229–30 (1986) (emphasizing that “not every matter touching on politics is a political question,” and concluding that the case under review was justiciable

because it “call[ed] for applying no more than the traditional rules of statutory construction, and then applying this analysis to the particular set of facts presented”).

Judicial review of IEEPA invocations accords with the text and legislative histories of the NEA and IEEPA. As discussed in Part I.C, Congress, in enacting IEEPA, added the “unusual and extraordinary threat” standard to prevent overuse of the law’s exceptional powers. Congress intended for such limiting language in specific emergency powers to serve as key constraints on the executive power presidents retained under the NEA. *See supra* Part I.B. It is entirely implausible that Congress intended for this critical limitation to be unenforceable. Indeed, shortly before the Special Committee’s formation, one of its co-chairs expressly faulted the “the courts” for interpreting congressional grants of emergency powers as “creating a virtually unlimited Executive prerogative.” 118 Cong. Rec. 18368 (1972) (statement of Sen. Charles Mathias), *reprinted in NEA Source Book, supra*, at 15; *see also id.* (lamenting that “neither Congress nor the courts has set criteria to define the kind of crisis which would justify invocation of these multifarious powers”); *id.*, *reprinted at NEA Source Book, supra*, at 16 (faulting courts for upholding exercises of emergency powers that “clearly represent[ed] an unconstitutional encroachment on legislative authority”); *cf. Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2615 (2020) (Kavanaugh, J., dissenting) (“This Court’s history is littered with unfortunate examples of overly broad judicial deference to the government when the government has invoked emergency powers . . . . The court of history has rejected those jurisprudential

mistakes and cautions us against an unduly deferential judicial approach . . .”).

Even if courts owe substantial deference to a president’s assessment of whether particular circumstances constitute a threat to national security, no special expertise or political judgment is required for a court to determine whether those circumstances are “unusual” or “extraordinary”—particularly where the frequency and extent of such circumstances are a matter of public record. Courts assess whether circumstances are “unusual” or “extraordinary” in an array of constitutional and statutory contexts, *see, e.g., Atkins v. Virginia*, 536 U.S. 304, 316 (2002) (concluding that execution of intellectually disabled offenders had “become truly unusual” based on infrequency of its application); *Magana-Magana v. Bondi*, 129 F.4th 557, 570 (9th Cir. 2025) (interpreting “extraordinary circumstances” in immigration code and noting that “courts routinely determine whether ‘extraordinary circumstances’ exist”), including those explicitly involving national defense considerations, *see, e.g., Filtration Dev. Co. v. United States*, 60 Fed. Cl. 371, 383, 387 (2004) (interpreting “unusual and compelling urgency” in military procurement statute to require time-bounded, not indefinite, exigency).

President Trump’s description of trade imbalances as “persistent” and “structural” refutes any claim that they are “unusual and extraordinary” in nature. So, too, does the president’s imposition of separate tariffs on nearly every nation. *See* Exec. Order No. 14,257, 90 Fed. Reg. at 15,045, 15,049–50. President Trump has even imposed tariffs on the several dozen countries with which the United States runs a trade *surplus*, claiming that the U.S. national security and economy

are under threat in those instances because “the accumulation of tariff and non-tariff barriers on U.S. exports may make that surplus smaller than it would have been without such barriers.” *Id.* at 15,043. As the caselaw adjudicating what is “unusual” or “extraordinary” would suggest, a circumstance that persists indefinitely with respect to every single nation on earth simply is not “unusual and extraordinary.” Indeed, it is so far from meeting that standard that judicial intervention would be warranted even if the political question doctrine might otherwise apply. A finding that a longstanding and universal circumstance is “unusual and extraordinary” is an “obvious mistake,” *Baker*, 369 U.S. at 214, that exceeds “a permitted range of honest judgment,” *Sterling*, 287 U.S. at 399, rendering President Trump’s worldwide tariffs “manifestly unauthorized” by law, *Baker*, 369 U.S. at 217.

### **C. IEEPA Does Not Authorize the Imposition of Tariffs.**

The legislative histories of the NEA and IEEPA bear directly on the proper interpretation of IEEPA’s scope. The courts below cited this Court’s admonition that executive actions with major political or economic significance must be clearly authorized by Congress. *See* 25-250 Pet. App. 34a–38a (Federal Circuit), 170a–172a (CIT); 24-1287 Pet. App. 23a (district court). There is an independent reason, however, to require clear authorization by Congress when the president takes action under the NEA and IEEPA—laws designed to ensure that emergency powers would be used sparingly and in accordance with their limitations. As Congress recognized in passing the NEA and IEEPA, the powers expressly granted to the

president during a national emergency are extremely potent and vulnerable to exploitation or abuse. Allowing a president to expand these powers beyond their already sweeping scope by inferring powers not clearly conferred would create exactly the kind of danger Congress sought to mitigate. The fact that the powers expressly granted by IEEPA are “broad,” as the government observes, Gov’t Br. 15, merely underscores the importance of resisting efforts to broaden them even further beyond their textual limits.

IEEPA does not clearly authorize the imposition of tariffs. The long list of presidential actions that it authorizes does not include imposing tariffs or leveling taxes or duties. Construing the word “regulate” to encompass the imposition of tariffs is a strained reading of the term that would render it an outlier from the other actions on the list, all of which relate to requiring or prohibiting transactions rather than taxing them. *See* 24-1287 Pet. App. 24a; 25-250 Pet. App. 33a. The legislative history of IEEPA, which describes intended uses for the law, is similarly devoid of any mention of tariffs. *See* H.R. Rep. No. 95-459, at 14–15; S. Rep. No. 95-466, at 5 (1977). The notion that Congress intended to create a sweeping new emergency tariff power *sub silentio* is all the more unlikely given that Congress had recently enacted broad tariff legislation. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2497b). Until now, no president had ever used IEEPA for tariffs in its nearly fifty-year history, itself a powerful sign that the law does not authorize such a measure. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (“[T]he longstanding practice of the government’—like any

other interpretive aid—‘can inform [a court’s] determination of what the law is.’” (second alteration in original) (internal quotation marks omitted) (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014)); 25-250 Pet. App. 35a–36a; 24-1287 Pet. App. 27a–28a. In short, far from IEEPA providing the clear authorization that should be required when emergency powers are invoked, multiple factors suggest that Congress did not intend for IEEPA to authorize tariffs.

#### **D. Upholding the Executive Orders Would Permit Circumvention of Tariff Laws.**

In passing the NEA and IEEPA, Congress emphasized that emergency powers should not be used as a substitute for regular, non-emergency legislation.<sup>6</sup> See H.R. Rep. No. 94-238, at 2 (1975) (noting that the NEA “will make it possible for our Government to function in accordance with regular and normal provisions of law rather than through special exceptions and procedures which were intended to be in effect for limited periods during specific emergency conditions”); H.R. Rep. No. 95-459, at 11 (directing that “authority for routine,

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<sup>6</sup> Congress did contemplate that IEEPA might be used, as a last resort, to control exports in the event of a lapse in non-emergency export control legislation. See H.R. Rep. No. 95-459, at 13. There are no such gaps to fill when it comes to non-emergency tariff legislation, as discussed herein. Similarly, while “Congress has for decades acquiesced in the use of IEEPA as a substitute for ordinary *sanctions* legislation,” see Brief of the Brennan Center for Justice & the Cato Institute as Amici Curiae at 17, *Sierra Club v. Trump*, 977 F.3d 853 (9th Cir. 2020) (Nos. 19-17501, 19-17502, 20-15044) (emphasis added), there is no such history of acquiescence with respect to the imposition of tariffs under IEEPA because no previous president has used IEEPA for that purpose.

nonemergency regulation of international economic transactions which has heretofore been conducted under [TWEA] should be transferred to other legislation”). By the same token—and even more importantly—emergency powers should never be used to circumvent restrictions or prohibitions included in non-emergency legislation absent a true emergency and clear authorization.

Here, Congress has established a detailed statutory scheme for tariffs. The authority to impose tariffs is expressly committed to Congress under the Constitution, as the first of its powers. *See* U.S. Const. art. I, § 8, cl. 1. Pursuant to that authority, Congress has passed multiple statutes explicitly authorizing tariffs in a range of circumstances. *See, e.g.*, Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994); Trade Act of 1974. These laws give the president and U.S. Trade Representative significant discretion to impose or adjust tariffs in response to specified circumstances, such as national security threats (19 U.S.C. § 1862(b)–(c)); injury to domestic industry (19 U.S.C. §§ 2251–2255); trade agreement violations by other nations (19 U.S.C. §§ 2411–2420); discrimination against U.S. commerce (19 U.S.C. § 1338); and serious trade imbalances (19 U.S.C. § 2132). Where presidents have sought to raise or lower tariffs under other circumstances, they have availed themselves of Trade Promotion Authority laws, which provide for expedited congressional approval of trade agreements that meet specified negotiating objectives and consultation/notification requirements. *See* Christopher A. Casey & Cathleen D. Cimino-Isaacs, Cong. Rsch. Serv., IF10038, *Trade Promotion Authority (TPA)* 1 (2024), <https://perma.cc/NZ59-PQZ9>.

Construing IEEPA to authorize the imposition of tariffs without any of the procedural and substantive restrictions of these laws would allow the president to bypass an elaborate legislative scheme in an area of plenary congressional authority. *See* 24-1287 Pet. App. 24a–27a; 25-250 Pet. App. 30a–31a. Such a result would be permissible only if a true emergency existed, the criteria for invoking IEEPA were met, and IEEPA clearly permitted the imposition of tariffs. None of those conditions is present here. *See supra* Parts II.A, B, & C.

Moreover, even if IEEPA could be interpreted as authorizing tariffs in some circumstances, it still could not be interpreted as authorizing the tariffs imposed under the challenged Executive Orders. Congress has enacted legislation—Section 122 of the Trade Act of 1974—specifically authorizing the president to impose tariffs in response to “large and serious United States balance-of-payment deficits” (including trade imbalances), but capping the size and duration of those tariffs. *See* 19 U.S.C. § 2132. Congress thus established parameters for tariffs addressing the very circumstances identified in Executive Order 14,257.<sup>7</sup> As the Court of International Trade held, construing IEEPA to authorize tariffs in these circumstances would permit circumvention of Section 122 and would

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<sup>7</sup> Citing *Yoshida*, the government argued below that Section 122 addresses “foreseeable events,” while IEEPA is intended for “unforeseeable events.” Opening Brief for Appellants at 50, *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312 (Fed. Cir. 2025) (No. 25-1812) (emphasis in original). That argument strongly supports the *plaintiffs’* position. There is nothing remotely unforeseeable about “persistent” and “structural” trade imbalances that have existed for decades. Exec. Order No. 14,257, 90 Fed. Reg. at 15,041. Tellingly, the government no longer advances that argument. *See* Gov’t Br. 37–39.

render its limitations a nullity. 25-250 Pet. App. 178a–81a. The Executive Orders imposing tariffs on Canada, Mexico, and China, which cite the protection of national security as a justification, similarly circumvent and nullify the requirements set forth in Section 232 of the Trade Expansion Act of 1962, which governs the adjustment of imports for national-security purposes. *See* 19 U.S.C. § 1862(b)–(c). This result violates not only basic canons of statutory construction, but also Congress’s intent, in enacting the NEA and IEEPA, to end the practice of presidents substituting emergency powers for “regular and normal provisions of law.” H.R. Rep. No. 94-238, at 2; H.R. Rep. No. 95-459, at 7, 10–11.

### **III. Upholding the Executive Orders Would Create a Dangerous Precedent.**

A ruling upholding the challenged Executive Orders would have far-reaching implications. In the future, presidents would know that they could invoke emergency powers to bypass Congress in adopting highly controversial policies, like worldwide tariffs, that Congress might not be willing to support—or that would violate the law absent a declaration of national emergency. A veto-proof majority of Congress would then be required to put an end to the contested policy. This would fundamentally upset the balance of power between the president and Congress.

Indeed, if given the green light to declare emergencies to evade Congress, presidents could invoke powers even more potent than the one that President Trump has relied on here. The Brennan Center has catalogued 137 statutory provisions that become available to presidents when they declare a national emergency, the vast majority of which

contain no substantive criteria for invocation beyond an emergency declaration. *See A Guide to Emergency Powers and Their Use, supra*. Although some of these powers are narrowly crafted, others are sweeping, and their invocation as a means of short-circuiting Congress could have profound consequences. *See, e.g.*, 47 U.S.C. § 606(c) (permitting the president to take over or shut down certain wireless telecommunications facilities, devices, and equipment during a national emergency); 49 U.S.C. § 114(g) (delegating broad authority over domestic transportation to the Transportation Security Administrator during a national emergency); 10 U.S.C. § 712(a) (allowing the president to detail any member of the U.S. armed forces to “any . . . country that he considers it advisable to assist in the interest of national defense”); 50 U.S.C. §§ 1513, 1515 (authorizing the president to suspend restrictions on overseas deployment, testing, development, transportation, storage, and disposal of lethal chemical or biological warfare agents).

If this Court upholds President Trump’s actions in the current case, such formidable powers could henceforth become available based simply on a president’s unilateral claim that he or she needs them, and against the wishes of a majority of Congress. Few presidents would be able to resist such an open invitation to unchecked power. At a minimum, government by presidential emergency order would likely become far more common than it has been in the past. President Trump has already far outpaced the rate at which any previous president has used statutory emergency powers since the enactment of the NEA. *See Declared National Emergencies Under the National Emergencies Act*, Brennan Ctr. for Just.

(Oct. 20, 2025), <https://perma.cc/4J9N-28DP> (listing 9 national emergency declarations during President Trump’s first 9 months in office). To the extent rule by emergency power is becoming a standard feature of U.S. government, it is inconsistent with Congress’s intent when it passed the NEA and with the constitutional separation of powers.

### CONCLUSION

For the reasons stated above, this Court should affirm.

Respectfully submitted,

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Dated: October 24, 2025