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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LEARNING RESOURCES, INC., ET AL. *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24–1287. Argued November 5, 2025—Decided February 20, 2026*

The question presented is whether the International Emergency Economic Powers Act (IEEPA) authorizes the President to impose tariffs. See 91 Stat. 1626. Shortly after taking office, President Trump sought to address two foreign threats: the influx of illegal drugs from Canada, Mexico, and China, Presidential Proclamation No. 10886, 90 Fed. Reg. 8327; Exec. Order No. 14193, 90 Fed. Reg. 9113; Exec. Order No. 14194, 90 Fed. Reg. 9117; Exec. Order No. 14195, 90 Fed. Reg. 9121, and "large and persistent" trade deficits, Exec. Order No. 14257, 90 Fed. Reg. 15041. The President determined that the drug influx had "created a public health crisis," 90 Fed. Reg. 9113, and that the trade deficits had "led to the hollowing out" of the American manufacturing base and "undermined critical supply chains," *id.*, at 15041. The President declared a national emergency as to both threats, deeming them "unusual and extraordinary," and invoked his authority under IEEPA to respond.

He imposed tariffs to deal with each threat. As to the drug trafficking tariffs, the President imposed a 25% duty on most Canadian and Mexican imports and a 10% duty on most Chinese imports. *Id.*, at 9114, 9118, 9122–9123. As to the trade deficit ("reciprocal") tariffs, the President imposed a duty "on all imports from all trading partners" of

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*Together with No. 25–250, *Trump, President of the United States, et al.* v. *V.O.S. Selections, Inc., et al.*, on certiorari to the United States Court of Appeals for the Federal Circuit.

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at least 10%, with dozens of nations facing higher rates. *Id.*, at 15045, 15049. Since imposing each set of tariffs, the President has issued several increases, reductions, and other modifications.

Petitioners in *Learning Resources* and respondents in *V.O.S. Selections* filed suit, alleging that IEEPA does not authorize the reciprocal or drug trafficking tariffs. The *Learning Resources* plaintiffs—two small businesses—sued in the United States District Court for the District of Columbia. That court denied the Government's motion to transfer the case to the United States Court of International Trade (CIT) and granted the plaintiffs' motion for a preliminary injunction, concluding that IEEPA did not grant the President the power to impose tariffs. The *V.O.S. Selections* plaintiffs—five small businesses and 12 States—sued in the CIT. That court granted summary judgment for the plaintiffs. And the Federal Circuit, sitting en banc, affirmed in relevant part, concluding that IEEPA's grant of authority to "regulate . . . importation" did not authorize the challenged tariffs, which "are unbounded in scope, amount, and duration." 149 F. 4th 1312, 1338. The Government filed a petition for certiorari in *V.O.S. Selections*, and the *Learning Resources* plaintiffs filed a petition for certiorari before judgment. The Court granted the petitions and consolidated the cases.

Held: IEEPA does not authorize the President to impose tariffs. The judgment in No. 24–1287 is vacated, and the case is remanded with instructions to dismiss for lack of jurisdiction; the judgment in No. 25–250 is affirmed.

No. 24–1287, 784 F. Supp. 3d 209, vacated and remanded; No. 25–250, 149 F. 4th 1312, affirmed.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I and II–A–1:

Article I, Section 8, of the Constitution specifies that "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises." The Framers recognized the unique importance of this taxing power—a power which "very clear[ly]" includes the power to impose tariffs. *Gibbons* v. *Ogden*, 9 Wheat. 1, 201. And they gave Congress "alone . . . access to the pockets of the people." The Federalist No. 48, p. 310 (J. Madison). The Framers did not vest any part of the taxing power in the Executive Branch. See *Nicol* v. *Ames*, 173 U. S. 509, 515.

The Government thus concedes that the President enjoys no inherent authority to impose tariffs during peacetime. It instead relies exclusively on IEEPA to defend the challenged tariffs. It reads the words "regulate" and "importation" to effect a sweeping delegation of Congress's power to set tariff policy—authorizing the President to impose tariffs of unlimited amount and duration, on any product from any

country. 50 U. S. C. §1702(a)(1)(B). Pp. 5–7.

THE CHIEF JUSTICE, joined by JUSTICE GORSUCH and JUSTICE BARRETT, concluded in Part II–A–2:

The Court has long expressed "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *West Virginia* v. *EPA*, 597 U. S. 697, 723 (quoting *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 324). In several cases described as involving "major questions," the Court has reasoned that "both separation of powers principles and a practical understanding of legislative intent" suggest Congress would not have delegated "highly consequential power" through ambiguous language. *Id*., at 723–724. These considerations apply with particular force where, as here, the purported delegation involves the core congressional power of the purse. Congressional practice confirms as much. When Congress has delegated its tariff powers, it has done so in explicit terms and subject to strict limits.

Against that backdrop of clear and limited delegations, the Government reads IEEPA to give the President power to unilaterally impose unbounded tariffs and change them at will. That view would represent a transformative expansion of the President's authority over tariff policy. It is also telling that in IEEPA's half century of existence, no President has invoked the statute to impose *any* tariffs, let alone tariffs of this magnitude and scope. That " 'lack of historical precedent,' coupled with the breadth of authority" that the President now claims, suggests that the tariffs extend beyond the President's "legitimate reach." *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109, 119 (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505). The " 'economic and political significance' " of the authority the President has asserted likewise "provide[s] a 'reason to hesitate before concluding that Congress' meant to confer such authority." *West Virginia*, 597 U. S., at 721 (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 159–160). The stakes here dwarf those of other major questions cases. And as in those cases, "a reasonable interpreter would [not] expect" Congress to "pawn[]" such a "big-time policy call[] . . . off to another branch." *Biden* v. *Nebraska*, 600 U. S. 477, 515 (BARRETT, J., concurring).

There is no exception to the major questions doctrine for emergency statutes. Nor does the fact that tariffs implicate foreign affairs render the doctrine inapplicable. The Framers gave "Congress alone" the power to impose tariffs during peacetime. *Merritt* v. *Welsh*, 104 U. S. 694, 700. And the foreign affairs implications of tariffs do not make it any more likely that Congress would relinquish its tariff power through vague language, or without careful limits. Accordingly, the President must "point to clear congressional authorization" to justify

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his extraordinary assertion of that power. *Nebraska*, 600 U. S., at 506 (internal quotation marks omitted). He cannot. Pp. 7–13.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Part II–B, concluding:

(a) IEEPA authorizes the President to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . . importation or exportation." §1702(a)(1)(B). Absent from this lengthy list of specific powers is any mention of tariffs or duties. Had Congress intended to convey the distinct and extraordinary power to impose tariffs, it would have done so expressly, as it consistently has in other tariff statutes.

The power to "regulate . . . importation" does not fill that void. The term "regulate," as ordinarily used, means to "fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." Black's Law Dictionary 1156. The facial breadth of this definition places in stark relief what "regulate" is not usually thought to include: taxation. Many statutes grant the Executive the power to "regulate." Yet the Government cannot identify any statute in which the power to regulate includes the power to tax. The Court is therefore skeptical that in IEEPA—and IEEPA alone—Congress hid a delegation of its birth-right power to tax within the quotidian power to "regulate."

While taxes may accomplish regulatory ends, it does not follow that the power to regulate includes the power to tax as a means of regulation. Indeed, when Congress addresses both the power to regulate and the power to tax, it does so separately and expressly. That it did not do so here is strong evidence that "regulate" in IEEPA does not include taxation.

A contrary reading would render IEEPA partly unconstitutional. IEEPA authorizes the President to "regulate . . . importation or exportation." §1702(a)(1)(B). But taxing exports is expressly forbidden by the Constitution. Art. I, §9, cl. 5.

The "neighboring words" with which "regulate" "is associated" also suggest that Congress did not intend for "regulate" to include the revenue-raising power. *United States* v. *Williams*, 553 U. S. 285, 294. Each of the nine verbs in §1702(a)(1)(B) authorizes a distinct action a President might take in sanctioning foreign actors or controlling domestic actors engaged in foreign commerce, as Presidential practice confirms. And none of the listed authorities includes the distinct and extraordinary power to raise revenue—a power which no President has ever found in IEEPA. Pp. 14–16.

(b) Several arguments marshaled in response are unpersuasive. First, the contention that IEEPA confers the power to impose tariffs because early commentators and the Court's cases discuss tariffs in

the context of the Commerce Clause answers the wrong question. The question is not whether tariffs can ever be a means of regulating commerce. It is instead whether *Congress*, when conferring the power to "regulate . . . importation," gave the President the power to impose tariffs at his sole discretion. And Congress's pattern of usage is plain: When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither in IEEPA.

Second, the argument that "regulate" naturally includes tariffs because the term lies between two poles in IEEPA—"compel" on the affirmative end and "prohibit" on the negative end—is unavailing. Although tariffs may be less extreme than an outright compulsion or prohibition, it does not follow that tariffs lie on the spectrum between those poles; they are different in kind, not degree, from the other authorities in IEEPA. Tariffs operate directly on domestic importers to raise revenue for the Treasury and are "very clear[ly] . . . a branch of the taxing power." *Gibbons*, 9 Wheat., at 201. Thus, they fall outside the spectrum entirely.

Third, the argument based on IEEPA's predecessor, the Trading with the Enemy Act (TWEA), and the Court of Customs and Patent Appeals' decision in *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, cannot bear the weight placed on it. A single, expressly limited opinion from a specialized intermediate appellate court does not establish a well-settled meaning that the Court can assume Congress incorporated into IEEPA.

Fourth, the historical argument based on the Court's wartime precedents fails. Those precedents are facially inapposite, as all agree the President lacks inherent peacetime authority to impose tariffs. And the attenuated chain of inferences from wartime precedents through multiple iterations of TWEA to IEEPA cannot support—much less clearly support—a reading of IEEPA that includes the distinct power to impose tariffs.

Finally, arguments relying on this Court's precedents lack merit. *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, bears little on the meaning of IEEPA. Section 232(b) of the Trade Expansion Act of 1962 contains sweeping, discretion-conferring language that IEEPA does not contain, and the explicit reference to duties in Section 232(a) renders it natural for Section 232(b) itself to authorize duties. Nor does *Dames & Moore* v. *Regan*, 453 U. S. 654, offer support because that case was exceedingly narrow, did not address the President's power to "regulate," and did not involve tariffs at all. Pp. 16–20.

JUSTICE KAGAN, joined by JUSTICE SOTOMAYOR and JUSTICE JACKSON, agreed that IEEPA does not authorize the President to impose tariffs, but concluded that the Court need not invoke the major

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questions doctrine because the ordinary tools of statutory interpretation amply support that result. Pp. 1–7.

JUSTICE JACKSON would also consult legislative history—in particular, the House and Senate Reports that accompanied IEEPA and its predecessor statute, TWEA—to determine that Congress did not intend for IEEPA to authorize the Executive to impose tariffs. Pp. 1–5.

ROBERTS, C. J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A–1, and II–B, in which SOTOMAYOR, KAGAN, GORSUCH, BARRETT, and JACKSON, JJ., joined, and an opinion with respect to Parts II–A–2 and III, in which GORSUCH and BARRETT, JJ., joined. GORSUCH, J., and BARRETT, J., filed concurring opinions. KAGAN, J., filed an opinion concurring in part and concurring in the judgment, in which SOTOMAYOR and JACKSON, JJ., joined. JACKSON, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., filed a dissenting opinion. KAVANAUGH, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

Nos. 24–1287 and 25–250

LEARNING RESOURCES, INC., ET AL., PETITIONERS
24–1287 *v.*
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
25–250 *v.*
V.O.S. SELECTIONS, INC., ET AL.

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

[February 20, 2026]

CHIEF JUSTICE ROBERTS announced the judgment of the Court and delivered the opinion of the Court, except as to Parts II–A–2 and III.*

We decide whether the International Emergency Economic Powers Act (IEEPA) authorizes the President to impose tariffs.

*JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON join only Parts I, II–A–1, and II–B of this opinion.

I

A

Shortly after taking office, President Trump sought to address two foreign threats. The first was the influx of illegal drugs from Canada, Mexico, and China. Presidential Proclamation No. 10886, 90 Fed. Reg. 8327 (2025); Exec. Order No. 14193, 90 Fed. Reg. 9113 (2025); Exec. Order No. 14194, 90 Fed. Reg. 9117 (2025); Exec. Order No. 14195, 90 Fed. Reg. 9121 (2025). The second was "large and persistent" trade deficits. Exec. Order No. 14257, 90 Fed. Reg. 15041 (2025). The President determined that the first threat had "created a public health crisis," 90 Fed. Reg. 9113, and that the second had "led to the hollowing out" of the American manufacturing base and "undermined critical supply chains," *id.*, at 15041. He invoked his authority under IEEPA to respond.

Enacted in 1977, IEEPA gives the President economic tools to address significant foreign threats. 91 Stat. 1626. When acting under IEEPA, the President must identify an "unusual and extraordinary threat" to American national security, foreign policy, or the economy, originating primarily "outside the United States." 50 U. S. C. §1701(a). And he must "declare[] a national emergency" under the National Emergencies Act. *Ibid.*; see 90 Stat. 1255. He may then, "by means of instructions, licenses, or otherwise," take the following actions to "deal with" the threat: "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." §§1701(a), 1702(a)(1)(B).

President Trump declared a national emergency as to both the drug trafficking and the trade deficits, which he

deemed "unusual and extraordinary" threats. He then imposed tariffs to deal with each threat. As to the drug trafficking tariffs, the President imposed a 25% duty on most Canadian and Mexican imports and a 10% duty on most Chinese imports. 90 Fed. Reg. 9114, 9118, 9122–9123. As to the trade deficit (or "reciprocal") tariffs, the President imposed a duty "on all imports from all trading partners" of at least 10%. *Id.*, at 15045. Dozens of nations faced higher rates. *Id.*, at 15049. And these tariffs applied notwithstanding any extant trade agreements. *Id.*, at 15045.

Since imposing each set of tariffs, the President has issued several increases, reductions, and other modifications. One month after imposing the 10% drug trafficking tariffs on Chinese goods, he increased the rate to 20%. See Exec. Order No. 14228, 90 Fed. Reg. 11463 (2025). One month later, he removed a statutory exemption for Chinese goods under $800. Exec. Order No. 14256, 90 Fed. Reg. 14899 (2025). Less than a week after imposing the reciprocal tariffs, the President increased the rate on Chinese goods from 34% to 84%. Exec. Order No. 14259, 90 Fed. Reg. 15509 (2025). The very next day, he increased the rate further still, to 125%. Exec. Order No. 14266, 90 Fed. Reg. 15625, 15626 (2025). This brought the total effective tariff rate on most Chinese goods to 145%. The President has also shifted sets of goods into and out of the reciprocal tariff framework. See, *e.g.*, Exec. Order No. 14360, 90 Fed. Reg. 54091 (2025) (exempting from reciprocal tariffs beef, fruits, coffee, tea, spices, and some fertilizers); Exec. Order No. 14346, 90 Fed. Reg. 43737 (2025). And he has issued a variety of other adjustments. See, *e.g.*, Exec. Order No. 14358, 90 Fed. Reg. 50729, 50730 (2025) (extending "the suspension of heightened reciprocal tariffs" on Chinese imports).

B

Petitioners in *Learning Resources* and respondents in *V.O.S. Selections* filed suit, alleging that IEEPA does not

authorize the reciprocal or drug trafficking tariffs. The *Learning Resources* plaintiffs—two small businesses—sued in the United States District Court for the District of Columbia. The *V.O.S. Selections* plaintiffs—five small businesses and 12 States—sued in the United States Court of International Trade (CIT).

The Government moved to transfer the *Learning Resources* case to the CIT. It argued that the District Court lacked jurisdiction under 28 U. S. C. §1581(i)(1), which gives the CIT "exclusive jurisdiction of any civil action commenced against" the Government "that arises out of any law of the United States providing for . . . tariffs" or their "administration and enforcement." The District Court denied that motion and granted the plaintiffs' motion for a preliminary injunction, concluding that IEEPA did not grant the President the power to impose tariffs. 784 F. Supp. 3d 209 (DC 2025).

In the *V.O.S. Selections* case, the CIT granted the plaintiffs' motion for summary judgment. 772 F. Supp. 3d 1350 (2025). The Federal Circuit, sitting en banc, affirmed in relevant part. 149 F. 4th 1312 (2025). It first concluded that the CIT had exclusive jurisdiction because the plaintiffs' claims arose out of modifications to the Harmonized Tariff Schedule of the United States (HTSUS). *Id.*, at 1329. On the merits, it agreed with the CIT that IEEPA's grant of authority to "regulate . . . importation" did not authorize the challenged tariffs, which "are unbounded in scope, amount, and duration." *Id.*, at 1338. Judge Cunningham concurred (for four judges), reasoning that IEEPA did not authorize the President to impose *any* tariffs. *Id.*, at 1340. Judge Taranto dissented (for four judges), concluding that IEEPA authorized the challenged tariffs. *Id.*, at 1348.

The Government filed a motion to expedite and a petition for certiorari in *V.O.S. Selections*, and the *Learning Resources* plaintiffs filed a petition for certiorari before

judgment. We granted the motion and petitions and consolidated the cases. 606 U. S. 1050 (2025).[1]

II

Based on two words separated by 16 others in Section 1702(a)(1)(B) of IEEPA—"regulate" and "importation"—the President asserts the independent power to impose tariffs on imports from any country, of any product, at any rate, for any amount of time. Those words cannot bear such weight.

A

1

Article I, Section 8, of the Constitution sets forth the powers of the Legislative Branch. The first Clause of that provision specifies that "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises." It is no accident that this power appears first. The power to tax was, Alexander Hamilton explained, "the most important of the authorities proposed to be conferred upon the Union." The Federalist No. 33, pp. 202–203 (C. Rossiter ed. 1961). It is both a "power to destroy," *McCulloch* v. *Maryland*, 4 Wheat. 316, 431 (1819), and a power "necessary to the existence and prosperity of a nation"—"the one great power upon which the whole national fabric is based." *Nicol* v. *Ames*, 173 U. S. 509, 515 (1899).

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[1] We agree with the Federal Circuit that the *V.O.S. Selections* case falls within the exclusive jurisdiction of the CIT. The plaintiffs' challenges "arise[ ] out of " modifications to the HTSUS. 28 U. S. C. §1581(i)(1). Where, as here, such modifications are made under an "Act[ ] affecting import treatment," 19 U. S. C. §2483, they are "considered to be statutory provisions of law for all purposes," §3004(c)(1)(C). Thus, the plaintiffs' challenges "arise[] out of [a] law of the United States providing for . . . tariffs." 28 U. S. C. §1581(i)(1). For the same reasons, the United States District Court for the District of Columbia lacked jurisdiction in the *Learning Resources* case.

The power to impose tariffs is "very clear[ly] . . . a branch of the taxing power." *Gibbons* v. *Ogden*, 9 Wheat. 1, 201 (1824). "A tariff," after all, "is a tax levied on imported goods and services." Congressional Research Service (CRS), C. Casey, U. S. Tariff Policy: Overview 1 (2025). And tariffs "raise[] revenue," *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 193 (1994)—the defining feature of a tax, *United States* v. *Kahriger*, 345 U. S. 22, 28, and n. 4 (1953); *Sonzinsky* v. *United States*, 300 U. S. 506, 514 (1937). Indeed, the Framers expected that the Government would for "a long time depend . . . chiefly on" tariffs for revenue. The Federalist No. 12, at 93 (A. Hamilton). Little wonder, then, that the First Congress's first exercise of its taxing power (and its second enacted law, right after the one providing for the new officials to take an oath) was a tariff law. See Act of July 4, 1789, ch. 2, 1 Stat. 24.

Recognizing the taxing power's unique importance, and having just fought a revolution motivated in large part by "taxation without representation," the Framers gave Congress "alone . . . access to the pockets of the people." The Federalist No. 48, at 310 (J. Madison); see also Declaration of Independence ¶19. They required "All Bills for raising Revenue [to] originate in the House of Representatives." U. S. Const., Art. I, §7, cl. 1. And in doing so, they ensured that only the House could "propose the supplies requisite for the support of government," thereby reducing "all the overgrown prerogatives of the other branches." The Federalist No. 58, at 359 (J. Madison). They did not vest any part of the taxing power in the Executive Branch. See *Nicol*, 173 U. S., at 515 ("[T]he whole power of taxation rests with Congress").

The Government thus concedes, as it must, that the President enjoys no inherent authority to impose tariffs during peacetime. Tr. of Oral Arg. 70–71. And it does not defend the challenged tariffs as an exercise of the President's warmaking powers. The United States, after all, is not at

war with every nation in the world. The Government instead relies exclusively on IEEPA. It reads the words "regulate" and "importation" to effect a sweeping delegation of Congress's power to set tariff policy—authorizing the President to impose tariffs of unlimited amount and duration, on any product from any country. 50 U. S. C. §1702(a)(1)(B).

2

We have long expressed "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *West Virginia* v. *EPA*, 597 U. S. 697, 723 (2022) (quoting *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 324 (2014)). In *Biden* v. *Nebraska*, 600 U. S. 477 (2023), for example, we declined to read authorization to "waive or modify" statutory or regulatory provisions applicable to financial assistance programs as a delegation of power to cancel $430 billion in student loan debt. *Id.*, at 494 (quoting 20 U. S. C. §1098bb(a)(1)). In *West Virginia* v. *EPA*, we declined to read authorization to determine the "best system of emission reduction" as a delegation of power to force a nationwide transition away from the use of coal. 597 U. S., at 732 (quoting 42 U. S. C. §7411(a)(1)). And in *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109 (2022) (*per curiam*), we declined to read authorization to ensure "safe and healthful working conditions" as a delegation of power to impose a vaccine mandate on 84 million Americans. *Id.*, at 114, 117 (quoting 29 U. S. C. §651(b)); see also, *e.g.*, *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 594 U. S. 758, 764–765 (2021) (*per curiam*); *King* v. *Burwell*, 576 U. S. 473, 485–486 (2015); *Utility Air*, 573 U. S., at 324.

We have described several of these cases as "major questions" cases. *Nebraska*, 600 U. S., at 505; *West Virginia*, 597 U. S., at 732; see also *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 159 (2000) (citing S. Breyer,

Judicial Review of Questions of Law and Policy, 38 Admin. L. Rev. 363, 370 (1986)). In each, the Government claimed broad, expansive power on an uncertain statutory basis. And in each, the statutory text might "[a]s a matter of definitional possibilities" have been read to delegate the asserted power. *West Virginia*, 597 U. S., at 732 (internal quotation marks omitted). But "context" counseled "skepticism." *Id.*, at 721, 732. That context included not just other language within the statute, but "constitutional structure" and "common sense." *Nebraska*, 600 U. S., at 512, 515 (BARRETT, J., concurring). "[B]oth separation of powers principles and a practical understanding of legislative intent" suggested Congress would not have delegated "highly consequential power" through ambiguous language. *West Virginia*, 597 U. S., at 723–724.

These considerations apply with particular force where, as here, the purported delegation involves the core congressional power of the purse. "Congress would likely . . . intend[] for itself " the "basic and consequential tradeoffs," *id.*, at 730, inherent in uses of this "most complete and effectual weapon," The Federalist No. 58, at 359. And if Congress were to relinquish that weapon to another branch, a "reasonable interpreter" would expect it to do so " 'clearly.' " *Nebraska*, 600 U. S., at 514–515 (BARRETT, J., concurring) (quoting *Utility Air*, 573 U. S., at 324).

What common sense suggests, congressional practice confirms. When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits. Congress has consistently used words like "duty" in statutes delegating authority to impose tariffs. (A customs "duty" is simply "the federal tax levied on goods shipped into the United States." Black's Law Dictionary 638 (12th ed. 2024).) See, *e.g.*, 19 U. S. C. §1338(d) ("rates of duty"); §2132(a) ("temporary import surcharge . . . in the form of duties"); §2253(a)(3)(A) ("duty on the imported article"); §2411(c)(1)(B) ("duties or other import restrictions"). It has

capped the amount and duration of tariffs. See, *e.g.*, §1338(d) (50% cap); §2132(a) (15% cap, 150-day time limit); §2253(e) (50% cap, phasedown requirement after one year). And it has conditioned exercise of the tariff power on demanding procedural prerequisites. See, *e.g.*, §2252 (investigation by the United States International Trade Commission, public hearings, report of findings and recommendation); §§2411–2414 (investigation by the United States Trade Representative, consultation with relevant country and interested parties, publication of findings).[2]

Against this backdrop of clear and limited delegations, the Government reads IEEPA to give the President power to unilaterally impose unbounded tariffs. On this reading, moreover, the President is unconstrained by the significant procedural limitations in other tariff statutes and free to issue a dizzying array of modifications at will. See *supra*, at 3. All it takes to unlock that extraordinary power is a Presidential declaration of emergency, which the Government asserts is unreviewable. Brief for Federal Parties 42. And the only way of restraining the exercise of that power is a veto-proof majority in Congress. See 50 U. S. C. §1622(a)(1) (requiring a "joint resolution" "enacted into law" to terminate a national emergency). That view, if credited, would "represent[] a 'transformative expansion'" of the President's authority over tariff policy, *West Virginia*, 597

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[2] The same is true of Section 232 of the Trade Expansion Act of 1962, 76 Stat. 877, which we have held authorizes sector-specific import "license fee[s]." *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, 571 (1976). Section 232(a) expressly references "duties." 19 U. S. C. §1862(a); see *infra*, at 19. And Section 232(c) authorizes the President to "adjust the imports" of an "article," §1862(c), but only after the Secretary of Commerce, in consultation with the Secretary of Defense, conducts an investigation and prepares a report finding that the "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," §1862(b).

U. S., at 724 (quoting *Utility Air*, 573 U. S., at 324), and indeed—as demonstrated by the exercise of that authority in this case—over the broader economy as well. See Congressional Budget Office, CBO's Current View of the Economy From 2025 to 2028, p. 5 (Sept. 2025); Brief for Federal Parties 2–3. It would replace the longstanding executive-legislative collaboration over trade policy with unchecked Presidential policymaking. See CRS, Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy (2015). Congress seldom effects such sea changes through "vague language." *West Virginia*, 597 U. S., at 724.

It is also telling that in IEEPA's "half century of existence," no President has invoked the statute to impose *any* tariffs—let alone tariffs of this magnitude and scope. *National Federation of Independent Business*, 595 U. S., at 119.[3] Presidents have, by contrast, regularly invoked IEEPA for other purposes. CRS, C. Casey, J. Elsea, & L. Rosen, The International Emergency Economic Powers Act: Origins, Evolution, and Use 18–21 (2025). At the same time, they have invoked other statutes—but never IEEPA—to impose tariffs, on products ranging from car tires to washing machines. See, *e.g.*, Presidential Proclamation No. 8414, 3 CFR 115 (2009 Comp.); Presidential

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[3] Indeed, even before IEEPA was enacted, only one President relied on its predecessor, the Trading with the Enemy Act (TWEA), ch. 106, 40 Stat. 411, to impose tariffs—and then only as a *post hoc* defense to a legal challenge. See Presidential Proclamation No. 4074, 36 Fed. Reg. 15724 (1971) (initially invoking the Tariff Act of 1930 and Trade Expansion Act of 1962); *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 572 (CCPA 1975). Those tariffs were also of limited amount, duration, and scope. See *id.*, at 568–569, 577–578 (noting that the 10-percent surcharge was described by President Nixon as " 'a temporary measure,' " was in effect less than five months, applied only to "articles which had been the subject of prior tariff concessions," and was capped at congressionally authorized rates); Economic Report of the President 70 (1972) ("When all exceptions to the 10-percent rule were taken into account, the effective rate of surcharge came down to 4.8 percent").

Proclamation No. 9694, 83 Fed. Reg. 3553 (2018). And those tariffs did not "even beg[in] to approach the size or scope" of the IEEPA tariffs at issue here. *Nebraska*, 600 U. S., at 502 (quoting *Alabama Assn.*, 594 U. S., at 765). The "'lack of historical precedent'" for the IEEPA tariffs, "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 Federation of Independent Business*, 595 U. S., at 119 (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505 (2010)).

The "'economic and political significance'" of the authority the President has asserted likewise "provide[s] a 'reason to hesitate before concluding that Congress' meant to confer such authority." *West Virginia*, 597 U. S., at 721 (quoting *Brown & Williamson*, 529 U. S., at 159–160). The President's assertion here of broad "statutory power over the national economy" is "extravagant" by any measure. *Utility Air*, 573 U. S., at 324. And as the Government admits—indeed, boasts—the economic and political consequences of the IEEPA tariffs are astonishing. The Government points to projections that the tariffs will reduce the national deficit by $4 trillion, and that international agreements reached in reliance on the tariffs could be worth $15 trillion. Brief for Federal Parties 3, 11. In the President's view, whether "we are a rich nation" or a "poor" one hangs in the balance. *Id.*, at 2. These stakes dwarf those of other major questions cases. See, *e.g.*, *Nebraska*, 600 U. S., at 483 ($430 billion); *Alabama Assn.*, 594 U. S., at 764 (nearly $50 billion); *West Virginia*, 597 U. S., at 714 ("billions of dollars in compliance costs"). As in those cases, "a reasonable interpreter would [not] expect" Congress to "pawn[]" such a "big-time policy call[] . . . off to another branch." *Nebraska*, 600 U. S., at 515 (BARRETT, J., concurring).

The Government and the principal dissent attempt to avoid application of the major questions doctrine on several grounds. None is convincing.

The Government argues first that the doctrine should not apply to emergency statutes. Brief for Federal Parties 35–36. But this argument is nearly identical to one it already advanced in *Nebraska*. There, the Government contended that a different emergency statute should be interpreted broadly because its "whole point" was to provide "substantial discretion to . . . respond to unforeseen emergencies." 600 U. S., at 500 (internal quotation marks omitted). We rejected that argument in *Nebraska*, and we reject it here as well. "Emergency powers," after all, "tend to kindle emergencies." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 650 (1952) (Jackson, J., concurring). Dozens of IEEPA emergencies remain ongoing today, including the first—declared over four decades ago in response to the Iranian hostage crisis. CRS, Casey, International Emergency Economic Powers Act, at 20. And as the Framers understood, emergencies can "afford a ready pretext for usurpation" of congressional power. *Youngstown*, 343 U. S., at 650 (Jackson, J., concurring). Where Congress has reason to be worried about its powers "slipping through its fingers," *id.*, at 654, we in turn have every reason to expect Congress to use clear language to effectuate unbounded delegations—particularly of its "one great power," *Nicol*, 173 U. S., at 515.

The Government's and the principal dissent's proposed foreign affairs exception fares no better. Brief for Federal Parties 34–35; *post*, at 45–57 (opinion of KAVANAUGH, J.). As a general matter, the President of course enjoys some "independent constitutional power[s]" over foreign affairs "even without congressional authorization." *FCC* v. *Consumers' Research*, 606 U. S. 656, 707 (2025) (KAVANAUGH, J., concurring). And Congress certainly may intend to "give the President substantial authority and flexibility" in many

foreign affairs or national security contexts. *Post*, at 48 (opinion of KAVANAUGH, J.) (quoting *Consumers' Research*, 606 U. S., at 706 (KAVANAUGH, J., concurring)). But "flip[ping]" the "presumption" under the major questions doctrine, Brief for Federal Parties 34, makes little sense when it comes to tariffs. As the Government admits, the President and Congress *do not* "enjoy concurrent constitutional authority" to impose tariffs during peacetime. *Ibid.*; Tr. of Oral Arg. 70–71. The Framers gave that power to "Congress alone"—notwithstanding the obvious foreign affairs implications of tariffs. *Merritt* v. *Welsh*, 104 U. S. 694, 700 (1882). And whatever may be said of other powers that implicate foreign affairs, we would not expect Congress to relinquish its tariff power through vague language, or without careful limits.

The central thrust of the Government's and the principal dissent's proposed exceptions appears to be that ambiguous delegations in statutes addressing "the most major of major questions" should necessarily be construed broadly. Brief for Federal Parties 35. But it simply does not follow from the fact that a statute deals with major problems that it should be read to delegate all major powers for which there may be a "colorable textual basis." *West Virginia*, 597 U. S., at 722. It is in precisely such cases that we should be alert to claims that sweeping delegations—particularly delegations of core congressional powers—"lurk[]" in "ambiguous statutory text." *Id.*, at 723 (internal quotation marks omitted). There is no major questions exception to the major questions doctrine.

Accordingly, the President must "point to clear congressional authorization" to justify his extraordinary assertion of the power to impose tariffs. *Nebraska*, 600 U. S., at 506 (internal quotation marks omitted). He cannot.

B

To begin, IEEPA authorizes the President to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . . importation or exportation." 50 U. S. C. §1702(a)(1)(B). Absent from this lengthy list of powers is any mention of tariffs or duties. That omission is notable in light of the significant but specific powers Congress *did* go to the trouble of naming. It stands to reason that had Congress intended to convey the distinct and extraordinary power to impose tariffs, it would have done so expressly—as it consistently has in other tariff statutes. See *supra*, at 8; accord, *post*, at 11, 26–27 (opinion of KAVANAUGH, J.).

The power to "regulate . . . importation" does not fill that void. "Regulate," as that term is ordinarily used, means to "fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." Black's Law Dictionary 1156 (5th ed. 1979); see also *Ysleta del Sur Pueblo* v. *Texas*, 596 U. S. 685, 697 (2022). This definition captures much of what a government does on a day-to-day basis. Indeed, if "regulate" is as broad as the principal dissent suggests, *post*, at 10–11, then the other eight verbs in §1702(a)(1)(B) are simply wasted ink. But the facial breadth of "regulate" places in stark relief what the term is not usually thought to include: taxation. The U. S. Code is replete with statutes granting the Executive the authority to "regulate" someone or something. Yet the Government cannot identify any statute in which the power to regulate includes the power to tax. The Government concedes, for example, that the Securities and Exchange Commission cannot tax the trading of securities, even though it is expressly authorized to "regulate the trading of . . . securities." 15 U. S. C. §78i(h)(1); see Brief for Federal Parties 31–32. We are therefore skeptical that in IEEPA—and IEEPA alone—Congress hid a

delegation of its birth-right power to tax within the quotidian power to "regulate."

Taxes, to be sure, may accomplish regulatory ends. See *Sonzinsky*, 300 U. S., at 513; *Gibbons*, 9 Wheat., at 201–202. But it does not follow that the power to regulate something includes the power to tax it as a means of regulation. Congressional practice suggests as much. When Congress addresses both the power to regulate and the power to tax, it does so separately and expressly. See, *e.g.*, 16 U. S. C. §460bbb–9(a) (distinguishing between the power to "tax persons, franchise, or private property" on lands and the power "to regulate the private lands"); 2 U. S. C. §622(8)(B)(i) ("government-sponsored enterprise" does not have the "power to tax or to regulate interstate commerce"). That is unsurprising, as the "power to regulate commerce" is "entirely distinct from the right to levy taxes." *Gibbons*, 9 Wheat., at 201. That Congress did not grant those authorities separately here is strong evidence that "regulate" in IEEPA does not include taxation.

A contrary reading would render IEEPA partly unconstitutional. IEEPA authorizes the President to "regulate . . . importation *or exportation*." 50 U. S. C. §1702(a)(1)(B) (emphasis added). Taxing exports, however, is expressly forbidden by the Constitution. Art. I, §9, cl. 5.

The "neighboring words" with which "regulate" "is associated" also suggest that Congress did not intend for "regulate" to include the revenue-raising power. *United States* v. *Williams*, 553 U. S. 285, 294 (2008). "Regulate" is one of nine verbs listed in §1702(a)(1)(B). Each authorizes a distinct action a President might take in sanctioning foreign actors or controlling domestic actors engaged in foreign commerce—blocking imports, for example, or prohibiting transactions. Presidential practice under IEEPA demonstrates as much. See CRS, Casey, International Emergency Economic Powers Act, at 79–106 (Table A–3); see, *e.g.*, Exec. Order No. 13194, 3 CFR 741 (2001 Comp.) (blocking

importation of diamonds from insurgent regime in Sierra Leone); Exec. Order No. 12947, 3 CFR 319 (1995 Comp.) (prohibiting transactions with those "who threaten to disrupt the Middle East peace process"). None of IEEPA's authorities includes the distinct and extraordinary power to raise revenue. And the fact that no President has ever found such power in IEEPA is strong evidence that it does not exist. See *supra,* at 10; *FTC* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 351–352 (1941).

We do not attempt to set forth the metes and bounds of the President's authority to "regulate . . . importation" under IEEPA. That "interpretive question" is "not at issue" in this case, and any answer would be "plain dicta." *West Virginia*, 597 U. S., at 734–735, and n. 5. Our task today is to decide only whether the power to "regulate . . . importation," as granted to the President in IEEPA, embraces the power to impose tariffs. It does not.[4]

The Government, echoed point-for-point by the principal dissent, marshals several arguments in response. First, it contends that IEEPA confers the power to impose tariffs because early commentators and this Court's cases discuss tariffs in the context of the Constitution's Commerce Clause. See Brief for Federal Parties 24–25; *post*, at 12–13 (opinion of KAVANAUGH, J.). But that answers the wrong question. The question is not, as the Government would have it, whether tariffs can ever be a means of regulating commerce. It is instead whether *Congress*, when conferring the power to "regulate . . . importation," gave the President the power to impose tariffs at his sole discretion. And

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[4] The principal dissent surmises that the President could impose "most if not all" of the tariffs at issue under statutes other than IEEPA. *Post*, at 62 (opinion of KAVANAUGH, J.). The cited statutes contain various combinations of procedural prerequisites, required agency determinations, and limits on the duration, amount, and scope of the tariffs they authorize. See *supra*, at 8–9; *post*, at 62–63. We do not speculate on hypothetical cases not before us.

Congress's pattern of usage is most relevant to answering that question. That pattern is plain: When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither here.

The Government raises another contextual argument. Because "regulate" "lies between" two "poles" in IEEPA—"compel" on the affirmative end and "prohibit" on the negative end—the term naturally includes the "less extreme, more flexible" tool of tariffs. Reply Brief 9 (internal quotation marks omitted); see *post*, at 29–30 (opinion of KAVANAUGH, J.) (making a greater-includes-the-lesser argument). But tariffs, as discussed above, are different in kind, not degree, from the other authorities in IEEPA. Unlike those authorities, tariffs operate directly on domestic importers to raise revenue for the Treasury. See 19 U. S. C. §1505(a); 19 CFR §141.1(b) (2025). Even though a tariff is, in some sense, "less extreme" than an outright compulsion or prohibition, it does not follow that tariffs lie on the spectrum between those poles. They are instead "very clear[ly] . . . a branch of the taxing power," *Gibbons*, 9 Wheat., at 201, and fall outside the spectrum entirely.

Finding no support in the statute the President invoked, the Government turns to one he did not: IEEPA's predecessor, TWEA. Ch. 106, 40 Stat. 411. In 1975, the Court of Customs and Patent Appeals held that the authority to "regulate . . . importation" in TWEA authorized President Nixon to impose limited tariffs. *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 572, 577–578. When Congress enacted IEEPA two years later, the Government contends, it conveyed that same authority (except without the limits). See also *post*, at 14–17 (opinion of KAVANAUGH, J.).

This argument cannot bear the weight the Government places on it. While this Court sometimes assumes that Congress incorporates judicial definitions into legislation, we do so "only when [the] term's meaning was 'well-settled'" before the adoption. *Kemp* v. *United States*, 596 U. S. 528,

539 (2022) (quoting *Neder* v. *United States*, 527 U. S. 1, 22 (1999)); see also *United States* v. *Kwai Fun Wong*, 575 U. S. 402, 412–415 (2015). A single, expressly limited opinion from a specialized intermediate appellate court does not clear that hurdle.[5] See *BP p.l.c.* v. *Mayor and City Council of Baltimore*, 593 U. S. 230, 244 (2021). The tariff authority asserted by President Nixon, moreover, was "far removed" from TWEA's "original purposes" of sanctioning foreign belligerents. Cohen, Fundamentals of U. S. Foreign Trade Policy, at 178–179. We are therefore skeptical that Congress enacted IEEPA with an eye toward granting that novel power.

The Government has another historical argument based on this Court's wartime precedents. See generally Brief for Professor Aditya Bamzai as *Amicus Curiae*; Reply Brief 9–11, 18. According to the Government, those precedents acknowledge an inherent Presidential power to impose tariffs during armed conflict. And, the argument goes, Congress in TWEA, and then in IEEPA, codified those precedents. But this argument fails at both steps. Insofar as the Government relies on our wartime cases themselves, they are facially inapposite. Regardless of what they might mean for the President's inherent *wartime* authority, all

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[5] The Government, citing the IEEPA House Committee Report, contends that Congress "indisputably knew of" *Yoshida*'s interpretation of TWEA. Brief for Federal Parties 26; see also *post*, at 15–16, and n. 11 (opinion of KAVANAUGH, J.). But even taking the Report at face value, it hardly helps the Government. The Report explains that "[s]uccessive Presidents have seized upon the open-endedness of [TWEA] section 5(b) to turn that section, through usage, into something quite different from what was envisioned in 1917." H. R. Rep. No. 95–459, pp. 8–9 (1977); accord, S. Cohen, R. Blecker, & P. Whitney, Fundamentals of U. S. Foreign Trade Policy 178–179 (2d ed. 2003). That is not exactly a stamp of approval on the action *Yoshida* guardedly endorsed. And in any event, the Government's "knew of" standard falls well short of the "broad and unquestioned" "judicial consensus" we have required to conclude that Congress incorporated a judicial definition into a statutory term. *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 349 (2005).

agree that the President has no inherent peacetime authority to impose tariffs.

Nor are we persuaded that the dots connect from our wartime precedents, through multiple iterations of TWEA, to IEEPA, such that IEEPA should be interpreted to grant the President an expansive peacetime tariff power. This argument relies extensively on a series of inferences drawn from scant legislative history. Such an attenuated chain cannot support—much less "clearly" support—a reading of IEEPA that includes the distinct power to impose tariffs. *Alabama Assn.*, 594 U. S., at 764.

Turning to this Court's precedents, the Government first relies on *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548 (1976). There, we held that Section 232(b) of the Trade Expansion Act of 1962, which allows the President to "adjust the imports" of particular goods to protect national security, includes the power to impose "license fees." *Id.*, at 561. But that holding bears little on the meaning of IEEPA. As a textual matter, Section 232(b) authorizes the President not only to "adjust . . . imports," but (as the Government emphasized in *Algonquin*) to "*take such action . . . as he deems necessary*" to adjust the imports of a good. Brief for Petitioners 26 (emphasis in original) and Tr. of Oral Arg. 6–7, in *Federal Energy Administration* v. *Algonquin SNG, Inc.*, O. T. 1975, No. 75–382. IEEPA does not contain such sweeping, discretion-conferring language. As for context, Section 232(a) states that "[n]o action shall be taken" to "decrease or eliminate" an existing "duty or other import restriction" if doing so would threaten national security. 19 U. S. C. §1862(a) (1970 ed.). This explicit reference to duties preceding Section 232(b) renders it natural for Section 232(b) itself to authorize duties. Thus, we decline to extend *Algonquin*'s expressly "limited" holding any further. 426 U. S., at 571.

Finally, the Government invokes *Dames & Moore* v. *Regan*, 453 U. S. 654 (1981), but that case offers no support.

Dames & Moore was exceedingly narrow,[6] did not address the President's power to "regulate," and did not involve tariffs at all. If anything, that case highlights the importance of close attention to IEEPA's text. "The terms of . . . IEEPA," we held, "do not authorize" the suspension of claims. *Id.*, at 675. So too here; the terms of IEEPA do not authorize tariffs.

III

The President asserts the extraordinary power to unilaterally impose tariffs of unlimited amount, duration, and scope. In light of the breadth, history, and constitutional context of that asserted authority, he must identify clear congressional authorization to exercise it.

IEEPA's grant of authority to "regulate . . . importation" falls short. IEEPA contains no reference to tariffs or duties. The Government points to no statute in which Congress used the word "regulate" to authorize taxation. And until now no President has read IEEPA to confer such power.

We claim no special competence in matters of economics or foreign affairs. We claim only, as we must, the limited role assigned to us by Article III of the Constitution. Fulfilling that role, we hold that IEEPA does not authorize the President to impose tariffs.

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[6] See, *e.g.*, 453 U. S., at 660 ("We are confined to a resolution of the dispute presented to us"); *ibid.* (We are "acutely aware of the necessity to rest decision on the narrowest possible ground capable of deciding the case"); *id.*, at 661 ("We attempt to lay down no general 'guidelines' covering other situations not involved here, and attempt to confine the opinion only to the very questions necessary to decision of the case"); *ibid.* ("[T]he decisions of the Court in this area have been rare, episodic, and afford little precedential value for subsequent cases"); *id.*, at 688 ("[W]e re-emphasize the narrowness of our decision"). This is not quite "no, no, a thousand times no," but should have sufficed to dissuade the principal dissent from invoking the case, see *post*, at 55–56, with respect to the quite distinct legal and factual issues present here.

The judgment of the United States Court of Appeals for the Federal Circuit in case No. 25–250 is affirmed. The judgment of the United States District Court for the District of Columbia in case No. 24–1287 is vacated, and the case is remanded with instructions to dismiss for lack of jurisdiction.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 24–1287 and 25–250

LEARNING RESOURCES, INC., ET AL., PETITIONERS
24–1287 *v.*
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
25–250 *v.*
V.O.S. SELECTIONS, INC., ET AL.

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

[February 20, 2026]

JUSTICE GORSUCH, concurring.

The President claims that Congress delegated to him an extraordinary power in the International Emergency Economic Powers Act (IEEPA)—the power to impose tariffs on practically any products he wants, from any countries he chooses, in any amounts he selects. Applying the major questions doctrine, the principal opinion rejects that argument. I join in full. The Constitution lodges the Nation's lawmaking powers in Congress alone, and the major questions doctrine safeguards that assignment against executive encroachment. Under the doctrine's terms, the President must identify clear statutory authority for the extraordinary delegated power he claims. And, as the principal opinion explains, that is a standard he cannot meet.

Whatever else might be said about Congress's work in IEEPA, it did not clearly surrender to the President the sweeping tariff power he seeks to wield.

Not everyone sees it this way. Past critics of the major questions doctrine do not object to its application in this case, and they even join much of today's principal opinion. But, they insist, they can reach the same result by employing only routine tools of statutory interpretation. *Post*, at 1 (KAGAN, J., joined by SOTOMAYOR and JACKSON, JJ., concurring in part and concurring in judgment). Meanwhile, one colleague who joins the principal opinion in full suggests the major questions doctrine *is* nothing more than routine statutory interpretation. *Post,* at 1 (BARRETT, J., concurring). Still others who have joined major questions decisions in the past dissent from today's application of the doctrine. *Post*, at 1 (KAVANAUGH, J., joined by THOMAS and ALITO, JJ., dissenting). Finally, seeking to sidestep the major questions doctrine altogether, one colleague submits that Congress may hand over to the President most of its powers, including the tariff power, without limit. *Post*, at 1–2 (THOMAS, J., dissenting). It is an interesting turn of events. Each camp warrants a visit.

I

Start with the critics. In the past, they have criticized the major questions doctrine for two main reasons. The doctrine, they have suggested, is a novelty without basis in law. *West Virginia* v. *EPA*, 597 U. S. 697, 779 (2022) (KAGAN, J., joined by, *inter alios*, SOTOMAYOR, J., dissenting) (calling the doctrine a "special cano[n]" that has "magically appear[ed]"). And, they have argued, the doctrine is rooted in an "anti-administrative-state stance" that prevents Congress from employing executive agency officials to "d[o] important work." *Id.*, at 780. Today, the critics proceed differently. They join a section of the principal opinion that applies the major questions doctrine. *Ante,* at 14–20.

And rather than critique the doctrine, they say only that it is "unnecessary" in this case "because ordinary principles of statutory interpretation lead to the same result." *Post*, at 2–3 (opinion of KAGAN, J.).

A

Unpack that last claim first. My concurring colleagues contend that, as a matter of "straight-up statutory construction," IEEPA does not grant the President the power to impose tariffs. *Post*, at 7. In doing so, they make thoughtful points about the statute's text and context. But their approach today is difficult to square with how they have interpreted other statutes. Dissenting in past major questions cases, they have argued that broad statutory language granting powers to executive officials should be read for all it is worth. Yet, now, when it comes to IEEPA's similarly broad language granting powers to the President, they take a more constrained approach.

Consider some examples of how they have proceeded in the past. Dissenting in *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109 (2022) (*per curiam*) (*NFIB*), two of my concurring colleagues confronted a statute charging the Occupational Safety and Health Administration with promoting "safe and healthful working conditions." *Id.*, at 127, 132 (joint opinion of Breyer, SOTOMAYOR, and KAGAN, JJ.) (internal quotation marks omitted). They read that language as authorizing the agency to impose a vaccine mandate on 84 million Americans. *Id.*, at 132; *id.*, at 120 (*per curiam*). In support of their reading, my colleagues stressed the statute's "expansive language," another provision authorizing the agency to issue temporary "emergency standards," and "the scope of the crisis" the agency was trying to address. *Id.*, at 132, 135 (joint dissent) (internal quotation marks omitted).

Dissenting in *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 594 U. S. 758 (2021)

(*per curiam*), my colleagues addressed a statute permitting the Centers for Disease Control and Prevention to issue regulations "necessary to prevent the . . . transmission . . . of communicable diseases." *Id.*, at 768 (opinion of Breyer, J., joined by SOTOMAYOR and KAGAN, JJ.) (internal quotation marks omitted). As they saw it, those terms granted the agency the power to regulate landlord-tenant relations nationwide during COVID–19. *Ibid.* In reaching this conclusion, my colleagues again highlighted the statute's "broad" language and suggested that it permitted the agency to impose even "greater restrictions" than the ones at issue in the case. *Id.*, at 769.

Dissenting in *West Virginia*, my colleagues faced a statute allowing the Environmental Protection Agency to ensure power plants employ the "best system of emission reduction." 597 U. S., at 758 (opinion of KAGAN, J.) (internal quotation marks omitted). They read that provision as authorizing the agency to effectively close many power plants and transform the electricity industry from coast to coast. See *id.*, at 754–755. In support, they once more argued that the statutory language was "broad" and "expansive," with "no ifs, ands, or buts." *Id.*, at 756–758. They stressed, too, that the relevant statutory terms appeared in "major legislation" intended to address "big problems," and that the statute authorized actions in the agency's "traditional lane" or "wheelhouse." *Id.*, at 756–757, 765.

Finally, dissenting in *Biden* v. *Nebraska*, 600 U. S. 477 (2023), my colleagues took up a statute permitting the Secretary of Education to "waive or modify any statutory or regulatory provision applying to [a federal] student-loan program" during a national emergency. *Id.*, at 533 (opinion of KAGAN, J., joined by SOTOMAYOR and JACKSON, JJ.) (internal quotation marks omitted). They said that language allowed the Secretary to cancel $430 billion in federal student-loan debt because of COVID–19. See *ibid.*; *id.*, at 501 (majority opinion). Once again, they argued that the

statutory terms were "broad," "expansive," "capacious," and designed to afford the Secretary a "poten[t]" power to respond to "national emergencies" that were "major in scope." *Id.*, at 533–542 (KAGAN, J., dissenting).

Now compare all that to how my colleagues proceed here. This case, they say, is "nearly the opposite." *Post*, at 3. While straight-up statutory interpretation granted executive officials all the power they sought in all those other cases, my colleagues insist this one is different because IEEPA simply does not "give the President the power he wants." *Ibid.*

That's a striking turn given the statutory terms before us. When the President declares a national emergency "to deal with any unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States," 50 U. S. C. §1701(a), IEEPA permits him to "regulate . . . importation . . . of . . . any property in which any foreign country or a national thereof has any interest," §1702(a)(1)(B). Surely, the authority granted here is "broad" and "expansive." See *West Virginia*, 597 U. S., at 758–759 (KAGAN, J., dissenting). It has "no ifs, ands, or buts" either. *Id.*, at 756. As a matter of ordinary meaning, the term "regulate" means to "fix, establish or control," "adjust by rule, method, or established mode," "direct by rule or restriction," or "subject to governing principles or laws." Black's Law Dictionary 1156 (5th ed. 1979); see also *post*, at 4. And tariffs do just that—they fix rules that control, adjust, or govern imports of "property in which any foreign country or a national thereof has any interest." §1702(a)(1)(B).

Without question IEEPA is also "major legislation" designed to address "big problems" and "crises," *West Virginia*, 597 U. S., at 754, 756–758 (KAGAN, J., dissenting) (internal quotation marks omitted), along with "emergencies" that are "major in scope," *Nebraska*, 600 U. S., at 542 (KAGAN, J., dissenting). By its terms, the statute applies

only during declared national emergencies involving "threat[s]" to the "national security, foreign policy, or economy of the United States." §1701(a). And it tasks the President personally with responding to those emergencies, a responsibility surely more in his "lane" or "wheelhouse" than that of any other executive official. See *West Virginia*, 597 U. S., at 765 (KAGAN, J., dissenting). Notably, too, IEEPA grants the President the power to impose even "greater restrictions" than tariffs, *Alabama Assn. of Realtors*, 594 U. S., at 769 (Breyer, J., dissenting), because the statute also permits him to "nullify," "prevent," and "void" imports, §1702(a)(1)(B); see also *Nebraska*, 600 U. S., at 539 (KAGAN, J., dissenting).

Why do my concurring colleagues read IEEPA so much more narrowly than they have other broad statutory terms found in other major legislation addressing other emergencies? They say contextual clues justify a narrowing construction here. See *post*, at 3–7. But what the concurrence calls "context" looks remarkably like the major questions doctrine's rule that, when executive branch officials claim Congress has granted them an extraordinary power, they must identify clear statutory authority for it. See *ante,* at 13 (reciting the rule).

Take some examples. The concurrence points to the "unparalleled authority" the President asserts "to impose a tariff of any amount, for any time, on only his own say-so." *Post*, at 6. In other words, the President claims an "[e]xtraordinary" power. *West Virginia*, 597 U. S., at 723 (majority opinion). The concurrence observes that no "President until now understood IEEPA to authorize imposing tariffs." *Post*, at 6. In other words, the power is an "unheralded" one. *West Virginia*, 597 U. S., at 722 (internal quotation marks omitted). Along the way, the concurrence also adds "a modicum of common sense about how Congress typically delegates" and "consideration of whether Congress ever has before, or likely would, delegate the power the

Executive asserts." *Post*, at 2 (internal quotation marks omitted). In other words, the statutory text must be read in light of "separation of powers principles." *West Virginia*, 597 U. S., at 723.

Having borrowed all those concepts from the major questions doctrine, the concurrence then turns to the key statutory terms before us—"regulate . . . importation"—and observes that they "sa[y] nothing" (at least not expressly) "about imposing tariffs." *Post*, at 3. And why is that fatal to the President's case? Because the President is attempting to exercise the "'core congressional power'" over taxes and tariffs, a power Article I of the Constitution vests in Congress alone. *Post*, at 5 (quoting *ante,* at 8); see also *West Virginia*, 597 U. S., at 737 (GORSUCH, J., concurring) (explaining that the major questions doctrine "protect[s] the Constitution's separation of powers," and particularly Article I, which vests "all federal legislative . . . [p]owers in . . . Congress" (internal quotation marks and alteration omitted)).

If my colleagues all but apply the major questions doctrine today, maybe they are simply recognizing what they have in other separation of powers cases involving the delegation of legislative power: that "[t]he guidance needed is greater" when the executive branch seeks to take "action[s] [that] will affect the entire national economy." *FCC* v. *Consumers' Research*, 606 U. S. 656, 673 (2025) (opinion for the Court by KAGAN, J.) (internal quotation marks omitted). Or maybe my colleagues believe the power the President asserts here outstrips even those powers executive officials asserted in our past major questions cases. But whatever the case, my concurring colleagues' course today suggests that skeptics owe the major questions doctrine a second look.

All of which leads me to take up the challenges they have posed to it in the past. Is the doctrine really some "special cano[n]" that has only recently "magically appear[ed]"?

West Virginia, 597 U. S., at 779 (KAGAN, J., dissenting). And is it really grounded in an "anti-administrative-state stance" that prevents Congress from using executive branch officials to perform "important work"? *Id.*, at 780.

B

The major questions doctrine teaches that, to sustain a claim that Congress has granted them an extraordinary power, executive officials must identify clear authority for that power. Far from a novelty, much the same principle has long applied to those who claim extraordinary delegated authority, whether in private or public law.

1

Examples stretch across many fields. Consider first the common law of corporations. In early modern England, corporations could be formed only with "an explicit, ex ante and direct authorization." R. Harris, Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844, p. 17 (2000). That authorization could be given by the Crown, an Act of Parliament, or a combination of the two. *Ibid.*; see also *id.*, at 19. Some of these corporations exercised regulatory functions not unlike those performed by modern administrative agencies. M. Bilder, The Corporate Origins of Judicial Review, 116 Yale L. J. 502, 516–517, 519–520 (2006). Indeed, the "[i]nitial settlements in Virginia and Massachusetts Bay, among others, were structured as corporations." *Id.*, at 535.

English law treated these corporations as having authority to issue bylaws. But that authority was subject to restrictions, one of which was that corporations could not regulate on major subjects without express authorization. Take *Kirk* v. *Nowill*, 1 T. R. 118, 99 Eng. Rep. 1006 (K. B. 1786). That case involved the Company of Cutlers, a corporation for makers of knives and other cutlery. See *id.*, at 118–119, 99 Eng. Rep., at 1006. An Act of Parliament gave

the company broad authority to regulate its members. *Id.*, at 118–121, 99 Eng. Rep., at 1006–1007. The company used that authority to adopt a bylaw allowing its officials to enter its members' "workshops and warehouses" and search for "deceitful and unworkmanly" cutlery. *Id.*, at 121–122, 99 Eng. Rep., at 1007. After the company seized supposedly unworkmanly forks, the aggrieved owner challenged the company's actions in court, arguing that the bylaw under which it acted was "bad in point of law" because the power to incur a forfeiture was not "expressly given to [the company] by Act of Parliament." *Id.*, at 118, 122–123, 99 Eng. Rep., at 1008. Applying a clear-statement rule, the King's Bench declared the bylaw, and therefore the seizure, unlawful. Lord Mansfield explained that the "power of making bye-laws to incur a forfeiture" was an "extraordinary power" over and above the default powers of corporations "created by charter." *Id.*, at 124, 99 Eng. Rep., at 1009. For this reason, the power needed to be "expressly given" by the company's progenitor, Parliament. *Ibid.* Since no such power had been clearly conferred, the seizure was unlawful. See *ibid.*

The same principle applied in American law. In *In re Election of Directors of Long Island R. Co.*, 19 Wend. 37, 40 (N. Y. Sup. Ct. 1837), a New York court addressed a case involving 2,700 shares of stock in the Long Island Railroad Company that the company had declared forfeited. *Ibid.* All agreed that the company had broad power to regulate its shares. See *id.*, at 41–42. Still, the court called the forfeiture an "extraordinary penalty," and held that no such power had been "expressly conferred" on the corporation by its charter. *Ibid.* In fact, the court borrowed the clear-statement rule from *Nowill*: If "extraordinary authority . . . is intended to be given, it must be by *express words* to that effect." *Id.*, at 43 (describing *Nowill* in detail).

The court in *Ex parte Burnett*, 30 Ala. 461 (1857), proceeded similarly. That case involved the incorporated town

of Cahaba, Alabama. See *id.*, at 464. The town set the price of a liquor license at $1,000, fined James Burnett for failing to obtain one, and eventually imprisoned him for not paying the fine. See *ibid.* Burnett sought a writ of habeas corpus and argued that Cahaba had acted beyond the scope of its corporate authority. *Ibid.*

Without a clear-statement rule, Burnett's argument would have stood little chance. That's because the town's charter granted it the authority "to make and establish all such rules, by-laws, and ordinances, respecting the streets, markets, buildings, . . . and police of said town, that shall appear to them requisite and necessary for the security, welfare, and convenience of said town, or for preserving health, peace, order, and good government within the same." *Id.*, at 467 (internal quotation marks omitted). The charter even specifically gave the town the "privileg[e] of granting licenses for retailing of spirituous and other liquors." *Ibid.* (internal quotation marks omitted). Semantically, the town's power was broad indeed and encompassed liquor licensing. But the court sided with Burnett anyway. Reasoning that the town's exorbitant licensing fee effectively banned the sale of liquor, the court held that Cahaba did not enjoy such extraordinary "prohibitory" power because it was "not authorized by any express grant of power" in the town's charter. *Id.*, at 469; see also *id.,* at 466.

These cases are not outliers. Treatises confirm that the extraordinary power principle was fundamental to municipal corporations. A statute could "not by implication invest [a] body with any extraordinary authority." J. Willcock, The Law of Municipal Corporations ¶226, p. 99 (1827). Extraordinary powers required "express words to that effect." *Ibid.* And "[a]ny fair, reasonable doubt concerning the existence of power [was] resolved by the courts against the corporation, and the power [was] denied." 1 J. Dillon, Commentaries on the Law of Municipal Corporations 145 (4th ed. 1890).

The takeaway is simple enough. Early corporations often functioned much like today's executive branch, exercising delegated regulatory authority. And, when interpreting the scope of that authority, the common law had a clear-statement rule that looked strikingly like the major questions doctrine.

Historically, a similar precept applied in agency law. As the leading early American treatise put it, instruments conferring powers of attorney were "ordinarily subjected to a strict interpretation." J. Story, Commentaries on the Law of Agency 80–81 (2d ed. 1844). So, for example, in *Attwood* v. *Munnings*, 7 Barn. & Cress. 278, 108 Eng. Rep. 727 (K. B. 1827), a principal had delegated broad power to an agent to act "generally for him and in his name," including in all things "as should be requisite, expedient, and advisable to be done in . . . his affairs and concerns, and as he might or could do if personally acting therein." *Id.*, at 279–280, 108 Eng. Rep., at 728 (internal quotation marks omitted). The agent then accepted certain debts on behalf of the principal. *Id.*, at 280, 108 Eng. Rep., at 728. The question for the court was whether this action was within the scope of the agent's authority. *Id.*, at 281, 108 Eng. Rep., at 728. The court said no. Powers of attorney are "instruments to be construed strictly." *Id.*, at 283, 108 Eng. Rep., at 729. And the power of attorney contained "no express power" to accept debts, so no such power had been given. *Ibid.*

Other examples abound. A power to sell casks of whiskey did not include the "unusual and extraordinary" power to offer a warranty against future seizures of the casks, unless granted by "express authority." *Palmer* v. *Hatch,* 46 Mo. 585, 587 (1870). Under a power of attorney, authority to enter contracts for a principal was subject to "strict interpretation" and generally did not authorize "contracts of an extraordinary character" outside those "connected with [the principal's] ordinary business." *Reynolds* v. *Rowley*, 4 La. Ann. 396, 398–399 (1849). And a power to manage a mine

did not authorize an agent to borrow money for the mine's operations on the principal's credit because there was no "express authority" for such a departure from the "usual manner" of running a mine. *Hawtayne* v. *Bourne*, 7 M. & W. 595, 599, 151 Eng. Rep. 905, 906 (Ex. 1841). This was true even "in cases of necessity," *id.*, at 599, 151 Eng. Rep., at 907, where the manager borrowed funds to address an "emergency suddenly arising," *id.,* at 600, 151 Eng. Rep., at 907.

Much the same principle applied to executive officials. Often, "[t]he legality of an executive action depended on the relationship between the size of the asserted power and the clarity of the underlying legal authority." T. Arvind & C. Burset, Partisan Legal Traditions in the Age of Camden and Mansfield, 44 Oxford J. Legal Studies 376, 388 (2024). *Entick* v. *Carrington*, 19 How. St. Tr. 1029 (C. P. 1765), offers an illustration. There, as part of an investigation for seditious libel, the English Secretary of State claimed authority to issue a warrant for the seizure of an author's papers. Lord Camden declared the seizure unlawful, reasoning that power asserted by the executive "ought to be as clear as it is extensive." T. Arvind & C. Burset, A New Report of *Entick* v. *Carrington* (1765), 110 Ky. L. J. 265, 324 (2022) (Arvind & Burset). Or, as another reporter described Camden's decision, "one should naturally expect that the law to warrant [the exercise of power] should be clear in proportion as the power is exorbitant." 19 How. St. Tr., at 1065–1066. The seizure represented an extraordinary exercise of power, Lord Camden found, and no legal authority clearly authorized it. See Arvind & Burset 324. Accordingly, the warrant was unlawful and the seizure could not stand. *Id.*, at 332.

2

Perhaps unsurprisingly given this history, American courts applied the extraordinary power principle when

Congress and the States started delegating new regulatory powers to executive agencies in the late 19th century. Take railroad commissions. After the Civil War, governments worried about the increasing power of railroad companies responded by creating new agencies and imbuing them with broad regulatory authority. These bodies were among the first modern administrative agencies. See *West Virginia*, 597 U. S., at 740 (GORSUCH, J., concurring). And when they claimed some extraordinary delegated power, both state and federal courts enforced a clear-statement rule. See, *e.g.*, *Siler* v. *Louisville & Nashville R. Co.*, 213 U. S. 175, 193–194 (1909) (declaring, in the course of interpreting a state statute, that an "enormous power" "must be conferred in plain language" "free from doubt"); *Board of R. Comm'rs of Ore.* v. *Oregon R. & Navigation Co.*, 17 Ore. 65, 77, 19 P. 702, 707–708 (1888) (When an agency exercises "powers delegated to [it] by the legislature" to carry out "important functions," the text must "define and specify the authority given it so clearly that no doubt can reasonably arise"); *ICC* v. *Cincinnati, N. O. & T. P. R. Co.*, 167 U. S. 479, 505 (1897) (holding a delegation of legislative power of "supreme delicacy and importance" must be "clear and direct"); *Gulf & Ship Island R. Co.* v. *Railroad Comm'n*, 94 Miss. 124, 134–135, 49 So. 118 (1908) ("It is universally held that a railroad commission . . . must be able to point to its grant of power . . . in clear and express terms, and nothing will be had by inference").

The railroad commissions may have been the first, but they were not the last. Whether executive officials claimed the power to criminally punish noncompliance with regulations, force employers to retain employees regardless of their unlawful conduct, or regulate intrastate candy sales, this Court held them to much the same standard. Because their claimed powers were so substantial, executive officials had to identify a "distinc[t]" authority for them, *United States* v. *Eaton*, 144 U. S. 677, 688 (1892), a "clear

legislative basis," *United States* v. *George*, 228 U. S. 14, 22 (1913), a "definite and unmistakable expression," *NLRB* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 255 (1939), or a "clea[r] mandate," *FTC* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 351, 355 (1941). Cf. *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607, 645 (1980) (plurality opinion) ("In the absence of a clear mandate . . . it is unreasonable to assume that Congress intended to give the Secretary [of Labor] the unprecedented power over American industry" he claimed).

It is no mystery why the Court proceeded this way when interpreting legislative directions to the executive branch. Article I of the Constitution vests all federal legislative power in Congress, and Article II charges the executive branch with seeing that Congress's laws are faithfully executed. In a very real sense, then, when it comes to legislative power, Congress is the principal and executive officials are the agents. See generally G. Lawson & G. Seidman, "A Great Power of Attorney": Understanding the Fiduciary Constitution (2017).

So what is the basis for the charge that the major questions doctrine represents some "magica[l]" innovation? See *West Virginia*, 597 U. S., at 779 (KAGAN, J., dissenting). Part of the answer may have to do with the fact that, in the latter half of the 20th century, this Court began experimenting with a very different approach. The Court pushed aside its long-held skepticism of claims to extraordinary delegated powers and began affirmatively encouraging them. *Chevron* deference is just one example of this phenomenon, though a stark one. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). That case established a presumption that was nearly the opposite of the major questions doctrine: When Congress failed to speak clearly, courts put a thumb on the scale in *favor* of delegated power. *Id.*, at 843–844. Given that development, the longstanding principles animating

the major questions doctrine may have receded from view for a time. After all, the two doctrines often applied in the same places and counseled opposite results. But with *Chevron* gone, so is the conflict. This Court's application of the major questions doctrine is not invention so much as return to form.

C

Now turn to my concurring colleagues' other charge: that the major questions doctrine is premised on an "anti-administrative-state stance." *West Virginia*, 597 U. S., at 780 (KAGAN, J., dissenting). It is important, they argue, to allow Congress to delegate expansive powers. Members of Congress unfortunately "often don't know enough—and know they don't know enough—to regulate sensibly on an issue." *Id.*, at 781. Nor can Congress easily "anticipate changing circumstances." *Ibid.* For these reasons, Members of Congress must rely on more adept and less constrained "people . . . found in agencies." *Ibid.* Indeed, my colleagues say, "administrative delegations . . . have helped to build a modern Nation." *Id.*, at 782. And the major questions doctrine, they worry, could jeopardize all that "astonish[ing] . . . progress." *Ibid.*

This policy complaint, of course, is no reason to disregard our precedents or longstanding legal principles. But, even taken on its own terms, it is a bit perplexing. The major questions doctrine is not "anti-administrative state." It is pro-Congress. Common-law courts understood that few written instruments can anticipate every eventuality, and that principals sometimes draft broad delegation language to account for this. At the same time, courts appreciated the corresponding risk that delegees could easily exploit loose language in their commissions for their own benefit and to the detriment of those they purported to serve. So common-law courts often strictly construed delegated

powers, not because they were anti-delegee, but because they were pro-principal.

The major questions doctrine performs a similar function. Article I vests all federal legislative power in Congress. But like any written instrument, federal legislation cannot anticipate every eventuality, a point my concurring colleagues have observed in the past. *Id.*, at 781–782. And highly resourceful members of the executive branch have strong incentives to exploit any doubt in Congress's past work to assume new power for themselves. The major questions doctrine helps prevent that kind of exploitation. Our founders understood that men are not angels, and we disregard that insight at our peril when we allow the few (or the one) to aggrandize their power based on loose or uncertain authority. We delude ourselves, too, if we think that power will accumulate safely and only in the hands of dispassionate "people . . . found in agencies." *Id.*, at 781. Even if unelected agency officials were uniquely immune to the desire for more power (an unserious assumption), they report to elected Presidents who can claim no such modesty. See *Myers* v. *United States*, 272 U. S. 52 (1926).

Another feature of our separation of powers makes the major questions doctrine especially salient. When a private agent oversteps, a principal may fix that problem prospectively by withdrawing the agent's authority. Under our Constitution, the remedy is not so simple. Once this Court reads a doubtful statute as granting the executive branch a given power, that power may prove almost impossible for Congress to retrieve. Any President keen on his own authority (and, again, what President isn't?) will have a strong incentive to veto legislation aimed at returning the power to Congress. Perhaps Congress can use other tools, including its appropriation authority, to influence how the President exercises his new power. Maybe Congress can sometimes even leverage those tools to induce the President to withhold a veto. But retrieving a lost power is no easy

business in our constitutional order. And without doctrines like major questions, our system of separated powers and checks-and-balances threatens to give way to the continual and permanent accretion of power in the hands of one man. That is no recipe for a republic.

This case offers an example of the problem. Article I grants Congress, not the President, the power to impose tariffs. Still, the President claims, Congress passed that power on to him in IEEPA, permitting him to impose tariffs on nearly any goods he wishes, in any amount he wishes, based on emergencies he himself has declared. He insists, as well, that his emergency declarations are unreviewable. A ruling for him here, the President acknowledges, would afford future Presidents the same latitude he asserts for himself. See Tr. of Oral Arg. 69. So another President might impose tariffs on gas-powered automobiles to respond to climate change. *Ibid*. Or, really, on virtually any imports for any emergency any President might perceive. And all of these emergency declarations would be unreviewable. Just ask yourself: What President would willingly give up that kind of power?

I recognize the concerns about the major questions doctrine. But it is not so novel as some have supposed. And it serves Article I values we all share. My concurring colleagues all but endorse it today. I hope past skeptics will give it another look.

II

Turn now to the second camp. If some have criticized the major questions doctrine, others have responded by seeking to soften its blow. Though joining today's principal opinion holding that "clear" statutory authority is required to sustain the exercise of an "extraordinary" power, *ante,* at 13, 20, JUSTICE BARRETT has suggested that the major questions doctrine might be reconceived. On her view, the doctrine need not be understood as a "substantive canon

designed to enforce Article I's Vesting Clause"—a "valu[e] external to a statute." *Nebraska*, 600 U. S., at 508, 510 (concurring opinion). Instead, the doctrine might be thought of as a "commonsense princip[e] of communication" that counsels "skepticism" when executive officials claim extraordinary powers derived from Congress. *Id.*, at 514, 516; see also *post*, at 1–4 (concurring opinion).

It is a thoughtful effort, but I harbor doubts. For one thing, there is no need to reconceive our doctrine; past critics all but apply the doctrine today and their previous criticisms fall flat. See Part I, *supra*. For another, this gloss on our major questions doctrine presents problems. Commonsense principles of communication do not explain many of our major questions cases—this one included. And if common sense really does go so far as to embrace a rule counseling "skepticism" of claims by executive officials that Congress has granted them extraordinary powers, that is common sense in name only. The reason for such skepticism must be Article I, a "substantive" source "external" to any statute.

A

Introducing her view that "commonsense principles of communication" can sometimes help resolve disputes over the meaning of statutory terms, JUSTICE BARRETT points to an old chestnut. *Nebraska*, 600 U. S., at 512, 514 (concurring opinion). Suppose a legislature used the phrase " whoever drew blood in the streets" in a criminal statute imposing punishment. As a matter of "common sense," JUSTICE BARRETT says, it would " 'g[o] without saying' " that the law doesn't apply to a surgeon accessing a patient's vein to save his life. *Ibid.* That is because the phrase "drew blood" is susceptible to two conventional idiomatic meanings: one "applicable to violent encounters with man or beast" and the other "to medical procedures," A. Scalia & B. Garner, Reading Law 357 (2012) (Scalia & Garner). And any

ordinary person faced with that phrase in a penal law would find it obvious which meaning applies. *Ibid.*; see also *Nebraska*, 600 U. S., at 512 (BARRETT, J., concurring).

The difficulty is, our major questions cases are different. Often, little about them "'goes without saying.'" *Ibid.* Take *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120 (2000). There, the question was whether the FDA could regulate tobacco products. *Id.*, at 125. Looking only to common sense, the answer would have been yes. Congress authorized the FDA to regulate "drugs," which Congress defined expressly and broadly as " 'articles (other than food) intended to affect the structure or any function of the body.'" *Id.*, at 126. As a matter of common sense, nicotine qualifies as a "drug" based on this statutory definition, as it might even as a matter of everyday speech. *West Virginia*, 597 U. S., at 721–722 (noting the "colorable textual basis" for the executive branch's interpretation in *Brown & Williamson*). Still, we held the FDA could not regulate tobacco products. *Brown & Williamson*, 529 U. S., at 159–160.

Other cases follow suit. We have ruled that the term "air pollutant" does not include greenhouse gases, even though greenhouse gases pollute the air. *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 316, 323–324 (2014). We have held that the phrase "'[r]egulations . . . necessary to prevent the . . . spread of communicable diseases'" does not include eviction moratoriums, even without questioning that eviction moratoriums were necessary to prevent the spread of COVID–19, a communicable disease. *Alabama Assn. of Realtors*, 594 U. S., at 761, 764. And we have said that closing coal power plants is not the " 'best system of emission reduction,'" even while acknowledging that closing them would reduce emissions. *West Virginia*, 597 U. S., at 721, 732–735.

None of these cases can be readily explained by "commonsense principles of communication." *Nebraska*, 600 U. S., at 514 (BARRETT, J., concurring). None involved a

phrase like "drew blood" susceptible to two conventional idiomatic meanings, one of which any English speaker faced with the law at issue might quickly rule out. Quite the opposite; in each case the agency had a strong argument that the statutory language, commonsensically read, granted the power it claimed. Meanwhile, all our major questions cases can be easily explained by reference to a rule requiring the executive branch to identify clear statutory authority when it claims Congress has granted it an extraordinary power. And that is a "dice-loading" rule, plain and simple, one designed to protect Article I, a "[s]ubstantive . . . valu[e] external" to the statutory terms at hand. *Id.*, at 508.

Common sense not only fails to explain many of our major questions cases. It doesn't explain even some of the cases JUSTICE BARRETT has held up as examples of commonsense cases. In *Bond* v. *United States*, 572 U. S. 844 (2014), for example, the Court confronted a statute that defined "chemical weapon" to include " 'any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.'" *Id.*, at 851; see also *Nebraska*, 600 U. S., at 512–513 (BARRETT, J., concurring) (discussing *Bond*). Despite that broad definition, the Court held that "an arsenic-based compound" didn't fit the bill. *Bond*, 572 U. S., at 852, 866. To reach that result, we did not use common sense alone. How could we have? It hardly goes without saying that arsenic doesn't qualify as a "chemical" which can cause " 'permanent harm to humans or animals.'" *Id.*, at 851; see also *id.*, at 867 (Scalia, J., concurring in judgment) (calling it "beyond doubt" that the ordinary meaning of the relevant statutory terms embraced the chemicals at issue). Instead, we relied on a clear-statement rule grounded in the substance of the Constitution—namely, the federalism canon. *Id.*, at 860 (majority opinion) ("[W]e can insist on a clear indication that Congress meant to reach purely local crimes, before interpreting the statute's expansive

language in a way that intrudes on the police power of the States"). So *Bond* may well be like our major questions cases, but that is only because it applied a clear-statement rule grounded in another substantive feature of the Constitution.

Consider as well the babysitter hypothetical JUSTICE BARRETT has posed. Imagine a parent of young children who hands a babysitter a credit card and says, "'[m]ake sure the kids have fun.'" *Nebraska*, 600 U. S., at 513 (concurring opinion). Now suppose the babysitter takes the kids on a road trip to an amusement park, "where they spend two days on rollercoasters and one night in a hotel." *Ibid.* "Was the babysitter's trip consistent with the parent's instruction?" *Ibid.* JUSTICE BARRETT believes the answer is likely "no" as a matter of common sense. See *id.*, at 513–514.

Really, though, unless one is to believe children do not "have fun" on rollercoasters and at hotels, the babysitter hypothetical can be explained only with reference to some "external" and "substantive" norm. *Id.*, at 508, 513. And, in fact, just such a norm is baked into the babysitter hypothetical—one we encountered in Part I–B, *supra*. The babysitter is exercising authority the parents have *delegated* to her. She is acting as their *agent*. As a result, one might expect a clear statement from the parents before the babysitter may do something extraordinary, like take the kids on a road trip.

This substantive norm about delegated powers not only lurks beneath the surface of the babysitter hypothetical, it " 'loads the dice'" against her. *Nebraska*, 600 U. S., at 510 (BARRETT, J., concurring). Doubtless, she would see it that way. The babysitter would argue that a trip to an amusement park is "fun." And she would be right under a commonsense understanding of the word. But because the babysitter is exercising delegated authority, she cannot

exercise such an extraordinary power without clear authorization for it.

Notice, too, the same outcome is no longer guaranteed when we remove the delegated power feature. If one parent leaves the children with the other parent, the trip to the amusement park might well be fine. No other contextual clues are needed. See *id.*, at 516 (agreeing with this). So if the answer to the babysitter hypothetical seems a matter of common sense to many Americans, that is only because the substantive norms associated with parental delegations to babysitter agents are so deeply rooted in our society. Say the same instruction were given to a babysitter in a community where children are raised collectively, like a kibbutz. Same answer? Hardly obvious.[1]

B

To be sure, in places JUSTICE BARRETT concedes that her gloss on the major questions doctrine requires resort to something more than "common sense" instincts about what would " 'g[o] without saying' " to an ordinary English speaker. *Nebraska*, 600 U. S., at 512 (concurring opinion); see also *post*, at 2. Sometimes, she suggests, common sense doesn't just help illuminate the "most natural" meaning of an idiomatic term like "drew blood" based on its presence in a penal law. 600 U. S., at 508. Sometimes, she says, "commonsense principles of communication" go much further. *Id.*, at 514. So much so that they wind up dictating a rule

[1] Today, JUSTICE BARRETT protests that the foregoing discussion "takes down a straw man." *Post*, at 1 (concurring opinion). But it was JUSTICE BARRETT who previously wrote that the major questions doctrine "grows out of . . . commonsense principles of communication." *Biden* v. *Nebraska*, 600 U. S. 477, 514 (2023) (same). And it was JUSTICE BARRETT who used the various illustrations recounted above to suggest that our major questions decisions can be explained by reference to the kind of "common sense . . . that 'goes without saying.' " *Id.*, at 512. If JUSTICE BARRETT now means to put all that to the flame, the major questions doctrine is better for it.

counseling "skepticism" of executive claims to extraordinary delegated powers. *Id.*, at 516. Why? Because, JUSTICE BARRETT says, a "reasonable observer" consults "our constitutional structure." *Id.*, at 515, 520. But if that's true, this version of common sense *does* require us to account for "values" entirely "external to a statute," including specifically the "substan[ce]" of Article I. *Id.*, at 508. And in so doing, this expanded version of common sense just becomes the substantive major questions doctrine by another name.

Today's decision illustrates the point. The principal opinion gestures at "common sense." *Ante,* at 8. But throughout, this "common sense" is linked to "'constitutional structure'" and "'separation of powers principles.' " *Ibid.* The principal opinion begins with the Constitution, observing that Article I vests the tariff power in Congress, not the executive branch. *Ante*, at 5–6. The principal opinion recounts the President's claim that Congress has "delegated" an "extraordinary" amount of its tariff power to him in IEEPA. *Ante,* at 8–9. And from there, the principal opinion proceeds to apply a clear-statement rule. It acknowledges that the ordinary meaning of the key statutory term in IEEPA—the word "regulate"—is capacious, so much so that it could be understood to "captur[e] much of what a government does." *Ante*, at 14. Still, the principal opinion reasons, that is not enough to sustain the President's claim because the statute does not "clear[ly]" grant him the "extraordinary" delegated power he seeks. *Ante,* at 13, 20. When it comes down to it, common sense serves as little more than a segue to Article I's Vesting Clause.

That is as it must be. The statutory terms contain no ambiguity we could use (or need) "commonsense principles of communication" to resolve. *Nebraska*, 600 U. S., at 514 (BARRETT, J., concurring). This case is nothing like the " 'drew blood' " illustration, where it might " 'g[o] without saying'" that any ordinary person would immediately

understand which of two idiomatic meanings a penal statute employed. *Id.*, at 512. Indeed, today's principal opinion does not even "attempt to set forth the metes and bounds" of IEEPA's key phrase " 'regulate . . . importation,'" *ante*, at 16, much less find the "best" or "most natural" meaning of those words, *Nebraska*, 600 U. S., at 508, 521 (BARRETT, J., concurring); *post*, at 1. Instead, we need go no further than to recognize that IEEPA fails to "clear[ly]" authorize tariffs. *Ante*, at 13, 20. And the only reason we can stop there is because Article I—a "[s]ubstantive . . . valu[e] external to a statute," 600 U. S., at 508 (BARRETT, J., concurring)—imposes a clear-statement rule when executive officials claim Congress has afforded them an extraordinary authority.

There's another problem too. The equivocation on whether "commonsense principles of communication" include only those things that might "go without saying," or also include "external" and "substantive" Article I "values," leads to a further equivocation on how much "skepticism" common sense might dictate when assessing an executive official's claim to an extraordinary delegated power. Common sense, we are told, does not impose a " 'clarity tax,' " but it does add an "expectation of clarity." *Id.*, at 508, 514. Common sense does not " 'loa[d] the dice,' " but it does counsel "skepticism." *Id.*, at 510–511, 516. Common sense means never "forgo[ing] the most natural reading of a statute," *post*, at 3, but it always means "expect[ing that] Congress [will] make the big-time policy calls," *post*, at 2 (internal quotation marks omitted). I am uncertain what to make of this, except that it seems to toggle between a clear-statement rule and nothing at all.[2]

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[2] To the extent JUSTICE BARRETT suggests any skepticism "commonsense principles of communication" might (or might not) advise derives from a " 'practical understanding of legislative intent,' " rather than "external" and "substantive" Article I "values," that poses still further (and familiar) problems. *Nebraska*, 600 U. S., at 508, 515 (concurring

I am certain of one thing: Our cases hold a clear statement is required to support a claim to an extraordinary delegated power. We required Congress to "speak clearly" in *Utility Air*, 573 U. S., at 324. We demanded "clear congressional authorization" in *NFIB*, 595 U. S., at 118. We did the same in *Nebraska*, 600 U. S., at 506, and in *West Virginia*, 597 U. S., at 732, and we do so again today, *ante,* at 13. Nor do I see cause for being quite so reluctant about acknowledging this. The common law recognized many clear-statement rules. See, *e.g.*, Part I–B, *supra.* Our own cases have applied a host of Constitution-enforcing clear-statement rules as well. We just encountered the federalism clear-statement rule in *Bond*. Add to the list clear-statement rules against laws that might apply retroactively, waive or abrogate sovereign immunity, or create enforceable rights under the Taxing Clause—to name just a few. See, *e.g.*, *Landgraf* v. *USI Film Products*, 511 U. S. 244, 265–268 (1994); *Financial Oversight and Management Bd. for P. R.* v. *Centro De Periodismo Investigativo, Inc.*, 598 U. S. 339, 346–347 (2023); *Medina* v. *Planned Parenthood South Atlantic*, 606 U. S. 357, 383–384, n. 8 (2025). Maybe all these rules could be recast as "common sense"—at least if common sense means taking account of the "external" and

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opinion) (quoting *West Virginia* v. *EPA*, 597 U. S. 697, 723 (2022)). Down that road lies all the pitfalls associated with reliance on legislative history and those associated with conflating unenacted legislative intent with the law. Scalia & Garner 397; *post*, p. 1 (JACKSON, J., concurring in part and concurring in judgment). Similar problems attend the notion that the appropriate degree of skepticism due a delegation might turn on what people "expect." *Nebraska*, 600 U. S., at 514, 520 (BARRETT, J., concurring); see also *post*, at 2 (same). JUSTICE BARRETT has offered no evidence about what people "expect" when confronted with different congressional delegations. And to the extent she believes their "expectations" would reflect an appropriate consideration of the whole " '*corpus juris*,' including the Constitution," *post*, at 2, n. 1, that just circles us right back to the "external" and "substantive" Article I "values" she strives so hard to sideline, see *Nebraska*, 600 U. S., at 508 (BARRETT, J., concurring).

"substantive" "values" found in "our constitutional structure." *Nebraska*, 600 U. S., at 508, 515 (BARRETT, J., concurring). But whatever the label, it hardly requires some "judicial flex," *post*, at 4, to recognize that the "external" constitutional "values" at stake in our major questions cases are no less weighty than those at play in other settings where we routinely apply a clear-statement rule.[3]

III

That brings us to the third camp. My dissenting colleagues have defended the major questions doctrine in the past, and they do so again today. *Post*, at 31–33 (opinion of KAVANAUGH, J.). They agree that the doctrine is grounded in the Constitution. *Post*, at 32. They agree that the doctrine requires us to deviate from " 'routine' " statutory interpretation principles and instead place a "thumb on the scale," one requiring executive officials to identify " 'clear' " congressional authorization when they seek to exercise some "major" power. *Post*, at 33. But, my colleagues say, IEEPA provides the clear statement needed to sustain the President's tariffs. *Post*, at 38–45. Alternatively, they submit, we shouldn't apply the major questions doctrine to any statute, like IEEPA, that implicates "foreign affairs." *Post*, at 45–49. And this exception, they add, is particularly warranted here because Congress has historically granted the

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[3] Notably, past critics of the major questions doctrine have not hesitated to apply many of these clear-statement rules. See *Financial Oversight and Management Bd. for P. R.* v. *Centro De Periodismo Investigativo, Inc.*, 598 U. S. 339, 346–347 (2023) (opinion for the Court by KAGAN, J.); *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 455–456, n. 1 (2024) (KAGAN, J., dissenting) (collecting examples); *West Virginia*, 597 U. S., at 751, n. 7 (GORSUCH, J., concurring) (same). Nor have they hesitated to adopt and apply other clear-statement rules with far less grounding in the Constitution than the major questions doctrine. See, *e.g.*, *Bowe* v. *United States*, 607 U. S. ___, ___–___ (2026) (slip op., at 9–10); *id.*, at ___–___ (GORSUCH, J., dissenting) (slip op., at 12–15); *Boechler* v. *Commissioner*, 596 U. S. 199, 208 (2022).

President large discretion in setting tariffs. *Post*, at 49–53. Once again, the points are thoughtful and merit careful consideration.

A

My dissenting colleagues begin by taking the major questions doctrine as they find it. They accept that the President's challenged actions are "of major economic and political significance." *Post*, at 33. They accept as well that he must identify "clear" congressional authorization to sustain those actions. *Ibid*. Still, the dissent maintains, IEEPA clearly grants the President the tariff power he asserts.

To arrive at that conclusion, the dissent consults four clues we have sometimes employed in our major questions cases to help assess whether a statute clearly authorizes an asserted power. See *West Virginia*, 597 U. S., at 746 (GORSUCH, J., concurring). The dissent formulates these clues largely as I would. See *post*, at 35–38. But, to my eyes, the dissent engages in a little grade inflation when applying them.

First, is the President seeking to exercise an "unheralded" or "newfound" power based on a "long-extant" statute? *Post*, at 39 (internal quotation marks omitted). The dissent insists that is not the case here because President Nixon imposed a 10 percent tariff on most imports in 1971, and then defended that action in lower courts under a predecessor to IEEPA, the Trading with the Enemy Act (TWEA). *Ibid.* But the words "regulate . . . importation" were added to TWEA in 1941. §301(1)(B), 55 Stat. 839. Congress used the same language in IEEPA in 1977. §203(a)(1)(B), 91 Stat. 1626. And in the 85 years of TWEA's existence with that language (and the 49 years of IEEPA's), that is the only time either statute has been invoked to impose tariffs. *Ante,* at 10–11, 17–18. A single time, and one never tested in this Court. Nor are these statutes seldom used. "Each year since 1990, Presidents have issued

roughly 4.5 executive orders . . . and declared 1.5 new national emergencies citing IEEPA." Congressional Research Service, The International Emergency Economics Powers Act: Origins, Evolution, and Use 20 (Sept. 1, 2025). That is pretty strong evidence the President here seeks to "deploy an old statute" in a novel way. *West Virginia*, 597 U. S., at 747 (GORSUCH, J., concurring).

Second, how has the executive branch interpreted IEEPA in the past? *Post*, at 40–41. The dissent says Presidents have long understood IEEPA to permit them to impose tariffs. *Ibid.* But for support, the dissent again relies on isolated evidence about other statutes. It points to the monetary exactions President Ford ordered under the Trade Expansion Act of 1962. *Post*, at 17, 40. And, once more, it points to President Nixon's invocation of TWEA to support his 1971 tariffs during lower court proceedings (though the dissent brushes aside the fact that President Nixon initially rejected the idea of relying on TWEA, see Brief for Carla Hills et al. as *Amici Curiae* 12–14). Whatever one makes of this history, it hardly reveals the kind of contemporaneous and consistent executive interpretation that might advance the dissent's cause. See *West Virginia*, 597 U. S., at 747 (GORSUCH, J., concurring). To the contrary, the fact that no President until now has invoked IEEPA to impose a duty—even one percent on one product from one country—is telling. *Id.*, at 748.

Third, is there a "mismatch" between the action the executive official seeks to take and his expertise? *Post*, at 41. On this one, I agree with the dissent. If tariffs fall in any executive official's "wheelhouse" (and not Congress's), it's the President's. *Ibid.*; see also *supra*, at 6.

Fourth, is the President "relying on oblique, elliptical, or cryptic language"? *Post*, at 41–42. The dissent says no because "[t]his case does not involve elephants in mouseholes." *Post*, at 41 (internal quotation marks omitted). Put another way, the dissent insists, the provisions of IEEPA

before us are not "ancillary" ones, but are designed to convey significant powers. *Post*, at 43 (internal quotation marks omitted). It's a fair enough point as far as it goes. But our cases ask not just whether a provision is a "mousehole" or "ancillary." They also caution against reading extraordinary powers into "broad or general" statutory language. *West Virginia*, 597 U. S., at 746 (GORSUCH, J., concurring) (internal quotation marks omitted); see also *Sossamon* v. *Texas*, 563 U. S. 277, 291 (2011) ("[C]lear statement rules ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation" (internal quotation marks omitted)). Indeed, and as we have seen, many of our major questions cases have found broad or general terms in significant statutes insufficient to support a claim to an extraordinary or unusual power. See Part I–A, *supra*. And here, the word "regulate" is broad as can be. So broad that it could be read to "captur[e] much of what a government does." *Ante,* at 14.

As I see it, then, three of the four clues the dissent relies on cut against it. It is important to add, as well, that as helpful as these clues can be in helping courts spot when a claimed power is *not* supported by clear statutory authority, they do not represent some exhaustive checklist, nor does satisfying one guarantee a claim will succeed. So, for example, even if an asserted power is in the agency's "wheelhouse," we might rule (and have ruled) against the agency if the power is "unheralded" because the statute has stood for decades without being interpreted to convey the power claimed. See, *e.g.*, *Brown & Williamson*, 529 U. S., at 144, 159–160.

Ultimately, the central question in any major questions case remains whether the executive branch's claim to an extraordinary power *is* supported by clear statutory authority. And, as the principal opinion explains at length, many additional clues beyond those the dissent addresses confirm that the President cannot meet that standard in this case.

These additional clues include the way the key statutory term "regulate" is used elsewhere in the U. S. Code, how Congress has delegated tariff authority in the past, and other neighboring language in IEEPA itself. *Ante*, at 14–15.

Contrary to the dissent's charge, too, the principal opinion's application of the major questions doctrine today in no way amounts to a "magic-words test." *Post*, at 44. Of course, if IEEPA included terms like "tariff" or "duty," that would have sufficed. But, to borrow a phrase from the dissent, "monetary exactions on foreign imports" would have worked just as well. *Post*, at 17. Same goes for "tax on imported goods." Or any similarly clear term or phrase. But IEEPA includes no such language, just a broad term that could cover almost anything a government does. And requiring specific rather than general language is just how clear-statement rules work. See, *e.g.*, *Sossamon*, 563 U. S., at 291.

B

If the President's claim fails under our usual major questions test, the dissent says we should respond by carving out an exception to it for cases (like this one) touching on "foreign affairs." *Post*, at 45.

On this score, I share a limited point of agreement with the dissent. Like the nondelegation doctrine, the major questions doctrine protects Article I's Vesting Clause and, for that reason, the doctrine does not apply where the President is exercising only his own inherent Article II powers. Like the nondelegation doctrine, too, the major questions doctrine may speak with less force where the President and Congress enjoy "overlap[ping] . . . authority." See *Gundy* v. *United States*, 588 U. S. 128, 159 (2019) (GORSUCH, J., dissenting); see also C. Bradley & J. Goldsmith, Foreign Affairs, Nondelegation, and the Major Questions Doctrine, 172 U. Pa. L. Rev. 1743, 1747 (2004) (Bradley & Goldsmith)

(explaining the "supposed foreign affairs exception" to the nondelegation doctrine "is better understood as a qualification that concerns situations in which a statutory authorization relates to an independent presidential power").

Doubtless, cases implicating overlapping powers can arise in the field of foreign affairs. The Constitution, for example, vests in Congress the power to raise and regulate armies, but it also vests in the President the commander-in-chief power. Compare Art. I, §8, cls. 12–14, with Art. II, §2, cl. 1. Similarly, Congress enjoys the power to regulate foreign commerce, but the President has power to negotiate treaties and nominate ambassadors. Compare Art. I, §8, cl. 3, with Art. II, §2, cl. 2. The President may even enjoy some "residual" powers pertaining to foreign affairs under Article II's Vesting Clause endowing him with the "executive Power." See S. Prakash & M. Ramsey, The Executive Power Over Foreign Affairs, 111 Yale L. J. 231, 234 (2001) (Prakash & Ramsey); but see C. Bradley & M. Flaherty, Executive Power Essentialism and Foreign Affairs, 102 Mich. L. Rev. 545, 551–552 (2004). Given all this, it is easy enough to imagine statutes and disputes under them that implicate both congressional and presidential powers where we might have reason to question whether the major questions doctrine applies with its usual force.

The problem for the dissent is that none of this is relevant here. Before us, the President concedes that he does not enjoy independent Article II authority to impose tariffs in peacetime. *Ante,* at 18–19. Nor does the President claim " 'concurrent'" constitutional authority to issue his tariffs. *Ante*, at 13 (citing Tr. of Oral Arg. 70–71). Instead, and to his credit, the President admits the power to authorize tariffs in peacetime is constitutionally vested in "Congress alone." *Ante,* at 13 (internal quotation marks omitted). Therefore, the President relies entirely on power derived from Congress, and that means the major questions doctrine applies in the normal way. See Bradley & Goldsmith

1796 ("IEEPA [is] not [an] authorizatio[n] that obviously connect[s] to independent presidential power in ways that would warrant the independent powers qualification").

Because of this problem, the dissent must argue for a much broader "foreign affairs" qualification to the major questions doctrine. Rather than ask whether an independent, constitutionally vested presidential power is implicated, the dissent would have us ask instead whether the President seeks to use the statute in question for a foreign affairs purpose—for example, as a "too[l]" to "incentivize a change in behavior by allies . . . or enemies." *Post*, at 50. When he does, the dissent submits, the major questions doctrine should not apply. And that's true, the dissent continues, even if the power the President asserts has "significant domestic ramifications." *Post*, at 51.

This new exception to the major questions doctrine would have (enormous) consequences hard to reconcile with the Constitution. Article I, §8, vests in Congress many powers that touch on "foreign affairs." Some of those powers were expected to be (and are) the "principal objects of federal legislation." The Federalist No. 53, p. 333 (C. Rossiter ed. 1961) (J. Madison). They include not only the power to impose tariffs, cl. 1, but also the power to establish uniform rules of naturalization, cl. 4, appropriate money for armies, cl. 12, and define and punish offenses against the law of nations, cl. 10. Under the dissent's view, all these legislative powers and more could be passed wholesale to the executive branch in a few loose statutory terms, no matter what domestic ramifications might follow. And, as we have seen, Congress would often find these powers nearly impossible to retrieve. See Part I–C, *supra*.

Consider an example. Imagine Congress adopted a law that arguably could be read to let the President borrow and spend money during peacetime as he sees fit. A law like that would represent an extraordinary delegation of Congress's power both to borrow "on the credit of the United

States," Art. I, §8, cl. 2, and to spend money in support of the "general Welfare," §8, cl. 1, and would carry with it "significant domestic ramifications," *post*, at 51. But if an enterprising executive could also use the law as a "tool" for affecting the behavior of "allies . . . or enemies," the dissent seemingly would have us exempt it from scrutiny under the major questions doctrine.

The dissent's exception is so broad it's hard not to wonder how it fits with some of our existing major questions precedents. In *West Virginia*, the Court applied the major questions doctrine over a dissent expressing concern that doing so would deny the EPA (and therefore the President) the power to respond to "the most pressing environmental challenge of our time"—"[c]limate chang[e]." 597 U. S., at 753 (KAGAN, J., dissenting) (internal quotation marks omitted). A challenge, the dissent continued, that threatened consequences global in scope, including "mass migration events[,] political crises, civil unrest, and even state failure." *Id.*, at 754 (internal quotation marks omitted). Was *West Virginia* a "foreign affairs" case? How about our major questions cases addressing efforts to combat the global pandemic that was COVID–19? See, *e.g.*, *NFIB*, 595 U. S., at 114.[4]

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[4] The dissent suggests that trying to identify when an independent Article II authority is in play would prove "jurisprudentially chaotic." *Post*, at 53, n. 23. But as the foregoing discussion illustrates, the dissent's alternative "foreign affairs" test poses its own challenges. And it seems to me only one is firmly rooted in the text of the Constitution. See Bradley & Goldsmith 1747; see also Prakash & Ramsey 233 ("[O]ne would think that the Constitution's text ought to play the preeminent role in discerning the Constitution's allocation of foreign affairs powers"). In this case, too, only one test promises any manner of "chao[s]" because all parties before us readily agree that the Constitution affords the President no independent power to impose peacetime tariffs. See H. Powell, The President's Authority Over Foreign Affairs: An Executive Branch Perspective, 67 Geo. Wash. L. Rev. 527, 549 (1999) ("The President has no independent power directly to regulate [or] tax . . . foreign commerce").

Seeking support for its sweeping new exception, the dissent points to three main precedents. *Post*, at 46–48, 53–57. I do not see how any of them might sustain its view. The first, *Hamdi* v. *Rumsfeld*, 542 U. S. 507 (2004), concerned the 2001 Authorization for Use of Military Force (AUMF), legislation which authorized the President to use "all necessary and appropriate force against those nations, organizations, or persons" responsible for the September 11, 2001, attacks. *Id.*, at 510 (internal quotation marks omitted). The dissent highlights the principal opinion's conclusion that the AUMF allowed the President to detain enemy combatants even though the law did not mention that power expressly. *Id.*, at 510, 516–517 (opinion of O'Connor, J.). And from this, the dissent draws the inference that any statute addressing foreign affairs should be exempt from scrutiny under the major questions doctrine. *Post*, at 54–55. But the dissent overlooks the fact that the principal opinion reached the conclusion it did only because it found detention of enemy combatants to be a traditional "incident to war." 542 U. S., at 518. And once Congress declares war (or, likewise, authorizes the use of military force abroad), that implicates the President's commander-in-chief powers. Put simply, *Hamdi* was a case of overlapping powers. Ours is not.

Second, the dissent invokes *Dames & Moore* v. *Regan*, 453 U. S. 654 (1981). See *post*, at 55–56. At its heart, that case involved an executive order by President Reagan suspending certain claims by U. S. citizens against Iran as part of a settlement involving the release of American hostages held there. 453 U. S., at 675. Just as we do today, *Dames & Moore* held that the "terms of the IEEPA . . . d[id] not authorize" the President's actions. *Ibid.* Even so, the Court proceeded to uphold those actions anyway, and did so based in part on its view (right or wrong) that the President enjoyed some " 'independent' " power to "enter into executive agreements" suspending certain claims. *Id.*, at 678, 682–

683. So unlike our case, *Dames & Moore* again involved overlapping powers. Along the way, too, the Court emphasized (repeatedly) the "narrowness" of its decision and that it should not be taken to "lay down" any "general 'guidelines' covering other situations not involved here." *Id.*, at 661; see also *id.*, at 660, 688. To derive from *Dames & Moore* a new general guideline exempting "foreign affairs" cases from the major questions doctrine's reach would thus require us to disregard its own cautionary direction.

Third, the dissent cites *United States* v. *Curtiss-Wright Export Corp.,* 299 U. S. 304 (1936). See *post*, at 46–48. There, the Court did suggest that nondelegation rules in the field of "domestic or internal affairs" should differ from those in the realm of "foreign or external affairs." *Curtiss-Wright*, 299 U. S., at 315. But what should we make of that language? If it means that the nondelegation doctrine (and perhaps, by extension, the major questions doctrine) must account for the President's independent Article II powers, I agree.

But I would hesitate to read more into the decision than that. Consider what was really at issue there. A statute permitted the President to ban the transfer of one class of goods (armaments). *Id.*, at 312. It did so with respect to two countries then engaged in a war (Bolivia and Paraguay). *Ibid.* The President's authority was conditioned on a finding that a ban "'may contribute to the reestablishment of peace between those countries.'" *Ibid.* Before making that finding, too, Congress directed him to consult " 'with the governments of other American Republics.'" *Ibid.* All told, then, the statute set forth the policy for the President to pursue. It bounded his authority by limiting his options with respect to a limited class of goods and countries. The statute further conditioned his exercise of those options on a factual finding reached after consultation with other nations. So whatever else might be said about *Curtiss-Wright*, one thing is apparent: In upholding the

President's actions under the law in question, the Court hardly allowed Congress to hand off all of its enumerated powers touching on foreign affairs to the President, the tariff power included.[5]

C

If its effort to secure a broad foreign affairs exception to the major questions doctrine won't work, the dissent hints at a more limited one specific to tariffs. Such an exception makes sense, the dissent says, because "Presidents have long been granted substantial discretion over tariffs." *Post*, at 52 (internal quotation marks omitted). Indeed, the dissent contends, this tradition traces "back to near the Founding." *Post*, at 59. If the dissent were right about that, one might hesitate before accepting the President's concession that this case does not implicate any inherent Article II authority. But, at least as I read it, history offers the dissent little to work with.

Americans fought the Revolution in no small part because they believed that only their elected representatives (not the King, not even Parliament) possessed authority to tax them. Declaration of Independence ¶19. And, they believed, that held true not just for direct taxes like those in the Stamp Act, but also for many duties on imports, like those found in the Sugar Act. E. Morgan & H. Morgan, The Stamp Act Crisis: Prologue to Revolution 72–74 (1995 ed.); see 1 E. Stanwood, American Tariff Controversies in the Nineteenth Century 60 (1903) (Stanwood); C. Van Tyne,

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[5] In places, the dissent also argues that the President's inherent Article II authority includes a wartime tariff power. See *post*, at 22–24; see also Brief for Professor Aditya Bamzai as *Amicus Curiae* 3. But this only highlights the dissent's bind. Whatever the full scope of the President's Article II war powers may be (and the briefs before us reveal a healthy debate whether they include the power to impose tariffs), those powers are not implicated here. IEEPA is not a wartime statute, nor does the President claim we are at war with the countries whose goods are subject to the tariffs.

The Causes of the War of Independence 126–136 (1922); J. Otis, The Rights of the British Colonies Asserted and Proved (1764), in The Collected Political Writings of James Otis 119, 161–162 (2015); see also *id.*, at xii (Introduction).

Americans later codified these beliefs in the Constitution. Under the Articles of Confederation, the national government was laden with debt and enjoyed few ways to repay it. To address that problem, the framers afforded the federal government new taxing powers in the Constitution. Art. I, §8, cl. 1. Many thought these powers among "the most important" features of the new federal charter. See, *e.g.*, The Federalist No. 33, at 202–203 (A. Hamilton). But, consistent with their view that only the people's elected representatives could constitutionally tax them, the framers gave Congress alone "access to the pockets of the people." *Id.*, No. 48, at 310 (J. Madison). And to cement that role, the Constitution required that "All Bills for raising Revenue shall originate in the House of Representatives," the body most responsive to the people. Art. I, §7, cl. 1.

For much of the Nation's history, this taxing power was essentially a tariff power. The framers even considered (and eventually rejected) the possibility of giving the federal government the power to tax only through tariffs. The Federalist No. 35, at 211 (A. Hamilton). No surprise, then, that Congress's first exercise of its taxing power was a tariff law. P. Ashley, Modern Tariff History 170–171 (2d ed. 1910). And until the 20th century, tariffs "accounted for between 50 and 90 percent" of the federal government's revenue. J. Dobson, Two Centuries of Tariffs: The Background and Emergence of the United States International Trade Commission 1 (1976).

How did Congress exercise its all-important tariff power? It debated every detail of the first tariff Act. Stanwood 39–71. Ultimately, Congress said, imported malt would incur a charge of 10 cents a bushel. Brown sugar one cent. Loaf sugar three cents. And so on. *Id.*, at 59. The first tariff Act

was set to last for seven years. *Id.*, at 72. It lasted barely one. *Ibid.* Soon, Congress was at it again, laying out another exacting schedule of duties. *Id.*, at 75–76. Throughout much of the 19th century, Congress proceeded similarly, enacting highly detailed tariff schedules one after another. See F. Taussig, The Tariff History of the United States 68–170 (8th ed. 1931).

An early debate over executive involvement in setting tariffs demonstrates just how strongly Congress felt that tariffs were a legislative business. In December 1791, President Washington told Congress that General St. Clair had been defeated in the Northwest Indian War, and the country would have to increase the size of the army. Stanwood 104. That meant the government needed more money. In response, a resolution was offered in the House of Representatives to solicit advice from the Secretary of the Treasury, Alexander Hamilton, on the best way to raise the additional revenue—including through new tariffs. 3 Annals of Congress 437 (1792); Stanwood 105–106. Ultimately, Hamilton's advice was sought, but only after a debate over the constitutionality of even asking a member of the executive branch for advice on raising revenue. *Ibid.*; 3 Annals of Congress 447.

To be sure, on later occasions Congress turned to the executive branch for more help still. But it usually did so to address changing trade practices in foreign countries. And in doing so, Congress set the important policies, with the executive branch responsible for finding facts—like what other countries' trade policies were at any given moment—or filling in the details. So, for example, Congress passed a statute in 1815 to repeal any "discriminating duty of tonnage . . . whenever the President" was "satisfied" that other countries' "discriminating or countervailing duties" had "been abolished." Act of Mar. 3, 1815, ch. 77, 3 Stat. 224; see also, *e.g.*, Act of Jan. 7, 1824, 4 Stat. 2–3.

Given this history, it's no surprise that the dissent relies mostly on statutes and cases after 1890. *Post*, at 59. But even they do little to support its claim. *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394 (1928), for example, involved a law instructing the President to "investigat[e]" the costs of production for American firms and their foreign counterparts and issue tariffs to "equalize" those costs. *Id.*, at 401, 409 (internal quotation marks omitted). The statute the Court faced in *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, 681 (1892), spoke similarly. Even when *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, came along in 1976, the Court upheld President Ford's imposition of monetary exactions on a single class of products under a statute that provided at least some guidance about how he should implement the law. *Id.*, at 559. And whether correctly decided or not, that case lies a far step from this one.

Before us, the President insists he may use IEEPA to equalize foreign and domestic duties—or not. He may use it to negotiate with foreign countries—or not. He may set tariffs at 1 percent or 1,000,000 percent. He may target one nation and one product or every nation and nearly every product. And he may change his mind at any time for nearly any reason. At least as I see it, history dating "back to near the Founding," *post*, at 59, does not support the notion that Presidents have traditionally enjoyed so much power. More nearly, history refutes it.[6]

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[6] Beyond the major questions hurdle, the dissent faces another, related one: the nondelegation doctrine. There the problems are just as acute. In recent decades, this Court has employed a relatively lax "intelligible principle" test to police delegations. See *FCC* v. *Consumers' Research*, 606 U. S. 656, 673 (2025); cf. *Gundy* v. *United States*, 588 U. S. 128, 157–159 (2019) (GORSUCH, J., dissenting) (arguing for a more traditional test). But recognizing that even the intelligible principle test poses challenges for it, the dissent contends for an even laxer test yet in cases involving "foreign affairs" and tariffs. *Post*, at 57–61. It's an effort that fails for

IV

That leaves one final camp to consider. JUSTICE THOMAS suggests that Congress may hand over most of its constitutionally vested powers to the President completely and forever. *Post*, at 2–3 (dissenting opinion). On his view, the only powers Congress may not delegate are those that involve "rules setting the conditions for deprivations of life, liberty, or property." *Ibid.* From this rule, it follows that Congress may give all its tariff powers to the President because "[i]mporting is a matter of privilege." *Post*, at 10–11. And, as a result, this case does not implicate any " '"separation of powers"' " concerns at all. *Post*, at 3 (quoting *ante,* at 8).

It's a sweeping theory. One that would require us to reimagine much of our case law addressing Article I's Vesting Clause. And one that presents difficulties of its own.

First, I do not see how JUSTICE THOMAS's theory resolves all " '"separation of powers"' " concerns in this case. *Post*, at 3 (quoting *ante,* at 8). Suppose for argument's sake that Congress *can* delegate its tariff powers to the President as completely as JUSTICE THOMAS suggests. Even then, the question remains whether Congress *has* given the President the tariff authority he claims in this case—or whether the President is seeking to exploit questionable statutory language to aggrandize his own power. See Part I–C, *supra.* Put another way, JUSTICE THOMAS's nondelegation solution does not automatically solve the major questions problem. As we have seen, when an executive official claims Congress has delegated to him some extraordinary power, the major questions doctrine requires him to identify clear statutory authority for its exercise—a standard he

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reasons we have just seen. Even if the nondelegation doctrine should apply differently when congressional legislation and executive actions implicate inherent Article II powers, *Gundy*, 588 U. S., at 159, none of that means it should do so where (as here) the President derives whatever authority he has only from Congress.

must satisfy even if Congress is free to pass to him the power he seeks. *Post*, at 2–3. In fact, this Court has previously applied, with our colleague's assent, the major questions doctrine in a case that appears, under his present view, to involve a power that Congress could delegate wholesale to the President. See *Nebraska*, 600 U. S., at 486–488 (involving the power to cancel federal student loan debts, which on JUSTICE THOMAS's account presumably qualifies as a benefit or privilege, not a right to life, liberty, or property). And, just as the major questions doctrine precluded the executive branch's assertion of power in that case, it does so here.

Second, even when it comes to the nondelegation doctrine, JUSTICE THOMAS's theory raises many questions. I appreciate that the doctrine may apply with less force in certain areas, such as when Congress legislates in a way that implicates one of the President's inherent powers. See Part III–B, *supra*; *Gundy*, 588 U. S., at 159 (GORSUCH, J., dissenting). But JUSTICE THOMAS would go much further. On his telling, the doctrine applies only to Congress's true legislative powers, which he says include only those powers addressing the deprivation of life, liberty, or property. As it turns out, only a small subset of Congress's enumerated powers in Article I, §8, fit that bill. See *post*, at 5–6 (listing the powers to punish counterfeiters, tax "internal[ly]," and regulate interstate commerce). Only those few powers are exclusively vested in Congress and subject to review of any kind under the nondelegation doctrine. All "other kinds of power[s]" enumerated in Article I, §8—including the powers to borrow and spend money, declare war, and regulate foreign trade—are not truly legislative and may be delegated at will. *Post*, at 2. So Congress may hand them off to the President completely and he has no need to worry about legal challenges under even this Court's (relatively lax) nondelegation doctrine. No matter, too, that Congress

might find itself permanently unable to retrieve these powers. See Part I–C, *supra*.

But if all that's true, what do we make of the Constitution's text? Section 1 of Article I vests "[a]ll legislative Powers herein granted" in Congress and no one else. Section 8 proceeds to list those powers in detail and without differentiation. Neither provision speaks of some divide between true legislative powers touching on "life, liberty, or property" that are permanently vested in Congress alone and "other kinds of power[s]" that may be given away and possibly lost forever to the President. *Post*, at 2.

What do we make, too, of what the founders said about Article I both before and after the Constitution's ratification? They regularly referred to powers in Article I, §8—even those that do not touch on life, liberty, or property—as legislative in nature. At the Constitutional Convention, early drafts described the powers to regulate "foreign" commerce, "raise armies," "equip Fleets," "coi[n] . . . money," and "establish post-offices" as "legislative powers." 2 The Records of the Federal Convention of 1787, pp. 142–144 (M. Farrand ed. 1966) (Farrand). James Madison wrote to Congress in 1817 that "[t]he legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution." 8 The Writings of James Madison 386 (G. Hunt ed. 1908); see also 1 *id.*, at 112, 133, 381 (noting, before the Constitutional Convention, the "legislative power over captures," and arguing borrowing money is an "exclusive power of Legislation").

Alexander Hamilton spoke similarly. 3 The Works of Alexander Hamilton 479 (H. Lodge ed. 1904) (Lodge) (discussing "[t]he legislative power of borrowing money"); 6 *id.*, at 182 (describing "the legislative power of regulating trade with foreign nations"); 2 *id.*, at 197, 198 (calling of "the legislative kind" and "of a legislative nature" the powers to raise money and troops, "establish rules in all cases of capture by sea or land," "regulate the alloy and value of coin,"

and "make all laws for the government of the army and navy"). So did James Wilson. 1 Collected Works of James Wilson 268 (K. Hall & D. Hall eds. 2007) (describing all the Senate's powers as "legislative powers," with the exception of the powers to try impeachments, concur in treaties, and consent to the appointment of officers, matters addressed outside Art. I, §8).

What do we make as well of early congressional debates? In the Second Congress, for example, the House of Representatives rejected on nondelegation grounds a proposal to give the President a largely unfettered power to establish postal routes, even though doing so hardly would have touched on life, liberty, or property. 3 Annals of Congress 229–242. In the Fifth Congress, four Representatives likewise objected on nondelegation grounds to a bill that authorized the President to raise an army of up to 10,000 men. 8 *id.*, at 1525–1527, 1532, 1535 (remarks of Reps. Nicholas, Gallatin, Baldwin, and McDowell). Though the bill ultimately passed, see Act of May 28, 1798, 1 Stat. 558, it did so apparently because it was deemed not to violate Article I's nondelegation principle—no Member of Congress responded that the principle was wholly inapplicable because the delegated power was not one that involved setting conditions for deprivations of life, liberty, or property. See 8 Annals of Congress 1525–1542.

What are we to do, too, with this Court's nondelegation precedents, which have never turned on JUSTICE THOMAS's view of life, liberty, or property? See *J. W. Hampton, Jr., & Co.*, 276 U. S., at 403, 409 (scrutinizing a delegation to executive officials to set customs duties); *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 405–406, 422, 433 (1935) (holding unconstitutional a delegation to executive officials to prohibit the transportation of petroleum products in interstate and *foreign* commerce); *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 196, 214–215, 225–226 (1943) (scrutinizing the delegation of authority to regulate the

granting of broadcasting licenses); see also *Sessions* v. *Dimaya*, 584 U. S. 148, 217 (2018) (THOMAS, J., dissenting) ("[I]mpermissible delegations of legislative power violate [the nondelegation] principle, not just delegations that deprive individuals of 'life, liberty, or property'").

Third, even if a distinction between true legislative powers and "other kinds of power[s]" were proper, *post*, at 2, I do not see why the tariff power would fall in the latter category and thus be something Congress could delegate away wholesale, without scrutiny, and forever. JUSTICE THOMAS suggests all that is possible because, at the founding, the tariff power was considered a " 'prerogative right' " of the British King. *Post*, at 11 (quoting N. Gras, Early English Customs System 21 (1918)).

That seems doubtful. Tariffs may have been among the King's prerogative powers during the reign of Edward I. See *id.*, at 20–21; see also *post*, at 11, n. 3 (citing P. Einzig, The Control of the Purse: Progress and Decline of Parliament's Financial Control 65 (1959) (discussing the practices "during the Middle Ages")). But even before the year 1400, Parliament had achieved some "victory over the King in the matter of imposing import duties." *Id.*, at 108–109. And after the Glorious Revolution of 1688, as this Court has put it, Parliament "secured supremacy in fiscal matters." *Consumer Financial Protection Bureau* v. *Community Financial Services Assn. of America, Ltd.*, 601 U. S. 416, 428 (2024) (citing 1 W. Blackstone, Commentaries on the Laws of England 306, 333 (1771)). "By the time of the American Revolution, trade regulation was thus a prime topic of *legislative* concern" in Britain. M. McConnell, The President Who Would Not Be King 217 (2020) (emphasis added); see also J. Chitty, Law of the Prerogatives of the Crown 163 (1820) ("[T]he King does not possess any general common law prerogative with respect to foreign commerce").

More importantly still, whatever the views in Britain may have been, American revolutionaries hardly shared

some universal conviction that all manner of tariffs were a matter of the King's prerogative, or even something Parliament, lacking colonial representatives, could freely impose on them. Though in the mid-1760s some colonists distinguished between " 'internal'" and " 'external' taxation" and "conceded [Parliament's] right to raise revenue through duties on trade," "the inadequacy of [that] much overstrained distinction" soon "became obvious." B. Bailyn, The Ideological Origins of the American Revolution 212–213, 215 (1967). Illustrative of the point, John Dickinson came to "repudiat[e]" the distinction "flatly and formally" in his Letters from a Farmer in Pennsylvania, *id.*, at 215, contending instead that laws aimed at raising revenue, but enacted without representation, were objectionable without "distinction . . . between internal and external taxes," Letters From a Farmer in Pennsylvania 39 (1774). See also *supra*, at 36–37 (recounting colonial objections to the Sugar Act); H. Unger, American Tempest 101 (2011) (observing that the "import duties" in the Townshend Acts helped "incite Americans to rebel"). And, of course, it was duties on foreign tea that triggered the Boston Tea Party. J. Ellis, The Cause 17–18 (2021). Are we really to believe that the patriots that night in Boston Harbor considered the whole of the tariff power some kingly prerogative?

As we have already seen, too, the growing American conviction that the peacetime tariff power is legislative and belongs only to the people's elected representatives was later reflected in both the Constitution and early congressional practice. See Part III–C, *supra*. To that discussion, I would add just this. The Articles of Confederation granted the Confederation Congress authority to make commercial treaties, but no authority to restrain "the *legislative power* of the respective states" to impose "imposts and duties *on foreigners*." Art. IX (emphasis added). At the Constitutional Convention that followed, where the tariff power was transferred to the federal government, delegates likewise

referred to it as a "legislative power." See, *e.g.*, 3 Farrand 615; 2 *id.*, at 142–143. And, during debates over the Jay Treaty, Hamilton explained that he held no doubt that regulating foreign trade and raising money from it was a "legislative power," if one that could be constrained by treaty. 6 Lodge 182, 189–190, 196. Reflecting the same sentiment that helped fuel the Revolution, he asked: "[W]hat legislative power can be more sacred?" *Id.*, at 196.

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For those who think it important for the Nation to impose more tariffs, I understand that today's decision will be disappointing. All I can offer them is that most major decisions affecting the rights and responsibilities of the American people (including the duty to pay taxes and tariffs) are funneled through the legislative process for a reason. Yes, legislating can be hard and take time. And, yes, it can be tempting to bypass Congress when some pressing problem arises. But the deliberative nature of the legislative process was the whole point of its design. Through that process, the Nation can tap the combined wisdom of the people's elected representatives, not just that of one faction or man. There, deliberation tempers impulse, and compromise hammers disagreements into workable solutions. And because laws must earn such broad support to survive the legislative process, they tend to endure, allowing ordinary people to plan their lives in ways they cannot when the rules shift from day to day. In all, the legislative process helps ensure each of us has a stake in the laws that govern us and in the Nation's future. For some today, the weight of those virtues is apparent. For others, it may not seem so obvious. But if history is any guide, the tables will turn and the day will come when those disappointed by today's result will appreciate the legislative process for the bulwark of liberty it is.

SUPREME COURT OF THE UNITED STATES

Nos. 24–1287 and 25–250

LEARNING RESOURCES, INC., ET AL., PETITIONERS
24–1287 *v.*
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
25–250 *v.*
V.O.S. SELECTIONS, INC., ET AL.

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

[February 20, 2026]

JUSTICE BARRETT, concurring.

As the principal opinion demonstrates, the most natural reading of the International Emergency Economic Powers Act does not encompass the power to impose tariffs. I write only to address JUSTICE GORSUCH's concurrence regarding the major questions doctrine.

To the extent that JUSTICE GORSUCH attacks the view that "common sense" alone can explain all our major questions decisions, *ante*, at 18–22, he takes down a straw man. I have never espoused that view. Rather, as I explained in my concurrence in *Biden* v. *Nebraska*, 600 U. S. 477, 507 (2023), the major questions doctrine "situates text in context" and is therefore best understood as an ordinary application of textualism. *Id.*, at 511. Textualists—like all those

who use language to communicate—do not interpret words in a vacuum. Instead, we use context, including "[b]ackground legal conventions," "common sense," and "constitutional structure," to ascertain a text's "most natural meaning." *Id.*, at 511–512, 515, 509.

Part of this context, as I have explained, is Article I of the Constitution, which vests Congress with " '[a]ll legislative Powers.'" *Id.*, at 515 (quoting Art. I, §1). Obviously, the Constitution bears on the meaning of a statute enacted pursuant to it. Because Article I grants all legislative powers to Congress, the reasonable interpreter would expect Congress "to make the big-time policy calls itself, rather than pawning them off to another branch." *Nebraska*, 600 U. S., at 515 (BARRETT, J., concurring).[1]

To the extent that JUSTICE GORSUCH also thinks that background legal conventions and constitutional structure inform the most natural reading of a statute, then we may not be very far apart. See *ante*, at 8–12, 14 (concurring opinion). Our only disagreement may be over the level of clarity required before a particular interpretation can be deemed the most natural one. I understand JUSTICE GORSUCH to require Congress always to speak precisely to any major power that it intends to give away. See *ante*, at 12–14, 25–26 (concurring opinion). As I have said before, I think that other, "less obvious" clues can do the trick. See *Nebraska*, 600 U. S., at 514 (BARRETT, J., concurring). I do not see any such clues here; in fact, as the Court explains, the clues we have point in the opposite direction. See, *e.g.*, *ante*, at 8–9 (opinion of ROBERTS, C. J.) (detailing how

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[1] Contrary to JUSTICE GORSUCH's suggestion, this approach to the major questions doctrine does not risk "conflating unenacted legislative intent with the law." *Ante*, at 24, n. 2 (concurring opinion). Rather, like textualism more generally, it looks for "a sort of 'objectified' intent—the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the *corpus juris*," including the Constitution. A. Scalia, A Matter of Interpretation 17 (1997).

Congress has elsewhere delegated the power to impose tariffs); *ante*, at 14–15 (majority opinion) (stressing that the Government "cannot identify any statute in which the power to regulate includes the power to tax").

At times, though, JUSTICE GORSUCH suggests that the purpose of the major questions doctrine is something other than to ascertain the most natural reading of a statute. For example, he writes that the doctrine serves to prevent "highly resourceful members of the executive branch" from "assum[ing] new power for themselves" because "men are not angels." *Ante*, at 16 (concurring opinion); see *West Virginia* v. *EPA*, 597 U. S. 697, 735 (2022) (GORSUCH, J., concurring) (describing doctrine as a "clear-statement rul[e]" that "operates to protect foundational constitutional guarantees"); *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109, 124–126 (2022) (GORSUCH, J., concurring) (similar). But if the Constitution permits Congress to give the Executive a particular power, who are we to get in the way? Does the Judiciary really protect the Constitution by impeding the constitutional action of another branch? If JUSTICE GORSUCH thinks that we should forgo the most natural reading of a statute because it is preferable for Congress, rather than the President, to make big decisions, that way lies "a lot of trouble" for the textualist. A. Scalia, A Matter of Interpretation 28 (1997) (Scalia).

Strong-form substantive canons—canons instructing a judge to adopt "an inferior-but-tenable reading"—veer beyond interpretation and into policymaking. *Nebraska*, 600 U. S., at 509 (BARRETT, J., concurring). And while the policy may be desirable or even constitutionally inspired, judges should hesitate to impose disciplining rules on Congress. See *ibid.*, n. 2 (explaining that such "prophylactic constraints" are "in tension with the Constitution's structure"). As Justice Scalia lamented, "whether these dice-loading rules are bad or good, there is also the question of where the courts get the authority to impose them. Can we

really just decree that we will interpret the laws that Congress passes to mean less or more than what they fairly say?" Scalia 28–29.

Granted, strong-form canons exist elsewhere in the law. See *Nebraska*, 600 U. S., at 508–509 (BARRETT, J., concurring). I do not propose to abandon these canons, nor have I taken the position that adopting them necessarily exceeds the judicial power. *Id.*, at 509, n. 2. But I am skeptical about adding new ones to the mix. *Ibid.* And while the major questions doctrine has an impressive pedigree as an interpretive principle, this Court has not (yet, anyway) embraced it as a strong-form rule that imposes a " 'clarity tax' " on Congress. *Id.*, at 508.

JUSTICE GORSUCH seems to disagree, pointing to a few late 19th- and early 20th-century cases.[2] See *ante*, at 12–14 (concurring opinion). But these cases, like our modern ones, are consistent with my context-based approach: They focus on ascertaining, not shaping, what the statute in dispute communicates. See, *e.g.*, *ICC* v. *Cincinnati*, *N. O. & T. P. R. Co.*, 167 U. S. 479, 511 (1897) (concluding that Congress "did not intend" to give interstate commission power to set railroad rates); *Siler* v. *Louisville & Nashville R. Co.*, 213 U. S. 175, 196 (1909) (reasoning that "the legislature never intended to and did not in fact" give a state commission power to set maximum railroad rates). I would not treat this evidence as precedent for a judicial flex. JUSTICE GORSUCH proposes to do something new. The innovation is in significant tension with textualism, so I do not support the project.

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[2] He also points to state cases and longstanding corporate law principles. *Ante*, at 8–13 (concurring opinion). While those sources support the existence of a background legal convention that informs a statute's most natural meaning, they are not evidence that this Court—which is bound by the constraints of Article III—has adopted a true clear-statement rule.

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[February 20, 2026]

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, concurring in part and concurring in the judgment.

The Court holds today that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. I agree with that conclusion, as I do with the bulk of the principal opinion's reasoning. But because I think the ordinary tools of statutory interpretation amply support today's result, I do not join the part of that opinion invoking the so-called major-questions doctrine.

The question that part asks, similar to the one posed in other " 'major questions' cases," is whether the President can identify "clear congressional authorization" for his action—here, to impose tariffs under IEEPA. *Ante,* at 7, 13, 20. The demand is for a clear statement—something more

explicit or specific than the statutory basis that would ordinarily suffice to support executive action. See, *e.g.*, *West Virginia* v. *EPA*, 597 U. S. 697, 721–724, 732 (2022); *Biden* v. *Nebraska*, 600 U. S. 477, 505–506 (2023). The reason for that requirement, according to today's opinion, is that the Executive has claimed an "extraordinary" power—one never asserted before and having large-scale "economic and political significance." *Ante,* at 7, 11; see *ante*, at 7–11.

I objected, in the principal cases cited, to the demand for a special brand of legislative clarity. See *West Virginia*, 597 U. S., at 764–784 (KAGAN, J., dissenting); *Nebraska*, 600 U. S., at 542–550 (KAGAN, J., dissenting). In my view, the Court used its clear-authorization rule in those cases to negate expansive delegations Congress had approved. I explained there that the proper way to interpret a delegation provision is through the standard rules of statutory construction. See *West Virginia*, 597 U. S., at 765–766 (KAGAN, J., dissenting). That means, most concisely stated, reading text in context. More expansively put, it means examining a delegation provision's language, assessing that provision's place in the broader statutory scheme, and applying a "modicum of common sense" about how Congress typically delegates. *Id.*, at 764 (KAGAN, J., dissenting); see *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000). The last of those inquiries includes consideration of whether Congress ever has before, or likely would, delegate the power the Executive asserts—a matter also of import in applying the major-questions doctrine. See *ante,* at 8–10; *Nebraska*, 600 U. S., at 512–514, 517–519 (BARRETT, J., concurring); *id.*, at 546, n. 3 (KAGAN, J., dissenting). In the past, though, I have thought that the Court used that doctrine to override—rather than help discover—the best reading of delegation statutes. See *West Virginia*, 597 U. S., at 756 (KAGAN, J., dissenting); *Nebraska*, 600 U. S., at 543 (KAGAN, J., dissenting).

This case presents more nearly the opposite situation: The use of a clear-statement rule here is unnecessary because ordinary principles of statutory interpretation lead to the same result.[1] It is not just that the Government's arguments fail to satisfy an especially strict test; it is that they fail to satisfy the normal one. Even without a clear-statement rule in the picture, the conclusion follows: IEEPA does not authorize the President to impose tariffs. And indeed, the principal opinion's reasoning well explains why. The rest of this opinion draws on that analysis (I hope without too much rehashing) to demonstrate what I view as the fundamental point: Usual text-in-context interpretation dooms the tariffs the President has imposed. The crucial provision of IEEPA, when viewed in light of the broader statutory scheme and with a practical awareness of how Congress delegates tariff authority, does not give the President the power he wants.

Most important, IEEPA's key phrase—the one the Government relies on—says nothing about imposing tariffs or

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[1] JUSTICE GORSUCH claims not to understand this statement, insisting that I now must be applying the major-questions doctrine, and his own version of it to boot. See *ante*, at 17 (concurring opinion) ("My concurring colleagues all but endorse it today"); *ante*, at 2, 7, 18 (similar). Given how strong his apparent desire for converts, see *ante*, at 2–26, I almost regret to inform him that I am not one. But that is the fact of the matter. I proceed in this case just as I did in *West Virginia* and *Nebraska*: I consider a delegation provision's language, broaden the scope to take in the statutory setting, and apply some common sense about how Congress normally delegates. See *West Virginia* v. *EPA*, 597 U. S. 697, 756–766 (2022) (KAGAN, J., dissenting); *Biden* v. *Nebraska*, 600 U. S. 477, 534–542 (2023) (KAGAN, J., dissenting). Contrary to JUSTICE GORSUCH's suggestion, see *ante*, at 3–7, that conventional method of interpretation will not always favor (or always disfavor) executive officials, given the variety of delegation schemes Congress adopts. I'll let JUSTICE GORSUCH relitigate on his own our old debates about other statutes, unrelated to the one before us. What matters here is only that IEEPA's delegation refutes the Executive's assertion of authority to levy tariffs, without any help from the major-questions doctrine.

taxes. That text authorizes the President, upon finding a foreign threat and declaring an emergency, to "regulate" the "importation" of foreign goods. 50 U. S. C. §1702(a)(1)(B). And the meaning of "regulate," both in common parlance and as Congress uses the word, does not encompass taxing. See *ante,* at 14–15. To "regulate," according to the Government's preferred definition, means to "fix, establish or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." Brief for Federal Parties 24 (quoting Black's Law Dictionary 1156 (5th ed. 1979)). Nothing in that definition naturally refers to levying taxes. Nor does Congress ever use the word "regulate" in that way. Hundreds of provisions in the U. S. Code give agencies the authority to "regulate" one thing or another. Yet the Government cannot identify a single one that is understood to grant taxing power. See Tr. of Oral Arg. 30. When Congress wants to delegate that power, it uses a whole different vocabulary—terms like "duty," "tariff," or "surcharge," which do not appear in IEEPA. See *ante,* at 8 (citing representative statutes); see also *ante,* at 19 (discussing, in particular, 19 U. S. C. §1862 (1970 ed.)). And likewise, when Congress means to cover *both* regulatory and taxing powers, it refers to each separately. See *ante*, at 15 (also citing statutes). Of course, Congress knows that taxes can be used for regulatory ends: They can be a means of controlling or adjusting behavior. But Congress still follows the path this Court long ago marked out, and the one most consonant with ordinary meaning, of treating the power to "regulate" trade as "entirely distinct" from the power to "levy taxes." *Gibbons* v. *Ogden*, 9 Wheat. 1, 201–202 (1824); see *ante,* at 15. So in granting only the former, IEEPA excludes the latter: The President has the ability to regulate, but not to impose taxes on, imports.

The surrounding statutory language confirms the point. As the principal opinion explains, "regulate" is one of 9

verbs listed in IEEPA's delegation provision. See *ante,* at 15. (The others are "investigate," "block," "direct," "compel," "nullify," "void," "prevent," and "prohibit." §1702(a)(1)(B).) Those verbs are followed by 11 objects, each describing a distinct sort of transaction involving foreign property—not just "importation," but also "acquisition," "use," "transfer," and so forth. *Ibid.* Combine the verbs and objects in all possible ways, and the statute authorizes 99 actions a President can take to address a foreign threat. And exactly none of the other 98 involves raising revenues. Rather, each enables the President to impose penalties, restrictions, or controls on foreign commerce. See *ante,* at 15. So when the phrase "regulate . . . importation" is invoked to impose quantity or quality limits on bringing foreign goods into the country—for example, by setting quotas or requiring quarantines—the phrase fits well with its 98 neighbors. Just like the rest, it provides a way to constrain or alter various foreign transactions. But when that phrase is invoked to impose tariffs? Then it becomes the odd man out—the only one of 99 permission slips to involve "the core congressional power of the purse." *Ante,* at 8; see *ante,* at 5–6. So even if (contra both conventional and congressional usage) the word "regulate" might refer to taxation in some other (hitherto undiscovered) statutory context, it would not do so in IEEPA.[2]

Likewise, Congress's consistent practice in delegating tariff power refutes the Government's position. As the

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[2] The legislative history of IEEPA offers yet more proof that Congress did not authorize taxation. The Senate Report, in its description of the statute, reduces the 99 authorized actions to the following: the power "to control or freeze property transactions where a foreign interest is involved." S. Rep. No. 95–466, p. 5 (1977). The House Report similarly describes the delegation provision as "authoriz[ing] the President" to "regulate or freeze any property in which any foreign country or a national thereof has any interest." H. R. Rep. No. 95–459, p. 15 (1977). Neither of those descriptions at all suggests that Congress intended to cede its taxing power.

principal opinion details, Title 19 of the U. S. Code includes multiple provisions granting the President authority to levy tariffs. See *ante,* at 8–9. But in each and every instance, Congress has not only used specific language (*e.g.*, "duty" or "surcharge"), see *supra*, at 4, but also imposed tight restraints on the power given. It has capped the tariff 's rate (*e.g.*, 15%); or limited the tariff 's duration (*e.g.*, 150 days); or established strict procedural conditions before the tariff can take effect (*e.g.*, investigations, public hearings, and reports); or all of the above. See *ante,* at 8–9. What Congress has never done in a tariff provision is what the Government claims it did here—conferred power on the President to impose a tariff of any amount, for any time, on only his own say-so. And construing IEEPA to give that unparalleled authority would effectively erase all the carefully confined tariff provisions in Title 19. For any President could then escape the rigors of those laws—could put in place, say, a non-time-limited 100% tariff on all foreign products—by the simple expedient of identifying a foreign threat. That gutting of Title 19's tariff scheme is not what Congress, when delegating power to "regulate" imports, could have meant to accomplish.

Nor has any President until now understood IEEPA to authorize imposing tariffs. Between 1977 (when IEEPA was enacted) and 2024, eight Presidents had the chance to make use of IEEPA's delegation of power. And all chose the same course. They invoked the statute's "regulate importation" provision for a variety of non-tariff purposes. See *ante,* at 10. But they looked elsewhere—to Title 19's provisions—for tariff authority. See *ante,* at 10–11. In other words, each President read the statutes as Congress wrote them, with IEEPA enabling him to regulate imports and Title 19 enabling him—in confined situations—to tax those foreign

goods. None, as far as anyone has suggested, even considered doing otherwise.[3]

For all those reasons, straight-up statutory construction resolves this case for me; I need no major-questions thumb on the interpretive scales. IEEPA gives the President significant authority over transactions involving foreign property, including the importation of goods. But in that generous delegation, one power is conspicuously missing. Nothing in IEEPA's text, nor anything in its context, enables the President to unilaterally impose tariffs. And needless to say, without statutory authority, the President's tariffs cannot stand. See *ante,* at 5–6.

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[3] Presidents followed the same practice, with one quasi-exception, under IEEPA's predecessor statute, the Trading with the Enemy Act (TWEA). Beginning in 1941, TWEA authorized the President, as IEEPA does now, to "regulate . . . importation." 12 U. S. C. §95a(1)(B) (1940 ed., Supp. I). During the next three decades, six Presidents used that delegation for only non-tariff ends, while relying on Title 19 to levy tariffs. In 1971, when President Nixon imposed tariffs in response to a balance-of-payments deficit, he continued in that tradition by invoking two statutes (the Tariff Act of 1930 and Trade Expansion Act of 1962) found in Title 19. See Presidential Proclamation No. 4074, 3 CFR 60 (1971–1975 Comp.). But in defending his act against a legal challenge, the Department of Justice argued that even if the two cited statutes did not authorize the tariffs, TWEA would do so. That after-the-fact claim of authority was upheld in the Court of Customs and Patent Appeals. See *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 572, 577–578 (CCPA 1975); *ante,* at 17. The principal opinion well explains why that single lower court decision about TWEA has no bearing on IEEPA's meaning. See *ante,* at 17–18, and n. 5.

SUPREME COURT OF THE UNITED STATES

Nos. 24–1287 and 25–250

LEARNING RESOURCES, INC., ET AL., PETITIONERS
24–1287 *v.*
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
25–250 *v.*
V.O.S. SELECTIONS, INC., ET AL.

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

[February 20, 2026]

JUSTICE JACKSON, concurring in part and concurring in the judgment.

I agree with the Court's conclusion that the International Emergency Economic Powers Act (IEEPA) does not provide the President with the power to tariff. Three of my colleagues have reached this result via the major questions doctrine, see *ante,* at 7–13 (opinion of ROBERTS, C. J.)—a framing that asks, in essence, whether Congress "would *likely* have intended" to delegate the authority to tariff to the President through IEEPA. *West Virginia* v. *EPA*, 597 U. S. 697, 730 (2022) (emphasis added); see also *id.*, at 722–723. While probing Congress's intent is the right inquiry, my colleagues speculate needlessly. In my view, the Court

can, and should, consult a statute's legislative history to determine what Congress actually intended the statute to do.

As Congress undertakes the legislative process, congressional committees in the Senate and House often generate official reports that describe Congress's aims for the legislation. See R. Katzmann, Judging Statutes 19–20 (2014) (Katzmann). Indeed, there is evidence that lawmakers themselves pay more attention to these reports than a statute's text to understand the statute's purpose and meaning. A. Gluck & L. Bressman, Statutory Interpretation From the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I, 65 Stan. L. Rev. 901, 965–966, 968–969 (2013); see also Katzmann 37–38. Thus, in contrast to the principal dissent's rejection of Committee Reports as a means of ascertaining a statute's meaning, *post*, at 16, n. 11 (opinion of KAVANAUGH, J.), I think these Senate and House Reports are among the best evidence of what Congress sought to accomplish with its enactments. See Gluck, 65 Stan. L. Rev., at 965, 977–978, 989.

In the cases now before us, that evidence shows that Congress did not intend for IEEPA to authorize the Executive to impose tariffs. Accord, *ante,* at 5, n. 2 (KAGAN, J., concurring in part and concurring in judgment). Instead, Congress intended to delegate to the President the power to freeze and control foreign property transactions.

Four pieces of the relevant legislative record support this conclusion. The first two are the House and Senate Reports that accompanied the 1941 amendment to IEEPA's predecessor statute, the Trading with the Enemy Act (TWEA). First enacted in 1917, TWEA authorized the President to control foreign property during wartime. But some of TWEA's sections delegating this authority had lapsed, and "there [was] doubt as to the effectiveness of other sections." H. R. Rep. No. 1507, 77th Cong., 1st Sess., 2 (1941). Accordingly, Congress amended TWEA in 1941, adding the subsection that includes the "regulate . . . importation"

language on which the President relies today. First War Powers Act, 55 Stat. 839–840. The Reports explained Congress's primary purpose for the 1941 amendment: shoring up the President's ability to control foreign-owned property by maintaining and strengthening the "existing system of foreign property control (commonly known as freezing control)." H. R. Rep. No. 1507, at 2–3; see also S. Rep. No. 911, 77th Cong., 1st Sess., 2 (1941).[1]

When Congress enacted IEEPA in 1977, limiting the circumstances under which the President could exercise his emergency authorities, it kept the "regulate . . . importation" language from TWEA. §203(a)(1)(B), 91 Stat. 1626. The other two relevant pieces of legislative history—the Senate and House Reports that accompanied IEEPA—demonstrate that Congress's intent regarding the scope of this statutory language remained the same. As the Senate Report explained, Congress's sole objective for the "regulate . . . importation" subsection was to grant the President the emergency authority "to control or freeze property transactions where a foreign interest is involved." S. Rep. No. 95–466, p. 5 (1977). The House Report likewise described IEEPA as empowering the President to "regulate or freeze any property in which any foreign country or a national thereof has any interest." H. R. Rep. No. 95–459, p. 15 (1977).

With this evidence of Congress's objective, interpreting the text of IEEPA becomes an easy task. Each of the listed verbs—"investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent

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[1] In addition to maintaining the President's "freezing control" authority, Congress also sought to authorize the President to *seize* foreign property and use it to serve the interests of the United States. H. R. Rep. No. 1507, at 3. To this end, the 1941 amendment provided that foreign-owned property "shall vest . . . in such agency or person as may be designated . . . by the President." 55 Stat. 840. Congress did not include this vesting language in IEEPA.

or prohibit," 50 U. S. C. §1702(a)(1)(B)—provides a means by which the President can freeze or control foreign property transactions. See *ante,* at 4–5, and n. 2 (opinion of KAGAN, J.). Tariffs are different in kind. They are a tax on imports; a means of generating revenue from transactions between private parties. See *ante,* at 6 (majority opinion). Because tariffs are not a means by which the President can freeze or control foreign assets, interpreting IEEPA to authorize tariffs would require the Court to override Congress's expressed purpose for including the "regulate . . . importation" language in the statute.

* * *

Like THE CHIEF JUSTICE's opinion, the principal dissent declines the help of legislative history. See *post,* at 16, n. 11 (opinion of KAVANAUGH, J.). The dissent concludes that IEEPA and TWEA are "best understood" as authorizing tariffs, and that any other interpretation would "not make much sense." *Post*, at 24–25, 29.[2] But why would it matter which interpretation *we* think is "best" when Congress has already told us? The legislative history here plainly establishes that Congress understood and intended IEEPA and TWEA to authorize a wholly different type of power: the power to freeze foreign-owned property. And the proper role of the Court is to give effect to Congress's intent, not our own instincts. See *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 542 (1940).

In short, in these cases, the legislative history provides helpful evidence of "what Congress was trying to do" in IEEPA. Katzmann 38. Given that evidence, we need not speculate or, worse, step into Congress's shoes and

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[2] This reasoning appears to follow the Court's relatively recent practice of picking what it deems the best reading of a statute without consideration of Congress's intent. See, *e.g.*, *Stanley* v. *City of Sanford*, 606 U. S. 46, 51–54 (2025); accord, *id.*, at 96–97, and n. 12 (JACKSON, J., dissenting).

formulate our own views about what powers would be best to delegate to the President for use during an emergency. See *ibid.*; J. Hurst, Dealing With Statutes 33 (1982). When Congress tells us why it has included certain language in a statute, the limited role of the courts in our democratic system of government—as interpreters, not lawmakers—demands that we give effect to the will of the people.

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[February 20, 2026]

JUSTICE THOMAS, dissenting.

I join JUSTICE KAVANAUGH's principal dissent in full. As he explains, the Court's decision today cannot be justified as a matter of statutory interpretation. Congress authorized the President to "regulate . . . importation." 50 U. S. C. §1702(a)(1)(B). Throughout American history, the authority to "regulate importation" has been understood to include the authority to impose duties on imports. *Post*, at 9–13, 22–29 (KAVANAUGH, J., dissenting). The meaning of that phrase was beyond doubt by the time that Congress enacted this statute, shortly after President Nixon's highly publicized duties on imports were upheld based on identical language. *Post*, at 14–22. The statute that the President relied on therefore authorized him to impose the duties on imports

at issue in these cases. JUSTICE KAVANAUGH makes clear that the Court errs in concluding otherwise.

I write separately to explain why the statute at issue here is consistent with the separation of powers as an original matter. The Constitution's separation of powers forbids Congress from delegating core legislative power to the President. This principle, known as the nondelegation doctrine, is rooted in the Constitution's Legislative Vesting Clause and Due Process Clause. Art. I, §1; Amdt. 5. Both Clauses forbid Congress from delegating core legislative power, which is the power to make substantive rules setting the conditions for deprivations of life, liberty, or property. Neither Clause prohibits Congress from delegating other kinds of power. Because the Constitution assigns Congress many powers that do not implicate the nondelegation doctrine, Congress may delegate the exercise of many powers to the President. Congress has done so repeatedly since the founding, with this Court's blessing.

The power to impose duties on imports can be delegated.[1] At the founding, that power was regarded as one of many

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[1] I refer to charges on imported goods as "duties," not "tariffs" or "taxes." When the government charged money for importing goods, that charge was historically called a custom or impost, each of which was a kind of "duty." See N. Webster, A Compendious Dictionary of the English Language 75, 152 (1806); Art. I, §10, cl. 2. The word "tariff " primarily referred to the schedule or table listing such duties, not the duties themselves. Webster, Compendious Dictionary, at 305. The word "tax," although sometimes used loosely to refer to all kinds of monetary charges, more often "exclude[d]" duties on imports. R. Natelson, What the Constitution Means by "Duties, Imposts, and Excises"—and "Taxes" (Direct or Otherwise), 66 Case W. Res. L. Rev. 297, 306 (2015).

In fact, although Colonial Americans "staunchly contested efforts by Parliament to 'tax' them," they often "conceded the authority of the British government to regulate commerce through financial exactions," including "prohibitory tariffs." *Ibid.* In the most "widely read" and "universally approved" response to the Stamp Act, E. Morgan & H. Morgan, The Stamp Act Crisis 71 (1953), Daniel Dulany wrote: "A Right to impose an internal Tax on the Colonies, without their Consent for the single

powers over foreign commerce that could be delegated to the President. Power over foreign commerce was not within the core legislative power, and engaging in foreign commerce was regarded as a privilege rather than a right. Early Congresses often delegated to the President power to regulate foreign commerce, including through duties on imports. As I suggested over a decade ago, the nondelegation doctrine does not apply to "a delegation of power to make rules governing private conduct in the area of foreign trade," including rules imposing duties on imports. *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 80–81, n. 5 (2015) (opinion concurring in judgment). Therefore, to the extent that the Court relies on "'separation of powers principles'" to rule against the President, *ante,* at 8 (opinion of ROBERTS, C. J.), it is mistaken.

I

The nondelegation doctrine is rooted in both the Legislative Vesting Clause and the Due Process Clause. The doctrine ensures that "[t]he Legislative [Branch] cannot transfer the Power of Making Laws to any other hands." J. Locke, Two Treatises of Government §141, p. 380 (P. Laslett ed. 1964) (Locke) (emphasis deleted). Importantly,

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Purpose of Revenue, is denied; a Right to regulate their Trade without their Consent is admitted. The Imposition of a Duty, may, in some Instances, be the proper Regulation." Considerations on the Propriety of Imposing Taxes in the British Colonies 34 (2d ed. 1765) (emphasis deleted). Likewise, Benjamin Franklin famously conceded Britain's "right 'of laying duties to regulate commerce,' " but rejected its power to " 'lay internal taxes.' " B. Bailyn, The Ideological Origins of the American Revolution 214 (1967); see also *id.*, at 212 (explaining that colonists denied Britain "all right to tax the colonies," but "conceded to it the right to raise revenue through duties on trade"); E. Nelson, The Royalist Revolution 32 (2014); C. Becker, The Declaration of Independence: A Study in the History of Political Ideas 90 (1922).

however, the nondelegation doctrine applies only to Congress's core legislative power, not to all of its powers.

A

The Legislative Vesting Clause grants Congress alone the federal legislative power. It requires that "[a]ll legislative Powers" granted to the Federal Government "shall be vested in a Congress of the United States." Art. I, §1. It follows that those federal legislative powers cannot be exercised by anyone else, including the President. See *Association of American Railroads*, 575 U. S., at 74 (opinion of THOMAS, J.).

"Legislative power" for purposes of the Vesting Clause means the power to make substantive rules setting the conditions for deprivations of life, liberty, or property. I have described this power as the "core legislative power" to distinguish it from other powers that the Constitution grants Congress. *Id.*, at 80. Core legislative power includes only the power to make "law" in the "Blackstonian sense of generally applicable rules of private conduct," the violation of which results in the deprivation of "core private rights." *Id.*, at 73, 76. These core private rights are the natural rights to life, liberty, and property. See 1 W. Blackstone, Commentaries on the Laws of England 123–136 (1765) (Blackstone); C. Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 566–567 (2007).

The nondelegation doctrine is also rooted in the Due Process Clause. That Clause prohibits the Federal Government from depriving any person of "life, liberty, or property, without due process of law." Amdt. 5. The Founders modeled it on chapter 39 of the Magna Carta, which prohibited the deprivation of a free man's private rights "except by the lawful judgment of his peers and by the law of the land." A. Howard, Magna Carta: Text and Commentary 45 (rev. ed. 1998); see *Obergefell* v. *Hodges*, 576 U. S. 644, 723 (2015) (THOMAS, J., dissenting). By the founding, the Magna

Carta was understood to mean that "no subject would be deprived of a private right—that is, a right of life, liberty, or property—except in accordance with 'the law of the land,' which consisted only of statutory and common law." *Association of American Railroads*, 575 U. S., at 72 (opinion of THOMAS, J.) (citing N. Chapman & M. McConnell, Due Process as Separation of Powers, 121 Yale L. J. 1672, 1688 (2012)).

A rule made by someone other than the legislature, such as the King, was not "'the law of the land.'" *Association of American Railroads*, 575 U. S., at 72 (opinion of THOMAS, J.). Chief Justice Coke famously held invalid the King's proclamation prohibiting new buildings in London because the King could not "create any offence" "without Parliament." *Case of Proclamations*, 12 Co. Rep. 74, 74–75, 77 Eng. Rep. 1352, 1353 (K. B. 1611); see *Association of American Railroads*, 575 U. S., at 72 (opinion of THOMAS, J.) (explaining that this principle was associated with chapter 39 of the Magna Carta). When the Founders transplanted the same principle into the Due Process Clause, they ensured that when the government wanted to deprive people of the familiar core private rights of "life, liberty, and property," it could not do so "on the basis of a rule (or a will) not enacted by the legislature." *Id.*, at 75–76.

B

Neither the Legislative Vesting Clause nor the Due Process Clause forbids Congress from delegating its other powers. As this Court put it two centuries ago, although Congress cannot delegate powers that are "strictly and exclusively legislative," it can "certainly delegate" others. *Wayman* v. *Southard*, 10 Wheat. 1, 42–43 (1825) (opinion for the Court by Marshall, C. J.).

Many of Congress's powers fall within the core legislative power subject to the nondelegation doctrine. For example, the Constitution gives Congress the power to regulate

commerce among the States. Art. I, §8, cl. 3. Congress can thus make substantive rules for interstate trade—such as by restricting drug shipments across state lines—punishable with fines or imprisonment. Cf. *Gonzales* v. *Raich*, 545 U. S. 1, 58 (2005) (THOMAS, J., dissenting). Likewise, the Constitution gives Congress many other powers that implicate life, liberty, and property, including the power to provide for the punishment of counterfeiting, Art. I, §8, cl. 6; the power to provide for the punishment of treason, Art. III, §3, cl. 2; and the power to impose internal taxes, Art. I, §8, cl. 1; Amdt. 16. These powers cannot be delegated, as I have repeatedly explained. See, *e.g.*, *Association of American Railroads*, 575 U. S., at 77 (opinion of THOMAS, J.); *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 487 (2001) (THOMAS, J., concurring). They cannot be delegated even if Congress delegates them unambiguously. Cf. *ante*, at 8 (opinion of ROBERTS, C. J.).

Congress also has many powers that are not subject to the nondelegation doctrine. "We now think of the powers listed in Article I, Section 8 as quintessentially legislative powers, but many of them were actual, former, or asserted powers of the Crown, which the drafters decided to allocate to the legislative branch." M. McConnell, The President Who Would Not Be King 274 (2020) (McConnell); accord, *Zivotofsky* v. *Kerry*, 576 U. S. 1, 36 (2015) (THOMAS, J., concurring in judgment in part and dissenting in part). These include the powers to raise and support armies, to fix the standards of weights and measures, to grant copyrights, to dispose of federal property, and, as discussed below, to regulate foreign commerce. Art. I, §8; Art. IV, §3. None of these powers involves setting the rules for the deprivation of core private rights. Blackstone called them "prerogative" powers, and sometimes "executive." See 1 Blackstone 242, 245, 255–262, 264–265, 276, 279; 2 *id.*, at 407, 410 (1766); 1 W. Crosskey, Politics and the Constitution in the History of the United States 416, 421–425 (1953); McConnell 274–

275. By one count, 13 of the 29 powers given to Congress in Article I were powers that "Blackstone described as 'executive' powers." 1 Crosskey, Politics and the Constitution, at 428.

For most of American history, the nondelegation doctrine was understood not to apply to these powers. Contra, *ante,* at 42–46 (GORSUCH, J., concurring). "The early congresses felt free to delegate certain powers to President Washington in broad terms." McConnell 333. Thus, the Constitution gives Congress the power to support armies, Art. I, §8, cl. 12, but Congress in 1789 delegated to the President the power to establish regulations for benefits to veterans wounded in the Revolutionary War. See Act of Sept. 29, 1789, ch. 24, 1 Stat. 95. The Constitution gives Congress the power to grant patents, Art. I, §8, cl. 8, but Congress in 1790 delegated to executive officials the power to grant patents in their discretion. See Act of Apr. 10, 1790, ch. 7, §1, 1 Stat. 109–110. The Constitution gives Congress the power to borrow money, Art. I, §8, cl. 2, but Congress in 1790 delegated to the President the power to borrow up to $12 million on behalf of the United States in his discretion. See Act of Aug. 4, 1790, §2, 1 Stat. 139. The Constitution gives Congress the power to raise armies, Art. I, §8, cl. 12, but Congress in 1791 delegated to the President the power to raise an army of 2,000 troops in his discretion. See Act of Mar. 3, 1791, §8, 1 Stat. 223. And, as I explain further below, see *infra*, at 13–15, the Constitution gives Congress the power to regulate foreign commerce, Art. I, §8, cl. 3, but early Congresses often delegated to the President the power to regulate foreign commerce. See, *e.g.*, Act of July 22, 1790, ch. 33, 1 Stat. 137; Act of June 4, 1794, ch. 41, 1 Stat. 372.

These early delegations had one thing in common: They did not implicate the Legislative Vesting Clause or the Due Process Clause. "None of these statutes disturbed natural rights or intruded into the core of the legislative power." McConnell 333; cf. A. Bamzai, Comment, Delegation and

Interpretive Discretion: *Gundy*, *Kisor*, and the Formation and Future of Administrative Law, 133 Harv. L. Rev. 164, 178 (2019). They therefore did not violate the nondelegation doctrine.

The Constitutional Convention seemed to agree with this understanding of delegation. Contra, *ante*, at 42 (GORSUCH, J., concurring). James Madison proposed an amendment clarifying that the President had the power " 'to execute such other powers'" as were " 'delegated by the national Legislature,'" so long as the delegated powers were " '"not Legislative nor Judiciary in their nature." ' " 1 Records of the Federal Convention of 1787, p. 67 (M. Farrand ed. 1966). Thus, in Madison's view, some of Congress's powers were "not Legislative" and could be "delegated" to the President. *Ibid.* Madison's proposal was rejected after others argued that it was unnecessary. *Ibid.* Madison agreed that the purpose of the proposed amendment was only to "prevent doubts and misconstructions." *Ibid.* Nobody disputed that Madison stated the correct scope of the nondelegation doctrine. *Ibid.*; see also McConnell 332 ("[W]e can infer [from Madison's motion] that the framers understood that Congress would be able to delegate its royal prerogative powers back to the President").[2]

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[2] Thus, although many used the word "legislative" in the broader sense to describe powers that should initially belong to the legislature, *ante,* at 42–43 (GORSUCH, J., concurring), the Founders likely understood the Legislative Vesting Clause to refer more narrowly to "core legislative power," *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 80 (2015) (THOMAS, J., concurring in judgment). That understanding accorded with the views of separation-of-powers theorists of the time, who distinguished the three core functions of government from the institutions that would exercise them in any given polity. S. Prakash & M. Ramsey, Foreign Affairs and the Jeffersonian Executive, 89 Minn. L. Rev 1591, 1612–1617 (2005); see 1 B. de Montesquieu, The Spirit of Laws 151–153 (T. Nugent transl., rev. ed. 1899). For nondelegation purposes, therefore, "[t]he key is to distinguish between strictly legislative authority—the power to make rules binding on persons or

II

As a matter of original understanding, historical practice, and judicial precedent, the power to impose duties on imports is not within the core legislative power. Congress can therefore delegate the exercise of this power to the President.

A

Neither of the two constitutional foundations for the nondelegation doctrine forbids Congress from delegating to the President the power to impose duties on imports.

1

The Legislative Vesting Clause provides no basis for applying the nondelegation doctrine to the power to impose duties on imports.

"The 'power over external affairs [is] in origin and essential character different from that over internal affairs.' " *Haaland* v. *Brackeen*, 599 U. S. 255, 356 (2023) (THOMAS, J., dissenting) (quoting *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 319 (1936)). Although internal affairs are governed by the domestic law of one sovereign, external affairs implicate the relationship between sovereigns, which is subject to the law of nations. See Locke §§145–148, at 383–384; 1 Blackstone 264; 4 *id.*, at 66–68 (1769); E. de Vattel, The Law of Nations 161–163, 281–289 (J. Chitty ed. 1852) (Vattel). External affairs, then, are not susceptible to being "directed by antecedent, standing, positive Laws" made by one nation. Locke §147, at 384. When a person goes abroad, he must resort to the political branches (and ultimately the military)—rather than the judiciary—for protection, can indebt the executive to foreign nations for his personal misconduct, and can trigger a foreign conflict. See Vattel 161–163, 281–289; 2 F. Wharton,

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property within the nation—and other powers assigned to Congress." McConnell 327.

Digest of International Law §222, pp. 575–576 (2d ed. 1887); see also *id.*, §§189, 213–221, at 432–445, 539–575.

The power to regulate external affairs was accordingly not viewed as within the core legislative power at the founding. See *Zivotofsky*, 576 U. S., at 35–37 (opinion of THOMAS, J.). Blackstone described powers over "intercourse with foreign nations" as "prerogative" powers naturally belonging to the King. 1 Blackstone 245; see *id.*, at 232. Locke agreed that this power "must be lodged" with the "executive." *Zivotofsky*, 576 U. S., at 35 (opinion of THOMAS, J.) (citing Locke §148). Baron de Montesquieu classified all powers "in respect to things dependent on the law of nations" as part of "the executive power." 1 The Spirit of Laws 151 (T. Nugent transl., rev. ed. 1899). The "legislative" power, by contrast, "applied only within the realm." McConnell 214.

The power to regulate external affairs included power over foreign commerce. At the founding, the "external executive power" included " 'the transactions of the state with any other independent state.' " *Zivotofsky*, 576 U. S., at 36 (opinion of THOMAS, J.). In Great Britain, the King had no unilateral legislative power, McConnell 107, but he had much unilateral power over foreign commerce. His power over foreign commerce included the power to "govern foreign trade," *id.*, at 216, and to "prohibit any of his subjects from leaving the realm," 1 Blackstone 261; accord, *East India Co.* v. *Sandys*, Skin. 223, 223–224, 90 Eng. Rep. 103 (K. B. 1684) (describing the "inherent prerogative in the Crown, that none should trade with foreigners without the King's licence"). Thomas Rutherforth's Institutes of Natural Law—"a treatise routinely cited by the Founders," *Zivotofsky*, 576 U. S., at 36 (opinion of THOMAS, J.)—explained that the "external executive power" included "the power of adjusting the rights of a nation in respect of . . . trade." 2 Institutes of Natural Law 55–56 (1756); accord, Locke §146, at 383. The power to impose duties on imports was a conventional method for governing foreign trade. It originated

as a "prerogative right" of the King, N. Gras, Early English Customs System 21 (1918).[3]

2

The Due Process Clause likewise provides no basis for applying the nondelegation doctrine to the power to impose duties on imports. The Due Process Clause protects "rights," not "privileges." *Gutierrez* v. *Saenz*, 606 U. S. 305, 331 (2025) (THOMAS, J., dissenting). Importing is a matter of privilege.

The government can charge money for privileges without depriving a person of property for due-process purposes. The government charges people money every day for a wide range of activities, such as to enter a government park, mail an envelope, apply for a copyright, or file a lawsuit. Because a person has no core private right to engage in these activities, the government is not subject to due-process restraints in setting such charges. The due-process question is not whether a government action " 'raise[s] revenue,' " *ante,* at 6 (majority opinion), but whether it implicates core private rights. *Supra*, at 3–4. Thus, when Congress delegates power to make "regulations" on federal land, the Secretary of Agriculture can set a "charge" for the "privilege of grazing sheep" on that land without thereby "exercis[ing] the legislative power." *United States* v. *Grimaud*, 220 U. S. 506, 522–523 (1911); see also Bamzai, 133 Harv. L. Rev., at 180–182; contra, *ante,* at 8 (opinion of ROBERTS, C. J.). Congress has, consistent with due process, delegated the power to set charges for a wide range of privileges. See 16 U. S. C. §6802 (delegating the power to set fees for entrance to and

[3] See also P. Einzig, The Control of the Purse: Progress and Decline of Parliament's Financial Control 65 (1959) ("[T]he origin of the term 'customs' is that it had been the ancient customary practice of the Crown to levy charges on imports and exports on its own authority"). Parliament took some of that prerogative power away, but delegated it back in broad terms to the King, see *id.*, at 65–70, who was still agreed to have no legislative power, McConnell 107–110.

use of federal recreation areas); 17 U. S. C. §1316 (delegating the power to "by regulation set reasonable fees" for applications); 39 U. S. C. §3622 (delegating the power to set postal rates); 28 U. S. C. §1911 ("The Supreme Court may fix the fees to be charged by its clerk").

A person had no core private right to import goods at the founding. On the Founders' understanding, statutes allowing "importation of goods from abroad were thought to create mere privileges rather than core private rights." Nelson, 107 Colum. L. Rev., at 580. Foreign commerce was governed by the law of nations, which is a law of "sovereigns," not of "private individuals." Vattel 285. "[A]ny attempt to introduce foreign goods" without the "expressed allowances" of the sovereign was "a violation of its sovereignty." *Cross* v. *Harrison*, 16 How. 164, 196 (1854). "Every state" had "a right to prohibit the entrance of *foreign merchandises*," including through the imposition of duties on imports. Vattel §§90, 99, at 38, 43. Because "no one had a vested right to import" any "goods from abroad," the imposition of "tariffs" as a condition for importing those goods did not implicate the Due Process Clause any more than when the government charges money for other privileges. Nelson, 107 Colum. L. Rev., at 580.

* * *

The power to impose duties on imports thus does not implicate either of the constitutional foundations for the nondelegation doctrine. Hence, even the strongest critics of delegation, myself included, have recognized that regulations of foreign commerce might not be subject to ordinary nondelegation limitations. See *FCC* v. *Consumers' Research*, 606 U. S. 656, 742, n. 19 (2025) (GORSUCH, J., dissenting) ("[I]t may be . . . that tariffs and domestic taxes present different contexts when it comes to the problem of delegation"); accord, *Association of American Railroads*, 575 U. S., at 80, and n. 5 (opinion of THOMAS, J.). So long as Congress

complies with other constitutional limitations, it can delegate this power.

B

Historical practice and precedent confirm that Congress can delegate the power to impose duties on imports.

1

Since the 1790s, Congress has consistently delegated to the President power over foreign commerce, including the power to impose duties on imports. "'Practically every volume of the United States Statutes'" contains broad delegations to the President in the area of foreign commerce. *Id.*, at 80, n. 5 (quoting *Curtiss-Wright Export Corp.*, 299 U. S., at 324).

The First Congress gave the President the power to "prescribe" "rules and regulations" that would "gover[n]" any person licensed to trade with Indians. 1 Stat. 137. Trade with Indians was regarded as "a matter of external relations." McConnell 333. In delegating this power, Congress did not specify or limit what kinds of regulations the President could impose. Act of July 22, 1790, 1 Stat. 137–138. Pursuant to that broad delegation, the President restricted trading "[d]istilled [s]pirits," required each trader to "give intelligence" to the Government, and subdelegated to his superintendents the power to "assign the limits within which each trader shall trade." 61 Timothy Pickering Papers, Massachusetts Historical Society 4 (Aug. 28, 1790); see also Letter from G. Washington to H. Knox (Aug. 13, 1790), in 6 Papers of George Washington 244–245 (D. Twohig ed. 1996). Any person who violated the President's regulations would owe $1,000 "payable to the President." 1 Stat. 137.

Succeeding early Congresses delegated many more powers over foreign commerce to the President. In 1794, Congress delegated to the President the power to "lay an

embargo on all ships and vessels in the ports of the United States," including ships belonging to Americans, unless Congress was in session. Act of June 4, 1794, 1 Stat. 372. It authorized the President to make "such regulations as the circumstances of the case may require" in exercising that delegated power. *Ibid.* Congress allowed the President to impose the embargo as "in his opinion, the public safety shall so require." *Ibid.* In 1795, Congress delegated to the President the power to "permit the exportation of arms, cannon and military stores, the law prohibiting the exportation of the same to the contrary notwithstanding." Act of Mar. 3, 1795, ch. 53, 1 Stat. 444. In 1798, Congress delegated to the President the power to discontinue "prohibitions and restraints" on commerce with France. Act of June 13, 1798, 1 Stat. 565–566; see also, *e.g.*, Act of Mar. 3, 1817, ch. 39, 3 Stat. 361–362 (delegating to the President the power to discontinue a ban on importation of plaster of Paris). In 1799, Congress delegated to the President the authority to discontinue and to reimpose "restraints and prohibitions" on commerce with France when he "deem[ed] it expedient and consistent with the interest of the United States." Act of Feb. 9, 1799, 1 Stat. 615. And, in 1800, Congress delegated to the President the power to remove a ban on trade with France, and to "re-establish" certain "restraints and prohibitions" when he "deem[ed] it expedient." Act of Feb. 27, 1800, 2 Stat. 9–10.[4]

Congress likewise delegated to the President the power to set duties on imports. In 1815, Congress delegated to the President the power to lower reciprocal duties when he was "satisfied" that other nations' trade practices no longer operated "to the disadvantage of the United States." Act of Mar. 3, 1815, ch. 77, 3 Stat. 224. In 1824, Congress

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[4] JUSTICE GORSUCH's interpretation of two "early congressional debates," *ante*, at 43 (concurring opinion), is thus difficult to reconcile with what early Congresses actually did.

delegated to the President the power to lower and to reimpose duties in response to foreign nations' trade practices. See Act of Jan. 7, 1824, 4 Stat. 2–3. Throughout the early decades of the Republic, Congress continued to delegate to the President similar powers over duties on imports on a regular basis. See, *e.g.*, Act of May 24, 1828, ch. 111, 4 Stat. 308; Act of May 31, 1830, ch. 219, 4 Stat. 425; Act of July 13, 1832, ch. 207, 4 Stat. 578–579. Presidents frequently changed the rates of duties on imports as to various foreign nations pursuant to these delegations.[5]

2

This Court has consistently upheld Congress's delegation of power over foreign commerce, including the power to impose duties on imports.

The Court has long conveyed to Congress that it may "invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, 691 (1892). Since shortly after the founding, the Court has rejected challenges to delegations of power over foreign commerce. See *Cargo of Brig Aurora* v. *United*

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[5] See, *e.g.*, July 24, 1818, Proclamation of President J. Monroe, in 2 Messages and Papers of the Presidents 606–607 (J. Richardson ed. 1897) (eliminating duties on "goods, wares, and merchandise imported into the United States" as to the Free Hanseatic city of Bremen); see also, *e.g.*, Aug. 1, 1818, Proclamation of President J. Monroe, in 2 *id.*, at 607; May 4, 1820, Proclamation of President J. Monroe, in 2 *id.*, at 642; Aug. 20, 1821, Proclamation of President J. Monroe, in 2 *id.*, at 665–666; Nov. 22, 1821, Proclamation of President J. Monroe, in 2 *id.*, at 666–667; June 7, 1827, Proclamation of President J. Quincy Adams, in 2 *id.*, at 942–943; July 1, 1828, Proclamation of President J. Quincy Adams, in 2 *id.*, at 970–971; May 11, 1829, Proclamation of President A. Jackson, in 3 *id.*, at 1003; June 3, 1829, Proclamation of President A. Jackson, in 3 *id.*, at 1004–1005; Apr. 28, 1835, Proclamation of President A. Jackson, in 3 *id.*, at 1365–1366; Sept. 1, 1836, Proclamation of President A. Jackson, in 3 *id.*, at 1452–1453; June 14, 1837, Proclamation of President M. Van Buren, in 4 *id.*, at 1539.

States, 7 Cranch 382, 386, 387–389 (1813). Even when a "challenged delegation, if it were confined to internal affairs, would be invalid," the Court has upheld the delegation. *Curtiss-Wright Export Corp.*, 299 U. S., at 315, 322. There is a "fundamental" difference, the Court has explained, between "foreign or external affairs" and "domestic or internal affairs." *Id.*, at 315. Thus, "Congress may of course delegate very large grants of its power over foreign commerce to the President," *Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.*, 333 U. S. 103, 109 (1948), including when it comes to imposing "duties" on imports, *Curtiss-Wright Export Corp.*, 299 U. S., at 325, n. 2.

When Congress has delegated to the President the power to impose duties on imports, this Court has upheld those delegations. In *Clark*, 143 U. S. 649, the Court upheld Congress's delegation to the President of the power to impose duties on nations whose importation policies "he may deem to be reciprocally unequal and unreasonable." *Id.*, at 680. It explained that Congress had "frequently, from the organization of the government to the present time," conferred powers over "trade and commerce" to "the President." *Id.*, at 683. In *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394 (1928), the Court upheld a delegation to the President to impose duties as necessary up to statutorily limited rates to make them reciprocal. *Id.*, at 401, 409. And, in *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548 (1976), the Court upheld a delegation of the power to impose a universal duty on imported oil. *Id.*, at 555, 558–560.[6]

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[6] The Court has even suggested that the President has inherent peacetime authority to impose duties on imports. After the Mexican-American War ended, executive officials imposed duties on imports at a California port within the United States before Congress had "passed an act to extend the collection of tonnage and import duties to the ports of California." *Cross* v. *Harrison*, 16 How. 164, 190 (1854); see also *id.*, at 192, 194–196. The executive officials unilaterally extended Congress's earlier

Although these cases involved duties on imports, the Court nowhere suggested that a different nondelegation rule applied because the duty was a "tax" or "raise[d] revenue." *Ante*, at 6 (majority opinion) (internal quotation marks omitted).[7]

III

Congress's delegation here was constitutional. The statute at issue in these cases, the International Emergency Economic Powers Act, delegates to the President a wide range of powers over foreign commerce. IEEPA gives the President, on conditions satisfied here, the power to "regulate" foreign commerce, including "importation" of foreign property. 50 U. S. C. §1702(a)(1)(B).

IEEPA's delegation of power to impose duties on imports complies with the nondelegation doctrine. Congress delegated to the President a version of the same power that it has delegated to him in many statutes since the early days of the Republic. See *supra*, at 13–17. Congress limited that delegation to foreign commerce. See §1702(a)(1)(B); see also §1701. In delegating the power to impose duties on imports, it gave the President no core legislative power to make substantive rules setting the conditions for deprivations of life, liberty, or property. Its delegation therefore complied with the constitutional separation of powers and is consistent with centuries of practice and precedent. It did not need to exercise that power itself and did not need to delegate it "unambiguously"—even though, as JUSTICE

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authorized duties to new ports. *Id.*, at 193. Although the Court's reasoning was somewhat opaque, the Court upheld the executive officials' unilateral peacetime duties in part because nobody has a right to "introduce foreign goods" except with the sovereign's "expressed allowances." *Id.*, at 196–197.

[7] In fact, less than a year ago, the Court explicitly rejected "a special nondelegation rule for revenue-raising legislation." *FCC* v. *Consumers' Research*, 606 U. S. 656, 674 (2025).

KAVANAUGH explains, it did. See *post*, at 38–45 (dissenting opinion).

The principal opinion bases its decision on the major questions doctrine. *Ante*, at 7–13 (opinion of ROBERTS, C. J.). In some cases, the Court has used the major questions doctrine as a canon of statutory interpretation because delegations of major powers are unlikely to be subtle. See, *e.g.*, *Whitman,* 531 U. S., at 468; see *ante,* at 8 (opinion of ROBERTS, C. J.); see also *Biden* v. *Nebraska*, 600 U. S. 477, 501–503 (2023). In other cases, the Court has used it to avoid what would have been originally understood as an unconstitutional delegation of legislative power. See, *e.g.*, *West Virginia* v. *EPA*, 597 U. S. 697, 723 (2022); *ante,* at 8 (opinion of ROBERTS, C. J.). In today's cases, neither the statutory text nor the Constitution provide a basis for ruling against the President. I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

Nos. 24–1287 and 25–250

LEARNING RESOURCES, INC., ET AL., PETITIONERS
24–1287 *v.*
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
25–250 *v.*
V.O.S. SELECTIONS, INC., ET AL.

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

[February 20, 2026]

JUSTICE KAVANAUGH, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

Acting pursuant to his statutory authority to "regulate . . . importation" under the 1977 International Emergency Economic Powers Act, or IEEPA, the President has imposed tariffs on imports of foreign goods from various countries. The tariffs have generated vigorous policy debates. Those policy debates are not for the Federal Judiciary to resolve. Rather, the Judiciary's more limited role is to neutrally interpret and apply the law. The sole legal question here is whether, under IEEPA, tariffs are a means to "regulate . . . importation." Statutory text, history, and precedent demonstrate that the answer is clearly yes: Like quotas and embargoes, tariffs are a traditional and common tool to regulate importation.

Since early in U. S. history, Congress has regularly authorized the President to impose tariffs on imports of foreign goods. Presidents have often used that authority to obtain leverage with foreign nations, help American manufacturers and workers compete on a more level playing field, and generate revenue for the United States. Numerous laws such as the Trade Expansion Act of 1962 and the Trade Act of 1974 continue to authorize the President to place tariffs on foreign imports in a variety of circumstances, and Presidents have often done so. In recent years, Presidents George W. Bush, Obama, and Biden have all imposed tariffs on foreign imports under those statutory authorities.

President Trump has similarly imposed tariffs, and has done so here under IEEPA. During declared national emergencies, IEEPA broadly authorizes the President to regulate international economic transactions. Most relevant for this case, during those national emergencies, IEEPA grants the President the power to "regulate . . . importation" of foreign goods.

In early 2025, President Trump declared two national emergencies pursuant to the National Emergencies Act. See 50 U. S. C. §1621(a). One emergency concerned drug trafficking into the United States. The other emergency involved trade imbalances with foreign nations that have harmed American manufacturers and workers.

To help address those emergencies, the President drew upon his authority in IEEPA to "regulate . . . importation," and he imposed tariffs on imports from various countries.

The plaintiffs argue and the Court concludes that the President lacks authority under IEEPA to impose tariffs. I disagree. In accord with Judge Taranto's careful and persuasive opinion in the Federal Circuit, I would conclude that the President's power under IEEPA to "regulate . . . importation" encompasses tariffs. As a matter of ordinary meaning, including dictionary definitions and historical

usage, the broad power to "regulate . . . importation" includes the traditional and common means to do so—in particular, quotas, embargoes, and tariffs.

History and precedent confirm that conclusion. In 1971, President Nixon imposed 10 percent tariffs on almost all foreign imports. He levied the tariffs under IEEPA's predecessor statute, the Trading with the Enemy Act, which similarly authorized the President to "regulate . . . importation." The Nixon tariffs were upheld in court.

Moreover, in 1976, a year before IEEPA was enacted, this Court unanimously ruled that a similarly worded statute authorizing the President to "adjust the imports" permitted President Ford to impose monetary exactions on foreign oil imports. See *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548 (1976) (*Algonquin*).

For both the Nixon tariffs and the Ford tariffs upheld by this Court in *Algonquin*, the relevant statutory provisions did not specifically refer to "tariffs" or "duties," but instead more broadly authorized the President to "regulate . . . importation" or to "adjust the imports." Therefore, when IEEPA was enacted in 1977 in the wake of the Nixon and Ford tariffs and the *Algonquin* decision, Congress and the public plainly would have understood that the power to "regulate . . . importation" included tariffs. If Congress wanted to exclude tariffs from IEEPA, it surely would not have enacted the same broad "regulate . . . importation" language that had just been used to justify major American tariffs on foreign imports.

Importantly, IEEPA's authorization for the President to impose tariffs did not grant the President any new substantive power. Since the Founding, numerous statutes have authorized—and still do authorize—the President to impose tariffs and other foreign import restrictions. IEEPA merely allows the President to impose tariffs somewhat more efficiently to deal with foreign threats during national emergencies.

Context and common sense buttress that interpretation of IEEPA. The plaintiffs and the Court acknowledge that IEEPA authorizes the President to impose quotas or embargoes on foreign imports—meaning that a President could completely block some or all imports. But they say that IEEPA does not authorize the President to employ the lesser power of tariffs, which simply condition imports on a payment. As they interpret the statute, the President could, for example, block all imports from China but cannot order even a $1 tariff on goods imported from China.

That approach does not make much sense. Properly read, IEEPA does not draw such an odd distinction between quotas and embargoes on the one hand and tariffs on the other. Rather, it empowers the President to regulate imports during national emergencies with the tools Presidents have traditionally and commonly used, including quotas, embargoes, and tariffs.

The Court today nonetheless concludes otherwise and holds that IEEPA does not authorize the President to impose tariffs to deal with the declared drug trafficking and trade deficit emergencies. But the Court's decision is splintered. In today's six-Justice majority, three Justices (JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON) interpret IEEPA not to authorize tariffs as a matter of ordinary statutory interpretation. I disagree for the reasons noted above and elaborated on at length in this opinion.

Three other Justices (THE CHIEF JUSTICE, JUSTICE GORSUCH, and JUSTICE BARRETT) lean on the major questions canon of statutory interpretation to resolve this case. That important canon requires "clear congressional authorization" for an executive action of major economic and political significance, particularly when the Executive exercises an "unheralded" power. *West Virginia* v. *EPA*, 597 U. S. 697, 722–723 (2022) (quotation marks omitted).

In my view, as I will explain, the major questions canon does not control here for two alternative and independent reasons.

First, the statutory text, history, and precedent constitute "clear congressional authorization" for the President to impose tariffs under IEEPA. In particular, throughout American history, Presidents have commonly imposed tariffs as a means to "regulate . . . importation." So tariffs were not an "unheralded" power when Congress enacted IEEPA in 1977 and authorized the President to "regulate . . . importation" of foreign goods. Therefore, the major questions doctrine is satisfied here. Cf. *Biden* v. *Missouri*, 595 U. S. 87 (2022) (*per curiam*).

Second, in any event, the Court has *never* before applied the major questions doctrine in the foreign affairs context, including foreign trade. Rather, as Justice Robert Jackson summarized and remains true, this Court has always recognized the "'unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed.' " *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 636, n. 2 (1952) (concurring opinion) (quoting *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 321–322 (1936)). In foreign affairs cases, courts read the statute as written and do not employ the major questions doctrine as a thumb on the scale against the President.

Although I firmly disagree with the Court's holding today, the decision might not substantially constrain a President's ability to order tariffs going forward. That is because numerous other federal statutes authorize the President to impose tariffs and might justify most (if not all) of the tariffs at issue in this case—albeit perhaps with a few additional procedural steps that IEEPA, as an emergency statute, does not require. Those statutes include, for example, the Trade Expansion Act of 1962 (Section 232); the Trade Act of 1974 (Sections 122, 201, and

301); and the Tariff Act of 1930 (Section 338). In essence, the Court today concludes that the President checked the wrong statutory box by relying on IEEPA rather than another statute to impose these tariffs.

In the meantime, however, the interim effects of the Court's decision could be substantial. The United States may be required to refund billions of dollars to importers who paid the IEEPA tariffs, even though some importers may have already passed on costs to consumers or others. As was acknowledged at oral argument, the refund process is likely to be a "mess." Tr. of Oral Arg. 153–155. In addition, according to the Government, the IEEPA tariffs have helped facilitate trade deals worth trillions of dollars—including with foreign nations from China to the United Kingdom to Japan, and more. The Court's decision could generate uncertainty regarding those trade arrangements.

In any event, the only issue before the Court today is one of law. In light of the statutory text, longstanding historical practice, and relevant Supreme Court precedents, I would conclude that IEEPA authorizes the President to "regulate . . . importation" by imposing tariffs on foreign imports during declared national emergencies. I therefore respectfully dissent.[1]

I

Before turning to the specifics of IEEPA's text, history, and precedent, I briefly review several fundamental constitutional principles about the roles of the three branches of the U. S. Government with respect to this case.

First, the plaintiffs and their *amici*, echoed by the Court, rhetorically emphasize that Article I, Section 8, of the Constitution assigns Congress, not the President, authority

[1] In this dissent, when I refer to "THE CHIEF JUSTICE's opinion," I am referring to the parts of THE CHIEF JUSTICE's opinion that speak for only three Justices—namely, Parts II–A–2 and III.

over tariffs. *Ante,* at 5. That rhetoric is a red herring in this case because no one disputes the point. Everyone, including the President, agrees that Congress possesses constitutional authority over tariffs.

The important principle here, as everyone also acknowledges, is that Congress may in turn authorize the President to impose tariffs. Cf. *FCC* v. *Consumers' Research*, 606 U. S. 656, 673–675 (2025); *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 409–410 (1928). Indeed, since the beginning of the Republic, Congress has regularly empowered the President to order tariffs and other foreign import restrictions under various circumstances. As noted above, many current federal laws continue to grant the President expansive tariff authority, including the Trade Expansion Act of 1962 (Section 232); the Trade Act of 1974 (Sections 122, 201, and 301); and the Tariff Act of 1930 (Section 338). Neither the plaintiffs nor the Court has suggested that the numerous laws granting tariff power to the President violate the Constitution's separation of powers.

Second, and relatedly, the President does not claim unilateral authority to impose IEEPA tariffs without congressional authorization or over a congressional prohibition. On the contrary, the President's argument recognizes that, in exercising his statutory tariff power under IEEPA, he must act within the scope of Congress's authorizations and abide by Congress's limitations. And the Executive has further acknowledged that the Judiciary maintains the final word in justiciable cases on whether Congress has authorized the President to impose those tariffs under IEEPA. See *Trump* v. *CASA, Inc.*, 606 U. S. 831, 859–860, n. 18 (2025); cf. *Marbury* v. *Madison*, 1 Cranch 137, 177–178 (1803).

The President here contends only that Congress, by enacting IEEPA in 1977, authorized the President to impose tariffs on foreign imports in declared national

emergencies. To use the familiar vernacular of Justice Robert Jackson in *Youngstown*, the President argues that this case falls into category one, where the President is acting "pursuant to an express or implied authorization of Congress." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 635 (1952) (concurring opinion). The President has not here asserted authority to impose IEEPA tariffs in a peacetime emergency in a *Youngstown* category two or three scenario. *Id.*, at 637–638.[2]

Third, Congress possesses a variety of tools to limit the President's tariffs—directly via new legislation or, perhaps more readily, by not approving annual appropriations necessary for the Executive Branch to continue to implement the tariffs. See *Biden* v. *Nebraska*, 600 U. S. 477, 505 (2023) ("Among Congress's most important authorities is its control of the purse").

Importantly, the House, the Senate, and the President annually approve most appropriations. As a result, each House of Congress and the President independently possesses *de facto* veto power over particular appropriations.[3]

Of course, many different appropriations items are usually considered and packaged together, so the negotiations can be complex. But the point stands: Congress is not a helpless bystander when it comes to the President's exercise of tariff authority under IEEPA. Cf. Ike Skelton National Defense Authorization Act for Fiscal Year 2011, 124 Stat. 4351–4352 (barring Executive from

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[2] Category two applies when "the President acts in absence of either a congressional grant or denial of authority." *Youngstown,* 343 U. S., at 637 (Jackson, J., concurring). Category three occurs when "the President takes measures incompatible with the expressed or implied will of Congress." *Ibid.*

[3] Two technical points for clarity: Given current Senate filibuster rules, a determined *minority* of the Senate could block an appropriation. Also, even over a Presidential veto, two-thirds of both Houses could together approve certain appropriations.

using funds to transfer detainees from Guantanamo into United States); Boland Amendment, 98 Stat. 1935–1936 (1984) (barring certain Executive Branch agencies from providing aid to Contras in Nicaragua).

In Congress, moreover, everything is related to everything else, as the saying goes. Members and Committees of Congress possess substantial tools of leverage over the Executive Branch. Cf. The Federalist No. 51, p. 322 (C. Rossiter ed. 1961) (J. Madison). Congress could, for example, wield its authority over oversight, legislation, confirmations, or appropriations to pressure the President to reduce or eliminate some or all of the IEEPA tariffs.

In light of Congress's appropriations authority and its other robust powers, it is not correct to suggest—as THE CHIEF JUSTICE's opinion today elliptically does, *ante*, at 9—that two-thirds majorities of both Houses of Congress would need to pass new legislation over a Presidential veto in order to limit these IEEPA tariffs or, more generally, to restrict the President's use of IEEPA to impose tariffs.

II

This case presents one straightforward question of statutory interpretation: Does Congress's explicit grant of authority in IEEPA for the President to "regulate . . . importation" of foreign goods in declared national emergencies authorize the President to impose tariffs? The answer is a clear yes.[4]

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[4] The relevant statutory provision provides in full:

"At the times and to the extent specified in section 1701 of this title, *the President may*, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

. . . . . .

"(B) investigate, block during the pendency of an investigation, *regulate*, direct and compel, nullify, void, prevent or prohibit, any

A

I begin as always with the statutory text.

In 1941, a few days after Pearl Harbor, Congress first enacted the relevant language, "regulate . . . importation," in an amendment to the 1917 Trading with the Enemy Act, known as TWEA. 55 Stat. 839; 40 Stat. 411. After that 1941 amendment, TWEA authorized the President to "regulate . . . importation" both during wartime and during peacetime national emergencies.

Then, in 1977, Congress split TWEA into two separate statutes. As relevant here, Congress amended TWEA to authorize the President to "regulate . . . importation" during wartime only. 91 Stat. 1625. And Congress enacted a separate statute, IEEPA, that granted the President the power to "regulate . . . importation" during peacetime national emergencies. *Id.*, at 1626.

The relevant IEEPA text authorized the President to "regulate . . . importation" "by means of instructions, licenses, *or otherwise*." *Ibid.*; 50 U. S. C. §1702(a)(1) (emphasis added). As the term "otherwise" indicates, the broadly worded statute did not exclude tariffs or dictate any specific means of regulating importation.[5]

At the time of TWEA's amendment in 1941 and IEEPA's enactment in 1977, the ordinary dictionary meaning of "regulate" was to "control," to "adjust by rule," or to "subject

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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) (emphasis added).

[5] Congress no doubt appreciated that quotas, embargoes, tariffs, and the like can be powerful tools for regulating foreign commerce. Congress calibrated the statute by exempting various categories of goods, meaning that those categories of goods are not subject to tariffs under IEEPA. §1702(b).

to governing principles or laws." Black's Law Dictionary 1156 (5th ed. 1979); see also Black's Law Dictionary 1519 (3d ed. 1933) (same); Webster's Third New International Dictionary 1913 (1976) (defining "regulate" as "to govern or direct according to rule" and "to bring under the control of law or constituted authority"); American Heritage Dictionary 1096 (1969) ("[t]o control or direct according to a rule"; "[t]o adjust in conformity to a specification or requirement").

Imposing tariffs on imports is clearly a way of controlling imports (Black's); governing or directing imports according to rule (Webster's, American Heritage); adjusting imports by rule, method, or established mode (Black's, American Heritage); or more generally subjecting imports to governing principles or laws (Black's). So the dictionary definitions amply demonstrate that tariffs are a means to "regulate . . . importation" of foreign imports.[6]

Consistent with those dictionary definitions and statutory references, tariffs historically have been—and still are—a common means for the United States to regulate importation of foreign goods. See, *e.g.*, Section 338 of the Tariff Act of 1930, 46 Stat. 704–706 (19 U. S. C. §1338); Section 232 of the Trade Expansion Act of 1962, 76 Stat. 877 (19 U. S. C. §1862); Title II of the Trade Act of 1974, 88 Stat. 2011 (19 U. S. C. §2251 *et seq.*); Title III of the Trade Act of 1974, 88 Stat. 2041 (19 U. S. C. §2411 *et seq.*).[7]

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[6] As other statutory authorities textually confirm, moreover, Congress has long understood tariffs to be a tool for regulating imports. For example, Section 350 of the Tariff Act of 1930 refers to "duties and other import restrictions." 19 U. S. C. §§1351(a)(1)(B), (c). And Section 122 of the Trade Act of 1974 uses the phrase "restrict imports" to cover duties. §2132(a). Both statutes take it as a given, therefore, that tariffs are a means of regulating imports.

[7] As the parties and the Court use the terms, "tariffs" and "duties" are synonymous.

In determining the ordinary meaning of "regulate . . . importation," the meaning of the related phrase "regulate commerce" is also instructive. That phrase has long been interpreted to encompass tariffs. Since the Founding, the Constitution's assignment to Congress of the broad power to "regulate" foreign commerce has been understood to include tariffs on foreign imports. See Art. I, §8. As Chief Justice Marshall explained, the "right to *regulate* commerce, *even by the imposition of duties*, was not controverted." *Gibbons* v. *Ogden*, 9 Wheat. 1, 202 (1824) (emphasis added). So too Justice Story: The "power to *regulate* commerce *includes the power of laying duties* to countervail the regulations and restrictions of foreign nations." 2 J. Story, Commentaries on the Constitution of the United States 530 (1833) (emphasis added). And still more Story: To "lay duties" is a "common means of executing the power" to "*regulate* commerce." *Id.*, at 531 (emphasis added). James Madison likewise stated that it cannot "be inferred" that the "power to *regulate* trade does not involve a power to tax it." Letter from J. Madison to J. Cabell, Sept. 18, 1828, in 9 Writings of James Madison 326 (G. Hunt ed. 1910) (emphasis added).

Marshall, Story, and Madison make for a formidable trio. And this Court has long echoed the Marshall-Story-Madison understanding that tariffs "*regulate*" foreign commerce. The "laying of a duty on imports, although an exercise of the taxing power, is also an exercise of the power to *regulate foreign commerce*." *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414, 428 (1940) (emphasis added). And again: Even though "the taxing power is a distinct power and embraces the power to lay duties, it does not follow that duties may not be imposed in the exercise of the power to *regulate commerce*. The contrary is well established."

Board of Trustees of Univ. of Ill. v. *United States*, 289 U. S. 48, 58 (1933) (emphasis added).[8]

The plaintiffs and the Court today seize on the word "regulate" in isolation, and say that it does not encompass the power to tariff. *Ante*, at 14–16. But the relevant statutory phrase is "regulate . . . importation." And we must look to the meaning of the phrase as a whole, as our precedents dictate. See *FCC* v. *AT&T Inc.*, 562 U. S. 397, 406 (2011) ("[T]wo words together may assume a more particular meaning than those words in isolation"). As I have explained, since the Founding, tariffs on foreign imports have been a common means of regulating foreign commerce, including imports. Notably, under the Court's reading of the word "regulate," Marshall, Story, and Madison all erred by concluding that the power to "regulate" foreign commerce includes the power to impose tariffs on foreign imports. That seems dubious.

If the Federal Government's constitutional power to "regulate" foreign commerce includes tariffs (as this Court has repeatedly said), and if the power to "regulate . . . importation" is the power to regulate foreign commerce with respect to imports (as it plainly is), then IEEPA's authorization for the President to "regulate . . . importation" clearly encompasses tariffs. Historical usage and that textual syllogism further buttress the dictionary definitions and help establish that tariffs are a means to regulate importation.[9]

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[8] Importantly, those historical sources also fully demonstrate that the Foreign Commerce Clause, not just the Taxing Clause, authorizes tariffs on foreign imports. See *Board of Trustees of Univ. of Ill.*, 289 U. S., at 58.

[9] The plaintiffs and the Court offer a double-bankshot argument that "regulate . . . importation" cannot include monetary exactions because IEEPA also authorizes the President to "regulate . . . exportation," and imposing duties on exports would violate the Constitution. *Ante,* at 15. But as the Government thoroughly explains, when a statute contains a

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Perhaps even more significantly, when IEEPA was enacted in 1977, Congress and the public clearly would have understood that the phrase "regulate . . . importation" encompassed tariffs. We know as much not only because of the dictionary definitions and the traditional understanding of tariffs as a tool to regulate foreign imports. We also know as much because of tariffs imposed by two Presidents and approved by federal courts, including the Supreme Court, in the years shortly before IEEPA's 1977 enactment.

First, in 1971, President Nixon imposed 10 percent tariffs across the board on virtually all imports from every country in the world. Presidential Proclamation No. 4074, 3 CFR 60–61 (1971–1975 Comp.). Those tariffs were justified under IEEPA's predecessor statute, the Trading with the Enemy Act, or TWEA.[10] Like IEEPA now, TWEA at that time authorized the President to "regulate . . . importation" during national emergencies, as well as wartime. And like IEEPA now, TWEA did not specifically use the words "tariff " or "duty."

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long string of verbs and nouns, each term should be understood in context. The relevant section of IEEPA contains 9 verbs and 11 objects, for a total of 99 combinations. We do not need to construe each word of the statute to ensure that it is perfectly aligned in all 99 pairings. See Reply Brief 17; *Robers* v. *United States*, 572 U. S. 639, 643–644 (2014); *Department of Agriculture Rural Development Rural Housing Service* v. *Kirtz*, 601 U. S. 42, 61 (2024) (We may not "disregard the statute's clear terms" simply because there may be "a valid constitutional defense" to some applications).

[10] President Nixon did not explicitly cite the "regulate . . . importation" language of TWEA when imposing those worldwide tariffs. But that merely reflected a diplomatic nicety given the title of the "Trading with the Enemy Act" and the desire to avoid publicly suggesting that allies were enemies. Once in court, the President openly invoked the "regulate . . . importation" language of TWEA as justification for the tariffs. See *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 569–571 (CCPA 1975).

The Nixon tariffs did not fly below the radar. On the contrary, President Nixon announced the worldwide 10 percent tariffs in a primetime address to the Nation on August 15, 1971. He imposed the tariffs as a tool "to make certain that American products will not be at a disadvantage" and that "the product of American labor will be more competitive." Public Papers of the Presidents, Richard Nixon, Aug. 15, 1971, p. 889. President Nixon sought to remove "the unfair edge that some of our foreign competition has," and he declared that when "the unfair treatment is ended, the import tax will end." *Ibid*.

The Nixon tariffs applied to almost all imports of foreign goods into the United States. And the tariffs had no time limit. To be sure, they did not end up lasting forever. But President Nixon terminated them only because the tariffs (as intended) induced major American trading partners to negotiate new agreements. Presidential Proclamation No. 4098, 3 CFR 94 (1971–1975 Comp.).

The Nixon tariffs garnered substantial national and international attention, and were generally popular in Congress. Predictably, however, the tariffs sparked litigation challenges. In 1975, the Court of Customs and Patent Appeals, the predecessor to the Federal Circuit, upheld the Nixon tariffs as a lawful exercise of the President's authority to "regulate . . . importation" under TWEA. *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 576, 583–584. The losing plaintiffs did not seek further review in this Court.

Two years later in 1977, when Congress divided TWEA into two, Congress retained that same "regulate . . . importation" language in both laws—in TWEA for wartime and in IEEPA for peacetime national emergencies. In doing so, Members of Congress were plainly aware—after all, how could they not be—that the "regulate . . . importation" language had recently been invoked by the President and interpreted by the courts to encompass tariffs. Indeed, the

House Committee Report noted that the relevant "regulate . . . importation" provision in TWEA "came into play when, on August 15, 1971, President Nixon declared a national emergency with respect to the balance-of-payments crisis and under that emergency imposed a surcharge on imports." H. R. Rep. No. 95–459, p. 5 (1977). The Report further referenced the appeals court's holding in *Yoshida* that TWEA "authorized imposition of duties" because of "the existence of the national emergency." H. R. Rep. No. 95–459, at 5.[11]

The Nixon tariffs persuasively demonstrate that Members of Congress and the public would have understood the phrase "regulate . . . importation" to include tariffs when IEEPA was enacted in 1977. If Congress wanted to exclude tariffs from IEEPA's scope, why would it enact the exact statutory language from TWEA that had just been invoked by the President and interpreted by the courts to cover tariffs? Neither the plaintiffs nor the Court today offers a good answer to that question. Understandably so, because there is no good answer.

The Court tries to dodge the force of the Nixon tariffs by observing that one appeals court's interpretation of "regulate . . . importation" to uphold President Nixon's tariffs does not suffice to describe that interpretation as "well-settled" when IEEPA was enacted in 1977. *Ante*, at 17–18. Fair enough. But that is not the right question. The question is what Members of Congress and the public would have understood "regulate . . . importation" to mean when Congress enacted IEEPA in 1977. See *New Prime Inc.* v. *Oliveira*, 586 U. S. 105, 113 (2019). Given the significant and well-known Nixon tariffs, it is entirely implausible to

[11] I cite the Committee Report not for determining the meaning of IEEPA, but rather to help show as an historical and factual matter that Members of Congress were aware of both the Nixon tariffs and the appeals court decision upholding those tariffs as a tool to "regulate . . . importation."

think that Congress's 1977 re-enactment of the phrase "regulate . . . importation" in IEEPA was somehow meant or understood to exclude tariffs.[12]

Second, if one holds any lingering doubts about Congress's and the public's understanding of the power to "regulate . . . importation" as of 1977, a second episode shortly before IEEPA's enactment should answer them.

In 1975, President Ford imposed significant monetary exactions on foreign imports of oil. Presidential Proclamation No. 4341, 3 CFR 433 (1971–1975 Comp.). He acted under Section 232 of the Trade Expansion Act of 1962. Like TWEA and IEEPA, the relevant provision of Section 232 did not use the word "tariff" or "duty." Rather, Section 232 broadly authorized the President to "adjust the imports" of a product, 19 U. S. C. §1862(b) (1970 ed.)—language akin to the "regulate . . . importation" language in IEEPA and TWEA.

In contrast to the Nixon tariffs, the Ford tariffs on oil imports generated some pushback in Congress. And a group of utility companies and States quickly sued, arguing that the relevant statutory phrase "adjust the imports" did not authorize monetary exactions such as tariffs.

Over a dissent, the D. C. Circuit agreed with the plaintiffs challenging the Ford tariffs. Much like the Court's decision today, the D. C. Circuit in the Ford matter concluded that Congress must explicitly authorize monetary exactions and that the applicable statutory phrase, "adjust the imports," did not do so. *Algonquin SNG,*

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[12] THE CHIEF JUSTICE's opinion also tries to dismiss President Nixon's tariffs as being of "limited amount, duration, and scope." *Ante*, at 10, n. 3. That claim appears incorrect on all three points, as Judge Taranto carefully explained in his Federal Circuit opinion. 149 F. 4th 1312, 1367–1369 (2025) (dissenting opinion). President Nixon imposed 10 percent tariffs on virtually all imports from every country in the world for an unspecified duration. See Presidential Proclamation No. 4074, 3 CFR 60–61 (1971–1975 Comp.).

Inc. v. *Federal Energy Admin.*, 518 F. 2d 1051, 1055 (CADC 1975).

In 1976, the Ford tariffs case came to the Supreme Court. In this Court, the plaintiffs pressed nearly identical arguments (and rhetorical flourishes) as those advanced by the plaintiffs and repeated by the Court in today's case.

The plaintiffs argued that the Ford-imposed monetary exactions involved "the broadest exercise of the tariff power in the history of the American Republic," reminiscent of "George III's stamp tax." Tr. of Oral Arg. in *Federal Energy Administration* v. *Algonquin SNG, Inc.*, O. T. 1975, No. 75–382, p. 26. They contended that the statute's authorization for the President to "adjust the imports" did not allow for such monetary exactions because the statute did "not mention the tariff on its face." *Ibid.* They asserted that this Court had "never implied a tax, never in the history of this Court from language which does not explicitly provide for tax, and here there is no such language, there is no language that mentions a measure of tax nor a method of calculation of tax. There is no such thing." *Id.*, at 33. They echoed the D. C. Circuit's holding that reading the phrase "adjust the imports" to encompass tariffs would be "an anomalous departure" from "the consistently explicit, well-defined manner in which Congress has delegated control over foreign trade and tariffs." *Algonquin*, 518 F. 2d, at 1055. And they claimed that interpreting the statute to include fees "undermines the whole tariff structure of the United States." Tr. of Oral Arg. in *Algonquin*, at 26.

Importantly, the *Algonquin* plaintiffs acknowledged (as do the plaintiffs and the Court in today's case) that the statutory language "adjust the imports" would allow the President to impose quotas and embargoes on foreign imports. See Brief for Respondents in *Algonquin,* No. 75–382, pp. 26–27, and n. 30. So a President could completely block all imports or limit their quantity. But according to the plaintiffs, Congress's "adjust the imports" language

precluded the President from exercising the lesser power of imposing monetary exactions such as tariffs.

The Supreme Court decided the Ford tariffs case in 1976. The Court unanimously reversed the D. C. Circuit and flatly rejected the plaintiffs' arguments. The Court held that the statutory phrase "adjust the imports"—even though it did not include terms such as "tariff," "tax," "duty," or "fee"—granted President Ford the authority to impose not only quotas and embargoes, but also monetary exactions on foreign imports. *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, 561 (1976).

The Court analyzed the statutory text and found "no support in the language of the statute" for the plaintiffs' argument that "adjust the imports" should "be read to encompass only quantitative methods—*i.e.*, quotas—as opposed to monetary methods—*i.e.*, license fees—of effecting such adjustments." *Ibid.* The Court further explained: "Unless one assumes, and we do not, that quotas will always be a feasible method of dealing directly with national security threats posed by the circumstances under which imports are entering the country, limiting the President to the use of quotas would effectively and artificially prohibit him from directly dealing with some of the very problems against which §232(b) is directed." *Id.*, at 561–562 (quotation marks omitted).

In short, according to the unanimous *Algonquin* Court, the statutory text, structure, and logic of Section 232 definitively established that the President's authority to "adjust the imports" encompassed not only quotas and embargoes, but also monetary exactions such as tariffs and fees.

Today's case should follow *a fortiori* from *Algonquin*. No meaningful daylight exists between the statutory phrase "adjust the imports" in Section 232 at issue in *Algonquin* and the phrase "regulate . . . importation" in IEEPA at

issue here. The plaintiffs and the Court in this case do not even try to distinguish "adjust the imports" from "regulate . . . importation." Nor could they. Recall that the dictionary definition of "regulate" includes "*adjust* by rule." Black's Law Dictionary, at 1156 (5th ed. 1979) (emphasis added). To adjust imports is to regulate imports. Indeed, if anything, the phrase "regulate . . . importation" is broader in scope than the phrase "adjust the imports."

So if Section 232's "adjust the imports" includes tariffs—as this Court unanimously concluded in *Algonquin* in 1976 just a year before IEEPA—how can IEEPA's "regulate . . . importation" not include tariffs?

Algonquin's importance for today's case rests not merely on its status as a unanimous on-point Supreme Court statutory precedent—although it is surely significant for that reason as well. The case is especially consequential for present purposes because it helps show the ordinary public and congressional understanding of "regulate . . . importation" in 1977 when Congress enacted IEEPA.

To be clear, the question here is not what individual Members of Congress might have subjectively intended in 1977. The question is the ordinary meaning and understanding of the words that Congress used. Given that the phrase "adjust the imports"—again, in a statutory provision that did not use specific words such as "tariff" or "duty"—was unanimously held by this Court in 1976 to include tariffs, and given that President Nixon had similarly relied on his statutory authority to "regulate . . . importation" to impose 10 percent tariffs on virtually all imports from all countries, could a rational citizen or Member of Congress in 1977 have understood "regulate . . . importation" in IEEPA not to encompass tariffs? I think not. Any citizens or Members of Congress in 1977 who somehow thought that the "regulate . . . importation" language in IEEPA excluded tariffs would have had their heads in the sand.

The Court today tries its best to distinguish *Algonquin* on the ground that Section 232 included "sweeping" language authorizing the President to take "such action" that "he deems necessary," whereas IEEPA does not. *Ante*, at 19. But the *Algonquin* Court did not rely on that language and instead focused on whether the phrase "adjust the imports" included monetary exactions. See 426 U. S., at 561. Moreover, IEEPA itself broadly authorizes the President to "regulate . . . importation" "by means of instructions, licenses, *or otherwise*" in order to "deal with" an "unusual and extraordinary" foreign "threat" to the "national security, foreign policy, or economy of the United States." 50 U. S. C. §§1701(a), 1702(a)(1)(B) (emphasis added). That language is similarly expansive, authorizing the President to employ various tools to "regulate . . . importation." In short, just as the phrase "adjust the imports" includes tariffs, as *Algonquin* held, so too the phrase "regulate . . . importation" includes tariffs.[13]

The Court also attempts to brush aside *Algonquin* by citing an entirely different provision of the Trade Expansion Act—one that was not at issue in *Algonquin*—that expressly refers to a "duty." *Ante*, at 19. But the *Algonquin* Court did not rely on—or even mention—that provision when concluding that the statutory phrase "adjust the imports" includes tariffs. For good reason. That provision, which states that "[n]o action shall be taken" to "decrease or eliminate" an existing "duty or other import restriction," 19 U. S. C. §1862(a) (1970 ed.), concerns only the power to reduce existing tariffs and plainly does not bear on a President's power to *impose* tariffs under Section 232.

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[13] In addition, IEEPA expressly authorizes the President to require licenses. And to obtain a license, a business may need to pay license fees that can be equivalent to tariffs. See §1702(a)(1).

To sum up on the Nixon and Ford tariffs: When enacting IEEPA in 1977, Congress employed the exact language recently invoked by President Nixon to justify 10 percent worldwide tariffs. And IEEPA came fast on the heels of this Court's unanimous 1976 decision in *Algonquin*, which held that substantially similar "adjust the imports" language authorized President Ford's tariffs on oil imports. Importantly, moreover, the statutory provisions authorizing the Nixon and Ford tariffs did not use specific words such as "tariff" or "duty."

The Nixon and Ford tariffs, this Court's decision in *Algonquin*, and the ordinary and historical understanding of tariffs as a means of regulating imports together render it all but impossible to conclude that Congress in 1977 implicitly excluded tariffs when retaining TWEA's "regulate . . . importation" language in IEEPA. If Congress in 1977 wanted to exclude tariffs from the President's IEEPA toolkit, either it would have not retained the phrase "regulate . . . importation," or it would otherwise have made clear in IEEPA that the power to impose tariffs was excluded. Congress did neither.

C

Two additional historical points strongly reinforce that analysis of text and precedent and further demonstrate that "regulate . . . importation" in IEEPA encompasses tariffs.

First, U. S. history from the 1800s through IEEPA's 1977 enactment illustrates how the statute came to incorporate the President's long-recognized authority to impose tariffs during wartime and then also during peacetime national emergencies.

Long before the initial 1917 enactment of the Trading with the Enemy Act, which was IEEPA's predecessor, the President possessed inherent wartime authority to prohibit commercial relations with enemy nations. That inherent

authority included the power to impose tariffs on foreign imports.

For example, during the Mexican-American War in the 1840s, President Polk permitted only limited trade with Mexico, subject to tariffs. Some Members of Congress publicly questioned whether the President possessed that tariff authority. In response, President Polk justified the tariffs on the ground that "the military right to exclude commerce altogether from the ports of the enemy in our military occupation included the minor right of admitting it under prescribed conditions." J. Polk, To the House of Representatives of the United States (Jan. 2, 1849), in 6 Compilation of the Messages and Papers of the Presidents 2522, 2523 (J. Richardson ed. 1897).

In 1854, the Supreme Court agreed with President Polk's view, stating: "No one can doubt" that the President, as "commander-in-chief of our naval force," possessed the authority to "regulate import duties." *Cross* v. *Harrison*, 16 How. 164, 189–190.

In 1862, President Lincoln partially lifted an existing blockade against the Confederate States during the Civil War. Like President Polk, he then permitted limited trade, subject to a monetary fee. A group of cotton sellers later sued, arguing that the fee "was essentially a tax and not authorized by any act of Congress, which alone had the power to impose taxes." *Hamilton* v. *Dillin*, 21 Wall. 73, 81 (1875). The Supreme Court rejected that argument, holding that there was "no question" that requiring a monetary fee to trade with the Confederate States was part of "the war power of the United States government." *Id.*, at 86–87. The existence of war meant "a suspension of commercial intercourse between the opposing sections of the country," so if "such a course of dealing were to be permitted at all, it would necessarily be upon such conditions as the government chose to prescribe." *Id.*, at 87.

And in 1898, during the Spanish-American War, President McKinley imposed duties "upon the occupation of any forts and places in the Philippine Islands." *Lincoln* v. *United States*, 197 U. S. 419, 428 (1905) (quotation marks omitted). This Court subsequently recognized those McKinley duties as a lawful wartime measure. *Id.*, at 427–428.

Why does that wartime history matter? Because when Congress first enacted the Trading with the Enemy Act in 1917 during World War I, it statutorily codified some of the President's longstanding inherent wartime powers over foreign trade, which included the power to tariff. See Trading with the Enemy Act, ch. 106, 40 Stat. 411; see also Brief for Professor Aditya Bamzai as *Amicus Curiae* 16–19, 26–27. For the duration of World War I, TWEA authorized the President, when he found "the public safety so requires," to make it unlawful "to import into the United States" from any "named" country certain goods "except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe." §11, 40 Stat. 422–423.

In 1933, during the Great Depression and five days after President Franklin Roosevelt took office, Congress expanded TWEA to apply not only in wartime, but also during a "national emergency" declared by the President. 48 Stat. 1.

Eight years later, in 1941, a few days after Pearl Harbor, Congress again amended TWEA's language by more succinctly providing that the President may "regulate" certain transactions, including "importation," under TWEA during war or "any other period of national emergency declared by the President." 55 Stat. 839.

So as of 1941—and from then to 1977—TWEA expressly authorized the President to "regulate . . . importation" both during wartime and during peacetime national emergencies. Historically, Presidents had regulated

importation by imposing tariffs, as the Polk, Lincoln, and McKinley tariffs illustrated. So TWEA from 1941 to 1977 was best understood to authorize tariffs. See Brief for Professor Aditya Bamzai as *Amicus Curiae* 27–28.

During that period, as I have discussed at length above, President Nixon in 1971 imposed 10 percent tariffs on almost all imports of foreign goods and relied on TWEA's "regulate . . . importation" language to justify them. Those tariffs were upheld in court.

Then, in 1977, Congress amended TWEA and divided it into two statutes. TWEA retained the President's power to "regulate . . . importation," but only during wartime. The newly enacted second law, IEEPA, also retained the power to "regulate . . . importation," and it would apply during periods of declared national emergencies. As this Court has previously recognized, IEEPA was "directly drawn" from TWEA, and the relevant authorities are essentially the same. *Dames & Moore* v. *Regan*, 453 U. S. 654, 671, 672–673 (1981).

Therefore, IEEPA's specific language—"regulate . . . importation"—was not new statutory text when Congress enacted IEEPA in 1977. Far from it. Beginning in 1941, TWEA had already authorized the President to "regulate . . . importation" of foreign goods in wartime and national emergencies. And the earlier Polk, Lincoln, and McKinley examples, as well as the later Nixon example, demonstrated that the power to "regulate . . . importation" historically encompassed tariffs as well as quotas and embargoes.

The plaintiffs and the Court today assert that wartime precedents do not govern peacetime. But Congress modeled IEEPA on TWEA precisely so that the President could continue to exercise certain wartime authorities such as quotas, embargoes, and tariffs during peacetime national emergencies as well. Congress first explicitly extended that wartime power to national emergencies in 1933, during the

Franklin Roosevelt Administration. Cf. *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 306 (1932) (Brandeis, J., dissenting) (The Great Depression was "an emergency more serious than war"). And Congress has continued to authorize the President to exercise that power in both wartime and peacetime emergencies.

In short, Congress in 1977 enacted the same "regulate . . . importation" language that had long been understood to encompass tariffs.

Second, contrary to the tenor of the plaintiffs' and the Court's arguments here, it would not have been at all unusual or surprising for Congress, when enacting IEEPA in 1977, to authorize the President to impose tariffs. Since the early days of the Republic, Congress has regularly granted the President the power to regulate foreign trade, including via tariffs.

A few examples: In 1810, Congress authorized the President to prohibit imports from Great Britain or France if either nation violated the neutral commerce of the United States. *Cargo of Brig Aurora* v. *United States*, 7 Cranch 382, 382–384, 388 (1813); 2 Stat. 606.

In 1890, Congress granted the President the power to impose import duties in response to duties imposed by other countries on American exports. *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, 680–681 (1892); 26 Stat. 612.

In 1922, Congress empowered the President to levy import duties under certain conditions. *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 400–402 (1928); 42 Stat. 941.

In 1930, Congress enacted Section 338 of the Tariff Act, which authorizes the President to impose tariffs when he finds that "any foreign country places any burden or disadvantage upon the commerce of the United States." 19 U. S. C. §1338(d); 46 Stat. 705.

In 1962, Congress authorized the President in Section 232 of the Trade Expansion Act to "adjust the imports" of a

foreign good that threatens to impair national security. §1862(c)(1)(A); 76 Stat. 877.

In 1974, under Section 201 of the Trade Act, Congress granted the President the power to "take all appropriate and feasible action within his power," including imposing a "duty" on imports that, according to the U. S. International Trade Commission, have caused or threatened "serious injury" to a domestic industry. §§2251(a), 2253(a)(1)(A), (3)(A); 88 Stat. 2014–2015.

So too, Section 301 authorizes the President to direct the U. S. Trade Representative to "impose duties" on countries engaging in unfair trade practices. §§2411(a), (c)(1)(B); 88 Stat. 2041–2042.

And Section 122 of the Act grants the President the power to impose a "temporary import surcharge" to "deal with large and serious United States balance-of-payment deficits." §2132(a)(1)(A); 88 Stat. 1987–1988.

Those many statutes definitively establish that Congress, since near the Founding, has delegated to the President broad power to impose tariffs on foreign imports. See also *ante,* at 13–15 (THOMAS, J., dissenting). So it would hardly have been unusual or surprising for Congress to have granted tariff power to the President during wartime and peacetime national emergencies, as it did in TWEA and IEEPA.

To be sure, given those other statutes that authorize the President to impose tariffs on foreign imports, one might reasonably ask: Why did the President need distinct tariff authority under IEEPA during peacetime emergencies—or, for that matter, under TWEA during wartime?

The basic answer is that IEEPA is an emergency statute that allows the President to impose tariffs somewhat more quickly, as would be expected in a declared national emergency. Similarly, in wartime, TWEA allows the President to impose tariffs more rapidly.

But critically, TWEA and IEEPA do not authorize the President to exercise some new substantive power. Rather, they authorize the President to exercise a commonly granted power—tariffs—more efficiently than under the many ordinary tariff statutes.

The plaintiffs and the Court assert that interpreting IEEPA to authorize tariffs would in effect evade specific limits on tariffs in certain other tariff statutes. But as Judge Taranto explained in the Federal Circuit, Congress in IEEPA understandably afforded the President more flexibility to act during declared emergencies, just as Congress had done in TWEA for wartime since 1917. See 149 F. 4th 1312, 1363–1366 (2025) (dissenting opinion).

Moreover, IEEPA is not a blank check. IEEPA contains its own limits, including the requirement that the tariffs deal with an unusual and extraordinary foreign threat, 50 U. S. C. §1701(b); a default 1-year limit on emergencies, §1622(d); an enumerated list of exceptions, §1702(b); and comprehensive congressional reporting requirements, §1703. And as noted above, each House of Congress possesses a variety of tools to revoke, limit, or influence a President's IEEPA or TWEA tariffs.

Relatedly, it is also not surprising that the many ordinary tariff statutes expressly refer to "tariffs," "duties," and the like, while IEEPA and TWEA do not. As Judge Taranto astutely explained, "Congress in those statutes was overwhelmingly focused on tariff issues," whereas "Congress in IEEPA (as in TWEA) was focused on the subject of emergencies and giving plainly broad emergency authority regarding foreign property." 149 F. 4th, at 1364 (dissenting opinion).

In sum, in authorizing the President to "regulate . . . importation," IEEPA embodies an "eyes-open congressional grant of broad emergency authority in this foreign-affairs realm, which unsurprisingly extends beyond authorities available under non-emergency laws, and Congress

confirmed the understood breadth by tying IEEPA's authority to particularly demanding procedural requirements for keeping Congress informed." *Id.*, at 1348.

D

Finally, all of that text, history, and precedent is further reinforced by two compelling pieces of context.

First, interpreting IEEPA to exclude tariffs creates nonsensical textual and practical anomalies. The plaintiffs and the Court do not dispute that the President can act in declared emergencies under IEEPA to impose quotas or even total embargoes on all imports from a given country. But the President supposedly cannot take the far more modest step of conditioning those imports on payment of a tariff or duty.

Textually, however, if quotas and embargoes are a means to regulate importation, how are tariffs not a means to regulate importation? Nothing in the text supports such an illogical distinction.

And it does not make much sense to think that IEEPA allows the President in a declared national emergency to, for example, shut off all or most imports from China, but not to impose even a $1 tariff on imports from China. As Judge Taranto forcefully pointed out in the Federal Circuit, tariffs are "just a less extreme, more flexible tool for pursuing the same objective of controlling the amount or price of imports that, after all, could be barred altogether." 149 F. 4th, at 1363 (dissenting opinion). All of that explains why this Court in *Algonquin* definitively rejected such a strange slice-and-dice approach to the President's statutory power to "adjust" imports. If quotas and embargoes are authorized, so are tariffs.

In short, whether through prohibiting imports via embargoes or regulating the quantity of imports through quotas or regulating the price of imports with tariffs, Congress granted the President flexibility in declared

national emergencies to take various actions affecting imports of foreign goods. The plaintiffs and the Court have no coherent textual or commonsensical explanation for why a rational Congress would, in such a momentous and carefully considered statute as IEEPA, grant the President the power to impose quotas and embargoes, but not tariffs, on foreign imports during emergencies.

Second, IEEPA was not debated and passed in a vacuum in 1977—it was enacted around the same time that Congress significantly *constrained* executive power in multiple ways in the wake of Watergate and Vietnam. The list of major new statutory restrictions on Presidential power enacted in the 1970s is long and extraordinary, with lasting effects to the present day.[14]

And Congress, during that comprehensive examination and recalibration of government power, did not overlook TWEA and the President's emergency authorities. Led by Senators Church and Mathias, Congress carefully studied the President's emergency authorities, including TWEA. Then, in 1976 and 1977, Congress enacted a variety of legislation to tighten up the President's emergency powers, including by passing a new National Emergencies Act that cabined the President's authority to declare emergencies by setting forth various procedural requirements.

Yet when enacting IEEPA in 1977, Congress continued to grant the President the power to "regulate . . . importation"

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[14] See, *e.g.*, Ethics in Government Act of 1978, 92 Stat. 1824, reenacted at 5 U. S. C. §13101 *et seq.*; Inspector General Act of 1978, 92 Stat. 1101, reenacted at 5 U. S. C. §401 *et seq.*; Presidential Records Act of 1978, 92 Stat. 2523, as amended, 44 U. S. C. §2201 *et seq.*; Federal Advisory Committee Act, 86 Stat. 770, as amended, 5 U. S. C. §1001 *et seq.*; Foreign Intelligence Surveillance Act of 1978, 92 Stat. 1783, as amended, 50 U. S. C. §1801 *et seq.*; Congressional Budget and Impoundment Control Act of 1974, 88 Stat. 297, as amended, 2 U. S. C. §621 *et seq.*; 1974 Amendments to the Freedom of Information Act, 88 Stat. 1561, as amended, 5 U. S. C. §552; War Powers Resolution, 87 Stat. 555, 50 U. S. C. §1541 *et seq.*

in declared national emergencies—a power that the President had possessed since 1941 under TWEA and that had recently been invoked by President Nixon to justify his 1971 tariffs. In IEEPA (and TWEA) in 1977, Congress consciously balanced concerns about expansive exercises of emergency powers against the necessity of equipping the President with tools to address exigencies that are difficult if not impossible to foresee. That broader congressional context—general skepticism and scaling back of executive power combined with re-enactment of the familiar "regulate . . . importation" language in IEEPA—strongly indicates that Congress said what it meant and meant what it said when it enacted IEEPA and continued to authorize the President to "regulate . . . importation" during national emergencies.

III

In an ordinary statutory interpretation case, I am confident that a majority of this Court would flatly reject the plaintiffs' exceedingly weak statutory arguments and would hold that IEEPA's authorization for the President to "regulate . . . importation" during national emergencies includes the power to impose tariffs.

Notably, the Court today does not claim that the phrase "regulate . . . importation" on its own excludes tariffs as a matter of ordinary statutory meaning. Only three Members of the Court, JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON, do so.

THE CHIEF JUSTICE's opinion in Part II–A–2, which is joined only by JUSTICE GORSUCH and JUSTICE BARRETT, instead relies on the major questions doctrine. The major questions doctrine is an important canon of statutory interpretation that the Court has applied in a number of significant cases over the last 45 years. See *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607, 645 (1980) (plurality opinion).

Justice Scalia articulated the canonical statement of the major questions doctrine: "We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.' " *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 324 (2014) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 160 (2000)); see also *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 594 U. S. 758, 764 (2021) (*per curiam*); *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109, 117 (2022) (*per curiam*); *Biden* v. *Nebraska*, 600 U. S. 477, 507 (2023); cf. *West Virginia* v. *EPA*, 597 U. S. 697, 723 (2022).

Stated otherwise, in cases where the Executive Branch takes an action of major economic and political significance, it must "point to 'clear congressional authorization' for the power it claims." *Ibid.* (quoting *Utility Air*, 573 U. S., at 324).

The requirement of "*clear* congressional authorization" for executive actions of major economic and political significance is "grounded in two overlapping and reinforcing presumptions: (i) a separation of powers-based presumption against the delegation of major lawmaking authority from Congress to the Executive Branch, and (ii) a presumption that Congress intends to make major policy decisions itself, not leave those decisions to agencies." *United States Telecom Assn.* v. *FCC*, 855 F. 3d 381, 419 (CADC 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc) (citation omitted). As this Court later recounted in *West Virginia*, "both separation of powers principles and a practical understanding of legislative intent make us reluctant to read into ambiguous statutory text the delegation claimed to be lurking there." 597 U. S.,

at 723 (quotation marks omitted).[15] The doctrine guards "against unintentional, oblique, or otherwise unlikely delegations of the legislative power." *NFIB*, 595 U. S., at 125 (GORSUCH, J., concurring).[16]

I agree that this case involves an executive action of major economic and political significance—which is typically the trigger for requiring "clear congressional authorization." But in my respectful view, THE CHIEF JUSTICE's opinion's application of the major questions doctrine in this case is incorrect for two alternative and independent reasons. First, the statutory text, history, and precedent constitute "clear congressional authorization" for the President to impose tariffs as a means to "regulate . . . importation." Second, and in the alternative, the major questions doctrine does not apply in the foreign affairs context. In the foreign affairs realm, courts recognize that Congress often deliberately grants flexibility and discretion to the President to pursue America's interests. In that context, courts therefore engage in "routine" textualist statutory interpretation—reading the text as written—and do not employ the major questions doctrine as a thumb on the scale against the President. *West Virginia*, 597 U. S., at 724.

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[15] The major questions doctrine has also been analogized to, among other things, the mischief rule, the absurdity doctrine, common sense, and context. See, *e.g.*, S. Bray, The Mischief Rule, 109 Geo. L. J. 967, 1011 (2021) (doctrine "has an essential similarity with the mischief rule"); *Biden* v. *Nebraska*, 600 U. S. 477, 511 (2023) (BARRETT, J., concurring) (context, common sense).

[16] I have long been, and fully remain, a strong proponent of the major questions doctrine. See *United States Telecom*, 855 F. 3d, at 418–426 (opinion of Kavanaugh, J.); *Loving* v. *IRS*, 742 F. 3d 1013, 1021 (CADC 2014); *Coalition for Responsible Regulation, Inc.* v. *EPA*, No. 9–1322 (CADC, Dec. 20, 2012), pp. 9–10 (Kavanaugh, J., dissenting from denial of rehearing en banc).

A

1

Because the major questions doctrine demands "clear congressional authorization," this Court has repeatedly recognized that the doctrine is "distinct" from "routine statutory interpretation." *West Virginia*, 597 U. S., at 724 (quotation marks omitted). Importantly, therefore, the doctrine applies—and makes a meaningful difference—only in cases where the Executive's "reading of a statute" "would, under more ordinary circumstances, be upheld." *Ibid.* (quotation marks omitted); see also *id.*, at 740, 742, n. 3 (GORSUCH, J., concurring); M. Sohoni, The Major Questions Quartet, 136 Harv. L. Rev. 262, 272–276 (2022).

To properly set up the inquiry: A major questions issue arises when: (i) the Executive relies on the text of a generally worded statute to exercise a specific power of major economic and political significance; (ii) the generally worded statute does not *explicitly* mention the specific major power, but (iii) the asserted major power falls within the generally worded text of the statute such that the Executive's assertion of that power "would, under more ordinary circumstances, be upheld," *West Virginia*, 597 U. S., at 724 (majority opinion) (quotation marks omitted).[17]

The question then is whether the generally worded statute supplies "clear congressional authorization" for the Executive to exercise that specific—but not explicitly mentioned—major power. Here, for example, does the generally worded statutory authorization for the President to "regulate . . . importation" clearly authorize the President to impose tariffs?

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[17] Of course, if the major power does not fall within the generally worded text as a matter of ordinary statutory interpretation, the major questions doctrine is not implicated or necessary to apply because the Government's statutory argument fails to begin with.

The requirement of "clear congressional authorization" is easy enough to state. But how do we apply it? How do we decide in a particular case whether a generally worded statute actually constitutes "clear congressional authorization" for a major power that otherwise falls within the general terms?

For starters, and critically, the Court has repeatedly emphasized that the major questions doctrine is not a magic words requirement. In other words, the doctrine does not require an explicit reference to the specific major power itself. As the Court's cases amply demonstrate, the major questions doctrine does not "forc[e] Congress to delegate in highly specific terms." *Biden* v. *Nebraska*, 600 U. S., at 516 (BARRETT, J., concurring) (quotation marks omitted).

Rather than require magic words (such as the words "tariff " or "duty" here), the Court's cases have focused on four somewhat overlapping factors or considerations in order to assess whether a generally worded statute constitutes "clear congressional authorization" for the specific major power.[18]

First, the major questions doctrine's most prominent work has been to ensure that the Executive cannot suddenly seize on an old and generally worded statute to exercise a power of great economic and political significance when that power would not reasonably have been understood at the time of enactment to fall within that generally worded statute. See *West Virginia*, 597 U. S., at 720–735; *Brown & Williamson*, 529 U. S., at 159–161. As the Court has said: "When an agency claims to discover in a long-extant statute an unheralded power to regulate a

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[18] Both JUSTICE GORSUCH and JUSTICE BARRETT have likewise read the Court's precedents to identify those same four factors, as they explained in their incisive separate opinions in *West Virginia* v. *EPA* and *Biden* v. *Nebraska*, respectively. See 597 U. S. 697, 746–749 (2022) (GORSUCH, J., concurring) (referring to the four "telling clues"); 600 U. S., at 517–520 (BARRETT, J., concurring); see also *ante,* at 27 (GORSUCH, J., concurring).

significant portion of the American economy, we typically greet its announcement with a measure of skepticism." *Utility Air*, 573 U. S., at 324 (citation and quotation marks omitted); *West Virginia*, 597 U. S., at 748 (GORSUCH, J., concurring).

The doctrine thus precludes an agency's attempt to effectuate "a fundamental revision of the statute." *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 231 (1994). Stated otherwise, an "agency's attempt to deploy an old statute focused on one problem to solve a new and different problem" may be "a warning sign that it is acting without clear congressional authority." *West Virginia*, 597 U. S., at 747 (GORSUCH, J., concurring). The Court's skepticism about major executive action in those scenarios has been heightened when Congress has "conspicuously and repeatedly declined to enact" legislation that would have authorized the executive action in question. *Id.*, at 724 (majority opinion).

A prototypical example occurred when OSHA, in order to justify a nationwide COVID–19 vaccine mandate for workers, relied "on a statutory provision that was adopted 40 years before the pandemic and that focused on conditions specific to the workplace." *Id.*, at 747 (GORSUCH, J., concurring). Another example arose when EPA invoked "newfound authority to regulate" emissions from "millions of small sources—including retail stores, offices, apartment buildings, shopping centers, schools, and churches." *Utility Air*, 573 U. S., at 328. Yet another happened when the CDC tried to impose an eviction moratorium for rental housing through an "unprecedented" assertion of its authority to regulate public health. *Alabama Assn. of Realtors*, 594 U. S., at 765.

Second, courts examine the "agency's past interpretations of the relevant statute." *West Virginia*, 597 U. S., at 747 (GORSUCH, J., concurring). The Executive's "track record can be particularly probative" in the major

questions context. *Biden* v. *Nebraska*, 600 U. S., at 519 (BARRETT, J., concurring).

A "contemporaneous and long-held Executive Branch interpretation of a statute is entitled to some weight." *West Virginia*, 597 U. S., at 747 (GORSUCH, J., concurring) (quotation marks omitted). Just "as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred." *Id.*, at 725 (majority opinion) (quotation marks omitted).

The *NFIB* Court therefore found it critical that "OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind" under the statute that the agency sought to invoke as authority for the vaccine mandate. 595 U. S., at 119. Likewise, in *Brown & Williamson*, the FDA had "repeatedly and consistently assert[ed] that it lacks jurisdiction under the FDCA to regulate tobacco products." 529 U. S., at 156. And in *West Virginia*, EPA had not "previously interpreted the relevant provision to confer on it such vast authority" to transform American industry. 597 U. S., at 749 (GORSUCH, J., concurring).

Third, courts assess whether "there is a mismatch between an agency's challenged action and its congressionally assigned mission and expertise," *id.,* at 748 (GORSUCH, J., concurring)—in other words, whether an agency is trying to regulate "outside its wheelhouse," *Biden* v. *Nebraska*, 600 U. S., at 518 (BARRETT, J., concurring).

In the *NFIB* case, OSHA, which is empowered to "set *workplace* safety standards, not broad public health measures," mandated COVID–19 vaccines. 595 U. S., at 117. In *Alabama Assn. of Realtors*, the CDC—a public health agency—attempted to regulate housing. 594 U. S., at 763–765. In *Gonzales* v. *Oregon*, the Attorney General

sought to assert authority over the drugs used in physician-assisted suicide. 546 U. S. 243, 267–268 (2006).

All of those cases involved serious mismatches between the agency's usual regulatory activities and its asserted major power.

Fourth, the Court looks at whether the relevant statutory language used to justify the Executive's exercise of a major power is "oblique," "elliptical," or "cryptic." *West Virginia*, 597 U. S., at 746–747 (GORSUCH, J., concurring) (alterations and quotation marks omitted). As the Court has often said, Congress does not "hide elephants" in statutory "mouseholes." *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001).

In *MCI Telecommunications Corp.*, for example, the Court refused to allow the FCC to eliminate rate regulation and fundamentally overhaul the telecommunications industry based on a "subtle" provision that merely permitted the FCC to "modify" rate-filing requirements. 512 U. S., at 231 (quotation marks omitted). In *Brown & Williamson*, the Court rejected the FDA's attempt to regulate the tobacco industry based on a "cryptic" statutory provision that referred to "safety." 529 U. S., at 160 (quotation marks omitted). In *Gonzales*, the Court said that Congress would not have granted the Attorney General the power to regulate physician-assisted suicide through "oblique" statutory language. 546 U. S., at 267. And in *West Virginia*, the Court found it unlikely that Congress would have granted major power to reshape the energy industry in a "previously little-used backwater" of the statute. 597 U. S., at 730.

2

So in this case we must apply those four factors in order to determine whether Congress, when it afforded the President the power to "regulate . . . importation," clearly authorized the President to impose tariffs. As I see it, those

factors show that Congress clearly authorized tariffs in IEEPA when it empowered the President to "regulate . . . importation."

First, unlike the OSHA vaccine mandate in *NFIB* or the greenhouse gas regulation in *Utility Air*, for example, the President here is not exercising an "unheralded" or "newfound authority" based on a "long-extant" statute—that is, exercising a power that was unanticipated or unforeseen when Congress enacted IEEPA's "regulate . . . importation" language in 1977.

On the contrary, as was fully explained above, the tariff authority exercised here is not remotely "unheralded." To recap: Any citizen or Member of Congress who paid the least bit of attention in 1977 would have readily understood that the President's authority to "regulate . . . importation" encompassed the power to tariff. There are the dictionary definitions and the historical usage and practice. And among other things, just a few years before IEEPA, that "regulate . . . importation" language was invoked by President Nixon and judicially approved to sustain his 10 percent worldwide tariffs. President Ford then implemented significant tariffs using substantially similar "adjust the imports" statutory language, and this Court unanimously upheld President Ford's tariffs in *Algonquin*.

So IEEPA's grant of authority to the President to impose tariffs in order to regulate importation is not "unheralded" or "newfound." That authority was plain as day in 1977.[19]

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[19] The Court downplays the significance of the prominent Nixon and Ford tariffs. *Ante,* at 17–19 (majority opinion); *ante,* at 27–28, 39 (GORSUCH, J., concurring). But the Nixon and Ford examples, as well as *Algonquin*, are critical for a proper and full understanding of the meaning of "regulate . . . importation" when Congress enacted IEEPA in 1977. We cannot ignore or diminish that history. THE CHIEF JUSTICE's opinion and JUSTICE GORSUCH's concurrence also say that no President since 1977 has invoked IEEPA to impose tariffs. *Ante,* at 10 (opinion of ROBERTS, C. J.); *ante,* at 27–28 (GORSUCH, J., concurring). But since

Second, the President is not interpreting the "regulate . . . importation" language in IEEPA differently from how past Presidents have interpreted it. At least as far as the briefing and arguments in this case have disclosed, no Presidential Administration since the enactment of the "regulate . . . importation" language in TWEA in 1941 or since its re-enactment in IEEPA in 1977 has interpreted the statute to exclude the power to impose tariffs. Moreover, before IEEPA's enactment, President Nixon imposed tariffs based on the same "regulate . . . importation" language. And in 1975, President Ford invoked authority to "adjust the imports" in order to similarly impose monetary exactions. In addition—if more is needed—Marshall, Story, Madison, and this Court have all long recognized that the power to regulate foreign commerce includes tariffs.

The current President's reading of IEEPA follows from and is entirely consistent with those past interpretations—making his position nothing like, for example, FDA's when it changed its longstanding position that it lacked the authority to regulate cigarettes, *Brown & Williamson,* 529 U. S., at 159–160, or OSHA's when it implemented a vaccine requirement even though it had "never before adopted a broad public health regulation of this kind," *NFIB*, 595 U. S., at 119.

When, as here, "established practice," *West Virginia*, 597 U. S., at 725 (quotation marks omitted), and the Executive's "track record," *Biden* v. *Nebraska*, 600 U. S., at 519

1977, Presidents have imposed numerous tariffs under non-emergency tariff statutes—including Section 232, which like IEEPA also does not explicitly reference tariffs or taxes. The fact that recent Presidents have not often had occasion under the National Emergencies Act to declare national emergencies in which tariffs would help "deal with" the specific emergency at issue does not mean that Presidents have now lost the authority exercised by President Nixon to impose tariffs. IEEPA was not designed as a use-it-or-lose-it source of emergency authority.

(BARRETT, J., concurring), convincingly show that the general statutory language has long been understood to cover the specific power asserted by the Executive, that record should all but resolve the matter for major questions purposes.

Third, there is no mismatch: The power to tariff falls squarely within the President's wheelhouse. From the Founding, as THE CHIEF JUSTICE's opinion today acknowledges, numerous other statutes have afforded—and still do afford—the President broad power to impose tariffs. *Ante,* at 8–9. This case is entirely different, therefore, from our prior major questions cases, where, for example, the CDC attempted to impose an eviction moratorium, *Alabama Assn. of Realtors*, 594 U. S., at 763–765; OSHA sought to implement a nationwide vaccine mandate, *NFIB*, 595 U. S., at 117–120; the FDA tried to regulate cigarettes, *Brown & Williamson*, 529 U. S., at 159–161; and the Attorney General attempted to regulate physician-assisted suicide, *Gonzales*, 546 U. S., at 267–268. Presidents imposing tariffs—whether pursuant to inherent wartime authority, pursuant to TWEA and IEEPA's "regulate . . . importation" language, pursuant to Section 232's "adjust the imports" text, or pursuant to the many other tariff statutory authorities—is hardly an unusual occurrence in our Nation's history or in recent times. For example, Presidents George W. Bush, Obama, and Biden all imposed tariffs pursuant to congressional authorization. There is no mismatch between the tariff power and the President's "mission and expertise." *West Virginia*, 597 U. S., at 748 (GORSUCH, J., concurring).

Fourth, the President is not relying on oblique, elliptical, or cryptic language. This case does not involve "elephants in mouseholes." *Whitman*, 531 U. S., at 468. This case instead involves an elephant (tariffs) in a statutory elephant hole (the power to "regulate . . . importation" to deal with foreign threats in national emergencies). IEEPA

was a major and thoroughly studied statute carefully crafted to grant the President a suite of powerful tools, including to "regulate . . . importation," and thereby allow him to respond swiftly to national emergencies and to help America respond to crises. Since its enactment, Presidents have invoked IEEPA more than 70 times to deal with emergencies and threats from the September 11, 2001, al Qaeda attacks to Iran to North Korea, and many others. See Congressional Research Service, The International Emergency Economic Powers Act: Origins, Evolution, and Use 18–32 (2025).

By 1977, moreover, it was well-known that tariffs on foreign imports—along with even more powerful tools such as quotas and embargoes—were a common way to "regulate . . . importation." IEEPA thus bears zero resemblance to the paradigmatic "previously little-used backwater" statutory provision that cannot support significant executive actions. *West Virginia*, 597 U. S., at 730.

All of that makes this case dramatically different from—really, the opposite of—the major questions cases where the Court has ruled against the Government. The text, the history, the context, and the precedent all point strongly to the conclusion that as of 1977, tariffs were a well-recognized means of regulating importation, like quotas and embargoes.

As Judge Taranto persuasively summarized, this case bears none of the hallmarks of past major questions cases where the Court found a lack of clear congressional authorization for the Government's asserted major power. IEEPA's "facial breadth in an emergency context makes the straightforward application of the statute's words hardly unheralded, and if a more specific herald is needed, it is present in the [Nixon] 1971 proclamation, *Yoshida CCPA*, and subsequent congressional adoption of the relevant language in 1977." 149 F. 4th 1312, 1376 (CA Fed. 2025) (dissenting opinion) (citations omitted). IEEPA seeks "to

provide flexibility in the tools available to the President to address the unusual and extraordinary threats specified in a declared national emergency. This is not an 'ancillary,' 'little used backwater' provision, or a delegation outside the recipient's wheelhouse." *Ibid.* (citation omitted).

This Court's recent decision in *Biden* v. *Missouri*, 595 U. S. 87 (2022) (*per curiam*), strongly supports the President's position here. That case involved a challenge to President Biden's COVID–19 vaccine requirement for millions of healthcare workers. The executive action there, too, was undoubtedly major. But the Court *upheld* the Government's vaccine mandate based on a general statutory authorization for HHS to impose safety requirements for healthcare facilities—notwithstanding the lack of explicit statutory reference to vaccines. *Id.*, at 90–96. In doing so, the Court emphasized that state vaccination requirements were common for healthcare workers and that the Federal Government regularly required healthcare workers to take various safety precautions. *Id.*, at 94–95. Notably, the Court upheld the vaccine mandate even though (as the dissenters pointed out) the *Federal* Government had not traditionally imposed such vaccine requirements on healthcare workers. See *id.*, at 104 (THOMAS, J., dissenting).

The clarity of the congressional authorization in today's case is far stronger than in *Biden* v. *Missouri*. The Nixon and Ford tariffs, the *Algonquin* decision, and the President's longstanding authority to regulate trade and impose tariffs establish—much more comprehensively and clearly than in *Biden* v. *Missouri*—that the President is not claiming some "unheralded power" that represents a "transformative expansion" of his authority. *Utility Air*, 573 U. S., at 324.

Because the Court upheld the Executive's exercise of a major power in *Biden* v. *Missouri*, it follows that the Court

today should likewise uphold the President's assertion of a major power here. Like cases should be treated alike.

In response to all of that, THE CHIEF JUSTICE's opinion clings to its primary argument in this case—that a statute must use the word "tariff " or "duty" or "tax" or the like to authorize tariffs on foreign imports. But this Court has repeatedly emphasized that the major questions doctrine is not a magic words requirement. THE CHIEF JUSTICE's opinion identifies no case that has demanded such specificity. And in *Algonquin*, this Court unanimously and squarely rejected the same argument that the statutory provision must specifically mention "tariffs" or "duties" or "taxes" for the President to impose tariffs on foreign imports. Under THE CHIEF JUSTICE's opinion, the Nixon and Ford tariffs would also have been unlawful. So too might other tariffs imposed under the longstanding Section 232 tariff statute, which broadly authorizes the President to "adjust the imports" of a foreign good without mentioning "tariffs" or "taxes." And so would tariffs imposed in wartime under TWEA's authority to "regulate . . . importation."[20]

THE CHIEF JUSTICE's opinion's approach to the major questions doctrine is a magic-words test under another name—in contravention of our precedents that make clear that Congress need not use magic words or "highly specific"

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[20] Under the Court's decision today, the President's authority to impose tariffs under TWEA during wartime is presumably now gone given that TWEA has the same "regulate . . . importation" language, 50 U. S. C. §4305(b)(1)(B)—unless the Court thinks that the statutory text somehow means one thing in TWEA and another in IEEPA, which would be historically inaccurate and textually unsupportable. One might think that the Court's opinion would also mean that tariffs cannot be imposed under Section 232, which authorizes the President to "adjust the imports." After all, that statutory provision likewise does not refer to "tariffs," duties," "taxes," "fees," or the like. But in *Algonquin*, the Court read Section 232 to authorize tariffs. I assume that the Court today does not intend to overrule *Algonquin*.

terms. *Biden* v. *Nebraska*, 600 U. S., at 516 (BARRETT, J., concurring) (quotation marks omitted).[21]

In previous cases, the Court has looked at the four factors to determine whether there is "clear congressional authorization" precisely because the major questions canon has no magic words requirement. If magic words or the equivalent were necessary, that would be the only factor. And the Court would not need the four factors that the Court has consistently applied.[22]

In sum, under the major questions doctrine as the Court has applied it, this should be a straightforward case. Congress supplied clear authorization for the President to impose tariffs under IEEPA.

B

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Second, there is an alternative and independent reason why the major questions doctrine does not apply here: This is a foreign affairs case.

A plethora of statutes in the U. S. Code grant the Executive the power to act in foreign affairs. And most of the important actions that "presidents take today, including in foreign affairs, rest at least in part on statutory

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[21] Taken at face value, moreover, the Court's major questions analysis would presumably also preclude Presidents from imposing quotas under IEEPA. Quotas are justified under the same "regulate . . . importation" language. How could the Court distinguish quotas from tariffs for major questions purposes? After all, quotas can be of even greater economic and political significance than tariffs.

[22] In his concurrence, JUSTICE GORSUCH opines that the phrase "monetary exactions on foreign imports" would constitute clear congressional authorization, but that the phrase "regulate . . . importation" does not. *Ante,* at 30. But if the phrase "regulate . . . importation" has historically and commonly encompassed "monetary exactions on foreign imports"—as it has—and if the four major questions factors taken together support the Executive—as they do—then I cannot agree with the line that JUSTICE GORSUCH is drawing between those two formulations.

authorization." C. Bradley & J. Goldsmith, Foreign Affairs, Nondelegation, and the Major Questions Doctrine, 172 U. Pa. L. Rev. 1743, 1745 (2024).

Yet this Court has *never* before applied the major questions doctrine—or anything resembling it—to a foreign affairs statute. I would not make this case the first.

Rather, in the foreign affairs context, this Court has interpreted statutes as written, with respect for the primacy of Congress's and the President's roles in foreign affairs and without using the major questions doctrine as a thumb on the scale against the President. See, *e.g.*, *Department of Navy* v. *Egan*, 484 U. S. 518, 529–530 (1988). That deeply rooted textualist approach to interpreting foreign affairs statutes is nothing new. What is new and rather extraordinary is the approach embodied in THE CHIEF JUSTICE's opinion for three Justices, which would extend the major questions doctrine into the foreign affairs realm for the first time.

Recall that the major questions doctrine is based on two overlapping foundations: "separation of powers principles and a practical understanding of legislative intent." *West Virginia*, 597 U. S., at 723.

With respect to separation of powers, the major questions doctrine serves to reinforce the nondelegation doctrine. But in the foreign affairs realm, the Court has recognized that Congress often broadly delegates authority to the Executive. From the Founding, numerous foreign affairs statutes "authorizing action by the President in respect of subjects affecting foreign relations" either "leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs." *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 324 (1936); *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 80, n. 5 (2015) (THOMAS, J., concurring in judgment). The reason

for those broad delegations is simple and obvious: If "success" for America's foreign affairs "aims" is to be "achieved, congressional legislation . . . must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." *Curtiss-Wright*, 299 U. S., at 320. Stated otherwise, "Congress—in giving the Executive authority over matters of foreign affairs—must of necessity paint with a brush broader than that it customarily wields in domestic areas." *Zemel* v. *Rusk*, 381 U. S. 1, 17 (1965).

As Justice Robert Jackson summarized, the Court's nondelegation cases—consistent with the "unbroken legislative practice which has prevailed almost from the inception of the national government," *Curtiss-Wright*, 299 U. S., at 322—have "recognized internal and external affairs as being in separate categories, and held that the strict limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in external affairs." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 636, n. 2 (1952) (concurring opinion); see *Curtiss-Wright*, 299 U. S., at 319–322; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 422 (1935).

As Justice Jackson further noted, the Court's precedents recognize the "'unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed.' " *Youngstown*, 343 U. S., at 636, n. 2 (concurring opinion) (quoting *Curtiss-Wright*, 299 U. S., at 321–322).

If the major questions doctrine is designed in part to protect nondelegation principles, but the nondelegation doctrine does not play a substantial role in foreign affairs cases (as the Court has held), then it follows that courts should not employ the major questions doctrine to put a thumb on the scale against the President when interpreting

foreign affairs statutes. Rather, as Justice Robert Jackson stated, courts should interpret those statutes as written.

Relatedly, to the extent that the major questions doctrine is designed to reflect a "practical understanding of legislative intent," *West Virginia*, 597 U. S., at 723, the doctrine appropriately plays no role in "national security or foreign policy contexts, because the canon does not reflect ordinary congressional intent in those areas." *FCC* v. *Consumers' Research*, 606 U. S. 656, 706 (2025) (KAVANAUGH, J., concurring). In the foreign affairs realm, Congress "has good reason to—and intends to—authorize many executive branch actions related to foreign affairs in broad or general terms." Bradley & Goldsmith, 172 U. Pa. L. Rev., at 1793.

Congress ordinarily seeks "to give the President substantial authority and flexibility to protect America and the American people." *Consumers' Research*, 606 U. S., at 706–707 (KAVANAUGH, J., concurring). After all, the President exercises the "vast share of responsibility for the conduct of our foreign relations." *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 414 (2003) (quotation marks omitted). So Congress "often" gives the President "a degree of discretion." *Curtiss-Wright*, 299 U. S., at 320. That "unbroken legislative practice" from the Founding means that courts interpreting statutes in the foreign affairs field should assume that Congress meant what it said. *Id.*, at 322.

Stated otherwise, "if the major questions doctrine turns on a contextual inquiry into likely congressional intent, it is likely for a variety of reasons to have less purchase in the foreign affairs area." Bradley & Goldsmith, 172 U. Pa. L. Rev., at 1790.

To be clear, Congress of course maintains the ultimate power over how broadly or narrowly to write statutes in the foreign policy and national security contexts. For example, Congress can write foreign affairs statutes narrowly.

Indeed, even for wartime powers, Congress rarely gives the President a "blank check." *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 536 (2004) (plurality opinion). And when Congress writes a narrow foreign affairs statute, this Court has enforced those statutory limits as written. Cf. *Hamdan* v. *Rumsfeld*, 548 U. S. 557, 593–595 (2006); *id.*, at 638–639 (Kennedy, J., concurring in part).

Moreover, when it does legislate more broadly, Congress sometimes claws back the statutory authorization by rescinding or amending overbroad statutes, or by restricting previously granted Presidential power through the leverage it possesses over appropriations, new legislation, or confirmations. See, *e.g.*, Foreign Intelligence Surveillance Act of 1978, 92 Stat. 1783; Military Commissions Act of 2006, 120 Stat. 2600, as amended, 10 U. S. C. §948a *et seq.*; Case-Church Amendment, Pub. L. 93–50, §307, 87 Stat. 129. Either House of Congress alone, through the appropriations process, can insist on certain limits as a condition of approving funding. At the end of the day, given the appropriations power, Congress holds the cards.

In short, in the foreign affairs context, this Court has *never* before super-imposed the major questions doctrine (or any similar canon or principle) onto ordinary statutory interpretation to place a thumb on the scale against the President. Rather, the Court interprets the relevant statutes according to their text, with respect for Congress's and the President's central roles in the foreign policy and national security fields.

2

This tariffs case plainly falls into the foreign affairs category. IEEPA "directly and expressly relate[s] to foreign affairs." Bradley & Goldsmith, 172 U. Pa. L. Rev., at 1796. And like quotas and embargoes, tariffs regulate the goods

that are imported into the country from foreign nations. The tariffs do not apply to goods produced in America.

Moreover, tariffs on foreign imports are significant tools of foreign policy and national security, whether imposed under IEEPA, TWEA, Section 232, Section 122, Section 201, Section 301, or Section 338. They are often used to "advance foreign policy goals, or as negotiating leverage in trade negotiations." Congressional Research Service, U. S. Tariff Policy: Overview 1 (2025). Like other economic tools, tariffs can "serve as a 'bargaining chip' to be used by the President when dealing with a hostile country," *Dames & Moore* v. *Regan*, 453 U. S. 654, 673 (1981)—or to incentivize a change in behavior by allies, partners, or enemies. Cf. *Association of American Railroads*, 575 U. S., at 80 (opinion of THOMAS, J.) (embargo statute "involved the external relations of the United States"); *Gundy* v. *United States*, 588 U. S. 128, 170–171 (2019) (GORSUCH, J., dissenting).

With respect to foreign trade specifically, Congress often "invest[s] the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, 691 (1892). Since the Founding, that longstanding practice has included tariff statutes: Congress has granted the President expansive power over tariffs and foreign trade. *Ante,* at 13–17 (THOMAS, J., dissenting). And this Court has uniformly rejected challenges to tariffs imposed by Presidents under those statutory authorities. *E.g.*, *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, 558–560 (1976); *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 409 (1928); *Marshall Field*, 143 U. S., at 690–694; *Cargo of Brig Aurora* v. *United States*, 7 Cranch 382, 386–388 (1813).

As Professors Bradley and Goldsmith well summarized, there is a "settled practice of about a century of the executive branch exercising emergency powers in many important contexts pursuant to the broadly worded IEEPA

and its predecessor, the Trading with the Enemy Act. And there is an even longer practice, dating to the Founding, of presidents exercising trade-related sanctions authority pursuant to broadly worded statutes. Notably, the Court has already suggested in both of these contexts that one should expect Congress to, in effect, paint with a broad brush." 172 U. Pa. L. Rev., at 1796–1797.

As with tariffs on foreign imports historically, the IEEPA tariffs on foreign imports at issue in this case implicate foreign affairs. According to the Government, the President has leveraged the IEEPA tariffs into trade deals with major trading partners including China, the United Kingdom, and Japan, among other countries. The Government says that the tariffs have helped make certain foreign markets more accessible to American businesses and have contributed to trade deals with foreign nations worth trillions of dollars.

Moreover, consistent with history and the traditional uses of tariffs, the President "is exercising his IEEPA authority in connection with highly sensitive negotiations he is conducting to end the conflict between the Russian Federation and Ukraine." Decl. of M. Rubio in No. 25–1812 (CA Fed., Aug. 29, 2025), p. 3. To that end, on August 6, 2025, the President imposed tariffs on India for "directly or indirectly importing Russian Federation oil." Exec. Order No. 14329, 90 Fed. Reg. 38701 (2025). And on February 6, 2026, the President reduced the tariffs on India because, according to the Government, India had "committed to stop directly or indirectly importing Russian Federation oil." Exec. Order No. 14384, 91 Fed. Reg. 6501 (2026).

To be sure, most foreign affairs and national security actions—whether war, international agreements, trade deals, or tariffs—lead to significant domestic ramifications within the United States. And this case is no exception. Nonetheless, in the foreign affairs field, courts interpret statutes as written, with appropriate respect to Congress and the President and without a major questions doctrine

weight on the scale against the President. See *Youngstown*, 343 U. S., at 636, n. 2 (Jackson, J., concurring).

Lest there be any remaining doubt that the major questions doctrine does not apply to tariffs on foreign imports, recall again this Court's decision in *Algonquin*. That case involved significant tariffs imposed by President Ford on oil imports. The relevant statute granted the President the authority to "adjust the imports." 19 U. S. C. §1862(b) (1970 ed.). The Court upheld the tariffs by interpreting the statute as written. Neither the major questions doctrine—nor anything resembling that doctrine—played a role in that case.

In short, "Presidential actions pursuant to broad congressional authorizations related to foreign affairs often have long historical pedigrees that can in various ways inform congressional intent to approve the actions in question. To the extent that this is so in particular instances, *the major questions doctrine's clear authorization requirement does not apply*." Bradley & Goldsmith, 172 U. Pa. L. Rev., at 1794 (emphasis added).

So it is here: Presidents "have long been granted substantial discretion over tariffs." *Id.*, at 1759, n. 90. This Court has never before applied the major questions doctrine to a statute authorizing the President to take action with respect to foreign affairs in general or tariffs in particular. And it should not do so today.

THE CHIEF JUSTICE's opinion's reliance on the major questions doctrine in this foreign affairs case is a first—a novel and unprecedented use of the major questions doctrine to invalidate Presidential action taken pursuant to congressional authorization in the foreign affairs area. I firmly disagree with that use of the major questions doctrine here. In the foreign affairs context, including tariffs, the longstanding rule is simple: Interpret the

statute as written, not with a thumb on the scale against the President.[23]

3

Related precedent further demonstrates that the major questions doctrine has not traditionally applied in the national security or foreign policy contexts. Consider two prominent examples.

First, in *Hamdi* v. *Rumsfeld*, 542 U. S. 507, this Court considered the 2001 Authorization for Use of Military Force, which Congress passed and President George W. Bush signed on September 18, 2001, in the wake of the al Qaeda attacks on the United States. The law broadly

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[23] In his thoughtful concurrence, JUSTICE GORSUCH agrees that the major questions doctrine often does not apply to foreign affairs statutes, but in his view it does not apply only when the President also has inherent or independent Article II power. *Ante*, at 30–31. THE CHIEF JUSTICE's opinion for three Justices also gestures at that position. See *ante,* at 12–13. I see some analytical and practical problems with that approach.

First, as JUSTICE GORSUCH elsewhere notes, the major questions doctrine serves in part to reinforce nondelegation principles. Yet as I have explained, the Court's nondelegation cases from the Founding to the present—including numerous cases involving tariffs—have "recognized internal and external affairs as being in separate categories, and held that the strict limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in external affairs." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 636, n. 2 (1952) (Jackson, J., concurring); see also *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 319–322 (1936); *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 422 (1935). In those cases, the Court has not further subdivided the foreign affairs power in the manner that JUSTICE GORSUCH now suggests.

Second, terms such as "inherent" or "independent" in this context continue to be "used, often interchangeably and without fixed or ascertainable meanings." *Youngstown*, 343 U. S., at 647 (Jackson, J., concurring); see also *id.*, at 637. So it would be both novel and jurisprudentially chaotic to try to now create a new approach tying the applicability of the major questions canon in the foreign affairs context to such uncertain triggers.

empowered the President to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks" that occurred on September 11, 2001. Authorization for Use of Military Force, 115 Stat. 224 (Sept. 18, 2001).

In *Hamdi*, the Government militarily detained in the United States an American citizen who had taken up arms with the Taliban. 542 U. S., at 510–511. The plaintiff Hamdi argued, among other things, that the AUMF generally authorized the use of force but did not specifically authorize military detention, at least detention of American-citizen enemy combatants in the United States. See *id.*, at 515–517. He contended that his military detention was therefore illegal.

In the principal opinion by Justice O'Connor, the Court rejected Hamdi's statutory argument, explaining that it was "of no moment that the AUMF does not use specific language of detention." *Id.*, at 519. Rather, because "detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war, in permitting the use of 'necessary and appropriate force,' Congress has clearly and unmistakably authorized detention in the narrow circumstances considered here." *Ibid.*

Consider the similarities between *Hamdi* and this case. Both involve major questions of foreign affairs. *Hamdi* involved U. S. military detention of an American citizen in America, pursuant to a generally worded authorization for use of military force. This case involves tariffs on foreign goods imported into America pursuant to a generally worded authorization to regulate importation. Detention is a traditional incident of the President's delegated power to wage war. See *id.*, at 518. Tariffs are a traditional incident of the President's delegated power to regulate imports and foreign commerce. In *Hamdi*, the Court said that as a matter of history, practice, and precedent, the AUMF's

general authorization for the use of military force clearly encompassed detention of enemy combatants. *Id.*, at 518–522. Here, as a matter of history, practice, and precedent, IEEPA's general authorization for regulation of importation likewise clearly encompasses tariffs on foreign imports.

Second, in 1981 in *Dames & Moore*, 453 U. S. 654, the Court did not apply the major questions doctrine, even though the Court had recently applied that principle in a significant domestic policy case. Cf. *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607 (1980) (plurality opinion).

The *Dames & Moore* case arose in the wake of the Iran hostage crisis where Iran held more than 50 American hostages at the U. S. Embassy in Iran for more than 14 months. As one part of the ultimate settlement of the hostage crisis with Iran, President Reagan suspended claims by U. S. nationals against Iran that were pending in American courts. *Dames & Moore*, 453 U. S., at 666. The President did so under IEEPA and the Hostage Act. *Id.*, at 675.

There can be little doubt that the question of suspending American citizens' claims against Iran was one of major economic and political significance. And the Court further recognized that the case touched "fundamentally upon the manner in which our Republic is to be governed." *Id.*, at 659. Yet the Court did not require "clear congressional authorization" for the President's exercise of that authority to suspend the Americans' claims against Iran.

On the contrary, the Court openly acknowledged that the relevant statutes—IEEPA and the Hostage Act—did not provide clear or "specific authorization" for the President to suspend those claims. *Id.*, at 677. The Court nonetheless concluded that the "general tenor of Congress' legislation in this area"—combined with Congress's longstanding acquiescence to the President's practice of settling claims—

supported the President's suspension of those claims. *Id.*, at 678. Congress's "general tenor" and acquiescence are of course far less than the "clear congressional authorization" that THE CHIEF JUSTICE's opinion today newly demands for the President's tariffs.

Again, consider the similarities between *Dames & Moore* and this case. *Dames & Moore* involved complicated questions of foreign policy and national security. The statutes in *Dames & Moore* were generally worded and did not specifically authorize suspension of claims. But Presidents had historically exercised a similar power. See *id.*, at 677–682. Here, we likewise have a generally worded statutory authorization to "regulate . . . importation." And Presidents have historically imposed tariffs.

If IEEPA permitted the President to lawfully suspend claims in *Dames & Moore*—despite the Court's transparent acknowledgment that the actual statutory text did not clearly authorize the President's actions—then surely IEEPA's authorization to "regulate . . . importation" easily justifies these tariffs.

THE CHIEF JUSTICE's opinion would chart a new course for the major questions doctrine, extending it for the first time deep into the foreign affairs sphere. If the Court had applied the major questions doctrine in *Hamdi* and *Dames & Moore*, those two landmark cases almost certainly would have been decided differently. So today's opinion marks a significant change. Will the Court apply the major questions doctrine in the foreign affairs context again in the future? Or is this a ticket good for one day and one train only? Time will tell. But in the meantime, the decision could engender significant uncertainty over the Executive's exercise of statutory authority in the foreign affairs realm.

As the *Hamdi* and *Dames & Moore* examples demonstrate, applying the major questions doctrine in the foreign policy and national security contexts in the past would have seriously hindered the President's ability to

exercise power granted by Congress to achieve important foreign policy and national security objectives for America. And if applied in the foreign affairs context in the future, it could impair Presidents' vital statutory authorities with respect to foreign policy and national security.[24]

* * *

Having said all of that on foreign affairs, I reiterate that the major questions doctrine—even if it applies in this foreign affairs context—does not defeat major executive actions that are *clearly authorized* by Congress. See Bradley & Goldsmith, 172 U. Pa. L. Rev., at 1790–1791. And as explained in Part III–A above, in IEEPA Congress clearly authorized the President to impose tariffs to "regulate . . . importation" in national emergencies. In other words, even if the major questions doctrine applies in the foreign affairs context exactly as it does in domestic affairs, the President should still prevail in this case.

IV

Finally, no Member of the Court today relies on the nondelegation doctrine. But the plaintiffs briefly raise such an argument, and I will therefore briefly address it. The

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[24] What is the status going forward of the major questions doctrine in foreign affairs cases? Only three Justices (at most) today suggest that the major questions doctrine should apply in the foreign affairs context—THE CHIEF JUSTICE, JUSTICE GORSUCH, and JUSTICE BARRETT. I doubt that the major questions doctrine analysis in THE CHIEF JUSTICE's opinion for those three Justices is controlling for future cases as a matter of precedent under the *Marks* rule. See *Marks* v. *United States*, 430 U. S. 188, 193 (1977). That is because three Justices (JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON) do not recognize the major questions doctrine at all. *Ante,* at 1–2 (KAGAN, J., concurring in part and concurring in judgment). And this dissent would not apply it in the foreign affairs context. So it appears that six Justices would not apply it in the foreign affairs context. In my view, the question of whether or how the major questions doctrine applies in foreign affairs cases remains at least an open question.

argument is unavailing for many of the reasons already noted in the major questions analysis above. This Court has repeatedly rejected constitutional challenges to congressional delegations to the President in the foreign affairs area, including delegations of tariff authority.

For matters of foreign affairs and national security, the Court has traditionally recognized that Congress "must of necessity paint with a brush broader than that it customarily wields in domestic areas." *Zemel* v. *Rusk*, 381 U. S. 1, 17 (1965). And to reiterate, numerous statutes "'authorizing action by the President in respect of subjects affecting foreign relations'" "'either leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs.'" *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 80, n. 5 (2015) (THOMAS, J., concurring in judgment) (quoting *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 324 (1936)). Therefore, as JUSTICE THOMAS has explained, the Court's precedents establish that "the Constitution grants the President a greater measure of discretion in the realm of foreign relations." *Association of American Railroads*, 575 U. S., at 80, n. 5; see *Curtiss-Wright Export Corp.*, 299 U. S., at 319–322; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 422 (1935).

Justice Robert Jackson likewise noted the "'unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed.'" *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 636, n. 2 (1952) (concurring opinion) (quoting *Curtiss-Wright*, 299 U. S., at 321–322). As such, the "strict limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in

external affairs." *Youngstown*, 343 U. S., at 636, n. 2 (concurring opinion).

Because statutes that "involv[e] the external relations of the United States" do not trigger the same kind of delegation concerns as purely domestic ones, *Association of American Railroads*, 575 U. S., at 80 (opinion of THOMAS, J.), the Court has regularly upheld delegations of power to the President in the national security and foreign policy realms. See, *e.g.*, *Curtiss-Wright*, 299 U. S., at 319–322; *Loving* v. *United States*, 517 U. S. 748, 771–774 (1996). Indeed, if a strict nondelegation doctrine applied in those areas, numerous statutes—including many authorizations for use of military force in the Nation's history—would have been unconstitutional delegations of authority to the President. See Authorization for Use of Military Force, 115 Stat. 224 (Sept. 18, 2001) ("[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001").

As to tariffs in particular: Broad delegations of tariff authority to the President have been in the heartland of permissible delegations upheld by this Court. Congress may, without running afoul of the Constitution, "invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, 691 (1892). Congressional delegations of tariffs and other foreign trade authorities to the President date back to near the Founding. And this Court has uniformly rejected nondelegation challenges to statutes delegating that authority to the President. *E.g.*, *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, 558–560 (1976); *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 409 (1928); *Marshall Field*, 143 U. S., at 690–694;

Cargo of Brig Aurora v. *United States*, 7 Cranch 382, 386–388 (1813).

This Court's decision in *Algonquin* is again instructive. There, the Court held that Section 232 did not constitute an unconstitutional delegation. 426 U. S., at 558–560. The Court found it sufficient that the President could act "only" to the extent "he deems necessary to adjust the imports" of an article such that it "will not threaten to impair the national security." *Id.*, at 559 (quotation marks omitted).

To be clear, I am not suggesting that there is no nondelegation doctrine in the foreign affairs realm. But the Court has consistently recognized that the doctrine affords more flexibility to Congress and the President in that area to deal with the complex foreign relations issues and national security threats facing America. See *Association of American Railroads*, 575 U. S., at 80, n. 5 (opinion of THOMAS, J.); *Youngstown*, 343 U. S., at 636, n. 2 (Jackson, J., concurring); *Curtiss-Wright*, 299 U. S., at 319–322; *Panama Refining*, 293 U. S., at 422.

In all events, for purposes of this Court's nondelegation precedents, IEEPA sufficiently constrains the President's authority to declare an emergency and impose tariffs. See *J. W. Hampton*, 276 U. S., at 409; *FCC* v. *Consumers' Research*, 606 U. S. 656, 673–675, 681–691 (2025). The President may exercise the authorities in IEEPA "only" "to deal with an unusual and extraordinary threat" that "has its source in whole or substantial part outside the United States" and "with respect to which a national emergency has been declared." 50 U. S. C. §1701. Congress placed numerous limits on IEEPA, including a default 1-year time limit, an enumerated list of exceptions, and comprehensive congressional reporting requirements. See §§1622(d), 1702(b), 1703.

It is also useful to underscore the extraordinary nature of the plaintiffs' nondelegation argument here. The plaintiffs' submission would mean that these tariffs would be

unlawful *even if* IEEPA explicitly authorized tariffs. Unlike their statutory and major questions doctrine arguments, their nondelegation argument is *not* based on a lack of an explicit reference to "tariffs" or "duties" or the like. Their nondelegation argument instead goes much further and would require very specific congressional directions to the President on when and under what circumstances he could impose tariffs and how high those tariffs could be. The plaintiffs' theory would have dramatic consequences and likely wipe out many of the existing tariff statutes that have long been upheld by this Court, as well as TWEA. And if the tariff authority here is unlawful, so too are most if not all IEEPA authorities such as asset freezes, embargoes, and quotas. And it would not stop there. The plaintiffs' nondelegation theory would threaten various other national security and foreign affairs statutes that similarly grant substantial discretion to the President. The Court today thankfully does not go down that road.[25]

V

The overarching theme of the Court's opinion is that tariffs are not a clear means to "regulate . . . importation" and that Congress was therefore required to use the word "tariff," "duty," or the like in IEEPA in 1977 if it wanted to authorize tariffs on foreign imports. But that conclusion

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[25] Some last points for completeness: The plaintiffs also raise two other arguments that the Court today does not address or rely on. First, they argue that Section 122, a non-emergency tariff statute that addresses trade deficits, implicitly displaces IEEPA's tariff authority. Second, they argue that the tariffs here do not deal with an "unusual and extraordinary threat" as to which a national emergency has been declared. In my view, those arguments are insubstantial, as Judge Taranto persuasively explained in the Federal Circuit. See 149 F. 4th 1312, 1359–1361, 1371–1375 (2025) (dissenting opinion). Because the Court today does not address or rely on them, I will not discuss them further here. Finally, I agree with footnote 1 of the Court's opinion regarding jurisdiction. *Ante,* at 5, n. 1.

contravenes text, history, and precedent. To summarize: *Algonquin* in 1976 unanimously held the opposite. The Nixon and Ford tariffs were based on statutory provisions that did not use the word "tariff" or "duty." There is a long tradition of Presidents imposing tariffs as a means of regulating importation and commerce. The predecessor Trading with the Enemy Act has long been understood to authorize tariffs during wartime as a means to "regulate . . . importation," even though it does not use the word "tariff" or "duty." The history of the Polk, Lincoln, and McKinley tariffs shows that tariffs are a means of regulating importation. Marshall, Story, and Madison stated that tariffs are a means of regulating foreign commerce. The dictionary definitions and ordinary usage establish that tariffs are a means of regulating importation.

All of that and much more, in my view, overwhelmingly establish that IEEPA clearly authorizes the President to impose tariffs.

That said, with respect to tariffs in particular, the Court's decision might not prevent Presidents from imposing most if not all of these same sorts of tariffs under other statutory authorities. For example, Section 122 of the Trade Act of 1974 permits the President to impose a "temporary import surcharge" to "deal with large and serious United States balance-of-payments deficits." 19 U. S. C. §2132(a). Section 201 of the Trade Act of 1974 provides that, if the International Trade Commission determines an article is being imported in such quantities that it is "a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article," the President may take "appropriate and feasible action," including imposing a "duty." §§2251(a), 2253(a)(3)(A). Section 301 of the Trade Act of 1974 authorizes the President through a subordinate officer to "impose duties" if he determines that "an act, policy, or practice of a foreign country" is "unjustifiable and

burdens or restricts United States commerce." §§2411(a)–(c). Section 338 of the Tariff Act of 1930 permits the President to impose tariffs when he finds that "any foreign country places any burden or disadvantage upon the commerce of the United States." §1338(d). And Section 232 of the Trade Expansion Act of 1962 authorizes the President to, after receiving a report from the Secretary of Commerce, "adjust the imports of [an] article and its derivatives so that such imports will not threaten to impair the national security." §1862(c)(1)(a).

So the Court's decision is not likely to greatly restrict Presidential tariff authority going forward. But the Court's decision is likely to generate other serious practical consequences in the near term. One issue will be refunds. Refunds of billions of dollars would have significant consequences for the U. S. Treasury. The Court says nothing today about whether, and if so how, the Government should go about returning the billions of dollars that it has collected from importers. But that process is likely to be a "mess," as was acknowledged at oral argument. Tr. of Oral Arg. 153–155. A second issue is the decision's effect on the current trade deals. Because IEEPA tariffs have helped facilitate trade deals worth trillions of dollars—including with foreign nations from China to the United Kingdom to Japan, the Court's decision could generate uncertainty regarding various trade agreements. That process, too, could be difficult.

* * *

The tariffs at issue here may or may not be wise policy. But as a matter of text, history, and precedent, they are clearly lawful. I respectfully dissent.

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Legal Sidebar

Supreme Court Overrules *Chevron* Framework

June 28, 2024

In what has the potential to be one of the most consequential decisions in federal administrative law, the Supreme Court on June 28, 2024, overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, in a pair of cases, *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce* (collectively *Loper*). The *Chevron* doctrine—named for the case that articulated it—required federal courts to defer to a federal agency's reasonable interpretation of ambiguous statutory provisions the agency administers.

For the better part of four decades, *Chevron* has been one of the foundational decisions in administrative law, governing the relationship between agencies and courts in matters of statutory interpretation and acting as a backdrop against which Congress has legislated. As one scholar put it: *Chevron* "is the most talked about, most written about, most cited administrative law decision of the Supreme Court. Ever." For the past decade or so, however, *Chevron* has come under increasing fire from some corners of the federal judiciary and legal academia. Once cited often and approvingly by a majority of Supreme Court Justices, *Chevron* has recently fallen into desuetude at the Court. Over the past several terms, the Court has declined to apply or even cite *Chevron* in cases where it may once have governed. Other methods of statutory interpretation, such as the major questions doctrine, appear to have displaced *Chevron*, at least in some instances. *Chevron*'s absence at the Court has not gone unnoticed, with several Justices commenting on *Chevron*'s absence as evidence that it should be overruled.

Against this backdrop, the Court explicitly overruled *Chevron*, holding that the *Chevron* framework violates Section 706 of the Administrative Procedure Act (APA). Section 706 requires courts to "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." The majority held that the APA's command required courts to exercise their own independent judgment on the meaning of a federal statute, but *Chevron* required courts to defer to reasonable agency interpretations of an ambiguous statute. That deference requirement, the Court held, abdicated the judiciary's foundational function to "say what the law is." Although the petitioners in *Loper* also challenged *Chevron* on constitutional grounds, the majority's opinion did not address those arguments.

The *Chevron* Framework

The *Chevron* framework required a court to defer to an executive agency's interpretation of an ambiguous statute that it administers so long as the agency's interpretation was reasonable. The framework's

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namesake 1984 Supreme Court case, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, set out a two-step process for determining whether a court must defer to an agency's statutory interpretation.

The *Chevron* framework typically applied if Congress has given an agency the general authority to make rules with the force of law. If a court determined that *Chevron* applied, at step one it would use the traditional tools of statutory construction to determine whether Congress directly addressed the precise issue before the court. If the statute was clear on its face with respect to the issue before the court, the court was to implement Congress's stated intent. If the court concluded instead that a statute was silent or ambiguous with respect to the specific issue, the court then proceeded to *Chevron*'s second step. At step two, courts were required to defer to an agency's reasonable interpretation of the statute regardless of whether the court would adopt that interpretation on its own were it to have reviewed the statute without the benefit of an agency's interpretation. The *Chevron* framework rested on several related assumptions, including (1) that statutory ambiguity indicates a congressional delegation of interpretive authority, (2) that agencies have more expertise than courts to interpret the statutes they administer, and (3) that agencies are politically accountable and therefore have more claim to make policy than courts.

The *Loper* Decision

The Court in *Loper* took specific aim at Chevron's first presumption—that statutory ambiguities indicate implicit delegation of interpretive authority to the agency. The majority explained that presumptions can be salutary, but only where they approximate reality. *Chevron*'s presumption, the Court explained, does not approximate reality, "because '[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two.'" Instead, the Court held that, when confronted with a statutory ambiguity, a court should not defer to an agency's interpretation but instead should do its "ordinary job of interpreting statutes, with due respect for the views of the Executive Branch." The views of the executive branch may, in the words of the 1944 Supreme Court case *Skidmore v. Swift & Co.*, have the "power to persuade, if lacking the power to control."

The Court based its decision on Section 706 of the APA which requires courts to interpret all questions of law in challenges to agency actions. Section 706, the Court held, codified existing practice at the time of its enactment in 1946, and although some cases at the time had applied deference doctrines in cases evaluating agency interpretations of law, they were outliers. Rather, courts at that time assumed their role to be the final interpreters of the meaning of federal law.

The majority's frequent reference to *Skidmore* and use of language from that decision suggests that, going forward, the Court expects lower courts to look to *Skidmore* to guide their consideration of an agency's preferred interpretation of an ambiguous statute. *Skidmore* gave its name to a much weaker form of deference that does not require courts to defer to agencies. The *Skidmore* case itself laid out a list of factors for courts to consider when determining whether an agency's interpretation commands the "power to persuade." Under *Skidmore*, courts

> consider that the rulings, interpretations and opinions of [an agency], while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

Skidmore, however, has received far less attention from the courts than *Chevron* has and may need additional development by the courts to refine its application.

In holding that the judiciary, not agencies, are to resolve statutory ambiguities, the majority explained that the Framers understood "the complexity of objects, . . . the imperfection of the human faculties, and the

simple fact that no language is so copious as to supply words and phrases for every complex idea," yet still expected politically insulated judges to exercise independent legal judgment in resolving statutory ambiguities. While ambiguities in statutes surely exist, the majority acknowledged, statutes have one "best" reading that courts can discover by applying the traditional tools of statutory interpretation. The majority further explained that courts do that all the time when reviewing statutes that an agency has not yet interpreted. In the Court's view, there is no reason for courts to abdicate their duty when an agency is involved. Undercutting another one of *Chevron*'s presumptions (that ambiguities call for agency expertise), the majority reasoned that statutory ambiguities do not call for policy expertise or draw judges into making policy—they call for the exercise of legal judgment. This distinction exists because, the majority stressed, courts, not agencies, have expertise in interpreting statutes and have done so for centuries.

Although the Court overruled *Chevron*, it appears to have preserved the holdings in cases that were decided pursuant to the *Chevron* framework prior to *Loper*. In the briefing of the case and during oral argument, the litigants and some of the justices discussed the fate of cases decided at *Chevron* step two. As explained above, at *Chevron* step two, a court must defer to an agency's reasonable interpretation of an ambiguous statute. In such cases, a court has not made a specific ruling on what the statute means—it has left that determination to an agency in light of the court's finding at step one that the statute is ambiguous. At oral argument, some of the Justices questioned the litigants about whether these step two decisions would still be considered binding if *Chevron* were overruled. Counsel for the petitioners argued that overruling *Chevron* would not disturb these cases because what the court had found at step two was that an agency's interpretation was "lawful." The Court appears to have adopted this argument in its opinion, holding that "we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory stare decisis despite our change in interpretive methodology." Despite the Court's holding, questions are likely to remain about whether agencies can change statutory interpretations that were found to be "reasonable" or "lawful" under step two.

The Dissent

The dissent, penned by Justice Kagan and joined by Justices Sotomayor and Jackson (the latter only with respect to the *Relentless* case), defended the *Chevron* framework on grounds that largely track those that supported the continued application of *Chevron* for the last four decades. *Chevron*, Justice Kagan wrote, is part of "warp and woof of modern government" and "reflects what Congress would want"—politically accountable expert agencies making policy, not judges. Justice Kagan, providing examples, explained that regulatory statutes often contain ambiguities or gaps (sometimes purposefully so) that cannot be resolved without the exercise of some kind of policymaking expertise that the courts simply do not have. Justice Kagan reasoned that statutes with such ambiguities or gaps have not fixed any "best" meaning at the time of enactment, and accordingly there is no law for a court to find using its tools of statutory construction. The judiciary's role, Justice Kagan articulated, is only to ensure that an agency's interpretation is a reasonable one, to ensure that courts stay out of policymaking. This limited role for courts, Justice Kagan stressed, is one of judicial "humility," recognizing that agencies have a better claim to democratic legitimacy and more expertise in making policy than courts. In other words, she explained, "agencies often know things about a statute's subject matter that courts could not hope to." Courts, Justice Kagan explained, can "muddle through" when asked to determine the meaning of an ambiguous statute, but compared to an agency that Congress has entrusted to administer a statute that may deal with technical subjects like wildlife regulation or medical drugs and devices, it is reasonable to believe Congress would prefer the agency to have interpretive authority.

Considerations for Congress

The *Loper* opinion rested on an interpretation of the APA—not the Constitution. Although the petitioners argued that *Chevron* violated Article III of the Constitution, the majority's opinion did not reach that issue. As a result, the Court left open the possibility that Congress could amend the APA or enact a standalone statute to codify some form of deference. Nonetheless, some commentators have argued that codifying *Chevron* would violate Article III. In their view Article III, like the APA, requires that the judiciary have final authority over the meaning of federal law—"to say what the law is" in the words of the seminal 1803 case *Marbury v. Madison*. By relying at times on *Marbury*—a case interpreting Article III—the majority's opinion appears to cast doubt on the Congress's ability to codify *Chevron*-like deference.

The decision, however, appears to leave open Congress's authority to expressly delegate interpretive authority to agencies. The Court held: "That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has." The Court cited examples where Congress had conferred discretion on an agency to interpret statutory terms or "to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility . . . such as appropriate or reasonable." Accordingly, Congress may still be able to confer interpretive authority on agencies so long as it does so expressly.

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SEVEN COUNTY INFRASTRUCTURE COALITION ET AL. *v.* EAGLE COUNTY, COLORADO, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23–975. Argued December 10, 2024—Decided May 29, 2025

Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. §10901. In 2020, the Seven County Infrastructure Coalition applied to the Board for approval of an 88-mile railroad line connecting Utah's oil-rich Uinta Basin to the national freight rail network, facilitating the transportation of crude oil to refineries along the Gulf Coast. As part of its project review, the Board prepared an environmental impact statement (EIS) that addressed significant environmental effects of the project and identified feasible alternatives that could mitigate those effects, as required by the National Environmental Policy Act (NEPA). The Board issued a draft EIS and invited public comment. After holding six public meetings and collecting more than 1,900 comments, the Board prepared a 3,600-page EIS that analyzed numerous impacts of the railway's construction and operation. Relevant here, the EIS noted, but did not fully analyze, the potential environmental effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil. The Board subsequently approved the railroad line, concluding that the project's transportation and economic benefits outweighed its environmental impacts. Petitions challenging the Board's action were filed in the D. C. Circuit by a Colorado county and several environmental organizations. The D. C. Circuit found "numerous NEPA violations arising from the EIS." 82 F. 4th 1152, 1196. Specifically, the D. C. Circuit held that the Board impermissibly limited its analysis of the environmental effects from upstream oil drilling and downstream oil refining projects, concluding that those effects were reasonably foreseeable impacts that the EIS should have analyzed more extensively. Based on the deficiencies it

found in the EIS, the D. C. Circuit vacated both the EIS and the Board's final approval order.

Held: The D. C. Circuit failed to afford the Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway. Pp. 6–22.

(a) NEPA ensures that agencies and the public are aware of the environmental consequences of certain proposed infrastructure projects. As a purely procedural statute, NEPA "does not mandate particular results, but simply prescribes the necessary process" for an agency's environmental review of a project. *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 350. Some federal courts reviewing NEPA cases have assumed an aggressive role in policing agency compliance with NEPA, and have not applied NEPA with the judicial deference demanded by the statutory text and the Court's cases.

When, as here, a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the "only role for a court" is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U. S. 223, 227. Further, the adequacy of an EIS is relevant only to the question of whether an agency's final decision (here, to approve the railroad project) was reasonably explained.

Judicial deference in NEPA cases extends to an agency's determination of what details are relevant in an EIS. While NEPA requires an EIS to be "detailed," 42 U. S. C. §4332(2)(C), and the meaning of "detailed" is a legal question, see *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 391–392, what details need to be included in any given EIS is a factual determination for the agency. The textual focus of NEPA is the "proposed action"—the project at hand—not other separate projects. §4332(2)(C). Courts should defer to agencies' discretionary decisions about where to draw the line when considering indirect environmental effects and whether to analyze effects from other projects separate in time or place. See *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 767. In sum, when assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness. Even a deficient EIS does not necessarily require vacating an agency's project approval, absent reason to

believe that the agency might disapprove the project if it added more to the EIS. Cf. 5 U. S. C. §706. Pp. 6–15.

(b) Contrary to the D. C. Circuit's NEPA analysis, the Board's determination that its EIS need not evaluate possible environmental effects from upstream and downstream projects separate from the Uinta Basin Railway complied with NEPA's procedural requirements, particularly NEPA's textually mandated focus on the "proposed action" under agency review. While indirect environmental *effects* of the project itself may fall within NEPA's scope even if they might extend outside the geographical territory of the project or materialize later in time, the fact that the project might foreseeably lead to the construction or increased use *of a separate project* does not mean the agency must consider that separate project's environmental effects. See *Public Citizen*, 541 U. S., at 767. This is particularly true where, as here, those separate projects fall outside the agency's regulatory authority. Pp. 15–21.

(c) NEPA does not allow courts, "under the guise of judicial review" of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558. Pp. 21–22.

82 F. 4th 1152, reversed and remanded.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and BARRETT, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment, in which KAGAN and JACKSON, JJ., joined. GORSUCH, J., took no part in the consideration or decision of the case.

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SUPREME COURT OF THE UNITED STATES

No. 23–975

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL., PETITIONERS *v.* EAGLE COUNTY, COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 29, 2025]

JUSTICE KAVANAUGH delivered the opinion of the Court.

Some 55 years ago, Congress passed and President Nixon signed the National Environmental Policy Act, known as NEPA. For certain infrastructure projects that are built, funded, or approved by the Federal Government, NEPA requires federal agencies to prepare an environmental impact statement, or EIS. The EIS must address the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects.

NEPA was the first of several landmark environmental laws enacted by Congress in the 1970s. Subsequent statutes included the Clean Air Amendments of 1970, the Clean Water Act of 1972, and the Endangered Species Act of 1973, among others.

Unlike those later-enacted laws, however, NEPA imposes no substantive environmental obligations or restrictions. NEPA is a purely procedural statute that, as relevant here, simply requires an agency to prepare an EIS—in essence, a report. Importantly, NEPA does not require the agency to weigh environmental consequences in any particular way.

Rather, an agency may weigh environmental consequences as the agency reasonably sees fit under its governing statute and any relevant substantive environmental laws.

Simply stated, NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decisionmaking, not to paralyze it.

In this case, the U. S. Surface Transportation Board considered a proposal by a group of seven Utah counties for the construction and operation of an approximately 88-mile railroad line in northeastern Utah. Under federal law, the Board determines whether to approve construction of new railroad lines. The railroad line here would connect Utah's oil-rich Uinta Basin—a rural territory roughly the size of the State of Maryland—to the national rail network. By doing so, the new railroad line would facilitate the transportation of crude oil from Utah to refineries in Louisiana, Texas, and elsewhere. And the project would bring significant economic development and jobs to the isolated Uinta Basin by better connecting the Basin to the national economy.

For that proposed 88-mile Utah railroad line, the Board prepared an extraordinarily lengthy EIS, spanning more than 3,600 pages of environmental analysis. The Board's EIS addressed the environmental effects of the railroad line. But the U. S. Court of Appeals for the D. C. Circuit nonetheless faulted the EIS for not sufficiently considering the environmental effects of projects separate from the railroad line itself—primarily, the environmental effects that could ensue from (i) increased oil drilling upstream in the Uinta Basin and (ii) increased oil refining downstream along the Gulf Coast of Louisiana and Texas.

On that basis, the D. C. Circuit vacated the Board's EIS and the Board's approval of the 88-mile railroad line. As a result, construction still has not begun even though the Board approved the project back in December 2021.

We reverse. First, the D. C. Circuit did not afford the

Board the substantial judicial deference required in NEPA cases. Second, the D. C. Circuit ordered the Board to address the environmental effects of projects separate in time or place from the construction and operation of the railroad line. But NEPA requires agencies to focus on the environmental effects of the project at issue. Under NEPA, the Board's EIS did not need to address the environmental effects of upstream oil drilling or downstream oil refining. Rather, it needed to address only the effects of the 88-mile railroad line. And the Board's EIS did so.

I

Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. §10901. After receiving an application for a new railroad line, the Board issues a public notice and initiates an agency proceeding to review the proposal; alternatively, the Board may streamline approval through a statutory exemption process. §§10101, 10502, 10901. In addition, for covered projects, NEPA compels the Board to prepare an environmental impact statement, or EIS.

In 2020, the Seven County Infrastructure Coalition—a group of seven Utah counties—applied to the Board for approval of an 88-mile railroad line in northeastern Utah. The new railroad line would connect the Uinta Basin with the interstate freight rail network—and via that network, to refineries in Louisiana, Texas, and other destinations.

The Uinta Basin contains significant quantities of crude oil and other fossil fuels. The Uinta Basin Railway would provide oil producers a more efficient option for transporting oil out of the Basin to refineries. As of now, oil from the Basin is carried by trucks that must navigate mountain passes on narrow roads, a difficult and slow journey in any season.

The Board's environmental review of the Uinta Basin

Railway followed standard NEPA procedures. In October 2020, the Board issued a draft EIS and invited public comment. During the public comment period, the Board held six public meetings and collected more than 1,900 comments. In August 2021, the Board published its final EIS.

All told, the Board's final EIS clocked in at more than 3,600 pages. The EIS identified and analyzed numerous "significant and adverse impacts that could occur as a result" of the railroad line's construction and operation—including disruptions to local wetlands, land use, and recreation. App. 121; see *id.*, at 94–105, 121–126, 206–347. The EIS likewise addressed several "minor impacts," such as air pollution and big-game movement around the construction site. *Id.*, at 126; see *id.*, at 126–134, 251–259, 309–325.

The EIS also noted, but did not fully analyze, the potential effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil carried by the railroad. *Id.*, at 135, 348–482, 511–516, 520–534, 539–543.

As to the environmental effects of upstream oil drilling, the EIS explained why further analysis of those "potential future, as yet unplanned, oil and gas development projects" was not needed. *Id.*, at 520. To begin with, the project at issue was an 88-mile railroad line, not an oil well or a drilling permit in the Uinta Basin. Moreover, the Board possesses "no authority or control over potential future oil and gas development" in the Basin. *Id.*, at 522. Future projects would be "subject to the approval processes of other federal, state, local, and tribal agencies." *Ibid.* In any event, the environmental effects of future oil and gas development in the Basin are "speculative" and attenuated from the project at hand. *Id.*, at 525; see *id.*, at 525–527 (citing *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 767–768, 770 (2004)).

As for the environmental effects of downstream oil refining projects, the Board recognized that "trains originating on the proposed rail line would transport crude oil to markets in other regions of the United States," such as Louisiana and Texas, and that oil refining (and the associated effects on the environment) could increase in those locations as a result. App. 477; see *id.*, at 477–482. But the identity of specific destinations "would depend on the ability and willingness of refineries in other markets to receive rail cars carrying Uinta Basin crude oil and process the oil in their refineries." *Id.*, at 477. Moreover, the Board "would have no role in approving or regulating the production, refining, or use" of Uinta Basin crude oil. *Id.*, at 540–541. So the Board did not fully evaluate the effects of additional oil refining along the Gulf Coast.

In December 2021, a few months after issuing the final EIS, the Board approved the construction and operation of the Uinta Basin Railway. Recognizing that "rail construction projects are in the public interest," the Board concluded that the new railroad line would "have substantial transportation and economic benefits," and that those benefits outweighed the environmental impacts identified in the EIS. App. to Pet. for Cert. 121a, 119a; see *id.*, at 118a–121a.

In the wake of the Board's final approval, a Colorado county and several environmental organizations sued by filing petitions for review in the U. S. Court of Appeals for the D. C. Circuit.

The D. C. Circuit found "numerous NEPA violations arising from the EIS." *Eagle Cty.* v. *Surface Transp. Bd.*, 82 F. 4th 1152, 1196 (2023). In the court's view, the Board "failed" to take "the requisite 'hard look' at all of the environmental impacts of the Railway." *Id.*, at 1175.

Specifically, the Court of Appeals held that the Board impermissibly limited its analysis of upstream and downstream projects. The court concluded that the

environmental effects from oil drilling in the Uinta Basin and oil refining along the Gulf Coast were " 'reasonably foreseeable impacts' " that the EIS should have analyzed more extensively. *Id.*, at 1177. The court rejected the Board's argument that those effects would arise from other projects (upstream oil drilling, downstream oil refining, and the like) that are separate from the current project and regulated by other agencies. *Id.*, at 1177–1180 (citing *Sierra Club* v. *FERC*, 867 F. 3d 1357, 1372–1375 (CADC 2017) (*Sabal Trail*)).

Based on the deficiencies it found in the EIS, the Court of Appeals vacated the EIS and the Board's final approval order. 82 F. 4th, at 1196. The Coalition and the Uinta Basin Railway sought review in this Court, and we granted certiorari. 602 U. S. ___ (2024).

II

For certain infrastructure projects that are built, funded, or approved by the Federal Government, NEPA requires federal agencies to prepare an environmental impact statement, or EIS, identifying significant environmental effects of the projects, as well as feasible alternatives. The law ensures that the agency and the public are aware of the environmental consequences of proposed projects. Properly applied, NEPA helps agencies to make better decisions and to ensure good project management.

Importantly, however, NEPA is purely procedural. In ultimately deciding whether to build, fund, or approve a project, an "agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 350 (1989). Otherwise stated, NEPA "does not mandate particular results, but simply prescribes the necessary process" for an agency's environmental review of a project. *Ibid.*; see *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 756–757 (2004); *Marsh* v. *Oregon*

Natural Resources Council, 490 U. S. 360, 370–372 (1989); *Baltimore Gas & Elec. Co.* v. *Natural Resources Defense Council, Inc.*, 462 U. S. 87, 97–98 (1983); *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U. S. 223, 227–228 (1980); *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558 (1978); *Kleppe* v. *Sierra Club*, 427 U. S. 390, 410, n. 21 (1976).[1]

Here, the Board's EIS evaluated the environmental effects of the proposed 88-mile railroad line in Utah's rural Uinta Basin. But the D. C. Circuit, following Circuit precedent applying NEPA, concluded that the EIS did not sufficiently address the reasonably foreseeable environmental impacts of increased upstream oil drilling in the Uinta Basin, as well as the environmental effects of

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[1] As it was phrased at the time of the Board's EIS (before a 2023 amendment to the statute, see n. 3, *infra*), NEPA directed federal agencies to

> "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> "(i) the environmental impact of the proposed action,
>
> "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> "(iii) alternatives to the proposed action,
>
> "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
>
> "Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." §102(2)(C), 83 Stat. 853, as amended, 42 U. S. C. §4332(2)(C) (2018).

increased downstream oil refining along the Gulf Coast. 82 F. 4th, at 1196.

As we will explain, we disagree with the D. C. Circuit's decision on two grounds. First, the court did not afford the Board the substantial judicial deference required in NEPA cases. Second, the court incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway.

A

Since the early 1970s, federal courts have reviewed NEPA cases. Over time, some courts have assumed an aggressive role in policing agency compliance with NEPA. Other courts have adopted a more restrained approach. In light of the continuing confusion and disagreement in the Courts of Appeals over how to handle NEPA cases, we think it important to reiterate and clarify the fundamental principles of judicial review applicable in those cases. As we will explain, the central principle of judicial review in NEPA cases is deference.[2]

As a general matter, when an agency interprets a statute, judicial review of the agency's interpretation is *de novo*. See *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 391–392 (2024). But when an agency exercises discretion

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[2] Some have debated whether Congress and the President in 1970 actually intended or anticipated judicial review of agency compliance with NEPA. See R. Lazarus, The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains, 100 Geo. L. J. 1507, 1515 (2012) (describing the history). In any event, an early D. C. Circuit case concluded that an agency's compliance with NEPA was judicially reviewable. See *Calvert Cliffs' Coordinating Comm., Inc.* v. *U. S. Atomic Energy Comm'n*, 449 F. 2d 1109 (1971). And this Court's cases have treated NEPA compliance as judicially reviewable. That said, courts must conduct their review with significant deference to the agency. When reviewing compliance with NEPA, "courts are to play only a limited role." *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558 (1978).

granted by a statute, judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained. See *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983); *FCC* v. *Prometheus Radio Project*, 592 U. S. 414, 423 (2021).

When a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the reviewing court must account for the fact that NEPA is a *purely procedural statute*. Under NEPA, an agency's only obligation is to prepare an adequate report. "NEPA requires no more." *Strycker's Bay Neighborhood Council*, 444 U. S., at 228. Unlike a plethora of other federal environmental statutes (such as the Clean Air Act, the Clean Water Act, etc.), NEPA imposes no *substantive* constraints on the agency's ultimate decision to build, fund, or approve a proposed project. So when reviewing an agency's EIS, "the only role for a court" is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. *Id.*, at 227; see *Vermont Yankee*, 435 U. S., at 551, 555. Because an EIS is only one input into an agency's decision and does not itself require any particular substantive outcome, the adequacy of an EIS is relevant only to the question of whether an agency's final decision (here, to approve the railroad) was reasonably explained.

In short, when determining whether an agency's EIS complied with NEPA, a court should afford substantial deference to the agency.

In practice, judicial deference in NEPA cases can take several forms. For example, NEPA says that the EIS should be "detailed." 42 U. S. C. §4332(2)(C). Of course, the meaning of "detailed" is a question of law to be decided by

a court. *Loper Bright*, 603 U. S., at 391–392. But what details need to be included in any given EIS? For the most part, that question does not turn on the meaning of "detailed"—instead, it "involves primarily issues of fact." *Marsh*, 490 U. S., at 377. The agency is better equipped to assess what facts are relevant to the agency's own decision than a court is. As a result, "agencies determine whether *and to what extent* to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767 (emphasis added). So the question of whether a particular report is detailed enough in a particular case itself requires the exercise of agency discretion—which should not be excessively second-guessed by a court. Brevity should not be mistaken for lack of detail. A relatively brief agency explanation can be reasoned and detailed; an EIS need not meander on for hundreds or thousands of pages. So courts should not insist on length as a prerequisite for finding an EIS to be detailed.[3]

The EIS also must identify significant environmental impacts and feasible alternatives. But there too, an agency exercises substantial discretion. An agency must make predictive and scientific judgments in assessing the relevant impacts (what are the likely impacts; do they rise to the level of "significant"?) and alternatives (what are the

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[3] Indeed, federal law now strictly *prohibits* an agency's EIS from going on endlessly. In 2023, two years after the Board issued its final EIS for the Uinta Basin Railway, Congress passed and President Biden signed an Act amending NEPA meaningfully titled the "Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023." Pub. L. 118–5, Div. C, Tit. III, §321, 137 Stat. 38–39. Under that BUILDER Act, an EIS "shall not exceed 150 pages" and must be completed in "2 years" or less. *Id.*, at 41–42 (42 U. S. C. §§4336a(e)(1)(A), (g)(1)(A)). That Act strongly reinforces the basic principles that NEPA, correctly interpreted, already embodied but that have been too often overlooked. The analysis in this opinion thus applies to NEPA as amended by the BUILDER Act.

potential alternatives; are they really "feasible"?). As this Court has said, "the term 'alternatives' is not self-defining," and "[c]ommon sense" should be brought to bear. *Vermont Yankee*, 435 U. S., at 551. Black-letter administrative law instructs that when an agency makes those kinds of speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its "most deferential." *Baltimore Gas & Elec.*, 462 U. S., at 103; see *Marsh*, 490 U. S., at 378; *State Farm*, 463 U. S., at 43.

In preparing an EIS, an agency also must determine the scope of the environmental effects that it will address. The textual focus of NEPA is the "proposed action"—that is, the project at hand. 42 U. S. C. §4332(2)(C) (2018). The agency therefore will obviously seek to assess significant effects from the project at issue. But how far will the agency go in considering the indirect effects that might occur outside the area of the immediate project—for example, due to emissions or run off from the project carried elsewhere by air or water? And will the agency evaluate the environmental effects from other future or geographically separate projects that may be initiated (or expanded) as a result of or in the wake of the current project? And what if another agency also possesses regulatory authority over a related project?

In analyzing those scope questions, it is critical to disaggregate the agency's role from the court's role. So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand. On those kinds of questions, as this Court has often said, agencies possess discretion and must have broad latitude to draw a "manageable line." *Public Citizen*,

541 U. S., at 767 (quoting *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U. S. 766, 774, n. 7 (1983)).

To tie all of this together: When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness. As the Court has emphasized on several occasions, and we doubly underscore again today, "inherent in NEPA . . . is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767. A reviewing court may not "substitute its judgment for that of the agency as to the environmental consequences of its actions." *Kleppe*, 427 U. S., at 410, n. 21.

Some courts have strayed and not applied NEPA with the level of deference demanded by the statutory text and this Court's cases. Those decisions have instead engaged in overly intrusive (and unpredictable) review in NEPA cases. Those rulings have slowed down or blocked many projects and, in turn, caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects.

The upshot: NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects. Some project opponents have invoked NEPA and sought to enlist the courts in blocking or delaying even those projects that otherwise comply with

all relevant substantive environmental laws. Indeed, certain project opponents have relied on NEPA to fight even clean-energy projects—from wind farms to hydroelectric dams, from solar farms to geothermal wells. See, *e.g.*, Brief for Chamber of Commerce of the United States of America, et al. as *Amici Curiae* 19–20.

All of that has led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation. Delay upon delay, so much so that the process sometimes seems to "borde[r] on the Kafkaesque." *Vermont Yankee*, 435 U. S., at 557. Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the EIS and for the builder of the project. And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion.

A 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development "under the guise" of just a little more process. *Id.*, at 558. A course correction of sorts is appropriate to bring judicial review under NEPA back in line with the statutory text and common sense. *Id.*, at 525. Congress did not design NEPA for *judges* to hamstring new infrastructure and construction projects. On the contrary, as this Court has stressed, courts should and "must defer to 'the informed discretion of the responsible federal agencies.'" *Marsh*, 490 U. S., at 377.

Critically, as the Government and the Coalition explained at oral argument, courts not only must defer to

the agency's reasonable choices regarding the scope and contents of the EIS, but also must keep in mind that review of an agency's EIS is not the same thing as review of the agency's final decision concerning the project. See Tr. of Oral Arg. 31–32, 70–71. That, too, follows from NEPA's status as a purely procedural statute. The ultimate question is not whether an EIS in and of itself is inadequate, but whether the agency's final decision was reasonable and reasonably explained. Review of an EIS is only one component of that analysis. Even if an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency's ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS. Cf. 5 U. S. C. §706. For example, in a case like this one, even if the EIS drew the line on the effects of separate upstream or downstream projects too narrowly, that mistake would not necessarily require a court to vacate the agency's approval of the railroad project. Cf. *Vermont Yankee*, 435 U. S., at 558.[4]

In other words, as this Court has said before, NEPA does not authorize a court to " 'interject itself within the area of discretion . . . as to the choice of the action to be taken'" by the agency. *Strycker's Bay Neighborhood Council*, 444 U. S., at 227–228 (quoting *Kleppe*, 427 U. S., at 410, n. 21). NEPA's procedural mandate helps "to insure a fully informed and well-considered decision, not necessarily a decision the judges of the Court of Appeals or this Court

[4] When, unlike this case, an agency *denies* approval of a project, the denied applicant may ordinarily challenge the denial under the APA or the relevant agency's governing statute. The denied applicant may argue, among other things, that the agency acted unreasonably in denying approval by weighing environmental consequences too heavily in light of the agency's governing statute and other relevant factors, or perhaps that the agency erred because the governing statute did not allow the agency to weigh environmental consequences at all. NEPA does not alter those judicial inquiries.

would have reached had they been members of the decisionmaking unit of the agency." *Vermont Yankee*, 435 U. S., at 558.

The "role of a court in reviewing the sufficiency of an agency's consideration of environmental factors is a limited one." *Id.*, at 555. The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.

B

Even apart from failing to afford sufficient deference to the Surface Transportation Board, the D. C. Circuit's decision was mistaken on the merits under NEPA. The D. C. Circuit erroneously required the Board to address environmental effects from projects that are separate in time or place from the 88-mile railroad project at hand—that is, effects from potential future projects or from geographically separate projects. Moreover, those separate projects fall outside the Board's authority and would be initiated, if at all, by third parties.

In its EIS, the Board determined that upstream oil drilling in the Uinta Basin and downstream oil refining along the Gulf Coast were separate from the construction and operation of the 88-mile railroad line. The Board's EIS explained that the "proposed rail line and any future oil and gas development projects are not two phases of a single action," but "separate, independent projects." App. 523. Those other projects, the Board reasoned, should not be considered "part of the proposed action assessed in the EIS." *Ibid.* The Board concluded that its EIS need not evaluate the possible environmental effects from separate upstream or downstream projects.[5]

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[5] Even though not mandated by NEPA to do so, the Board did identify some of the potential effects and marginal risks from projects separate from the 88 miles of additional railroad track in rural Utah. See, *e.g.*, App. 354–358 (forecasting the number of oil wells that could be added in the Uinta Basin as a result of increased production spurred by the new

The Board's approach complied with NEPA and this Court's longstanding NEPA precedents. Importantly, the textually mandated focus of NEPA is the "proposed action"—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration. 42 U. S. C. §4332(2)(C) (2018); see *Aberdeen & Rockfish R. Co.* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 422 U. S. 289, 322–324 (1975); *Kleppe*, 427 U. S., at 398–402. Therefore, when the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project.

To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA, as the Government explained at oral argument. See Tr. of Oral Arg. 59–63.

But if the project at issue might lead to the construction or increased use *of a separate project*—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects *of that separate project*. To put it in legal terms, the

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railway); *id.*, at 420–423, 539–542 (evaluating effects from increased oil refining along the Gulf Coast). The Board should not necessarily earn bonus points for studying more than NEPA demanded. But it should definitely not receive a failing grade just because its 3,600-page EIS was less thorough in analyzing the effects from other projects than the Court of Appeals might have preferred.

separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project. See *Public Citizen*, 541 U. S., at 767 (citing *Metropolitan Edison,* 460 U. S., at 774, and n. 7). The effects from a separate project may be factually foreseeable, but that does not mean that those effects are relevant to the agency's decisionmaking process or that it is reasonable to hold the agency responsible for those effects. Cf. *Public Citizen*, 541 U. S., at 766–767. In those circumstances, "the causal chain is too attenuated." *Metropolitan Edison,* 460 U. S., at 774. In other words, there is no "'reasonably close causal relationship' " between the project at hand and the environmental effects of those other projects. *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison,* 460 U. S., at 774).

Moreover, and importantly, the Board here possesses no regulatory authority over those separate projects. The Board does not regulate oil drilling, oil wells, oil and gas leases, or oil refineries. The Board approves railroad lines. See 49 U. S. C. §§10101, 10901. Other agencies possess authority to regulate those separate projects and their environmental effects. As this Court stated in one of the more important sentences in the NEPA canon, "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect." *Public Citizen*, 541 U. S., at 770. In other words, agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority. For that reason as well, there is no "'reasonably close causal relationship' " between the 88-mile railroad project at hand and the environmental effects of the separate oil drilling and oil refining projects. *Id.*, at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774); see also *Robertson*, 490 U. S., at 350–353; *Vermont Yankee*, 435 U. S., at 550–551, 558.

To be sure, NEPA mandates that an agency "consult

with" other agencies as appropriate. 42 U. S. C. §4332(2)(C). But there is a vast difference between, for example, an agency's consulting with the Forest Service to determine the effects of a railroad line that would pass through a national forest and an agency's asking another agency to assess how 88 miles of additional track in rural Utah would contribute to emissions or climate change along the Gulf Coast. Indeed, "no rule of reason worthy of that title would require an agency to prepare an EIS" addressing effects from another project that is separate in time or place from the project at hand—particularly when it would require the agency to speculate about the effects of a separate project that is outside its regulatory jurisdiction. *Public Citizen*, 541 U. S., at 767–768 (citing *Aberdeen & Rockfish R. Co.*, 422 U. S., at 325).

In this case, the Uinta Basin Railway was the relevant project. NEPA therefore required the Board to consider the environmental effects of that 88-mile railroad line's construction and operation. To the extent that the new 88-mile railroad line could disrupt the habitat of protected species, or the new rail embankments could cause soil erosion into local bodies of water, or trains on the new line could pollute the air, NEPA dictated that the Board evaluate those effects. And consistent with NEPA, the Board here *did* comprehensively evaluate those effects, including via consultation with other agencies. As the D. C. Circuit itself recognized, the Board explained that "construction and operation of the Railway" would affect "water resources, air quality, [and] special status species like the greater sage-grouse." 82 F. 4th, at 1168. But nothing in NEPA required the Board to go further and study environmental impacts from upstream or downstream projects separate in time or place from the 88-mile railroad line's construction and operation.

Under NEPA, it also bears emphasis, a mere "'but for' causal relationship is insufficient to make an agency

responsible for a particular effect." *Public Citizen*, 541 U. S., at 767. Likewise, the fact that other projects might foreseeably be built or expanded in the wake of the current project does not, by itself, make the agency responsible for addressing the environmental effects of those other projects. The agency may draw what it reasonably concludes is a "'manageable line'"—one that encompasses the effects of the project at hand, but not the effects of projects separate in time or place. *Ibid.* (quoting *Metropolitan Edison*, 460 U. S., at 774, n. 7). True, a new airport may someday lead to a new stretch of highway; a new pipeline to a new power plant; a new housing development to a new subway stop. But the environmental effects of the project at hand constitute NEPA's textual focus. An agency need not assess the environmental effects of other separate projects simply because those projects (and effects) might not materialize but for the project at hand, or are in some sense foreseeable.

Simply stated, a court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project. See *Public Citizen*, 541 U. S., at 767–768; *Metropolitan Edison*, 460 U. S., at 774–775. NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects. A relatively modest infrastructure project should not be turned into a scapegoat for everything that ensues from upstream oil drilling to downstream refinery emissions. As Justice Rehnquist underscored in *Vermont Yankee*, NEPA is not a "game" where project objectors can engage in "unjustified obstructionism"—here, for example, by raising a slew of remote effects that they think " 'ought to be' considered." 435 U. S., at 553–554.

To be sure, in certain circumstances, other projects may be interrelated and close in time and place to the project at

hand—a residential development next door to and built at the same time as a ski resort, for example. See, *e.g.*, *Robertson*, 490 U. S., at 338–340. The question then is whether that is a single project within the authority of the agency in question. There may be a gray area in defining the project at hand. Even in those circumstances, however, a court's review still must remain deferential, as we explained in Part II–A above. In other words, even if the reviewing court in such a case might think that NEPA would support drawing a different line, a court should defer to an agency so long as the agency drew a reasonable and " 'manageable line.' " *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774, n. 7). All of that is to again underscore that a difference may exist between what an agency should do as a matter of good policy and best practices under NEPA, and what a reviewing court may subsequently order an agency to do under NEPA.

In this case, in any event, the NEPA question is not close. The Board did not need to evaluate potential environmental impacts of the separate upstream and downstream projects. As to other projects upstream, the EIS rightly explained that the environmental consequences of future oil drilling in the Basin are distinct from construction and operation of the railroad line. App. 525–527. As for other projects downstream, the Board likewise correctly explained that any environmental effects from highly regulated oil refineries along the Gulf Coast are well outside the scope of the 88-mile railroad project in rural Utah. *Id.*, at 420–423, 539–542.[6]

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[6] In addition, inherent in Board approval of railroad lines is the understanding that any new freight railroad may transport different kinds of cargo over an approved line—from corn to cars to coal and the like. See Brief for Association of American Railroads as *Amicus Curiae* 2, 8–9. As common carriers, railroads subject to the Board's jurisdiction are required to provide "transportation or service on reasonable request"

An agency may decline to evaluate environmental effects from separate projects upstream or downstream from the project at issue. *Public Citizen*, 541 U. S., at 770. Here, the Board's EIS concluded that the "proposed rail line and any future oil and gas development projects are not two phases of a single action," but "separate, independent projects." App. 523. So the Board concluded that they need not be considered "part of the proposed action assessed in the EIS." *Ibid.* Absolutely correct.

* * *

In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability. Some courts' NEPA decisions have fallen short of that objective. The proper judicial approach for NEPA cases is straightforward: Courts should review an agency's EIS to check that it addresses the environmental effects of the project at hand. The EIS need not address the effects of separate projects. In conducting that review, courts should afford substantial deference to the agency as to the scope and contents of the EIS.

Plaintiffs' policy objections to this 88-mile Utah railroad may or may not be persuasive. But neither "the language nor the history of NEPA suggests that it was intended to give citizens a general opportunity to air their policy objections to proposed federal actions. The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements." *Metropolitan Edison*, 460 U. S.,

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to any person or commodity. 49 U. S. C. §§11101(a), 10102(9). Railroad lines approved by the Board cannot decline to provide "common carrier" transport based on the product or commodity to be carried. §11101(a). For that additional reason, the EIS here correctly explained that the Board was "not required to analyze impacts related to the destinations or end uses of any such products or commodities" transported by the 88-mile railroad line, including Uinta Basin crude oil. App. 422; see *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 766–770 (2004).

at 777. Citizens may not enlist the federal courts, "under the guise of judicial review" of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. *Vermont Yankee*, 435 U. S., at 558.

We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 23–975

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL., PETITIONERS *v.* EAGLE COUNTY, COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 29, 2025]

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, concurring in the judgment.

The National Environmental Policy Act improves agency decisionmaking by requiring agencies to consider environmental impacts for which their decisions would be responsible. I agree with the Court that the Surface Transportation Board would not be responsible for the harms caused by the oil industry, even though the railway it approved would deliver oil to refineries and spur drilling in the Uinta Basin. I reach that conclusion because, under its organic statute, the Board had no authority to reject petitioners' application on account of the harms third parties would cause with products transported on the proposed railway. The majority takes a different path, unnecessarily grounding its analysis largely in matters of policy. Accordingly, I write separately to explain why the result in this case follows inexorably from our precedent.

I

A

The Uinta Basin spans thousands of square miles across northwestern Utah and Colorado. Bookended by the Uinta Mountains in the north and the Roan Cliffs in the south,

the Basin is hard to access and has few residents. The Basin, however, contains "'extensive deposits of valuable minerals,' " including large reserves of "waxy crude," a form of petroleum known for its thick consistency at ambient temperatures. 82 F. 4th 1152, 1165–1166 (CADC 2023). For over a decade, oil producers have transported this oil out of the Basin in heated tanker trucks, to be sold to refineries in Utah and beyond.

Petitioners, the Seven County Infrastructure Coalition and the Uinta Basin Railway, LLC, plan to build a railway connecting the Uinta Basin with the Union Pacific Railroad Company station in Kyune, Utah, and from there to the national rail network. As the Coalition recognizes, "the Railway's predominant and expected primary purpose would be" to enable Basin oil producers to transport, with greater ease and in greater quantities, waxy crude to refineries in the Gulf Coast. *Ibid.* Nearly all the waxy crude transported by train out of the Uinta Basin would continue its travels over the Union Pacific track from Kyune to Denver, which runs through Eagle County, Colorado, and closely abuts the Colorado River.

B

No person may "construct an additional railroad line" or "provide transportation over . . . an extended or additional railroad line" without a certificate of approval from the Surface Transportation Board. 49 U. S. C. §10901(a). Applicants can file a formal application for such a certificate, §10901(c), or they can seek approval through an abbreviated exemption process, §10502(a). In either case, the Act expresses a clear presumption in favor of approving railways. See *ibid.* (exemptions must be granted "to the maximum extent" consistent with law); §10901(c) (the Board "shall" issue a certificate "unless" inconsistent with public convenience and necessity).

In May 2020, petitioners requested permission to build

the Railway by way of the exemption procedure. Because the proposed railway constitutes a "major Federal action significantly affecting" the environment, the National Environmental Policy Act (NEPA) required the Board to prepare a "detailed" statement addressing its environmental impacts. 42 U. S. C. §4332(C). The Board conditionally approved petitioners' request based on the Railway's " 'transportation merits,'" but it deferred a final decision pending the results of its environmental review. Surface Transportation Board, Office of Environmental Analysis, Uinta Basin Railway Final Environmental Impact Statement S–2, n. 2 (Aug. 2021) (Final EIS).

After soliciting public comment, the Board completed its environmental impact statement on August 6, 2021.[1] App. to Pet. for Cert. 76a. The statement recognized that "between 3.68 and 10.52 trains" would travel daily on the proposed new railway, which would be used "primarily to transport crude oil from the Basin to markets across the United States." Final EIS 1–4. Consistent with its obligations under NEPA, the Board discussed the comparative environmental merits of alternative railway routes as well as the environmental consequences common to all alternatives. Among other things, the Board analyzed the Railway's likely impact on the Basin's natural environment and the impacts increased freight traffic from the Railway would have on the existing Union Pacific line running through Eagle County.

Of particular relevance here, the Board recognized that "[r]efiners would refine the crude oil transported by the proposed rail line into various fuels," which in turn would be

[1] The final statement consisted of a 600-page report accompanied by supporting appendixes and responses to the public comments. See www.uintabasinrailwayeis.com (Board-created website containing the complete EIS and all related documentation); cf. *ante,* at 2, 4, 15, n. 5, 22 (asserting that the EIS spanned more than 3,600 pages of analysis).

combusted, causing an increase in greenhouse-gas emissions. *Id.*, at 3.15–35. Depending on market conditions, the Board estimated that increased oil production made possible by the Railway would cause greenhouse-gas emissions equivalent to between 0.04 and 0.1 percent of the global total. *Id.*, at 3.15–36. (By way of comparison, Sweden and Ireland are each responsible for about 0.1 percent of global emissions.[2]) Although the Board recognized the "massive deleterious impacts" of climate change, it explained that it was "not required to analyze impacts related to the destinations or end uses of " products transported on proposed rail lines. *Ibid.* After all, the Board explained, "railroads have a common carrier obligation to carry all commodities, including hazardous materials, upon reasonable request," meaning the Board cannot control the products "transported on the proposed rail line." *Ibid.* (citing 49 U. S. C. §11101 and *Riffin* v. *STB*, 733 F. 3d 340, 345–347 (CADC 2013)). For that reason, the Board did not consider in further detail the effects of increased drilling for oil in the Basin, or increased refining of oil in the Gulf Coast.

After completing this analysis, the Board issued a decision approving the railway. With respect to the anticipated increase in oil production, the Board again concluded that it had "no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development." App. to Pet. for Cert. 108a. Board member Oberman dissented. In his view, the Board did have "the power to deny construction approval based on weighing all of the environmental impacts that will arise from oil and gas development in the Basin," particularly because the Railway's " 'entire purpose'" would be to stimulate such production. *Id.*, at 124a.

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[2] See European Commission, Emissions Database for Global Atmospheric Research Report 2024 (last accessed May 7, 2025), https://edgar.jrc.ec.europa.eu/report_2024#emissions_table.

C

Several environmental groups filed a petition for review of the Board's decision to approve the railway, arguing principally that the Board should have further considered the consequences of increased oil drilling and refining that the Railway's construction would enable. Eagle County separately petitioned for review of the Board's decision, alleging that the Board's environmental analysis was deficient because it ignored or underestimated the Railway's impacts, through increased rail traffic, on the County and the nearby Colorado River. Petitioners intervened in support of the Board's decision.

The D. C. Circuit rejected several claims no longer at issue here, but it sided with the challengers on others. With regard to the environmental respondents' challenge, the court held that the Board should have more carefully considered the deleterious environmental effects of increased oil production made possible by the Railway's construction. 82 F. 4th, at 1180. Among other things, the court explained, the Board should have "estimate[d] the emissions or other environmental impacts" of oil refining as localized for the "specific regions that will receive the oil based on expected train traffic." *Id.*, at 1179. The court rejected the Board's argument "that it lacks authority to prevent, control, or mitigate those developments." *Id.,* at 1180. Instead, in the D. C. Circuit's view, the Board's statutory obligation to consider whether the Railway would serve the "'public convenience and necessity'" encompassed "reasonably foreseeable environmental harms," including those resulting from the increase in oil production on the Gulf Coast. *Ibid.*

Moving to the County's claims, the D. C. Circuit agreed the Board's analysis of the Railway's effect on the Union Pacific track and the Colorado River contained serious, unexplained errors and omissions. The court further concluded that the Board had failed to comply with several

other statutory requirements unrelated to NEPA. Accordingly, the D. C. Circuit vacated the Board's decision and remanded it to the agency for further proceedings.

Petitioners asked this Court to review only one part of the D. C. Circuit's decision: whether NEPA required the Board to study the environmental impacts of oil wells and refineries that lie outside the Board's regulatory authority. Pet. for Cert. i. This Court granted review to decide that question.

II

A

NEPA requires agencies to prepare and publish a "detailed statement" reviewing the environmental impact of any major federal action. 42 U. S. C. §4332. That "action-forcing" requirement serves dual purposes, ensuring both that an agency considers a project's environmental consequences before deciding whether to approve it, and rendering the agency publicly accountable for environmental harms it decides to tolerate. See *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 349–350 (1989). The point, as this Court has recognized, is not merely that an agency produce a report but "that environmental concerns be integrated into the very process of decision-making." *Andrus* v. *Sierra Club*, 442 U. S. 347, 350 (1979); see also *Kleppe* v. *Sierra Club*, 427 U. S. 390, 409–410 (1976); *Robertson*, 490 U. S., at 350. In that way, NEPA's procedural requirements advance Congress's aim that the Federal Government "use all practicable means [to ensure] that the Nation may . . . fulfill the responsibilities of each generation as trustee of the environment for succeeding generations." §4331(b)(1).

Because NEPA's central aim is to improve agency decisionmaking, an agency need not consider every conceivable environmental consequence of a proposed federal action. Rather, agencies need only analyze environmental impacts

for which their decision would be (at least in part) "responsible," a requirement akin to "the familiar doctrine of proximate cause from tort law." *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U. S. 766, 774, and n. 7 (1983). An agency is not responsible for environmental impacts it could not lawfully have acted to avoid, either through mitigation or by disapproving the federal action. See *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 770 (2004). Nor is an agency responsible for impacts that, though technically avoidable, are so causally attenuated from or ancillary to the agency's statutorily assigned tasks that it could not reasonably have been expected to consider them as part of its decisionmaking process. *Metropolitan Edison*, 460 U. S., at 774. Together these limitations serve to keep the scope of the agency's review targeted to environmental impacts it is well positioned to address.

Precedent makes these abstract principles concrete. In *Public Citizen*, this Court evaluated the Federal Motor Carrier Safety Administration's environmental analysis of regulations establishing an application process for Mexican motor carriers who wanted to operate in the United States. 541 U. S., at 758–763. The application system itself had only minimal environmental impacts (related to anticipated roadside inspections of the Mexican trucks and buses). Yet the agency developed it at the direction of the President, who had decided to lift a long-running moratorium on Mexican carriers' operation in the United States following the system's completion. *Id.*, at 760. Thus, promulgation of the agency's regulations would enable a substantial influx of new trucking, which in turn would have major environmental implications.

This Court concluded that, though the agency's regulations would be a "but-for" cause of the new trucking, it did not need to consider the related environmental impacts because it had "no authority to prevent" them. *Id.,* at 766–

767. After all, the decision to lift the moratorium had been the President's, not the agency's, and the agency could not lawfully refuse to issue its regulations in order to block the President's decision. *Id.*, at 761. The agency had no means to prevent, and thus was not responsible for, the consequences of lifting the moratorium. Hence NEPA did not require it to analyze those consequences.

The Court's decision in *Metropolitan Edison* illustrates the companion principle: Some environmental impacts are connected to an agency action by way of so "attenuated" a causal chain that the agency may reasonably dismiss them as ancillary to its decision. 460 U. S., at 774. In *Metropolitan Edison*, the Court considered whether the Nuclear Regulatory Commission had to analyze not only the risk that a proposed nuclear plant would cause an accident, but also the psychological concern nearby residents might experience when they learned about that risk. *Ibid.* Although the psychological concern would be "caused by" the nuclear plant, the Court held that NEPA did not require the agency to consider it. *Id.*, at 774–775. That makes sense: Preventing nuclear accidents is a core element of the Commission's statutory task; preventing psychological distress is not. See *id.*, at 776 (noting that "psychiatric expertise" is "not otherwise relevant to [the agency's] congressionally assigned functions"). Because the agency could reasonably disregard psychological distress in deciding whether to approve a power plant, it could disregard that risk in its environmental analysis as well.

As these cases show, the dual limitations on an agency's duty to consider information under NEPA yield a "'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767 (quoting *Marsh* v. *Oregon Natural Resources Council*, 490 U. S. 360,

373–374 (1989)). NEPA requires consideration of environmental impacts only if such consideration would result in information on which the agency could act.

B

Consistent with these principles, judicial review of an agency's environmental impact statement involves a two-step analysis. First, courts must consider the grounds on which an agency may rely under its organic statute to modify (by mitigation) or reject a proposed federal action. If the organic statute precludes consideration of a particular issue, the agency may set it aside for purposes of its NEPA review as well. That is the rule of *Public Citizen*.[3]

Second, if an agency decided not to review an environmental impact because (in its judgment) the impact was too causally attenuated from the question at hand, courts must ask whether the agency "acted arbitrarily" in doing so. *Kleppe*, 427 U. S., at 412. That deferential standard of review is appropriate here, as it is across substantive areas of administrative law, because "[a]gencies . . . have 'unique expertise,' often of a scientific or technical nature, relevant to applying a regulation 'to complex or changing circumstances.'" *Kisor* v. *Wilkie*, 588 U. S. 558, 571 (2019) (plurality opinion). Thus, as the majority points out, agencies often are "better equipped to assess what facts are relevant to the[ir] . . . own decision than a court is." *Ante*, at 10; cf. *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 456 (2024) (KAGAN, J., dissenting) ("[A]gencies often know things about a statute's subject matter that courts could not hope to").[4]

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[3] It follows from this rule that the proper scope of an agency's NEPA review depends in part on the nature of the agency's statutory authority. The greater an agency's authority to consider and prevent environmental impacts in its decisionmaking process, the greater its duty under NEPA to consider those impacts, and vice versa.

[4] Of course, that point applies equally when an agency decides that an environmental impact is relevant to its decision.

This case provides no occasion to consider the second step because the question presented is resolved at the first. The Board twice decided it lacked authority to reject railway applications on account of the ways in which third parties would use the products "transported on the proposed rail line." Final EIS 3.15–36; App. to Pet. for Cert. 108a ("Here, the Board has no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development"). Each time, the agency cited *Public Citizen* to justify its decision not to analyze further the environmental effects of oil drilling and refining made possible by the Railway. See Final EIS 3.15–36; App. to Pet. for Cert. 108a.

Review of the Board's organic statute, the Interstate Commerce Commission Termination Act, confirms the Board's understanding of the scope of its review. "As common carriers, railroads subject to the Board's jurisdiction are required to provide 'transportation or service on reasonable request' to any person or commodity." *Ante,* at 20, n. 6 (quoting 49 U. S. C. §11101(a)). In addition, the Act contains a clear presumption in favor of approving new railways. See *supra*, at 3. And of the 15 statutory policies the Board must consider in the exemption process, not one concerns the anticipated use of commodities that will be transported on the proposed railway. See §§10101(1)–(15). Unlike the Board, meanwhile, other entities do have authority "to approve oil and gas development projects" and to regulate the effects of refining. See Brief for Federal Respondents 19. All this suggests, as the Board concluded, that the Board could not have rejected petitioners' application in order to prevent the harmful effects of oil drilling and refining.[5] Short of rejecting the Railway entirely, moreover, the

[5] The D. C. Circuit came to the opposite conclusion because it viewed the Board's authority to license railroad construction based on the " 'public convenience and necessity' " as encompassing the effects of oil drilling and refining enabled by the Railway. 82 F. 4th 1152, 1180 (2023). That

common carrier mandate prevented the Board from mitigating, by limiting the transport of crude oil, the Railway's spurring of the oil industry. See §11101(a).

The environmental respondents concede that the Board correctly understood the scope of its decisionmaking authority. See Tr. of Oral Arg. 84–85. Instead, they argue that the Board should have analyzed even environmental impacts it could not lawfully prevent. Yet *Public Citizen* squarely forecloses that position. See *supra*, at 9–10. Even a foreseeable environmental effect is outside of NEPA's scope if the agency could not lawfully decide to modify or reject the proposed action on account of it. NEPA thus did not require the Board to consider the effects of oil drilling and refining.

* * *

Under NEPA, agencies must consider the environmental impacts for which their decisions would be responsible. Here, the Board correctly determined it would not be responsible for the consequences of oil production upstream or downstream from the Railway because it could not lawfully consider those consequences as part of the approval process. For that reason, I concur in the Court's judgment reversing the D. C. Circuit's holding requiring the Board to consider in further detail harms caused by the oil industry.

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phrase, however, must be read "with a view to [its] place in the overall statutory scheme." *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989). Here, the Board's organic statute contains clear indicators, most significantly the common carrier mandate, that the Board's authority does not extend so far.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CASA, INC., ET AL.

ON APPLICATION FOR PARTIAL STAY

No. 24A884. Argued May 15, 2025—Decided June 27, 2025*

Plaintiffs (respondents here)—individuals, organizations, and States—filed three separate suits to enjoin the implementation and enforcement of President Trump's Executive Order No. 14160. See Protecting the Meaning and Value of American Citizenship, 90 Fed. Reg. 8449. The Executive Order identifies circumstances in which a person born in the United States is not "subject to the jurisdiction thereof" and is thus not recognized as an American citizen. The plaintiffs allege that the Executive Order violates the Fourteenth Amendment's Citizenship Clause, §1, and §201 of the Nationality Act of 1940. In each case, the District Court entered a "universal injunction"—an injunction barring executive officials from applying the Executive Order to *anyone*, not just the plaintiffs. And in each case, the Court of Appeals denied the Government's request to stay the sweeping relief. The Government argues that the District Courts lacked equitable authority to impose universal relief and has filed three nearly identical emergency applications seeking partial stays to limit the preliminary injunctions to the plaintiffs in each case. The applications do not raise—and thus the Court does not address—the question whether the Executive Order violates the Citizenship Clause or Nationality Act. Instead, the issue the Court decides is whether, under the Judiciary Act of 1789, federal courts have equitable authority to issue universal injunctions.

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*Together with No. 24A885, *Trump, President of the United States, et al.* v. *Washington et al.*, and No. 24A886, *Trump, President of the United States, et al.* v. *New Jersey et al.*, also on applications for partial stays.

Syllabus

Held: Universal injunctions likely exceed the equitable authority that Congress has given to federal courts. The Court grants the Government's applications for a partial stay of the injunctions entered below, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue. Pp. 4–26.

(a) The issue raised by these applications—whether Congress has granted federal courts authority to universally enjoin the enforcement of an executive order—plainly warrants this Court's review. On multiple occasions, and across administrations, the Solicitor General has asked the Court to consider the propriety of this expansive remedy. As the number of universal injunctions has increased over the years, so too has the importance of the issue. Pp. 4–5.

(b) The Government is likely to succeed on the merits of its claim that the District Courts lacked authority to issue universal injunctions. See *Nken* v. *Holder*, 556 U. S. 418, 434 (holding that for a stay application to be granted, the applicant must make a strong showing of likelihood of success on the merits). The issuance of a universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power. The Judiciary Act of 1789 endowed federal courts with jurisdiction over "all suits . . . in equity," §11, 1 Stat. 78, and still today, this statute "is what authorizes the federal courts to issue equitable remedies," S. Bray & E. Sherwin, Remedies 442. This Court has held that the statutory grant encompasses only those sorts of equitable remedies "traditionally accorded by courts of equity" at our country's inception. *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 319.

Universal injunctions are not sufficiently "analogous" to any relief available in the court of equity in England at the time of the founding. *Grupo Mexicano*, 527 U. S., at 318–319. Equity offered a mechanism for the Crown "to secure justice where it would not be secured by the ordinary and existing processes of law." G. Adams, The Origin of English Equity, 16 Colum. L. Rev. 87, 91. This "judicial prerogative of the King" thus extended to "those causes which the ordinary judges were incapable of determining." 1 J. Pomeroy, Equity Jurisprudence §31, p. 27. Eventually, the Crown instituted the "practice of delegating the cases" that "came before" the judicial prerogative "to the chancellor for his sole decision." *Id.*, §34, at 28. The "general rule in Equity [was] that all persons materially interested [in the suit] [were] to be made parties to it." J. Story, Commentaries on Equity Pleadings §72, p. 74 (Story). Injunctions were no exception; there were "sometimes suits to restrain the actions of particular officers against particular plaintiffs." S. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 425 (Bray, Multiple Chancellors). Of importance

here, suits in equity were brought by and against individual parties, and the Chancellor's remedies were generally party specific. See *Iveson* v. *Harris*, 7 Ves. 251, 257, 32 Eng. Rep. 102, 104 ("[Y]ou cannot have an injunction except against a party to the suit"). In sum, under longstanding equity practice in England, there was no remedy "remotely like a national injunction." Bray, Multiple Chancellors 425.

Nor did founding-era courts of equity in the United States chart a different course. If anything, the approach traditionally taken by federal courts cuts *against* the existence of such a sweeping remedy. Consider *Scott* v. *Donald*, where the plaintiff successfully challenged the constitutionality of a law on which state officials had relied to confiscate alcohol that the plaintiff kept for personal use. See 165 U. S. 107, 109 (statement of case); *id.*, at 111–112 (opinion of the Court). Although the plaintiff sought an injunction barring enforcement of the law against both himself and anyone "whose rights [were] infringed and threatened" by it, the Court permitted only relief benefitting the named plaintiff. *Id.*, at 115–117. In the ensuing decades, the Court consistently rebuffed requests for relief that extended beyond the parties. See, *e.g.*, *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 123; *Frothingham* v. *Mellon*, decided with *Massachusetts* v. *Mellon*, 262 U. S. 447, 487–489.

The Court's early refusals to grant relief to nonparties are consistent with the party-specific principles that permeate the Court's understanding of equity. "[N]either declaratory nor injunctive relief," the Court has said, "can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs." *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 931. In fact, universal injunctions were conspicuously nonexistent for most of the Nation's history. Their absence from 18th and 19th century equity practice settles the question of judicial authority.

While "equity is flexible," *Grupo Mexicano*, 527 U. S., at 322, the Court's precedent emphasizes that its "flexibility is confined within the broad boundaries of traditional equitable relief." *Ibid.* Because the universal injunction lacks a historical pedigree, it falls outside the bounds of a federal court's equitable authority under the Judiciary Act. Pp. 5–11.

(c) Respondents' counterarguments are unavailing. Pp. 11–21.

(1) In an effort to satisfy *Grupo Mexicano*'s historical test, respondents claim that universal injunctions are the modern equivalent of the decree resulting from a "bill of peace"—a form of group litigation in the Court of Chancery. Respondents contend that the existence of this historic equitable device means that federal courts have the equitable authority to issue universal injunctions under the Judiciary Act. The analogy, however, does not work. True, "bills of peace allowed

[courts of equity] to adjudicate the rights of members of dispersed groups without formally joining them to a lawsuit through the usual procedures." *Arizona* v. *Biden*, 40 F. 4th 375, 397 (Sutton, C. J., concurring). Unlike universal injunctions, however, which reach *anyone* affected by executive or legislative action, bills of peace involved a "group [that] was small and cohesive." Bray, Multiple Chancellors 426. And unlike universal injunctions, which bind only the parties to the suit, decrees resulting from a bill of peace "would bind all members of the group, whether they were present in the action or not." 7A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1751, at 10.

The bill of peace lives in modern form, but not as the universal injunction. It is instead analogous to the modern class action—which, in federal court, is governed by Rule 23 of the Federal Rules of Civil Procedure. See *ibid.* Rule 23 requires numerosity (such that joinder is impracticable), common questions of law or fact, typicality, and representative parties who adequately protect the interests of the class. Fed. Rule Civ. Proc. 23(a). The requirements for a bill of peace were virtually identical. See 7A Wright, Federal Practice and Procedure §1751, at 10 and n. 4. By forging a shortcut to relief that benefits parties and nonparties alike, universal injunctions impermissibly circumvent Rule 23's procedural protections. Pp. 12–15.

(2) Respondents contend that universal injunctions—or at least *these* universal injunctions—are simply an application of the principle that a court of equity may fashion a remedy that awards complete relief. But "complete relief" is not synonymous with "universal relief." It is a narrower concept, long embraced in the equitable tradition, that allows courts to "administer complete relief *between the parties*." *Kinney-Coastal Oil Co.* v. *Kieffer*, 277 U. S. 488, 507 (emphasis added). To be sure, party-specific injunctions sometimes "advantag[e] nonparties," *Trump* v. *Hawaii*, 585 U. S 667, 717 (THOMAS, J., concurring), but they do so only incidentally.

Here, prohibiting enforcement of the Executive Order against the child of an individual pregnant plaintiff will give that plaintiff complete relief: Her child will not be denied citizenship. And extending the injunction to cover everyone similarly situated would not render *her* relief any more complete. So the individual and associational respondents are wrong to characterize the universal injunction as simply an application of the complete-relief principle. The inquiry is more complicated for the state respondents, because the relevant injunction does not purport to directly benefit nonparties. Instead, the District Court for the District of Massachusetts decided that a universal injunction was necessary to provide the States *themselves* complete re-

lief. As the States see it, their harms—financial injuries and the administrative burdens flowing from citizen-dependent benefits programs—cannot be remedied without a blanket ban on the enforcement of the Executive Order. Children often move across state lines or are born outside their parents' State of residence. Given the cross-border flow, the States say, a "patchwork injunction" would prove unworkable for the provision of certain federally funded benefits. The Government retorts that even if the injunction is designed to benefit only the States, it is "more burdensome than necessary to redress" their asserted harms, see *Califano* v. *Yamasaki*, 442 U. S. 682, 702, and that narrower relief is appropriate. The Court declines to take up these arguments in the first instance. The lower courts should determine whether a narrower injunction is appropriate, so we leave it to them to consider these and any related arguments. Pp. 15–19.

(3) Respondents defend universal injunctions as a matter of policy; the Government advances policy arguments running the other way. As with most questions of law, the policy pros and cons are beside the point. Under the Court's well-established precedent, see *Grupo Mexicano*, 527 U. S., at 319, because universal injunctions lack a founding-era forebear, federal courts lack authority to issue them. Pp. 19–21.

(d) To obtain interim relief, the Government must show that it is likely to suffer irreparable harm absent a stay. *Nken*, 556 U. S., at 434–435. When a federal court enters a universal injunction against the Government, it "improper[ly] intru[des]" on "a coordinate branch of the Government" and prevents the Government from enforcing its policies against nonparties. *INS* v. *Legalization Assistance Project of Los Angeles County Federation of Labor*, 510 U. S. 1301, 1306 (O'Connor, J., in chambers); see also *Maryland* v. *King*, 567 U. S. 1301, 1303 (ROBERTS, C. J., in chambers) (" '[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury' " (alteration in original)). The Court's practice also demonstrates that an applicant need not show it will prevail on the underlying merits when it seeks a stay on a threshold issue. See, *e.g.*, *Gutierrez* v. *Saenz*, 603 U. S. __; *OPM* v. *AFGE*, 604 U. S. __. The Government here is likely to suffer irreparable harm from the District Courts' entry of injunctions that likely exceed the authority conferred by the Judiciary Act. And the balance of equities does not counsel against awarding the Government interim relief: A partial stay will cause no harm to respondents because they will remain protected by the preliminary injunctions to the extent necessary and appropriate to afford them complete relief. Pp. 24–26.

(e) When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too. The

Syllabus

Government's applications for partial stays of the preliminary injunctions are granted, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue. P. 26.

Applications for partial stays granted.

BARRETT, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. ALITO, J., filed a concurring opinion, in which THOMAS, J., joined. KAVANAUGH, J., filed a concurring opinion. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined. JACKSON, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 24A884

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CASA, INC., ET AL.

ON APPLICATION FOR PARTIAL STAY

No. 24A885

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

ON APPLICATION FOR PARTIAL STAY

No. 24A886

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* NEW JERSEY, ET AL.

ON APPLICATION FOR PARTIAL STAY

[June 27, 2025]

JUSTICE BARRETT delivered the opinion of the Court.

The United States has filed three emergency applications challenging the scope of a federal court's authority to enjoin Government officials from enforcing an executive order. Traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the lawsuit. The injunctions before us today reflect a more recent development: district courts asserting the power to prohibit enforcement of a law or policy against *anyone*. These injunctions—known as "universal injunctions"—likely exceed the equitable authority that

Congress has granted to federal courts.[1] We therefore grant the Government's applications to partially stay the injunctions entered below.

I

The applications before us concern three overlapping, universal preliminary injunctions entered by three different District Courts. See 763 F. Supp. 3d 723 (Md. 2025), appeal pending, No. 25–1153 (CA4); 765 F. Supp. 3d 1142 (WD Wash. 2025), appeal pending, No. 25–807 (CA9); *Doe* v. *Trump*, 766 F. Supp. 3d 266 (Mass. 2025), appeal pending, No. 25–1170 (CA1). The plaintiffs—individuals, organizations, and States—sought to enjoin the implementation and enforcement of President Trump's Executive Order No. 14160.[2] See Protecting the Meaning and Value of American Citizenship, 90 Fed. Reg. 8449 (2025). The Executive Order identifies circumstances in which a person born in the United States is not "subject to the jurisdiction thereof" and

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[1] Such injunctions are sometimes called "nationwide injunctions," reflecting their use by a single district court to bar the enforcement of a law anywhere in the Nation. But the term "universal" better captures how these injunctions work. Even a traditional, parties-only injunction can apply beyond the jurisdiction of the issuing court. *Steele* v. *Bulova Watch Co.*, 344 U. S. 280, 289 (1952) (When "exercising its equity powers," a district court "may command persons properly before it to cease or perform acts outside its territorial jurisdiction"). The difference between a traditional injunction and a universal injunction is not so much *where* it applies, but *whom* it protects: A universal injunction prohibits the Government from enforcing the law against *anyone*, anywhere. H. Wasserman, "Nationwide" Injunctions Are Really "Universal" Injunctions and They Are Never Appropriate, 22 Lewis & Clark L. Rev. 335, 338 (2018).

[2] The Government does not dispute—nor could it—that the individual plaintiffs have standing to sue. But it argues that the States lack third-party standing because their claims rest exclusively on the rights of individuals. Application for Partial Stay of Injunction in No. 24A884, pp. 28–32. It also challenges the District Courts' authority to grant relief to the organizations' members who are not identified in the complaints. See *id.*, at 22. We do not address these arguments.

is thus not recognized as an American citizen. See *ibid.* Specifically, it sets forth the "policy of the United States" to no longer issue or accept documentation of citizenship in two scenarios: "(1) when [a] person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when [a] person's mother's presence in the United States was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth." *Ibid.* The Executive Order also provides for a 30-day ramp-up period. During that time, the order directs executive agencies to develop and issue public guidance regarding the order's implementation. See *id.*, at 8449–8450.

The plaintiffs filed suit, alleging that the Executive Order violates the Fourteenth Amendment's Citizenship Clause, §1, as well as §201 of the Nationality Act of 1940, 54 Stat. 1138 (codified at 8 U. S. C. §1401). In each case, the District Court concluded that the Executive Order is likely unlawful and entered a universal preliminary injunction barring various executive officials from applying the policy to *anyone* in the country. And in each case, the Court of Appeals denied the Government's request to stay the sweeping relief. See 2025 WL 654902 (CA4, Feb. 28, 2025); 2025 WL 553485 (CA9, Feb. 19, 2025); 131 F. 4th 27 (CA1 2025).

The Government has now filed three nearly identical applications seeking to partially stay the universal preliminary injunctions and limit them to the parties. See Application for Partial Stay of Injunction in No. 24A884; Application for Partial Stay of Injunction in No. 24A885; Application for Partial Stay of Injunction in No. 24A886.[3] The applications do not raise—and thus we do not address—the question whether the Executive Order violates

[3] Because the applications are materially identical, we cite only the application in No. 24A884 throughout the rest of the opinion.

the Citizenship Clause or Nationality Act. The issue before us is one of remedy: whether, under the Judiciary Act of 1789, federal courts have equitable authority to issue universal injunctions.

II

The question whether Congress has granted federal courts the authority to universally enjoin the enforcement of an executive or legislative policy plainly warrants our review, as Members of this Court have repeatedly emphasized. See, *e.g.*, *McHenry* v. *Texas Top Cop Shop*, 604 U. S. ___, ___ (2025) (GORSUCH, J., concurring in grant of stay) (slip op., at 1) ("I would . . . take this case now to resolve definitively the question whether a district court may issue universal injunctive relief"); *Labrador* v. *Poe*, 601 U. S. ___, ___–___ (2024) (GORSUCH, J., joined by THOMAS and ALITO, JJ., concurring in grant of stay) (slip op., at 7–8) ("[T]he propriety of universal injunctive relief [is] a question of great significance that has been in need of the Court's attention for some time"); *Griffin* v. *HM Florida-ORL, LLC*, 601 U. S. ___, ___ (2023) (statement of KAVANAUGH, J., joined by BARRETT, J., except as to footnote 1, respecting denial of application for stay) (slip op., at 3) (Universal injunctions present "an important question that could warrant our review in the future"); *Trump* v. *Hawaii*, 585 U. S. 667, 713 (2018) (THOMAS, J., concurring) ("If [universal injunctions'] popularity continues, this Court must address their legality"). On multiple occasions, and across administrations, the Solicitor General has asked us to consider the propriety of this expansive remedy. See, *e.g.*, Application for Stay of Injunction in *McHenry* v. *Texas Top Cop Shop*, *Inc.*, O. T. 2024, No. 24A653 (Biden administration); Brief for Petitioners in *Trump* v. *Hawaii*, O. T. 2017, No. 17–965 (first Trump administration).

It is easy to see why. By the end of the Biden administration, we had reached "a state of affairs where almost every

major presidential act [was] immediately frozen by a federal district court." W. Baude & S. Bray, Comment, Proper Parties, Proper Relief, 137 Harv. L. Rev. 153, 174 (2023). The trend has continued: During the first 100 days of the second Trump administration, district courts issued approximately 25 universal injunctions. Congressional Research Service, J. Lampe, Nationwide Injunctions in the First Hundred Days of the Second Trump Administration 1 (May 16, 2025). As the number of universal injunctions has increased, so too has the importance of the issue.

III

A

The Government is likely to succeed on the merits of its argument regarding the scope of relief. See *Nken* v. *Holder*, 556 U. S. 418, 434 (2009) (holding that for a stay application to be granted, the applicant must make " 'a strong showing that [it] is likely to succeed on the merits' "). A universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power.[4]

The Judiciary Act of 1789 endowed federal courts with jurisdiction over "all suits . . . in equity," §11, 1 Stat. 78, and still today, this statute "is what authorizes the federal courts to issue equitable remedies," S. Bray & E. Sherwin, Remedies 442 (4th ed. 2024). Though flexible, this equitable authority is not freewheeling. We have held that the statutory grant encompasses only those sorts of equitable remedies "traditionally accorded by courts of equity" at our country's inception. *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 319 (1999); see also, *e.g.*, *Payne* v. *Hook*, 7 Wall. 425, 430 (1869) ("The equity jurisdiction conferred on the Federal courts is the same

[4] Our decision rests solely on the statutory authority that federal courts possess under the Judiciary Act of 1789. We express no view on the Government's argument that Article III forecloses universal relief.

that the High Court of Chancery in England possesses").[5] We must therefore ask whether universal injunctions are sufficiently "analogous" to the relief issued " 'by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act.'" *Grupo Mexicano*, 527 U. S., at 318–319 (quoting A. Dobie, Handbook of Federal Jurisdiction and Procedure 660 (1928)).

The answer is no: Neither the universal injunction nor any analogous form of relief was available in the High Court of Chancery in England at the time of the founding. Equity offered a mechanism for the Crown "to secure justice where it would not be secured by the ordinary and existing processes of law." G. Adams, The Origin of English Equity, 16 Colum. L. Rev. 87, 91 (1916). This "judicial prerogative of the King" thus extended to "those causes which the ordinary judges were incapable of determining." 1 J. Pomeroy, Equity Jurisprudence §31, p. 27 (1881). Eventually, the Crown instituted the "practice of delegating the cases" that "came before" the judicial prerogative "to the chancellor for his sole decision." *Id.*, §34, at 28. This "became the common mode of dealing with such controversies." *Ibid.*

Of importance here, suits in equity were brought by and against individual parties. Indeed, the "general rule in Equity [was] that all persons materially interested [in the suit] [were] to be made parties to it." J. Story, Commentaries on Equity Pleadings §72, p. 74 (2d ed. 1840) (Story). Injunctions were no exception; there were "sometimes suits

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[5] See also *Guaranty Trust Co.* v. *York*, 326 U. S. 99, 105 (1945) ("[T]he federal courts [have] no power that they would not have had in any event when courts were given 'cognizance,' by the first Judiciary Act, of suits 'in equity' "); *Boyle* v. *Zacharie & Turner*, 6 Pet. 648, 658 (1832) ("[T]he settled doctrine of this court is, that the remedies in equity are to be administered, not according to the state practice, but according to the practice of courts of equity in the parent country").

to restrain the actions of *particular* officers against *particular* plaintiffs." S. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 425 (2017) (Bray, Multiple Chancellors) (emphasis added). And in certain cases, the "Attorney General could be a defendant." *Ibid.* The Chancellor's remedies were also typically party specific. "As a general rule, an injunction" could not bind one who was not a "party to the cause." F. Calvert, Suits in Equity 120 (2d ed. 1847); see also *Iveson* v. *Harris*, 7 Ves. 251, 257, 32 Eng. Rep. 102, 104 (1802) ("[Y]ou cannot have an injunction except against a party to the suit"). Suffice it to say, then, under longstanding equity practice in England, there was no remedy "remotely like a national injunction." Bray, Multiple Chancellors 425.

Nor did founding-era courts of equity in the United States chart a different course. See 1 Pomeroy, Equity Jurisprudence §41, at 33–34. If anything, the approach traditionally taken by federal courts cuts *against* the existence of such a sweeping remedy. Consider *Scott* v. *Donald*, where the plaintiff successfully challenged the constitutionality of a law on which state officials had relied to confiscate alcohol that the plaintiff kept for personal use. See 165 U. S. 107, 109 (1897) (statement of case); *id.*, at 111–112 (opinion of the Court). Although the plaintiff sought an injunction barring enforcement of the law against both himself and anyone else "whose rights [were] infringed and threatened" by it, this Court permitted only a narrower decree between "the parties named as plaintiff and defendants in the bill." *Id.*, at 115–117.[6]

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[6] Though the principal dissent claims otherwise, we do not treat *Scott* as "dispositive." *Post*, at 28 (opinion of SOTOMAYOR, J.). Under *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308 (1999), the lack of a historical analogue is dispositive. *Scott* simply illustrates that as late as 1897, this Court adhered to a party-specific view of relief. And while the principal dissent relies on *Smyth* v. *Ames*, 169 U. S. 466, 518 (1898), as a counterexample to *Scott*, see *post*, at 28 (opinion of

In the ensuing decades, we consistently rebuffed requests for relief that extended beyond the parties. See, *e.g.*, *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 123 (1940) ("The benefits of [the court's] injunction" improperly extended "to bidders throughout the Nation who were not parties to any proceeding, who were not before the court[,] and who had sought no relief"); cf. *Frothingham* v. *Mellon*, decided with *Massachusetts* v. *Mellon*, 262 U. S. 447, 487–489 (1923) (concluding that the Court lacked authority to issue "preventive relief" that would apply to people who "suffe[r] in some indefinite way in common with people generally"); Bray, Multiple Chancellors 433 (explaining that the *Frothingham* analysis "intertwines concepts of equity, remedies, and the judicial power"). As Justice Nelson put it while riding circuit, "[t]here is scarcely a suit at law, or in equity, . . . in which a general statute is interpreted, that does not involve a question in which other parties are interested." *Cutting* v. *Gilbert*, 6 F. Cas. 1079, 1080 (No. 3,519) (CC SDNY 1865). But to allow all persons subject to the statute to be treated as parties to a lawsuit "would confound the established order of judicial proceedings." *Ibid.*

Our early refusals to grant relief to nonparties are consistent with the party-specific principles that permeate our understanding of equity. "[N]either declaratory nor injunctive relief," we have said, "can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs." *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 931 (1975); see also *Gregory* v. *Stetson*, 133 U. S. 579, 586 (1890) ("It is an elementary principle

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SOTOMAYOR, J.), it is unclear why. Even supporters of the universal injunction recognize that "the decree [that *Smyth*] affirmed did not reach beyond the parties." M. Sohoni, The Lost History of the "Universal" Injunction, 133 Harv. L. Rev. 920, 939 (2020); *Smyth*, 169 U. S., at 476–477 (statement of case) (quoting circuit court order that enjoined state officials from enforcing the statute "against *said* railroad companies" (emphasis added)).

that a court cannot adjudicate directly upon a person's right without having him either actually or constructively before it. This principle is fundamental"); Baude, 137 Harv. L. Rev., at 168 (noting the "party-specific understanding of what equitable remedies do").

In fact, universal injunctions were not a feature of federal-court litigation until sometime in the 20th century. See Bray, Multiple Chancellors 448–452 (discussing various rationales for the birth of the universal injunction); see also Application in No. 24A884, at 17–18. The D. C. Circuit issued what some regard as the first universal injunction in 1963. See *Wirtz* v. *Baldor Elec. Co.*, 337 F. 2d 518, 535 (enjoining the Secretary of Labor "with respect to the entire [electric motors and generators] industry," not just the named plaintiffs to the lawsuit).[7] Yet such injunctions remained rare until the turn of the 21st century, when their use gradually accelerated. See Bray, Multiple Chancellors 439–443 (referencing *Flast* v. *Cohen*, 392 U. S. 83 (1968), and *Harlem Valley Transp. Assn.* v. *Stafford*, 360 F. Supp. 1057 (SDNY 1973)). One study identified approximately 127 universal injunctions issued between 1963 and 2023.

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[7] There is some dispute about whether *Wirtz* was the first universal injunction. Professor Mila Sohoni points to other possible 20th-century examples, including *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943), *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), and *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288 (1913). See M. Sohoni, 133 Harv. L. Rev., at 943; Brief for Professor Mila Sohoni as *Amica Curiae* 3; see also *post*, at 21 (opinion of SOTOMAYOR, J.). But see M. Morley, Disaggregating the History of Nationwide Injunctions: A Response to Professor Sohoni, 72 Ala. L. Rev. 239, 252–256 (2020) (disputing these examples). Regardless, under any account, universal injunctions postdated the founding by more than a century—and under *Grupo Mexicano*, equitable authority exercised under the Judiciary Act must derive from founding-era practice. 527 U. S., at 319. It also bears emphasis that none of these cases addresses the propriety of universal relief. Like a "drive-by-jurisdictional rulin[g]," implicit acquiescence to a broad remedy "ha[s] no precedential effect." *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 91 (1998).

See District Court Reform: Nationwide Injunctions, 137 Harv. L. Rev. 1701, 1705 (2024). Ninety-six of them—over three quarters—were issued during the administrations of President George W. Bush, President Obama, President Trump, and President Biden. *Ibid.*

The bottom line? The universal injunction was conspicuously nonexistent for most of our Nation's history. Its absence from 18th- and 19th-century equity practice settles the question of judicial authority.[8] See *Grupo Mexicano*, 527 U. S., at 318–319. That the absence continued into the 20th century renders any claim of historical pedigree still more implausible. Even during the "deluge of constitutional litigation that occurred in the wake of *Ex parte Young*, throughout the *Lochner* Era, and at the dawn of the New Deal," universal injunctions were nowhere to be found. M. Morley, Disaggregating the History of Nationwide Injunctions: A Response to Professor Sohoni, 72 Ala. L. Rev. 239, 252 (2020) (footnotes omitted). Had federal courts believed themselves to possess the tool, surely they would not have let it lay idle.

Faced with this timeline, the principal dissent accuses us of "misunderstand[ing] the nature of equity" as being "fr[ozen] in amber . . . at the time of the Judiciary Act." *Post*, at 29 (opinion of SOTOMAYOR, J.). Not so. We said it before, see *supra*, at 5, and say it again: "[E]quity is flexible." *Grupo Mexicano*, 527 U. S., at 322. At the same time, its "flexibility is confined within the broad boundaries of

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[8] The principal dissent faults us for failing to identify a single founding-era case in which this Court held that universal injunctions exceed a federal court's equitable authority. See *post*, at 29 (opinion of SOTOMAYOR, J.). But this absence only bolsters our case. That this Court had no occasion to reject the universal injunction as inconsistent with traditional equity practice merely demonstrates that no party even bothered to ask for such a sweeping remedy—because no court would have entertained the request. Cf. *Grupo Mexicano*, 527 U. S., at 332 ("[E]quitable powers conferred by the Judiciary Act of 1789 did not include the power to create remedies previously unknown to equity jurisprudence").

traditional equitable relief."[9] *Ibid.* A modern device need not have an exact historical match, but under *Grupo Mexicano*, it must have a founding-era antecedent. And neither the universal injunction nor a sufficiently comparable predecessor was available from a court of equity at the time of our country's inception. See *id.*, at 333. Because the universal injunction lacks a historical pedigree, it falls outside the bounds of a federal court's equitable authority under the Judiciary Act.[10] See *id.*, at 318–319.

B

Respondents raise several counterarguments, which the principal dissent echoes. First, they insist that the universal injunction has a sufficient historical analogue: a decree resulting from a bill of peace. Second, they maintain that

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[9] Notwithstanding *Grupo Mexicano*, the principal dissent invokes *Ex parte Young*, 209 U. S. 123 (1908), as support for the proposition that equity can encompass remedies that have "no analogue in the relief exercised in the English Court of Chancery," because *Ex parte Young* permits plaintiffs to "obtain plaintiff-protective injunctions against Government officials," and the English Court of Chancery "could not enjoin the Crown or English officers," *post*, at 30 (opinion of SOTOMAYOR, J.). But contrary to the principal dissent's suggestion, *Ex parte Young* does not say—either explicitly or implicitly—that courts may devise novel remedies that have no background in traditional equitable practice. Historically, a court of equity could issue an antisuit injunction to prevent an officer from engaging in tortious conduct. *Ex parte Young* justifies its holding by reference to a long line of cases authorizing suits against state officials in certain circumstances. See 209 U. S., at 150–152 (citing, *e.g.*, *Osborn* v. *Bank of United States*, 9 Wheat. 738 (1824); *Governor of Georgia* v. *Madrazo*, 1 Pet. 110 (1828); and *Davis* v. *Gray*, 16 Wall. 203 (1873)). Support for the principal dissent's approach is found not in *Ex parte Young*, but in Justice Ginsburg's partial dissent in *Grupo Mexicano*, which eschews the governing historical approach in favor of "[a] dynamic equity jurisprudence." 527 U. S., at 337 (opinion concurring in part and dissenting in part).

[10] Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. See 5 U. S. C. §706(2) (authorizing courts to "hold unlawful and set aside agency action").

universal injunctions are consistent with the principle that a court of equity may fashion complete relief for the parties. Third, they argue that universal injunctions serve important policy objectives.

1

In an effort to satisfy *Grupo Mexicano*'s historical test, respondents claim that universal injunctive relief *does* have a founding-era forebear: the decree obtained on a "bill of peace," which was a form of group litigation permitted in English courts. See Opposition to Application in No. 24A884 (*CASA*), pp. 30–31; see also Brief for Professor Mila Sohoni as *Amica Curiae* 6–8. This bill allowed the Chancellor to consolidate multiple suits that involved a "common claim the plaintiff could have against multiple defendants" or "some kind of common claim that multiple plaintiffs could have against a single defendant." Bray, Multiple Chancellors 426; see *How* v. *Tenants of Bromsgrove*, 1 Vern. 22, 23 Eng. Rep. 277 (1681) (suit by a lord against his tenants collectively); *Brown* v. *Vermuden*, 1 Ch. Ca. 283, 22 Eng. Rep. 802 (1676), and *Brown* v. *Vermuden*, 1 Ch. Ca. 272, 22 Eng. Rep. 796 (1676) (suit by a parson against lead miners in a parish, who named four of their members to defend the suit in a representative capacity). Universal injunctions are analogous to this traditional equitable device, respondents say, so federal courts have authority under the Judiciary Act to issue them.

The analogy does not work. True, "bills of peace allowed [courts of equity] to adjudicate the rights of members of dispersed groups without formally joining them to a lawsuit through the usual procedures." *Arizona* v. *Biden*, 40 F. 4th 375, 397 (CA6 2022) (Sutton, C. J., concurring); see Story §§120–135 (discussing representative suits). Even so, their use was confined to limited circumstances. See 7A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1751, p. 10, and n. 4 (4th ed. 2021) (citing *Adair* v.

New River Co., 11 Ves. 429, 32 Eng. Rep. 1154 (Ch. 1803)). Unlike universal injunctions, which reach *anyone* affected by legislative or executive action—no matter how large the group or how tangential the effect—a bill of peace involved a "group [that] was small and cohesive," and the suit did not "resolve a question of legal interpretation for the entire realm." Bray, Multiple Chancellors 426. And unlike universal injunctions, which bind only the parties to the suit, decrees obtained on a bill of peace "would bind all members of the group, whether they were present in the action or not." 7A Wright, Federal Practice and Procedure §1751, at 10; see *Smith* v. *Swormstedt*, 16 How. 288, 303 (1854) (When "a court of equity permits a portion of the parties in interest to represent the entire body . . . the decree binds all of them the same as if all were before the court"); see also Story §120 ("[I]n most, if not in all, cases of this sort, the decree obtained upon such a Bill will ordinarily be held binding upon all other persons standing in the same predicament"). As Chief Judge Sutton aptly put it, "[t]he domesticated animal known as a bill of peace looks nothing like the dragon of nationwide injunctions." *Arizona*, 40 F. 4th, at 397 (concurring opinion).

The bill of peace lives in modern form, but not as the universal injunction. It evolved into the modern class action, which is governed in federal court by Rule 23 of the Federal Rules of Civil Procedure. 7A Wright, Federal Practice and Procedure §1751, at 10 ("It was the English bill of peace that developed into what is now known as the class action"); see *Hansberry* v. *Lee*, 311 U. S. 32, 41 (1940) ("The class suit was an invention of equity"). And while Rule 23 is in some ways "more restrictive of representative suits than the original bills of peace," *Rodgers* v. *Bryant*, 942 F. 3d 451, 464 (CA8 2019) (Stras, J., concurring), it would still be recognizable to an English Chancellor. Rule 23 requires numerosity (such that joinder is impracticable), common questions of law or fact, typicality, and representative parties

who adequately protect the interests of the class. Fed. Rule Civ. Proc. 23(a). The requirements for a bill of peace were virtually identical. See 7A Wright, Federal Practice and Procedure §1751, at 10, and n. 4 (citing *Adair*, 11 Ves. 429, 32 Eng. Rep. 1154). None of these requirements is a prerequisite for a universal injunction.

Rule 23's limits on class actions underscore a significant problem with universal injunctions. A "'properly conducted class action,'" we have said, "can come about in federal courts in just one way—through the procedure set out in Rule 23." *Smith* v. *Bayer Corp.*, 564 U. S. 299, 315 (2011); Fed. Rule Civ. Proc. 23(a) ("One or more members of a class may sue or be sued as representative parties on behalf of all members *only if* " Rule 23(a)'s requirements are satisfied (emphasis added)). Yet by forging a shortcut to relief that benefits parties and nonparties alike, universal injunctions circumvent Rule 23's procedural protections and allow " 'courts to "create *de facto* class actions at will." ' " *Smith*, 564 U. S., at 315 (quoting *Taylor* v. *Sturgell*, 553 U. S. 880, 901 (2008)). Why bother with a Rule 23 class action when the quick fix of a universal injunction is on the table? Cf. *Grupo Mexicano*, 527 U. S., at 330–331 ("Why go through the trouble of complying with local attachment and garnishment statutes when this all-purpose prejudgment injunction is available?"). The principal dissent's suggestion that these suits *could* have satisfied Rule 23's requirements simply proves that universal injunctions are a class-action workaround. *Post*, at 25–26 (opinion of SOTOMAYOR, J.).

The taxpayer suit is a similarly inadequate historical analogy. Contra, *post*, at 24–25. In a successful taxpayer suit, a court would enjoin the collection of an unlawful tax against "taxpayers joined as co-plaintiffs, or by one taxpayer suing on behalf of himself and all others similarly situated." 1 Pomeroy, Equity Jurisprudence §260, at 277. To be sure, some state courts would occasionally "enjoin the

enforcement and collection" of taxes against an "entire community," even when a "single taxpayer su[ed] on his own account." *Id.*, at 277–278. But the practice of extending relief "with respect to any taxpayer" was not adopted by state courts until the mid-19th century, and even then, not all states were willing to provide such sweeping relief. See Bray, Multiple Chancellors 427. This post-founding practice of some state courts thus sheds minimal light on federal courts' equitable authority under the Judiciary Act. What is more, in *Frothingham*, we refused to allow a single taxpayer to challenge a federal appropriations act. 262 U. S., at 486–487. That counsels against placing much, if any, reliance on taxpayer suits as justification for the modern universal injunction.

2

Respondents contend that universal injunctions—or at least *these* universal injunctions—are consistent with the principle that a court of equity may fashion a remedy that awards complete relief. See Opposition to Application in No. 24A884 (*CASA*), at 22–25; Opposition to Application in No. 24A885 (*Washington*), pp. 28–32; Opposition to Application in No. 24A886 (*New Jersey*), pp. 31–39. We agree that the complete-relief principle has deep roots in equity. But to the extent respondents argue that it justifies the award of relief to nonparties, they are mistaken.[11]

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[11] JUSTICE JACKSON, for her part, thinks the "premise" that universal injunctions provide relief to nonparties is "suspect" because, in her view, "[n]onparties may *benefit* from an injunction, but only the plaintiff gets *relief*." *Post*, at 8–9, n. 2 (dissenting opinion). The availability of contempt proceedings suggests otherwise. Consider the civil contempt context. Under "traditional principles of equity practice," courts may "impos[e] civil contempt sanctions to 'coerce [a] defendant into compliance' with an injunction." *Taggart* v. *Lorenzen*, 587 U. S. 554, 560 (2019) (quoting *United States* v. *Mine Workers*, 330 U. S. 258, 303–304 (1947)). Generally, civil contempt proceedings occur between the original parties to the lawsuit. See *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418,

"Complete relief" is not synonymous with "universal relief." It is a narrower concept: The equitable tradition has long embraced the rule that courts generally "may administer complete relief *between the parties*." *Kinney-Coastal Oil Co.* v. *Kieffer*, 277 U. S. 488, 507 (1928) (emphasis added). While party-specific injunctions sometimes "advantag[e] nonparties," *Trump*, 585 U. S., at 717 (THOMAS, J., concurring), they do so only incidentally.

Consider an archetypal case: a nuisance in which one neighbor sues another for blasting loud music at all hours of the night. To afford the plaintiff complete relief, the court has only one feasible option: order the defendant to turn her music down—or better yet, off. That order will necessarily benefit the defendant's surrounding neighbors too; there is no way "to peel off just the portion of the nuisance that harmed the plaintiff." *Rodgers*, 942 F. 3d, at 462 (Stras, J., concurring); see A. Woolhandler & C. Nelson, Does History Defeat Standing Doctrine? 102 Mich. L. Rev. 689, 702 (2004). But while the court's injunction might have the *practical effect* of benefiting nonparties, "that benefit [is] merely incidental." *Trump*, 585 U. S., at 717 (THOMAS, J., concurring); see also 3 J. Pomeroy, Equity Jurisprudence §1349, pp. 380–381 (1883).[12] As a matter of law, the injunc-

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444–445 (1911). But a federal court's "power in civil contempt proceedings is determined by the requirements of full remedial relief" to "effect compliance with its decree." *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 193–194 (1949). And "[w]hen an order grants relief for a nonparty," as is the case with universal injunctions,"the procedure for enforcing the order is the same as for a party." Fed. Rule Civ. Proc. 71; see, *e.g.*, *Zamecnik* v. *Indiana Prairie School Dist. No. 204*, 636 F. 3d 874, 879 (CA7 2011). So a nonparty covered by a universal injunction is likely to reap both the practical benefit and the formal relief of the injunction. See M. Smith, Only Where Justified: Toward Limits and Explanatory Requirements for Nationwide Injunctions, 95 Notre Dame L. Rev. 2013, 2019 (2020).

[12]There may be other injuries for which it is all but impossible for

tion's protection extends only to the suing plaintiff—as evidenced by the fact that only the plaintiff can enforce the judgment against the defendant responsible for the nuisance. If the nuisance persists, and another neighbor wants to shut it down, she must file her own suit.[13]

The individual and associational respondents are therefore wrong to characterize the universal injunction as simply an application of the complete-relief principle. Under this principle, the question is not whether an injunction offers complete relief to *everyone* potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court*. See *Califano* v. *Yamasaki*, 442 U. S. 682, 702 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*" (emphasis added)). Here, prohibiting enforcement of the Executive Order against the child of an individual pregnant plaintiff will give that plaintiff complete relief: Her child will not be denied citizenship. Extending the injunction to cover all other similarly situated individuals would not render *her* relief any more complete.

The complete-relief inquiry is more complicated for the state respondents, because the relevant injunction does not purport to directly benefit nonparties. Instead, the District Court for the District of Massachusetts decided that a uni-

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courts to craft relief that is complete *and* benefits only the named plaintiffs. See, *e.g.*, *Shaw* v. *Hunt*, 517 U. S. 899 (1996) (racially gerrymandered congressional maps).

[13] The new plaintiff might be able to assert nonmutual offensive issue preclusion. See *Parklane Hosiery Co.* v. *Shore*, 439 U. S. 322, 331–332 (1979) (setting forth prerequisites for applying the doctrine). But nonmutual offensive issue preclusion is unavailable against the United States. *United States* v. *Mendoza*, 464 U. S. 154, 155 (1984). That universal injunctions end-run this rule is one of the Government's objections to them.

versal injunction was necessary to provide the States *themselves* with complete relief. See 766 F. Supp. 3d, at 288.[14] The States maintain that the District Court made the right call. See Opposition to Application in No. 24A886 (*New Jersey*), at 31–39.

As the States see it, their harms—financial injuries and the administrative burdens flowing from citizen-dependent benefits programs—cannot be remedied without a blanket ban on the enforcement of the Executive Order. See, *e.g.*, *id.*, at 9–11. Children often move across state lines or are born outside their parents' State of residence. *Id.*, at 31, 35. Given the cross-border flow, the States say, a "patchwork injunction" would prove unworkable, because it would require them to track and verify the immigration status of the parents of every child, along with the birth State of every child for whom they provide certain federally funded benefits. *Ibid.*

The Government—unsurprisingly—sees matters differently. It retorts that even if the injunction is designed to benefit only the States, it is "more burdensome than necessary to redress" their asserted harms. *Califano*, 442 U. S., at 702. After all, to say that a court *can* award complete relief is not to say that it *should* do so. Complete relief is not a guarantee—it is the maximum a court can provide. And in equity, "the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff 's story needs to be." S. Bray & P. Miller, Getting into Equity, 97 Notre Dame L. Rev. 1763, 1797 (2022). In short, "[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case." *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329

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[14] The District Court for the Western District of Washington acknowledged the state respondents' complete-relief argument but primarily granted a universal injunction on the basis that the "extreme nature of the equities . . . alone warrant[ed] nationwide relief." 765 F. Supp. 3d 1142, 1153 (2025).

(1944).

Leaning on these principles, the Government contends that narrower relief is appropriate. For instance, the District Court could forbid the Government to apply the Executive Order within the respondent States, including to children born elsewhere but living in those States. Application in No. 24A884, at 23. Or, the Government says, the District Court could direct the Government to "treat covered children as eligible for purposes of federally funded welfare benefits." *Ibid.* It asks us to stay the injunction insofar as it sweeps too broadly.

We decline to take up these arguments in the first instance. The lower courts should determine whether a narrower injunction is appropriate; we therefore leave it to them to consider these and any related arguments.

3

Respondents also defend universal injunctions as a matter of policy. They argue that a universal injunction is sometimes the only practical way to quickly protect groups from unlawful government action. See Opposition to Application in No. 24A884 (*CASA*), at 26–27; see also A. Frost, In Defense of Nationwide Injunctions, 93 N. Y. U. L. Rev. 1065, 1090–1094 (2018) (suggesting that universal injunctions are appropriate when not all interested individuals can come quickly to court); *post*, at 37–39 (SOTOMAYOR, J., dissenting). Respondents also contend that universal injunctions are an appropriate remedy to preserve equal treatment among individuals when the Executive Branch adopts a facially unlawful policy. Opposition to Application in No. 24A884 (*CASA*), at 25–27; cf. *post*, at 22 (SOTOMAYOR, J., dissenting). And they suggest that forcing plaintiffs to proceed on an individual basis can result in confusion or piecemeal litigation that imposes unnecessary costs on courts and others. See Opposition to Application in No. 24A885 (*Washington*), at 31–32; Frost, 93 N. Y. U.

L. Rev., at 1098–1101; see also *post*, at 31 (SOTOMAYOR, J., dissenting). So, they insist, universal injunctions must be permitted for the good of the system.

The Government advances policy arguments running the other way. Echoing Chief Judge Sutton, the Government asserts that avoiding a patchwork enforcement system is a justification that "lacks a limiting principle and would make nationwide injunctions the rule rather than the exception" for challenges to many kinds of federal law. *Arizona*, 40 F. 4th, at 397 (concurring opinion). It stresses—as the principal dissent also observes—that universal injunctions incentivize forum shopping, since a successful challenge in one jurisdiction entails relief nationwide. See Application in No. 24A884, at 19–20; see also *post*, at 22 (opinion of SOTOMAYOR, J.). In a similar vein, the Government observes that universal injunctions operate asymmetrically: A plaintiff must win just one suit to secure sweeping relief. But to fend off such an injunction, the Government must win everywhere. See Application in No. 24A884, at 19–20; see also *post*, at 22–23 (opinion of SOTOMAYOR, J.) (acknowledging this concern).[15] Moreover, the Government contends, the practice of universal injunctions means that highly consequential cases are often decided in a "fast and furious" process of " 'rushed, high-stakes, [and] low-information'" decisionmaking. *Labrador*, 601 U. S., at (slip op., at 12) (GORSUCH, J., concurring in grant of stay). When a district court issues a universal injunction, thereby halting the enforcement of federal policy, the Government says that it has little recourse but to proceed to the court of appeals for an emergency stay. The loser in the court of

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[15] The Government contrasts this with class actions. A judgment in a Rule 23 class action (favorable or not) binds the whole class—so if the defendant wins, it is protected from future suits. But because an adverse ruling on a request for universal relief lacks this preclusive effect, plaintiffs can continue to file in different forums until they find a court willing to award such relief.

appeals will then seek a stay from this Court. See Application in No. 24A884, at 20. This process forces courts to resolve significant and difficult questions of law on a highly expedited basis and without full briefing. See *ibid.*[16]

The upshot: As with most disputed issues, there are arguments on both sides. But as with most questions of law, the policy pros and cons are beside the point. Under our well-established precedent, the equitable relief available in the federal courts is that "traditionally accorded by courts of equity" at the time of our founding. *Grupo Mexicano*, 527 U. S., at 319. Nothing like a universal injunction was available at the founding, or for that matter, for more than a century thereafter. Thus, under the Judiciary Act, federal courts lack authority to issue them.

C

The principal dissent focuses on conventional legal terrain, like the Judiciary Act of 1789 and our cases on equity. JUSTICE JACKSON, however, chooses a startling line of attack that is tethered neither to these sources nor, frankly, to any doctrine whatsoever. Waving away attention to the limits on judicial power as a "mind-numbingly technical query," *post*, at 3 (dissenting opinion), she offers a vision of

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[16] Acknowledging these problems, the principal dissent admits that "[t]here may be good reasons not to issue universal injunctions in the typical case." *Post*, at 23 (opinion of SOTOMAYOR, J.). This concession, while welcome, is inconsistent with the position that the universal injunction is a "nothing to see here" extension of the kind of decree obtained on a bill of peace. Neither the principal dissent nor respondents have pointed to any evidence that such decrees presented any of the universal injunction's systemic problems or that they were reserved for situations in which the defendant's conduct was "patently unconstitutional" and risked "exceptional" harm. *Post*, at 22–23. It is precisely because the universal injunction is a new, potent remedy that it poses new, potent risks. Our observation in *Grupo Mexicano* rings true here: "Even when sitting as a court in equity, we have no authority to craft a 'nuclear weapon' of the law." 527 U. S., at 332.

the judicial role that would make even the most ardent defender of judicial supremacy blush. In her telling, the fundamental role of courts is to "order everyone (including the Executive) to follow the law—full stop." *Post*, at 2; see also *post*, at 10 ("[T]he function of the courts—both in theory and in practice—necessarily includes announcing what the law requires in . . . suits for the benefit of all who are protected by the Constitution, not merely doling out relief to injured private parties"); see also *post*, at 11, n. 3, 15. And, she warns, if courts lack the power to "require the Executive to adhere to law universally," *post*, at 15, courts will leave a "gash in the basic tenets of our founding charter that could turn out to be a mortal wound," *post*, at 12.

Rhetoric aside, JUSTICE JACKSON's position is difficult to pin down. She might be arguing that universal injunctions are appropriate—even required—whenever the defendant is part of the Executive Branch. See, *e.g.*, *post*, at 3, 10–12, 16–18. If so, her position goes far beyond the mainstream defense of universal injunctions. See, *e.g.*, Frost, 93 N. Y. U. L. Rev., at 1069 ("Nationwide injunctions come with significant costs and should never be the default remedy in cases challenging federal executive action"). As best we can tell, though, her argument is more extreme still, because its logic does not depend on the entry of a universal injunction: JUSTICE JACKSON appears to believe that the reasoning behind *any* court order demands "universal adherence," at least where the Executive is concerned. *Post*, at 2 (dissenting opinion). In her law-declaring vision of the judicial function, a district court's opinion is not just persuasive, but has the legal force of a judgment. But see *Haaland* v. *Brackeen*, 599 U. S. 255, 294 (2023) ("It is a federal court's judgment, not its opinion, that remedies an injury"). Once a single district court deems executive conduct unlawful, it has stated what the law requires. And the Executive must conform to that view, ceasing its enforcement of the

law against anyone, anywhere.[17]

We will not dwell on JUSTICE JACKSON's argument, which is at odds with more than two centuries' worth of precedent, not to mention the Constitution itself. We observe only this: JUSTICE JACKSON decries an imperial Executive while embracing an imperial Judiciary.

No one disputes that the Executive has a duty to follow the law. But the Judiciary does not have unbridled authority to enforce this obligation—in fact, sometimes the law prohibits the Judiciary from doing so. See, *e.g.*, *Marbury* v. *Madison*, 1 Cranch 137 (1803) (concluding that James Madison had violated the law but holding that the Court lacked jurisdiction to issue a writ of mandamus ordering him to follow it). But see *post*, at 15 (JACKSON, J., dissenting) ("If courts do not have the authority to require the Executive to adhere to law universally, . . . compliance with law sometimes becomes a matter of Executive prerogative"). Observing the limits on judicial authority—including, as relevant here, the boundaries of the Judiciary Act of 1789—is required by a judge's oath to follow the law.

JUSTICE JACKSON skips over that part. Because analyzing the governing statute involves boring "legalese," *post*, at 3, she seeks to answer "a far more basic question of enormous practical significance: May a federal court in the

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[17] Think about what this position means. If a judge in the District of Alaska holds that a criminal statute is unconstitutional, can the United States prosecute a defendant under that statute in the District of Maryland? Perhaps JUSTICE JACKSON would instinctively say yes; it is hard to imagine anyone saying no. But why, on JUSTICE JACKSON's logic, does it not violate the rule of law for the Executive to initiate a prosecution elsewhere? See *post*, at 2 (dissenting opinion). Among its many problems, JUSTICE JACKSON's view is at odds with our system of divided judicial authority. See, *e.g.*, this Court's Rule 10(a) (identifying conflict in the decisions of the courts of appeals as grounds for granting certiorari). It is also in considerable tension with the reality that district court opinions lack precedential force even vis-à-vis other judges in the same judicial district. See *Camreta* v. *Greene*, 563 U. S. 692, 709, n. 7 (2011).

United States of America order the Executive to follow the law?" *Ibid.* In other words, it is unecessary to consider whether Congress has constrained the Judiciary; what matters is how the Judiciary may constrain the Executive. JUSTICE JACKSON would do well to heed her own admonition: "[E]veryone, from the President on down, is bound by law." *Ibid.* That goes for judges too.

IV

Finally, the Government must show a likelihood that it will suffer irreparable harm absent a stay. *Nken*, 556 U. S., at 434–435. When a federal court enters a universal injunction against the Government, it "improper[ly] intru[des]" on "a coordinate branch of the Government" and prevents the Government from enforcing its policies against nonparties. *INS* v. *Legalization Assistance Project of Los Angeles County Federation of Labor*, 510 U. S. 1301, 1306 (1993) (O'Connor, J., in chambers). That is enough to justify interim relief.

The principal dissent disagrees, insisting that "it strains credulity to treat the Executive Branch as irreparably harmed" by these injunctions, even if they are overly broad. *Post*, at 17 (opinion of SOTOMAYOR, J.); see also Opposition to Application in No. 24A884 (*CASA*), at 16–20. That is so, the principal dissent argues, because the Executive Order is unconstitutional. Thus, "the Executive Branch has no right to enforce [it] against anyone." *Post*, at 15.

The principal dissent's analysis of the Executive Order is premature because the birthright citizenship issue is not before us.[18] And because the birthright citizenship issue is

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[18] The dissent worries that the Citizenship Clause challenge will never reach this Court, because if the plaintiffs continue to prevail, they will have no reason to petition for certiorari. And if the Government keeps losing, it will "ha[ve] no incentive to file a petition here . . . because the outcome of such an appeal would be preordained." *Post*, at 42 (opinion of SOTOMAYOR, J.). But at oral argument, the Solicitor General acknowledged that challenges to the Executive Order are pending in multiple

not before us, we take no position on whether the dissent's analysis is right. The dissent is wrong to say, however, that a stay applicant cannot demonstrate irreparable harm from a threshold error without also showing that, at the end of the day, it will prevail on the underlying merits. That is not how the *Nken* factors work. See 556 U. S., at 434. For instance, when we are asked to stay an execution on the grounds of a serious legal question, we ask whether the capital defendant is likely to prevail on the merits of the issue before us, not whether he is likely to prevail on the merits of the underlying suit. See, *e.g.*, *Gutierrez* v. *Saenz*, 603 U. S. __ (2024) (granting application for a stay based on a question implicating the prisoner's standing to attempt to access DNA testing). The same is true when an applicant seeks a stay in other contexts. See, *e.g.*, *OPM* v. *AFGE*, 604 U. S. __ (2025) (granting application for stay because the organizational plaintiffs' allegations were "insufficient to support [their] standing"). So too here.

The question before us is whether the Government is likely to suffer irreparable harm from the District Courts' entry of injunctions that likely exceed the authority conferred by the Judiciary Act. The answer to that question is yes. See *Coleman* v. *Paccar Inc.*, 424 U. S. 1301, 1307–1308 (1976) (Rehnquist, C. J., in chambers); *Trump* v. *International Refugee Assistance Project*, 582 U. S. 571, 578–579 (2017) (*per curiam*); see also *Maryland* v. *King*, 567 U. S. 1301, 1303 (2012) (ROBERTS, C. J., in chambers) ("'[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury'" (alteration in original)). And

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circuits, Tr. of Oral Arg. 50, and when asked directly "When you lose one of those, do you intend to seek cert?", the Solicitor General responded, "yes, absolutely." *Ibid.* And while the dissent speculates that the Government would disregard an unfavorable opinion from this Court, the Solicitor General represented that the Government will respect both the judgments and the opinions of this Court. See *id.*, at 62–63.

the balance of equities does not counsel against awarding the Government interim relief: Partial stays will cause no harm to respondents because they will remain protected by the preliminary injunctions to the extent necessary and appropriate to afford them complete relief.

* * *

Some say that the universal injunction "give[s] the Judiciary a powerful tool to check the Executive Branch." *Trump*, 585 U. S., at 720 (THOMAS, J., concurring) (citing S. Amdur & D. Hausman, Nationwide Injunctions and Nationwide Harm, 131 Harv. L. Rev. Forum 49, 51, 54 (2017); S. Malveaux, Class Actions, Civil Rights, and the National Injunction, 131 Harv. L. Rev. Forum, 56, 57, 60–62 (2017)). But federal courts do not exercise general oversight of the Executive Branch; they resolve cases and controversies consistent with the authority Congress has given them. When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too.

The Government's applications to partially stay the preliminary injunctions are granted, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue. The lower courts shall move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity. The injunctions are also stayed to the extent that they prohibit executive agencies from developing and issuing public guidance about the Executive's plans to implement the Executive Order. Consistent with the Solicitor General's representation, §2 of the Executive Order shall not take effect until 30 days after the date of this opinion. See Tr. of Oral Arg. 55.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 24A884

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ON APPLICATION FOR PARTIAL STAY

No. 24A885

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No. 24A886

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* NEW JERSEY, ET AL.

ON APPLICATION FOR PARTIAL STAY

[June 27, 2025]

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring.

The Court today holds that federal courts may not issue so-called universal injunctions. I agree and join in full. As the Court explains, the Judiciary Act of 1789—the statute that " 'authorizes the federal courts to issue equitable remedies' "—does not permit universal injunctions. *Ante,* at 5. It authorizes only those remedies traditionally available in equity, and there is no historical tradition allowing courts to provide "relief that extend[s] beyond the parties." *Ante,* at 5–11. That conclusion is dispositive: As I have previously explained, "[i]f district courts have any authority to issue

universal injunctions," it must come from some specific statutory or constitutional grant. *Trump* v. *Hawaii*, 585 U. S. 667, 713–714 (2018) (concurring opinion). But, the Judiciary Act is the only real possibility, and serious constitutional questions would arise even if Congress purported to one day allow universal injunctions. See *id.*, at 714, n. 2; see also *United States* v. *Texas*, 599 U. S. 670, 693–694 (2023) (GORSUCH, J., concurring in judgment).

I write separately to emphasize the majority's guidance regarding how courts should tailor remedies specific to the parties. Courts must not distort "the rule that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano* v. *Yamasaki*, 442 U. S. 682, 702 (1979). Otherwise, they risk replicating the problems of universal injunctions under the guise of granting complete relief.

As the Court recognizes, the complete-relief principle operates as a ceiling: In no circumstance can a court award relief beyond that necessary to redress the plaintiffs' injuries. See *ante,* at 18 ("Complete relief is not a guarantee—it is the maximum a court can provide"). This limitation follows from both Article III and traditional equitable practice. Because Article III limits courts to resolving specific "Cases" and "Controversies," see U. S. Const., Art. III, §2, it requires that any remedy "be tailored to redress the plaintiff 's particular injury." *Gill* v. *Whitford*, 585 U. S. 48, 73 (2018). And, equitable remedies historically operated on a plaintiff-specific basis. *Ante,* at 6–9. Accordingly, any "remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Lewis* v. *Casey*, 518 U. S. 343, 357 (1996).

Courts therefore err insofar as they treat complete relief as a mandate. Some judges have read our precedents to suggest that courts should provide plaintiffs whatever remedy is necessary to give them complete relief. See, *e.g.*,

Mock v. *Garland*, 75 F. 4th 563, 587 (CA5 2023) ("[I]njunctions should be crafted to 'provide complete relief to the plaintiffs' "); Z. Siddique, Nationwide Injunctions, 117 Colum. L. Rev. 2095, 2106 (2017) ("[C]ourts . . . tailor their injunctions to provide complete relief to the parties—no less and no more"). But, that reading misunderstands the complete-relief principle.

This principle reflects the equitable "rule that courts generally 'may administer complete relief between the parties.' " *Ante,* at 16 (emphasis deleted). It is an important "aim of the law of remedies . . . to put the plaintiff in her rightful position." S. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 466 (2017) (Bray). But, "to say that a court *can* award complete relief is not to say that it *should* do so." *Ante,* at 18. And, in some circumstances, a court *cannot* award complete relief.

As the Court today affirms, any relief must fall within traditional limits on a court's equitable powers. See *ante,* at 5–6 (citing *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 319 (1999); *Payne* v. *Hook*, 7 Wall. 425, 430 (1869)). Courts must ask whether the relief plaintiffs seek "was traditionally accorded by courts of equity." *Grupo Mexicano*, 527 U. S., at 319. And, they must ensure that any injunctions comport with both the complete-relief principle and other "principles of equity." *Ante,* at 26. For example, courts may need to weigh considerations such as equity's concern "with justice . . . also for the defendant." Bray 468; see H. McClintock, Handbook of the Principles of Equity 78 (2d ed. 1948). In some cases, traditional equitable limits will require courts and plaintiffs to make do with less than complete relief.

This Court's decision in *Frothingham* v. *Mellon*, decided with *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923), exemplifies this constraint. Appellant Frothingham sought to "enjoin the execution of a federal appropriation act" on the

grounds that the Act exceeded the Government's authority and that its execution would improperly increase her tax burden. *Id.*, at 479, 486. On a maximalist view of the complete-relief principle, Frothingham would have been entitled to a national injunction had her claim been meritorious. After all, "a prohibition on using *her* tax money for the [statute] would have been wholly ineffectual" in remedying the injury caused by unlawful federal spending, given "the fungibility of money": The Government would still have been free to execute the statute, so long as it labeled the underlying funds as coming from other taxpayers. Bray 431. A court thus would have needed to enjoin all spending under the statute to provide effective relief. But, this Court rejected Frothingham's request for such an injunction as beyond "the preventive powers of a court of equity." 262 U. S., at 487. Among other reasons, it emphasized that an individual taxpayer's "interest in the moneys of the Treasury" was "comparatively minute and indeterminable," and that the petitioner had not suffered any "direct injury" but rather was "suffer[ing] in some indefinite way in common with people generally." *Id.*, at 487–488.*

To be sure, "[w]hat counts as complete relief " can be a difficult question. Bray 467. Many plaintiffs argue that only sweeping relief can redress their injuries. And, I do not dispute that there will be cases requiring an "indivisible remedy" that incidentally benefits third parties, Tr. of Oral Arg., 14–15, such as "[i]njunctions barring public nuisances," *Hawaii*, 585 U. S., at 717 (THOMAS, J., concurring). But, such cases are by far the exception.

An indivisible remedy is appropriate only when it would be "all but impossible" to devise relief that reaches only the plaintiffs. *Ante,* at 16–17, n. 12. Such impossibility is a

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*Although courts now treat *Frothingham* primarily as a case about taxpayer standing, its analysis in fact "intertwine[d] concepts of equity, remedies, and the judicial power." Bray 430–433; see *ante,* at 8.

high bar. For example, the Court today readily dispatches with the individual and associational respondents' position that they require a universal injunction, notwithstanding their argument that a "plaintiff-specific injunction" would be difficult to administer and would subject the associations' members to the burden of having "to identify and disclose to the government" their membership. Tr. of Oral Arg. 141–142. As the Court recognizes, "prohibiting enforcement of the Executive Order against the child of an individual pregnant plaintiff " is all that is required to "give that plaintiff complete relief." *Ante,* at 17. Courts may not use the complete-relief principle to revive the universal injunction.

* * *

For good reason, the Court today puts an end to the "increasingly common" practice of federal courts issuing universal injunctions. *Hawaii*, 585 U. S., at 713 (THOMAS, J., concurring). The Court also makes clear that the complete-relief principle provides a ceiling on federal courts' authority, which must be applied alongside other "principles of equity" and our holding that universal injunctions are impermissible. *Ante,* at 26. Lower courts should carefully heed this Court's guidance and cabin their grants of injunctive relief in light of historical equitable limits. If they cannot do so, this Court will continue to be "dutybound" to intervene. *Hawaii*, 585 U. S., at 721 (THOMAS, J., concurring).

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ON APPLICATION FOR PARTIAL STAY

[June 27, 2025]

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court but write separately to note two related issues that are left unresolved and potentially threaten the practical significance of today's decision: the availability of third-party standing and class certification.

First, the Court does not address the weighty issue whether the state plaintiffs have third-party standing to assert the Citizenship Clause claims of their individual residents. See *ante*, at 2, n. 2; see also *ante*, at 26 ("The Government's applications to partially stay the preliminary

injunctions are granted, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff *with standing to sue*" (emphasis added)). Ordinarily, "a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties." *Powers* v. *Ohio*, 499 U. S. 400, 410 (1991). In limited circumstances, however, the Court has permitted a party to assert the rights of a third party. Admittedly, the Court has not pinned down the precise circumstances in which third-party standing is permissible. See *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118, 127, n. 3 (2014). And commentators have emphasized the need for "greater doctrinal coherence." C. Bradley & E. Young, Unpacking Third-Party Standing, 131 Yale L. J. 1, 7 (2021) (Bradley & Young).

But at a minimum, we have said that a litigant seeking to assert the legal rights or interests of others must demonstrate ordinary Article III standing for itself *and* answer the additional "threshold question whether [it has] standing to raise the rights of others." *Kowalski* v. *Tesmer*, 543 U. S. 125, 129 (2004). But see *FDA* v. *Alliance for Hippocratic Medicine*, 602 U. S. 367, 398 (2024) (THOMAS, J., concurring). This latter requirement, as we have explained, entails a showing that the litigant has a "close relationship" to the right holder and that there is some "'hindrance'" to the right holder's ability to "protect his own interests." *Kowalski*, 543 U. S., at 130 (quoting *Powers*, 499 U. S., at 411). So long as third-party standing doctrine remains good law, federal courts should take care to apply these limitations conscientiously, including against state plaintiffs. That is especially so in cases such as these, in which the parties claiming third-party standing (*i.e.*, the States) are not directly subject to the challenged policy in the relevant respect and face, at most, collateral injuries. See Bradley & Young 56–60.

Today's decision only underscores the need for rigorous and evenhanded enforcement of third-party-standing limitations. The Court holds today that injunctive relief should generally extend only to the suing plaintiff. See *ante*, at 16–17. That will have the salutary effect of bringing an end to the practice of runaway "universal" injunctions, but it leaves other questions unanswered. Perhaps most important, when a State brings a suit to vindicate the rights of individual residents and then procures injunctive relief, does the injunction bind the defendant with respect to all residents of that State? If so, States will have every incentive to bring third-party suits on behalf of their residents to obtain a broader scope of equitable relief than any individual resident could procure in his own suit. Left unchecked, the practice of reflexive state third-party standing will undermine today's decision as a practical matter.

Second, today's decision will have very little value if district courts award relief to broadly defined classes without following "Rule 23's procedural protections" for class certification. *Ante*, at 14. The class action is a powerful tool, and we have accordingly held that class "certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338, 350–351 (2011) (internal quotation marks omitted). These requirements are more than "a mere pleading standard," *id.*, at 350, and a hasty application of Rule 23 of the Federal Rules of Civil Procedure can have drastic consequences, creating "potential unfairness" for absent class members and confusion (and pressure to settle) for defendants. *General Telephone Co. of Southwest* v. *Falcon*, 457 U. S. 147, 161 (1982). Recognizing these effects, Congress took the exceptional step of authorizing interlocutory review of class certification. See Fed. Rule Civ. Proc. 23(f).

Putting the kibosh on universal injunctions does nothing to disrupt Rule 23's requirements. Of course, Rule 23 may

permit the certification of nationwide classes in some discrete scenarios. But district courts should not view today's decision as an invitation to certify nationwide classes without scrupulous adherence to the rigors of Rule 23. Otherwise, the universal injunction will return from the grave under the guise of "nationwide class relief," and today's decision will be of little more than minor academic interest.

* * *

Lax enforcement of the requirements for third-party standing and class certification would create a potentially significant loophole to today's decision. Federal courts should thus be vigilant against such potential abuses of these tools. I do not understand the Court's decision to reflect any disagreement with these concerns, so I join its decision in full.

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ON APPLICATION FOR PARTIAL STAY

[June 27, 2025]

JUSTICE KAVANAUGH, concurring.

The plaintiffs here sought preliminary injunctions against enforcement of the President's Executive Order on birthright citizenship. The District Courts granted *universal* preliminary injunctions—that is, injunctions prohibiting enforcement of the Executive Order against anyone. Under the Court's holding today, district courts issuing injunctions under the authority afforded by the Judiciary Act of 1789 may award only plaintiff-specific relief. I join the Court's careful and persuasive opinion, which will bring needed clarity to the law of remedies.

To be sure, in the wake of the Court's decision, plaintiffs

who challenge the legality of a new federal statute or executive action and request preliminary injunctive relief may sometimes seek to proceed by class action under Federal Rule of Civil Procedure 23(b)(2) and ask a court to award preliminary classwide relief that may, for example, be statewide, regionwide, or even nationwide. See *ante*, at 13–14; *A. A. R. P.* v. *Trump*, 605 U. S. ___, ___ (2025) (*per curiam*) (slip op., at 7); *Califano* v. *Yamasaki*, 442 U. S. 682, 701–703 (1979). And in cases under the Administrative Procedure Act, plaintiffs may ask a court to preliminarily "set aside" a new agency rule. 5 U. S. C. §706(2); see, *e.g.*, *West Virginia* v. *EPA*, 577 U. S. 1126 (2016); see also *Corner Post, Inc.* v. *Board of Governors*, 603 U. S. 799, 826–843 (2024) (KAVANAUGH, J., concurring).[1]

But importantly, today's decision will require district courts to follow proper legal procedures when awarding such relief. Most significantly, district courts can no longer award preliminary nationwide or classwide relief except when such relief is legally authorized. And that salutary development will help bring substantially more order and discipline to the ubiquitous preliminary litigation over new federal statutes and executive actions.

I write separately simply to underscore that this case focuses on only one discrete aspect of the preliminary litigation relating to major new federal statutes and executive actions—namely, what *district courts* may do with respect to those new statutes and executive actions in what might be called "the interim before the interim." Although district courts have received much of the attention (and criticism) in debates over the universal-injunction issue, those courts generally do not have the last word when they grant or deny preliminary injunctions. The

[1] In addition, as the Court notes, an injunction granting complete relief to plaintiffs may also, as a practical matter, benefit nonparties. *Ante*, at 15–19.

courts of appeals and this Court can (and regularly do) expeditiously review district court decisions awarding or denying preliminary injunctive relief. The losing party in the district court—the defendant against whom an injunction is granted, or the plaintiff who is denied an injunction—will often go to the court of appeals to seek a temporary stay or injunction. And then the losing party in the court of appeals may promptly come to this Court with an application for a stay or injunction. This Court has therefore often acted as the ultimate decider of the interim legal status of major new federal statutes and executive actions. See, *e.g.*, *Ohio* v. *EPA*, 603 U. S. 279 (2024); *Danco Laboratories, LLC* v. *Alliance for Hippocratic Medicine*, 598 U. S. ____ (2023); *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109 (2022) (*per curiam*); *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 594 U. S. 758 (2021) (*per curiam*); see also *Labrador* v. *Poe*, 601 U. S. ___, ___–___ (2024) (KAVANAUGH, J., concurring in grant of stay) (slip op., at 2–3).

After today's decision, that order of operations will not change. In justiciable cases, this Court, not the district courts or courts of appeals, will often still be the ultimate decisionmaker as to the interim legal status of major new federal statutes and executive actions—that is, the interim legal status for the several-year period before a final decision on the merits.

I

The Court's decision today focuses on the "interim before the interim"—the preliminary relief that district courts can award (and courts of appeals can approve) for the generally *weeks-long* interim before this Court can assess and settle the matter for the often *years-long* interim before a final decision on the merits. To appreciate the broader context surrounding today's decision, it is important to understand

this Court's role in preliminary litigation of this sort.

The basic scenario in these kinds of applications to this Court is by now familiar. Congress passes a major new statute, or the Executive Branch issues a major new rule or executive order. The litigation over the legality of the new statute or executive action winds its way through the federal courts. And that litigation may meander on for many months or often years before this Court can issue a final ruling deciding the legality of the new statute or executive action.

In the meantime, various plaintiffs may seek preliminary injunctions, sometimes in many different district courts. And a government defendant against whom a preliminary injunction is granted (or a plaintiff who is denied a preliminary injunction) may seek a temporary stay or injunction in the court of appeals and then in this Court.

That preliminary-injunction litigation—which typically takes place at a rapid-fire pace long before the merits litigation culminates several years down the road—raises a question: What should the *interim* legal status of the significant new federal statute or executive action at issue be during the several-year period before this Court's final ruling on the merits?

That interim-status question is itself immensely important. The issue of whether a major new federal statute or executive action "is enforceable during the several years while the parties wait for a final merits ruling . . . raises a separate question of extraordinary significance to the parties and the American people." *Labrador* v. *Poe*, 601 U. S. ___, ___–___ (2024) (KAVANAUGH, J., concurring in grant of stay) (slip op., at 2–3).

The interim-status issue in turn raises two other critical questions: Should there be a *nationally uniform* answer on the question of whether a major new federal statute or executive action can be legally enforced in the often years-long interim period until this Court reaches a final decision

on the merits? If so, *who decides* what the nationally uniform interim answer is?

First, in my view, there often (perhaps not always, but often) should be a nationally uniform answer on whether a *major* new federal statute, rule, or executive order can be enforced throughout the United States during the several-year interim period until its legality is finally decided on the merits.

Consider just a few of the major executive actions that have been the subject of intense preliminary-injunction or other pre-enforcement litigation in the past 10 years or so, under Presidents of both political parties. They range from travel bans to birthright citizenship, from the Clean Power Plan to student loan forgiveness, from the OSHA vaccine mandate to the service of transgender individuals in the military, from Title IX regulations to abortion drugs. And the list goes on. Those executive actions often are highly significant and have widespread effects on many individuals, businesses, governments, and other organizations throughout the United States.

Often, it is not especially workable or sustainable or desirable to have a patchwork scheme, potentially for several years, in which a major new federal statute or executive action of that kind applies to some people or organizations in certain States or regions, but not to others. The national reach of many businesses and government programs, as well as the regular movement of the American people into and out of different States and regions, would make it difficult to sensibly maintain such a scattershot system of federal law.

Second, if one agrees that the years-long interim status of a highly significant new federal statute or executive action should often be uniform throughout the United States, who decides what the interim status is?

The answer typically will be this Court, as has been the case both traditionally and recently. This Court's actions

in resolving applications for interim relief help provide clarity and uniformity as to the interim legal status of major new federal statutes, rules, and executive orders. In particular, the Court's disposition of applications for interim relief often will effectively settle, *de jure* or *de facto*, the interim legal status of those statutes or executive actions nationwide.

The decision today will not alter this Court's traditional role in those matters. Going forward, in the wake of a major new federal statute or executive action, different district courts may enter a slew of preliminary rulings on the legality of that statute or executive action. Or alternatively, perhaps a district court (or courts) will grant or deny the functional equivalent of a universal injunction—for example, by granting or denying a preliminary injunction to a putative nationwide class under Rule 23(b)(2), or by preliminarily setting aside or declining to set aside an agency rule under the APA.

No matter how the preliminary-injunction litigation on those kinds of significant matters transpires in the district courts, the courts of appeals in turn will undoubtedly be called upon to promptly grant or deny temporary stays or temporary injunctions in many cases.

And regardless of whether the district courts have issued a series of individual preliminary rulings, or instead have issued one or more broader classwide or set-aside preliminary rulings, the losing parties in the courts of appeals will regularly come to this Court in matters involving major new federal statutes and executive actions.[2]

If there is no classwide or set-aside relief in those kinds of nationally significant matters, then one would expect a flood of decisions from lower courts, after which the losing

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[2] By statute, some litigation may start in a court of appeals or three-judge district court and then come directly to this Court.

parties on both sides will probably inundate this Court with applications for stays or injunctions.[3] And in cases where classwide or set-aside relief has been awarded, the losing side in the lower courts will likewise regularly come to this Court if the matter is sufficiently important.

When a stay or injunction application arrives here, this Court should not and cannot hide in the tall grass. When we receive such an application, we must grant or deny.[4] And when we do—that is, when this Court makes a decision on the interim legal status of a major new federal statute or executive action—that decision will often constitute a form of precedent (*de jure* or *de facto*) that provides guidance throughout the United States during the years-long interim period until a final decision on the merits.

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[3] That scenario explains why it would not make much sense for this Court to apply different standards to (i) an application for an injunction and (ii) an application for a stay of an injunction. See, *e.g.*, *Tandon* v. *Newsom*, 593 U. S. 61, 64 (2021) (*per curiam*) (applying the usual stay standard to an application for an injunction).

Suppose a district court in Circuit A enjoins a new executive action. And the court of appeals in Circuit A then declines to stay the injunction. Meanwhile, a district court in Circuit B does not enjoin that new executive action, and the court of appeals in Circuit B also declines to enjoin it. Both cases come to this Court on applications for interim relief—one seeking a stay of injunction and one seeking an injunction. It would not be particularly rational to deny a stay and leave the injunction in place in Circuit A, and then to turn around and deny an injunction in Circuit B on account of a purportedly higher standard for this Court to grant injunctions rather than stays. The standards should mesh so that this Court can ensure uniformity without regard to the happenstance of how various courts of appeals and district courts ruled.

[4] To obtain an interim stay or injunction, "an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial" of the application. *Hollingsworth* v. *Perry*, 558 U. S. 183, 190 (2010) (*per curiam*); see *Tandon*, 593 U. S., at 64. The Court may also consider (4) the "balance" of "the equities" and "relative harms" to the parties. *Hollingsworth*, 558 U. S., at 190.

II

It is sometimes suggested, however, that this Court should adopt a policy of presumptively denying applications for stays or injunctions—even applications involving significant new federal statutes or executive actions—regardless of which way the various lower courts have ruled. That suggestion is flawed, in my view, because it would often leave an unworkable or intolerable patchwork of federal law in place. And even in cases where there is no patchwork—for example, because an application comes to us with a single nationwide class-action injunction—what if this Court thinks the lower court's decision is wrong? On student loan forgiveness or the Clean Power Plan or mifepristone or the travel bans, for example? Should we have a rule of presumptively denying relief, thereby allowing erroneous injunctions (or erroneous denials of injunctions) of major new statutes and executive actions to remain in place for several years, and thus severely harming the Government and would-be beneficiaries of (or regulated parties under) those new statutes and executive actions? I think not. And this Court's actions over the years reflect that the Court thinks not.

Unless and until this Court grants or denies an application for stay or injunction, tremendous uncertainty may surround the interim legal status of the new federal statute or executive action throughout the country. The statute or executive action may be in effect in some places but not others, for some businesses but not others, for some Americans but not others. That temporary geographic, organizational, and individual variation in federal law might not warrant this Court's intervention in run-of-the-mill cases—which is why it makes sense that this Court denies applications for interim relief when the Court is unlikely to later grant certiorari. See *Does 1–3* v. *Mills*, 595 U. S. __, __ (2021) (BARRETT, J., concurring in denial of application for injunctive relief). But in cases involving

major new federal statutes or executive actions, uniformity is often essential or at least sensible and prudent. In those kinds of cases, disuniformity—even if only for a few years or less—can be chaotic. And such chaos is not good for the law or the country.

One of this Court's roles, in justiciable cases, is to resolve major legal questions of national importance and ensure uniformity of federal law. So a default policy of off-loading to lower courts the final word on whether to green-light or block major new federal statutes and executive actions for the several-year interim until a final ruling on the merits would seem to amount to an abdication of this Court's proper role.

Some might object that this Court is not well equipped to make those significant decisions—namely, decisions about the interim status of a major new federal statute or executive action—on an expedited basis. But district courts and courts of appeals are likewise not perfectly equipped to make expedited preliminary judgments on important matters of this kind. Yet they have to do so, and so do we. By law, federal courts are open and can receive and review applications for relief 24/7/365. See 28 U. S. C. §452 ("All courts of the United States shall be deemed always open for the purpose of filing proper papers . . . and making motions and orders"). And this Court has procedural tools that can help us make the best possible interim decision in the limited time available—administrative stays, additional briefing, *amicus* briefs, oral argument, certiorari before judgment, and the like. On top of that, this Court has nine Justices, each of whom can (and does) consult and deliberate with the other eight to help the Court determine the best answer, unlike a smaller three-judge court of appeals panel or one-judge district court. And this Court also will have the benefit of the prior decisions in the case at hand from the court of appeals and the district court.

Some might argue that preliminary disputes over the

legality of major new statutes and executive actions can draw this Court into difficult or controversial matters earlier than we might like, as distinct from what happens on our slower-moving merits docket. That is an understandable concern. But when it comes to the interim status of major new federal statutes and executive actions, it is often important for reasons of clarity, stability, and uniformity that this Court be the decider. And Members of the Court have life tenure so that we can make tough calls without fear or favor. As with the merits docket, the Court's role in resolving applications for interim relief is to neutrally referee each matter based on the relevant legal standard. Avoiding controversial or difficult decisions on those applications is neither feasible nor appropriate.

Some might also worry that an early or rushed decision on an application could "lock in" the Court's assessment of the merits and subtly deter the Court from later making a different final decision. But in deciding applications for interim relief involving major new statutes or executive actions, we often have no choice but to make a preliminary assessment of likelihood of success on the merits; after all, in cases of that sort, the other relevant factors (irreparable harm and the equities) are often very weighty on both sides. See *Labrador* v. *Poe*, 601 U. S. __, __–___ (2024) (KAVANAUGH, J., concurring in grant of stay) (slip op., at 3–4). Moreover, judges strive to make the correct decision based on current information notwithstanding any previous assessment of the merits earlier in the litigation. It is not uncommon to think and decide differently when one knows more. This Court has done so in the past, see *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943), and undoubtedly will continue to do so in the future.

To reiterate, this Court should not insert itself into run-of-the-mill preliminary-injunction cases where we are not likely to grant certiorari down the road. But determining the nationally uniform *interim* legal status for several years

of, say, the Clean Power Plan or Title IX regulations or mifepristone rules is a role that the American people appropriately expect this Court—and not only the courts of appeals or district courts—to fulfill.

* * *

The volume of preliminary-injunction and other pre-enforcement litigation over new federal laws and executive actions coming to this Court has been growing in recent years. That trend is in part the result of the increasing number of major new executive actions by recent Presidential administrations (of both political parties) that have had difficulty passing significant new legislation through Congress. Meanwhile, applications for stays or injunctions in capital-punishment cases, election disputes, and other time-sensitive matters (including numerous COVID–19-related disputes in the few years beginning in 2020) have also continued to come to this Court on a steady basis, as they traditionally have.

Although the volume of applications has increased, the Court's responsibility for deciding consequential applications for stays or injunctions is not new. See, *e.g.*, *West Virginia* v. *EPA*, 577 U. S. 1126 (2016) (temporarily enjoining Clean Power Plan); *Purcell* v. *Gonzalez*, 549 U. S. 1 (2006) (*per curiam*) (vacating injunction pending appeal regarding state voter ID law); *Rubin* v. *United States*, 524 U. S. 1301 (1998) (Rehnquist, C. J., in chambers) (denying stay pending certiorari of order enforcing subpoenas to Secret Service agents regarding their observations of the President); *Schlesinger* v. *Holtzman*, 414 U. S. 1321 (1973) (Marshall, J., in chambers) (staying District Court's injunction that had ordered a halt to bombing in Cambodia); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 584, 589 (1952) (after expedited oral argument, affirming District Court's preliminary injunction that proscribed seizure of steel mills by government); cf.

Rosenberg v. *United States*, 346 U. S. 273, 283–285 (1953) (vacating stay of execution of the Rosenbergs).

Today's decision on district court injunctions will not affect this Court's vitally important responsibility to resolve applications for stays or injunctions with respect to major new federal statutes and executive actions. Deciding those applications is not a distraction from our job. It is a critical part of our job. With that understanding, I join the Court's opinion in full.

SUPREME COURT OF THE UNITED STATES

No. 24A884

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CASA, INC., ET AL.

ON APPLICATION FOR PARTIAL STAY

No. 24A885

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

ON APPLICATION FOR PARTIAL STAY

No. 24A886

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* NEW JERSEY, ET AL.

ON APPLICATION FOR PARTIAL STAY

[June 27, 2025]

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, dissenting.

Children born in the United States and subject to its laws are United States citizens. That has been the legal rule since the founding, and it was the English rule well before then. This Court once attempted to repudiate it, holding in *Dred Scott* v. *Sandford*, 19 How. 393 (1857), that the children of enslaved black Americans were not citizens. To remedy that grievous error, the States passed in 1866 and Congress ratified in 1868 the Fourteenth Amendment's Citizenship Clause, which enshrined birthright citizenship in

the Constitution. There it has remained, accepted and respected by Congress, by the Executive, and by this Court. Until today.

It is now the President who attempts, in an Executive Order (Order or Citizenship Order), to repudiate birthright citizenship. Every court to evaluate the Order has deemed it patently unconstitutional and, for that reason, has enjoined the Federal Government from enforcing it. Undeterred, the Government now asks this Court to grant emergency relief, insisting it will suffer irreparable harm unless it can deprive at least some children born in the United States of citizenship. See Protecting the Meaning and Value of American Citizenship, Exec. Order No. 14160, 90 Fed. Reg. 8849 (2025).

The Government does not ask for complete stays of the injunctions, as it ordinarily does before this Court. Why? The answer is obvious: To get such relief, the Government would have to show that the Order is likely constitutional, an impossible task in light of the Constitution's text, history, this Court's precedents, federal law, and Executive Branch practice. So the Government instead tries its hand at a different game. It asks this Court to hold that, no matter how illegal a law or policy, courts can never simply tell the Executive to stop enforcing it against anyone. Instead, the Government says, it should be able to apply the Citizenship Order (whose legality it does not defend) to everyone except the plaintiffs who filed this lawsuit.

The gamesmanship in this request is apparent and the Government makes no attempt to hide it. Yet, shamefully, this Court plays along. A majority of this Court decides that these applications, of all cases, provide the appropriate occasion to resolve the question of universal injunctions and end the centuries-old practice once and for all. In its rush to do so the Court disregards basic principles of equity as well as the long history of injunctive relief granted to nonparties.

No right is safe in the new legal regime the Court creates. Today, the threat is to birthright citizenship. Tomorrow, a different administration may try to seize firearms from law-abiding citizens or prevent people of certain faiths from gathering to worship. The majority holds that, absent cumbersome class-action litigation, courts cannot completely enjoin even such plainly unlawful policies unless doing so is necessary to afford the formal parties complete relief. That holding renders constitutional guarantees meaningful in name only for any individuals who are not parties to a lawsuit. Because I will not be complicit in so grave an attack on our system of law, I dissent.

I

The majority ignores entirely whether the President's Executive Order is constitutional, instead focusing only on the question whether federal courts have the equitable authority to issue universal injunctions. Yet the Order's patent unlawfulness reveals the gravity of the majority's error and underscores why equity supports universal injunctions as appropriate remedies in this kind of case. As every conceivable source of law confirms, birthright citizenship is the law of the land.

A

The Citizenship Clause provides that "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U. S. Const., Amdt. 14, §1. That means what it says. Nestled in the Fourteenth Amendment alongside the Equal Protection Clause, the Citizenship Clause does not discriminate on the basis of race, sex, ethnicity, religion, or, importantly here, parentage. It refers instead to "[a]ll persons born or naturalized in the United States." *Ibid.*

Besides birth, there is only one condition: that one be

"subject to the jurisdiction" of the United States. Yet that condition too leaves no room for ambiguity. To be "subject to the jurisdiction" of the United States means simply to be bound to its authority and its laws. See N. Webster, An American Dictionary of the English Language 732 (C. Goodrich & N. Porter eds. 1865) (defining jurisdiction as the "[p]ower of governing or legislating," or "the power or right of exercising authority"). As the Government would presumably concede, virtually everyone born in the United States and present in its territory is subject to its authority and its laws. After all, "[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute." *Schooner Exchange* v. *McFaddon,* 7 Cranch 116, 136 (1812) (Marshall, C. J., for the Court). Once a citizen of another nation steps onto United States soil, she is (with narrow exception) "amenable to the jurisdiction" of the United States. *Id*., at 144. That is why "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful." *Plyler* v. *Doe*, 457 U. S. 202, 211, n. 10 (1982).

Few constitutional questions can be answered by resort to the text of the Constitution alone, but this is one. The Fourteenth Amendment guarantees birthright citizenship.

B

Unsurprisingly given the clarity of the Citizenship Clause's text, every other source of interpretation confirms this conclusion. Consider, first, its history. Long before the Fourteenth Amendment, and indeed before the founding, the common-law rule of *jus soli* (literally, right of the soil) governed English citizenship. That rule rendered a person's birthplace determinative of her citizenship status. Thus, "the children of aliens, born . . . in England," generally were "natural-born subjects, and entitled to all the privileges of such." 1 W. Blackstone, Commentaries on the

Laws of England 361–362 (1765); see also H. Broom & G. Denman, Constitutional Law Viewed in Relation to Common Law 31 (2d ed. 1885) (describing *Calvin's Case* (1608), which established that "[e]very one born within the dominions of the King of England . . . is . . . entitled to enjoy all the rights and liberties of an Englishman").

That English common-law rule carried over to the United States after the founding. Shortly after the Constitution's ratification, James Madison observed that "it [was] an established maxim that birth is a criterion of allegiance," *i.e.*, of citizenship. 1 Annals of Cong. 404 (1789). Birth, he explained, could convey citizenship in two ways: either through "place" (under the "right of the soil" principle) or through "parentage" (as for one born to United States citizens). *Ibid.* "[B]ut, in general," Madison explained, "place is the most certain criterion" and "it is what applies in the United States." *Ibid.* Mere decades later, Justice Story wrote that "[n]othing is better settled . . . than the doctrine that the children even of aliens born in a country . . . are subjects by birth." *Inglis* v. *Trustees of Sailor's Snug Harbour in City of New York*, 3 Pet. 99, 164 (1830). Well before the Fourteenth Amendment, then, it was the undisputed "law of the United States [that] every person born within the dominions and allegiance of the United States, whatever were the situation of his parents, is a natural born citizen." *Lynch* v. *Clarke*, 1 Sand. Ch. 583, 663 (N. Y. Ch. 1844).

Though the law was clear, the Nation did not always live up to its promise. Infamously, this Court departed from the birthright citizenship principle in *Dred Scott*, 19 How. 393, holding that the children of enslaved black Americans "are not included, and were not intended to be included, under the word 'citizens' in the Constitution." *Id.*, at 404. Following the Civil War, the Reconstruction Congress corrected that grave error. Section 1 of the Civil Rights Act of 1866, 14 Stat. 27, declared that "all persons born in the United

States and not subject to any foreign power" would be "citizens of the United States." The Fourteenth Amendment's guarantee of birthright citizenship followed two years later.

The lawmakers who ratified the Fourteenth Amendment understood that it would extend citizenship to all children born here, regardless of parental citizenship. Indeed, some objected to its passage on those grounds, complaining that it would permanently extend citizenship to immigrants who "invade [state] borders" and "settle as trespassers." Cong. Globe, 39th Cong., 1st Sess., 2891 (1866). Proponents agreed, if not with the anti-immigrant sentiment, that the Clause would extend citizenship to the children of immigrants. For example, Senator Conness of California (one of the Amendment's lead supporters) confirmed on the floor "that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law." *Id.*, at 2892. "We have declared that by law" in the Civil Rights Act, he explained, and "now it is proposed to incorporate the same provision in the fundamental instrument of the nation." *Id.*, at 2891. Not one Senator disagreed with this understanding of the Clause.

In the end, "[t]he Citizenship Clause was no legal innovation." J. Ho, Defining "American": Birthright Citizenship and the Original Understanding of the 14th Amendment, 9 Green Bag 2d 367, 369 (2006); see also *id.*, at 368 ("Birthright citizenship is guaranteed by the Fourteenth Amendment. That birthright is protected no less for children of undocumented persons than for descendants of *Mayflower* passengers"). "It simply restored the longstanding English common law doctrine of *jus soli*" abrogated by *Dred Scott*. Ho, 9 Green Bag 2d, at 369; see also M. Ramsey, Originalism and Birthright Citizenship, 109 Geo. L. J. 405, 472 (2020) (The "central purpose" of the Citizenship Clause "was, of course, to overrule *Dred Scott*").

C

Following the ratification of the Fourteenth Amendment, this Court confirmed the Amendment's plain meaning in *United States* v. *Wong Kim Ark*, 169 U. S. 649 (1898). At issue was the citizenship of Wong Kim Ark, a young California resident born in San Francisco to Chinese immigrant parents. *Id.*, at 652. When Wong returned to California from a trip to China, a custom's collector denied him entry on the sole ground that he was not a citizen of the United States. *Id.*, at 653.

This Court held that "[t]he Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory." *Id.*, at 693. As the President does today, the Government in *Wong Kim Ark* rested its case on the Clause's sole qualifier. Wong was not subject to the jurisdiction of the United States, the Government claimed, because at birth his parents were aliens in the United States who were "subjects of the emperor of China," thus making Wong a subject of the emperor of China as well. *Id.*, at 652–653. This Court squarely rejected that attempt to limit the Citizenship Clause's reach. Instead, it held, the "'subject to the jurisdiction'" qualifier excludes only "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign State," *id.*, at 682, "with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes," *id.*, at 693.[1]

[1] The first two exceptions "ha[d] already been shown, by the law of England and by our own law, from the time of the first settlement of the English colonies in America, [to be] recognized exceptions to the fundamental rule of citizenship by birth within the country." *Wong Kim Ark*, 169 U. S., at 682. The additional exception for certain children born to Indian tribe members reflected the country's historical understanding that Indian tribes were "*quasi* foreign nations" within the physical boundaries of the United States. See Cong. Globe, 39th Cong., 1st Sess.,

That holding conclusively settled any remaining dispute over the Citizenship Clause's meaning. Since then, all three branches of Government have unflinchingly adhered to it.

This Court, for one, has repeatedly reaffirmed *Wong Kim Ark*'s holding. Notwithstanding legislation purporting to render Japanese persons "ineligible" for citizenship, we held in *Morrison* v. *California*, 291 U. S. 82 (1934), that a child with Japanese parents "is a citizen of the United States if he was born within the United States." *Id.*, at 85. The Court recognized the same rule even during World War II, when individuals of Japanese ancestry were subject to curfew and exclusion orders. See *Hirabayashi* v. *United States*, 320 U. S. 81, 96–97 (1943). So too has the Court recognized that the child of parents unlawfully present in the United States "is, of course, an American citizen by birth." *United States ex rel. Hintopoulos* v. *Shaughnessy*, 353 U. S. 72, 73 (1957). The same is true of children whose parents gained admission into the United States by unlawful means. See, *e.g.*, *INS* v. *Errico*, 385 U. S. 214, 215–216 (1966); *INS* v. *Rios-Pineda*, 471 U. S. 444, 446 (1985).

Congress, for its part, has also reaffirmed the principles of birthright citizenship by enshrining it in a federal statute. Section 201 of the Nationality Act of 1940 provides that all those "born in the United States, and subject to the jurisdiction thereof," "shall be nationals and citizens of the United States at birth." 8 U. S. C. §1401(a); see also *Taggart* v. *Lorenzen*, 587 U. S. 554, 560 (2019) (recognizing

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2890 (1866). Treaties between many tribes and the Federal Government, at the time, ensured that it was the tribe, and not the United States Government, that had "prescriptive and law enforcement authority" over tribal members. M. Ramsey, Originalism and Birthright Citizenship, 109 Geo. L. J. 405, 443–444 (2020); see *id.*, at 442–444. Congress eventually extended birthright citizenship to tribal members born in the United States in 1924. See Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253, 8 U. S. C. §1401(b). These exceptions are not at issue in these cases.

"longstanding interpretive principle" that if statutory term " 'is "obviously transplanted from another legal source," it "brings the old soil with it" ' ").

For at least the last century, the Executive Branch has adhered to the same principle. When Congress proposed to reaffirm birthright citizenship in the 1940 Nationality Act, cabinet officials described it as "a statement of the common-law rule, which has been in the United States from the beginning of its existence." House Committee on Immigration and Naturalization, Nationality Laws of the United States, 76th Cong., 1st Sess., 7 (Comm. Print 1939). Indeed, the Government concedes even now that the Executive Branch has recognized the vitality of birthright citizenship "at least back to World War II, if not earlier." App. to Opposition to Application in No. 24A886, p. 323a. That explains, among other things, why the Social Security Administration and the Department of State have long accepted proof of one's birthplace as proof of citizenship. See 44 Fed. Reg. 10369, 10371 (1979); 20 CFR §§422.107(d), 422.103(c)(2) (2024); 22 CFR §§51.40, 51.42 (2024).

Some decades ago, the Office of Legal Counsel was asked to respond to a House bill that would have denied birthright citizenship to " 'children born in the United States to parents who are not citizens or permanent resident aliens.'" 19 Op. OLC 340, 341 (1995). The answer well summed up the state of the law: This "office grapples with many difficult and close issues of constitutional law. The lawfulness of this bill is not among them. This legislation is unquestionably unconstitutional." *Ibid.*

II

A

Undeterred by the Constitution, history, Supreme Court precedent, federal law, and longstanding Executive Branch practice, President Donald J. Trump issued Executive Order No. 14160 on the day of his inauguration that purported

to redefine American citizenship. The Order declares that United States citizenship does not extend to persons who are born to a mother unlawfully present in the United States, or lawfully present on a temporary basis, and a father who is neither a citizen nor lawful permanent resident. *Ibid.* It further prohibits federal agencies from issuing citizenship documentation to such persons or accepting state documentation to that effect, and it directs a slew of federal officials to conform agency regulations to the Order. *Id.*, at 8449–8450. The prohibition, according to the Order, applies "only to persons who are born within the United States after 30 days from the date of th[e] order." *Id.*, at 8449.

B

Shortly after the President issued the Citizenship Order, several groups of plaintiffs (together, respondents) challenged the Order in Federal District Courts in Maryland, Massachusetts, and Washington. Respondents include: a group of pregnant women[2] whose children will not be United States citizens under the terms of the Citizenship Order; two immigrants-rights organizations with thousands of members across the country who are likely to give birth to children who would also be denied citizenship under the Order; and 22 States, the District of Columbia, and the city of San Francisco. In their respective suits, respondents asserted that the Citizenship Order violates the Fourteenth Amendment and §1401(a).

Respondents also sought a preliminary injunction barring enforcement of the Citizenship Order during the pendency of the litigation. If allowed to go into effect, they said, the policy would inflict irreparable harm on their children

[2] Two of these women seek to represent a class of pregnant women and children residing in Washington State, who are affected by the Citizenship Order. See Complaint in No. 2:25–cv–00127 (WD Wash., Feb. 4, 2025), ECF Doc. 106. The District Court has yet to rule on the certification of that putative class.

(and their members' children) by denying them "enjoyment of the full privileges, rights, and benefits that come with U. S. citizenship," and rendering them vulnerable to unlawful deportation before the Courts could adjudicate their constitutional claim. Complaint in No. 8:25–cv–00201 (D Md., Jan. 21, 2025), p. 6, ¶12; see also Complaint in No. 2:25–cv–00127 (WD Wash., Feb. 4, 2025), ECF Doc. 106, pp. 33–36, ¶¶120–139 (Washington Complaint).

As for the States, they attested that enforcement of the Citizenship Order would cost them millions of dollars in federal funding and impose significant administrative burdens. The States "administer numerous programs for the benefit of their residents, including for newborns and young children, some of whom are wards of the plaintiff States who are entitled to care by statute." *Id.*, at 23, ¶79. Those social welfare programs include ones provided for by state law, as well as ones established by federal law, such as Medicaid and the Children's Health Insurance Program: Several of them "are funded in part by federal dollars, with federal funding frequently tied to the citizenship and immigration status of the individuals served." *Ibid.* By stripping some children within the States of their citizenship, the Order would reduce the States' federal funding, "forc[ing the States] to bear significantly increased costs to operate and fund programs that ensure the health and well-being of their residents." *Id.*, at 6, ¶8, 4–5, ¶6; see also Opposition to Application in No. 24A886 (New Jersey), pp. 9–11; Complaint in No. 1:25–cv–10139 (D Mass., Jan. 21, 2025), pp. 23–42, ¶¶121–201. Relatedly, because the States must verify the citizenship status of the individuals they serve, the States alleged that the Citizenship Order would force them to expend significant sums to "modif[y] their . . . operational structures and administration" to account for the changes in citizenship. Washington Complaint 6, ¶8; see also Opposition to Application in No. 24A886 (New Jersey), at 9–11.

All three District Courts preliminarily enjoined enforcement of the Citizenship Order. Each court determined that the Citizenship Order was likely unlawful, that respondents were likely to face irreparable harm without an injunction, and that the equities and public interest cut decisively in respondents' favor. See 763 F. Supp. 3d 723, 727, 744–745 (Md. 2025); 765 F. Supp. 3d 1142, 1152–1153 (WD Wash. 2025); *Doe* v. *Trump*, 766 F. Supp. 3d 266, 274, 285–287 (Mass. 2025).

The District Courts further determined that only injunctions blocking the Citizenship Order's enforcement nationwide would completely redress respondents' injuries. For the organizational plaintiffs, the Maryland District Court explained that those plaintiffs have " 'over 680,000 members . . . who reside in all 50 U.S. states'" and "hundreds of them expect to give birth soon." 763 F. Supp. 3d, at 746. The Washington District Court found that "a geographically limited injunction would be ineffective" for the state plaintiffs "as it would not completely relieve [the States] of the Order's financial burden(s)." 765 F. Supp. 3d, at 1153. For one thing, that court explained, the constant flow of people moving in and out of various States meant some children born to noncitizen parents in a nonplaintiff State would later reside in a plaintiff State. Once there, those children (under state law) would be eligible for state benefits. Yet due to the Citizenship Order, the plaintiff States would no longer receive federal funding to support those benefits. In addition, the plaintiff States would have to create an entirely new administrative and recordkeeping system to accommodate children who were not citizens under the Order and born in a nonplaintiff State. So if the District Court allowed birthright citizenship to continue for children born in the plaintiff States, but not in any other State, that would not completely redress the States' financial injury. *Ibid.*

For identical reasons, the Massachusetts District Court

also found that the state plaintiffs' injuries could be redressed only by a universal injunction. See 766 F. Supp. 3d, at 288 ("The harms [the States] have established stem from the [Order's] impact on the citizenship status—and the ability to discern or verify such status—for any child located or seeking various services within their jurisdiction").

The Government filed motions to stay the injunctions in three separate Courts of Appeals. Nowhere did the Government contest the District Courts' uniform holdings that the Citizenship Order likely violated the Constitution. Instead, it challenged only the scope of the ordered relief, arguing that the injunctions should be narrowed to block the Order's enforcement against only the individual persons named in the complaints.

All three appellate courts denied the Government's request and left the preliminary injunctions intact. See 131 F. 4th 27 (CA1 2025); 2025 WL 654902 (CA4, Feb. 28, 2025); 2025 WL 553485 (CA9, Feb. 19, 2025). The Fourth Circuit, which reviewed the preliminary injunction issued to the organizational plaintiffs, concluded that "[t]he district court . . . carefully explained why an injunction limited to the parties—including organizations with hundreds of thousands of members nationwide—would be unworkable in practice and thus fail to provide complete relie[f] to the plaintiffs." 2025 WL 654902, *1. The First and Ninth Circuits left undisturbed the Massachusetts and Washington District Courts' respective determinations that only universal injunctions would fully redress the States' injuries. See 131 F. 4th, 42–43; 2025 WL 553485, *1.

On March 13, the Government filed emergency applications with this Court requesting partial stays of the three preliminary injunctions of the Citizenship Order. The Government renews its contention that the injunctions must be narrowed to benefit only formal parties in these cases.

III

In partially granting the Government's remarkable request, the Court distorts well-established equitable principles several times over. A stay, this Court has said, "'is not a matter of right,'" but rather "'an exercise of judicial discretion.'" *Nken* v. *Holder*, 556 U. S. 418, 433 (2009). For centuries, courts have "close[d] the doors" of equity to those "tainted with inequitableness or bad faith relative to the matter in which [they] seek relief." *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Machinery Co.*, 324 U. S. 806, 814 (1945). Yet the majority throws the doors of equity open to the Government in a case where it seeks to undo a fundamental and clearly established constitutional right. The Citizenship Order's patent unlawfulness is reason enough to deny the Government's applications.

The Government also falls well short of satisfying its burden to show that it will likely suffer irreparable harm absent a stay and that it will likely succeed on the merits of its challenge to the scope of the injunctions. *Nken*, 556 U. S., at 434–435. The Executive Branch has respected birthright citizenship for well over a century, and it advances no plausible reason why maintaining the status quo while the litigation proceeds would cause it irrevocable harm. Nor could it, for the Constitution and federal law prohibit the enforcement of the Citizenship Order.

For all that, moreover, the Government is not even correct on the merits of universal injunctions. To the contrary, universal injunctions are consistent with long-established principles of equity, once respected by this Court. What is more, these cases do not even squarely present the legality of universal injunctions. That is because, even if the majority were right that injunctions can only offer "complete relief *to the plaintiffs before the court*," *ante,* at 17, each of the lower courts here correctly determined that the nationwide relief they issued was necessary to remedy respondents' in-

juries completely. So even ignoring the traditional stay factors and accepting the majority's view of the merits, there is no reason to grant relief in these cases.

A

It is a bedrock principle that parties who request a stay must show they will likely suffer irreparable harm absent such relief. Indeed, "[t]he authority to grant stays has historically been justified by the perceived need 'to prevent irreparable injury to the parties or to the public' pending review." *Nken*, 556 U. S., at 432 (quoting *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U. S. 4, 9 (1942)). Thus, an apparent likelihood of success on the merits never suffices on its own to justify this Court's intervention: Our emergency docket is not a mechanism for an expedited appeal. Accordingly, "this Court can avoid delving into the merits" "[i]f the [applicant does not] demonstrat[e] an irreparable injury." *Labrador* v. *Poe*, 601 U. S. ___, ___ (2024) (KAVANAUGH, J., concurring in grant of stay) (slip op., at 3); contra, *ante*, at 8–11 (KAVANAUGH, J., concurring).

What grave harm does the Executive face that prompts a majority of this Court to grant it relief? The answer, the Government says, is the inability to enforce the Citizenship Order against nonparties. For the majority, that answer suffices. See *ante,* at 24 ("When a federal court enters a universal injunction against the Government, it 'improper[ly] intrude[s]' on 'a coordinate branch of the Government' and prevents the Government from enforcing its policies against nonparties").

The problem, however, is that the Executive Branch has no right to enforce the Citizenship Order against anyone. As the Executive itself once put it, the Order is "unquestionably unconstitutional." *Supra*, at 9. It defies logic to say that maintaining a centuries-long status quo for a few months longer will irreparably injure the Government. See *Starbucks Corp.* v. *McKinney*, 602 U. S. 339, 345–346

(2024) (The "purpose" of equitable relief " 'is merely to preserve the relative positions of the parties until a trial on the merits can be held' "). The President's "mandate . . . to exercise his executive power," *Myers* v. *United States*, 272 U. S. 52, 123 (1926), in any event, does not permit him to rewrite the Constitution or statutory provisions at a whim. By forging ahead and granting relief to the Government anyway, this Court endorses the radical proposition that the President is harmed, irreparably, whenever he cannot do something he wants to do, even if what he wants to do is break the law.

The majority claims that it can sidestep "analysis of the Executive Order" altogether because (in its view) every overbroad injunction necessarily causes irreparable harm sufficient to warrant emergency intervention. *Ante,* at 24. Yet where a purportedly overbroad injunction orders the Government to do only what this Court has expressly held it is required to do, it is hard to see how it could cause any harm. At oral argument, the Government conceded it was bound to follow this Court's precedent. See Tr. of Oral Arg. 62–63. This Court's precedent establishes beyond a shade of doubt that the Executive Order is unconstitutional. See *supra*, at 3–9. Thus, by enjoining the Government from violating settled law, the District Courts' orders do not cause the Government any harm.

The majority's contrary position is self-refuting. Suppose an executive order barred women from receiving unemployment benefits or black citizens from voting. Is the Government irreparably harmed, and entitled to emergency relief, by a district court order universally enjoining such policies? The majority, apparently, would say yes.

Nothing in this Court's precedents supports that result. It turns one of the " 'most critical' factors we must consider in deciding whether to grant a stay" into a box-checking exercise whenever the relevant enjoined action is an executive one. *Trump* v. *International Refugee Assistance Project*, 582

U. S. 571, 584 (2017) (THOMAS, J., concurring in part and dissenting in part). Even accepting that "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury," *Maryland* v. *King*, 567 U. S. 1301, 1303 (2012) (ROBERTS, C. J., in chambers), that democratic consideration cuts against the Government in these cases. Through the ratification of the Fourteenth Amendment, Congress and the States constitutionalized birthright citizenship. Congress also codified birthright citizenship in §1401(a). It is thus the Citizenship Order, not the District Courts' injunctions, that prevents the "'effectuat[ion]' " of a constitutional amendment and repeals a " 'statut[e] enacted by representatives of [the American] people.'" *Id.*, at 1303.

Simply put, it strains credulity to treat the Executive Branch as irreparably harmed by injunctions that direct it to continue following settled law. "All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it." *United States* v. *Lee*, 106 U. S. 196, 220 (1882); but see *Trump* v. *United States*, 603 U. S. 593 (2024). The injunctions do no more harm to the Executive than the Constitution and federal law do.

B

A majority of this Court nonetheless rushes to address the merits of the Government's applications, holding that universal injunctions "likely exceed the equitable authority that Congress has granted to federal courts." *Ante,* at 1–2. A majority that has repeatedly pledged its fealty to "history and tradition" thus eliminates an equitable power firmly grounded in centuries of equitable principles and practice. By stripping all federal courts, including itself, of that power, the Court kneecaps the Judiciary's authority to stop the Executive from enforcing even the most unconstitutional policies. That runs directly counter to the point of equity: empowering courts to do complete justice, including

through flexible remedies that have historically benefited parties and nonparties alike.

1

A brief recounting of equity's history demonstrates the majority's grave error. The American legal system grew out of English law, which had two primary judicial institutions: the common-law courts and equity courts. Equity courts arose because of the inflexibility of the common-law system; their purpose was to look beyond formal writs and provide remedies where the common law gave inadequate relief. In Blackstone's words, equity was meant "to give remedy in cases where none before was administered." 3 Commentaries on the Laws of England, at 50.

Adaptability has always been a hallmark of equity, especially with regard to the scope of its remedies. While common-law courts were "compelled to limit their inquiry to the very parties in the litigation before them," equity courts could "adjust the rights of all, however numerous," and "adapt their decrees to all the varieties of circumstances, which may arise, and adjust them to all the peculiar rights of all the parties in interest." J. Story, Commentaries on Equity Jurisprudence §28, pp. 27–28 (2d ed. 1839). After all, equity's "constant aim" was "to do complete justice." J. Story, Commentaries on Equity Pleadings §72, p. 74 (2d ed. 1840). Accordingly, equity courts could "decid[e] upon and settl[e] the rights of all persons interested in the subject-matter of the suit, so that the performance of the decree of the Court may be perfectly safe to those, who are compelled to obey it, and also, that future litigation may be prevented." *Ibid.*

For equity courts, injunctions were "manifestly indispensable for the purposes of social justice in a great variety of cases." Story, Commentaries on Equity Jurisprudence §959a, at 227. Unlike this Court, then, those courts "constantly decline[d] to lay down any rule which shall limit

their power and discretion as to the particular cases, in which such injunctions shall be granted, or withheld." *Ibid.* Justice Story underscored the "wisdom in this course": Equity courts needed flexibility to craft injunctions for particular cases, as it was "impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs." *Ibid.*

In their pursuit of complete justice, equity courts could award injunctive and other equitable relief to parties and nonparties alike. For centuries, they did so through what was known as "bills of peace." If a plaintiff or group of plaintiffs filed such a bill, an English court could use a single case to settle disputes affecting whole communities, for "the inherent jurisdiction of equity" included the power "to interfere for the prevention of a multiplicity of suits." 1 J. Pomeroy, Equity Jurisprudence §260, p. 278 (1881). Bills of peace issued in cases "'where the parties [were] very numerous, and the court perceive[d] that it [would] be almost impossible to bring them all before the court; or where the question is of general interest, and a few may sue for the benefit of the whole.'" *Ortiz* v. *Fibreboard Corp.*, 527 U. S. 815, 832 (1999) (quoting *West* v. *Randall*, 29 F. Cas. 718, 722 (No. 17,424) (CC RI 1820) (Story, J.)). In such cases, a court could "grant [equitable relief] without making other persons parties," instead considering them "quasi parties to the record, at least for the purpose of taking the benefit of the decree, and of entitling themselves to other equitable relief, if their rights [were] jeopard[iz]ed." *Id.*, at 723.

Early American courts embraced bills of peace and extended their logic to cases "which [were] not technically 'bills of peace,' but '[were] analogous to,' or 'within the principle' of such bills." 1 Pomeroy, Equity Jurisprudence §269, at 293. One example was taxpayer suits, which allowed courts to enjoin universally the enforcement of a challenged tax. Sometimes, such suits were filed "by any number of taxpayers joined as co-plaintiffs, or by one taxpayer suing

on behalf of himself and all others similarly situated." *Id.*, at 277. But taxpayer suits were not always representative in nature: Even "a single taxpayer suing on his own account," if victorious, could enjoin the collection of a tax against anyone. *Ibid.* Individual plaintiffs, moreover, could secure an order "to set aside and annul any and every illegal public official action . . . whereby a debt . . . would be unlawfully created." *Ibid.* By allowing "complete and final relief [to] be given to an entire community by means of one judicial decree," American courts (like their English counterparts) spared nonparties and themselves from the burden of "an indefinite amount of separate litigation." *Id.*, at 278.

Federal courts have also exercised equitable authority to enjoin universally federal and state laws for more than a century. For instance, before deciding the constitutionality of a new federal law in *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288 (1913), this Court entered an order blocking the law's enforcement against parties and nonparties. See M. Sohoni, The Lost History of the "Universal" Injunction, 133 Harv. L. Rev. 920, 944–946 (2020). In *Lewis*, two newspaper publishers challenged as unconstitutional a federal law requiring publishers to file with the Postmaster General twice-yearly disclosures about their editorial board membership, corporate ownership, and subscribership. Sohoni, 133 Harv. L. Rev., at 944. After the District Court upheld the law and authorized a direct appeal to the Supreme Court, one of the publishers moved for a restraining order. The proposed order sought relief not only for the publisher who filed it, but asked the Court to " 'restrai[n]'" the Postmaster General and other federal officials from enforcing the law against " '*appellant and other newspaper publishers*.' " *Id.*, at 946. This Court readily agreed, see *Journal of Commerce and Commercial Bulletin* v. *Burleson*, 229 U. S. 600, 601 (1913) (*per curiam*), even as it would have sufficed

for the movant publishers' sake to enjoin the Act's enforcement against them alone pending their appeal.

In *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), too, this Court affirmed a universal injunction of Oregon's compulsory public schooling law. See Sohoni, 133 Harv. L. Rev., at 959–962. Two private school owners challenged that law in a suit against the Governor of Oregon and other state officials. "The plaintiffs did not sue on behalf of a represented group or class; they sued for themselves, alleging that the law was an unconstitutional interference with their property rights." *Id.*, at 959. Yet a three-judge federal court awarded them a universal injunction. See *id.*, at 960–961. This Court, in affirming that relief, twice described it as "appropriate." *Pierce*, 268 U. S., at 530, 533. The Court understood that the injunction it affirmed would provide relief to nonparties, commenting that such relief was necessary because enforcing the Act would result not only in the "destruction of appellees' primary schools," but would also destroy "perhaps all other private primary schools for normal children within the State of Oregon." *Id.*, at 534.

Cases like *Lewis* and *Pierce* were not outliers. Throughout the early 20th century, federal courts granted universal injunctions even when a narrower remedy would have sufficed to redress the parties' injuries. See, *e.g.*, *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 642 (1943) (affirming an injunction that shielded the plaintiff class of Jehovah's Witnesses, and any other children with religious scruples, from complying with a state law requiring children to salute the American flag); see also Sohoni, 133 Harv. L. Rev., at 943–993 (collecting cases). It is certainly true that federal courts have granted more universal injunctions of federal laws in recent decades. But the issuance of broad equitable relief intended to benefit parties and nonparties has deep roots in equity's history and in this Court's precedents.

The universal injunctions of the Citizenship Order fit

firmly within that tradition. The right to birthright citizenship is "clear," the Citizenship Order is an " 'illegal act,' " and without the " 'preventive process of injunction,'" the right will be " 'irreparably injured.' " *Arthur* v. *Oakes*, 63 F. 310, 328 (CA7 1894) (Harlan, J.) (describing standard for when an injunction should issue). It would be "'almost impossible,'" moreover, " 'to bring all [affected individuals] before the court,' " *Ortiz*, 527 U. S., at 832, justifying the use of one suit to settle the issue of the Citizenship Order's constitutionality for all affected persons. See 1 Pomeroy, Equity Jurisprudence §260, at 450–451. Complete justice, the "constant aim" of equity, Story, Commentaries on Equity Pleadings §72, at 74, demands a universal injunction: " 'the only remedy which the law allows to prevent the commission'" of a flagrantly illegal policy. *Arthur*, 63 F., at 328. The District Courts, by granting such relief, appropriately "settle[d] the rights of all persons interested in the subject-matter" of these suits, binding the Government so as to prevent needless "future litigation." Story, Commentaries on Equity Pleadings §72, at 74.

Of course, as a matter of equitable discretion, courts may often have weighty reasons not to award universal relief. Among other things, universal injunctions can prevent different district and appellate courts from considering the same issues in parallel, forestalling the legal dialogue (or "percolation") the federal system uses to answer difficult questions correctly. Not so here, however, because the Citizenship Order is patently unconstitutional under settled law and a variety of district and appellate courts have reviewed the issue. So too can universal injunctions encourage forum shopping, by allowing preferred district judges in a venue picked by one plaintiff to enjoin governmental policies nationwide. They also operate asymmetrically against the Government, giving plaintiffs a litigation advantage: To halt Government action everywhere, a plaintiff must win

only one universal injunction across many potential lawsuits. Yet this is not a scenario where granting universal relief will encourage forum shopping or give plaintiffs the upper hand. Quite the opposite: By awarding universal relief below, the District Courts just ordered the Government to do everywhere what any reasonable jurist would order the Government to do anywhere.

There may be good reasons not to issue universal injunctions in the typical case, when the merits are open to reasonable disagreement and there is no claim of extraordinary and imminent irreparable harm.[3] See Story, Commentaries on Equity Jurisprudence §959a, at 227 ("[Injunctive relief] ought . . . to be guarded with extreme caution, and applied only in very clear cases"); cf. *ante,* at 13 ("[The] use [of bills of peace] was confined to limited circumstances"). The universal injunctions in these cases, however, are more than appropriate. These injunctions, after all, protect newborns from the exceptional, irreparable harm associated with losing a foundational constitutional right and its immediate benefits. They thus honor the most basic value of our constitutional system: They keep the Government within the bounds of law. *Marbury* v. *Madison*, 1 Cranch 137, 163 (1803).

2

The majority's contrary reasoning falls flat. The majority starts with the Judiciary Act of 1789, which gives federal courts jurisdiction over "all suits . . . in equity." §11, 1 Stat. 78. In the majority's telling, universal injunctions are inconsistent with equity jurisdiction because they are not "sufficiently 'analogous' to the relief ' "exercised by the High

[3] These prudential considerations, however, have nothing to do with whether universal injunctions are consistent with historical equitable principles and practice. Contra *ante,* at 21, n. 16; but cf. *ante,* at 21 ("[T]he policy pros and cons [of universal injunctions] are beside the point").

Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act." ' " *Ante,* at 6 (quoting *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 318–319 (1999)). In reaching that ahistorical result, the Court claims that the English Chancellor's remedies were "typically" party specific, and emphasizes that party-specific principles have permeated this Court's understanding of equity. *Ante,* at 6–9.

The majority's argument stumbles out the gate. As the majority must itself concede, injunctions issued by English courts of equity were "typically," but not always, party specific. *Ante,* at 7. After all, bills of peace, for centuries, allowed English courts to adjudicate the rights of parties not before it, and to award remedies intended to benefit entire affected communities. Taxpayer suits, too, could lead to a complete injunction of a tax, even when only a single plaintiff filed suit.

The majority seeks to distinguish bills of peace from universal injunctions by urging that the former (but not the latter) typically applied to small and cohesive groups and were representative in nature. See *ante,* at 13. Yet those are distinctions without a difference. Equity courts had the flexibility to "adapt their decrees to all the varieties of circumstances, which may arise, and adjust them to all the peculiar rights of all the parties in interest." Story, Commentaries on Equity Jurisprudence §28, at 28. There is no equitable principle that caps the number of parties in interest. Indeed, in taxpayer suits, a single plaintiff could get the relief of "annul[ling] any and every kind of tax or assessment" that applied to an entire "county, town, or city."

1 Pomeroy, Equity Jurisprudence §260, at 277.[4] "[T]he inherent jurisdiction of equity to interfere for the prevention of a multiplicity of suits," moreover, is what empowered common law courts to issue bills of peace. *Id.*, at 450–451 (4th ed. 1918). That is why early American courts understood taxpayer suits, in which even a "single taxpayer suing on his own account" and not on behalf of others could secure a total injunction, to be a natural extension of a bill of peace. *Id.*, at 277 (1881).[5]

It is also unclear why " 'cohesive[ness]'" or "representative[ness]" would preclude even those universal injunctions that, like here, benefit a discrete and cohesive group. *Ante,* at 13. The Citizenship Order itself applies only to a subset group of newborn children: that is, children born to a mother unlawfully or temporarily present, and a father who

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[4] *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923), which addressed a taxpayer's standing to challenge a federal appropriation, did not consider how broadly a court could enjoin Government action and is therefore not to the contrary. *Id.*, at 488; contra, *ante,* at 15.

[5] The majority asserts that taxpayer suits are an "inadequate historical analogy" for a universal injunction, *ante,* at 14, but cannot dispute their essential similarity: By providing relief to an entire affected community, both do more than merely redress a plaintiff 's injuries. Instead, the majority says that single-plaintiff, nonrepresentative taxpayer suits cannot be proper "historical" analogues because they trace only back to the "mid-19th century." See *ibid*. Yet the same is true of plaintiff-protective injunctions against federal and state government officials, an equitable remedy the majority embraces by reference to "a long line of cases authorizing suits against State officials in certain circumstances" that range from the cusp of the mid-19th century to the late mid-19th century. *Ante,* at 11, n. 9. In any event, early American courts deemed taxpayer suits " 'analogous to,' [and] 'within the principle of' . . . bills [of peace],' " 1 Pomeroy, Equity Jurisprudence §269, at 293, which trace back to the equitable practice of the English Chancery Court, *ante,* at 12. Nor is it clear why it matters that individual taxpayer suits occurred in state courts, or that those courts did not always award the broad injunctions available to them. Contra, *ante,* at 15. The relevant question is simply whether a court of equity could award injunctive relief to nonparties. The answer to that question is, obviously, yes.

is neither a citizen nor lawful permanent resident. Those mothers and fathers share "not only [a common] interest in the question, but one in common in the subject-matter of th[is] suit." *Scott* v. *Donald*, 165 U. S. 107, 116 (1897). Nor is there any doubt that at least the individual respondents adequately represent the injunction's beneficiaries: Like all affected parents, they "are necessarily interested in obtaining the relief sought" to preserve their children's citizenship. *Emmons* v. *National Mut. Bldg. & Loan Assn. of NY*, 135 F. 689, 691 (CA4 1905) (explaining the "well-known doctrine of equity jurisprudence" that " 'the relief sought by [a plaintiff]' " must be " 'beneficial to those whom he undertakes to represent' " (quoting 1 R. White, F. Nichols, & H. Garrett, Daniell's Chancery Practice 243 (6th Am. ed. 1894))). What was true of bills of peace is thus true of these universal injunctions and universal injunctions generally, too: Both allow courts to "'adjudicate the rights of members of dispersed groups without formally joining them to a lawsuit through the usual procedures.'" *Ante,* at 13.

That bills of peace bear some resemblance to modern day Federal Rule of Civil Procedure 23 class actions does not mean they cannot also be a historical analogue to the universal injunction. Contra, *ante,* at 13 ("The bill of peace lives in modern form" as the "modern class action . . . governed in federal court by Rule 23," "not as the universal injunction"). In the majority's view, Rule 23 class actions, but not universal injunctions, would "be recognizable to an English Chancellor" because the limitations on class actions mirror those that applied to bills of peace. *Ante,* at 14 (Rule 23 "requires numerosity (such that joinder is impracticable), common questions of law or fact, typicality, and representative parties who adequately protect the interests of the class"); cf. *supra*, at 25 (explaining why the universal injunctions in these cases are consistent with those limits). To the extent that English Chancellors would care about the differences between Rule 23 and universal injunctions,

the majority provides absolutely no reason to conclude they would think the former permissible and not the latter. To the contrary, unlike the Court today, the English Chancery Court recognized that principles of equity permit granting relief to nonparties. The history of bills of peace makes that apparent, particularly because they went beyond what Rule 23 permits. See *ante,* at 13–14 ("[T]he modern Rule 23 is in some ways 'more restrictive of representative suits than the original bills of peace'"). They are thus a common ancestor to both class actions and universal injunctions.

In any event, nothing in Rule 23 purports to supplant or modify federal courts' equitable authority under the Judiciary Act to grant relief to nonparties, nor could it. Contra, *ante,* at 14. The majority frets that universal injunctions, if permissible, will empower federal courts to create *de facto* class actions at will, thereby circumventing Rule 23's procedural protections. *Ibid*. Those concerns, however, have not been borne out in reality. Rule 23 has coexisted with universal injunctions against the Government for decades. Universal injunctions also cannot supplant the paradigm form of class actions, which seek money damages. In all events, to the extent the majority's concern has any teeth, reviewing courts are already well equipped to safeguard Rule 23's procedural protections. If there is a genuine lack of clarity as to the lawfulness of challenged Government action, district courts may well abuse their discretion by reflexively issuing universal injunctions where a Rule 23 class action would be more appropriate. See *Ashcroft* v. *American Civil Liberties Union*, 542 U. S. 656, 664 (2004) (standard of review for preliminary injunctions is " 'abuse of discretion' ").

The majority next insists that the practice of "founding-era courts of equity in the United States" cuts against universal injunctions, and that this Court "consistently rebuffed requests for relief that extended beyond the parties." *Ante*, at 8. The majority's account is irreconcilable with

early American bills of peace and the history of taxpayer suits. It further contradicts this Court's practice, in cases like *Lewis*, *Pierce*, and *Barnette*, of affirming and granting universal injunctions even when narrower, plaintiff-focused injunctions would have offered complete relief to the parties. See *supra*, at 20–21. The majority instead focuses on one case from 1897, in which this Court "permitted only a narro[w] decree between 'the parties named as plaintiff and defendants in the bill,' " *ante,* at 7 (quoting *Scott*, 165 U. S., at 117), over others, including from the same period, doing just the opposite. The majority offers no principled basis to deem the question resolved by a single case from 1897 while cases just a few years later charted a different course. Indeed, if the relevant inquiry turns on "founding-era practice," then there is no reason why a case from 1897 should be dispositive. *Ante,* at 9, n. 7.

In the majority's telling, *Scott* merely "illustrates that as late as 1897, this Court adhered to a party-specific view of relief." *Ante,* at 7–8, n. 6. Nothing in *Scott*, however, dictates that equitable relief must always be party specific. To the contrary, just one year after *Scott*, the Court endorsed the opposite view: "Only a court of equity," the Court explained, "is competent to . . . determine, once for all and without a multiplicity of suits, matters that affect not simply individuals, but the interests of the entire community." *Smyth* v. *Ames*, 169 U. S. 466, 518 (1898); see also *id.*, at 517 ("[T]he circuit court of the United States, sitting in equity, can make a comprehensive decree covering the whole ground of controversy, and thus avoid the multiplicity of suits that would inevitably arise under the statute").[6]

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[6] Regardless of the actual decree the *Smyth* court approved, see *ante,* at 7–8, n. 6, its analysis clearly reveals that the Court understood equity to permit broad relief intended to benefit parties and nonparties alike. That is why this Court later approved or granted universal injunctions

The majority does not identify a single case, from the founding era or otherwise, in which this Court held that federal courts may never issue universal injunctions or broad equitable relief that extends to nonparties. That is to be expected, given the historical support for such relief and its use in bills of peace and taxpayer suits.

Most critically, the majority fundamentally misunderstands the nature of equity by freezing in amber the precise remedies available at the time of the Judiciary Act. Even as it declares that "'[e]quity is flexible,'" *ante,* at 11, the majority ignores the very flexibility that historically allowed equity to secure complete justice where the rigid forms of common law proved inadequate. Indeed, "[i]n th[e] early times [of the common law] the chief juridical employment of the chancellor must have been in devising new writs, directed to the courts of common law, to give remedy in cases where none before was administered." 3 Blackstone, Commentaries on the Laws of England, at 50. Adaptability has thus always been at the equity's core. Hence why equity courts "constantly decline[d] to lay down any rule which shall limit their power and discretion as to the particular cases, in which such injunctions shall be granted, or withheld." Story, Commentaries on Equity Jurisprudence §959(a), at 227. The Judiciary Act of 1789 codified equity itself, not merely a static list of remedies.

Historical analogues are no doubt instructive and provide important guidance, but requiring an exact historical match for every equitable remedy defies equity's purpose. Equity courts understood the "wisdom" in keeping injunctive relief flexible, for it was "impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs." *Ibid.* Of course,

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in *Lewis*, *Pierce*, and *Barnette* without "address[ing] the propriety of universal relief." *Ante,* at 9, n. 7. See also *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288 (1913); *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943).

in assessing whether a remedy falls within federal courts' equity jurisdiction under the Judiciary Act, this Court has asked "[w]hether the relief . . . was traditionally accorded by courts of equity." *Grupo Mexicano,* 527 U. S., at 319. *Grupo Mexicano*, however, does not dictate the level of generality for that historical inquiry, and general principles of equity that themselves existed at the founding militate against requiring a near exact match as the majority does. Cf. *United States* v. *Rahimi*, 602 U. S. 680, 692 (2024) ("The law must comport with the principles underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin' ").

Indeed, equitable relief in the United States has evolved in one respect to protect rights and redress wrongs that even the majority does not question: Plaintiffs today may obtain plaintiff-protective injunctions against Government officials that block the enforcement of unconstitutional laws, relief exemplified by *Ex parte Young*, 209 U. S. 123 (1908). That remedy, which traces back to the equity practice of mid-19th century courts, finds no analogue in the relief exercised in the English Court of Chancery, which could not enjoin the Crown or English officers. See *supra*, at 24, n. 4; see also Sohoni, 133 Harv. L. Rev., at 928, 1002–1006; see also R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 958–959 (5th ed. 2003) (noting that, in *Young*, "the threatened conduct of the defendant would not have been an actionable wrong at common law" and that the "principle [in *Young*] has been easily absorbed in suits challenging *federal* official action"). Under the majority's rigid historical test, however, even plaintiff-protective injunctions against

patently unlawful Government action should be impermissible.[7] Such a result demonstrates the folly of treating equity as a closed system, rather than one designed to adapt to new circumstances.

The relative absence of universal injunctions against the United States before the late 20th century, moreover, reflects constitutional and procedural limitations on judicial power, not equitable ones. Brief for Legal Historians in No. 24A884 as *Amici Curiae* 13–16. Until the enactment of the Amendments to the Administrative Procedure Act in 1976, sovereign immunity barred most suits against the Federal Government. *Id.*, at 14–15 (citing G. Sisk, Litigation With the Federal Government §4.10(b), p. 339 (2016)). Officer suits against Cabinet officials before that point, moreover, could be brought only in Washington, D. C., due to limits on personal jurisdiction and venue that existed at the time. Brief for Legal Historians in No. 24A884 as *Amici Curiae* 15–16. The later emergence of universal injunctions against the United States followed the removal of those barriers and the expansion of federal actions and laws. The rise of universal injunctions therefore represents equity's essential adaptation to modern governance.

It is a "common expression . . . that Courts of Equity delight to do justice, and not by halves." Story, Commentaries on Equity Pleadings §72, at 74. The majority, however, delights to do justice by piecemeal. Its decision to strip the federal courts of the authority to issue universal injunctions of even flagrantly unlawful Government action represents a grave and unsupported diminution of the judicial power of equity. Centuries ago, Chief Justice Marshall warned that "[i]f the legislatures of the several states may, at will,

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[7] The majority's expressed support for such injunctions is thus irreconcilable with its view that equitable remedies must be very closely " 'analogous' to the relief ' "exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act." ' " *Ante,* at 6.

annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery." *United States* v. *Peters*, 5 Cranch 115, 136 (1809). The Court should have heeded that warning today.

C

Even the majority's view of the law cannot justify issuance of emergency relief to the Government in these cases, for the majority leaves open whether these particular injunctions may pass muster under its ruling. Indeed, the lower courts issued the challenged injunctions consistent with an equitable principle that even the majority embraces: Courts may award an equitable remedy when it is "necessary to provide complete relief to the plaintiffs." *Califano* v. *Yamasaki*, 442 U. S. 682, 702 (1979). As the majority recounts, "[t]he equitable tradition has long embraced the rule that courts generally 'may administer complete relief between the parties.' " *Ante,* at 16 (quoting *Kinney-Coastal Oil Co.* v. *Kieffer*, 277 U. S. 488, 507 (1928); emphasis deleted).[8]

So too does the Court recognize that, in some cases, complete relief will require a broad remedy that necessarily benefits nonparties. See *ante,* at 17, n. 13 ("There may be other injuries for which it is all but impossible for courts to craft relief that is both complete *and* benefits only the named plaintiffs"); see also *Gill* v. *Whitford*, 585 U. S. 48, 66–67 (2018) ("[T]he only way to vindicate an individual plaintiff 's right to an equally weighted vote [is] through a wholesale 'restructuring of the geographical distribution of seats in a state legislature'"). Hence the majority's nui-

[8] That explains the majority's bottom line, in which it declares that the Government's applications are "granted, but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue." *Ante*, at 27.

sance hypothetical: If a plaintiff sues her neighbor for playing loud music at night, a court can order the neighbor to turn off the music at night, even if doing so will naturally benefit other neighbors who are not parties to the suit. See *ante,* at 16–17.

The majority need not resort to hypotheticals, however, because the very injunctions in these cases were necessary to give respondents complete relief. Indeed, each District Court found that a universal injunction was the only feasible option to redress fully respondents' injuries. See 763 F. Supp. 3d, at 746 (concluding that "[o]nly a nationwide injunction will provide complete relief to the plaintiffs" because the organizational plaintiffs have "'over 680,000 members . . . who reside in all 50 U.S. states and several U.S. territories'" and " '[h]undreds or even thousands'" of those members " 'will give birth to children in the United States over the coming weeks and months'" (alterations in original)); 765 F. Supp. 3d, at 1153 ("[A] geographically limited injunction would be ineffective, as it would not completely relieve [the plaintiff States] of the Order's financial burden(s)"); 766 F. Supp. 3d, at 288 (explaining that "injunctive relief limited to the State plaintiffs [would be] inadequate" because it would "fai[l] in providing complete relief to the State plaintiffs").

Recognizing as much, the majority retreats to the view that, even if a court "*can* award complete relief," it "*should* [not] do so" reflexively. *Ante,* at 18; see also *ibid.* ("Complete relief is not a guarantee—it is the maximum a court can provide"); *ante,* at 2 (opinion of THOMAS, J.) (suggesting courts "err insofar as they treat complete relief as a mandate"). Even so, the Court never suggests that the District Courts in these cases should not have awarded relief to the parties that completely remedied their alleged injuries. Nor could it. The majority recognizes that "in equity, 'the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be.'" *Ante,* at 18–19.

Here, respondents paired their respective requests for complete relief with the strongest story possible: Without such relief, an executive order that violates the Constitution, federal law, Supreme Court precedent, history, and over a century of Executive Branch practice would infringe upon their constitutional rights or cause them to incur significant financial and administrative costs.

Perhaps that is why the majority leaves open the possibility that the District Courts, in these cases, could have granted at least respondent States a nationwide injunction consistent with the notion of "complete relief." The majority recognizes, correctly, that the Massachusetts District Court "decided that a universal injunction was necessary to provide the States *themselves* with complete relief." *Ante,* at 18.[9] And the majority does not dispute the basis for those decisions: "Children often move across state lines or are born outside their parents' State of residence," and "th[is] cross-border flow" would make an injunction protecting only children born in the party States "unworkable." *Ante,* 18. A narrower injunction would "require [the States] to track and verify the immigration status of the parents of every child, along with the birth State of every child for whom they provide certain federally funded benefits." *Ante*, at 18. Unrebutted record evidence bears this out and shows that the Citizenship Order would irreparably harm the States, even if it does not apply to children born within their boundaries. The Court does not contend otherwise. That should be the end of the matter.

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[9] In the majority's telling, the Washington District Court "acknowledged the state respondents' complete relief argument but primarily granted a universal injunction" based on its weighing of the equities. See *ante,* at 18, n. 14. Not so. That court carefully explained why "a geographically limited injunction would be ineffective, as it would not completely relieve [the States] of the Order's financial burden(s)." 765 F. Supp. 3d 1142, 1153–1154 (2025). A narrower injunction, it explained, would be "unworkable" and would itself likely impose new "recordkeeping and administrative burden[s]" on the States. *Id.*, at 1154.

Nevertheless, the majority suggests that the District Courts might consider, after this Court hands down its decision, whether some alternative narrower injunction would provide the States complete relief. See *ibid.* What would such an injunction look like, and would it be feasible? The Court does not say. The majority does note, but takes no position on, two narrower injunctions the Government claims would still give complete relief to the States: an order prohibiting the Government from enforcing the Citizenship Order in respondent States, including as to state residents born elsewhere; or an order directing the Government to treat children covered by the Citizenship Order as eligible for federally funded welfare benefits when those children reside in a respondent State. See *ibid.* (citing Application for Partial Stay of Injunction in No. 24A884, p. 23).

As an initial matter, the Government never raised those narrower injunctions to the District Courts, meaning it forfeited them. That is what the First Circuit expressly held, 131 F. 4th, at 43 ("declining to consider" those alternatives because they were "raised for [the] first time . . . in support of stay pending appeal of preliminary injunction"), and the majority does not dispute the point. It is true that plaintiffs seeking a preliminary injunction bear the burden of making "a clear showing that [they are] entitled to such relief." *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 22 (2008). The States met that burden, however: They presented what is still uncontroverted evidence that an injunction applicable only to children born within their borders would give them less than complete relief. Accordingly, it was reasonable for the District Courts to fashion the remedies that they did, for they were "not obligated to undertake the task of chiseling from the government's across-the-board [Executive Order] a different policy the government never identified, endorsed, or defended." *J. D.* v. *Azar*, 925 F. 3d 1291, 1336 (CADC 2019) (*per curiam*).

Those proffered alternatives, moreover, are unworkable

on their face. Each would require creating a two-tiered scheme in which the Government's recognition of some children's citizenship status or eligibility for federally funded benefits would change based on whether a child resides in one of respondent States at any given moment. That scheme would have to operate, somehow, without imposing an administrative burden on respondent States or disrupting their receipt of federal funds to which they are entitled. "[T]he regular movement of the American people into and out of different States . . . would make it difficult to sensibly maintain such a scattershot system." *Ante,* at 5 (opinion of KAVANAUGH, J.).

Such a system would also be incompatible with federal law. Some statutes, like those governing Medicaid and Supplemental Nutrition Assistance Program (SNAP) benefits, require States to give benefits only to applicants with a Social Security number and to use those numbers for certain administrative purposes. See, *e.g.*, 7 U. S. C. §2025(e); 42 U. S. C. §1320b–7(a)(1). States could not comply with those laws under the Government's alternative injunctions because children covered by the Citizenship Order in nonparty States would still be treated as noncitizens at birth. Thus, when some of those children later move to one of respondent States, they would lack Social Security numbers. No matter how it is done, discarding the nationwide status quo of birthright citizenship would result in chaos.

What is more, the principle of complete relief does not require courts to award only the absolute narrowest injunction possible. To conclude otherwise would eviscerate the "discretion and judgment" that is integral to the crafting of injunctive relief. *International Refugee Assistance Project*, 582 U. S., at 579. Indeed, equitable relief "[t]raditionally . . . has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs." *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955) (footnote omitted). That is

why the court in the majority's nuisance hypothetical can "order the defendant to turn her music down," or to turn it "off," even though the latter is technically more burdensome on the defendant than necessary to give the plaintiff complete relief. *Ante,* at 16.

Accordingly, the District Courts appropriately determined that the "only one feasible option" that would give complete relief to the States was a universal injunction. See *ibid.* Clearly, the majority is asking the lower courts themselves to explain what is patently obvious about the Government's proposed injunctions and any others that can be imagined.

Inexplicably, however, the Court declares that, for the associational and individual respondents, injunctions enjoining the Government from enforcing the Citizenship Order against them (and only them) would have sufficed. See *ante,* at 17–18. In fashioning equitable relief, however, courts must take into account "'what is workable.' " *North Carolina* v. *Covington*, 581 U. S. 486, 488 (2017) (*per curiam*). Just like the injunction that the majority blesses in the context of its nuisance-suit hypothetical, which will bestow a peaceful night upon the plaintiff 's neighbors even when the plaintiff is not herself at home, the preliminary injunction for the associational and individual respondents reflects what is practicable. As the Maryland District Court found, "'hundreds or even thousands'" of the associational respondents' members, who reside in all 50 States, " 'will give birth to children in the United States over the coming weeks and months.'" 763 F. Supp. 3d, at 746. Theoretically, it might be possible for a court to fashion an injunction that runs to each of the thousands of expectant mothers in that group. But see *ante,* at 5 (opinion of KAVANAUGH, J.) ("Often, it is not especially workable or sustainable or desirable to have a patchwork scheme . . . in which a major new federal statute or executive action . . . applies to some people or organizations in certain States or

regions, but not to others"). Yet anything less than a nationwide injunction creates a risk that the Government, inadvertently or intentionally, will enforce the Citizenship Order against some of the plaintiffs' children before this Court rules definitively on the Order's lawfulness.

A narrower injunction would necessarily task "[t]hose [responsible for] determining a baby's citizenship status . . . with [correctly] confirming [biological] parentage, the citizenship or immigration status of both [biological] parents, and membership in specific organizations." Opposition to Application for Partial Stay of Injunction in No. 24A884, p. 24. That, in turn, would "impose an enormous burden on expecting parents, membership organizations, government employees at all levels, and hospital staff," increasing the risk of mistake. *Ibid.* The risk of noncompliance is also particularly stark here, where the challenged action itself reflects an utter disregard for settled precedent, and given the Government's repeated insistence that it need not provide notice to individuals before their sudden deportations. See, *e.g.*, *A. A. R. P.* v. *Trump*, 605 U. S. ___, ___ (2025) (*per curiam*) (slip op., at 2); *Department of Homeland Security* v. *D. V. D.*, 606 U. S. ___, ___ (2025) (SOTOMAYOR, J., dissenting) (slip op., at 15). The majority does not identify a narrower alternative that is both practical and mitigates that risk.

At the very least, there is no reason to think that the District Court abused its discretion in deciding that only a nationwide injunction could protect the plaintiffs' fundamental rights. See *Ashcroft*, 542 U. S., at 664 (setting forth the standard of review). "Crafting a preliminary injunction," after all, "is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *International Refugee Assistance Project*, 582 U. S., at 579. Applying deferential abuse-of-discretion review, the Fourth Circuit emphasized that the "[t]he district court . . . carefully

explained why an injunction limited to the parties—including organizations with hundreds of thousands of members nationwide—would be unworkable in practice and thus fail to provide complete relie[f] to the plaintiffs." 2025 WL 654902, *1. The majority gives no justification for deeming the District Court's reasoned assessment an abuse of discretion.

D

The equities and public interest weigh decisively against the Government. For all of the reasons discussed, the Citizenship Order is patently unconstitutional. To allow the Government to enforce it against even one newborn child is an assault on our constitutional order and antithetical to equity and public interest. Cf. *Salazar* v. *Buono*, 559 U. S. 700, 714–715 (2010) (plurality opinion) ("'[A] court must never ignore . . . circumstances underlying [equitable relief] lest the decree be turned into an "instrument of wrong"'"). Meanwhile, newborns subject to the Citizenship Order will face the gravest harms imaginable. If the Order does in fact go into effect without further intervention by the District Courts, children will lose, at least for the time being, "a most precious right," *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 159 (1963), and "cherished status" that "carries with it the privilege of full participation in the affairs of our society," *Knauer* v. *United States*, 328 U. S. 654, 658 (1946). Affected children also risk losing the chance to participate in American society altogether, unless their parents have sufficient resources to file individual suits or successfully challenge the Citizenship Order in removal proceedings. Indeed, the Order risks the "creation of a substantial 'shadow population' " for covered children born in the United States who remain here. *Plyler*, 457 U. S., at 218. Without Social Security numbers and other documentation, these children will be denied critical public services, like SNAP and Medicaid, and lose the ability to engage fully in

civic life by being born in States that have not filed a lawsuit. Worse yet, the Order threatens to render American-born children stateless, a status "deplored in the international community" for causing "the total destruction of the individual's status in organized society." *Trop* v. *Dulles*, 356 U. S. 86, 101–102 (1958) (plurality opinion). That threat hangs like a guillotine over this litigation.

The Order will cause chaos for the families of all affected children too, as expecting parents scramble to understand whether the Order will apply to them and what ramifications it will have. If allowed to take effect, the Order may even wrench newborns from the arms of parents lawfully in the United States, for it purports to strip citizenship from the children of parents legally present on a temporary basis. See 90 Fed. Reg. 8449. Those newborns could face deportation, even as their parents remain lawfully in the country. In light of all these consequences, there can be no serious question over where the equities lie in these cases.

IV

The Court's decision is nothing less than an open invitation for the Government to bypass the Constitution. The Executive Branch can now enforce policies that flout settled law and violate countless individuals' constitutional rights, and the federal courts will be hamstrung to stop its actions fully. Until the day that every affected person manages to become party to a lawsuit and secures for himself injunctive relief, the Government may act lawlessly indefinitely.

Not even a decision from this Court would necessarily bind the Government to stop, completely and permanently, its commission of unquestionably unconstitutional conduct. The majority interprets the Judiciary Act, which defines the equity jurisdiction for all federal courts, this Court included, as prohibiting the issuance of universal injunctions (unless necessary for complete relief). What, besides equity, enables this Court to order the Government to cease

completely the enforcement of illegal policies? The majority does not say. So even if this Court later rules that the Citizenship Order is unlawful, we may nevertheless lack the power to enjoin enforcement as to anyone not formally a party before the Court. In a case where the Government is acting in open defiance of the Constitution, federal law, and this Court's holdings, it is naive to believe the Government will treat this Court's opinions on those policies as "*de facto*" universal injunctions absent an express order directing total nonenforcement. *Ante*, at 6 (opinion of KAVANAUGH, J.).

Indeed, at oral argument, the Government refused to commit to obeying any court order issued by a Federal Court of Appeals holding the Citizenship Order unlawful (except with respect to the plaintiffs in the suit), even within the relevant Circuit. Tr. of Oral Arg. 61–63. To the extent the Government cannot commit to compliance with Court of Appeals decisions in those Circuits, it offers no principled reason why it would treat the opinions of this Court any differently nationwide. Thus, by stripping even itself of the ability to issue universal injunctions, the Court diminishes its role as "the ultimate decider of the interim [and permanent] legal status of major new federal statutes and executive actions." *Ante*, at 3 (opinion of KAVANAUGH, J.).

There is a serious question, moreover, whether this Court will ever get the chance to rule on the constitutionality of a policy like the Citizenship Order. Contra, *ante*, at 6 (opinion of KAVANAUGH, J.) ("[T]he losing parties in the courts of appeals will regularly come to this Court in matters involving major new federal statutes and executive actions"). In the ordinary course, parties who prevail in the lower courts generally cannot seek review from this Court, likely leaving it up to the Government's discretion whether a petition will

be filed here.[10] These cases prove the point: Every court to consider the Citizenship Order's merits has found that it is unconstitutional in preliminary rulings. Because respondents prevailed on the merits and received universal injunctions, they have no reason to file an appeal. The Government has no incentive to file a petition here either, because the outcome of such an appeal would be preordained. The Government recognizes as much, which is why its emergency applications challenged only the scope of the preliminary injunctions.

Even accepting that this Court will get the opportunity to "ac[t] as the ultimate decider" of patently unlawful policies, *ante,* at 3 (opinion of KAVANAUGH, J.), and that the Executive Branch will treat this Court's opinions as *de facto* universal injunctions,[11] it is still necessary for the lower courts to have the equitable authority to issue universal injunctions, too. As JUSTICE KAVANAUGH notes, it can take, at a minimum, "*weeks*" for an application concerning a major

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[10] On rare occasion, this Court has permitted a party who prevailed in the lower courts nonetheless to obtain this Court's review of a legal question. See, *e.g.*, *Camreta* v. *Greene*, 563 U. S. 692, 698 (2011) (allowing a government official who prevailed on grounds of qualified immunity to challenge an underlying adverse constitutional ruling). Those exceptions have no relevance here, however, because there is no adverse determination for respondents to challenge.

[11] The majority insists that the constitutionality of the Citizenship Order will come before this Court eventually and that, when it does, the Government will obey this Court's resulting opinion with respect to all newborn children. *Ante,* at 25, n. 18. Why? The majority is sure that the Government will honor its oral-argument promises to " 'seek cert'" when it " 'lose[s] one of ' " its pending appeals and to "respect both the judgments and opinions of this Court." *Ibid.* (quoting Tr. of Oral Arg. 50). The majority's certainty that the Government will keep its word is nothing short of a leap of faith, given that the Government has adopted a plainly unconstitutional policy in defiance of this Court's precedent and then gamed the system to stymie this Court's consideration of the policy's merits. In any event, the Government's promise is cold comfort to the many children whose parents do not file a lawsuit and whose citizenship status remains in flux pending this Court's review.

new policy to reach this Court. *Ibid.* In the interim, the Government may feel free to execute illegal policies against nonparties and cause immeasurable harm that this Court may never be able to remedy. Indeed, in these cases, there is a serious risk the Government will seek to deport newborns whose parents have not filed suit if all the injunctions are narrowed on remand. That unconscionable result only underscores why it is necessary, in some cases, for lower courts to issue universal injunctions.

Fortunately, in the rubble of its assault on equity jurisdiction, the majority leaves untouched one important tool to provide broad relief to individuals subject to lawless Government conduct: Rule 23(b)(2) class actions for injunctive relief. That mechanism may provide some relief, but it is not a perfect substitute for a universal injunction. First, a named plaintiff must incur the higher cost of pursuing class relief, which will involve, at a minimum, overcoming the hurdle of class certification. "'[D]emonstrating th[e] prerequisites'" of numerosity, commonality and typicality and the adequacy of the named plaintiff to represent the class " 'is difficult and time consuming and has been getting harder as a result of recent court decisions and federal legislation.' " *Chicago* v. *Barr*, 961 F. 3d 882, 917 (CA7 2020) (quoting A. Frost, In Defense of Nationwide Injunctions, 93 N. Y. U. L. Rev. 1065, 1096 (2018); alterations in original). " 'Courts have heightened the evidentiary standard for class certification' " as well, " 'requiring hearings and sometimes significant amounts of evidence on the merits of the class before certifying the class.' " 961 F. 3d, at 917. In recent years, moreover, "'courts have started to deny class certification if they think there has been a flaw in class definition,' " sometimes "'without first allowing the plaintiffs to amend that definition in response to the court's concerns.' " *Ibid.* What is more, "'defendants can seek interlocutory review of a court's decision to certify a class, adding further delay and expense to the certification process.'" *Ibid.*

Hence why some " 'describ[e] the class certification process as a "drawn-out procedural bog," which comes with significant expense and delay for the would be class member.' " *Ibid.* Indeed, at oral argument, the Government refused to concede that a class could be certified to challenge the Citizenship Order and promised to invoke Rule 23's barriers to stop it. See Tr. of Oral Arg. 31–32.

Nevertheless, the parents of children covered by the Citizenship Order would be well advised to file promptly class-action suits and to request temporary injunctive relief for the putative class pending class certification. See *A. A. R. P.*, 605 U. S., at ___ (slip op., at 7); *Califano*, 442 U. S., at 701–703; see also *ante,* at 1–2 (opinion of KAVANAUGH, J.) (recognizing that lower courts, in some circumstances, can "award preliminary classwide relief that may . . . be statewide, regionwide, or even nationwide"). For suits challenging policies as blatantly unlawful and harmful as the Citizenship Order, moreover, lower courts would be wise to act swiftly on such requests for relief and to adjudicate the cases as quickly as they can so as to enable this Court's prompt review.

* * *

The rule of law is not a given in this Nation, nor any other. It is a precept of our democracy that will endure only if those brave enough in every branch fight for its survival. Today, the Court abdicates its vital role in that effort. With the stroke of a pen, the President has made a "solemn mockery" of our Constitution. *Peters*, 5 Cranch, at 136. Rather than stand firm, the Court gives way. Because such complicity should know no place in our system of law, I dissent.

SUPREME COURT OF THE UNITED STATES

No. 24A884

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CASA, INC., ET AL.

ON APPLICATION FOR PARTIAL STAY

No. 24A885

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

ON APPLICATION FOR PARTIAL STAY

No. 24A886

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* NEW JERSEY, ET AL.

ON APPLICATION FOR PARTIAL STAY

[June 27, 2025]

JUSTICE JACKSON, dissenting.

I agree with every word of JUSTICE SOTOMAYOR's dissent. I write separately to emphasize a key conceptual point: The Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law.

It is important to recognize that the Executive's bid to vanquish so-called "universal injunctions" is, at bottom, a request for this Court's permission to engage in unlawful behavior. When the Government says "do not allow the lower courts to enjoin executive action universally as a remedy for unconstitutional conduct," what it is actually saying

is that the Executive wants to continue doing something that a court has determined violates the Constitution—please allow this. That is some solicitation. With its ruling today, the majority largely grants the Government's wish. But, in my view, if this country is going to persist as a Nation of laws and not men, the Judiciary has no choice but to deny it.

Stated simply, what it means to have a system of government that is bounded by law is that everyone is constrained by the law, no exceptions. And for that to actually happen, courts must have the power to order everyone (including the Executive) to follow the law—full stop. To conclude otherwise is to endorse the creation of a zone of lawlessness within which the Executive has the prerogative to take or leave the law as it wishes, and where individuals who would otherwise be entitled to the law's protection become subject to the Executive's whims instead.

The majority cannot deny that our Constitution was designed to split the powers of a monarch between the governing branches to protect the People. Nor is it debatable that the role of the Judiciary in our constitutional scheme is to ensure fidelity to law. But these core values are strangely absent from today's decision. Focusing on inapt comparisons to impotent English tribunals, the majority ignores the Judiciary's foundational duty to uphold the Constitution and laws of the United States. The majority's ruling thus not only diverges from first principles, it is also profoundly dangerous, since it gives the Executive the go-ahead to sometimes wield the kind of unchecked, arbitrary power the Founders crafted our Constitution to eradicate. The very institution our founding charter charges with the duty to ensure universal adherence to the law now requires judges to shrug and turn their backs to intermittent lawlessness. With deep disillusionment, I dissent.

I

To hear the majority tell it, this suit raises a mind-numbingly technical query: Are universal injunctions "sufficiently 'analogous' to the relief issued 'by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act' " to fall within the equitable authority Congress granted federal courts in the Judiciary Act of 1789? *Ante*, at 6. But that legalese is a smokescreen. It obscures a far more basic question of enormous legal and practical significance: May a federal court in the United States of America order the Executive to follow the law?

A

To ask this question is to answer it. In a constitutional Republic such as ours, a federal court has the power to order the Executive to follow the law—and it must. It is axiomatic that the Constitution of the United States and the statutes that the People's representatives have enacted govern in our system of government. Thus, everyone, from the President on down, is bound by law. By duty and nature, federal courts say what the law is (if there is a genuine dispute), and require those who are subject to the law to conform their behavior to what the law requires. This is the essence of the rule of law.

Do not take my word for it. Venerated figures in our Nation's history have repeatedly emphasized that "[t]he essence of our free Government is 'leave to live by no man's leave, underneath the law'—to be governed by those impersonal forces which we call law." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 654 (1952) (R. Jackson, J., concurring). "Our Government is fashioned to fulfill this concept so far as humanly possible." *Id.*, at 654–655. Put differently, the United States of America has " 'a government of laws and not of men.' " *Cooper* v. *Aaron*, 358 U. S. 1, 23 (1958) (Frankfurter, J., concurring) (quoting *United States*

v. *Mine Workers*, 330 U. S. 258, 307 (1947) (Frankfurter, J., concurring in judgment)); see also, *e.g.*, Mass. Const., pt. 1, Art. XXX (1780), in 3 Federal and State Constitutions 1893 (F. Thorpe ed. 1909) (J. Adams); *Marbury* v. *Madison*, 1 Cranch 137, 163 (1803) (Marshall, C. J., for the Court); *United States* v. *Dickson*, 15 Pet. 141, 162 (1841) (Story, J., for the Court).

That familiar adage is more than just mere "'rhetorical flourish.' " *Cooper*, 358 U. S., at 23. It is "'the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power.'" *Ibid.* Indeed, "constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law." C. McIlwain, *Constitutionalism*: Ancient and Modern 21–22 (rev. ed. 1947); see also *id.*, at 21 ("All constitutional government is by definition limited government").

Those who birthed our Nation limited the power of government to preserve freedom. As they knew all too well, "constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go." Montesquieu, The Spirit of Laws, in 38 Great Books of the Western World 69 (T. Nugent transl., R. Hutchins ed. 1952). But the Founders reasoned that the vice of human ambition could be channeled to prevent the country from devolving into despotism—ambition could be "made to counteract ambition." The Federalist No. 51, p. 322 (C. Rossiter ed. 1961) (J. Madison). If there were, say, a Constitution that divided power across institutions "in such a manner as that each may be a check on the other," then it could be possible to establish Government by and for the People and thus stave off autocracy. *Ibid.*; see also *Myers* v. *United States*, 272 U. S. 52, 293 (1926) (Brandeis, J., dissenting) ("The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power").

Through such separated institutions, power checks power. See Montesquieu, The Spirit of Laws, at 69. Our system of institutional checks thus exists for a reason: so that "the private interest of every individual may be a sentinel over the public rights." The Federalist No. 51, at 322.

B

The distribution of power between the Judiciary and the Executive is of particular importance to the operation of a society governed by law. Made up of " 'free, impartial, and independent' " judges and justices, the Judiciary checks the political branches of Government by explaining what the law is and "securing obedience" with it. *Mine Workers*, 330 U. S., at 308, 312 (opinion of Frankfurter, J.); see *Marbury*, 1 Cranch, at 177. The federal courts were thus established "not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government." *United States* v. *Lee*, 106 U. S. 196, 220 (1882).

Quite unlike a rule-of-kings governing system, in a rule-of-law regime, nearly "[e]very act of government may be challenged by an appeal to law." *Cooper*, 358 U. S., at 23 (opinion of Frankfurter, J.). In this country, the Executive does not stand above or outside of the law. Consequently, when courts are called upon to adjudicate the lawfulness of the actions of the other branches of Government, the Judiciary plays "an essential part of the democratic process." *Mine Workers*, 330 U. S., at 312. Were it otherwise—were courts unable or unwilling to command the Government to follow the law—they would "sanctio[n] a tyranny" that has no place in a country committed to "well-regulated liberty and the protection of personal rights." *Lee*, 106 U. S., at 221. It is law—and " 'Law alone' "—that " 'saves a society from being rent by internecine strife or ruled by mere brute power however disguised.' " *Cooper*, 358 U. S., at 23 (quoting *Mine Workers*, 330 U. S., at 308).

The power to compel the Executive to follow the law is particularly vital where the relevant law is the Constitution. When the Executive transgresses an Act of Congress, there are mechanisms through which Congress can assert its check against the Executive unilaterally—such as, for example, asserting the power of the purse. See K. Stith, Congress' Power of the Purse, 97 Yale L. J. 1343, 1360 (1988) (describing Congress's ability to "regulat[e] executive branch activities by limitations on appropriations"). But when the Executive violates the Constitution, the only recourse is the courts. Eliminate that check, and our government ceases to be one of "limited powers." *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991). After all, a limit that "do[es] not confine the perso[n] on whom [it is] imposed" is no limit at all. *Marbury*, 1 Cranch, at 176.[1]

II

With that background, we can now turn to this suit and

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[1] These foundational separation-of-powers principles are, of course, the doctrinal underpinnings of the observations I make in Parts II and III, *infra*. If my point is "difficult to pin down," *ante*, at 22, that could be due to the majority's myopic initial framing—it casts today's emergency applications as being solely about the scope of judicial authority, while ignoring (or forgetting) the concomitant expansion of executive power that results when the equitable remedial power of judges is needlessly restricted. Or perhaps the culprit is the majority's threshold decision to rest its holding solely on the Judiciary Act, *ante*, at 5, n. 4, thereby facilitating its convenient sidestepping of the startling constitutional implications that follow from blanket limitations on the Judiciary's response to the Executive's lawlessness. Whatever the source of the majority's confusion, there is no question that its statutory holding restricting the traditional equitable power of federal courts to craft a suitable remedy for established (or likely) constitutional violations has significant ramifications for the separation of powers and for constitutional rights more broadly. JUSTICE SOTOMAYOR thoroughly explains why restricting judges in this manner is legally and historically unfounded. My goal is to highlight the myriad ways in which the majority's newly minted no-universal-injunctions limitation also subverts core constitutional norms and is fundamentally incompatible with the rule of law.

focus on the ways in which the majority's ruling undermines our constitutional system. JUSTICE SOTOMAYOR has laid out the relevant facts, see *ante*, at 9–13 (dissenting opinion), and I will not repeat what she has said. It suffices for my purposes to reiterate that, before these applications arrived here, three District Courts had concluded that Executive Order No. 14160—which attempts to alter the Constitution's express conferral of citizenship on all who are born in this Nation, Amdt. 14, §1—likely violates the Constitution. Those courts each thus enjoined the Executive from enforcing that order anywhere, against anyone. See 763 F. Supp. 3d 723 (Md. 2025), appeal pending, No. 25–1153 (CA4); 765 F. Supp. 3d 1142 (WD Wash. 2025), appeal pending, No. 25–807 (CA9); *Doe* v. *Trump*, 766 F. Supp. 3d 266 (Mass. 2025), appeal pending, No. 25–1170 (CA1). Three Courts of Appeals then declined to upset these injunctions during the pendency of the Government's appeals. See 2025 WL 654902 (CA4, Feb. 28, 2025); 2025 WL 553485 (CA9, Feb. 19, 2025); 131 F. 4th 27 (CA1 2025).

The majority now does what none of the lower courts that have considered Executive Order No. 14160 would do: It allows the Executive's constitutionally dubious mandate to go into effect with respect to anyone who is not already a plaintiff in one of the existing legal actions. Notably, the Court has *not* determined that any of the lower courts were *wrong* about their conclusion that the executive order likely violates the Constitution—the Executive has not asked us to rule on the lawfulness of Executive Order No. 14160. But the majority allows the Executive to implement this order (which lower courts have so far uniformly declared likely unconstitutional) nonetheless.

Given the critical role of the Judiciary in maintaining the rule of law, see Part I, *supra*, it is odd, to say the least, that the Court would grant the Executive's wish to be freed from the constraints of law by prohibiting district courts from ordering complete compliance with the Constitution. But the

majority goes there. It holds that, even assuming that Executive Order No. 14160 violates the Constitution, federal courts lack the power to prevent the Executive from continuing to implement that unconstitutional directive.

As I understand the concern, in this clash over the respective powers of two coordinate branches of Government, the majority sees a power grab—but not by a presumably lawless Executive choosing to act in a manner that flouts the plain text of the Constitution. Instead, to the majority, the power-hungry actors are . . . (wait for it) . . . the district courts. See *ante*, at 1 (admonishing district courts for daring to "asser[t] the power" to order the Executive to follow the law universally). In the majority's view, federal courts only have the power to "afford the plaintiff complete relief" in the cases brought before them; they can do nothing more. *Ante*, at 16. And the majority thinks a so-called universal injunction—that is, a court order requiring the Executive to follow the law across the board and not just with respect to the plaintiff—"grant[s] relief to nonparties." See *ante*, at 6–8. Therefore, the majority reasons, issuing such orders exceeds district courts' authority. See *ante*, at 21.

So many questions arise.[2] The majority's analysis is fully

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[2] Although I will not spend much space discussing it here, the majority's primary premise—that universal injunctions "grant relief to nonparties"—is suspect. When a court issues an injunction (universal or otherwise), it does so via an order that governs the relationship between the plaintiff and the defendant. Fed. Rule Civ. Proc. 65(d). That order provides the plaintiff with *relief*: If the plaintiff believes that the defendant has violated the court's order, she may come back to court, injunction in hand, and demand enforcement or compensation through the mechanism of civil contempt. See *Longshoremen* v. *Philadelphia Marine Trade Assn.*, 389 U. S. 64, 75 (1967) (recognizing that an "injunction" is "an equitable decree compelling obedience under the threat of contempt"). As the majority recognizes, nonparties may benefit from an injunction a court issues in a plaintiff's case. See *ante*, at 16. But that does not mean those incidental beneficiaries have received relief—"the injunction's pro-

interrogated, and countered, in JUSTICE SOTOMAYOR's dissent. My objective is to expose the core conceptual fallacy underlying the majority's reasoning, which, to me, also tends to demonstrate why, and how, today's ruling threatens the rule of law.

The pillar upon which today's ruling rests is the majority's contention that the remedial power of the federal courts is limited to granting "complete relief" to the parties. *Ante*, at 15–16. And the majority's sole basis for that prop-

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tection" (*i.e.*, the ability to seek contempt) "extends only to the suing plaintiff." *Ante*, at 17.

An injunction prohibiting the Executive from acting unlawfully operates precisely the same way. Such an injunction may benefit nonparties as a practical matter—but only the named plaintiffs have the right to return to the issuing court and seek contempt, if the Executive fails to comply. See *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444–445 (1911) ("Proceedings for civil contempt are between the original parties"); *Buckeye Coal & R. Co.* v. *Hocking Valley R. Co.*, 269 U. S. 42, 48–49 (1925) (holding that a nonparty injured by the defendant's noncompliance with an injunction could not enforce the injunction); cf. *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 750 (1975) ("[A] consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it"). So, the majority's concern that universal injunctions inappropriately grant "relief" to nonparties is incorrect. Nonparties may *benefit* from an injunction, but only the plaintiff gets *relief*.

Federal Rule of Civil Procedure 71 is not to the contrary. Contra, *ante*, at 15, n. 11. At most, that rule and the cases the majority cites suggest that, in certain narrow circumstances, a nonparty for whose benefit an injunction was issued may be able to go to the issuing court and seek contempt. But "the precise contours of Rule 71 . . . remain unclear," *Beckett* v. *Air Line Pilots Assn.*, 995 F. 2d 280, 287–288 (CADC 1993), and courts have largely recognized that, to the extent nonparty enforcement of an injunction is available, the nonparty must stand in a close relationship to the plaintiff or have been specifically named in the injunction. See *United States* v. *American Soc. of Composers, Authors, and Publishers*, 341 F. 2d 1003, 1008 (CA2 1965) (nonparty could not enforce injunction where it was "not . . . named in the judgment" even though it was "indirectly or economically benefited by the decree").

osition is the practice of the High Court of Chancery in England. *Ante*, at 6–7. But this cramped characterization of the Judiciary's function is highly questionable when it comes to suits against the Executive. That is, even if the majority is correct that courts in England at the time of the founding were so limited—and I have my doubts, see *ante*, at 18–20 (SOTOMAYOR, J., dissenting)—why would courts in *our* constitutional system be limited *in the same way*?

The Founders of the United States of America squarely rejected a governing system in which the King ruled all, and all others, including the courts, were his subordinates. In our Constitution-centered system, the People are the rulers and we have the rule of law. So, it makes little sense to look to the relationship between English courts and the King for guidance on the power of our Nation's Judiciary vis-à-vis its Executive. See The Federalist No. 69, at 416 (A. Hamilton) (explaining how the President differs from the King, including because "[t]he person of the King of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable"). Indeed, it is precisely because the law constrains the Government in our system that the Judiciary's assignment is so broad, per the Constitution. Federal courts entertain suits against the Government claiming constitutional violations. Thus, the function of the courts—both in theory and in practice—necessarily includes announcing what the law requires in such suits for the benefit of all who are protected by the Constitution, not merely doling out relief to injured private parties.

Put differently, the majority views the Judiciary's power through an aperture that is much too small, leading it to think that the *only* function of our courts is to provide "complete relief" to private parties. Sure, federal courts do that, and they do it well. But they *also* diligently maintain the rule of law itself. When it comes to upholding the law, federal courts ensure that all comers—*i.e.*, everyone to whom

the law applies and over whom the court has personal jurisdiction (including and perhaps especially the Executive)—know what the law is and, most important, follow it.[3]

III

Still, upon reading the Court's opinion, the majority's foundational mistake in mischaracterizing the true scope and nature of a federal court's power might seem only marginally impactful. Indeed, one might wonder: Why all the fuss? After all, the majority recognizes that district courts can still issue universal injunctions in some circumstances. See *ante*, at 16–18. It even acknowledges that the lower

[3] No one is saying that the reasoning of a district court's opinion, on its own, "has the legal force of a judgment," *ante*, at 22; of course it does not. The real issue today's applications raise is whether district-court opinions are entitled to respect while litigation over the lawfulness of the defendant's conduct is ongoing. As I have explained, the majority's key move is to start by assuming that the remedial power of federal courts is quite narrow (*i.e.*, it is only appropriately exercised to grant "complete relief" to the parties). *Ante*, at 5–11, 16. The majority forgets (or ignores) that federal courts also make pronouncements of law and issue orders compelling compliance if violations are identified. Then, having zeroed in on solely the courts' plaintiff-specific-remedies function, the majority unsurprisingly insists that a district court cannot respond to the Executive's decision to violate the law universally by issuing an order compelling universal cessation of the Executive's unlawful behavior. This kind of broad injunction is merely one tool in a judge's kit of remedial options—one that is directly responsive to the court's duty to uphold the law and the Executive's decision to consciously violate it—and it is no more or less binding than any of the district court's other determinations. So, rather than disdainfully securing permission to disregard the district court's opinion and continue engaging in unlawful conduct vis-à-vis anyone who is not the plaintiff, an enjoined Executive that believes the district court was wrong to conclude that its behavior is unlawful has a rule-of-law-affirming response at the ready: It can seek expedited review of the merits on appeal. District courts themselves also have the flexibility to stay their injunctions pending appeal, if that is requested and the circumstances demand it. But rather than permit lower courts to adapt their remedies to the particulars of a given case, the majority today ties judges' hands, requiring them to acquiesce to executive lawlessness in every situation.

courts may reimpose the same universal injunctions at issue in *these* cases, if the courts find on remand that doing so is necessary to provide complete relief to the named plaintiffs. See *ante*, at 19. From the standpoint of outcomes, that's all welcome news. But, as I explain below, from the perspective of constitutional theory and actual practice, disaster looms.

What I mean by this is that our rights-based legal system can only function properly if the Executive, and everyone else, is *always* bound by law. Today's decision is a seismic shock to that foundational norm. Allowing the Executive to violate the law at its prerogative with respect to anyone who has not yet sued carves out a huge exception—a gash in the basic tenets of our founding charter that could turn out to be a mortal wound. What is more, to me, requiring courts themselves to provide the dagger (by giving their *imprimatur* to the Executive Branch's intermittent lawlessness) makes a mockery of the Judiciary's solemn duty to safeguard the rule of law.

A

Do remember: The Executive has not asked this Court to determine whether Executive Order No. 14160 complies with the Constitution. Rather, it has come to us seeking the right to continue enforcing that order *regardless—i.e.*, even though six courts have now said the order is likely unconstitutional. What the Executive wants, in effect, is for this Court to bless and facilitate its desire to operate in two different zones moving forward: one in which it is required to follow the law (because a particular plaintiff has secured a personal injunction prohibiting its unlawful conduct), and another in which it can choose to violate the law with respect to certain people (those who have yet to sue).

In the first zone, law reigns. For the named plaintiffs in the suits before us, for example, the lower courts' determi-

nation that Executive Order No. 14160 is likely unconstitutional and cannot be implemented has teeth. Per the courts' orders, the Executive is prohibited from denying citizenship to the offspring of the named plaintiffs. See *ante*, at 26 (leaving the injunctions in place to the extent "necessary to provide complete relief to each plaintiff with standing to sue"). Within this zone, the courts' rule of decision—that Executive Order No. 14160 is likely unconstitutional—applies.

But with its ruling today, the majority endorses the creation of a second zone—one in which that rule of decision has no effect. In this zone, which is populated by those who lack the wherewithal or ability to go to court, all bets are off. There is no court-issued mandate requiring the Executive to honor birthright citizenship in compliance with the Constitution, so the people within this zone are left to the prerogatives of the Executive as to whether their constitutional rights will be respected. It does not matter what six federal courts have said about Executive Order No. 14160; those courts are powerless to make the Executive stop enforcing that order altogether. In effect, then, that powerlessness creates a void that renders the Constitution's constraints irrelevant to the Executive's actions. Of course, the Executive *might* choose to follow the law in this zone as well—but that is left to its discretion. And the Solicitor General has now confirmed that, in the absence of a personal injunction secured by a particular plaintiff, this Executive's view is that compliance with lower court rulings on matters of constitutional significance is optional.[4]

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[4] The Solicitor General said that quiet part out loud by baldly asserting that the Executive reserves the right to defy Circuit precedent. Tr. of Oral Arg. 33–34, 60–61. Although he further suggested that the administration would abide by precedent from *this* Court in future similar cases, *id.*, at 35, 63, even that seems to be a matter of prerogative, as there is no inherent limit to the limited-scope-of-authority logic that underlies today's holding, see *ante*, at 41 (SOTOMAYOR, J., dissenting). The

I am not the first to observe that a legal system that operates on two different tracks (one of which grants to the Executive the prerogative to disregard the law) is anathema to the rule of law.[5] Thus, the law-free zone that results from this Court's near elimination of universal injunctions is not an unfamiliar archetype. Also eerily echoing history's horrors is the fact that today's prerogative zone is unlikely to impact the public in a randomly distributed manner. Those in the good graces of the Executive have nothing to fear; the new prerogative that the Executive has to act unlawfully will not be exercised with respect to *them*. Those who accede to the Executive's demands, too, will be in the clear. The wealthy and the well connected will have little difficulty securing legal representation, going to court, and obtaining injunctive relief in their own name if the Executive violates their rights.

Consequently, the zone of lawlessness the majority has now authorized will disproportionately impact the poor, the

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Executive's less-than-sterling record of compliance with Supreme Court rulings to date casts further doubt on this compliance claim; as JUSTICE SOTOMAYOR has explained, the Executive Order at issue here seems to squarely violate at least one—and perhaps five—of our bedrock precedents. See *ante*, at 7–9 (dissenting opinion).

[5] See E. Fraenkel, The Dual State, pp. xiii, 3, 71 (1941) (describing the way in which the creation of a "Prerogative State" where the Executive "exercises unlimited arbitrariness . . . unchecked by any legal guarantees" is incompatible with the rule of law); see also J. Locke, Second Treatise of Civil Government 13 (J. Gough ed. 1948) ("[F]reedom of men under government is to have a standing rule to live by, common to every one of that society . . . and not to be subject to the . . . arbitrary will of another man"); The Federalist No. 26, p. 169 (C. Rossiter ed. 1961) (A. Hamilton) (contrasting the monarch's "prerogative" with the emergence of "liberty"); *Myers* v. *United States*, 272 U. S. 52, 295 (1926) (Brandeis, J., dissenting) ("[P]rotection of the individual . . . from the arbitrary or capricious exercise of power [is] an essential of free government"); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 641 (1952) (R. Jackson, J., concurring) (observing that our Constitution—which embodies the rule of law—does not grant to the Executive the "prerogative exercised by George III").

uneducated, and the unpopular—*i.e.*, those who may not have the wherewithal to lawyer up, and will all too often find themselves beholden to the Executive's whims. This is yet another crack in the foundation of the rule of law, which requires "equality and justice in its application." *Papachristou* v. *Jacksonville*, 405 U. S. 156, 171 (1972). In the end, though, everyone will be affected, because it is law's evenhanded application—"to minorities as well as majorities, to the poor as well as the rich"—that "holds society together." *Ibid.*

The majority "skips over" these consequences. *Ante*, at 23. No one denies that the power of federal courts is limited—both by the Constitution and by Congress. But the majority seems to forget (or ignores) that the Constitution and Congress also limit the power of the Executive. In addition, it is indisputable that the Executive's power to leverage physical force in a manner that directly threatens to deprive people of life, liberty, or property creates uniquely harmful risks when unconstrained by law. But the majority today roots its holding in a purported statutory limitation, not a constitutional one. *Ante*, at 5, n. 4. And, as I have explained, our Constitution gives federal courts the authority to order the Executive to stop acting unlawfully. See Part I, *supra*. To the extent Congress has attempted to strip federal courts of that power via the Judiciary Act (and, to be clear, I do not think it has, for the reasons JUSTICE SOTOMAYOR discusses, see *ante*, at 23–31), it is powerless to do so.

The bottom line is this: If courts do not have the authority to require the Executive to adhere to law universally, a dual-track system develops in which courts are ousted as guardians in some situations and compliance with law sometimes becomes a matter of executive prerogative. But "[t]here can be no free society without law administered through an independent judiciary." *Mine Workers*, 330 U. S., at 312 (opinion of Frankfurter, J.). "If one man"—

even a very important man, and even a democratically elected man—"can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny." *Ibid.*

B

This leads me to another potentially destructive aspect of today's decision—the Court's dismissive treatment of the solemn duties and responsibilities of the lower courts. Sworn judicial officers must now put on blinders and take a see-no-evil stance with respect to harmful executive conduct, even though those same officials have already announced that such conduct is likely unconstitutional. Yes, certain named plaintiffs have brought particular lawsuits seeking protection of their legal rights. But their claim is that Executive Order No. 14160 violates the Constitution. If the court agrees with them, why on Earth must it permit that unconstitutional government action to take effect at all?

I have already explained why the majority's answer—because the court is powerless to do anything but give "complete relief " to those parties—is wrong in terms of the actual scope of federal courts' authority. See Part I, *supra.* I now observe that this response also erroneously suggests that a court does something wrongful when it imposes a universal injunction in a single plaintiff 's lawsuit—akin to giving a windfall to those who do not deserve the law's protection because *they* have not sued. *Ante*, at 8–9, 12–15. This way of conceptualizing universal injunctions mistakes that remedy for the unearned spoils of particular adversarial engagements, rather than a necessary tool employed to defend the Constitution by reinforcing pre-existing rights.

Here is what I mean. Our Constitution indisputably con-

fers individual rights that operate as unequivocal protections against government action.[6] Thus, a constrained Executive—*i.e.*, one who is bound by the Constitution not to violate people's rights—is a public benefit, guaranteed to all from the start, without regard to the nature or existence of any particular enforcement action.[7] Properly understood, then, when the Executive violates those pre-existing rights in a nonparticularized manner, a universal injunction merely restores what the People were always owed; that remedy does *not* improperly distribute an unearned benefit to those who did not have the temerity to secure it for themselves by filing a lawsuit.

Or consider it the other way: When a court is prevented from enjoining the Executive universally after the Executive establishes a universal practice of stripping people's constitutional rights, anyone who is entitled to the Constitution's protection but will instead be subjected to the Executive's whims is improperly divested of their inheritance. The Constitution is flipped on its head, for its promises are essentially nullified.[8] So, rather than having a governing

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[6] See, *e.g.*, Amdt. 1 (prohibiting the government from preventing the "free exercise" of religion or "abridging the freedom of speech"); Amdt. 2 (prohibiting the government from infringing on the right "to keep and bear Arms"); Amdt. 4 (prohibiting the government from conducting "unreasonable searches and seizures"); Amdt. 5 (prohibiting the government from depriving persons of "life, liberty, or property, without due process of law").

[7] In this way of framing the issue, nonparties are more than mere "incidental" beneficiaries of universal injunctions that require the Executive to respect constitutional rights. See n. 2, *supra*. Rather, the very concept of constitutional rights makes the People *intended* beneficiaries of the constraints that the Constitution imposes on executive action.

[8] Again, the law binds the Executive from the outset in our constitutional scheme, for the benefit of all. See Part I, *supra*. Thus, a lawsuit is merely the vehicle that invokes the Judiciary's power to check the Executive by enforcing the law. The topsy-turvy scheme the majority creates today gets those well-established norms exactly backward: The law disappears as an initial constraint on the Executive, and apparently only

system characterized by protected rights, the default becomes an Executive that can do whatever it wants to whomever it wants, unless and until each affected individual affirmatively invokes the law's protection.

A concrete example helps to illustrate why this turnabout undermines the rule of law. Imagine an Executive who issues a blanket order that is blatantly unconstitutional—demanding, say, that any and all of its political foes be summarily and indefinitely incarcerated in a prison outside the jurisdiction of the United States, without any hearing or chance to be heard in court. Shortly after learning of this edict, one such political rival rushes into court with his lawyer, claims the Executive's order violates the Constitution, and secures an injunction that prohibits the Executive from enforcing that unconstitutional mandate. The upshot of today's decision is that, despite that rival's success in persuading a judge of the unconstitutional nature of the Executive's proclamation, the court's ruling and injunction can *only* require the Executive to shelve any no-process incarceration plan that targets *that particular individual* (the named plaintiff); the Executive can keep right on rounding up its other foes, despite the court's clear and unequivocal pronouncement that the executive order is unlawful.

The majority today says that, unless and until the other political rivals seek and secure their own personal injunctions, the Executive can carry on acting unconstitutionally with respect to each of them, as if the Constitution's due process requirement does not exist. For those who get to court in time, their right not to be indefinitely imprisoned without due process will be protected. But if they are unable to sue or get to the courthouse too late, the majority says, oh well, there is nothing to be done, despite the fact

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exists if a particular plaintiff files a particular lawsuit in a particular court, claiming his (particular) entitlement.

that their detention without due process is plainly prohibited by law.

A Martian arriving here from another planet would see these circumstances and surely wonder: "*what good is the Constitution, then*?" What, really, is this system for protecting people's rights if it amounts to *this*—placing the onus on the victims to invoke the law's protection, and rendering the very institution that has the singular function of ensuring compliance with the Constitution powerless to prevent the Government from violating it? "Those things Americans call constitutional rights seem hardly worth the paper they are written on!"

These observations are indictments, especially for a Nation that prides itself on being fair and free. But, after today, that is where we are. What the majority has done is allow the Executive to nullify the statutory and constitutional rights of the uncounseled, the underresourced, and the unwary, by prohibiting the lower courts from ordering the Executive to follow the law across the board. Moreover, officers who have sworn an oath to uphold the law are now required to allow the Executive to blatantly violate it. Federal judges pledge to support and defend the Constitution of the United States against all enemies, foreign or domestic. 5 U. S. C. §3331. They do *not* agree to permit unconstitutional behavior by the Executive (or anyone else). But the majority forgets (or ignores) this duty, eagerly imposing a limit on the power of courts that, in essence, prevents judges from doing what their oaths require.[9]

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[9] The majority highlights a number of policy concerns that some say warrant restriction of the universal-injunction remedy. *Ante*, at 20–21. In my view, those downsides pale in comparison to the consequences of forcing federal courts to acquiesce to executive lawlessness. Moreover, and in any event, the various practical problems critics have identified are largely overblown. For example, while many accuse universal injunctions of preventing percolation, the facts of this very suit demonstrate otherwise: Three different District Courts each considered the merits of Executive Order No. 14160, and appeals are now pending in

I view the demise of the notion that a federal judge can order the Executive to adhere to the Constitution—full stop—as a sad day for America. The majority's unpersuasive effort to justify this result makes it sadder still. It is the responsibility of each and every jurist to hold the line. But the Court now requires judges to look the other way after finding that the Executive is violating the law, shamefully permitting unlawful conduct to continue unabated.

Today's ruling thus surreptitiously stymies the Judiciary's core duty to protect and defend constitutional rights. It does this indirectly, by preventing lower courts from telling the Executive that it has to stop engaging in conduct that violates the Constitution. Instead, now, a court's power to prevent constitutional violations comes with an asterisk—a court can make the Executive cease its unconstitutional conduct **but* only with respect to the particular plaintiffs named in the lawsuit before them, leaving the Executive free to violate the constitutional rights of anyone and everyone else.

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three Courts of Appeals. See *supra*, at 7. Other prudential concerns are better addressed in more targeted ways, such as by changing venue rules to prevent forum or judge shopping, or by encouraging lower courts to expedite their review, thereby teeing the merits up for this Court as quickly as possible.

That is not to say that universal injunctions can or should be issued in every case; a court must always fit its remedy to the particular case before it, and those particulars may caution against issuing universal relief in certain instances. See *ante*, at 22–23 (SOTOMAYOR, J., dissenting). But the Court today for the first time ever adopts a blanket authority-diminishing rule: It declares that courts do not have the power to exercise their equitable discretion to order the Executive to completely cease acting pursuant to an unlawful directive (unless doing so is necessary to provide complete relief to a given plaintiff). And, again, this very suit illustrates why that bright line rule goes much too far. As JUSTICE SOTOMAYOR emphasizes, multiple courts have recognized that Executive Order No. 14160 is "patently unconstitutional under settled law," and those courts thus issued the relief necessary to "protect newborns from the exceptional, irreparable harm associated with losing a foundational constitutional right and its immediate benefits." *Ibid.*

* * *

Make no mistake: Today's ruling allows the Executive to deny people rights that the Founders plainly wrote into our Constitution, so long as those individuals have not found a lawyer or asked a court in a particular manner to have their rights protected. This perverse burden shifting cannot coexist with the rule of law. In essence, the Court has now shoved lower court judges out of the way in cases where executive action is challenged, and has gifted the Executive with the prerogative of sometimes disregarding the law. As a result, the Judiciary—the one institution that is solely responsible for ensuring our Republic endures as a Nation of laws—has put both our legal system, and our system of government, in grave jeopardy.

"The accretion of dangerous power does not come in a day." *Youngstown*, 343 U. S., at 594 (opinion of Frankfurter, J.). But "[i]t does come," "from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority." *Ibid.* By needlessly granting the Government's emergency application to prohibit universal injunctions, the Court has cleared a path for the Executive to choose law-free action at this perilous moment for our Constitution—right when the Judiciary should be hunkering down to do all it can to preserve the law's constraints. I have no doubt that, if judges must allow the Executive to act unlawfully in some circumstances, as the Court concludes today, executive lawlessness will flourish, and from there, it is not difficult to predict how this all ends. Eventually, executive power will become completely uncontainable, and our beloved constitutional Republic will be no more.

Perhaps the degradation of our rule-of-law regime would happen anyway. But this Court's complicity in the creation of a culture of disdain for lower courts, their rulings, and the law (as they interpret it) will surely hasten the downfall

of our governing institutions, enabling our collective demise. At the very least, I lament that the majority is so caught up in minutiae of the Government's self-serving, finger-pointing arguments that it misses the plot. The majority forgets (or ignores) that "[w]ith all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." *Id.*, at 655 (opinion of R. Jackson, J.). Tragically, the majority also shuns this prescient warning: Even if "[s]uch institutions may be destined to pass away," "it is the duty of the Court to be last, not first, to give them up." *Ibid.*

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IN FOCUS

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Farm Bill Primer: Trade and Export Promotion Programs

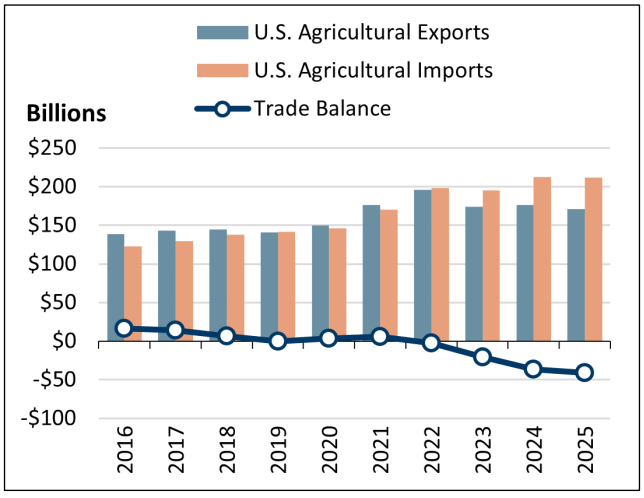
Agricultural exports are significant to farmers and the U.S. economy. With the productivity of U.S. agriculture growing faster than domestic demand, farmers and agriculturally oriented firms rely on export markets to sustain prices and revenue. The trade title of the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334) authorized export market development programs and export credit guarantee programs from FY2019 to FY2023 to expand foreign markets for U.S. farmers and food manufacturers. Subsequent legislation extended the authorizations through FY2026 (P.L. 119-37). These market expansion programs derive their statutory authorities from the Agricultural Trade Act of 1978 (P.L. 95-501), as amended. The trade title of the 2018 farm bill also includes international food assistance programs and international technical assistance and exchange programs and provisions, which are not addressed in this In Focus.

Trade Situation Overview

In 2025, U.S. food and agricultural exports totaled $171 billion, and U.S. imports totaled $212 billion, resulting in a trade deficit of $41 billion (**Figure 1**) according to U.S. Department of Agriculture (USDA) data. Bulk commodities, such as corn, soybeans, wheat, cotton, and rice, are the leading U.S. farm exports. Leading consumer-oriented exports include tree nuts, dairy, meat and poultry, fruits, and vegetables. In 2025, about 50% of U.S. agricultural exports were destined for the top four U.S. export markets: Mexico, Canada, the European Union, and Japan.

Figure 1. Value of U.S. Agricultural Trade

Figure is interactive in the HTML version of this report.



Source: CRS from USDA's Global Agricultural Trade System data. Data are not adjusted for inflation. Trade balance constructed as imports subtracted from exports.

The U.S. agricultural trade surplus peaked at $40.1 billion in 2011. It has since fallen and was a trade deficit in 2019 and between 2022 and 2025. Many attribute the rise in U.S. food and agricultural imports to increasing domestic demand for imported, consumer-oriented goods such as fruits, vegetables, alcoholic beverages, beef, and coffee products.

Trade Provisions in the Farm Bill

The trade title of a farm bill generally contains reauthorizations and amendments for agricultural export programs and other trade-related provisions.

Export Market Development Programs

Export promotion programs are authorized under a single Agricultural Trade Promotion and Facilitation (ATPF) umbrella program administered by USDA. Programs are authorized to receive mandatory funding of $255 million annually through FY2026, as extended (7 U.S.C. §5623, P.L. 119-37).

- **Market Access Program (MAP)** provides cost-sharing of overseas marketing and promotional activities that help build commercial markets for U.S. agricultural exports (no less than $200 million per year).
- **Foreign Market Development (FMD) Cooperator Program** funds projects that address long-term opportunities to reduce foreign import constraints or expand export growth opportunities (no less than $34.5 million per year).
- **E. (Kika) de la Garza Emerging Markets Program** provides cost-sharing for technical assistance to support generic U.S. agricultural exports (no more than $8 million per year).
- **Technical Assistance for Specialty Crops** funds projects addressing sanitary and phytosanitary (SPS) and technical trade barriers to U.S. specialty crop exports ($9 million per year).
- **Priority Trade Fund** supports activities to access, develop, maintain, and expand markets for U.S. agricultural exports ($3.5 million per year).

The farm bill authorizes USDA to fund MAP and FMD activities in Cuba, which otherwise would be prohibited (7 U.S.C. §5623(f)(4)).

Export Credit Guarantee Programs

The farm bill authorizes $1 billion in export credit guarantees annually through FY2026, as extended, for

exports to emerging markets (7 U.S.C. §5622 note, P.L. 119-37). Additionally, $5.5 billion is available annually with no funding expiration date (7 U.S.C. §5641(b)). Export credit guarantees are carried out under two programs.

- **GSM-102 Program** provides credit guarantees to finance commercial U.S. agricultural exports mainly to developing countries.
- **Facility Guarantee Program** provides payment guarantees to improve or establish agriculture-related facilities in emerging markets.

Under these programs, the Commodity Credit Corporation (CCC) provides payment guarantees on commercial financing and assumes the risk of default on payments by the foreign purchasers on loans to facilitate U.S. exports.

Other Export-Related Provisions

The farm bill authorizes appropriations for the Biotechnology and Agricultural Trade Program with discretionary funding of $2 million through FY2026, as extended (7 U.S.C. §5679, P.L. 119-37). The program funds grants for public and private sector projects that address nontariff regulatory barriers (e.g., SPS) to U.S. agricultural exports.

Administrative Actions

For FY2024 and FY2025, USDA allocated $300 million annually for a new export promotion program called the Regional Agricultural Promotion Program (RAPP). In November 2025, USDA announced $285 million in funding availability for the America First Trade Promotion Program (AFTPP), a new export promotion program that runs through FY2028 and operates under RAPP regulations (7 C.F.R. §1489). AFTPP and RAPP are authorized and funded by the CCC Charter Act (15 U.S.C. §714c(f)).

USDA uses the same CCC authority to fund the Quality Samples Program (QSP), which promotes U.S. agricultural products. QSP is annually funded at $2.5 million.

FY2025 Budget Reconciliation Law

The FY2025 budget reconciliation law (P.L. 119-21) is to provide USDA $285 million annually from mandatory CCC funding for a supplemental agricultural trade promotion program indefinitely starting in FY2027 (7 U.S.C. §5623a).

Issues and Options

As Congress considers a next farm bill and issues related to U.S. agricultural trade promotion, it may evaluate, reauthorize, modify, or end existing programs or establish new programs and initiatives. Congress may also evaluate U.S. agricultural trade policy and objectives.

Export Promotion Programs. Critics of export promotion programs claim the programs provide federal support for activities that private firms could otherwise fund. Supporters claim the programs keep U.S. agricultural products competitive overseas, diversify market opportunities, help generate additional farm income, and increase farm and food sector jobs. Some U.S. agricultural trade and producer groups have sought increased funding for export promotion and market development programs.

Trade Policy. Some U.S. government officials and industry stakeholders have expressed interest in addressing certain policies of U.S. trading partners that may be impeding U.S. agricultural exports; others seek to address foreign export and import competition. The Office of the U.S. Trade Representative's (USTR's) annual *National Trade Estimate Report on Foreign Trade Barriers* for 2026 highlights a range of tariff and nontariff trade barriers.

Overview of H.R. 7567 Trade Provisions

In the 119th Congress, the trade title of H.R. 7567, the 2026 farm bill that Congress has begun work on, addresses some of the issues mentioned above. Several provisions in H.R. 7567 incorporate aspects of stand-alone bills on export promotion and agricultural trade policy (e.g., H.R. 1086, H.R. 2322/S. 1119, and H.R. 5620).

H.R. 7567 would nearly double mandatory CCC funding for ATPF programs beginning in FY2027 for a total of $500 million and further increase to $533 million annually for FY2028 through FY2031. Another provision would create an FMD subprogram that would address infrastructure deficiencies in foreign markets that could damage U.S. agricultural exports. The bill would repeal the export program established by P.L. 119-21 and repeal the provision prohibiting MAP from assisting the U.S. mink industry (7 U.S.C. §5623 note).

H.R. 7567 would require USDA and USTR to negotiate with foreign governments to ensure the right to use common names for U.S. agricultural and food products in foreign markets that might otherwise be prohibited due to geographical indication protections. Another provision would establish an interagency agricultural trade enforcement task force to identify agricultural trade barriers that are "vulnerable to dispute settlement" under trade agreements and to enforce trade agreement violations, with a particular focus on India's agricultural subsidies. The bill also would create an interagency working group to monitor and assess trade-related information on seasonal and perishable fruits and vegetables and coordinate on trade actions and investigations.

The trade title in H.R. 7567 also proposes reporting requirements. For example, the Government Accountability Office would be required to submit a report to Congress on policy options for USDA to support the competitiveness of U.S. seafood producers in global and domestic markets. Other provisions would require USDA along with USTR to submit a report to Congress on how potential changes to or termination of the United States-Mexico-Canada Agreement may affect U.S. agriculture and a report on the effect on U.S. beef and cattle markets due to changes to U.S. tariff-rate quotas on Argentine beef imports.

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IF12155

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Introduction

This report constitutes a guide to a series of two-page "primers" examining the various programs and policies that comprise periodic omnibus legislation on farm and food policy, commonly known as "the farm bill." The President signed the 2018 farm bill, the Agriculture Improvement Act of 2018 (P.L. 115-334), into law on December 20, 2018. The 2018 farm bill generally authorizes programs for five years. Congress enacted a one-year extension in November 2023 for 2024 (P.L. 118-22, Division B, §102) and a second one-year extension in December 2024 to cover FY2025 and the 2025 crop year (P.L. 118-158, Division D). Many farm bill programs will expire in 2025 unless Congress extends their authorization through a new farm bill or other legislation.

The 2018 farm bill authorized a broad array of programs and policies across 12 titles that define much of the federal government's role in the agricultural sector. It also established the parameters for key domestic and foreign nutrition assistance programs. The 2018 farm bill authorizes a wide range of agriculture and food programs and policies that address commodity support; conservation; trade; foreign and domestic nutrition assistance; farm credit and rural development; research, extension, and education; forestry; energy; horticulture; crop insurance; and livestock-related matters, among others

There are 23 primers summarized in this report and organized under descriptive headings rather than by farm bill titles to facilitate accessibility for those who are not familiar with the 2018 farm bill. The concept behind these primers is to provide relevant information on key programs and policy initiatives authorized by the 2018 farm bill in a concise format that serves as a quick reference resource for Members of Congress and congressional staff. To this end, the primers describe many of the leading programs and policies within the 2018 farm bill. They also identify some of the higher-profile policy issues that may arise as Congress engages in the process of writing a new farm bill and highlight some policy options that Congress could consider as it undertakes this task. The titles of the primers are hyperlinked for easy access.

The primers listed herein also identify CRS subject matter analysts and provide references to related CRS reports for those who want to explore a specific topic area within the 2018 farm bill in greater depth or who seek additional analysis on an individual program or policy. For an overview of the entire 2018 farm bill, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*. For a history of farm bill legislation, see CRS Report R45210, *Farm Bills: Major Legislative Actions, 1965-2024*. For a discussion of the consequences of farm bill expiration, see CRS Report R47659, *Expiration of the 2018 Farm Bill and Extension for 2025*. For analysis of the farm bill markup in 2024, see CRS Report R48167, *The 2024 Farm Bill: H.R. 8467 Compared with Current Law*.

This report summarizes the farm bill primers listed below. The headings of the summaries contain hyperlinks to the full CRS In Focus products.

- *Farm Bill Primer: What Is the Farm Bill?*
- *Farm Bill Primer: Budget Dynamics*
- *Farm Bill Primer: Programs Without Baseline Beyond FY2024*
- *Farm Bill Primer: Animal Disease Management and Prevention*
- *Farm Bill Primer: Farm Safety Net Programs*
- *Farm Bill Primer: PLC and ARC Farm Support Programs*
- *Farm Bill Primer: MAL and LDP Farm Support Programs*
- *Farm Bill Primer: Support for Cotton*
- *Farm Bill Primer: Support for the Dairy Industry*

- *Farm Bill Primer: Federal Crop Insurance Program*
- *Farm Bill Primer: Disaster Assistance*
- *Farm Bill Primer: Conservation Title*
- *Farm Bill Primer: Energy Title*
- *Farm Bill Primer: Forestry Title*
- *Farm Bill Primer: Horticulture Title and Related Provisions*
- *Farm Bill Primer: Selected Hemp Industry Issues*
- *Farm Bill Primer: Beginning and Underserved Producers*
- *Farm Bill Primer: Support for Native Agricultural Producers*
- *Farm Bill Primer: SNAP and Nutrition Title Programs*
- *Farm Bill Primer: Agricultural Research and Extension*
- *Farm Bill Primer: USDA Support for Aquaculture Operations*
- *Farm Bill Primer: Rural Development Title*
- *Farm Bill Primer: Rural Broadband Provisions*
- *Farm Bill Primer: Trade and Export Promotion Programs*

Overview and Budget

CRS In Focus IF12047, *Farm Bill Primer: Background and Status*, by Jim Monke and Megan Stubbs

This CRS In Focus provides an overview of the multiyear, omnibus legislation known as the farm bill. In particular, it describes the breadth of agriculture and nutrition policy that the farm bill authorizes while providing a brief history of the evolution of the farm bill to the present day. It further reviews estimated costs of the 2018 farm bill by title at the time of enactment and an updated estimate of the budget baseline for mandatory programs for a next farm bill. The House markup of a farm bill in 2024 is discussed in the context of current issues.

CRS In Focus IF12233, *Farm Bill Primer: Budget Dynamics*, by Jim Monke

Congress may consider a new farm bill in 2025 because provisions authorized in the 2018 farm bill (P.L. 115-334) begin expiring at the end of FY2025. From a budgetary perspective, many farm bill programs are assumed to continue. This report discusses the two types of funding—mandatory spending and discretionary authorizations—and the implications of each for farm bill budgeting and program continuity. Farm bill programs have nearly $1.4 trillion of mandatory funding available for the next 10 years. The In Focus also addresses supplemental funding in recent years, which may influence policy expectations for a new farm bill.

CRS In Focus IF12115, *Farm Bill Primer: Programs Without a Budget Baseline*, by Jim Monke

In preparation for a next farm bill, Congress may consider a subset of 21 programs in the 2018 farm bill that do not have a budget baseline for funding beyond FY2024. This In Focus identifies these 21 programs, which received a total of $906 million of mandatory funding during the five years (FY2019-FY2023) of the 2018 farm bill and $177 million in FY2024 for the first one-year extension. The second one-year extension for FY2025 did not provide additional funding for these programs. Programs that receive mandatory funding do not require annual discretionary appropriations. Reauthorizing farm bill programs without baseline would have a positive score (cost) and therefore would likely need to be offset by reductions elsewhere.

Animal Health

CRS In Focus IF12934, *Farm Bill Primer: Animal Disease Management and Prevention*, by Lia Biondo

Animal agriculture accounts for about half of the total value of U.S. agricultural products. The current highly pathogenic avian influenza outbreak illustrates how animal diseases can be costly to control, disrupt domestic supply and international trade of animal products, and affect human health. USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for protecting and improving animal health in the United States. Congress provides APHIS approximately $400 million annually to administer several programs to prevent and respond to animal disease. This CRS In Focus describes those APHIS programs and identifies selected issues of potential interest to Congress.

Commodity Programs and Farm Support

CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*, by Stephanie Rosch

The so-called federal "farm safety net" is a collection of programs administered by the U.S. Department of Agriculture (USDA) that provide risk protection and income support to farmers in the United States who experience natural disasters, adverse growing conditions, and/or low market prices. Farm safety net programs fall into three categories: the federal crop insurance program (FCIP), standing agricultural disaster programs, and agricultural commodity support programs. The FCIP and standing agricultural disaster programs are permanently authorized under various laws. The commodity support programs are authorized through the 2025 crop year.

CRS In Focus IF12114, *Farm Bill Primer: PLC and ARC Farm Support Programs*, by Stephanie Rosch

The Price Loss Coverage (PLC) and the Agriculture Risk Coverage (ARC) programs provide income support to producers of certain eligible commodities. The amount of support varies by commodity and from year-to-year based on program enrollments and market conditions. These programs are authorized through the 2025 crop year. The 2018 farm bill reauthorized these programs with relatively minor changes that expanded support available to producers. This CRS In Focus addresses significant features of these programs and identifies selected issues that Congress could consider as it debates a next farm bill.

CRS In Focus IF12140, *Farm Bill Primer: MAL and LDP Farm Support Programs*, by Stephanie Rosch

The Marketing Assistance Loan (MAL) program has been a significant feature of U.S. farm policy since the 1930s. The MAL program provides loans to farmers that are collateralized by eligible stored commodities and provides price support to borrowers when market prices drop below levels specified in statute. Congress has authorized the Loan Deficiency Payment (LDP) program since the 1980s. The LDP program provides payments to farmers eligible to receive price support under the MAL program. Farmers must meet eligibility requirements for these programs and cannot receive both MAL and LDP benefits for the same commodity. These programs are authorized through the 2025 crop year.

CRS In Focus IF12195, *Farm Bill Primer: Support for Cotton*, by Stephanie Rosch

The United States is the world's third-largest cotton producer and the leading cotton exporter, accounting for nearly one-third of global trade in raw cotton. Between 2000 and 2020, U.S. cotton production decreased by more than 15%, and U.S. textile mill usage decreased by more than 80%. Title I of the 2018 farm bill reauthorized commodity support for domestic producers of cotton, including support that had been previously eliminated in the Agricultural Act of 2014 (2014 farm bill; P.L. 113-79). Titles I and XII of the 2018 farm bill reauthorized support for domestic users of cotton for various periods. Certain programs are authorized through the 2025 crop year. In addition, the Secretary of Agriculture has taken measures, outside of the farm bill programs, to support cotton producers.

CRS In Focus IF12202, *Farm Bill Primer: Support for the Dairy Industry*, by Christine Whitt

The 2018 farm bill provides support to the dairy industry through a variety of programs. The Dairy Margin Coverage (DMC), enacted in the 2018 farm bill, is the primary program that provides income support to milk producers. The DMC allows milk producers to buy a guaranteed margin—calculated as the all milk price minus feed costs—for their milk production. Each year, participating dairy producers choose a margin coverage level and the share of their milk production history to cover. They receive DMC payments for months in which the margin is triggered based on USDA's calculation of the milk-feed margin. This program is authorized through December 31, 2025.

CRS In Focus IF12201, *Farm Bill Primer: Federal Crop Insurance Program*, by Stephanie Rosch

The federal crop insurance program (FCIP) helps make insurance coverage available to farmers from private sector insurers to help mitigate potential financial consequences of adverse growing and market conditions. USDA regulates the policies offered and subsidizes the premiums that farmers pay in order to encourage farmer participation in the program. Premium subsidies covered about 60% of the total premium on average for all policies sold in 2024. Since its inception in 1938, the FCIP has grown from an ancillary program with low participation to a central pillar of federal farm support, with more than 543 million acres and $192 billion in crop and livestock value insured in 2024. The FCIP is permanently authorized, but Congress has modified it in various ways in periodic farm bills.

CRS In Focus IF12101, *Farm Bill Primer: Disaster Assistance*, by Christine Whitt

A number of federal programs help agricultural producers recover from the effects of natural disasters, including federal crop insurance, the Noninsured Crop Disaster Assistance Program, livestock and fruit tree disaster programs, and emergency disaster loans. All programs are permanently authorized, and most receive "such sums as necessary" through mandatory spending authority. As such, these programs did not require reauthorization in the 2018 farm bill.

Conservation

CRS In Focus IF12024, *Farm Bill Primer: Conservation Title*, by Megan Stubbs

The conservation title of a farm bill generally contains a number of reauthorizations, amendments, and new programs that encourage farmers and ranchers to implement resource-conserving practices on private land. Starting in 1985, farm bills have addressed a broader range of topics as "conservation." Conservation programs administered by USDA can be grouped into the following categories based on similarities: working land programs, land retirement programs, easement programs, partnership programs, conservation compliance, and other overarching provisions.

Energy

CRS In Focus IF10639, *Farm Bill Primer: Energy Title*, by Kelsi Bracmort

The 2018 farm bill contains 12 titles that address agricultural and food programs and Title IX, the energy title. The 2018 farm bill was the fourth farm bill to contain an energy title. The energy title is primarily focused on support for renewable energy—particularly agriculture-related energy, energy efficiency, and bioproducts (e.g., cleaning supplies). This In Focus summarizes the 2018 farm bill energy title, including mandatory versus discretionary funding amounts, as a basis for informing discussions on a next farm bill while identifying issues that Congress could consider as part of that process.

Forestry

CRS In Focus IF12054, *Farm Bill Primer: Forestry Title*, by Anne A. Riddle

Forest management generally, as well as forest research and forestry assistance, is often considered by the agriculture committees in Congress. Although most forestry programs are permanently authorized, forestry is often addressed in the periodic farm bills to reauthorize many agriculture programs. The 2018 farm bill included a separate forestry title, and this In Focus summarizes some of the forestry provisions addressed in the 2018 farm bill and related issues that Congress may debate as it considers a next farm bill.

Horticulture, Specialty Crops, and Organic Farming

CRS In Focus IF12017, *Farm Bill Primer: Horticulture Title and Related Provisions*, by Renée Johnson

The 2018 farm bill reauthorized and expanded funding for many of the existing USDA programs supporting fruits, vegetables, and other specialty crops while providing support for many locally sourced products (not limited to crops) and hemp cultivation. Support for these sectors is not limited to the horticulture title; it is also contained within other farm bill titles, covering a range of programs administered by USDA. This In Focus provides an overview of selected 2018 farm bill provisions and issues for a next farm bill related to specialty crops, organically produced and locally sourced products, and hemp.

CRS In Focus IF12278, *Farm Bill Primer: Hemp Industry Support and Regulation*, by Renée Johnson

The 2018 farm bill legalized hemp by removing *hemp* from the definition of marijuana in the Controlled Substances Act. It also directed USDA to create a framework to regulate hemp cultivation under federal law and facilitate commercial cultivation, processing, marketing, and sale of hemp and hemp-derived products. Other 2018 farm bill provisions made hemp producers eligible for federal crop insurance and agricultural research programs. A number of hemp stakeholders are advocating for additional changes via a next farm bill, such as relaxing some USDA regulatory requirements and reducing the Drug Enforcement Administration's role in regulating hemp.

New, Beginning, Underserved, and Veteran Farmers and Ranchers

CRS In Focus IF12096, *Farm Bill Primer: Beginning and Underserved Producers*, by Jim Monke

Beginning farmers and ranchers—generally defined as having operated a farm or ranch for no more than 10 years—comprise a significant part of the U.S. agricultural sector. They contribute to rural and non-rural economies and are considered to be critical given ongoing concerns about the aging U.S. farm population, the "disappearing middle" (i.e., mid-sized farms both in terms of farm numbers and value of sales), and general trends toward increasing consolidation and fewer, larger farms. The 2018 farm bill reauthorized and expanded programs administered by USDA that support new farmers and ranchers. These programs targeted new farmers within specific farm demographic groups based on age, race, and gender, as well as socially disadvantaged (underserved) farmers and farmers who are military veterans.

CRS In Focus IF12160, *Farm Bill Primer: Support for Tribal Food and Agriculture*, by Jim Monke

In 2017, Native agricultural producers accounted for 2% of all U.S. producers. The 2018 farm bill (P.L. 115-334) expanded federal farm program support for Native agricultural producers and tribal communities. Congress further enhanced community and economic development for tribes in the Indian Community Economic Enhancement Act of 2020 (P.L. 116-261) and provided additional support for historically underserved agricultural producers, including Native producers, in the American Rescue Plan Act of 2021 (P.L. 117-2).

Nutrition Assistance

CRS In Focus IF12255, *Farm Bill Primer: SNAP and Nutrition Title Programs*, by Randy Alison Aussenberg and Kara Clifford Billings

The nutrition title of a farm bill typically reauthorizes a number of nutrition or domestic food assistance programs, including the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program). These programs were reauthorized by the 2018 farm bill and extended by P.L. 118-22. They are authorized through September 30, 2025. In a subsequent farm bill's nutrition title, policymakers might revisit 2018 debates and decisions and consider new challenges and questions, including temporary changes made during the COVID-19 pandemic.

Research, Extension, and Related Matters

CRS In Focus IF12023, *Farm Bill Primer: Agricultural Research and Extension*, by Eleni G. Bickell

The research title addresses research, extension, and education at land-grant universities and other nonfederal institutions, as well as departmental policies, programs, and research within USDA. Most of the research title programs require annual discretionary appropriations; a few programs receive mandatory spending. This In Focus provides background information and discusses selected 2018 farm bill provisions and issues for a next farm bill related to agricultural research, extension, and education, including funding.

CRS In Focus IF12275, *Farm Bill Primer: USDA Support for Aquaculture Operations*, by Eleni G. Bickell

Aquaculture facilities that grow aquatic animal and plant species in controlled or selected environments are generally eligible for the same support from USDA that is available to all U.S. farmers, ranchers, and producers. The 2018 farm bill reauthorized and expanded provisions specifically related to USDA's aquaculture research and assistance programs. Aquaculture producers are also eligible for other USDA competitive grants available to all U.S. agricultural producers. Aquaculture stakeholders have identified a number of policy recommendations in support of the industry, some of which Congress could address in a next farm bill.

Rural Development

CRS In Focus IF12038, *Farm Bill Primer: Rural Development Title*, by Lisa S. Benson

Omnibus farm bills are the major modern legislative vehicle for addressing many rural development issues. Since 1973, omnibus farm bills have included a rural development title, which has included USDA Rural Development programs focused on rural utility systems (i.e., water, waste disposal, electricity, and broadband), rural business, and rural housing. The USDA Rural Business-Cooperative Service, USDA Rural Utilities Service, and USDA Rural Housing Service administer these programs. Most USDA Rural Development programs rely on discretionary funding, which Congress authorizes in farm bills and funds through the annual appropriations process.

CRS In Focus IF12041, *Farm Bill Primer: Rural Broadband Provisions*, by Lisa S. Benson

Congress has included provisions addressing rural broadband (i.e., high-speed internet access) in the rural development title of omnibus farm bills since 2002. The 2018 farm bill amended and reauthorized many of the rural broadband programs administered by USDA. This In Focus provides background information on USDA rural broadband programs and an overview of selected rural broadband provisions in the 2018 farm bill and identifies some issues that Congress could consider as it debates a next farm bill.

Trade and Export Promotion

CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*, by Benjamin Tsui

Agricultural exports are significant to farmers and the U.S. economy. With the productivity of U.S. agriculture growing faster than domestic demand, farmers and agriculturally oriented firms rely on export markets to sustain prices and revenue. The trade title of the 2018 farm bill (P.L. 115-334) authorizes programs to expand foreign markets for U.S. farmers and food manufacturers through export market development programs and export credit guarantee programs. These programs are authorized through FY2025.

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Retaliatory Tariffs on U.S. Agriculture and USDA's Responses: Frequently Asked Questions

May 27, 2025

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Retaliatory Tariffs on U.S. Agriculture and USDA's Responses: Frequently Asked Questions

SUMMARY

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May 27, 2025

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In 2025, the Trump Administration imposed several rounds of tariffs against trading partners under the under the International Emergency Economic Powers Act (IEEPA) and Section 232 of the Trade Expansion Act of 1962, commonly referred as "Section 232." The first IEEPA tariffs targeting Canada, the People's Republic of China, and Mexico were in response to what President Trump identified as the "failures" of the three countries to address issues such as drug and human trafficking and transnational crime. Subsequently, under IEEPA, the Trump Administration imposed a 10% tariff on most trading partners, imposed additional tariffs on China, and proposed country-specific "reciprocal tariffs" addressing bilateral trade deficits. The Trump Administration also expanded steel and aluminum tariffs and imposed new tariffs on automobile and automobile parts under Section 232.

In response to these U.S. tariffs, some countries have imposed or announced potential retaliatory tariffs on U.S. goods, including U.S. agricultural products. In March 2025, Canada imposed retaliatory tariffs that included U.S. agricultural goods. In March 2025, China imposed retaliatory tariffs that included U.S. agricultural goods and, in April 2025, further increased tariffs on all U.S. goods. In May 2025, China temporarily decreased its retaliatory tariffs on U.S. goods following an agreement with the United States. In April 2025, the European Union released a list of U.S. products targeted for retaliatory tariffs effective June 2025.

During the first Trump Administration, beginning in 2018, certain trading partners imposed retaliatory tariffs on U.S. agricultural products in response to tariffs imposed by the United States. In response to the retaliatory tariffs, the U.S. Department of Agriculture (USDA) used administrative authorities to provide approximately $25.7 billion in direct income support payments to farmers, for purchases for agricultural commodities, and in additional support for trade promotion activities.

This report discusses frequently asked questions about retaliatory tariffs on U.S. agriculture and USDA's response to the retaliatory tariffs since 2018. It addresses the agricultural context of recent tariff actions by the United States and subsequent retaliatory tariffs by trading partners, what retaliatory tariffs were imposed on U.S. agriculture in 2018 and 2019 and their effects on trade flows for select agricultural commodities, rationales why foreign trading partners target U.S. agricultural products for retaliation, and the agricultural provisions of the U.S.-China Phase One Agreement. The report also discusses the 2018 and 2019 USDA responses to retaliatory tariffs and the views of these responses.

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Introduction

In March 2025, Canada and the People's Republic of China (hereinafter China) imposed retaliatory tariffs on a range of U.S. exports, including agricultural products, in response to U.S. tariffs imposed in February and March 2025 under the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. §§1701 et seq.).[1] The U.S. tariffs were a response to what President Trump identified as "failures" on the part of Canada, China, and Mexico to address issues such as drug and human trafficking and transnational crimes.[2] Many Members of Congress have an interest in the impact that foreign retaliatory tariffs have on the U.S. agricultural and food sectors, which rely on export markets for additional revenue and economic activity. In addition to the February and March 2025 IEEPA tariffs, the United States has taken other tariff actions that faced retaliatory or threats of retaliatory tariffs on U.S. agricultural exports.

In 2018 and 2019, during the first Trump Administration, China, the European Union (EU), Canada, Mexico, Turkey, and India responded to U.S. tariff actions with retaliatory tariffs on U.S. imports that included agricultural products. In response, the U.S. Department of Agriculture (USDA) used administrative authorities to distribute about $25.7 billion through three programs that, respectively, provided direct income support payments to farmers, purchased agricultural commodities, and supported trade promotion activities. In April 2025, Secretary of Agriculture Brooke Rollins indicated that it would take months to determine whether payments for producers are needed in response to retaliatory tariffs but that USDA is "setting up the infrastructure" to address trade damages.[3]

This report addresses some frequently asked questions (FAQs) grouped into four categories: background, trade actions in 2025, trade actions in 2018-2023, and USDA's response to retaliatory tariffs.

Background

What Are Tariffs?

Tariffs are taxes or duties levied on imported goods. Foreign retaliatory tariffs on U.S. exports make U.S. goods less competitive in foreign markets compared to goods not subject to tariffs, such as substitutable goods produced in the foreign country and goods from other suppliers. Tariffs on agricultural products are commonly applied either at an ad valorem basis (i.e., a

[1] For purposes of this report, *agricultural product* refers to the U.S. Department of Agriculture's (USDA's) definition, which follows the World Trade Organization's (WTO's) definition. The WTO's definition includes most food products but excludes those such as seafood and forestry products. For more information about U.S. tariff authorities and policies in general and the International Emergency Economic Powers Act (IEEPA), see CRS Report R48435, *Congressional and Presidential Authority to Impose Import Tariffs*; CRS In Focus IF11030, *U.S. Tariff Policy: Overview*; CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*; and CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues*.

[2] Executive Order 14193 of February 1, 2025, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border," 90 *Federal Register* 9113, February 7, 2025; Executive Order 14194 of February 1, 2025, "Imposing Duties to Address the Situation at Our Southern Border," 90 *Federal Register* 9117, February 7, 2025; and Executive Order 14195 of February 1, 2025, "Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," 90 *Federal Register* 9121, February 7, 2025.

[3] Secretary Rollins is quoted in Marcia Brown, "'We Just Haven't Seen Anything Like This': Farmers Brace for Trump's Trade War," *Politico*, April 4, 2025; see also Andy Castillo, "USDA Says Farm Impact of New Tariffs Unknown Until Fall," *Farm Progress*, April 4, 2025.

percentage of the value of the imported goods) or at a specific basis (i.e., assessed at a fixed amount of money per unit of an imported good).

What Agricultural Products Does the United States Export and Import?

The United States is one of the top exporters of agricultural products in the world, with exports totaling $176.0 billion in 2024. Exports account for about 20% of total U.S. agricultural and food production by value.[4] The USDA Foreign Agricultural Service groups agricultural products into three broad categories:

- Bulk: raw and unprocessed commodities sold in large quantities that are mostly used as inputs (e.g., corn, wheat, cotton, soybeans)
- Intermediate: processed commodities used as inputs in the manufacturing of other products (e.g., soybean meal, ethanol, vegetable oils, essential oils, hides and skins)
- Consumer oriented: a larger collection of agricultural and food products for consumers and retailers (e.g., fruits, vegetables, meat, poultry, dairy, alcoholic beverages)

Bulk commodities are the leading U.S. farm exports. In 2024, over 60% of U.S. agricultural exports by value were to Mexico, Canada, China, the EU, and Japan.

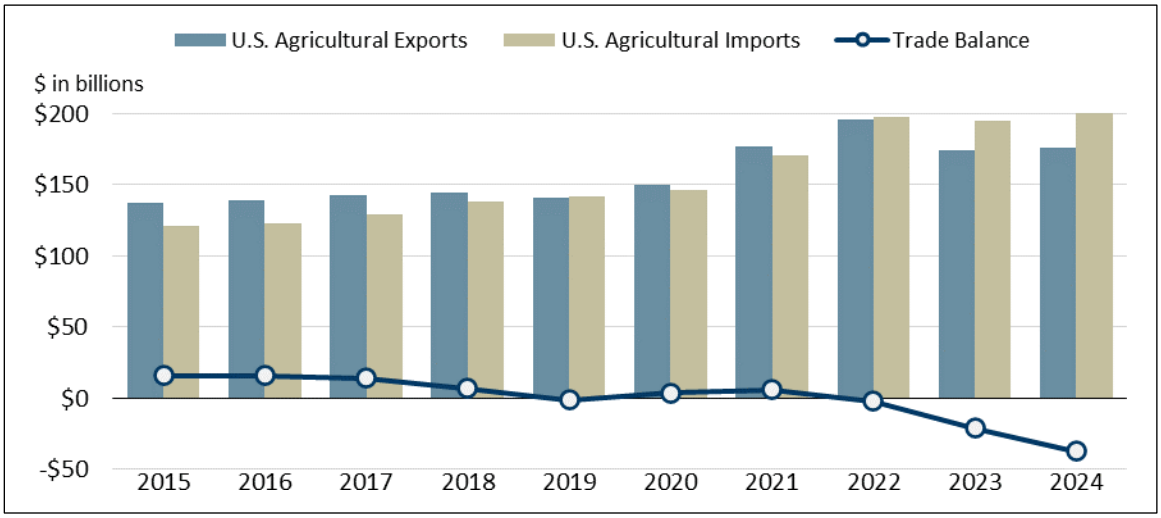
The share of U.S. production that is exported varies by year and type of agricultural product. On average, for the past decade on a quantity basis, for bulk commodities, the United States exported 15% of corn, 46% of rice, 47% of soybeans and wheat, 55% of sorghum, and 84% of cotton produced. For meat products, about 11% of beef and veal, 16% of chicken meat, and 23% of swine meat produced were exported.[5] For tree nuts, the United States exported on average nearly 70% of almonds and walnuts and 64% of pistachios produced. For fresh fruits, the United States exported on average 5% of tangerines/mandarins, 17% of apples, 19% of cherries, and 33% of table grapes produced.

In 2024, the United States imported $213.0 billion in agricultural products, which provided U.S. consumers more choice, variety, and product availability year-round as well as increased competition for certain U.S. producers. Leading imports included fruits, vegetables, vegetable oils, alcoholic beverages (e.g., distilled spirits, wine, beer), beef, and coffee. The top sources of U.S. agricultural imports were Mexico, Canada, and the EU, which accounted for 60% of total agricultural imports. Comparing the value of U.S. agricultural trade exports with imports reveals that the U.S. agricultural trade surplus peaked at $40.1 billion in 2011 and has since fallen, becoming trade deficits in 2019, 2022, 2023, and 2024. In 2024, the agricultural trade deficit was $37.0 billion. See **Figure 1** for U.S. agricultural trade trends in the past decade. See **Table 1** and **Table 2** for trade statistics for the top five U.S. agricultural export markets and top five U.S. agricultural import suppliers for the past decade.

[4] USDA, Economic Research Service (ERS), "U.S. Agricultural Trade – U.S. Agricultural Trade at a Glance," January 7, 2025, https://www.ers.usda.gov/topics/international-markets-us-trade/us-agricultural-trade/us-agricultural-trade-at-a-glance.

[5] Calculated by CRS from USDA production, supply, and distribution quantity data at USDA, Foreign Agricultural Service (FAS), "PSD Online," https://apps.fas.usda.gov/psdonline/app/index.html#/app/home.

Figure 1. Value of U.S. Agricultural Exports and Imports, 2015-2024



Source: Figure created by CRS using U.S. Census Bureau international trade data via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), "Global Agricultural Trade System Online: GATS Home," https://apps.fas.usda.gov/gats/default.aspx. See Bulk, Intermediate, and Consumer-Oriented Harmonized System-10 (BICO-10) groupings.

Notes: Data are not adjusted for inflation. Trade balance is calculated as imports subtracted from exports.

Table 1. U.S. Agricultural Exports to Top Five Markets, 2015 to 2024

In Billions of Dollars (nominal)

Trading Partner	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Mexico	17.9	18.0	18.8	19.3	19.4	18.3	25.5	28.5	28.4	30.3
Canada	22.2	21.4	21.7	22.0	21.9	22.3	25.3	28.7	28.4	28.4
China	20.4	21.7	19.6	9.2	13.9	26.4	32.8	38.1	28.8	24.7
EU-27	11.0	10.2	10.5	12.5	10.8	10.4	11.0	12.3	12.6	12.8
Japan	11.6	11.4	12.1	13.1	12.0	11.7	14.2	14.7	11.9	12.0
Rest of world	54.2	56.2	60.1	68.5	63.1	60.5	67.9	73.4	64.1	67.8
World total	**137.2**	**138.9**	**142.9**	**144.7**	**141.1**	**149.7**	**176.6**	**195.7**	**174.2**	**176.0**

Source: CRS from USDA, Global Agricultural Trade System (GATS) data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-27 = the European Union customs union and its 27 member countries.

Table 2. U.S. Agricultural Imports from Top Five Suppliers, 2015 to 2024

In Billions of Dollars (nominal)

Trading Partner	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Mexico	22.2	24.1	25.9	27.5	30.2	32.9	38.0	43.3	45.4	48.6
Canada	22.4	22.2	22.9	23.7	24.4	25.3	31.2	37.5	40.1	41.0
EU-27	22.8	23.6	25.1	27.1	28.4	27.4	32.0	35.8	32.9	36.4
Brazil	4.0	3.8	3.9	3.9	4.1	4.0	4.7	6.2	6.2	7.9
China	4.3	4.3	4.5	4.9	3.7	3.8	4.1	4.7	4.7	5.8
Rest of world	45.4	44.6	46.9	50.8	50.8	52.7	60.6	70.6	65.6	73.2
World total	**121.1**	**122.6**	**129.2**	**138.0**	**141.6**	**146.3**	**170.6**	**198.2**	**194.8**	**213.0**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-27 = the European Union customs union and its 27 member countries.

All states export agricultural products, but a fraction of states account for the majority of farm export sales. For calendar year 2023, USDA estimated that over half of total U.S. agricultural exports based on value came from the eight leading agricultural exporting states, which were California, Iowa, Illinois, Minnesota, Nebraska, Texas, Indiana, and Missouri.[6]

Why Would Trading Partners Target U.S. Agricultural Products with Retaliatory Tariffs?

Foreign governments may target U.S. agricultural products for any of several reasons. The United States is one of the largest exporters of agricultural products, and these products represent a large target for retaliation for many trading partners. The value of agricultural products exported to U.S. trading partners that imposed retaliatory tariffs on U.S. agricultural products during the first Trump Administration was more than $76 billion in 2017.

Another reason U.S. trading partners may target U.S. agriculture is because agricultural commodities may be sourced globally from multiple suppliers. Trading partners could source agricultural imports from suppliers other than the United States. Australia, Brazil, Canada, and the EU are examples of major agricultural exporters that compete with the United States for foreign markets.

Retaliating trade partners may consider U.S. domestic politics when determining tariff targets, choosing products from specific regions or states to maximize political pressure. For example, some observers assert that bourbon whiskey was targeted in the 2018 retaliatory tariffs because it was produced in the then-Senate Majority Leader's home state of Kentucky.[7]

[6] USDA, ERS, "State Agricultural Trade Data," January 9, 2025, https://www.ers.usda.gov/data-products/state-agricultural-trade-data.

[7] Thiemo Fetzer and Carlo Schwarz, "Tariffs and Politics: Evidence from Trump's Trade Wars," *The Economic Journal*, vol. 131, no. 636 (May 2021), pp. 1717-1741; and Rob Gillie, "Canada Announces Billions in Retaliatory Tariffs Against US," Associated Press, June 30, 2018.

2025 Trade Actions

What U.S. Trade Actions Precipitated Retaliatory Tariffs in 2025?

Beginning in 2025, the United States has imposed tariffs under IEEPA and Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862), commonly referred as "Section 232."[8] These trade actions provoked foreign retaliatory tariffs that targeted U.S. agriculture as well as other sectors of the U.S. economy. The United States has also proposed additional trade actions under these and other statutory authorities that, if implemented, may lead to further retaliatory actions from U.S. trading partners.

International Emergency Economic Powers Act (IEEPA) Tariffs

Addressing Drug Trafficking and Illegal Immigration

On February 1, 2025, President Trump signed three executive orders imposing tariffs of 25% on imports from Canada (with a lower 10% tariff on energy resources) and Mexico, and a 10% tariff on imports from China, all beginning February 4, 2025.[9] These executive orders cited IEEPA as the underlying authority to impose tariffs. The executive orders cited the "failure" of the three governments in addressing issues such as drug trafficking and other criminal activities. On February 3, President Trump issued executive orders delaying the duties until March 4, citing steps taken by Canada and Mexico to address U.S. concerns on illegal migration and illicit drugs.[10] On March 3, President Trump increased the tariff on imports from China from 10% to 20% effective March 4, stating that China had not adequately addressed the illicit drug crisis.[11]

On March 6, President Trump issued executive orders further amending the original February 1 executive orders for Canada and Mexico by not imposing the additional 25% duties on goods that claim and qualify for preferential treatment under the U.S.-Mexico-Canada Agreement (USMCA) and lowering tariffs for potash imports to 10%.[12] Potash, the main source of potassium in

[8] For more background, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*; CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*; CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues*; CRS Infographic IG10012, *The International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act: Key Facts*; and CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*. For more information about U.S.-China tariff actions, see CRS In Focus IF12990, *U.S.-China Tariff Actions Since 2018: An Overview*.

[9] Executive Order 14193 of February 1, 2025, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border," 90 *Federal Register* 9113, February 7, 2025; Executive Order 14194 of February 1, 2025, "Imposing Duties to Address the Situation at Our Southern Border," 90 *Federal Register* 9117, February 7, 2025; and Executive Order 14195 of February 1, 2025, "Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China," 90 *Federal Register* 9121, February 7, 2025. For more information about U.S.-Canada relations and the IEEPA tariffs, see CRS Insight IN12533, *U.S.-Canada Relations amid Tariffs Under the International Emergency Economic Powers Act*.

[10] Executive Order 14197 of February 3, 2025, "Progress on the Situation at Our Northern Border," 90 *Federal Register* 9183, February 10, 2025; and Executive Order 14198 of February 3, 2025, "Progress on the Situation at Our Southern Border," 90 *Federal Register* 9185, February 10, 2025.

[11] Executive Order 14228 of March 3, 2025, "Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China," 90 *Federal Register* 11463, March 7, 2025.

[12] Executive Order 14231 of March 6, 2025, "Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border," 90 *Federal Register* 11785, March 11, 2025; and Executive Order 14232 of March 6, 2025, "Amendment to Duties to Address the Flow of Illicit Drugs Across Our Southern Border," 90 *Federal Register* 11787, March 11, 2025.

fertilizer, is a key input for U.S. farmers. The United States imports about 97% of its potash fertilizer used each year, with Canada accounting for about 85% of imports by quantity.[13] U.S. tariff rates on fertilizer are generally duty-free, including under the United States' USMCA tariff schedule.[14]

China (in February) and Canada (in March) initiated World Trade Organization (WTO) dispute consultations with the United States in response to the IEEPA tariff actions.[15] In the March 24-25, 2025, WTO Committee on Agriculture meeting, Canada questioned whether the United States had considered the negative effects of the tariffs on factors such as food security, economic growth, agricultural sector supply chains, and inflation for food prices.[16] For more information about the WTO and the Agreement on Agriculture, see the text box below.

What Is the World Trade Organization and Agreement on Agriculture?

The World Trade Organization (WTO) is an international organization that administers the rules and agreements negotiated among its members to eliminate trade barriers and govern trade. The WTO provides for a "common institutional framework" to address multilateral trade relations among WTO members and to facilitate trade agreement negotiations, resolve trade disputes, administer trade rules, monitor trade policies, and provide technical assistance. The United States was a leading force behind the WTO's establishment in 1995.

As part of the results of the multilateral negotiations that established the WTO, several agreements covering trade in goods were agreed to among negotiating members. The WTO Agreement on Agriculture's main objective is to "reform agricultural trade so that it is closer to competitive market conditions." Under the Agreement on Agriculture, national agricultural policies—including domestic farm support, agricultural export subsidies, and restrictive import controls—were placed under a multilaterally agreed-upon set of disciplines. WTO members agreed to reform their domestic agricultural support policies, increase access to imports, and reduce export subsidies. The agreement also established a Committee on Agriculture. The Committee on Agriculture oversees and monitors the implementation of the agreement and provides a forum for members to consult with each other on agricultural trade issues as well as raise and address questions related to the agreement.

Source: WTO, *The WTO Agreements Series: Agriculture*, 3rd ed. (WTO, 2016).

Note: For more background on the WTO, see CRS In Focus IF10002, *World Trade Organization*.

"Reciprocal Tariffs" Addressing Trade Deficits

On April 2, 2025, President Trump signed an executive order imposing additional tariffs of 10% on most imports from most U.S. trading partners effective April 5, 2025, and additional country-specific tariffs on 57 trading partners effective April 9, 2025.[17] The April 2 executive order also

[13] Potassium fertilizer usage data from USDA, FAS, "Global Fertilizer Dashboard," September 10, 2024, https://www.fas.usda.gov/data/visualization-global-fertilizer-trade-dashboard. Potassium fertilizer import data from USDA, FAS, Global Agricultural Trade System Online, "Foreign Agricultural Trade of the United States" product grouping.

[14] United States International Trade Commission, "Chapter 31: Fertilizers," in *Harmonized Tariff Schedule (2025)*, March 14, 2025, https://hts.usitc.gov/; and Office of the U.S. Trade Representative (USTR), "Tariff Schedule of the United States," agreement between the United States of America, the United Mexican States, and Canada, July 1, 2020.

[15] WTO, "DS633: United States—Additional Tariff Measures on Goods from China," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds633_e.htm; and WTO, "DS634:United States—Additional Import Duties on Goods from Canada," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds634_e.htm.

[16] WTO, "View Question & Answer," in *Agriculture Information Management System*, accessed March 17, 2025, https://agims-qna.wto.org/public/Pages/en/ViewQnA_Validated.aspx?officialID=111129&caller=https://agims-qna.wto.org/public/Pages/en/SearchResult.aspx.

[17] Executive Order 14257 of April 2, 2025, "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits," 90 *Federal Register* 15041, April 7, 2025. A list of the country-specific tariffs (inclusive of the 10% imposed on most other trading partners) can be found at https://www.whitehouse.gov/wp-content/uploads/2025/04/Annex-I.pdf.

cited IEEPA as the underlying authority to impose tariffs. The executive order declared a national emergency due to

> underlying conditions, including a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and [nontariff] barriers, and U.S. trading partners' economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits.[18]

The April 2 executive order's additional tariffs do not apply to Canada or Mexico. If the February 1 executive orders that imposed the drug-trafficking and illegal-immigration-related IEEPA tariffs on both countries are terminated, then both countries' imports would face a 12% tariff as a result of the April 2 executive order. The April 2 executive order excludes some key agricultural inputs such as potash, peat, veterinary vaccines, and certain pesticides.[19] Tariffs on China are cumulative to previous tariffs imposed. On April 8, 2025, President Trump signed an executive order increasing the "reciprocal tariff" on China from the original 34% to 84% effective April 10 in response to China's April 4 announcement of 34% retaliatory tariffs that went into effect April 10.[20] On April 9, President Trump signed another executive order raising the "reciprocal tariffs" on China to 125% effective April 10 in response to the April 9 announcement by China that it was increasing its retaliatory tariffs from 34% to 84% effective April 10.[21] See "China's Retaliatory Tariffs" for further background.

The April 9 executive order also suspended the country-specific tariffs effective April 10 until July 9, 2025, a total of 90 days. The additional 10% tariff for most trading partners is still in effect.

The Trump Administration applied a novel methodology to calculate the tariffs imposed in accordance with the April 2 executive order. Although the April 2 executive order cites nontariff barriers, including technical barriers to trade (TBT) and "sanitary and phytosanitary [SPS] measures that unnecessarily restrict trade without furthering safety objectives," as factors contributing to the persistent U.S. trade deficit, the methodology of calculating the country-specific "reciprocal tariffs" is not based on estimates of tariff and nontariff barriers implemented by countries on U.S.-specific or broader categories of products.[22] Instead, the "reciprocal tariff" calculations are based on the 2024 bilateral trade deficit with a country divided by the 2024 value of that country's imports into the United States, divided by two, making the assumption that the resulting tariff rate would "offset" any tariff and nontariff policies applied by the foreign country.[23] Many economists have questioned both the use of this methodology to calculate

[18] Executive Order 14257 of April 2, 2025, "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits."

[19] Oliver Ward, "Some Key Ag Inputs Exempt from Sweeping New Duties," April 4, 2025; and Ryan Hanrahan, "Key Ag Inputs Exempt from New Reciprocal Tariffs," *Farm Policy News*, April 7, 2025. A full list of products exempt from the April 2 tariffs can be found at https://www.whitehouse.gov/wp-content/uploads/2025/04/Annex-II.pdf.

[20] Executive Order 14259 of April 8, 2025, "Amendment to Reciprocal Tariffs and Updated Duties as Applied to Low-Value Imports from the People's Republic of China," 90 *Federal Register* 15509, April 14, 2025.

[21] Executive Order 14266 of April 9, 2025, "Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment," 90 *Federal Register* 15625, April 15, 2025.

[22] USTR, "Reciprocal Tariff Calculations," accessed May 27, 2025, https://ustr.gov/sites/default/files/files/Issue_Areas/Presidential%20Tariff%20Action/Reciprocal%20Tariff%20Calculations.pdf. *Technical barriers to trade (TBT) measures* are related to mandatory compliance with regulatory requirements, voluntary standards, and conformity assessment procedures required by regulations or standards. *Sanitary and phytosanitary (SPS) measures* are laws, regulations, standards, and procedures that governments enforce to protect human, animal, or plant life or health.

[23] USTR, "Reciprocal Tariff Calculations," accessed April 4, 2025, https://ustr.gov/issue-areas/reciprocal-tariff-calculations.

country-specific tariffs and the Administration's claim that the tariff rates capture barriers to U.S. exports.[24] In the past, USDA's Economic Research Service (ERS) and other researchers have estimated the tariff equivalent of TBT and SPS measures for specific agricultural products or product groups, such as in a 2015 study on nontariff measures between the United States and EU.[25]

On May 12, 2025, the United States and China issued a joint statement that reduced U.S. "reciprocal tariffs" to 10% and China's retaliatory tariffs to the "reciprocal tariffs" to 10% effective May 14 for 90 days.[26]

Section 232 Steel, Aluminum, and Automotive Tariffs

On February 10, 2025, President Trump issued proclamations effective March 12, 2025, that modified tariffs on steel and aluminum, authorized under Section 232 of the Trade Expansion Act of 1962.[27] These tariffs were originally imposed during the first Trump Administration. The changes included eliminating country exemptions from tariffs negotiated during the Biden and first Trump Administrations. Effective April 4, 2025, certain beer products as aluminum derivative products were added to the list of imports subject to a Section 232 tariff of 25%.[28]

[24] Glenn Kessler, "Trump White House Cited Economists for Its Tariff Formula. They Pan It," *Washington Post*, April 4, 2025; Robert Farley and D'Angelo Gore, "Fact Check: Trump's Misleading Tariff Chart," *Roll Call*, April 4, 2025; Peter Foster and Sam Fleming, "Donald Trump Baffles Economists with Tariff Formula," *Financial Times*, April 3, 2025; Kevin Corinth and Stan Veuger, "President Trump's Tariff Formula Makes No Economic Sense. It's Also Based on an Error," American Enterprise Institute, April 4, 2025; Brent Neiman, "The Trump White House Cited My Research to Justify Tariffs. It Got It All Wrong," *New York Times*, April 7, 2025; Anjali V. Bhatt, "PIIE Experts React to Trump's Tariffs Announced April 2," Peterson Institute for International Economics, April 3, 2025; and Alan Cole, "Trump's Reciprocal Tariff Calculations Are Nonsense, Will Punish Mutually Beneficial Trade," Tax Foundation, April 3, 2025.

[25] Shawn Arita et al., *Estimating the Effects of Selected Sanitary and Phytosanitary Measures and Technical Barriers to Trade on U.S.-EU Agricultural Trade*, USDA, ERS, November 10, 2015. Other examples of studies estimating tariff equivalents on on-tariff measures include Olivier Cadot et al., *Estimating Ad Valorem Equivalents of Non-Tariff Measures: Combining Price-Based and Quantity-Based Approaches*, Organisation for Economic Co-operation and Development (OECD), OECD Trade Policy Papers No. 215, May 16, 2018; Xin Ning and Jason H. Grant, "New Estimates on the Ad-Valorem Equivalents of SPS Measures: Evidence from Specific Trade Concerns," selected paper prepared for presentation at the International Agricultural Trade Research Consortium's 2019 Annual Meeting, Washington, DC, December 2019; and Rui Mao et al., "Economic and Environmental Impacts of Agricultural Non-Tariff Measures: Evidence Based on *Ad Valorem* Equivalent Estimates," *International Food and Agribusiness Management Review*, vol. 26, no. 3 (2023), pp. 379-396.

[26] White House, "Joint Statement on U.S.-China Economic and Trade Meeting in Geneva," May 12, 2025, https://www.whitehouse.gov/briefings-statements/2025/05/joint-statement-on-u-s-china-economic-and-trade-meeting-in-geneva/.

[27] Proclamation 10896 of February 10, 2025, "Adjusting Imports of Steel into the United States," 90 *Federal Register* 9817, February 18, 2025; and Proclamation 10895 of February 10, 2025, "Adjusting Imports of Aluminum into the United States," 90 *Federal Register* 9807, February 18, 2025. For more information on Section 232 steel and aluminum tariffs, see CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*.

[28] Department of Commerce, Bureau of Industry and Security, "Implementation of Duties on Aluminum Derivatives Beer and Empty Aluminum Cans Pursuant to Proclamation 10895 Adjusting Imports of Aluminum into the United States," 90 *Federal Register* 14786, April 2025; and U.S. Customs and Border Protection (CBP), *Cargo Systems Messaging Service # 64639013—Guidance: Section 232 Additional Aluminum Derivative Products*, April 3, 2025, https://content.govdelivery.com/bulletins/gd/usdhscbp-3da5025?wgt_ref=usdhscbp_widget_2. CBP indicated that beer classified under the Harmonized Tariff Schedule of the United States not in glass containers would be subject to the 25% tariff under Section 232.

Separately, on March 26, 2025, President Trump announced Section 232 tariffs on U.S. imports of automobiles effective April 3 and certain automobile parts effective May 3.[29]

Some U.S. trading partners, such as Canada and the EU, announced retaliatory tariffs in response to Section 232 steel, aluminum, and automotive tariffs. To date, only the EU retaliatory tariffs have stated plans to target U.S. agricultural exports.[30]

What Retaliatory Tariffs Have Been Imposed on U.S. Agriculture in 2025?

In 2025, Canada, China, and the EU announced and/or imposed retaliatory tariffs that targeted U.S. agriculture.[31]

Canada's Retaliatory Tariffs

On March 4, 2025, Canada implemented retaliatory tariffs of 25% on select U.S. imports in response to the IEEPA tariffs on Canadian imports that went into effect the same day.[32] According to analysis of 2024 Canadian import statistics, these tariffs targeted approximately $5.9 billion in U.S. agricultural goods.[33] By value, about 90% of the U.S. products facing retaliatory tariffs were consumer-oriented goods, including coffee, tea, orange juice, alcoholic beverages (i.e., beer, wine, distilled spirits), pasta, fruits (e.g., oranges, peaches), vegetables (e.g., tomatoes, preserved cucumbers), pecans, poultry, sausages, condiments (e.g., ketchup, mayonnaise, soy sauce), confections, dairy products (e.g., whey, cheese, milk), and tobacco products.

Canada announced its intention to implement a second round of tariffs on a proposed list of additional U.S. goods to be subject to a 25% tariff.[34] Products proposed for additional retaliation include meat (e.g., beef, pork, poultry), additional dairy products (e.g., butter, cheese), baked goods (e.g., toasted bread, waffles), nonbeverage ethanol, additional fruits (e.g., apples, cherries, strawberries), additional vegetables (e.g., onions, asparagus, lettuce), and tree nuts (e.g., almonds, walnuts).

Mexico's Retaliatory Tariffs

President of Mexico Claudia Sheinbaum reportedly planned to announce tariff and nontariff measures in response to the IEEPA tariffs on March 9 but instead held a "festival" to celebrate the

[29] Proclamation 10908 of March 26, 2025, "Adjusting Imports of Automobiles and Automobile Parts into the United States," 90 *Federal Register* 14705, April 3, 2025. For more background, see CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*.

[30] In May 2025, the United Kingdom and India notified the WTO of a proposed increase in tariffs on U.S. imports in response to the U.S. Section 232 steel and aluminum tariffs. Similarly, Japan notified the WTO of a proposed increase in tariffs on U.S. imports in response to the U.S. Section 232 tariffs on steel, aluminum, automobiles, and automobile parts. Neither country has released a list of products targeted for retaliation nor imposed retaliatory tariffs.

[31] For more background, see CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*.

[32] Government of Canada, "List of Products from the United States Subject to 25 Per Cent Tariffs Effective March 4, 2025," March 4, 2025, https://www.canada.ca/en/department-finance/news/2025/03/list-of-products-from-the-united-states-subject-to-25-per-cent-tariffs-effective-march-4-2025.html. Canada originally planned to implement retaliatory tariffs on February 4, 2025, but delayed for another month after the United States delayed its 25% tariffs on Canada.

[33] CRS calculations from Trade Data Monitor and Statistics Canada.

[34] Government of Canada, "Notice of Intent to Impose Countermeasures in Response to United States Tariffs on Canadian Goods," March 7, 2025, https://www.canada.ca/en/department-finance/programs/consultations/2025/notice-intent-impose-countermeasures-response-united-states-tariffs-on-canadian-goods.html.

suspension of U.S. tariffs.[35] On March 7, President Sheinbaum stated that Mexico "would like to avoid imposing reciprocal tariffs" on U.S. goods and continue its dialogue with the United States but also would not rule out retaliatory tariffs.[36]

China's Retaliatory Tariffs

On February 10, China imposed retaliatory tariffs on certain U.S. goods in response to the 10% IEEPA tariffs on imports from China. These included a 10% tariff on U.S. agricultural machinery.[37] On March 10, China imposed additional tariffs of 10% or 15% in response to the United States' March 3 announcement of a 10% increase of tariffs on imported goods from China.[38] These tariffs included mostly agricultural products. According to 2024 import statistics of China, these tariffs targeted about $21.2 billion worth of U.S. agricultural imports.[39] By value, about 80% of the products facing retaliatory tariffs are bulk commodities, such as soybeans, cotton, sorghum, wheat, corn, and pulses. Consumer-oriented products targeted for retaliatory tariffs include beef, pork, poultry, dairy products (e.g., milk albumin, ice cream, cheese), fruit (e.g., cherries, oranges, apples), and tree nuts (e.g., pistachios, almonds, walnuts). Most of these products had faced retaliatory tariffs imposed by China during the first Trump Administration.

On April 4, 2025, in response to the United States' 34% IEEPA "reciprocal tariff" on imports from China, China announced an additional 34% tariff on all U.S. goods effective April 10.[40] On April 9, following the U.S. announcement that the "reciprocal tariff" on imports from China was increasing from 34% to 84%, China announced that it was increasing its original additional 34% tariff on U.S. goods to 84% effective April 10.[41] On April 11, China further increased tariffs on U.S. goods from 84% to 125% effective April 12 in response to the United States' April 10 increase of "reciprocal tariffs" on imports from China from 84% to 125%.[42] On May 12, 2025,

[35] Fabiola Sánchez, "Tens of Thousands of Mexicans Rally with President to Celebrate US Decision to Delay Tariffs," Associated Press, March 9, 2025.

[36] Government of Mexico, "Versión estenográfica. Conferencia de prensa de la presidenta Claudia Sheinbaum Pardo del 7 de abril de 2025 [Stenographic Version. Press Conference of President Claudia Sheinbaum Pardo]," April 7, 2025, https://www.gob.mx/presidencia/articulos/version-estenografica-conferencia-de-prensa-de-la-presidenta-claudia-sheinbaum-pardo-del-7-de-abril-de-2025?idiom=es; and Raul Cortes and Kylie Madry, "Mexico Seeks to Avoid Retaliatory Tariffs Against US, but Not Ruling Them Out," Reuters, April 7, 2025.

[37] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于对原产于美国的部分进口商品加征关税的公告 [Announcement of the Customs Tariff Commission of the State Council on Imposing Additional Tariffs on Certain Imported Goods from the United States]," February 4, 2025, https://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202502/t20250204_3955222.htm. For more information about U.S.-China tariff actions, see CRS In Focus IF12990, *U.S.-China Tariff Actions Since 2018: An Overview*.

[38] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于对原产于美国的部分进口商品加征关税的公告 [Announcement of the Customs Tariff Commission of the State Council on Imposing Additional Tariffs on Certain Imported Goods from the United States]," March 4, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202503/t20250304_3959228.htm.

[39] CRS calculations from Trade Data Monitor and China Customs Statistics.

[40] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于对原产于美国的进口商品加征关税的公告 [Announcement of the Customs Tariff Commission of the State Council on Imposing Additional Tariffs on Imported Goods from the United States]," April 4, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250404_3961451.htm.

[41] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于调整对原产于美国的进口商品加征关税措施的公告 [Announcement of the Customs Tariff Commission of the State Council on Adjusting Tariff Measures on Imported Goods from the United States]," April 9, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250409_3961684.htm.

[42] Ministry of Finance of the People's Republic of China, "国务院关税税则委员会关于调整对原产于美国的进口商

(continued...)

China and the United States issued a joint statement that reduced China's retaliatory tariffs to the U.S. "reciprocal tariffs" to 10%, while the United States reduced its "reciprocal tariffs" to 10% effective May 14, 2025, for 90 days.[43] See ""Reciprocal Tariffs" Addressing Trade Deficits" for further background.

European Union Retaliatory Tariffs

On March 12, 2025, the EU announced that it would allow the suspension of its 2018 and 2020 tariff countermeasures against the United States to lapse on April 1, in response to U.S. steel and aluminum tariffs.[44] These tariffs targeted about $1.3 billion worth of U.S. agricultural imports, according to 2024 EU import data.[45] Whiskey products, which were targeted with a 50% tariff, accounted for nearly half of the value of targeted imports. Other products targeted included corn, rice, tobacco products, peanut butter, cranberries, kidney beans, and peanut butter, all of which were subject to a 25% tariff, and essential oils, subject to a 10% tariff.

Additionally, the EU announced that it would gather information from stakeholders to determine which additional U.S. imports to target with tariffs.[46] Proposed additional targets include agricultural products such as poultry, beef, tree nuts, alcoholic beverages (e.g., beer, wine), dairy products, fruits, and vegetables.[47]

On March 20, the European Commissioner for Trade and Economic Security announced that the EU would postpone the first set of tariffs set to be imposed on April 1 to mid-April.[48] The commissioner explained that the EU is considering aligning the timing of the two sets of countermeasures to consult with EU member states on both lists simultaneously in light of proposed additional U.S. tariffs for April 2.

On April 7, 2025, President of the European Commission Ursula von der Leyen stated that the EU is ready to negotiate with the United States and offered "zero-for-zero tariffs for industrial goods."[49] In past trade negotiations, agriculture has been a contentious issue between the two trading partners because of key differences in agricultural regulatory issues (e.g., EU

品加征关税措施的公告 [Announcement of the Customs Tariff Commission of the State Council on Adjusting Additional Tariff Measures on Imported Goods from the United States]," April 11, 2025, https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250411_3961823.htm.

[43] Ministry of Commerce of the People's Republic of China, "中美日内瓦经贸会谈联合声明 [Joint Statement on China-U.S. Economic and Trade Meeting in Geneva]," May 12, 2025, https://www.mofcom.gov.cn/xwfb/ldrhd/art/2025/art_8055948aadb5450598bf73d1aae6828e.html.

[44] European Commission (EC), "Commission Responds to Unjustified US Steel and Aluminium Tariffs with Countermeasures," March 12, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_740.

[45] CRS calculations from Trade Data Monitor and Eurostat.

[46] EC, "Information Gathering Notice Under Regulation (EU) No 654/2014 on the New US Tariffs on Steel and Aluminium Products, and Possible EU Rebalancing Measures in Response," March 12, 2025, https://policy.trade.ec.europa.eu/consultations/information-gathering-notice-under-regulation-eu-no-6542014-new-us-tariffs-steel-and-aluminium_en.

[47] EC, "EU Countermeasures on US Steel and Aluminium Tariffs Explained," March 11, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_25_750/QANDA_25_750_EN.pdf.

[48] EC, "Remarks by Commissioner Šefčovič at the Joint Hearing of the Committee on International Trade on Trade Relations with the United States and a Structured Dialogue," March 20, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_25_840/SPEECH_25_840_EN.pdf.

[49] EC, "Press Statement by President von der Leyen with Norwegian Prime Minister Støre," April 7, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_25_996/STATEMENT_25_996_EN.pdf.

biotechnology approval process, use of growth promotants in U.S. meat production, and geographical indications).[50]

On April 10, following the 90-day postponement of the United States' country-specific "reciprocal tariffs," President von der Leyen announced a hold for 90 days on retaliatory tariffs that were set to go into effect April 15.[51] On April 14, the EU released a list of U.S. products to be subject to retaliatory tariffs and suspended all planned tariff measures until July 14, 2025.[52] Bulk commodities targeted include soybeans, corn, durum wheat, and rice. Consumer-oriented products targeted include almonds, beef, processed cranberries, tobacco products, cranberry and orange juices, spices, peanut butter, dried egg yolk, bakery goods and pasta, and ice cream. Tariff rates for agricultural products listed are 25%, except for essential oils, which would face a 10% tariff. The EU-proposed tariffs targeted about $5.3 billion worth of U.S. agricultural products, according to 2024 EU import data.[53]

On May 8, 2025, the EU launched a public consultation on a list of U.S. agricultural and industrial imports that would be subject to retaliatory tariffs.[54] The consultation is in response to U.S. "reciprocal tariffs" and U.S. tariffs on automobiles and certain automobile parts.

2018 Through 2023 Trade Actions

What Retaliatory Tariffs Were Imposed on U.S. Agriculture in 2018 and 2019?

In response to U.S. tariff actions in 2018, certain trading partners of the United States responded with retaliatory tariffs on U.S. goods, including agricultural products.[55] In April 2018, China responded to U.S. Section 232 steel and aluminum tariffs with retaliatory tariffs on certain U.S. imports, including agricultural products (e.g., fruit, ginseng, pork, tree nuts, wine). In June 2018, Mexico, the EU, and Turkey responded to Section 232 tariffs with retaliatory tariffs. The agricultural products targeted included pork products, cheese, apples, potatoes, cranberries, and whiskey by Mexico; corn, rice, sweet corn, kidney beans, certain breakfast cereals, peanut butter, orange juice, cranberry juice, whiskey, cigars, tobacco products, and essential oils by the EU; and tree nuts, rice, and tobacco by Turkey. In July 2018, Canada responded with retaliatory tariffs on U.S. products, including dairy, poultry, and beef products; coffee, chocolate, sugar, and

[50] For more background about U.S.-European Union agricultural trade relations, see CRS Report R47095, *U.S.-EU Trade Relations*; and CRS Report R46241, *U.S.-EU Trade Agreement Negotiations: Trade in Food and Agricultural Products*.

[51] EC, "Statement by President von der Leyen," April 10, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_25_1036/STATEMENT_25_1036_EN.pdf; and EC, "Commission Proposal to Impose Trade Countermeasures Against US Obtains Necessary Support from EU Member States," April 9, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_25_1025/STATEMENT_25_1025_EN.pdf.

[52] EC, "EU Pauses Countermeasures Against US Tariffs to Allow Space for Negotiations," April 14, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1058. The EU originally planned to implement tranches of retaliatory tariffs effective April 15, May 16, and December 1, 2025, prior to the April 14 postponement announcement.

[53] CRS calculations from Trade Data Monitor and Eurostat.

[54] EC, "Commission Consults on Possible Countermeasures and Readies WTO Litigation in Response to US Tariffs," May 8, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_1149/IP_25_1149_EN.pdf.

[55] For background, see CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*; and CRS Report R45929, *China's Retaliatory Tariffs on U.S. Agriculture: In Brief*.

confectionery; prepared food products; condiments; bottled water; and whiskies. India imposed retaliatory tariffs in June 2019 targeting U.S. chickpeas, almonds, walnuts, apples, and lentils.

Separate from the Section 232 tariffs and retaliatory tariffs, the United States also imposed tariffs on China under Title III of the Trade Act of 1974 (19 U.S.C. §§2411-2420), commonly referred as "Section 301," starting in July 2018. Between 2018 and 2019, the United States and China imposed several rounds of tariffs and retaliatory tariffs. Nearly all U.S. agricultural products faced retaliatory tariffs. In September 2019, China announced a tariff exclusion list for certain U.S. products subject to Section 301 retaliatory tariffs, including agricultural products such as alfalfa and whey for feed use.[56] In February 2020, China announced a tariff exclusion process for Chinese companies impacted by the Section 301 retaliatory tariffs on U.S. imports.[57]

According to one analysis, during the 2018/2019 trade conflict, agricultural products accounted for 68% of China's Section 232 retaliation, 22% of China's Section 301 retaliation, 33% of the EU's retaliation, 20% of Canada's retaliation, 79% of Mexico's retaliation, nearly 20% of Turkey's retaliation, and 61% of India's retaliation.[58]

In May 2019, the United States removed Section 232 tariffs on Canada and Mexico, and in turn, Canada and Mexico removed retaliatory tariffs on the United States to facilitate the ratification of USMCA.[59]

Following an October 2021 agreement between the United States and the EU on the Section 232 tariffs, the EU suspended retaliatory tariffs that included U.S. agricultural products from January 2022 to the end of December 2023, and later extended the suspension to the end of March 2025.[60] The EU postponed imposing retaliatory tariffs in order to assess the planned U.S. April 2, 2025, "reciprocal tariffs" announcement and postponed again in response to the U.S. 90-day pause of country-specific "reciprocal tariffs."[61] EU retaliatory tariffs are suspended until July 14, 2025. See "European Union Retaliatory Tariffs" for further background.

The United Kingdom (UK) suspended Section 232 retaliatory tariffs effective June 2022.[62] The UK inherited the original EU retaliatory tariffs when the UK separated from the EU customs union in January 2021.

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[56] USDA, FAS, *Outcome of Batch One of China's Tariff Exclusion Process*, GAIN Report CH19061, September 18, 2019, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Outcome%20of%20Batch%20One%20of%20China%E2%80%99s%20Tariff%20Exclusions%20Process%20_Beijing_China%20-%20Peoples%20Republic%20of_9-17-2019.

[57] USDA, FAS, *China Announces a New Round of Tariff Exclusions*, GAIN Report CH2020-0017, February 26, 2020, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=China%20Announces%20a%20New%20Round%20of%20Tariff%20Exclusions_Beijing_China%20-%20Peoples%20Republic%20of_02-18-2020.

[58] Jason H. Grant et al., "Agricultural Exports and Retaliatory Trade Actions: An Empirical Assessment of the 2018/2019 Trade Conflict," *Applied Economic Perspectives and Policy*, vol. 43, no. 2 (June 2021), p. 18.

[59] Ana Swanson and Dan Bilefsky, "United States Reaches Deal to Lift Metal Tariffs on Canada and Mexico," *New York Times*, May 17, 2019.

[60] EC, "EU Prolongs Tariff Suspension for US Products Related to the Steel and Aluminium Dispute," December 19, 2023, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_6713/IP_23_6713_EN.pdf.

[61] EC, "EU Countermeasures on US Steel and Aluminium Tariffs Explained," March 11, 2025, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_25_750/QANDA_25_750_EN.pdf; and EC, "EU Pauses Countermeasures Against US Tariffs to Allow Space for Negotiations," April 14, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1058.

[62] Government of the United Kingdom, "UK and US Resolve Steel and Aluminium Tariffs Issue," March 22, 2022, https://www.gov.uk/government/news/uk-and-us-resolve-steel-and-aluminium-tariffs-issue.

In September 2023, India removed retaliatory tariffs on U.S. almonds, apples, chickpeas, lentils, and walnuts following a June 2023 resolution between the United States and India that terminated six nonagricultural WTO disputes.[63]

Were U.S. Agricultural Exports Affected by Retaliatory Tariffs?

The retaliatory tariffs were one of many factors that influenced agricultural exports. **Table 3** displays U.S. agricultural exports to retaliating and non-retaliating trading partners from 2017 to 2020 in nominal values. Although China, Canada, Mexico, the EU, and Turkey imposed retaliatory tariffs in the spring and summer of 2018, total U.S. agricultural exports from 2017 compared to 2018 increased by 1%. While exports to China declined by 53%, other U.S. agricultural export markets (e.g., the EU, Vietnam, South Korea, Egypt) saw an increase of exports that offset the decline in exports to China. The total value of U.S. agricultural exports declined in 2019 and 2020 relative to 2018 levels and remained similar to 2017 levels. Although foreign tariffs impact the competitiveness of U.S. agricultural exports in relation to other foreign suppliers, other factors may contribute to U.S. trade flows because of unique dynamics of specific commodities. This section provides a snapshot of select major U.S. agricultural exports between 2017 and 2020 that were impacted by retaliatory tariffs, to illustrate the role of tariffs and nontariff factors on agricultural trade flows.

Table 3. U.S. Agricultural Exports to Retaliating and Non-Retaliating Trading Partners, 2017 to 2020

In Billions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
U.S. exports to retaliating trading partners				
China	19.6	9.2	13.9	26.4
Canada	21.7	22.0	21.9	22.3
Mexico	18.8	19.3	19.4	18.3
EU-28	12.4	14.5	12.6	12.1
India	1.9	1.8	2.1	1.7
Turkey	1.8	1.5	1.3	1.2
U.S. exports to non-retaliating trading partners	66.7	76.4	69.9	67.6
Total U.S. agricultural exports	**142.9**	**144.7**	**141.1**	**149.7**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Soybeans

Table 4 presents annual total U.S. soybean exports from 2017 to 2020, broken down by major markets (i.e., China, the EU, Mexico, and Egypt) and the rest of the world combined. China imposed retaliatory tariffs on U.S. soybeans starting in 2018, which is reflected in a 74% decline

[63] USDA, FAS, *Success Story – India Cuts Retaliatory Tariffs on US Almonds-Apples-Walnuts-Chickpeas-Lentils*, GAIN Report IN2023-0066, September 12, 2023 and USTR, "United States Announces Major Resolution on Key Trade Issues with India," June 22, 2023.

in exports by value in 2018 compared to 2017. Between 2009 and 2017, nearly 60% of U.S. soybean exports by value on average were destined for China. Other U.S. trading partners such as the EU, Mexico, and Egypt increased imports of U.S. soybeans but not at levels to replace the shortfall from the decline of China's imports. USDA attributed the increased imports of U.S. soybeans from trading partners other than China to factors such as more competitive prices of U.S. soybeans following China's retaliatory tariffs, Brazil-sourced soybeans commanding a price premium, and tighter supplies from Argentina because of drought.[64] Another factor that may have affected China's imports for soybeans from the United States and other suppliers was dampened demand for animal feed because of the spread of African swine fever in China beginning in the summer of 2018 and the culling of 750,000 to 1.1 million swine.[65]

Table 4. U.S. Soybean Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
China	12,224.4	3,119.2	8,004.9	14,065.7
EU-28	1,636.7	3,077.5	1,953.2	1,970.8
Mexico	1,574.2	1,818.0	1,878.1	1,879.8
Egypt	364.5	1,163.5	994.7	1,486.2
Rest of world	5,656.5	7,879.8	5,862.8	6,113.7
Total U.S. soybean exports	**21,456.3**	**17,058.1**	**18,693.6**	**25,516.2**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Corn

Annual total U.S. corn exports from 2017 to 2020 are displayed in **Table 5**, broken down by select markets and the rest of the world. China and the EU imposed tariffs on U.S. corn in 2018. In 2018, EU imports initially surged prior to the imposition of June 2018 retaliatory tariffs and dwindled afterward, which resulted in a total of about $320 million of U.S. corn exported to the EU in 2018, which dropped to about $510,000 in 2019. U.S. corn exports to China also saw declines in 2018 and 2019 compared to 2017. Historically, U.S. corn exports to China varied from year to year even before the implementation of retaliatory tariffs. The United States has cited past issues affecting U.S. corn market access into China, including China's biotechnology policy, policy in liquidating domestic corn stocks, and lack of transparency in how China administers its tariff-rate quota for corn (as well as rice and wheat).[66] According to USDA, multiple factors

[64] USDA, FAS, *EU-28: Oilseeds and Products Update – Lowest Rapeseed Crop in Over a Decade*, GAIN Report AU1907, September 12, 2019; USDA, FAS, *Mexico: Oil Seeds and Products Annual: Lack of Supports to Slow Oilseed Production, While Meal and Oil Remain Stable*, GAIN Report MX9014, April 1, 2019; and USDA, FAS, *Egypt: Oilseeds and Products Annual 2019: U.S. Soybean Exports to Egypt Skyrocket, Volume Likely to Continue Through 2020*, GAIN Report EG19004, March 31, 2019.

[65] Stephen Morgan et al., *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, USDA, ERS, January 2022, p. 25; and Fred Gale et al., *How China's African Swine Fever Outbreaks Affected Global Pork Markets*, USDA, ERS, November 2023, p. 12.

[66] USTR, *2019 Report to Congress on China's WTO Compliance*, March 2020, p. A-69; and USTR, *2022 Report to Congress on China's WTO Compliance*, February 2023, pp. 31-32. Tariff-rate quotas (TRQs) are two-tiered (continued...)

contributed to the decline in U.S. corn exports in 2019, including higher U.S. prices due to reduced production and strong domestic use for feed and ethanol, and export competition from Argentina, Brazil, and Ukraine.[67] In 2020, U.S. corn exports to China increased 2,136% from the previous year following the U.S.-China Phase One Agreement and China's exclusions for Section 301 retaliatory tariffs on agricultural products.[68]

Table 5. U.S. Corn Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
Mexico	2,645.5	3,060.8	2,735.9	2,685.2
Japan	2,163.4	2,813.0	2,011.2	1,855.5
China	142.0	50.2	55.5	1,240.5
Colombia	784.7	927.3	682.5	879.2
South Korea	705.4	1,355.7	358.7	548.1
EU-28	113.2	319.8	0.5	0.4
Rest of world	2,576.4	3,945.5	1,826.4	2,037.1
Total U.S. corn exports	**9,130.6**	**12,472.4**	**7,670.6**	**9,245.9**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Tree Nuts

Table 6 displays U.S. tree nut exports, broken down by top export markets in addition to Turkey and the rest of the world. Starting in mid-2018, China and Turkey imposed retaliatory tariffs on U.S. tree nuts (e.g., almonds, cashews, pistachios, walnuts). In June 2019, India imposed retaliatory tariffs on U.S. almonds and walnuts. Generally, from 2017 to 2020, U.S. exports of tree nuts by value increased yearly despite the imposition of retaliatory tariffs. USDA attributed strong domestic demand in China and India for tree nuts as driving U.S. export growth.[69] Other factors that favored U.S. tree nut export growth were the United States' share in world production and trade, particularly for almonds and walnuts, as well as a steep drop-off in Iranian pistachio production and exports because of a weather shock in marketing year 2018/2019.[70] Despite Turkey's retaliatory tariffs, the United States was still a major source of almond and walnut imports for Turkey but with decreasing market share after 2018.[71]

applications of tariffs for an imported product. A specified quantity of imports (in-quota) enters the importing country at a reduced tariff rate. Imports that exceed the quantity (out-of-quota or over-quota) typically face higher tariffs.

[67] USDA, FAS, *2019 United States Agricultural Export Yearbook*, July 22, 2020, pp. 5-6.

[68] USDA, FAS, *2020 United States Agricultural Export Yearbook*, April 5, 2021, p. 6; and USDA, FAS, *China: Grain and Feed Annual*, GAIN Report CH2020-0048, April 6, 2020.

[69] USDA, FAS, *2019 United States Agricultural Export Yearbook*, pp. 27-28; and USDA, FAS, *2020 United States Agricultural Export Yearbook*, pp. 29-30.

[70] USDA, FAS, *2019 United States Agricultural Export Yearbook*, p. 28; and USDA, FAS, *2020 United States Agricultural Export Yearbook*, p. 30; and USDA, FAS, *Tree Nuts: World Markets and Trade*, February 2019.

[71] USDA, FAS, *Turkey: Tree Nuts Annual*, GAIN Report TU2020-0031, September 23, 2020.

Table 6. U.S. Tree Nut Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
EU-28	2,707.2	2,768.5	3,114.9	2,877.8
India	738.0	662.5	823.2	913.6
China	242.9	328.3	605.4	747.2
Canada	642.7	695.8	697.4	738.2
Turkey	308.4	278.9	340.4	249.8
Rest of world	3,840.0	3,781.3	3,493.2	2,873.0
Total U.S. tree nut exports	**8,479.4**	**8,515.5**	**9,074.5**	**8,399.6**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding. EU-28 = the European Union customs union and its 28 member countries, which included the United Kingdom until it left in January 2021.

Pork

Table 7 displays U.S. pork and pork product exports, broken down by the top five export markets and the rest of the world. China and Mexico imposed tariffs on U.S. pork and pork product exports in mid-2018, with Mexico lifting tariffs in mid-2019. U.S. pork exports to China dropped 14% by value between 2017 and 2018. In 2019, U.S. pork exports to China rebounded despite the retaliatory tariffs, which USDA attributes to decreased domestic pork production in China caused by African swine fever outbreaks.[72] U.S. pork exports to Mexico declined 13% by value from 2017 to 2018, while Canada gained market share in 2018.[73] Despite Mexico lifting its tariffs, U.S. pork exports declined from 2018 to 2020, which USDA attributes to strong domestic production, a weak Mexican economy, and depreciation of the peso.[74]

[72] USDA, FAS, *China: Livestock and Products Annual*, GAIN Report CH2019-0205, August 7, 2020; Fred Gale et al., *How China's African Swine Fever Outbreaks Affected Global Pork Markets*, pp. 20-21; and Frank Kyekyeku Nti et al., "Impact of Retaliatory Tariffs on the U.S. Pork Sector," *Choices* (Quarter 4, 2019).

[73] USDA, FAS, *Mexico: Livestock and Products Annual: Higher Pork Consumption Drives Production as Mexico Increases Exports of Pork and Beef*, GAIN Report MX9027, August 15, 2019; and Frank Kyekyeku Nti et al., "Impact of Retaliatory Tariffs on the U.S. Pork Sector."

[74] USDA, FAS, *2019 United States Agricultural Export Yearbook*, p. 17; and USDA, FAS, *2020 United States Agricultural Export Yearbook*, p. 17.

Table 7. U.S. Pork and Pork Product Exports, 2017 to 2020

In Millions of Dollars (nominal)

Trading Partner	2017	2018	2019	2020
China	662.3	570.9	1,300.2	2,279.8
Japan	1,625.9	1,630.5	1,523.4	1,622.9
Mexico	1,514.1	1,310.7	1,278.4	1,162.3
Canada	792.8	764.8	801.8	854.0
South Korea	475.1	670.3	592.9	452.6
Rest of world	1,415.0	1,455.4	1,454.8	1,347.8
Total U.S. pork and pork products	**6,485.1**	**6,402.8**	**6,951.5**	**7,719.6**

Source: CRS from USDA, GATS data (BICO-10).

Notes: Data are not just adjusted for inflation. Values may not sum to totals shown because of rounding.

Were U.S. Farm Sector Sales Affected by Retaliatory Tariffs?

The retaliatory tariffs were one of many factors that influenced U.S. farm sector sales. The farm sector earns revenue from the sales of crops, livestock, and animal products. The total value of these commodities was approximately $370 billion in 2017, $372 billion in 2018, $369 billion in 2019, and $368 billion in 2020 (**Table 8**). Compared to 2017 levels, the total value of crops, livestock, and animal products sold was approximately $1.6 billion higher in 2018, $1.1 billion lower in 2019, and $2.9 billion lower in 2020.

Table 8.Value of Crops, Livestock, and Animal Products Sold, 2017 to 2020

In Billions of Dollars (nominal)

Commodity Type	2017	2018	2019	2020
Crops				
Cotton	$7.57	$7.48	$6.82	$6.81
Feed crops	$53.92	$57.29	$58.42	$57.52
Food grains	$11.20	$12.13	$11.51	$11.78
Fruits and nuts	$30.59	$29.35	$29.19	$27.83
Oil crops	$41.09	$39.47	$36.22	$43.84
Tobacco	$1.38	$1.22	$0.96	$0.82
Vegetables and melons	$20.50	$18.70	$19.11	$21.06
All other crops	$28.62	$30.35	$31.53	$32.83
Livestock and animal products				
Dairy products	$37.94	$35.24	$40.55	$40.36
Cattle and calves	$66.94	$67.18	$66.19	$63.32
Hogs	$21.04	$20.77	$21.76	$19.16
Miscellaneous livestock	$6.86	$6.94	$7.06	$7.00
Poultry and eggs	$42.79	$45.96	$40.00	$35.17
Total	**$370.44**	**$372.07**	**$369.32**	**$367.50**

Source: CRS calculations using USDA, Economic Research Service, "Farm Income and Wealth Statistics—Value Added by the U.S. Agricultural Sector, 2016-2025F," updated February 2025, https://data.ers.usda.gov/reports.aspx?ID=4047.

Notes: Feed crops include barley, corn, hay, oats, and grain sorghum. Food grains include rice, rye, and wheat. Dairy products includes milk.

While the total value of crops, livestock, and animal products sold remained relatively level from 2017 to 2020, sales were variable for all categories of commodities over this period. In 2018, the value of feed grains, food grains, cattle and calves, poultry and eggs, and all other crops increased relative to 2017 levels; the total value of other agricultural commodities sold declined in 2018 relative to 2017 levels (**Table 8**). In 2019, the value of feed grains, food grains, all other crops, dairy, hogs, and miscellaneous livestock increased relative to 2017 levels, while the total value for other agricultural commodities declined relative to 2017 levels.

Changes in market prices between 2017 and 2020 contributed to the changes in the values of commodities sold each year. For example, retaliatory tariffs imposed in 2018 targeted specific agricultural commodities, including almonds, fresh sweet cherries, corn, cotton, hogs, milk, sorghum, soybeans, and wheat. Compared to 2017, 2018 marketing year average prices were higher for corn, upland cotton, sorghum, and wheat and lower for the other targeted commodities (**Table 9**). Compared to 2017, 2019 marketing year average prices were higher for corn, milk, and sorghum and lower for the other targeted commodities. Compared to 2017, 2020 marketing year average prices were higher for fresh sweet cherries, corn, milk, sorghum, soybeans, and wheat and lower for the other targeted commodities.

Table 9. Marketing Year Average Prices for Selected Agricultural Commodities, 2017 to 2020

In Dollars per Unit (Nominal)

Commodity	Unit	2017	2018	2019	2020
Almonds	Pound	$2.53	$2.50	$2.45	$1.71
Cherries (fresh sweet)	Ton	$2.06	$1.83	$1.93	$2.92
Corn	Bushel	$3.36	$3.61	$3.56	$4.53
Cotton (extra long staple)	Pound	$1.39	$1.15	$1.06	$1.19
Cotton (upland)	Pound	$0.69	$0.70	$0.60	$0.66
Hogs	Hundredweight	$53.10	$50.20	$51.40	$46.90
Milk	Hundredweight	$17.69	$16.28	$18.65	$18.16
Sorghum	Hundredweight	$5.75	$5.82	$5.96	$9.00
Soybeans	Bushel	$9.33	$8.48	$8.57	$10.80
Wheat	Bushel	$4.72	$5.16	$4.58	$5.05

Source: CRS using USDA, National Agricultural Statistics Service, "Quick Stats," accessed March 14, 2025.

What Were the Economic Losses to the U.S. Agricultural Sector from Retaliatory Tariffs in 2018 and 2019?

Various studies have estimated losses to the U.S. agricultural sector associated with retaliatory tariffs; these studies employ different methodologies and provide differing estimates of losses

attributable to retaliatory tariffs.[75] Estimates of economic losses made by USDA's Office of the Chief Economist (OCE) in 2018 and 2019 had extra significance for policymakers as they were used to inform USDA's responses to retaliatory tariffs in 2018 and 2019 (see "USDA's Response to Retaliatory Tariffs").[76]

USDA OCE estimated that the 2018 economic losses were between $11 billion and $12 billion.[77] According to USDA figures reported by the Government Accountability Office (GAO), $10.2 billion of the estimated $11 billion to $12 billion were for losses to almonds, fresh sweet cherries, corn, cotton, dairy, hogs, sorghum, soybeans, and wheat.[78] According to USDA figures reported by GAO, USDA OCE estimated that the 2019 economic losses for agricultural and related commodities were approximately $16.9 billion.[79]

In January 2022, USDA ERS published updated estimates of trade losses. ERS reported estimates of approximately $27 billion in trade losses between July 2018 and December 2019.[80] ERS reported that China's retaliatory tariffs reduced the value of U.S. agricultural trade by approximately $25.7 billion, and retaliatory tariffs imposed by other countries reduced the value of U.S. agricultural trade by approximately $1.5 billion. ERS reported estimated annualized losses for some commodities, including $9.35 billion for soybeans, $854 million for sorghum, $646 million for pork, $618 million for fruits, $391 million for dairy, $366 million for cotton, $309 million for wheat, $219 million for tree nuts, $198 million for corn, and $46 million for rice.

USDA OCE estimated economic losses in 2018 and 2019 by projecting hypothetical scenarios of world trade that could have occurred had retaliatory tariffs not been imposed on U.S. agricultural products. USDA OCE made those projections before data on actual exports were available for the year as part of USDA's efforts to "craft a short-term relief strategy to protect agricultural producers" in accordance with Presidential directives.[81] Updating such projections with subsequently available data suggests that USDA OCE may have overestimated trade losses in 2018 and 2019. Actual agricultural exports were approximately $145 billion in 2018 and approximately $141 billion in 2019 (**Table 3**). These values compare to agricultural exports in 2015, 2016, and 2017 of $137 billion, $139 billion, and $143 billion, respectively. USDA's

[75] See, for example, USDA, ERS, *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, ERR-304, January 2022.

[76] USDA, *Cost Benefit Analysis: Market Facilitation Program*, July 24, 2018; USDA, "USDA Announces Support for Farmers Impacted by Unjustified Retaliation and Trade Disruption," press release, May 23, 2019; USDA Office of the Chief Economist (OCE), *Trade Damage Estimation for the Market Facilitation Program and Food Purchase and Distribution Program*, September 13, 2018; and USDA OCE, *Trade Damage Estimation for the 2019 Market Facilitation Program and Food Purchase and Distribution Program*, August 22, 2019.

[77] USDA, "USDA Assists Farmers Impacted by Unjustified Retaliation," press release, July 24, 2018, https://www.usda.gov/about-usda/news/press-releases/2018/07/24/usda-assists-farmers-impacted-unjustified-retaliation. In the press release, USDA stated that they were authorizing "up to $12 billion in programs, which is in line with the estimated $11 billion impact of the unjustified retaliatory tariffs on U.S. agricultural goods."

[78] CRS calculations using data in GAO, "Appendix III: 2018 MFP and 2019 MFP Trade Damage Estimate and Payment Methodologies," in *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*, GAO-22-468, November 2021, https://www.gao.gov/assets/gao-22-468.pdf.

[79] CRS calculations using data in GAO, "Appendix III: 2018 MFP and 2019 MFP Trade Damage Estimate and Payment Methodologies," in *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*. Related commodities included distiller's dried grains with solubles, ethanol, peanut butter, infant formula, ice cream, casein, and lactose.

[80] USDA, ERS, *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, ERR-304, January 2022.

[81] USDA, "USDA Assists Farmers Impacted by Unjustified Retaliation," press release, July 24, 2018.

estimated economic losses imply that USDA effectively projected agricultural exports in 2018 and 2019 to be approximately $157 billion in the absence of retaliatory tariffs.[82]

USDA ERS reported estimated trade losses for 2018 and 2019 at levels similar to USDA OCE's estimates. To calculate these estimated trade losses, USDA ERS used estimates published in an academic study with a different methodology than had been used by USDA OCE in 2018 and 2019.[83] This methodology is one of many that are commonly used in the academic literature to estimate economic losses from retaliatory tariffs. Other commonly used methodologies may estimate different losses. For example, a different academic study found that total 2018 and 2019 economic losses for soybeans were $3.2 billion;[84] USDA OCE estimated soybean losses at $3.6 billion for 2018 alone.[85] That study found that USDA overcompensated the agricultural sector by $5.4 billion for soybean losses in 2018 and 2019.[86]

Methods used to estimate trade losses from retaliatory tariffs can produce different estimates depending on the data used. USDA OCE produced estimates in 2018 after spring planting was complete but before 2018 commodities were harvested. In 2019, USDA OCE produced estimates before farmers had finished spring planting. USDA OCE acted at those times in support of the Administration's goal of providing expedited assistance to farmers who experienced trade disruptions with major export markets. Some policymakers may agree with the Administration's decision to provide expedited assistance to farmers in 2018 and 2019. Other policymakers may question the need for expedited assistance in 2018 and 2019 given the availability of other farm support programs.[87]

In addition, methods used to estimate trade losses can produce different estimates depending on the assumptions applied. In their 2021 analysis of the Market Facilitation Program (MFP), GAO found that USDA OCE's 2018 estimates of economic losses "used a justifiable baseline" to model what trade would have been in the absence of retaliatory tariffs.[88] GAO also found that USDA OCE's 2019 estimates of economic losses "used baselines that did not best represent what trade would be absent the retaliatory tariffs, and that increased trade damage estimates." In their response to GAO's 2021 analysis, USDA OCE stated that

> [t]he draft report's finding that the 2019 baseline is not representative and increased trade damage estimates does not take into account that the decision on what is the appropriate baseline depends on the policy goals and that there is not one single most representative baseline. OCE provided alternatives that reflected different options based on the direction of senior USDA decision makers under the previous administration and selection of the baseline was part of the program design and not made by OCE.[89]

[82] CRS calculations. Actual 2018 trade of $145 billion plus $12 billion in estimated trade losses is $157 billion. Actual 2019 trade of $141 billion plus $16 billion in estimated trade losses is $157 billion.

[83] USDA ERS used estimated product-specific changes in the value of exports as published in Jason H. Grant et al., "Agricultural Exports and Retaliatory Trade Actions: An Empirical Assessment of the 2018/2019 Trade Conflict," *Applied Economic Perspectives and Policy*, vol. 43, no. 2 (June 2021).

[84] Michael Adjemian et al., "Estimating the Market Effect of a Trade War: The Case of Soybean Tariffs," *Food Policy*, vol. 105 (December 2021).

[85] USDA, *Cost Benefit Analysis: Market Facilitation Program*, July 24, 2018.

[86] Michael Adjemian et al., "Estimating the Market Effect of a Trade War: The Case of Soybean Tariffs."

[87] For background on other farm support programs, see CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*.

[88] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[89] GAO, "Appendix VIII: Comments from the Department of Agriculture," in *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*, p. 86.

USDA OCE also noted that their 2018 and 2019 economic analyses adhered to departmental and Office of Management and Budget requirements for economic analyses. Some policymakers may support USDA's senior decisionmakers' reliance on USDA OCE to estimate economic losses in order to be timely and responsive to decisionmakers' requirements. Other policymakers may support the use of independent feedback on USDA OCE's economic analyses used to inform USDA policymaking.

What Were the U.S.-China Phase One Agreement Provisions for Agriculture?

In January 2020, President Trump and China's Vice Premier Liu He signed the "Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China" (U.S.-China Phase One Agreement) to reduce U.S.-China trade tensions that escalated in 2018 when the United States imposed several rounds of tariffs on imports from China under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974 authorities.[90] The Phase One Agreement included purchase commitments of U.S. imports by China of no less than $12.5 billion and $19.5 billion above a 2017 baseline in agricultural and seafood products total for 2020 and 2021, respectively.[91] Other provisions in the agreement included China abiding by its WTO obligations by improving its tariff-rate quota administration for wheat, corn, and rice and greater transparency of its domestic support programs.[92] China also agreed to implement a "transparent, predictable, efficient, science- and risk-based regulatory process" for evaluating and authorizing agricultural biotechnology products. The agreement contains SPS-measures-related provisions to facilitate trade for agricultural and food products. Additionally, in March 2020, China implemented a new Section 301 retaliatory tariff exclusion process for imported U.S. agricultural products, although this was not directly associated with the Phase One Agreement.[93] Prior to the March 2020 exclusion process, only certain enumerated products were considered for tariff exclusions.

U.S. export and China's import data show that China did not meet its purchase commitments of U.S. agricultural and seafood products listed in the Phase One Agreement for the years 2020 and 2021, falling short by an estimated total of $13.1 billion (based on U.S. trade data) or $18.1 billion (based on China's trade data) over the two years.[94] Subsequent reports from the Office of

[90] For background, see CRS In Focus IF12125, *Section 301 and China: The U.S.-China Phase One Trade Deal*; and CRS In Focus IF11412, *U.S.-China Phase I Deal: Agriculture*. For the agreement text and agriculture-related fact sheets of the U.S.-China Phase One Agreement, see USDA, FAS, "China Phase One Agreement," https://www.fas.usda.gov/topics/china-phase-one-agreement.

[91] The U.S.-China Phase One Agreement does not explicitly state the 2017 baseline amount. The agreement specifies that both U.S. and Chinese trade data will be used to determine whether the purchase commitment provisions have been implemented. The 2017 baseline amount of approximately $20.9 billion is based on CRS calculations from Trade Data Monitor and U.S. Census Bureau data of U.S. agricultural and seafood product exports to China identified in Annex 6.1 of the U.S.-China Phase One Agreement. The 2017 baseline amount would be approximately $24.1 billion based on CRS calculations from Trade Data Monitor and China Customs Statistics' import data of U.S. agricultural and seafood products. For background on differences in U.S. and China's trade data, see CRS Report RS22640, *What's the Difference?—Comparing U.S. and Chinese Trade Data*.

[92] Separate from and prior to the Phase One Agreement, the United States initiated and won two WTO disputes against China's administration of its TRQs for wheat, corn, and rice and agricultural domestic support policies for rice and wheat. TRQs are two-tiered applications of tariffs for an imported product. A specified quantity of imports (in-quota) enters into the importing country at a reduced tariff rate. Imports that exceed the quantity (out-of-quota or over-quota) typically face higher tariffs.

[93] USDA, FAS, *China Announces a New Round of Tariff Exclusions*, GAIN Report CH2020-0017, February 26, 2020.

[94] CRS calculations from Trade Data Monitor, U.S. Census Bureau, and China Customs Statistics data.

the U.S. Trade Representative assert that China did not fully implement its obligations under the Phase One Agreement, including provisions related to agricultural trade.[95]

USDA's Response to Retaliatory Tariffs

How Did USDA Respond to Retaliatory Tariffs in 2018 and 2019?

In response to foreign trade retaliation targeting U.S. agricultural products in 2018 and 2019, the Secretary of Agriculture used the authorities and funds of the Commodity Credit Corporation (CCC) to provide additional assistance to the farm sector.[96] USDA made available up to $12.0 billion in CCC funding in 2018 and up to $16.0 billion in CCC funding in 2019. USDA determined how much funding to make available each year on the basis of its modeling of economic losses resulting from foreign countries imposing retaliatory tariffs (see "What Were the Economic Losses to the U.S. Agricultural Sector from Retaliatory Tariffs in 2018 and 2019?").

The funds made available in 2018 and 2019 were distributed through three ad hoc programs: the Market Facilitation Program (MFP), the Food Purchase and Distribution Program (FPDP), and the Agricultural Trade Promotion Program (ATP). These programs provided direct income support payments to farmers, purchased agricultural commodities, and supported trade promotion activities, respectively. Support from MFP, FPDP, and ATP supplemented direct income support, commodity purchases, and trade promotion activities authorized by the farm bill and other legislation.[97]

The bulk of the CCC funds were distributed through MFP (**Table 10**). MFP made direct payments to producers of eligible crops, dairy, and hogs. USDA made significant changes to MFP between the first and second rounds of funding, including expanding the commodities eligible for support, increasing payment limits for producers, and shifting from commodity-specific payments to county-specific payments, among other changes.[98]

[95] See USTR, *2024 National Trade Estimate Report on Foreign Trade Barriers*, March 2024, pp. 51-60; and USTR, *2024 Report to Congress on China's WTO Compliance*, January 2025.

[96] For background on the authorities and funds of the Commodity Credit Corporation, see CRS Report R44606, *The Commodity Credit Corporation (CCC)*.

[97] For additional background on income support authorized through the farm bill, see CRS In Focus IF12218, *Farm Bill Primer: Farm Safety Net Programs*. For additional background on USDA's commodity purchasing authorities, see CRS In Focus IF12193, *Farm and Food Support Under USDA's Section 32 Account*. For additional background on trade promotion authorized through the farm bill, see CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*.

[98] For background on the implementation of MFP in 2018 and 2019, see CRS Report R45310, *Farm Policy: USDA's 2018 Trade Aid Package*; CRS Report R45865, *Farm Policy: USDA's 2019 Trade Aid Package*; and CRS In Focus IF11289, *Farm Policy: Comparison of 2018 and 2019 Market Facilitation Programs*.

Table 10. Funds Available and Program Outlays for USDA Programs Responding to Retaliatory Tariffs

In Millions of Dollars

Program	Funds Available	Program Outlays
USDA trade assistance announced in 2018		
Market Facilitation Program	$10,600	$8,617
Food Purchase and Distribution Program	$1,200	$1,100
Agricultural Trade Promotion Program	$200	$200
2018 subtotal	**$12,000**	**$9,917**
USDA trade assistance announced in 2019		
Market Facilitation Program	$14,500	$14,368
Food Purchase and Distribution Program	$1,400	$1,264
Agricultural Trade Promotion Program	$100	$100
2019 subtotal	**$16,000**	**$15,732**
Grand total	**$28,000**	**$25,650**

Sources: Compiled by CRS using USDA, "USDA Assists Farmers Impacted by Unjustified Retaliation," press release, July 24, 2018, https://www.usda.gov/about-usda/news/press-releases/2018/07/24/usda-assists-farmers-impacted-unjustified-retaliation; USDA, "USDA Announces Details of Assistance for Farmers Impacted by Unjustified Retaliation," press release, August 27, 2018; USDA, "USDA Launches Second Round of Trade Mitigation Payments," press release, December 17, 2018; USDA, "USDA Announces Details of Support Package for Farmers," press release, July 25, 2019; USDA, *USDA Explanatory Notes – Agricultural Marketing Service*, 2022; USDA, Agriculture Marketing Service, "Food Purchase and Distribution Program," https://www.ams.usda.gov/selling-food-to-usda/trade-mitigation-programs; USDA, Office of Inspector General, *Oversight of the Agricultural Trade Promotion Program*, Audit Report 07601-0001-24, August 2022; and Government Accountability Office (GAO), *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, GAO-22-104259, February 2022.

Note: Values in the "program outlays" column do not sum to total shown because of rounding applied by CRS.

How Were Market Facilitation Program Funds Distributed?

USDA allocated $25.1 billion for the Market Facilitation Program (MFP) and outlaid approximately $23.0 billion in MFP payments. According to GAO, USDA distributed 2018 MFP payments to 582,596 farms (excluding farms in Puerto Rico) and 2019 MFP payments to 643,965 farms (including farms in Puerto Rico).[99] The average 2018 MFP payment per farm was $14,791 in 2018 and the average 2019 MFP payment per farm was $22,312. In each year, payments varied across farms depending on the commodities produced on the farm, the way 2018 and 2019 MFP payments were structured, and other factors.

MFP payments were available to producers of certain crops and livestock commodities. Eligible livestock commodities for 2018 and 2019 MFP payments included dairy and hogs. Eligible crops varied for 2018 and 2019 MFP, with more commodities of each type eligible for 2019 MFP payments compared to those eligible for 2018 MFP payments. In each year, more than 90% of

[99] GAO, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, GAO-22-104259, January 2022. GAO's report does not discuss 2018 payments to farmers in the U.S. territories in 2018 or 2019 payments to farmers in the U.S. territories excluding Puerto Rico.

MFP payments were distributed to producers of non-specialty crops (**Table 11**).[100] Livestock commodities received about 4% of total MFP payments each year, and specialty crops received about 1% of 2018 MFP payments and 2% of 2019 MFP payments.

Table 11. Distribution of Market Facilitation Program Payments, by Commodity Type

In Millions of Dollars

Commodity Type	2018 MFP Payments	2019 MFP Payments	Total
Non-specialty crops	$8,194	$13,529	$21,723
Livestock commodities	$351	$566	$917
Specialty crops	$72	$274	$346
Total	**$8,617**	**$14,368**	**$22,986**

Source: CRS calculations using GAO, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, GAO-22-104259, January 2022.

Notes: MFP = Market Facilitation Program. Non-specialty crops eligible for 2018 MFP payments were corn, cotton, sorghum, soybeans, and wheat. Non-specialty crops eligible for 2019 MFP payments were alfalfa hay, barley, canola, chickpeas (large and small), corn, cotton (extra long staple and upland), crambe, dried beans, dry peas, flaxseed, lentils, millet, mustard seed, oats, peanuts, rapeseed, rice (long grain, medium grain, and temperate japonica), rye, safflower, sesame seed, sorghum, soybeans, sunflower seed, triticale, and wheat. Livestock commodities eligible for 2018 and 2019 MFP payments were hogs and dairy. Specialty crops eligible for 2018 MFP payments were shelled almonds and fresh sweet cherries. Specialty crops eligible for 2019 MFP payments were almonds, cranberries, cultivated ginseng, fresh grapes, fresh sweet cherries, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts.

In 2018, MFP made payments separately for each commodity.[101] According USDA, about 82% of 2018 MFP payments were for soybeans, 6% for cotton, and 3% each for sorghum and wheat (**Table 12**). Corn, dairy, and hogs each received about 2% of total payments. Fresh sweet cherries and shelled almonds each received less than 1% of total payments.

Table 12. Distribution of 2018 Market Facilitation Program Payments

Commodity	Payment (in $ million)	Share of Total
Corn	$133.52	2%
Cotton	$484.08	6%
Dairy	$182.35	2%
Fresh sweet cherries	$42.69	< 1%
Hogs	$155.59	2%
Shelled almonds	$21.92	< 1%

[100] Statute defines specialty crops as fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture) (7 U.S.C. §1621 note). For additional background on specialty crops, see CRS In Focus IF11317, *2018 Farm Bill Primer: Specialty Crops and Organic Agriculture*; and CRS In Focus IF12017, *Farm Bill Primer: Horticulture Title and Related Provisions*.

[101] In 2018, the Market Facilitation Program (MFP) had payment limits of $125,000 for non-specialty crops, $125,000 for specialty crops, and $125,000 for animal products (dairy and hogs). The maximum possible payment for a producer of all three types of commodities was $375,000. Eligibility for 2018 MFP was restricted to (1) applicants whose average adjusted gross income (AGI) was less than $900,000 and (2) applicants whose AGI exceeded $900,000 and at least 75% of the AGI was derived from farming, ranching, or forestry-related activities.

Commodity	Payment (in $ million)	Share of Total
Sorghum	$244.56	3%
Soybeans	$7,069.34	82%
Wheat	$241.62	3%
Total	$8,575.65	**100%**

Source: CRS calculations using USDA *Report to House and Senate Committees on Appropriations and Agriculture*, October 31, 2019.

Notes: USDA reported outlays for 2018 Market Facilitation Program (MFP) payments of approximately $8.576 billion as of October 31, 2019. As of January 2022, program outlays were $8.617 billion. Equivalent data by commodity for the 2019 MFP are not available.

For 2019 MFP for non-specialty crops, USDA made payments separately by county. All non-specialty crops within a county received a common payment rate that varied across counties from $15 per acre to $150 per acre. Payments for non-specialty crops were capped at $250,000.[102]

According to GAO, USDA chose to change its payment calculations to avoid distorting farmers' planting decisions in 2019.[103] County-specific payment rates meant that compensation for the same commodity varied by county. For example, GAO found that corn producers in the Midwest received $61 per acre on average, while corn producers in the South received $69 per acre on average. GAO concluded that USDA's use of the new methodology resulted in 2019 MFP payments that exceeded USDA's estimated trade damages for corn and were less than USDA's estimated trade damages for soybeans, sorghum, and cotton.[104]

For specialty crops, dairy, and livestock, USDA calculated 2019 MFP payments by commodity, similar to its 2018 method. Maximum payments were capped at $250,000 total for all specialty crops and $250,000 total for dairy and hogs. GAO concluded that USDA's use of a single payment rate for tree nuts resulted in 2019 MFP payments that exceeded USDA's estimated trade damages for almonds and pecans and were less than USDA's estimated trade damages for hazelnuts, macadamia nuts, pistachios, and walnuts.[105]

How Were Food Purchase and Distribution Program Funds Distributed?

USDA allocated $2.6 billion for the Food Purchase and Distribution Program (FPDP) and outlaid more than $2.3 billion on purchased commodities. Approximately 136 vendors were awarded

[102] In 2019, MFP had payment limits of $250,000 for non-specialty crops, $250,000 for specialty crops, and $250,000 for animal products (dairy and hogs). The maximum possible payment for a producer of all three types of commodities was $750,000. Eligibility for 2019 MFP was restricted to (1) applicants whose average AGI was less than $900,000 and (2) applicants whose AGI exceeded $900,000 and at least 75% of the AGI was derived from farming, ranching, or forestry-related activities.

[103] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[104] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[105] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

contracts under 2018 FPDP.[106] USDA has not released the number of vendors awarded contracts for 2019 FPDP.

Most of the commodities purchased were distributed to states for further distribution to food banks and food pantries that participate in The Emergency Food Assistance Program.[107] Other recipients eligible to receive FPDP commodities included states, for use in the Commodity Supplemental Foods Program; tribes that operate the Food Distribution Program on Indian reservations; and the National School Lunch Program.[108] Additionally, if domestic feeding programs were unable to use commodities purchased through FPDP, USDA had the option to distribute surplus commodities to approved nonprofit entities for distribution to low-income individuals.[109]

Data on actual FPDP purchases in 2018 or 2019 are not available. USDA announced targets for FPDP purchases in 2018 and 2019 (**Table 13**). The selection of targeted commodities varied in 2018 and 2019. In some instances, USDA targeted FPDP purchases of commodities that were also eligible for MFP payments. For example, FPDP targeted $919.70 million worth of dairy products and pork in 2018 and 2019. Producers of milk and hogs also received $917 million in 2018 MFP and 2019 MFP payments (**Table 11**). USDA ceased targeting FPDP purchases for some commodities that were also made eligible for MFP payments in 2019. USDA targeted 12 commodities—cranberries, grapes, hazelnuts, kidney beans, lentils, macadamia nuts, navy beans, peas, pecans, pistachios, rice, and walnuts—for 2018 FPDP purchases but not for 2019 FPDP purchases; these commodities were ineligible for 2018 MFP payments and eligible for 2019 MFP payments. USDA has not provided data that would allow for comparison of the amount of support provided from FPDP and MFP separately for each these commodities. Total FPDP targeted purchases for specialty crops were $390.42 million in 2018 and $282.60 million in 2019 ($673.02 million total). Total 2018 MFP and 2019 MFP payments for specialty crops were $346 million (**Table 11**).

Table 13. Food Purchase and Distribution Program Targeted Commodities, 2018 and 2019

In Millions of Dollars

Commodity	2018 Targeted Purchases	2019 Targeted Purchases	Total
Apples	$93.40	$88.00	$181.40
Apricots	$0.20	$0.10	$0.30
Beef	$14.80	$151.00	$165.80
Blueberries	$1.70	$5.00	$6.70
Citrus	$83.70	$104.00	$187.70
Cranberries	$32.80	$0.00	$32.80
Dairy products	$84.90	$68.00	$152.90

[106] USDA, "Report to House and Senate Committees on Appropriations and Agriculture," October 31, 2019.

[107] USDA, Agricultural Marketing Service, "Food Purchase and Distribution Program," https://www.ams.usda.gov/selling-food-to-usda/trade-mitigation-programs.

[108] USDA, "USDA Announces Details of Support Packaged for Farmers," press release, July 25, 2019.

[109] On July 29, 2019, USDA published a final rule creating the Expanded Domestic Commodity Donation Program, which allowed for disposal of surplus commodities acquired as part of USDA's trade mitigation response to outlets not currently used in existing USDA Food and Nutrition Service programs.

Commodity	2018 Targeted Purchases	2019 Targeted Purchases	Total
Figs	$0.02	$0.10	$0.12
Grapes	$48.20	$0.00	$48.20
Hazelnuts	$2.10	$0.00	$2.10
Kidney beans	$14.20	$0.00	$14.20
Lamb	$0.00	$17.00	$17.00
Lentils	$1.80	$0.00	$1.80
Macadamia nuts	$7.70	$0.00	$7.70
Navy beans	$18.00	$0.00	$18.00
Onions	$0.00	$0.40	$0.40
Peanut butter	$12.30	$0.00	$12.30
Pears	$1.40	$4.00	$5.40
Peas	$11.80	$0.00	$11.80
Pecans	$16.00	$0.00	$16.00
Pistachios	$85.20	$0.00	$85.20
Plums/prunes	$18.70	$22.00	$40.70
Pork	$558.80	$208.00	$766.80
Potatoes	$44.50	$22.00	$66.50
Poultry	$0.00	$432.00	$432.00
Processed foods	$0.00	$200.00	$200.00
Raisins	$0.00	$24.00	$24.00
Rice	$48.10	$0.00	$48.10
Strawberries	$1.50	$2.00	$3.50
Sweet corn	$2.40	$11.00	$13.40
Walnuts	$34.60	$0.00	$34.60
Total	**$1,238.82**	**$1,358.60**	**$2,597.42**

Source: CRS calculations using USDA, "USDA Announces Details of Assistance for Farmers Impacted by Unjustified Retaliation," press release, August 27, 2018; and USDA, "USDA Announces Details of Support Packaged for Farmers," press release, July 25, 2019.

Notes: Citrus includes grapefruit, lemons, limes, oranges, and orange juice. Processed foods include canned tomatoes, pasta, prepared cereals, soups and broths, tomato sauces, and other products. Cranberries, grapes, hazelnuts, kidney beans, lentils, macadamia nuts, navy beans, peas, pecans, pistachios, rice, and walnuts were purchased in 2018 but were not eligible in 2019.

USDA administered FPDP under the rules of USDA's Commodity Procurement Program and required commodities supplied to be sourced from American producers on American farms. For FPDP, the USDA Office of Inspector General (OIG) found no reportable issues related to the type and quantify of commodities purchased but did find reportable issues related to verifying the domestic origin of purchased commodities and other aspects of contract management.[110] In

[110] USDA, Office of Inspector General, *Food Purchase and Distribution Program*, Audit Report 01601-0003-41, August 2023.

response to a congressional directive, USDA noted that six vendors awarded contracts under 2018 FPDP had substantial foreign ownership but that the products purchased for the 2018 FPDP were "100 percent domestically produced and processed."[111] In 2018, the six foreign-owned vendors supplied approximately $459 million in pork, $107 million in potatoes, $1.8 million in blueberries, and $1.4 million in strawberries.

How Were Agricultural Trade Promotion Program Funds Distributed?

USDA allocated $300 million for the Agricultural Trade Promotion Program (ATP) and spent $300 million on trade promotion activities. ATP provided cost-share funds to 59 organizations that support activities to develop new markets for U.S. agricultural and agriculture-related products (e.g., forestry and seafood products).[112] ATP-eligible activities included consumer advertising, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research, and technical assistance. ATP participants were required to contribute 10% for generic promotion activities and 50% for branded promotion activities.[113]

ATP was similar to the Market Access Program (MAP) authorized through the farm bill, which receives annual appropriations of $200 million.[114] Using results from prior analyses of MAP, an academic study estimated that these additional ATP funds could expand U.S. agricultural exports by $8.5 billion and U.S. farm sector cash receipts by $4.8 billion.[115]

USDA OIG audited ATP in 2022. USDA OIG found that USDA awarded funding to applicants "who may not have been the most meritorious based on the announced criteria and program regulations."[116] USDA OIG said they were "unable to attest to the merits of the 59 ATP grants awarded [by USDA Foreign Agricultural Service] in fiscal year (FY) 2019, totaling $300 million."

How Have Agricultural Stakeholders and Oversight Agencies Assessed USDA's Response to Retaliatory Tariffs Imposed in 2018 and 2019?

USDA's ad hoc programs in response to retaliatory tariffs on U.S. agricultural products provided support to the agricultural sector with the goals of increasing farm incomes, increasing domestic

[111] USDA, "Report to House and Senate Committees on Appropriations and Agriculture," October 31, 2019, p. 15. Section 119 of the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019 (P.L. 116-59) required the Secretary of Agriculture to provide an accounting of commodity purchases from substantially foreign-owned companies or their subsidiaries, among other provisions.

[112] For a list of Agricultural Trade Promotion Program (ATP) awardees, see USDA, FAS, "ATP Funding Allocations," https://www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp/atp-funding-allocations.

[113] USDA, Commodity Credit Corporation, "Agricultural Trade Promotion Program," 83 *Federal Register* 4417, August 30, 2018.

[114] For additional background on farm-bill-funded trade promotion programs, see CRS In Focus IF12155, *Farm Bill Primer: Trade and Export Promotion Programs*.

[115] Gary Williams, "The Overlooked Agricultural Trade Promotion Program of the USDA Trade Aid Packages," *Choices* (Quarter 4, 2019).

[116] USDA Office of Inspector General, *Oversight of the Agricultural Trade Promotion Program*, Audit Report 07601-0001-24, August 2022, https://usdaoig.oversight.gov/sites/default/files/reports/2024-11/07601000124FRredactedpublic.pdf.

prices through purchases of agricultural commodities, and diversifying export markets. Farmers reported that MFP helped them manage cash flow on their operations.[117]

In response to congressional requests, GAO published analyses of MFP in 2020, 2021, and 2022.[118] In their 2021 analysis, GAO found that USDA OCE's 2018 estimates of economic losses "used a justifiable baseline" to model what trade would have been in the absence of retaliatory tariffs. GAO also found that USDA OCE's 2019 estimates of economic losses "used baselines that did not best represent what trade would be absent the retaliatory tariffs, and that increased trade damage estimates."[119] GAO also found that USDA's methodology for calculating 2019 MFP payments "addressed some limitations of its 2018 methodology but resulted in (1) producers of the same nonspecialty crop (such as corn and soybeans) being paid differently in different counties, and (2) total payments for a nonspecialty crop different from USDA's estimate of trade damage to the crop."

In their response to GAO's 2021 analysis, USDA OCE stated that

> [t]he draft report's finding that the 2019 baseline is not representative and increased trade damage estimates does not take into account that the decision on what is the appropriate baseline depends on the policy goals and that there is not one single most representative baseline. OCE provided alternatives that reflected different options based on the direction of senior USDA decision makers under the previous administration and selection of the baseline was part of the program design and not made by OCE.[120]

USDA OCE also noted that their 2018 and 2019 economic analyses adhered to departmental and Office of Management and Budget requirements for economic analyses.

In their 2022 analysis, GAO found that USDA's compliance methodology for MFP was not designed to identify high-risk payments for auditing.[121] GAO noted that USDA conducted multiple compliance reviews for MFP eligibility requirements and that the reviews identified significant improper payments in 2018 and 2019. GAO found that the review of 2018 MFP payments was "limited in its usefulness for several reasons" and that USDA discontinued its review of 2019 MFP payments because of competing agency priorities.

USDA OIG audited FPDP in 2023. USDA OIG found no reportable issues related to the type and quantity of commodities purchased but did find reportable issues related to verifying the domestic origin of purchased commodities and other aspects of contract management.[122]

USDA OIG audited ATP in 2022. USDA OIG found that USDA awarded funding to applicants "who may not have been the most meritorious based on the announced criteria and program

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[117] See, for example, witness testimony provided to the House Committee on Agriculture Subcommittee on Livestock and Foreign Agriculture during the hearing "U.S. Agricultural Trade: Stakeholder Perspectives" on March 10, 2020, https://democrats-agriculture.house.gov/uploadedfiles/116-33_-_42601.pdf.

[118] GAO, *USDA Market Facilitation Program: Information on Payments for 2019*, GAO-20-700R, August 2020; GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*; and GAO, GAO-22-104259, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, January 2022.

[119] GAO, *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*.

[120] GAO, "Appendix VIII: Comments from the Department of Agriculture," *USDA Market Facilitation Program: Stronger Adherence to Quality Guidelines Would Improve Future Economic Analyses*, p. 86.

[121] GAO, GAO-22-104259, *USDA Market Facilitation Program: Oversight of Further Supplemental Assistance for Farmers Could Be Improved*, January 2022.

[122] USDA, Office of Inspector General, *Food Purchase and Distribution Program*, Audit Report 01601-0003-41, August 2023.

regulations."[123] USDA OIG said they were "unable to attest to the merits of the 59 ATP grants awarded by [USDA Foreign Agricultural Service] in fiscal year (FY) 2019, totaling $300 million."

For More Information

Congressional staff seeking additional information on any of the key terms, concepts, and answers to the FAQs in this report may contact the authors and/or refer to CRS reports on trade authorities, agricultural trade, and farm support in general, which have been identified in the relevant sections above.

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[123] USDA, Office of Inspector General, *Oversight of the Agricultural Trade Promotion Program*, Audit Report 07601-0001-24, August, 2022.

IEEPA Tariffs Challenged in Supreme Court (published 10.16.25)

Introduction

On August 29, a federal appeals court **ruled** that the International Emergency Economic Powers Act (IEEPA) does not provide the Trump Administration authority to impose retaliatory tariffs. In its ruling, the appeals court held that President Trump exceeded the authority granted by the IEEPA when he signed five Executive Orders imposing tariffs on "nearly all goods from nearly every country in the world." The court's ruling permitted the Trump Administration to appeal the judgment to the United States Supreme Court, which agreed to hear arguments during the first week of November. Trump is the first and only President to rely on the IEEPA to implement tariffs, so this case will cover new ground. With the challenged tariffs playing a large role in international trade, the outcome of this case will certainly impact U.S. agricultural markets. This article will discuss the background of the case, the decision of the appeals court, and what comes next.

Background

The IEEPA was established in 1977 to grant the President the authority to exercise a variety of economic powers in response to a declared national emergency, while also limiting other economic powers granted to the President by earlier statutes like the Trading with the Enemy Act (TWEA). Functionally, the IEEPA allows the President to "investigate, regulate, or prohibit any transactions in foreign exchange." **50 U.S.C. §1702(a) (1977)**. However, the President's authority under the IEEPA is available only "to deal with any unusual and extraordinary threat . . . if the President declares a national emergency with respect to such threat." **50 U.S.C. §1701(a) (1977)**.

In January of this year, President Trump **declared** a national emergency at the U.S.- Mexico Border, citing national security concerns. This national emergency was later expanded to include Canada and China. Executive Orders Nos. **14193**, **14194**, **14195**, **14257**, and **14266** imposed tariffs on Mexico, Canada, and China in response to these national emergencies. The tariffs instituted by these executive orders are referred to in the court's opinion as the "Trafficking and Reciprocal Tariffs." The Trump Administration cited the President's IEEPA authority to regulate foreign trade in the event of a national emergency as the legal basis for instituting the tariffs. At issue in ***V.O.S. Selections, Inc. v. Trump,*** **No. 2025-1812 (Fed. Cir. 2025)**, are the five Executive Orders issued by President Trump to impose trade duties on foreign trading partners.

The Case

On April 14, 2025, a group of five businesses **filed suit** in the Court of International Trade (CIT), challenging the reciprocal tariffs instituted by President Trump following the declared national emergency. In the complaint, the plaintiffs alleged that the IEEPA did not grant President Trump the authority to levy the challenged tariffs. The complaint asserted that the authority to impose tariffs, "must be granted clearly and unmistakably" and not "through some implication so vague and indeterminate that it went unnoticed by every other President for nearly five decades."

The plaintiffs additionally claimed that even if the IEEPA did confer this authority to the President, then it is an unconstitutional delegation of legislative authority. On this point, the plaintiffs alleged that interpreting the IEEPA as allowing the challenged tariffs would constitute a "sweeping delegation of legislative power." According to the complaint, this "sweeping delegation" would violate the nondelegation doctrine, which exists to prevent Congress from giving its legislative power to entities not vested with such authority under the Constitution. At the CIT, the court **held** that the IEEPA did not authorize these tariffs and that the challenged orders would be permanently enjoined. Because the CIT found that the IEEPA did not authorize the tariffs, the CIT did not address whether it was an unconstitutional delegation of authority. The government appealed that decision to the U.S. Court of Appeals for the Federal Circuit.

On appeal, the court limited its discussion to "whether the Trafficking and Reciprocal Tariffs imposed by the Challenged Executive Orders are authorized by IEEPA." The court **held** that they were not. In reaching this conclusion, the appeals court relied on the text of the IEEPA, the IEEPA's history, and similar trade statutes. The court held that the IEEPA's authority, which permits the President to "regulate . . . importation," does not include the ability to impose sweeping tariffs. The court noted that the IEEPA does not include the word "tariff" or any of its synonyms like "tax" or "duty." However, in a variety of other statutes that do confer tariff authority on the President, Congress has used "clear and precise terms to delegate tariff power."

The court reasoned that the history and purpose of the IEEPA conflicted with President Trump's tariffs. The court pointed out that since the IEEPA was enacted, "not once before has a President asserted his authority . . . to impose tariffs." The court noted that the IEEPA was specifically enacted to "cabin the President's authority" and further reasoned that, "it seems unlikely that Congress intended, in enacting IEEPA, to depart from its past practice and grant the President unlimited authority to impose tariffs." This, coupled with the explicit grants of authority found in similar statutes, led the court to conclude that, "whenever Congress intends to delegate to the President the authority to impose tariffs, it does so

explicitly." Because the court found that IEEPA did not authorize these tariffs, the court did not address whether IEEPA violated the nondelegation doctrine.

Moving Forward

Despite finding that the IEEPA did not authorize the tariffs implemented by President Trump, the appeals court declined to affirm the CIT's decision to overturn and block the challenged tariffs. For now, the challenged tariffs will stand. In reaching this decision, the court relied on **Trump v. CASA, Inc., 606 U.S. 831 (2025).** There, the Supreme Court **held** that the injunctions sought were "broader than necessary to provide complete relief to each plaintiff with standing to sue." Rather than granting the injunction, the Supreme Court in **CASA** instructed the lower courts to "move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity."

The appeals court here took the same approach. On sending the decision back to the CIT for further review, the appeals court instructed the CIT to "consider in the first instance whether its grant of a universal injunction comports with the standards outlined by the Supreme Court in *CASA.*" This refusal to grant the injunctions have preserved the tariffs and will allow the Trump Administration to continue collecting tariff revenue for the time being. The government has appealed the CIT's decision to the Supreme Court, which decided to hear the case.

At the Supreme Court, **two questions** have been presented for review. First, whether the IEEPA allows a President to institute tariffs after declaring a national emergency. Second, if IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President, a question that was left unanswered in the lower courts. The Trump Administration has urged the Supreme Court to hear the case and issue a decision quickly. In a document published on September 9, the Supreme Court **granted** a motion to expedite the case and set oral arguments for November 5, 2025.

The Supreme Court's decision will have major political and economic implications, regardless of the outcome. Siding with the President would likely allow further tariffs to be enacted under the IEEPA and would expand the statute's authority for future administrations. Siding with the plaintiffs would likely result in the challenged tariffs being completely vacated. Given the impacts of the tariffs so far, this option would have a major effect on the U.S. economy. A final decision is not likely to come soon, but the outcome of this case will have major implications for the U.S. agriculture industry.

Overview of Recent Ag Trade Announcements (published 11.20.25)

Background

Following President Trump's three-leg journey across Asia in October of 2025, the White House has released details of new trade agreements that seek to increase U.S. agricultural exports. Additionally, agreements executed earlier this year with the United Kingdom (U.K.) and the European Union (E.U.) mark a similar attempt to increase exports to various European nations. This article will briefly discuss the details of the various trade developments announced by the White House throughout 2025.

Mutual Responsibilities & Consequences

It is important to note that the trade deals discussed below are still preliminary and in some cases are merely agreed upon "frameworks" meant to guide negotiations as they progress. As a result, they are not (and are not yet intended to be) binding on either country. Given the unpredictability of international trade, the final agreements could potentially vary greatly from these initial framework agreements, depending on future negotiations.

Article I of the Constitution gives Congress the exclusive power to "regulate commerce with foreign nations." In the past, when the President exercised their power to negotiate trade agreements, they were considered "congressional-executive agreements" and would ultimately require Congress' approval under trade promotion authority (TPA) enacted by Congress. However, the most recent TPA authority expired in 2021, creating uncertainty in whether foreign trade agreements would require congressional authorization. For example, when President Biden executed the Indo-Pacific Economic Framework for Prosperity (IPEF), no agreements under this trade deal were submitted to Congress for approval.

With the expiration of the TPA, it is unclear whether President Trump's "framework agreements" will require Congressional approval, creating yet another area of uncertainty in the future of these agreements. The Congressional Research Service has recently published a report that may be helpful for more information on the interplay between executive and legislative authority.

China

Following a meeting in South Korea between President Trump and Chinese President Xi Jinping, the White House published details of a new trade deal agreed upon by the U.S. and China. In a fact sheet recently published on the White House website, the trade deal is referred to as a "historic agreement" that will "open China's market to U.S. soybeans and other agricultural exports." The trade deal stipulates that China will suspend its retaliatory

tariffs implemented throughout 2025. These include tariffs on U.S. chicken, wheat, corn, cotton, sorghum, soybeans, pork, beef, aquatic products, fruits, vegetables, and dairy products. Further, China has agreed to purchase at least 12 million metric tons of U.S. soybeans during the final two months of 2025. China has also committed to purchase at least 25 million metric tons of U.S. soybeans in 2026, 2027, and 2028. Finally, China has agreed to resume purchasing U.S. sorghum, hardwood, and softwood logs.

China is a major purchaser of U.S. soy, so this can have a significant impact on production and market values. For example, in 2024 China purchased 26.81 million metric tons of U.S. soybeans. Between January and May of 2025, before trade tensions escalated, figures **indicate** China had imported 6 million metric tons of U.S. Soybeans. It has been **reported** by the USDA that since the summit in South Korea, China has purchased 792,000 metric tons of U.S. soybeans.

As of the time of writing, China **has not** publicly issued a confirmation of its commitment to purchase the specified amounts of U.S. soybeans. However, in regards to some other components of the deal, China has **confirmed** its suspension of its retaliatory tariffs on U.S. imports. It will, however, leave in place a 13% tariff on imported U.S. soybeans.

Japan

During the trip to Asia, President Trump met with Japan's Prime Minister Sanae Takaichi to reconfirm the Framework Agreement entered by the U.S. and Japan on July 22, 2025. The framework contained provisions intended to bolster agricultural trade between the U.S. and Japan. Details of this agreement were outlined in an **Executive Order** signed by President Trump on September 4, 2025, titled "Implementing the United States-Japan Agreement." The Executive Order states that Japan will be "working toward an expedited implementation of a 75 percent increase of United States rice procurements within the Minimum Access rice scheme." Additionally, Japan will be investing $8 billion per year towards "purchases of United States agricultural goods, including corn, soybeans, fertilizer, bioethanol (including for sustainable aviation fuel)." Japan has reconfirmed its commitments in a recently published **Joint Statement** between Japan and the U.S..

The United Kingdom

On May 8, 2025 President Trump and Prime Minister Keir Starmer **announced** the U.S.-UK Economic Prosperity Deal (EPD). Per the **general terms** of this agreement, the United Kingdom will be removing its 20% tariff on U.S. beef exports, which currently impacts beef exports within a quota of 1,000 metric tons. The U.K. has also agreed to create a preferential duty-free quota of 13,000 metric tons for U.S. beef. A preferential-duty free agreement is a form of trade agreement that allows products to be imported with reduced

import costs and fees. The trade deal between the U.S. and the U.K. also stipulates that the two nations will "commit to working together to improve market access for agricultural products." However, the trade deal does not go into detail on how exactly market access will be improved. An **update** recently published by the U.K. government states, "We will execute the legislative process to create a preferential duty-free quota for US beef of 13,000 metric tonnes (MT) per calendar year." Similar to the above agreements, at this point this is a voluntary and mutual decision, rather than a binding legal commitment.

The E.U.

On July 27, 2025, President Trump **announced** a new "Framework Agreement" with the E.U.. The **Framework Agreement** stipulates that the E.U. provide preferential market access for U.S. agricultural goods including tree nuts, dairy products, fresh and processed fruits and vegetables, processed foods, planting seeds, soybean oil, and pork and bison meat. Like the agreement with the U.K., this trade deal states that the E.U. and U.S. "commit to work together to address non-tariff barriers affecting trade in food and agricultural products" which includes "streamlining requirements for sanitary certificates for pork and dairy products." In a **Joint Statement** between the U.S. and the E.U., the Framework Agreement is referred to as "a first step in a process that can be further expanded over time to cover additional areas and continue to improve market access and increase their trade and investment relationship."

Malaysia

On October 26, 2025, the U.S. and Malaysia executed the "**Agreement on Reciprocal Trade**." According to a **fact sheet** published by the Office of the U.S. Trade Representative, Malaysia has committed to provide significant preferential market access for U.S. agricultural products. This includes dairy, horticultural products, poultry, pork, rice, and fuel ethanol. Malaysia has also committed to address "non-tariff" barriers to U.S. agricultural exports. To accomplish this, Malaysia has pledged to: (1) recognize the U.S. food safety system for U.S. meat, poultry, and dairy products; (2) streamline halal certification of U.S. food and agricultural products; (3) open market access for U.S. sorghum; and (4) adopt regionalization approaches to facilitate U.S. exports of pork and poultry. Malaysia has confirmed these commitments via a **Joint Statement** between the U.S. and Malaysia. According to that joint statement, the two nations will "undertake domestic formalities in advance of the Agreement entering into force." The agreement is additionally confirmed in a **post** by the National Trade Promotion Agency of Malaysia, which claims the agreement "strengthens regulatory certainty and supply-chain resilience through deeper cooperation in trade facilitation."

Cambodia

On the same day that the Malaysia agreement was formalized, a **new trade agreement** with Cambodia was also announced. Under this agreement, Cambodia has agreed to eliminate tariffs on all U.S. food and agricultural product imports. Further, the agreement contains language indicating Cambodia's intent to promote the importation of U.S. agricultural products. Specifically, Cambodia says it will recognize U.S. regulatory oversight, U.S. sanitary and phytosanitary measures, and accept certificates issued by U.S. regulatory authorities for food and agricultural products. U.S. **sanitary and phytosanitary measures** are a set of testing and inspection methods used to ensure the safety of agricultural products. This language in the trade agreement indicates that when importing U.S. agricultural products, Cambodia will defer to safety determinations already made by U.S. regulatory agencies. This, in theory, should reduce non-tariff barriers to trade between the U.S. and Cambodia. While this agreement is not yet finalized, the two countries **have committed** to "undertake domestic formalities" to make it so.

Ongoing Negotiations

The negotiations discussed in this section are even more nebulous, as they are merely attempts to negotiate the terms of a potential agreement. However, they are still an indication that the following countries are at least at the negotiating table with the U.S.

Indonesia and the U.S. are still negotiating details of a trade deal that was first discussed in a **joint statement** issued on July 22, 2025. Per the joint statement, Indonesia would eliminate "approximately 99 percent" of tariff barriers currently placed on a "full range" of imported U.S. food and agricultural products. The proposed agreement also stipulates that the U.S. and Indonesia will cooperate to exempt U.S. food and agricultural products from all import licensing regimes, provide Fresh Food of Plant Origin designation for all applicable U.S. plant products, and to recognize listing of all U.S. meat, poultry, and dairy facilities. The joint statement provides that Indonesia will also accept certificates issued by U.S. regulatory authorities.

Further, the U.S. and Vietnam have announced a **framework** for a trade agreement, but are still in the process of finalizing details of a more comprehensive agreement. The framework states that Vietnam will provide preferential market access for "substantially all" U.S. agricultural exports to Vietnam.

On October 26, 2025, the White House posted a **joint statement** discussing an agreed-upon framework for a new trade deal between the U.S. and Thailand. The framework states that Thailand will eliminate tariff barriers on "approximately 99 percent of goods" covering a full range of U.S. food and agricultural products. Similar to other agreements, the U.S. and

Thailand trade deal would require Thailand to accept safety certifications of food and agricultural products issued by U.S. regulatory authorities. This joint statement also "takes note" of "the forthcoming commercial deals between U.S. and Thai companies" for the purchase of U.S. feed corn, soybean meal, and dried distiller grains with solubles at an estimated 2.6 billion dollars per year.

Finally, on November 14, 2025, the White House published a **fact sheet** outlining the framework for new U.S. trade deals with Switzerland and Liechtenstein. Negotiations are ongoing, but a recently published **press release** indicates that Switzerland and Liechtenstein have in fact signed a "non-binding memorandum of understanding" with the U.S. At this time, only the "non-binding memorandum of understanding" has been signed, so the specific details of the agreement have not been finalized and may be subject to change. Per the fact sheet, this new trade deal will "lock in the largest expansion ever of U.S. exporter access to Swiss markets, creating new opportunities for U.S. manufacturers, farmers, ranchers, fishermen, and other producers." To accomplish this expansion, Switzerland and Liechtenstein will remove "a range of tariffs" on U.S. agriculture products including fresh and dried nuts, fish and seafood, and fruits. Additionally, Switzerland will establish tariff rate quotas for American poultry, beef, and bison. Finally, the fact sheet discusses Switzerland and Liechtenstein's intent to address non-tariff barriers which have historically prevented certain U.S. goods from being imported. To remove these barriers, the nations will address "restrictive measures" on U.S. poultry and attempt to streamline requirements for U.S. dairy products.

Conclusion

Trade relationships between countries are complicated. Until binding agreements are reached, negotiations may continue. While more time will be needed to determine the ultimate impact, the language recognizes the importance of international trade to U.S. agriculture and indicates an intent to improve exports of U.S. agricultural products.

Supreme Court Vacates IEEPA Tariffs (published 3.5.26)

Introduction

In January 2025, President Trump declared national emergencies at the U.S. borders, citing an influx of "poisonous fentanyl" and "the extraordinary threat posed by illegal aliens". According to the Trump Administration, these emergencies authorized the President to impose tariffs under the International Emergency Economic Powers Act (IEEPA). IEEPA grants the President authority to undertake specific economic actions in response to a national emergency. Using IEEPA, the Trump Administration imposed tariffs on Mexico, Canada, and China. These tariffs were challenged in federal courts and ultimately struck down by the Supreme Court on February 20, 2026, in *Learning Resources, Inc. v. Trump*. To learn more about the IEEPA tariffs and the Court's decision, click here.

Following that decision, certain questions remained unanswered. Will there be refunds for the IEEPA tariffs? How will those refunds be issued? Will the Trump Administration impose new tariffs, and if so, how? Recent developments have provided some clarity on these issues and what importers can expect moving forward. This article will discuss refunds, new tariffs implemented by the Trump Administration, and an investigation by the United States Trade Representative that could potentially lead to new tariffs.

Refunds & The CAPE System

Reportedly, approximately $133.5 billion was collected on IEEPA tariffs by December 2025. With those tariffs now vacated by the Supreme Court, American importers are seeking refunds. Because the Court's decision did not mention refunds, importers were left uncertain about whether refunds would be issued. Recent developments at the Court of International Trade (CIT) have provided some clarity, but background is needed to understand those actions.

When a good that is subject to tariffs enters the United States, one of two collection processes applies: formal and informal entries. Formal entry is required when the value of imported goods exceeds $2,500. In a formal entry, the importer must pay the estimated tariff rate and post a bond with Customs and Border Protection (CBP). CBP later calculates the final tariff rate. This is known as "liquidation." Under federal law, liquidation must occur within one year of the entry. Informal entries generally do not require a bond and are considered liquidated once the importer pays the estimated tariffs.

Under the Tariff Act of 1930, the Secretary of the Treasury is authorized to offer tariff refunds when "it is ascertained on liquidation or reliquidation . . . that more money has been deposited or

paid as duties than was required by law." In those situations, refunds are required if the discrepancy exceeds $20.00. Additionally, refunds may be mandated after a court orders reliquidation.

On March 4, 2026 the Court of International Trade (CIT) issued an order stating that, "all importers of record whose entries were subject to IEEPA duties are entitled to benefit from the *Learning Resources* decision." To facilitate this, the CIT ordered that any liquidated entries "for which liquidation is not final" be reliquidated without regard to the IEEPA tariffs. Unliquidated entries were likewise ordered to be liquidated. In other words, the CIT ordered CBP to pretend as if the IEEPA tariffs never existed and begin issuing refunds. As discussed above, liquidation is a crucial step in the refund process, as it determines the amount owed by the importer.

On March 6, the CIT issued a subsequent order temporarily suspending CBP's obligation to issue refunds, after CBP indicated it needed additional time to liquidate or reliquidate all entries. CBP asserted that the "volume of entries" made each year prevent it from being able to "affirmatively review and liquidate each entry." CBP is still responsible for collecting and liquidating all non-IEEPA tariffs, which seems to have initially caused CBP to doubt its ability to comply with the CIT's order. However, CBP then filed a subsequent declaration which outlined its plans to implement a new online system to process IEEPA refunds.

CBP plans to implement the Consolidated Administration and Processing of Entries (CAPE) claims portal. According to CBP, CAPE will be a web-based resource allowing importers and brokers to submit IEEPA refund requests. CAPE will use information submitted by importers to determine refund eligibility. If eligible, tariff rates will be liquidated or reliquidated "as if the IEEPA duties had never been declared." After liquidation or reliquidation, CAPE will automatically issue refunds to eligible importers. It is important to note that CAPE is not yet finalized. Accordingly, CBP will be implementing a phased development of CAPE, with basic system functionality being activated first. To ensure eligibility for refunds, importers must first enroll in the Automated Clearing House (ACH) program. ACH is a system used by CBP to process and transmit electronic credit and debit transfers and will be used to distribute IEEPA refunds. For more information on the CAPE system, click here.

Refunds have been a looming issue since the Court's decision in *Learning Resources*. Given the amount collected under the IEEPA tariffs, many U.S. importers are likely seeking to recover refunds. When the Court did not address refunds in its opinion, those importers were left with uncertainty. However, with its introduction of the CAPE system, CBP has provided at least one potential avenue for producer refunds under IEEPA.

Section 122 Tariffs

On February 20, 2026, President Trump announced a new 10% global tariff rate under Section 122 of the Trade Act of 1974 (Section 122). The initial announcement came the same day the Supreme Court invalidated the IEEPA tariffs. Since its enactment, no tariffs had previously been implemented under Section 122. Because no tariffs have been imposed under Section 122 before, many importers may be unclear about Section 122's purpose and how it relates to the newly announced tariffs.

Section 122 was implemented to address "fundamental international payments problems." More specifically, Section 122 allows the president to impose tariffs to: 1) deal with large and serious United States balance-of-payments deficits; 2) prevent an imminent and significant depreciation of the dollar in foreign exchange markets; or 3) cooperate with other countries in correcting an international balance-of-payments disequilibrium.

A balance-of-payments refers to a record detailing all transactions made between a country's entities and international trading partners. It includes a current account, a capital account, and a financial account. The current account tracks a nation's trade of goods and services, its earnings on foreign investments, and its foreign money transfers. The capital account covers transactions in foreign financial institutions and central bank reserves. The financial account records deposits, ownership of investment securities, and direct investment between U.S. residents and foreign entities. A balance-of-payments deficit means that the United States is sending more money out than it is taking in.

Unlike IEEPA, Section 122 explicitly grants the President authority to impose tariffs. However, Section 122 also places limitations on any tariffs enacted under its authority. To address one of the above-mentioned payments problems, the President may enact a temporary tariff. The tariff cannot exceed 150 days, unless approved by Congress. 19 U.S.C. § 2132(a)(3). The tariff rate may not exceed 15% *ad valorem*. An *ad valorem* tariff is calculated based on the total value of the goods, rather than their quantity or weight. In other words, the tariff may not exceed 15% of the total value of the imported goods. Section 122 requires that the tariff rate be applied "consistently with the principle of nondiscriminatory treatment." 19 U.S.C. § 2132(d)(1). This means that the rate must generally apply equally to all countries. However, when a country has "large or persistent balance-of-payments surpluses," the President may target them specifically.

Using the authority granted by Section 122, the Trump Administration announced a 10% *ad valorem* import duty on articles being imported into the United States. The administration asserts that the Section 122 tariffs are necessary to correct "a large and serious balance-of-payments deficit." The announcement explains that the United States is currently in an overall account deficit and running a deficit in each component of the current account. To support this claim, the Trump Administration asserts that: 1) the annual U.S. goods trade deficit reached 40% during 2024; 2) the U.S. made less on exported capital and labor than other countries made by exporting capital

and labor to the U.S. and; 3) more money is currently being transferred out of the United States than is being transferred in. According to the announcement, these issues "endanger U.S. economic and national security."

The announcement additionally lists certain exemptions from the Section 122 tariff rate. The exemptions include but are not limited to: certain critical minerals; natural resources unavailable in the United States; beef, tomatoes, and oranges; pharmaceuticals; certain electronics; certain aerospace products; and informational materials. Additionally, goods traded according to the agreement between the United States, Mexico, and Canada will be exempted. As discussed above, the Section 122 tariffs face a 150-day statutory-limit, which could potentially be extended by Congress. This means that the tariffs could at least be active until July 20, 2026.

The Section 122 tariffs have already faced legal challenges. A coalition of twenty-four states filed a lawsuit challenging the Section 122 tariffs on March 5, 2026. The suit, filed in the CIT, argues that Section 122 does not authorize the Trump Administration's tariffs. The complaint argues that a trade deficit is not a balance-of-payments deficit, and therefore Section 122 does not apply. According to the states, the administration is "contorting" the term balance-of-payments and "cherry-picking only the negative components." They argue that when foreign capital and financial investments into the United States are included, the actual balance-of-payments is only 0.2% of the United States' gross domestic product, which the states characterize as "essentially a rounding error." The states claim that Section 122 does not authorize tariffs based on a trade deficit and that the administration cannot "redefine" the term balance-of-payments to justify the Section 122 tariffs. The plaintiffs conclude by requesting the CIT to declare the Section 122 tariffs unlawful, vacate them, and order refunds of tariffs already collected.

Whether the Section 122 tariffs will survive this challenge remains to be seen. As of the time of writing, the tariffs have been in effect for just over a month, and many questions remain unanswered. Section 122 imposes a 150-day limit, but Congress could extend that period. Even if Congress were to extend the deadline, the tariffs could be overturned by the courts. Further, President Trump has indicated that the rate will be increased to 15%. Whether Section 122 authorized the recent tariffs is an issue for the federal courts to decide, which could take some time.

Potential Section 301 Tariffs

On March 17, 2026, the Office of the United States Trade Representative (USTR) initiated an investigation of foreign countries under Section 301 of the Trade Act of 1974 (Section 301). According to a USTR press release, the investigation focuses on "acts, policies, and practices of various economies" related to structural excess capacity in manufacturing sectors. Structural excess capacity occurs when production capacity exceeds domestic and global demand. The USTR

claims that this excess capacity will lead to "overproduction and large or persistent trade surpluses, as well as underutilized and unused capacity, in manufacturing sectors." According to the USTR, this poses "a serious challenge to U.S. efforts to re-shore supply chains and provide good-paying jobs for American workers." While the USTR has explained why it launched the investigation, many may still be unclear about how Section 301 works and what could come next.

Section 301, at its core, is designed to address "unfair" foreign trade policies and enforce international trade agreements. Section 301 applies when the USTR determines that "the rights of the United States under any trade agreement are being denied." Section 301 also applies when "an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or is unjustifiable and burdens or restricts United States commerce."

A Section 301 investigation can be initiated by the USTR itself or by a private party. Private parties must file a petition describing the unfair trade practice and how it is harming the U.S. economy. Once filed, the USTR has 45 days to decide whether to begin a formal investigation. The USTR must publish a notice in the Federal Register when self-initiating an investigation. The USTR is also required to seek public comment on proposed actions. For non-trade agreement investigations, a final determination will generally be issued 12 months after an investigation begins.

If the USTR finds through investigation that a country has violated a trade agreement or implemented an act, policy, or practice that is unjustifiable, Section 301 authorizes certain actions. Most notably, the USTR may impose tariffs. Under Section 301 the USTR is authorized to impose duties or "other import restrictions" on the goods of a foreign country for "such time as the Trade Representative determines appropriate."

The USTR announced that it has self-initiated a Section 301 investigation. The USTR will investigate China, the European Union, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India for the above-mentioned structural excess capacity concerns. If the USTR determines that the policies or practices of the countries under investigation are actionable under Section 301, it may act under the statute, including imposing tariffs.

This is a broad investigation, and it will likely be some time before any official action is announced. However, any actions taken could have significant economic consequences. Individuals interested in submitting a public comment on the investigation may do so here. The deadline to submit written comments is April 15, 2026.

Conclusion

In the aftermath of the *Learning Resources* decision, many questions remained unanswered. However, some answers have emerged in the weeks since. While not finalized, the CAPE system may provide an avenue for importers seeking IEEPA refunds. Despite ongoing legal challenges, President Trump's Section 122 tariffs suggest that tariffs remain a central part of the administration's trade strategy. This is further reinforced by the USTR's decision to initiate a broad Section 301 investigation against U.S. trading partners. It remains to be seen what the investigation will ultimately find and what actions may follow. Regardless, importers and consumers should stay informed about these developments and monitor further changes in U.S. trade policy.

To learn more about the IEEPA tariffs, click here.

To read the full text of the Trade Act of 1974, click here.

To learn more about enrolling in the ACH program, click here.

Federal Court Strikes Down 2019 & 2024 ESA Regulations (published 4.16.26)

On March 30, 2026, a federal court in California issued a ruling to overturn several Endangered Species Act ("ESA") regulations adopted by the Trump administration in 2019 and the Biden administration in 2024. The plaintiffs in ***Ctr. for Biological Diversity v. U.S. Dep't of Interior*, No. 24-cv-04651 (N.D. Cal. Mar. 30, 2026)** challenged six rules in total with the court ultimately concluding that four violated the statutory text of the ESA. Earlier this year, the United States Fish and Wildlife Service ("FWS") together with the National Marine Fisheries Service ("NMFS") proposed a slate of new ESA regulations intended to restore the rules established under the first Trump administration. While those rules have yet to be finalized, it is possible that the recent court ruling may offer some insight into how courts may ultimately treat those regulations.

ESA Overview

The ESA was enacted in 1973 for the purpose of conserving species at risk of extinction and the habitats upon which those species depend. 16 U.S.C. § 1531(b). The statute is jointly administered by FWS and NMFS (collectively, "the Services") which are responsible for creating and maintaining a list of species that are classified as either "threatened" or "endangered" depending on the level of risk those species face. 16 U.S.C. § 1533. Once a species is added to that list, it becomes protected under the ESA.

When the Services list a species for protection under the ESA, they must also designate critical habitat for the species. 16 U.S.C. § 1533(a)(3)(A)(i). The ESA defines critical habitat as specific geographical areas which are "occupied by the species, at the time it is listed […] on which are found those physical or biological features essential to the conservation of the species" or areas which are not occupied by the species at the time of listing but the Services have determined are "essential for the conservation of the species." 16 U.S.C. § 1532 (5)(A).

Along with requiring the Services to list species under the ESA and designate critical habitat for those species, the ESA also requires all other federal agencies to consult with the Services to avoid harming listed species or designated critical habitat. Specifically, the ESA requires each federal agency to ensure that any action it "authorize[s], fund[s], or carrie[s] out" is "not likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of" critical habitat. 16 U.S.C. § 1536(a)(2). To initiate this process, the agency taking action will determine whether its action "may affect" listed species. 50 C.F.R. § 402.13. If the agency concludes that its action "may affect" a listed species, it must reach out to the Services to determine whether the action is

"likely to adversely affect" the species. 50 C.F.R. § 402.13 If so, then the Services must engage in formal consultation, a process which requires the consulting Service to prepare a document known as a Biological Opinion ("BiOp"). 50 C.F.R. § 402.13 The BiOp will evaluate more thoroughly the expected impacts of the agency's action and if it concludes that the action is likely to jeopardize the continued existence of a protected species or result in the destruction or adverse modification of critical habitat, it must also include mitigation measures the agency can take to avoid causing such negative impacts. 50 C.F.R. § 402.13. When making a determination about the impacts an agency action may have on listed species, the Services must base their conclusions on "the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2).

Background to the Case

Since 2019, the ESA has experienced several rounds of regulatory changes. In August 2019, the Services issued final rules to change the procedures related to the listing of species under the ESA and the consultation process between the Services and other federal agencies. A closer look at those changes is available here. The plaintiffs in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* filed a lawsuit to challenge those 2019 regulations. However, following a change in Presidential administration, the court sent the matter back to the Services for review, bringing that lawsuit to an end. In 2024, the Services adopted new regulations which, according to the plaintiffs, resolved some of their concerns with the 2019 regulations but ultimately retained certain issues while introducing others. More information on the 2024 regulatory changes can be found here.

After the new regulations were finalized in 2024, the plaintiffs filed the current lawsuit to challenge six specific provisions that had been either introduced in 2019 and retained in 2024 or introduced for the first time in 2024. Following another change in Presidential administration in 2025, the Services sought to have the case either paused or dismissed, citing another round of updated ESA regulations that had been proposed in 2025 which the Services expect to finalize before the end of 2026. However, the court concluded that neither pausing or dismissing the case would be appropriate, noting that it would be better for the court to "provide the [Services] with its reading" before the new regulations are final so that the Services can take into account any "problems" the court might find.

Many of the regulatory changes proposed in 2025 were identical to those that had been made in 2019 before being modified in 2024. Although various lawsuits were filed to challenge the 2019 rules, they were largely paused or dismissed after the Services announced that they would revisit those regulations following the transition from the Trump administration to the Biden administration. For that reason, no court ever fully considered whether the 2019 rules complied with the ESA. The recent decision in *Ctr. for Biological*

Diversity v. U.S. Dep't of Interior represents the first time a court has considered the legality of those regulations and may provide some insight into how the rules proposed in 2025 may be viewed by courts after they are finalized.

Recent Court Decision

The plaintiffs in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* asked the court to review six ESA regulations and consider whether they violated the statutory requirements of the ESA. Four of those regulations are related to the consultation process while the other two are concerned with the designation of critical habitat. Of those six, the court found that four violated the ESA and should be overturned. The other two were upheld.

"Effects of the Action"

During agency consultation with the Services, the ESA requires the Services to evaluate the effects of the agency action on listed species and critical habitat to determine whether jeopardy of a species or the destruction or adverse modification of critical habitat is likely to occur. 16 U.S.C. § 1536. Before 2019, the ESA regulations defined "effects of the action" as "the direct and indirect effects of an action on the species or critical habitat." 50 C.F.R. § 402.02 (2018). The 2019 rules changed the definition of "effects of the action" to "all consequences to listed species or critical habitat that are caused by the proposed action" and clarified that a "consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur." 50 C.F.R. § 402.02 (2019). The Services left this definition in place when it amended the regulations in 2024.

The plaintiffs argue that this violates the ESA's requirement that the Services rely on the best scientific data available when considering the impacts an agency's action may have on listed species and that it the phrase "reasonably certain to occur" conflicts with the ESA requirement that the Services consider whether jeopardy of a species is "likely" to occur. The court agreed with the plaintiffs on both arguments. First, the court concluded that the 2019 rule violates the ESA's "best available data" requirement because the ESA "imposes a mandatory duty on the Services to analyze the likelihood of jeopardy or harm to habitat using the best available data." According to the court, the best scientific data available may not be the same as impacts that are "reasonably certain to occur." Next, the court concluded that the provision of the 2019 regulation that requires the Services to only consider those impacts to species and habitat which are "reasonably certain to occur" is contrary to the ESA requirement that Services consider whether jeopardy of a species or harm to habitat is "likely." Because what is "likely" may not necessarily include what is "reasonably certain to occur," the court held that this regulation violated the ESA and should be overturned.

Consideration of Mitigation Measures

When drafting a BiOp, the ESA regulations require the Services to take into account "any beneficial actions" taken or proposed to be taken by the action agency. 50 C.F.R. § 402.14(g)(8). The purpose of this rule is to ensure that the Services consider any activities that are beneficial to listed species that the consulting agency plans to include as part of its proposed action when determining what the impacts of that action could be to protected wildlife. In 2019, the Services amended the ESA rules to clarify that the Services should take such beneficial activities into consideration without "any additional demonstration of binding plans." 50 C.F.R. § 402.14(g)(8). In other words, the 2019 rules require the Services to give proposed beneficial activities the same consideration as any other portion of the agency action even if the agency has not committed to carrying out those activities.

The plaintiffs argued that this violates the ESA's requirement that the Services "insure" against jeopardy of listed species by "forcing them to consider amorphous, non-binding mitigation plans in making no-jeopardy findings." In it's opinion, the court agreed with the plaintiffs, concluding that the 2019 rule violated the ESA because it does not satisfy the statutory requirement that the Services "insure" against harm to species or habitat. According to the court, the ESA requires beneficial activities to be excluded from consideration unless they are binding.

Definition of "Destruction or Adverse Modification"

Under the ESA, the Services must "insure" that federal agency actions will not cause jeopardy to listed species or "destruction or adverse modification" to designated critical habitat. 16 U.S.C. § 1536(a)(2). Prior to 2019, the ESA regulations defined "destruction or adverse modification" as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species." 50 C.F.R. § 402.02 (2018). In 2019, that definition was amended to "a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole* for the conservation of a listed species." 50 C.F.R. § 402.02 (2019). That definition was retained in the 2024 regulations.

The plaintiffs argue that introducing the language "as a whole" violates the ESA by replacing the statutory requirement to avoid all destruction or adverse modification of critical habitat with a regulatory provision that allows at least some destruction or adverse modification of critical habitat. The court agreed, concluding that the text of the ESA "prohibits adverse modification entirely" and that the 2019 rule violated that requirement by permitting at least some adverse modification to critical habitat.

Duty to Request Reinitiation of Consultation

Before 2024, the ESA regulations concerning agency consultation required both the agency taking action or the consulting Service to request reinitiation of consultation under certain circumstances. 50 C.F.R. § 402.16(a) (2023). In 2024, the Services amended their regulations so that only the agency taking action is required to request reinitiation of consultation. The plaintiffs claim that the Services unlawfully rescinded their duty to request reinitiation of consultation, arguing that the Services failed to provide adequate reasons to support amending the regulations. In 2024, the Services stated that they were amending the regulation to clarify that only the action agency has the authority and responsibility to initiate or reinitiation consultation. The court was not persuaded by that reasoning. According to the court, while the text of the ESA does not allow the Services to compel any federal agency to engage in consultation, nothing in the pre-2024 rule gave the Services that authority. The rule required the Services to request reinitiation in certain circumstances but did not grant the Services the authority to require the federal agency to reinitiate consultation. Because the Services failed to provide a persuasive reason for changing a rule that had been in place for 25 years, the court found the change to be unlawfully arbitrary and concluded that it should be overturned.

Rules Upheld

Finally, the court considered the last two regulations challenged by the plaintiffs. While the court overturned the first four regulations it considered, it upheld the last two after concluding that they did not violate the ESA.

The ESA defines "threated species" as "any species which is likely to become an endangered species within the foreseeable future[.]" 16 U.S.C. § 1532(20). Before 2024, the ESA regulations required the Services to defined "foreseeable future" as extending "only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely." 50 C.F.R. § 424.11(d) (2023). In 2024, the Services amended that definition to "as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats." 50 C.F.R. § 424.11(d) (2025). In making this change, the Services replaced language requiring that they "reasonably determine" that threats to a species are "likely" with language that the Services make "reasonably reliable predictions" about those same threats. The plaintiffs argued that the new language contradicts the ESA requirement that the Services base their conclusions on the "best available data," but the court disagreed. In its ruling, the court concluded that the two phrases "appear synonymous" and that to determine whether an effect is "likely" requires making a "reliable prediction" about that effect. Because the court determined that the pre-2024 rule and the amended rule are functionally equivalent, it concluded that the rule should be upheld.

Finally, the court considered the plaintiffs' challenge to an ESA regulation concerning the designation of critical habitat. The text of the ESA requires the Services to designate critical habitat at the same time it lists a species "to the maximum extent prudent and determinable." 16 U.S.C. § 1533(a)(3). Before 2024, the ESA regulations identified two limited circumstances where designating critical habitat at the same time a species is listed would not be prudent and determinable. In 2024, the Services modified the regulation to include two other circumstances where designating critical habitat would not be necessary. The plaintiffs argue that the new rule violates the ESA by unlawfully expanding the conditions under which the Services may find that designating critical habitat is not prudent and determinable. However, the court disagreed, citing previous court decisions which held that the Services could only make a not-prudent finding with respect to critical habitat would be beneficial to the species. Because the two additional circumstances outlined in the 2024 ruling described situations where reaching a not-prudent finding would be beneficial to the species, the court found that the regulation complied with the ESA and should be upheld.

Going Forward

Since 2019, the ESA has seen several rounds of regulatory updates. So far, this is the first time a court has reviewed any of the updated rules on the merits to consider whether they comply with the statutory requirements of the ESA. In 2025, the Services launched a new round of regulatory changes, many of which mirror the changes made in 2019. While those rules have yet to be finalized, the ruling in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* may offer some insight into how courts will treat those regulations once they are final. For those who are regulated under the ESA, remaining informed on regulatory changes is helpful to understand how the law will be implemented going forward.

To view the court's decision in *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, click here.

To view the text of the ESA, click here.

For more NALC resources on the ESA, click here.

Supreme Court Agrees to Hear Pesticide Preemption Lawsuit (published 1.27.26)

The United States Supreme Court has announced that it will hear oral arguments in *Durnell v. Monsanto*, a case filed by a Missouri plaintiff who claims that exposure to the herbicide Roundup and its active ingredient glyphosate caused him to develop non-Hodgkin's lymphoma. The case is one of thousands that have been filed over the last decade against Monsanto Company (now owned by Bayer) by plaintiffs who claim that using Roundup caused them to develop cancer and that Monsanto failed to warn consumers about the alleged health risk. For its part, Bayer has argued that the state law claims raised by plaintiffs in these cases are preempted by federal pesticide law and should be dismissed. After years of litigation, that question will now be presented to the Supreme Court. However, the Court rules in this case will have an impact not only on ongoing litigation involving Roundup and glyphosate but may set a precedent for lawsuits involving other pesticide products.

Background: Roundup Lawsuits and *Durnell*

Roundup is one of the most widely used herbicides in the United States. It was developed in the 1970s and has been available in the United States for decades. Glyphosate, the active ingredient in Roundup, was first approved by the Environmental Protection Agency ("EPA") since 1974. Roundup is used both in agricultural and non-agricultural settings. Since the 1990s, Roundup has been an essential part of Monsanto's Roundup Ready system which paired use of the herbicide with glyphosate-resistant crop seeds to allow direct applications during the growing seasons. Commercial formulations of Roundup have been used in home and municipal landscaping for years.

Since 2015, tens of thousands of lawsuits have been filed against Bayer by plaintiffs claiming that the use of Roundup caused them to develop cancer. These cases have been filed in state courts and raise what products liability claims that arise out of state law, specifically the civil tort of failure to warn. In response, Bayer has argued that federal pesticide law preempts state law products liability claims and that such claims should be dismissed. While only a handful of the cases filed against Bayer have gone to trial, juries and judges alike have been split on the issue. While some juries have issued verdicts in favor of Bayer, finding that the pesticide manufacturer complied with the law and is not liable for a plaintiff's injuries, others have returned verdicts in favor of the plaintiffs and awarded damages in amounts exceeding $2 billion. Similarly, of the three circuit courts that have been asked to determine whether federal pesticide law preempts the plaintiffs' state law claims, the Third Circuit has held that the claims are preempted while the Ninth and Eleventh Circuits have held that they are not.

The plaintiff in *Durnell* originally filed his lawsuit against Bayer in 2019. He filed his case in state court in Missouri where he lives and where Monsanto is headquartered. Like other plaintiffs in pesticide liability cases, the plaintiff in *Durnell* raised several state law products liability claims including failure to warn. At trial, the jury concluded that Monsanto had failed to warn the plaintiff of possible health risks of using Roundup and awarded him $1.25 million. Bayer appealed that verdict to the Missouri Court of Appeals which affirmed the jury order and held that the plaintiff's failure to warn claim was not preempted by federal law. Bayer then attempted to appeal that ruling to the Missouri Supreme Court which declined to hear the case. Now, the matter comes before the United States Supreme Court.

Arguments Before the Supreme Court

Both the plaintiff and Bayer have made arguments to the Supreme Court that have become familiar to those keeping up with how pesticide liability cases have evolved in recent years. Each argument focuses on the text of the Federal Insecticide, Rodenticide, and Fungicide Act ("FIFRA") and a previous Supreme Court case to either support or refute the argument that federal pesticide law preempts state law claims of failure to warn.

FIFRA is the primary federal law regulating pesticide use in the United States. Under FIFRA, a pesticide cannot be sold or distributed in the United States until it has been approved for use by the Environmental Protection Agency ("EPA"). To approve a pesticide, EPA must determine that the product will not cause "unreasonable adverse effects" on the environment when used as intended. 7 U.S.C. § 136a(c)(5)(C). FIFRA defines "unreasonable adverse effects" as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide[.]" 7 U.S.C. § 136(bb). To meet this standard, EPA will assess the human health impacts of pesticides it is seeking to register, including assessing the carcinogenicity of the product and its active ingredients.

Along with providing for the registration of pesticide products, FIFRA also describes the authority that states have to regulate approved pesticides. Under FIFRA, a state may "regulate the sale or use of any federally registered pesticide[.]" 7 U.S.C. § 136v(a). However, FIFRA also provides that states "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from" those required by federal law. 7 U.S.C. § 136v(b). In other words, while FIFRA allows states to regulate the sale and use of federally registered pesticides, it does not allow states to set requirements for the labeling or packaging of a registered pesticide that differs from the labeling and packaging approved by EPA. Additionally, FIFRA prohibits the sale and distribution of any pesticide which is "misbranded." 7 U.S.C. § 136j(a)(1)(E). Under FIFRA, a pesticide is

considered misbranded if its label does not include a warning statement which may be necessary to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).

Failure to warn is a type of civil tort that is typically raised in products liability cases. As with most civil torts, failure to warn arises out of state law and is enforced at the state level. When a plaintiff raises a claim of failure to warn, they are not arguing that a product they used was defective, but rather that the product manufacturer failed to provide adequate warnings or instructions about the safe use of the product. To succeed on failure to warn, a plaintiff will generally need to demonstrate two things. First, that the manufacturer did not adequately warn consumers about a particular risk, and second that the risk was either known or knowable in light of the best available knowledge at the time the product was manufactured and distributed.

In the past, the Supreme Court has only once addressed FIFRA's prohibition on states to impose labeling requirements that differ from those approved by EPA and how it interacts with products liability claims that arise under state law. In ***Bates v. Dow Agrosciences LLC*, 544 U.S. 431**, the Supreme Court held that a pesticide labeling requirement imposed by state law would be preempted by FIFRA if the requirement is "in addition to or different from" the labeling and packaging requirements imposed under FIFRA. The Court noted that a state law requiring a pesticide label to include the word "DANGER" when its federally registered label is required to include the word "CAUTION" would be preempted by FIFRA. However, the Court also noted that a state requirement for pesticide labeling would not be preempted if it was "equivalent to, and fully consistent with, FIFRA's misbranding provisions."

In appealing *Durnell* to the Supreme Court, Bayer asked the Court to consider whether FIFRA preempts the plaintiff's state law failure to warn claim. Bayer argues that the claim is preempted. It first cites FIFRA's requirement that states may not require a pesticide's label to bear language that is "in addition to or different from" federal labeling requirements. According to Bayer, the only way it could fully resolve the plaintiff's claims would be to amend the label for Roundup products sold in Missouri to include a cancer warning which is not required by the federal label. Not only does the federal label for Roundup not include a cancer warning, but Bayer also notes that EPA has never made a finding that either Roundup or glyphosate are carcinogenic to humans. Relying on the ruling in *Bates*, Bayer argues that the plaintiff's failure to warn claims should be preempted because to resolve them, Bayer would be required to put a cancer warning on its Roundup labels which would differ from the labeling language required under federal law.

The plaintiff argues exactly the opposite. According to the plaintiff, his failure to warn claims are not preempted by FIFRA because they run parallel to FIFRA's misbranding

provisions. Also relying on *Bates*, the plaintiff in *Durnell* argues that Supreme Court precedent has already established that a state law products liability claim will not be preempted by FIFRA if it is equivalent to and consistent with FIFRA's prohibition on the sale of misbranded pesticides. According to the plaintiff, his failure to warn claim is consistent with FIFRA's misbranding prohibitions because FIFRA considers a pesticide to be misbranded if it does not include a warning necessary to protect health and the claim of failure to warn was raised to argue that Bayer failed to provide a necessary health warning to users of Roundup. Because failure to warn raises a claim that is consistent with FIFRA's misbranding provisions, the plaintiff asks the Supreme Court to rule that the claim is not preempted.

While these arguments directly mirror claims raised by Bayer and other plaintiffs in other cases involving federal preemption of failure to warn claims in pesticide liability cases, *Durnell* adds a twist that slightly differentiates it from those cases. Unlike other plaintiffs, the plaintiff in *Durnell* asserts that his failure to warn claims were not brought over the labels affixed to each individual unit of Roundup, but rather to the marketing materials that Monsanto used to advertise Roundup in the 1990s and 2000s. The plaintiff claims that he bought and used Roundup based on commercials and print advertising that stated using Roundup was completely safe and featured people applying Roundup while wearing only tee shirts and shorts. Because FIFRA applies only to pesticide labeling, not marketing materials, the plaintiff argues that his lawsuit differs from previous litigation where the question of whether FIFRA preempts failure to warn has been raised. Bayer maintains that there is no difference between *Durnell* and prior preemption cases because it would still need to update labels for units of Roundup sold in the state of Missouri to include a cancer warning to fully redress the plaintiff's claim.

Going Forward

As of the publication of this article, the Supreme Court has not scheduled a date to hear oral arguments in *Durnell*. It is not yet clear when a final ruling in the case can be expected. Whatever the outcome, whether the Court agrees with the plaintiff and finds that FIFRA does not preempt the state law claim of failure to warn or sides with Bayer and finds that FIFRA does preempt such claims, the final decision in this lawsuit will affect not only the thousands of currently pending pesticide liability cases but is also likely to affect any such lawsuits filed in the future. While the bulk of pesticide liability cases filed over the last decade have involved Roundup and glyphosate, other pesticides such as paraquat and chlorpyrifos have also been the focus of such lawsuits. Despite settling thousands of pesticide liability lawsuits, Bayer still has thousands more actively pending against it. The

company has indicated that if the matter is not resolved, it could threaten the future availability of Roundup for agricultural uses.

Although it is too early to predict how the Supreme Court will rule, prior to agreeing to hear *Durnell*, the Court asked the federal government to weigh in. In December, the Solicitor General filed an amicus brief both urging the Supreme Court to take up the case and clarifying that the federal government believes that FIFRA preempts the plaintiff's failure to warn case.

The National Agricultural Law Center will provide in-depth updates as this case proceeds.

To view Bayer's petition to the Supreme Court, click here.

To view the plaintiff's response, click here.

To view the Solicitor General's amicus brief, click here.

For more information on pesticide liability lawsuits from the National Agricultural Law Center, click here.

WOTUS Update: EPA & Corps Propose New Definition (published 12.02.25)

On November 17, 2025, the Environmental Protection Agency ("EPA") together with the United States Army Corps of Engineers ("the Corps") announced a proposed rule to redefine the term "waters of the United States" under the Clean Water Act ("CWA"). The intent of the proposal is to bring the definition of waters of the United States, commonly referred to as WOTUS, in line with the United States Supreme Court 2023 decision ***Sackett v. EPA*, 566 US 120 (2023)**. This proposal marks the sixth time since 2015 that the regulatory definition of WOTUS has changed and is likely to prompt litigation after it is formally finalized. The proposal has been published the Federal Register and is currently open for public comment through January 5, 2026.

Background CWA, Current WOTUS Rule, and *Sackett*

The CWA of 1972 is the leading federal water pollution statute in the United States. The purpose of the Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To achieve this goal, the CWA has established permitting programs to limit the amount of pollution discharged into waters and wetlands. Under the National Pollution Elimination System ("NPDES") program, it is illegal for anyone to discharge a pollutant from a discernable, concrete source into "navigable waters" without first receiving a permit from EPA. 33 U.S.C. § 1342. Similarly, the 404 permitting program prohibits the discharge of "dredged or fill material" into "navigable waters" without a permit from the Corps. 33 U.S.C. § 1344. Crucially, both the NPDES and 404 permitting programs cover activities that occur within "navigable waters." Although the term "navigable waters" is a legal term of art which is generally understood to refer to waters which can be used to facilitate interstate or foreign commerce, the CWA defines the term as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). However, the CWA does not define the term "waters of the United States." Instead, it has been left up to EPA and the Corps to define the term.

In the decades since the CWA was passed, crafting a lasting definition of WOTUS has been a struggle for the agencies and courts, and the formal regulatory definition has changed several times. A full timeline of the different definitions of WOTUS is available here. Most recently, the definition of WOTUS was revised in 2023, first through a finalized rulemaking conducted by EPA during the Biden administration, and then again following the Supreme Court's ruling in *Sackett v. EPA*. Under the initial 2023 final rule, the definition of WOTUS included five categories of waters: (1) traditional navigable waters that could be used in interstate for foreign commerce, the territorial seas, and interstate waters including interstate wetlands; (2) impoundments of waters otherwise identified as WOTUS; (3) tributaries of traditionally navigable waters or impoundments that met either the relatively

permanent standard or significant nexus test articulated by the Supreme Court in ***Rapanos v. US*, 547 US 715 (2006)**; (4) wetlands adjacent to any WOTUS with "adjacent" understood to mean neighboring, bordering, or contiguous; and (5) all other lakes, ponds, streams, and wetlands that satisfied either the relatively permanent standard or significant nexus test. Further information on the initial 2023 WOTUS definition can be found here.

The initial 2023 WOTUS rule fully incorporated both the relatively permanent standard and the significant nexus test which stem from the Supreme Court's decision in *Rapanos v. US*. In that case, the Supreme Court was asked to consider the degree to which wetlands could be included in the definition of WOTUS. The Court was unable to reach a majority opinion, instead issuing a plurality opinion and a concurring opinion. The plurality opinion articulated the relatively permanent standard which would extend the definition of WOTUS to those waters which are "relatively permanent, standing or continuously flowing" and then to those wetlands which share a "continuous surface connection" with such waters. The concurring opinion, on the other hand, crafted the significant nexus test which extended the WOTUS jurisdiction to those wetlands that share a "significant nexus," with a water that is already recognized as a WOTUS. A significant nexus would exist if a wetland "significantly affect[s] the chemical, physical, and biological integrity" with a recognized WOTUS.

Weeks after the first 2023 definition of WOTUS was finalized, the Supreme Court released its decision in *Sackett v. EPA*. Like in *Rapanos v. US*, the Court in *Sackett v. EPA* was asked to consider to what extent wetlands should be included in the WOTUS definition. Specifically, the plaintiffs specifically asked the Supreme Court to formally overturn the significant nexus test and adopt the relatively permanent standard. Ultimately, the Court did just that, concluding that the term "waters" in "waters of the United States" refers to "only those relatively permanent, standing or continuously flowing bodies of water […] described in ordinary parlance as streams, oceans, river, and lakes" and to wetlands that are "indistinguishable" from such waters due to a continuous surface connection.

Following the Supreme Court's decision in *Sackett v. EPA*, EPA issued what is known as the Conforming Rule to revise the WOTUS definition in light of the Court's ruling. Issued in August 2025, the Conforming Rule cut references to the significant nexus test from the WOTUS definition and clarified that the word "adjacent" with respect to adjacent wetlands meant "having a continuous surface connection." The rule also noted that only those tributaries of navigable waters which satisfy the relatively permanent standard would be considered WOTUS. To learn more about the Conforming Rule, click here.

When the Trump administration took office in 2025, it announced an intention to revisit numerous environmental regulations, including the definition of WOTUS. After holding a

series of listening sessions with stakeholders across the county, EPA and the Corps have released their latest proposal to redefine the term.

Proposed WOTUS Definition

According to EPA, its latest WOTUS proposal has two primary goals: to bring the definition in line with *Sackett v. EPA* and to provide more clarity to landowners and the public as to which waters fall under the CWA's permitting jurisdiction. To that end, it is proposing to include five categories of waters in the definition of WOTUS and is introducing new definitions intended to clarify when a water is relatively permanent and what constitutes a continuous surface connection.

Under the proposal, the following categories of waters would be considered WOTUS:

(1) Traditionally navigable waters which may be used to facilitate interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and the territorial seas.
(2) Impoundments of waters otherwise identified as WOTUS.
(3) Tributaries of traditionally navigable waters which are relatively permanent, standing or continuously flowing.
(4) Wetlands adjacent to a traditionally navigable water or tributary.
(5) Lakes and ponds that do not fall into the above categories but which are relatively permanent, standing or continuously flowing and share a continuous surface connection with a traditionally navigable water or tributary.

Importantly, the proposal would not include interstate waters as a category of WOTUS. This is a departure from previous WOTUS definitions, almost all of which have included interstate waters as WOTUS. These categories also differ from previous WOTUS definitions by specifying that waters which fall under category five must not only be relatively permanent but must also share a continuous surface connection with a traditionally navigable water or tributary to be considered WOTUS. Under past definitions, the continuous surface connection standard was applied only to wetlands.

Along with making changes to the categories of waters considered WOTUS, the proposed rule also includes new definitions for the terms "relatively permanent," "continuous surface connection," and "tributary." Under the proposed rule, "relatively permanent" would be defined as "standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season." EPA notes that "the wet season" would refer to a predictable and extended period of time when surface water is present in a geographical feature in response to an annual wet season when precipitation is greater than average. However, that would not include what are

known as “ephemeral waters” which are geographic features that contain surface water only in direct response to precipitation. Under this definition of relatively permanent, a river which periodically dries out in the late summer months, but which flows during the winter and spring after increased rain and snowmelt could be considered a WOTUS, while a creek that is dry most of the time and flows only after a heavy rain would likely not be considered a WOTUS.

The proposed rule would define “continuous surface connection” as “having surface water at least during the wet season and abutting (*i.e.*, touching) a jurisdictional water.” EPA clarifies that this definition presents a two-pronged test which requires a wetland or waterbody to both: (1) abut, as in directly touch, a traditionally navigable water or tributary; and (2) have surface water at least during the wet season. Wetlands or waters with a sub-surface connection to a recognized WOTUS – meaning connected to a WOTUS by water that is not on the surface but is not deep enough underground to be considered groundwater – would not be considered a WOTUS under this definition. Additionally, EPA notes that CWA permitting jurisdiction would only be extended to the portion of a wetland which retains surface water at least during the wet season.

Finally, the proposal would define “tributary” as “a body of water with relatively permanent flow, a bed and bank, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow.” Under this definition, a tributary to a traditionally navigable water that has a discernable bank and bed, and which has surface water at least during the wet season could be considered a WOTUS. However, a water without a bank and bed, such as a grassed waterway, would likely not be considered a WOTUS even if it held surface water year-round.

Besides defining what a WOTUS is, the proposal also strengthens language describing what a WOTUS is not. Particularly relevant to agriculture, the proposal would strengthen existing exclusions for prior converted cropland. The term “prior converted cropland” comes from the Wetland Conservation provisions of the 1985 Farm Bill, better known as Swampbuster. Prior converted cropland refers to wetland areas which were converted to agricultural land capable of producing a crop prior to December 23, 1985. Although prior converted cropland is currently excluded from the definition of WOTUS, the proposed rule would clarify that such land would only lose that exclusion and become subject to CWA jurisdiction if it were abandoned and reverted to a wetland that met the definition of “adjacent wetland” under WOTUS.

Next Steps

The proposed rule was published in the Federal Register on November 20, 2025, formally initiating a period of public comment that is currently set to end on January 5, 2026. While public comments may address any part of the proposal, EPA is specifically requesting comment on the following: whether WOTUS should be limited to only traditionally navigable waters and those wetlands that share a continuous surface connection with such waters; whether "relatively permanent" should include only those waters that contain surface water year-round instead of waters that contain surface water at least during an annual wet season; and whether a wetland must have a continuous surface connection with a navigable water or tributary year-round to be considered a WOTUS.

After the period of public comment concludes, EPA and the Corps will review the comments it receives before drafting and issuing a final rule. Once the rule becomes finalized, it is very likely that it will be challenged in court. Since 2015, all final regulations defining WOTUS have led to lengthy legal battles that often result in separate WOTUS definitions being applied across the country as the court cases proceed. Importantly, the last time a court was asked to consider whether the regulatory definition of WOTUS complied with the text of the CWA, the doctrine of *Chevron* deference was still the law of the land. Under *Chevron* deference, courts were instructed to defer to agency interpretations of ambiguous statutory language so long as the interpretation was reasonable. However, in 2024, the Supreme Court overturned *Chevron* deference in its landmark decision ***Loper Bright Enters. v. Raimondo*, 603 US 369 (2024)**. According to the Supreme Court, judges should not defer to agency statutory interpretations but should themselves state what the law is. This means that judges asked to consider whether a future WOTUS definition complies with the CWA may rely on judicial interpretations of the statute rather than agency interpretations.

The new proposed WOTUS definition has kicked off another cycle of attempting to define a crucial, but ambiguous term that determines when someone needs a CWA permit and when they do not. Whether the final definition will satisfy EPA's goals of crafting a durable definition remains to be seen.

To view the proposed WOTUS rule and learn how to submit a comment, click here.

To view the current definition of WOTUS, click here.

To view the text of *Sackett v. EPA*, click here.

To view the text of the CWA, click here.

For more CWA resources from the National Agricultural Law Center, click here.

Preliminary Injunction Halts Enforcement of West Virginia's Food Dye Ban (published 2.3.26)

On December 23, 2025, a District Judge in the Southern District of West Virginia ruled that the state is temporarily prohibited from enforcing its synthetic food dye ban while the law is being challenged in court. This law, enacted as HB 2354 and codified at W. Va. Code § 16-7-2, 4; 18-5D-3A, is being challenged by the International Association of Color Manufacturers (IACM). While the litigation remains ongoing, this article will discuss the court's most recent ruling.

Background on HB 2354

In 2025, West Virginia enacted HB 2354, a bill that addressed synthetic color dyes. Specifically, this bill was two-fold and included both a provision banning the use of certain synthetic color dyes statewide and prohibiting foods with these ingredients from being included in a "meal served in a school nutrition program." The bill had a two-step implementation scheme with the school portion going into effect last year, and the statewide ban going into effect in 2028.

The statewide ban portion included language that declared foods with ingredients that are "poisonous or injurious" to health to be adulterated. W. Va. Code § 16-7-2(b)(7). This language is followed by an enumerated list of "poisonous or injurious" ingredients that includes, "butylated hydroxyanisole, propylparaben, FD&C Blue No.1, FD&C Blue No.2, FD&C Green No.3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6." In West Virginia, adulterated foods are prohibited from being sold and violators are guilty of a misdemeanor and will be fined upon conviction. W. Va. Code § 16-7-4. However, this law includes an exception for sellers of foods with the enumerated ingredients if the seller makes less than $5,000 in aggregate of food per month. This portion of the law is set to go into effect on January 1, 2028.

The second part of the law, codified at W. Va. Code § 18-5D-3A, bans the following color dyes from being served in school nutrition program meals – Red Dye No. 3, Red Dye No. 40, Yellow Dye No. 5, Yellow Dye No. 6, Blue Dye No. 1, Blue Dye No. 2, and Green Dye No. 3. This provision did not prohibit the sale of food items with these ingredients as part of a school fundraiser off school premises or on school premises at least one-half hour after the end of the school day. The school meal portion of the law went into effect on August 1, 2025.

Background of color additives

The Food and Drug Administration (FDA) defines color additives as "a dye, pigment or other substance, which is capable of imparting color when added or applied to a food, drug, or cosmetic to the human body." They are distinguished from food additives by the Federal Food, Drug and Cosmetic Act (FDCA), and must be approved by FDA before they can be used in food. Color additives are classified into two categories – naturally occurring and synthetic. A synthetic color dye is manmade and is required by the FDA to be certified as safe before it is included in food. While a naturally occurring color additive must also be approved by the FDA before it is used, it is exempted from the safety certification process that synthetic dyes must undergo.

There are nine synthetic color dyes approved for use in foods by the FDA – three of which the agency is in the process of revoking. The approval for the nine can be found at 21 CFR § 74.101-706. Seven of the nine approved synthetic dyes are included in the enumerated list of prohibited ingredients in West Virginia's law. The other two enumerated ingredients are not classified as color additives by the FDA. Butylated hydroxyanisole is classified as a food additive, and propylparaben is an ingredient classified under the "Generally Recognized As Safe" pathway. To learn more about the federal government's current color dye scheme, click here to read NALC article "FDA Announces Plan to 'Phase Out' Synthetic Dyes."

The Case

Two months after the school meal provision of HB 2354 went into effect, the trade association, International Association of Color Manufacturers (IACM), challenged its constitutionality. IACM has been the singular association "representing the interests of the color additives industry, both natural and synthetics," since 1972. Its members include manufacturers, producers, and users in the color industry. The case is *International Association of Color Manufacturers v. Singh.*

In its complaint, IACM is claiming HB 2354's unconstitutionality in three ways. First, IACM claims the law is a violation of the Equal Protection Clause because it "targeted color additives without any rational basis for finding that they are . . . unsafe in any way." Second, they claim the law is a prohibited bill of attainder that "singl[es] out for prohibition and criminal sanction the named color additives" without a proper judicial proceeding. Last, the complaint claims that the law is unconstitutionally vague in violation of the Due Process Clause.

This litigation is ongoing, and the merits of IACM's challenge remain undecided. However, this article will further discuss a recent decision in the case – the Judge's ruling on IACM's request for a preliminary injunction.

A preliminary injunction is a motion that may be granted before or during a trial with the goal of preserving the status quo before a final judgement. For a preliminary injunction to be issued, a plaintiff must satisfy four factors: 1) that the plaintiff is likely to succeed on the merits, 2) that he is likely to suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in his favor, and 4) that an injunction is in the public interest. However, when the defendant is the government, the last two factors are combined.

Success on the Merits

The Court first looked at IACM's three claims to see if they would be likely to succeed on the merits. For the equal protection claim, the Court determined that IACM was not likely to succeed because "there was at least a debatable question regarding the safety of the named color additives" brought before the West Virginia legislature. An equal protection claim arises from the Fourteenth Amendment to the U.S. Constitution and provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of law." Specifically, this clause requires equal treatment for individuals in similar situations. However, unless a law burdens a fundamental right or a suspect class, it will be upheld if "it bears a rational relation to some legitimate end." Through looking at the legislative history, the Court determined that enough discussion about the potential safety risks of color additives occurred to create a rational basis for HB 2354's enactment.

Next, the Court determined that IACM was also unlikely to succeed on their bill of attainder claim. An unconstitutional bill of attainder occurs when a legislative act singles out an individual or narrow group of people for punishment without a judicial proceeding. There are three elements that must be met for a legislative act to be considered a bill of attainder: 1) the law must impose punishment, 2) it must target specific individuals or identifiable groups, and 3) it must do so in a manner that bypasses judicial protections. Here, the Court found that HB 2354 is not an unconstitutional bill of attainder. The Court determined that the law applies to anyone who adulterates food, and not just the specific manufacturers or users of the enumerated color additives. Further, the Court found the bill does not impose punishment without judicial protection because it includes language that clarifies a punishment will not be levied until after conviction.

Last, the Court looks to IACM's claim of unconstitutional vagueness and determines that IACM would be successful. Specifically, the Court finds that HB 2354 is unconstitutionally vague because it fails to define "poisonous and injurious" and does not prohibit other color additives not included in the enumerated list from being classified as such. The doctrine of void for vagueness applies when a statute fails to "give a person of ordinary intelligence adequate notice of what conduct is prohibited" or does not "include sufficient standards to prevent arbitrary and discriminatory enforcement." Manning v. Caldwell for City of

Roanoke, 930 F.3d 264, 272 (4th Cir. 2019). Thus, a statute that does not clearly state what actions it is prohibiting would be considered vague because it does not give adequate notice to the public and might lead to unfair enforcement.

Here, along with its lack of definition for poisonous or injurious, the Court took issue with the following language in HB 2354, "poisonous or injurious to the health, *including* butylated hydroxyanisole, propylparaben, FD&C Blue No. 1 . . ." (emphasis added). In particular, the Court found that a failure to define "poisonous or injurious" paired with the insertion of a "nonexclusive" enumerated list of FDA-approved color additives would "leave the door open for arbitrary enforcement." In other words, the Court believes HB 2354 is vague because it does not make clear what color additives would be classified as "poisonous and injurious." Further, since there is no standard that clarifies which color additives are prohibited, additional color additives could be considered "poisonous and injurious" without the public having adequate notice.

Though this ruling analyzed the claims of IACM and made assertions of their likely outcomes, it is not a ruling on the merits. However, a ruling like this is often an indicator of the direction a judge might go later when the merits are actually being decided.

Irreparable Harm

Next, the Court looked at a preliminary injunction's second factor, irreparable harm. For an injunction to succeed, the person seeking it must prove that it is likely to suffer irreparable harm in its absence. Harm that cannot be fully rectified by the trial's final judgement is considered irreparable, and economic harms will only be deemed irreparable if they are unrecoverable. Here, the Court finds that IACM has made sufficient showing that its members will suffer irreparable economic harm if this injunction fails. The Court specifies that the uncertainty surrounding HB 2354, because of its likely unconstitutional vagueness, is sufficient to establish irreparable harm. The Court explains that IACM's members would suffer harm if they spent significant resources changing their processes, updating equipment, or developing new products for a law that is likely unconstitutional.

Balance of Equities and Public Interest

Last, the court considers the third and fourth factors of a preliminary injunction – the balance of equities and public interest. In a case where the defendant is the government, these two factors are merged, thus the Court analyzes them together. The goal of a preliminary injunction is to "keep the status quo," and this factor will consider if the hardships imposed on the plaintiff outweighs the public's interest in having the law enforced. Here, the Court determines that it would be unfair to require IACM's members to comply with HB 2354 given that it is likely unconstitutional. Further, because the statewide

ban portion of HB 2354 is not yet being enforced by West Virginia's Department of Health, the Court believes that granting this injunction will not harm the public and will not disturb the status quo.

Impacts of the injunction

Because of the factors discussed, the Court grants IACM the preliminary injunction. This means that while the litigation remains ongoing, West Virginia's Department of Health will not be able to enforce the statewide ban portion of HB 2354. However, the Court notes in a footnote of its decision that the injunction will not apply to the school meal portion of the law. They make clear that this distinction is because IACM only "demonstrated that Section 16-7-2(b)(7)," the statewide ban portion, "is likely unconstitutionally vague." Thus, the West Virginia Board of Education will be permitted to continue enforcing the school meal portion of the law.

Conclusion

This case remains ongoing, and at this time, no trial date has been set. As more state legislatures consider passing similar legislation to West Virginia's, it is likely that this will not be the only litigation pertaining to the matter. To stay up to date on this case and the actions of state legislatures nationwide, click here to subscribe to NALC's biweekly newsletter, "The Feed."

Texas Food Law Litigation Updates: Part 2 (published 3.3.26)

Though 2026 is young, the year has already seen a few interesting judicial rulings related to food law coming out of the state of Texas. Specifically, courts in the Western District of Texas have issued two decisions on preliminary injunctions – granting one and denying the other. This article is the second in a two-part series covering recent litigation updates in Texas. The first article can be read here.

Cell-cultured Protein Ban

The first case involves a challenge to a Texas law that sought to temporarily ban the sale of "cell-cultured proteins" in Texas. SB 261, passed in the 2025 Texas legislative session, defined cell-cultured protein as "a food product derived from harvesting animal cells and artificially replicating those cells in a growth medium to produce tissue." Per the law, the prohibition on selling cell-cultured meat went into effect on September 1, 2025, and will last until September 1, 2027. The law is codified into the Texas code at Tex. Health & Safety Code §§ 431.002(5-a), 431.02105(a). Texas is one of seven states to have passed a ban on the sale of cell-cultured meat. To learn more about other state alternative protein laws, click here to view NALC's Alternative Protein Laws State Compilation.

The day after SB 261 went into effect, it was challenged in court. The plaintiffs are Wild Type, Inc. d/b/a Wildtype (Wildtype) and UPSIDE Foods, Inc. (Upside) – two companies based out of California who produce and sell cultivated meat. Wildtype produces cultivated salmon, and Upside produces cultivated chicken. The plaintiffs claim that SB 261 violates the Dormant Commerce Clause and the Supremacy Clause of the US Constitution.

January 2026 Ruling

On January 16, 2026, the court heard oral arguments on a number of motions in this case. Following the arguments, the court orally ruled on all motions; however, it also released an order explaining the decisions. The motions that were heard included Defendant Garza's Motion to Dismiss for Lack of Jurisdiction; Defendants Paxton, Young, and Shuford's Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Claim; and Plaintiffs' Motion for Preliminary Injunction. Specifically, the judge granted Defendant Garza's Motion to Dismiss and Granted in-part the Motion to Dismiss from Defendants Paxton, Young, and Shuford. This means that Defendant Garza, the County Attorney for Travis County, will no longer be a party in this case. As for the other defendants, the court granted in-part their motion to dismiss. This means that while it dismissed part of the claims against them, the case will still be allowed to continue on some of the Plaintiff's claims. Specifically, the court dismissed Upside's claims that SB 261 is preempted by the federal poultry laws, but found

that both plaintiffs may still bring their claim that SB 261 violated the Dormant Commerce Clause.

In determining these rulings, the court specifically looked to Upside's claim that the Poultry Product Inspection Act (PPIA) preempted SB 261. The PPIA is the federal law that "regulates the processing, inspection, distribution, labeling, and sale of poultry products sold in interstate commerce," and it is administered by the US Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS). Specifically, the PPIA includes an express preemption clause that states "requirements within the scope of this chapter with respect to premises, facilities and operations of any official establishment which are in addition to, or different than those made under this chapter may not be imposed by any State."

Express preemption claims will be evaluated by looking to the scope of the express preemption clause and determining if the challenged state law falls within the scope. Here, the court determined that the scope of the PPIA's express preemption claim extended to food safety activities and any behaviors that would cause the adulteration of a product. Under that standard, the court finds that SB 261 does not fall within the scope of the PPIA's clause because SB 261 is a "complete sales ban" that has no impact on food safety nor behaviors that might adulterate a chicken product. Thus, the court found that the PPIA would not preempt SB 261 and that claim should be dismissed.

Last, the court turned to the Plaintiff's motion for a preliminary injunction. In making this motion, Upside and Wildtype were asking the court to prohibit Texas from enforcing this law while the litigation is ongoing. A preliminary injunction will have four elements: 1) moving party must show they are likely to succeed on the merits, 2) that they will suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in their favor, and 4) that an injunction is in the public interest. Here, the court determined that the Plaintiffs do not meet the irreparable harm element because Plaintiff's do not have significant "contractual business already in place in Texas." Additionally, the court finds that it would not be in the balance of equities to grant this preliminary injunction for two companies with very little business in Texas. Further, since two of the four elements are not met, the court declines the opportunity to analyze all four and denies the preliminary injunction.

Effect of the ruling

The court's decision to deny plaintiff's motion for preliminary injunction does not mean the case is resolved, nor is it a determination on the case's merits. This decision's effect is that the state of Texas will have the ability to enforce the ban on cell-cultured proteins while the litigation remains ongoing. Further, because of the court's decision to deny Defendants

Paxton, Young, and Shuford's motion to dismiss against the Dormant Commerce Clause claim, the case will continue on that claim. However, Upside and Wildtype have appealed the denial of a preliminary injunction to the 5th Circuit. While it remains unclear at this time how the 5th Circuit will rule, it is likely that no judgement on the merits will occur until the preliminary injunction issue is first settled.

MAHA Law

Also, in its 2025 legislative session, Texas passed SB 25, which has been referred to as Texas' "MAHA bill." This name is referencing the fact that many of the policy changes included in this legislation are aligned with priorities of the "Make America Healthy Again" movement. This law includes a section that requires food manufacturers to bear a particular disclosure statement if their food product contains any of 44 listed ingredients. Tex. Health & Safety Code § 431.0815. Specifically, the disclosure must say, "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom." This portion of SB 25 will not go into effect until January 1, 2027, and its scope is limited to food product labels developed or copyrighted after the effective date. To learn more about the legislation itself, click here to read NALC article "'MAHA' Movement: New Texas and Louisiana Laws."

On December 5, 2025, a group of nonprofit associations that represent food and beverage manufacturers brought a lawsuit challenging the constitutionality of SB 25's labeling provision. Specifically, the plaintiffs make four claims 1) that SB 25's labeling requirement is a violation of the First Amendment, 2) that it is preempted by federal law, 3) that it is unconstitutionally vague, and 4) that it violates the Dorman Commerce Clause.

Like the litigation on Texas' cell-cultured meat ban, this case remains ongoing. However, the court recently published an order that ruled on the plaintiff's request for a preliminary injunction. As previously mentioned, a preliminary injunction is a pretrial motion that can order a party to cease or begin doing a specific action. For a preliminary injunction to be successful, the moving party must satisfy four elements: 1) that they are likely to succeed on the merits, 2) that they will suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in their favor, and 4) that an injunction is in the public interest.

Likelihood of Success on the Merits

To determine if the first element of a preliminary injunction is met, the court first looked to see if plaintiffs would be likely to succeed on their claim that SB 25's labeling requirement violates the First Amendment. The First Amendment of the US Constitution prohibits laws

that abridge the freedom of speech and includes protections against content-based regulations. A content-based regulation is one that will compel a particular message and require an individual or entity to alter the content of their speech. These laws are presumed to be unconstitutional unless the government can prove "they are narrowly tailored to serve compelling state interests" under the standard of strict scrutiny.

Here, the court notes that SB 25 compels the manufacturers of foods and beverages to convey a word-for-word, government-scripted message on their food labels. As a result, the court finds that strict scrutiny is likely to be the standard applied. When strict scrutiny is applied, the burden shifts, and now the government must prove that its actions were constitutional (as opposed to the plaintiffs having to show that the actions were unconstitutional). The court noted that the government failed to meet its burden, instead focusing almost entirely on a different argument. Because the government did not meet its burden under that analysis, if the strict scrutiny standard is applied, the statute would be unconstitutional on First Amendment grounds.

Instead, the government primarily focused its argument on a claim that the court should consider the case under the intermediate scrutiny argument. Intermediate scrutiny would be applied here if a court classified SB 25's labeling provision as commercial speech rather than content-based regulation. While the court does not assess whether it is commercial speech or content-based here, it walks SB 25 through an intermediate scrutiny analysis by applying the four-part test established in *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). It's four elements include 1) is the speech misleading or does it concern unlawful activity, 2) is there a substantial government interest, 3) does the regulation advance the government interest asserted, and 4) is it narrowly tailored to achieve the interest.

Here, the court determines that there is a substantial government interest in promoting the consumption of better food ingredients by citizens of Texas. However, the court does not believe that SB 25's labeling provision asserts this interest in a "narrowly tailored" way. It finds there are less restrictive ways Texas could accomplish this goal. As an example, the court states that Texas could have conducted a public advertising campaign warning of these dangers. Thus, the four elements of *Central Hudson* are not met, and the court determines SB 25's labeling provision would likely not pass intermediate scrutiny. Since the court found that the provision would likely not pass either a strict scrutiny or intermediate scrutiny evaluation, it concludes that the plaintiffs have shown a substantial likelihood of success on their First Amendment claim.

Before moving on to the other elements though, the court also evaluates the likelihood of success on plaintiff's vagueness and preemption claims. Both of these claims are related

to a portion of SB 25's labeling provision that would make the provision ineffective if the US Food and Drug Administration or the USDA issued a law or regulation that prohibited the use, imposed conditions of use, or determined the safety of one of the 44 listed ingredients. Tex. Health & Safety Code § 431.0817. The court determines that plaintiffs have not shown they are likely to succeed on their vagueness challenge because they have not produced enough evidence to show that food or beverage manufacturers would be unclear on what triggers the preemption clause. Further, the court finds that the plaintiffs would likely not succeed on their claim that SB 25's labeling provision is preempted by *current* federal laws because neither the Food, Drug, and Cosmetics Act nor the Nutrition Labeling and Education Act "directly conflict" with the Texas law. Though the court finds that success on the merits is not likely with the claims of vagueness and preemption, the first element of a preliminary injunction is met through the likelihood of success on the First Amendment claim.

Irreparable Harm

Next, the court looked to the second factor of a preliminary injunction, irreparable harm. To meet this element, the person seeking a preliminary injunction must prove they are likely to suffer irreparable harm if the law is enforced. In cases involving the First Amendment, courts recognize that the loss of free speech constitutes an irreparable injury, even if the injury only occurs for a short period of time. Here, since the court found it was likely that plaintiffs would succeed on their First Amendment claim, the court determines that irreparable harm is satisfied. Thus, the second element of a preliminary injunction is met.

Balance of Equities and Public Interest

Last, the court looked to the third and fourth elements of a preliminary injunction. In cases where the government is the defendant, these two factors merge. This element will consider whether the hardships imposed on the moving party outweigh the public's interest the law's enforcement. Here, since the hardship suffered is a likely infringement upon First Amendment freedoms, the court determines that this outweighs any public interest in SB 25's enforcement. Accordingly, the court finds that the third and fourth factors of a preliminary injunction are met.

Effects of the ruling

Since the four factors were satisfied, the court grants the plaintiffs a preliminary injunction and the state of Texas will be prohibited from enforcing the labeling provisions of SB 25 while the litigation is ongoing. A decision on a preliminary injunction is not a ruling on the merits, but might be an indicator of the direction a court might go in the future. A trial date has not yet been set for this case, and it currently sits in the discovery phase of the lawsuit.

Conclusion

Since neither of the court's most recent rulings on SB 261 or SB 25 were final judgements, there will likely continue to be noteworthy updates in both cases. To stay up-to-date on these lawsuits and other issues related to food law, click here to subscribe to NALC's biweekly newsletter, "The Feed."

'MAHA' Movement: Defining Ultra-processed Foods (published 10.21.25)

This month California Governor Gavin Newsom signed AB 1264 into law. This landmark legislation creates a statutory definition of ultra-processed foods (UPF) and makes California the first state in the nation to ban certain UPFs from being served in schools. AB 1264's enactment follows recent announcements from the US Department of Agriculture (USDA) and the Food and Drug Administration (FDA) that the federal agencies are collaborating to create a definition for UPFs. This article will discuss both the California law and compare it with another popular food classification system.

Background of UPFs and NOVA

The new California enactment is the first time UPFs have been officially defined by law. This is noteworthy because there is no otherwise universally accepted definition of UPF, whether in law or in science. However, there are several food classification systems that attempt to define it. The system most applied in scientific literature is called Nova, the Portuguese translation for the word "new." Nova was created by researchers at the University of Sao Paulo, Brazil in the format of a 2010 publication titled, "A new classification of foods based on the extent and purpose of their processing." It expanded on work published the year before by Brazilian epidemiologist Carlos Monteiro, a collaborator on the Nova publication, in which Monteiro first termed the phrase UPF. The 2010 publication extended the concept of UPFs into the Nova system and further classified foods into three categories based on "the extent and purpose of the industrial processing applied to them."

In 2019, Monteiro further expanded Nova in a publication for the UN Decade of Nutrition. Now, Nova recognizes four categories of food. The categories include unprocessed or minimally processed; processed culinary ingredients; processed foods; and UPFs. Unprocessed or minimally processed includes edible parts of plants or animals, fungi, algae and water. Food can be still be classified in this category if it underwent minimal processing such as roasting, boiling, non-alcoholic fermentation, or pasteurization. Processed culinary ingredients include oils, butter, lard, sugar, and salt. These are substances that are derived from group 1 foods or else from nature by processes like pressing, refining, grinding, milling, and drying. Processed foods are foods that are made by adding a group 2 substance to a group 1 food and are generally recognized as modified versions of the group 1 food. This could include canned vegetables, tinned fish preserved in oil, whole fruit preserved in syrup, and most freshly baked breads. Under the Nova system, UPFs are defined as "formulations made mostly or entirely from substances derived from foods and additives, with little if any intact group 1 food." Examples of UPF food under the

Nova system include soft drinks, sweet or savory packaged snacks, and pre-prepared frozen dishes.

As mentioned before, Nova is not the only food classification system that defines UPFs, but it was the first and is the most applied in scientific literature. Food and Agriculture Organization of the United Nations' publication titled "Ultra-processed foods, diet quality, and health using the NOVA classification system" contains a helpful chart in Annex 1 that outlines some of the different systems.

California's AB 1264

With a goal of making school meals healthier, California enacted AB 1264. This law, along with creating a legal definition for UPFs, prohibits certain foods meeting the definition from being served in California's public schools. This is the first time a state has both sought to statutorily define UPFs and ban their use in schools. However, this is not the first time California has passed landmark legislation related to the ingredients of food served in schools. In 2024, California was the first state to prohibit the sale of food and beverages containing synthetic color additives in schools. In 2025, several states passed similar legislation, many of whom did so under the mantle of "Make America Healthy Again" (MAHA). Though the California initiatives were not enacted under the "MAHA" mantle, AB 1264, in a way similar to the synthetic dye ban, might serve as a model for how other states attempt to define UPFs. To learn more about California's school synthetic dye prohibition, click here to read NALC article "State Food Laws Enacted in 2024." To lean more about other state "MAHA" actions, click here to read NALC article, "'MAHA' Movement: New Texas and Louisiana Laws."

Definition of UPFs

Along with defining UPFs, AB 1264 bans certain foods that meet that definition from being served in school meals. Specifically, the law bans "restricted school foods" and "UPFs of concern" from being served in elementary, middle, or high schools after July 1, 2035. The classification of foods as being "restricted school foods" or "UPFs of concern" depends on whether the foods meet the definition of UPFs laid out in the California law. Thus, to understand which foods are prohibited, this article will first discuss California's definition of UPFs.

AB 1264 will codify the following definition of UPFs at Cal. Health & Safety Code § 104661. UPFs are food or beverages that contain:

- A substance available in FDA's Substances Added to Food database that has a FDA-defined technical effect, and

- *Either* 1) high amounts of saturated fat, sodium, or added sugar, *or* 2) a non-nutritive sweetener

FDA's Substances Added to Food is a searchable database that includes many of the types of ingredients regulated by the FDA. For example, the database includes food additives, color additives, and Generally Recognized as Safe substances that are listed in FDA regulations. California's new UPF definition applies to a substance found in the database that is designed to have any of the following technical effects, surface-active agents; stabilizers and thickeners; propellants, aerating agents, and gases; colors and coloring adjuncts; emulsifiers and emulsifier salts; flavoring agents and adjuvants (excluding spices and other natural seasonings and flavorings); flavor enhancers (excluding spices and other natural seasonings and flavorings); and nonnutritive sweeteners. The definitions of these technical effects can be found in 21 CFR § 170.3(o).

To meet the UPF definition, a food or beverage must contain one of the substances with a defined technical effect and contain *either* 1) high amounts of saturated fats, sodium, or added sugar *or* 2) a nonnutritive sweeter. Specifically, the law defines a product with a high amount of saturated fat as a food or beverage deriving 10 percent or greater of its total energy from saturated fat. Similarly, high sodium food or beverages contain a ratio equal to or greater than 1:1 milligrams of sodium to calories. Finally, added sugar products meeting the definition include food or beverages with at least 10 percent of total energy derived from added sugars. Thus, under California's UPF definition, a food containing a substance with a defined technical effect that derives 12 percent of its total energy from added sugars would be a UPF.

Further, California's definition would also include a food that contains 1) a substance with a defined technical effect and 2) a non-nutritive sweetener. A non-nutritive sweetener is defined as a substance with less than 2 percent of the caloric value of sucrose per equivalent unit of sweetening capacity. 21 CFR § 170.3(o)(19). California lists several examples of a non-nutritive sweetener including sucralose, steviol glycosides, and lactitol.

The law clarifies that raw agricultural commodities, unprocessed locally grown or raised agricultural products, minimally processed prepared foods, class 1 milk, alcoholic beverages, medical foods, infant formula, and commodity foods specifically made available by the USDA do not qualify as UPFs. Additionally, the law explains that salt, sodium chloride, spices or other natural seasonings or flavorings, nor natural color additives "shall not by themselves cause a food or beverage to be categorized as a UPF."

"Minimally processed prepared foods" is defined in Cal. Food & Agri. Code § 49015(a)(4) as food that prepared using 1) traditional processes to make food edible, to preserve it, or to

make it safe for human consumption, or 2) physical processes that do not fundamentally alter the raw product or that only separate a whole, intact food into component parts. Traditional processes could include smoking, roasting, freezing, drying, and fermenting. Physical processes could include grinding meat, separating eggs, and pressing fruits to produce juice. Thus, under California law, foods that undergo these processes do not meet the standard of "ultra-processed."

Examples of UPFs

Using California's definition, this article will evaluate the following foods and beverages to determine if they would classify as UPFs.

- Goldfish – Pepperidge Farm's Goldfish backed snack crackers would be considered a UPF because the product contains 1) Riboflavin, a database substance that functions as a color or coloring adjunct and flavor enhancer, and 2) has a 250mg of sodium and 140 calories – a ration greater than 1:1.
- Dino Nuggets – Tyson Foods' Frozen (chicken) Dino Nuggets would be considered a UPF under the California standard because the product contains food starch, a stabilizer or thickener, a high amount of sodium with 430mg of sodium and 210 calories.
- Mac & Cheese – Based on the nutrition facts of Kraft's Original Mac & Cheese Macaroni and Cheese Dinner, it would qualify as an UPF. The ingredient list contains Sodium Triphosphate, a substance designed as an emulsifier or emulsifier salt, and contains greater than a 1:1 sodium to calorie ratio with 530mg of sodium and 220 calories in a serving.
- Corn Dogs – Based on the nutrition facts of State Fair's Classic Corn Dogs, this food would qualify as an UPF. The product contains Sodium Diacetate which is a substance designed as a flavoring agent and adjuvant, and the product contains more than 10% of total energy from saturated fat.
- Gatorade – The lemon-lime flavor of Gatorade would qualify as a UPF because it contains 1) FD&C Yellow 5, a substance designed to function as a color or coloring adjunct, and 2) more than 10% of its total energy from added sugars.
- Apple Juice – Mott's 100% Original Apple Juice would not meet the California definition of a UPF because as juice produced from the pressing of a fruit, it falls under the "minimally processed prepared food" exception. However, regardless of the exception, it would still not be a UPF because it does not meet the definition's two-part test. While the apple juice contains ascorbic acid, a substance designed to function as a stabilizer or thickener, it has 0 percent added sugars and saturated

fats, has a sodium to calorie ratio under 1:1, and does not contain a non-nutritive sweetener.

Prohibiting specific UPFs from schools

Along with creating a definition for UPFs, the California law also prohibits "restricted school foods" and "UPFs of concern" from being served in schools. UPFs of concern include food that 1) meets the law's outlined UPF definition and 2) is classified as "of concern" through regulations adopted by the California Department of Public Health (CDPH). Restricted school foods are defined very broadly by the law as a food or beverage that contains one or more of the listed substances with a defined technical effect and is also restricted from service or sale in schools via CDPH regulations.

The law directs the CDPH to define both UPFs of concern and restricted school foods after considering several factors. Seven factors are listed in the law and include questions like, "whether the substance or group of substances are banned or restricted in other state, federal, or international jurisdictions due to concerns about adverse health consequences," "whether the food has been modified to be high in saturated fat, added sugar, or salt," and "whether the food meets the requirements of [FDA's] final rule . . . titled 'Food Labeling: Nutrient Content Claims; Definition of Healthy.'" CDPH's consideration of the listed factors must be "guided by a rigorous examination of available reputable peer-reviewed scientific evidence" and must be completed by June 1, 2028. By July 1, 2029 schools must begin to phase out both restricted school foods and UPFs of concern, and by July 1, 2032 a vendor shall not offer restricted school foods or UPFs of concern to a school.

CDPH is required to review the regulations and update definitions every five years. Additionally, the law creates reporting requirements for vendors of food products sold to a school. The vendor reporting requirements will go into place on February 1, 2028 and must be submitted yearly until February 1, 2032.

CA vs Nova

California's definition of UPFs is different from the standard created in Nova because it outlines tangible characteristics that a food must possess to be classified as a UPF. For instance, California's definition classifies food as an UPF is it contains a specific substance with a defined technical effect or if it contains a certain amount of added sugars. Conversely, Nova categorizes food based on a broad spectrum of the type and extent of processing it underwent. However, Nova is vague about what level of processing crosses into the UPF threshold. For example, in the UN Decade of Nutrition article UPFs are classified as those with "additives that imitate or enhance the sensory qualities of foods." However, the article also blurs the line between UPFs and processed foods by stating that

"additives in UPFs include some also used in processed foods, such as preservatives, antioxidants and stabilizers." While Nova is a helpful tool in categorizing foods into four groups, it is not a nuanced definition like the California law.

Federal Agencies Seek to Define UPFs

The timing of the enactment of AB 1264 is significant because the USDA and FDA are currently collaborating to establish a definition of UPFs. On July 23, 2025, the agencies published a press release announcing a joint Request for Information to "gather information and data to help establish a federally recognized uniform definition for UPFs." This initiative follows statements in the Make Our Children Healthy Again Assessment, published by the Make America Healthy Again Commission, that UPF overconsumption is one of the driving factors of what the assessment calls the "childhood chronic disease crisis." The agencies have not indicated that they plan to prohibit UPFs in school meals, as California has done, but they have stated a uniform definition will "allow for consistency in research and policy." The RFI is publicly available for comments until Oct. 23, 2025.

Though California's law and the state's initiative is not categorized under the mantle of "MAHA," its enactment might have an effect on the definition USDA and FDA create. Further, as other state legislatures begin their 2026 sessions in the upcoming months, they might model California's law in their own UPF definitional attempts.

To learn more about the FDA's Final "Healthy" Rule, click here to read NALC article "FDA Releases Final 'Healthy' Rule."

Solar Smarts for Landowners: An Overview

By Rusty Rumley

While not a new subject, solar leasing is a topic that will garner increased attention because of the additional funds from the Inflation Reduction Act (IRA) becoming available at the beginning of 2023. The IRA incentivizes the adoption of solar through several mechanisms such as the 30% solar tax credit for installing solar on a residence, but the primary one affecting solar leasing on a commercial scale is the 30% business investment tax credit. This credit is expected to spur demand for more commercial solar projects over the next decade and landowners can expect to be approached by representatives of these future projects for leasing opportunities.

What is a solar lease?

The typical commercial solar lease is where an outside party approaches a landowner to negotiate placing solar panels, substations, power lines, roads and other necessary infrastructure on their property for a significant period of time (twenty-five to thirty-five years with optional extensions are common) for a specified rental rate per acre per year or with some form of revenue sharing much like a royalty payment for an oil or gas lease.

These leases tend to be complicated and due to the length of the lease it is important to have an experienced attorney look over any potential contract before signing. While the leases tend to be long, twenty to forty pages is not uncommon, there are some clauses that need to be reviewed carefully.

Typical Clauses and Things to be Aware of in Solar Leases

Different companies use different lease agreements; however, there are similarities between the various contracts. Understanding these clauses can help when consulting with an experienced attorney about potential lease options.

Signing a lease agreement does not guarantee a solar lease.

Signing a solar lease guarantees that the solar developer has the option to go forward with the construction of a solar project, but it does not guarantee that they will build it. Solar companies may approach many landowners and sign lease agreements that lock the landowner into an initial agreement where the solar company can gather data and decide which site will best fit their needs. During the initial period the landowner typically has to grant them access to the property and refrain from signing any other agreements that might interfere with the solar lease. If by the end of the initial period the company has not started construction then the agreement typically expires, the landowner is able to keep any payments that have already been made, and the landowner can sign new lease agreements with other solar companies.

Income from the Solar Lease

What have your neighbors been offered? Many leases have a confidentiality clause, but those are typically only binding after the contract has been signed. Rental rates can vary dramatically so researching current rates is critical before signing a solar lease. Another issue this often not thought of is how will your rental rate increase over time? Remember that these agreements can last for

more than three decades. The revenue you receive might be adequate in 2023, but will that same sum be a fair rental rate in 2037? Escalation clauses address this issue by building into the agreement an orderly increase in the rental rate over the life of the lease agreement.

Property taxes

Property that is assessed and tax as agricultural property generally has a lower property tax rate than residential or commercial property. If a solar project is developed on your property then a county assessor may determine that the property is in commercial energy production rather than agricultural production which could significantly increase your annual property tax. This should be an area that is addressed in a lease agreement. Does the solar company pay the increase in taxes due to the solar development or will the landowner bear this cost?

Liability for Damage to the Solar Equipment

What about protecting the solar panels and other equipment on the leased property? Some leases make the landowner liable for any damages to equipment on the leased property. Can you guarantee that nobody will damage the equipment? Many solar projects construct fencing around the perimeter and it may be prudent to make the company responsible for any damage that occurs on their leased property.

Decommissioning the Project

Solar projects can easily last twenty-five to thirty-five years; however, at some point the project will no longer be economically viable. Who will pay for cleanup at the end of the lease period? Many contracts are silent as to which party bears the cost of removing the solar equipment and restoring the land to its prior condition. A good lease agreement should specify which party will be responsible for decommissioning the project and some ever require the solar company to establish a bond to pay for cleanup at termination. A lawyer can be extremely helpful in negotiating these types of arrangements.

Conclusion

There are numerous things that a landowner should think about before signing a solar lease and this article covers some of the important things to consider. Having an experienced attorney go through the lease is crucial because the time to negotiate is before signing the contract. For more information on the subject of solar leases click **here**.

To read the Inflation Reduction Act of 2022, click **here**.

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

Solar Leasing for Landowners: Payment Structures

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Solar leasing is the practice of renting tracts of land to install solar panels and infrastructure to generate electricity from sunlight. The typical commercial solar lease is where an outside party approaches a landowner to negotiate placing solar panels, substations, power lines, roads and other necessary infrastructure on their property for a significant period of time (twenty-five to thirty-five years with optional extensions are common) for a specified rental rate per acre per year or with some form of revenue sharing much like a royalty payment for an oil or gas lease.

Because landowners and solar companies are free to negotiate terms, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that all leases contain. Available commercial solar leases were gathered and analyzed to create this blog series about common clauses and to layout the variety of terms within those common clauses. The following post details common components of the payment structure of solar leases.

Common Payment Structures

Solar companies establish payment structures in their proposed lease agreements, and this is typically one of the first sections that a landowner will review. Many solar companies exist across the country resulting in diverse payment structures. While most lease agreements will vary, there are some common approaches that most companies follow. A very common approach to solar leases is to divide the lease into separate phases and pay different rates or through different calculations according to the phase of the solar lease. Some leases may pay a fixed rate based on the potential megawatts of power that the project could generate or even pay a royalty payment of some percentage of the power actually produced while many leases pay a fixed amount per acre per year. Other factors, such as state laws can also impact lease agreements. For example, both Tennessee and Florida statutorily require solar

lease agreements to include statements of the lease's compensation structure.[1] It is critical to carefully examine the lease and understand what compensation you are entitled to either during the life of the lease or if payment depends on the current phase of the lease agreement.

Simple Payment Structure

Simple payment structures may focus on one phase, such as the production phase, to compensate the property owner. For example, one lease agreement we reviewed requires payment based on the potential amount of energy produced:

> "… the annual rent of Seventy-five hundred dollars ($7,500) per megawatt (AC) of Installed Power (as defined herein) payable to Landlord, in advance, in annual installments."

This type of payment structure exposes the landowner to a major potential risk. Not all lease agreements turn into a completed solar project. There may be years after signing the initial agreement before a final decision on a project is made. Will the landowner be compensated for this time period? Simple payment structures may not take into account the time and complexity of building a solar project, so landowners need to ensure that they are adequately compensated for what they provide even if the project is never completed.

Payments Based on Lease Phases

Solar leases, and the developments themselves, are complicated projects that will take years to start producing power. It is common to break up lease agreements into different phases and the compensation methods and amount for the phases may differ dramatically. Common phases are the option phase, the construction phase, the operations phase and the decommissioning phase. Lease agreements may use some, or all, of the phases above. Exact names may differ from lease to lease, but the practical effects are similar.

The Option Phase

An option phase is the time period between the signing of the agreement and the beginning of the construction phase. Some of these phases can be as short as six months, while others may last for years. During the option phase, most leases contain no guarantee that the leased land will actually be used for a solar project.

[1] *See* Tenn. Code Ann. § 66-9-204; *see also* Fla. Stat. § 520.23 (2023).

The company may enter into contracts with several landowners while they decide which land to initiate their project on. The company will also need to sort out many practical issues such as permits, loans, power purchase agreements and a myriad of other things necessary for a successful solar project. Because rental payments in the future are unknown, it is beneficial to require rent payments during the option period. Example:

> "As consideration for the Option, during the Option Period, Grantee shall pay to Landowner option payments (collectively, the "Option Payments" and each an "Option Payment") in the amount of (i) US $2,500 (the "Initial Option Payment"), due and payable on the date that is forty-five (45) days after the Effective Date and (ii) thereafter, US $625 per calendar quarter, due and payable on the first day of the applicable calendar quarter."

Construction Phase

This phase of construction typically begins when they start bringing in construction equipment and materials and will last until solar project is actively producing power. During the option phase there may be minimal disruption to the landowner's use of their property, but during the construction phase the landowner may have very limited access to a significant portion of their property. Payments for this phase tend to be more substantial than the payments from the option phase because of the loss of access to the property. Examples:

- Payment is to begin when construction begins, and payment is to be made per acre.
- Landowner shall be paid $20,000 annually during Construction period.

Operations Phase

This phase begins when the construction is complete and the project begins producing power commercially. This phase can last for decades and ends when the project goes into the decommissioning phase. It is important to carefully review the contract to see how long it can last. Many contracts also include language where a specified period of time is guaranteed (20 years) and the company is entitled to extend this phase at their own discretion (company has an option to extend the agreement by five or ten years at their sole discretion). Payment calculations during the operations phase can also vary substantially. Many contracts pay on a per acre per year basis, but other contracts are paid on installed megawatts or a royalty payment based on the actual amount of power generated. Because of the length of this phase in the lease it is a common practice build in an escalation clause to keep up with inflation. Examples:

- $2,200 per acre of Easement Area per year during the Operations Period, escalating at a rate of 2% per annum.
- …$1,000 per acre per year for the Rent Payment of the leased property. Starting on the third (3rd) anniversary of the first Rent Payment Date, and for each annual anniversary thereafter, the annual Rent shall be increased by three percent (3%) over the Rent otherwise then in effect.

Decommissioning Phase

This phase begins at the end of the operations phase and, hopefully, concludes when all of the solar project infrastructure has been removed from the property and the premises has been returned to the state that it was in before the construction phase began. Many older agreements do not address the decommissioning phase and landowners may need to negotiate for payment and additional security to ensure proper decommissioning. Because of the length of these leases the original parties that signed the agreement may no longer be available (or the project could be sold to another company) so it is critical to document each party's responsibilities in the contract. One common approach to ensure that funds are available to pay for decommissioning is to require a bond from the solar company that can cover cleanup at the end of the lease. It also may be a wise idea to have payments for the property to continue through the decommissioning phase to incentivize the company to move forward. Example:

- Rental Payment of $1,500 per acre per year shall continue until all solar infrastructure has been removed from the premises at the conclusion of the agreement.

Conclusion

Overall, it is important that the solar lease agreement accurately encapsulates the terms agreed on by the parties. It is important to have an attorney that is knowledgeable about solar leases to thoroughly review the agreement for the landowner because once the contract is signed it is very difficult to make any changes. The long lease period means that anything left out of the agreement is something that the landowner, and potentially their heirs, will have to deal with for years to come.

To see more articles in this series click here.

To read the Inflation Reduction Act of 2022, click **here**.

To read the Farmland Owner's Guide to Solar Leasing, click here.
To read Understanding Solar Energy Agreements, click here.

Solar Smarts for Landowners: Property Owner Rights/Use

Rusty Rumley, Senior Staff Attorney

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Solar leasing is the practice installing solar panels on large areas of land leased from a third party to generate electricity from sunlight. Commercial solar leasing is a topic that has garnered increasing attention because of the high rental rates in many areas of the country. Large-scale commercial solar leases include several unique aspects that make them differ from the typical residential solar contract. Because landowners and solar companies are free to enter a contract containing whatever terms the parties agree on, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that many leases contain. We gathered and analyzed many available commercial solar leases to create this blog series about the most common clauses and layout the variety of terms found within those common clauses. The following post details common clauses involving the landowner's rights and use of the land during the lease; however, it is important to have an attorney thoroughly review any contract before it is signed. To read the overview post on Solar Smarts for Landowners click here.

Access and Use of the Property Clauses

Land carries an intrinsic value for farmers that is often difficult to put into words. Protecting the land and farming land that is not being used under a solar lease is often a priority when negotiating any lease. This makes it important to consider whether the lease agreement significantly limits the landowner's access to, or use of, their property. Many leases contain an "owner access" or property use restriction clause that specifies what actions can be taken by both the solar developer and the landowner. Having clear expectations from both sides of the agreement can limit potential conflicts in the future. In our research, some solar leases may adequately address many of these issues while others are lacking in detail. If there are specific uses and activities that the landowner wishes to continue, the lease agreement should expressly include those rights before anything is signed. Below are sample clauses from various solar leases that we have selected to use as examples as well as commentary about the clauses:

- Landlord shall not make any material changes to the property that would impact the soil quality of the Easement area or block the sunlight.

This clause provides very little guidance to the lease parties and is written entirely in favor of the solar developer. What impacts soil quality and what should be avoided to not block sunlight? Adding clear expectations with specific descriptions of prohibited activities would help to clarify this clause. The landowner will also want assurances on how they can continue to use their property in a way that does not violate the lease agreement. These issues will be addressed as we look at different clauses. Example two:

- "During the Development Term, owner shall have the right to continue to use the Property for agricultural, ranching, timber harvesting, and/or other reasonable purposes so long as the Property is maintained substantially in accordance with its current condition and in compliance with all applicable laws."

This clause allows the property owner to continue using the property for normal farming activities during the development term of the lease. It is important to note that this clause only applies to the development term, not the entire lease. Once construction begins the landowner will lose access to some property but notice that the exact property at issue is not described in this clause. To learn more about the different phases of a solar lease read our guide to Understanding Solar Energy Agreements here.

If a landowner wishes to retain rights to use the land in these ways throughout the entirety of the lease term, the lease agreement should reflect that and include a similar clause applicable to the construction and operation terms. One issue that frequently arises is that due to the nature of the construction phase, the project may need more of the land than when the project moves into the operation phase. The solar developer will need extra space to store equipment and supplies during the construction phase, and the landowner should make sure that they will be compensated for this additional temporary usage. During this phase the landowner is unlikely to be able to continue farming this property. Because the development phase can take years to complete the landowner would like to be able to farm their property in the meantime and receive sufficient notice before the solar lease moves into the construction phase. For pasture this notice may be short, but for row crops the landowner should negotiate for a longer notice period so that they do not lose

a growing crop. Regardless of the notice period, it is important to include language specifying damages when a solar lease moves into the construction phase.

A lease may also include an owner access clause that specifies the process to be followed for the landowner to access the leased premises.

For example:

- "During the Construction and Operation Term and any Extended Term with respect to any Property, Owner shall have the right to reasonably access such Property at reasonable intervals and at reasonable times and upon at least forty-eight hours' prior advance written notice to Lessee to inspect such Property. Any such access shall not materially interfere with Lessee's use of such Property for Solar Energy Purposes and occupancy of such Property in any manner."

This clause clarifies the steps to be taken for the landowner to access the property and also places a restriction on the actions taken by the landowner while on the property. The property owner may want to inspect their property to make sure that the property is being taken care of, but this is also a potentially dangerous place to be with either construction equipment during the construction phase or dangerous amounts of electricity during the operation term so the solar developer will want to protect themselves as well.

Ultimately, a solar lease also grants access to the land to many individuals who are likely strangers to the landowner. Employees from the solar company, maintenance workers, and others will be accessing the land over the course of several decades. This is likely unfamiliar to rural landowners and can cause additional stress and impose increased liability. A lease may specifically limit what can be grown on the land (timber is typically prohibited since it may create shade), what can be built on the land (barns, houses or other structures that could create shade) and other uses, such as hunting rights, may be restricted or significantly limited.

It is important to negotiate the access and usage of the property that the landowner will feel comfortable with before signing any agreement. Once the agreement is signed then it is very difficult to change the agreement in the future.

Maintenance of the Property

Most leases establish which party is responsible for maintenance of the property. Some leases require the tenant to maintain the property, while others hold the landowner responsible for keeping the land in proper order.

For example:

- "Landlord shall maintain its property adjacent to the Leased Premises in good condition and state of repair to avoid interference with Tenant's use of the Leased Premises and the Easement. Landlord shall not construct or permit to be constructed structures or plant or permit to be planted trees adjacent to the Leased Premises that will impede solar access to Solar Farm."
- Landlord shall maintain the property in a good condition, including the property in the immediate vicinity of the System.
- Operator (tenant) shall maintain the property in a neat and clean condition. Operator shall repair any cattle guards, fences, or gates damaged in connection to the Operator's activities on the property.

Many solar agreements split the duty for maintenance of the property. The solar developer is often responsible for the property that is being actively used by the project (this land is almost aways fenced in to limit access) and the property owner is responsible for maintaining the property outside the fence. Many solar developers will also reserve the right to maintain land immediately outside of the project so that they can cut down vegetation that could create shade or a fire hazard. Specifying responsibilities between the parties can make relations better over the life of the lease agreement.

Conclusion

A property owner should consider how the lease terms impact their ability to use their land. Issues such as use of the surrounding land and maintenance of the property may seem like far away concepts during the lease negotiation, but the terms created during these negotiations will dictate how the land will be used and maintained for decades to come.

To read other articles in the Solar Smarts for Landowners series click **here.**

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

Solar Smarts for Landowners: Miscellaneous Clauses

Solar leasing is the practice of installing solar panels on large areas of land leased from a third party to generate electricity from sunlight. Commercial solar leasing is a topic that has garnered increasing attention because of the high rental rates in many areas of the country. Large-scale commercial solar leases include several unique aspects that make them differ from the typical residential solar contract. Because landowners and solar companies are free to enter a contract containing whatever terms the parties agree on, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that many leases contain. We gathered and analyzed many available commercial solar leases to create this blog series about the most common clauses and layout the variety of terms found within those common clauses. The following post details common clauses regarding miscellaneous topics such as assignment/subleasing provisions, confidentiality clauses, binding arbitration clauses, insurance requirements, and oil, gas, and mineral rights.

Assignment/Subleasing

Most, if not all, of these leases include a clause that allows the developer to assign, transfer, or sublease their interest in the property without the consent of the landowner. Some leases require limited or no notice to sublease or assign the developer's interest to another party. Landowners may be able to negotiate for more notice on an assignment or sublease, but it is doubtful that the developer will forego this ability. Solar leases are long-term contracts that can last for decades and developers will want, or need, the flexibility to transfer the project to another party. What does this practically mean for the landowner? Other than negotiating for more notice potentially, this type of clause illustrates the importance of capturing the full agreement in writing. A landowner may have a wonderful relationship with the initial developer, but subsequent operators may not be so accommodating. The landowner's success in navigating future challenges with the solar company depends on the language that is negotiated before the lease is executed.

Confidentiality Clauses

Solar companies often ask that landowners not discuss the details of their agreements with their neighbors or nearby landowners. Some leases specifically include confidentiality clauses that prohibit either party from disclosing to a third party the financial details of the agreement, especially during the option period. Landowners are also often prohibited from revealing the lessee's product design,

methods of operation and construction to any third party. These clauses are included to protect the unique features of a solar company's business model from competing companies and potentially in negotiating different pay rates with different neighbors. There are several different issues that landowners and their attorneys should be aware of with confidentiality clauses.

First, this does not stop the landowner from seeking legal advice on the lease. In fact, a landowner may be able to use this clause to negotiate with the developer on paying some, or all, of the landowner's attorney fees for reviewing the lease because they are creating legal liability for the landowner. In some parts of the country developers may be willing to reimburse attorney fees for the landowners and not in other parts, but it is an issue that your attorney should explore.

Second, the landowner should be able to consult with other people such as family members, accountants, tenants and lenders before signing the agreement as the contract needs to be executed for the confidentiality clause in the lease to come into force. Some developers may have other types of documents, such as Non-Disclosure Agreements (NDAs), that are introduced earlier in the negotiations and those agreements should be carefully reviewed by the landowner's attorney before they are signed.

It is important to be aware of any confidentiality requirements in your agreement to avoid liability for breach of contract.

Arbitration and Venue

Ideally, lease agreements would sufficiently encapsulate the agreement of the parties, and the parties would not have any issues that lead to disputes. However, no contract can address all potential problems that may arise during a lease that is likely to last more than a quarter of a century. Leases often include arbitration clauses that require parties to resolve any disputes through binding arbitration rather than in court. Before entering a lease agreement that requires arbitration, a landowner should consider whether they are willing to surrender their right to have the case heard in court. These binding arbitration clauses are often more favorable to the solar companies because a landowner is much more likely to win a jury trial in his or her hometown against a large solar corporation.

Here is an example of a binding arbitration clause:

> "Any Dispute that is not settled to their mutual satisfaction within the applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties."

Venue, or forum selection, is another clause that your attorney should carefully review. Venue clauses decide the location where a contract dispute will be litigated. If the solar lease does not specify where venue should occur, then the default answer is where the breach of contract happened. This is usually going to be the county or parish where the solar lease is located which typically favors the landowner. Developers that do not have an arbitration clause will usually want to have any court actions held in a location that is more favorable to them. The landowner's attorney should carefully review these sections of the agreement to fully protect the landowner's interests as much as practicable in case of a later dispute.

Insurance/Indemnification

It is important to ensure that, in the case of an accident that causes loss, both parties are protected. The most common lease requires the developer to maintain an insurance policy that covers injury to person and property. These clauses typically include a minimum policy amount. For example, a $2 million minimum for each individual occurrence and $5 million in umbrella liability insurance. This requirement ensures that the solar developer will be able to pay for any damages that arise from its actions or injuries on the property.

Additionally, landowners are subject to premises liability and owe a certain duty of care to those who enter their land. This duty of care would extend to employees of the solar company, maintenance workers, and any other individual who enters the land in relation to the solar project. Solar leases should include indemnity clauses in which the developer agrees to indemnify and hold harmless the landowner for any losses caused by injury to another person or piece of property. This is important because it is possible that an accident may occur in the 30+ year span these agreements typically last, and the landowner does not want to be held liable for personal injury in relation to the project. Some early solar leases have indemnity clauses that protect the developer at the landowner's expense and those should be avoided whenever possible. The landowner should not be held responsible if, for example, teenagers shoot at solar panels from the road and cause damage. A well drafted lease will put the risk of liability on the developer since they are the ones with control over that property during the life of the solar lease.

Mineral Rights and Solar Leases

It is very common in some states that both mineral developments (usually oil and gas exploration) and solar development are happening in the same area at the

same time. Solar developers will want the exclusive right to use the property for their solar project and may ask landowners for some form of assurance in the lease that they will have sole rights to the property. This may not be something that the landowner can guarantee. People that own the surface estate (the landowners) may not own the mineral estate (the valuable minerals underneath the surface) if those rights have been severed. In many states the mineral estate is the dominant estate over the surface estate, and they may use a "reasonable amount" of the surface as necessary to extract their minerals. This means that if the landowner has only the surface rights to their property, then they cannot, and should not, guarantee that the solar developer will have exclusive rights to the surface because they cannot exclude a mineral owner from extracting those minerals. With modern drilling techniques there is more flexibility on where the wellhead can be located, but the landowner should not agree to clauses that they may not be able to honor. Developers in states with active mineral exploration should be aware of this issue; however, the landowner's attorney should also seek to minimize the risk by recognizing this risk in the lease agreement.

Conclusion

Ultimately, landowners and solar companies may include any clauses they wish in a lease agreement. It is best to enter into a comprehensive agreement that addresses all material issues and topics in order to protect both the landowner and the developer. Any term that is written in the lease is enforceable against both parties, and it will be more difficult, if not impossible to enforce terms that are not included in the written agreement. Landowners spend much of their time looking at the payment clause of a solar lease, but the other miscellaneous clauses can impact the overall success of the lease agreement.

To read other articles in the Solar Smarts for Landowners series click **here**.

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

IEEPA Tariffs Challenged in Supreme Court (published 10.16.25)

Introduction

On August 29, a federal appeals court **ruled** that the International Emergency Economic Powers Act (IEEPA) does not provide the Trump Administration authority to impose retaliatory tariffs. In its ruling, the appeals court held that President Trump exceeded the authority granted by the IEEPA when he signed five Executive Orders imposing tariffs on "nearly all goods from nearly every country in the world." The court's ruling permitted the Trump Administration to appeal the judgment to the United States Supreme Court, which agreed to hear arguments during the first week of November. Trump is the first and only President to rely on the IEEPA to implement tariffs, so this case will cover new ground. With the challenged tariffs playing a large role in international trade, the outcome of this case will certainly impact U.S. agricultural markets. This article will discuss the background of the case, the decision of the appeals court, and what comes next.

Background

The IEEPA was established in 1977 to grant the President the authority to exercise a variety of economic powers in response to a declared national emergency, while also limiting other economic powers granted to the President by earlier statutes like the Trading with the Enemy Act (TWEA). Functionally, the IEEPA allows the President to "investigate, regulate, or prohibit any transactions in foreign exchange." **50 U.S.C. §1702(a) (1977)**. However, the President's authority under the IEEPA is available only "to deal with any unusual and extraordinary threat . . . if the President declares a national emergency with respect to such threat." **50 U.S.C. §1701(a) (1977)**.

In January of this year, President Trump **declared** a national emergency at the U.S.- Mexico Border, citing national security concerns. This national emergency was later expanded to include Canada and China. Executive Orders Nos. **14193**, **14194**, **14195**, **14257**, and **14266** imposed tariffs on Mexico, Canada, and China in response to these national emergencies. The tariffs instituted by these executive orders are referred to in the court's opinion as the "Trafficking and Reciprocal Tariffs." The Trump Administration cited the President's IEEPA authority to regulate foreign trade in the event of a national emergency as the legal basis for instituting the tariffs. At issue in ***V.O.S. Selections, Inc. v. Trump,* No. 2025-1812 (Fed. Cir. 2025)**, are the five Executive Orders issued by President Trump to impose trade duties on foreign trading partners.

The Case

On April 14, 2025, a group of five businesses filed suit in the Court of International Trade (CIT), challenging the reciprocal tariffs instituted by President Trump following the declared national emergency. In the complaint, the plaintiffs alleged that the IEEPA did not grant President Trump the authority to levy the challenged tariffs. The complaint asserted that the authority to impose tariffs, "must be granted clearly and unmistakably" and not "through some implication so vague and indeterminate that it went unnoticed by every other President for nearly five decades."

The plaintiffs additionally claimed that even if the IEEPA did confer this authority to the President, then it is an unconstitutional delegation of legislative authority. On this point, the plaintiffs alleged that interpreting the IEEPA as allowing the challenged tariffs would constitute a "sweeping delegation of legislative power." According to the complaint, this "sweeping delegation" would violate the nondelegation doctrine, which exists to prevent Congress from giving its legislative power to entities not vested with such authority under the Constitution. At the CIT, the court held that the IEEPA did not authorize these tariffs and that the challenged orders would be permanently enjoined. Because the CIT found that the IEEPA did not authorize the tariffs, the CIT did not address whether it was an unconstitutional delegation of authority. The government appealed that decision to the U.S. Court of Appeals for the Federal Circuit.

On appeal, the court limited its discussion to "whether the Trafficking and Reciprocal Tariffs imposed by the Challenged Executive Orders are authorized by IEEPA." The court held that they were not. In reaching this conclusion, the appeals court relied on the text of the IEEPA, the IEEPA's history, and similar trade statutes. The court held that the IEEPA's authority, which permits the President to "regulate . . . importation," does not include the ability to impose sweeping tariffs. The court noted that the IEEPA does not include the word "tariff" or any of its synonyms like "tax" or "duty." However, in a variety of other statutes that do confer tariff authority on the President, Congress has used "clear and precise terms to delegate tariff power."

The court reasoned that the history and purpose of the IEEPA conflicted with President Trump's tariffs. The court pointed out that since the IEEPA was enacted, "not once before has a President asserted his authority . . . to impose tariffs." The court noted that the IEEPA was specifically enacted to "cabin the President's authority" and further reasoned that, "it seems unlikely that Congress intended, in enacting IEEPA, to depart from its past practice and grant the President unlimited authority to impose tariffs." This, coupled with the explicit grants of authority found in similar statutes, led the court to conclude that, "whenever Congress intends to delegate to the President the authority to impose tariffs, it does so

explicitly." Because the court found that IEEPA did not authorize these tariffs, the court did not address whether IEEPA violated the nondelegation doctrine.

Moving Forward

Despite finding that the IEEPA did not authorize the tariffs implemented by President Trump, the appeals court declined to affirm the CIT's decision to overturn and block the challenged tariffs. For now, the challenged tariffs will stand. In reaching this decision, the court relied on **Trump v. CASA, Inc., 606 U.S. 831 (2025).** There, the Supreme Court held that the injunctions sought were "broader than necessary to provide complete relief to each plaintiff with standing to sue." Rather than granting the injunction, the Supreme Court in **CASA** instructed the lower courts to "move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity."

The appeals court here took the same approach. On sending the decision back to the CIT for further review, the appeals court instructed the CIT to "consider in the first instance whether its grant of a universal injunction comports with the standards outlined by the Supreme Court in *CASA.*" This refusal to grant the injunctions have preserved the tariffs and will allow the Trump Administration to continue collecting tariff revenue for the time being. The government has appealed the CIT's decision to the Supreme Court, which decided to hear the case.

At the Supreme Court, two questions have been presented for review. First, whether the IEEPA allows a President to institute tariffs after declaring a national emergency. Second, if IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President, a question that was left unanswered in the lower courts. The Trump Administration has urged the Supreme Court to hear the case and issue a decision quickly. In a document published on September 9, the Supreme Court granted a motion to expedite the case and set oral arguments for November 5, 2025.

The Supreme Court's decision will have major political and economic implications, regardless of the outcome. Siding with the President would likely allow further tariffs to be enacted under the IEEPA and would expand the statute's authority for future administrations. Siding with the plaintiffs would likely result in the challenged tariffs being completely vacated. Given the impacts of the tariffs so far, this option would have a major effect on the U.S. economy. A final decision is not likely to come soon, but the outcome of this case will have major implications for the U.S. agriculture industry.

Overview of Recent Ag Trade Announcements (published 11.20.25)

Background

Following President Trump's three-leg journey across Asia in October of 2025, the White House has released details of new trade agreements that seek to increase U.S. agricultural exports. Additionally, agreements executed earlier this year with the United Kingdom (U.K.) and the European Union (E.U.) mark a similar attempt to increase exports to various European nations. This article will briefly discuss the details of the various trade developments announced by the White House throughout 2025.

Mutual Responsibilities & Consequences

It is important to note that the trade deals discussed below are still preliminary and in some cases are merely agreed upon "frameworks" meant to guide negotiations as they progress. As a result, they are not (and are not yet intended to be) binding on either country. Given the unpredictability of international trade, the final agreements could potentially vary greatly from these initial framework agreements, depending on future negotiations.

Article I of the Constitution gives Congress the exclusive power to "regulate commerce with foreign nations." In the past, when the President exercised their power to negotiate trade agreements, they were considered "congressional-executive agreements" and would ultimately require Congress' approval under trade promotion authority (TPA) enacted by Congress. However, the most recent TPA authority expired in 2021, creating uncertainty in whether foreign trade agreements would require congressional authorization. For example, when President Biden executed the Indo-Pacific Economic Framework for Prosperity (IPEF), no agreements under this trade deal were submitted to Congress for approval.

With the expiration of the TPA, it is unclear whether President Trump's "framework agreements" will require Congressional approval, creating yet another area of uncertainty in the future of these agreements. The Congressional Research Service has recently published a report that may be helpful for more information on the interplay between executive and legislative authority.

China

Following a meeting in South Korea between President Trump and Chinese President Xi Jinping, the White House published details of a new trade deal agreed upon by the U.S. and China. In a fact sheet recently published on the White House website, the trade deal is referred to as a "historic agreement" that will "open China's market to U.S. soybeans and other agricultural exports." The trade deal stipulates that China will suspend its retaliatory

tariffs implemented throughout 2025. These include tariffs on U.S. chicken, wheat, corn, cotton, sorghum, soybeans, pork, beef, aquatic products, fruits, vegetables, and dairy products. Further, China has agreed to purchase at least 12 million metric tons of U.S. soybeans during the final two months of 2025. China has also committed to purchase at least 25 million metric tons of U.S. soybeans in 2026, 2027, and 2028. Finally, China has agreed to resume purchasing U.S. sorghum, hardwood, and softwood logs.

China is a major purchaser of U.S. soy, so this can have a significant impact on production and market values. For example, in 2024 China purchased 26.81 million metric tons of U.S. soybeans. Between January and May of 2025, before trade tensions escalated, figures **indicate** China had imported 6 million metric tons of U.S. Soybeans. It has been **reported** by the USDA that since the summit in South Korea, China has purchased 792,000 metric tons of U.S. soybeans.

As of the time of writing, China **has not** publicly issued a confirmation of its commitment to purchase the specified amounts of U.S. soybeans. However, in regards to some other components of the deal, China has **confirmed** its suspension of its retaliatory tariffs on U.S. imports. It will, however, leave in place a 13% tariff on imported U.S. soybeans.

Japan

During the trip to Asia, President Trump met with Japan's Prime Minister Sanae Takaichi to reconfirm the Framework Agreement entered by the U.S. and Japan on July 22, 2025. The framework contained provisions intended to bolster agricultural trade between the U.S. and Japan. Details of this agreement were outlined in an **Executive Order** signed by President Trump on September 4, 2025, titled "Implementing the United States-Japan Agreement." The Executive Order states that Japan will be "working toward an expedited implementation of a 75 percent increase of United States rice procurements within the Minimum Access rice scheme." Additionally, Japan will be investing $8 billion per year towards "purchases of United States agricultural goods, including corn, soybeans, fertilizer, bioethanol (including for sustainable aviation fuel)." Japan has reconfirmed its commitments in a recently published **Joint Statement** between Japan and the U.S..

The United Kingdom

On May 8, 2025 President Trump and Prime Minister Keir Starmer **announced** the U.S.-UK Economic Prosperity Deal (EPD). Per the **general terms** of this agreement, the United Kingdom will be removing its 20% tariff on U.S. beef exports, which currently impacts beef exports within a quota of 1,000 metric tons. The U.K. has also agreed to create a preferential duty-free quota of 13,000 metric tons for U.S. beef. A preferential-duty free agreement is a form of trade agreement that allows products to be imported with reduced

import costs and fees. The trade deal between the U.S. and the U.K. also stipulates that the two nations will "commit to working together to improve market access for agricultural products." However, the trade deal does not go into detail on how exactly market access will be improved. An **update** recently published by the U.K. government states, "We will execute the legislative process to create a preferential duty-free quota for US beef of 13,000 metric tonnes (MT) per calendar year." Similar to the above agreements, at this point this is a voluntary and mutual decision, rather than a binding legal commitment.

The E.U.

On July 27, 2025, President Trump **announced** a new "Framework Agreement" with the E.U.. The **Framework Agreement** stipulates that the E.U. provide preferential market access for U.S. agricultural goods including tree nuts, dairy products, fresh and processed fruits and vegetables, processed foods, planting seeds, soybean oil, and pork and bison meat. Like the agreement with the U.K., this trade deal states that the E.U. and U.S. "commit to work together to address non-tariff barriers affecting trade in food and agricultural products" which includes "streamlining requirements for sanitary certificates for pork and dairy products." In a **Joint Statement** between the U.S. and the E.U., the Framework Agreement is referred to as "a first step in a process that can be further expanded over time to cover additional areas and continue to improve market access and increase their trade and investment relationship."

Malaysia

On October 26, 2025, the U.S. and Malaysia executed the "**Agreement on Reciprocal Trade**." According to a **fact sheet** published by the Office of the U.S. Trade Representative, Malaysia has committed to provide significant preferential market access for U.S. agricultural products. This includes dairy, horticultural products, poultry, pork, rice, and fuel ethanol. Malaysia has also committed to address "non-tariff" barriers to U.S. agricultural exports. To accomplish this, Malaysia has pledged to: (1) recognize the U.S. food safety system for U.S. meat, poultry, and dairy products; (2) streamline halal certification of U.S. food and agricultural products; (3) open market access for U.S. sorghum; and (4) adopt regionalization approaches to facilitate U.S. exports of pork and poultry. Malaysia has confirmed these commitments via a **Joint Statement** between the U.S. and Malaysia. According to that joint statement, the two nations will "undertake domestic formalities in advance of the Agreement entering into force." The agreement is additionally confirmed in a **post** by the National Trade Promotion Agency of Malaysia, which claims the agreement "strengthens regulatory certainty and supply-chain resilience through deeper cooperation in trade facilitation."

Cambodia

On the same day that the Malaysia agreement was formalized, a **new trade agreement** with Cambodia was also announced. Under this agreement, Cambodia has agreed to eliminate tariffs on all U.S. food and agricultural product imports. Further, the agreement contains language indicating Cambodia's intent to promote the importation of U.S. agricultural products. Specifically, Cambodia says it will recognize U.S. regulatory oversight, U.S. sanitary and phytosanitary measures, and accept certificates issued by U.S. regulatory authorities for food and agricultural products. U.S. **sanitary and phytosanitary measures** are a set of testing and inspection methods used to ensure the safety of agricultural products. This language in the trade agreement indicates that when importing U.S. agricultural products, Cambodia will defer to safety determinations already made by U.S. regulatory agencies. This, in theory, should reduce non-tariff barriers to trade between the U.S. and Cambodia. While this agreement is not yet finalized, the two countries **have committed** to "undertake domestic formalities" to make it so.

Ongoing Negotiations

The negotiations discussed in this section are even more nebulous, as they are merely attempts to negotiate the terms of a potential agreement. However, they are still an indication that the following countries are at least at the negotiating table with the U.S.

Indonesia and the U.S. are still negotiating details of a trade deal that was first discussed in a **joint statement** issued on July 22, 2025. Per the joint statement, Indonesia would eliminate "approximately 99 percent" of tariff barriers currently placed on a "full range" of imported U.S. food and agricultural products. The proposed agreement also stipulates that the U.S. and Indonesia will cooperate to exempt U.S. food and agricultural products from all import licensing regimes, provide Fresh Food of Plant Origin designation for all applicable U.S. plant products, and to recognize listing of all U.S. meat, poultry, and dairy facilities. The joint statement provides that Indonesia will also accept certificates issued by U.S. regulatory authorities.

Further, the U.S. and Vietnam have announced a **framework** for a trade agreement, but are still in the process of finalizing details of a more comprehensive agreement. The framework states that Vietnam will provide preferential market access for "substantially all" U.S. agricultural exports to Vietnam.

On October 26, 2025, the White House posted a **joint statement** discussing an agreed-upon framework for a new trade deal between the U.S. and Thailand. The framework states that Thailand will eliminate tariff barriers on "approximately 99 percent of goods" covering a full range of U.S. food and agricultural products. Similar to other agreements, the U.S. and

Thailand trade deal would require Thailand to accept safety certifications of food and agricultural products issued by U.S. regulatory authorities. This joint statement also "takes note" of "the forthcoming commercial deals between U.S. and Thai companies" for the purchase of U.S. feed corn, soybean meal, and dried distiller grains with solubles at an estimated 2.6 billion dollars per year.

Finally, on November 14, 2025, the White House published a **fact sheet** outlining the framework for new U.S. trade deals with Switzerland and Liechtenstein. Negotiations are ongoing, but a recently published **press release** indicates that Switzerland and Liechtenstein have in fact signed a "non-binding memorandum of understanding" with the U.S. At this time, only the "non-binding memorandum of understanding" has been signed, so the specific details of the agreement have not been finalized and may be subject to change. Per the fact sheet, this new trade deal will "lock in the largest expansion ever of U.S. exporter access to Swiss markets, creating new opportunities for U.S. manufacturers, farmers, ranchers, fishermen, and other producers." To accomplish this expansion, Switzerland and Liechtenstein will remove "a range of tariffs" on U.S. agriculture products including fresh and dried nuts, fish and seafood, and fruits. Additionally, Switzerland will establish tariff rate quotas for American poultry, beef, and bison. Finally, the fact sheet discusses Switzerland and Liechtenstein's intent to address non-tariff barriers which have historically prevented certain U.S. goods from being imported. To remove these barriers, the nations will address "restrictive measures" on U.S. poultry and attempt to streamline requirements for U.S. dairy products.

Conclusion

Trade relationships between countries are complicated. Until binding agreements are reached, negotiations may continue. While more time will be needed to determine the ultimate impact, the language recognizes the importance of international trade to U.S. agriculture and indicates an intent to improve exports of U.S. agricultural products.

Supreme Court Vacates IEEPA Tariffs (published 3.5.26)

Introduction

In January 2025, President Trump declared national emergencies at the U.S. borders, citing an influx of "poisonous fentanyl" and "the extraordinary threat posed by illegal aliens". According to the Trump Administration, these emergencies authorized the President to impose tariffs under the International Emergency Economic Powers Act (IEEPA). IEEPA grants the President authority to undertake specific economic actions in response to a national emergency. Using IEEPA, the Trump Administration imposed tariffs on Mexico, Canada, and China. These tariffs were challenged in federal courts and ultimately struck down by the Supreme Court on February 20, 2026, in *Learning Resources, Inc. v. Trump*. To learn more about the IEEPA tariffs and the Court's decision, click here.

Following that decision, certain questions remained unanswered. Will there be refunds for the IEEPA tariffs? How will those refunds be issued? Will the Trump Administration impose new tariffs, and if so, how? Recent developments have provided some clarity on these issues and what importers can expect moving forward. This article will discuss refunds, new tariffs implemented by the Trump Administration, and an investigation by the United States Trade Representative that could potentially lead to new tariffs.

Refunds & The CAPE System

Reportedly, approximately $133.5 billion was collected on IEEPA tariffs by December 2025. With those tariffs now vacated by the Supreme Court, American importers are seeking refunds. Because the Court's decision did not mention refunds, importers were left uncertain about whether refunds would be issued. Recent developments at the Court of International Trade (CIT) have provided some clarity, but background is needed to understand those actions.

When a good that is subject to tariffs enters the United States, one of two collection processes applies: formal and informal entries. Formal entry is required when the value of imported goods exceeds $2,500. In a formal entry, the importer must pay the estimated tariff rate and post a bond with Customs and Border Protection (CBP). CBP later calculates the final tariff rate. This is known as "liquidation." Under federal law, liquidation must occur within one year of the entry. Informal entries generally do not require a bond and are considered liquidated once the importer pays the estimated tariffs.

Under the Tariff Act of 1930, the Secretary of the Treasury is authorized to offer tariff refunds when "it is ascertained on liquidation or reliquidation . . . that more money has been deposited or

paid as duties than was required by law." In those situations, refunds are required if the discrepancy exceeds $20.00. Additionally, refunds may be mandated after a court orders reliquidation.

On March 4, 2026 the Court of International Trade (CIT) issued an order stating that, "all importers of record whose entries were subject to IEEPA duties are entitled to benefit from the *Learning Resources* decision." To facilitate this, the CIT ordered that any liquidated entries "for which liquidation is not final" be reliquidated without regard to the IEEPA tariffs. Unliquidated entries were likewise ordered to be liquidated. In other words, the CIT ordered CBP to pretend as if the IEEPA tariffs never existed and begin issuing refunds. As discussed above, liquidation is a crucial step in the refund process, as it determines the amount owed by the importer.

On March 6, the CIT issued a subsequent order temporarily suspending CBP's obligation to issue refunds, after CBP indicated it needed additional time to liquidate or reliquidate all entries. CBP asserted that the "volume of entries" made each year prevent it from being able to "affirmatively review and liquidate each entry." CBP is still responsible for collecting and liquidating all non-IEEPA tariffs, which seems to have initially caused CBP to doubt its ability to comply with the CIT's order. However, CBP then filed a subsequent declaration which outlined its plans to implement a new online system to process IEEPA refunds.

CBP plans to implement the Consolidated Administration and Processing of Entries (CAPE) claims portal. According to CBP, CAPE will be a web-based resource allowing importers and brokers to submit IEEPA refund requests. CAPE will use information submitted by importers to determine refund eligibility. If eligible, tariff rates will be liquidated or reliquidated "as if the IEEPA duties had never been declared." After liquidation or reliquidation, CAPE will automatically issue refunds to eligible importers. It is important to note that CAPE is not yet finalized. Accordingly, CBP will be implementing a phased development of CAPE, with basic system functionality being activated first. To ensure eligibility for refunds, importers must first enroll in the Automated Clearing House (ACH) program. ACH is a system used by CBP to process and transmit electronic credit and debit transfers and will be used to distribute IEEPA refunds. For more information on the CAPE system, click here.

Refunds have been a looming issue since the Court's decision in *Learning Resources*. Given the amount collected under the IEEPA tariffs, many U.S. importers are likely seeking to recover refunds. When the Court did not address refunds in its opinion, those importers were left with uncertainty. However, with its introduction of the CAPE system, CBP has provided at least one potential avenue for producer refunds under IEEPA.

Section 122 Tariffs

On February 20, 2026, President Trump announced a new 10% global tariff rate under Section 122 of the Trade Act of 1974 (Section 122). The initial announcement came the same day the Supreme Court invalidated the IEEPA tariffs. Since its enactment, no tariffs had previously been implemented under Section 122. Because no tariffs have been imposed under Section 122 before, many importers may be unclear about Section 122's purpose and how it relates to the newly announced tariffs.

Section 122 was implemented to address "fundamental international payments problems." More specifically, Section 122 allows the president to impose tariffs to: 1) deal with large and serious United States balance-of-payments deficits; 2) prevent an imminent and significant depreciation of the dollar in foreign exchange markets; or 3) cooperate with other countries in correcting an international balance-of-payments disequilibrium.

A balance-of-payments refers to a record detailing all transactions made between a country's entities and international trading partners. It includes a current account, a capital account, and a financial account. The current account tracks a nation's trade of goods and services, its earnings on foreign investments, and its foreign money transfers. The capital account covers transactions in foreign financial institutions and central bank reserves. The financial account records deposits, ownership of investment securities, and direct investment between U.S. residents and foreign entities. A balance-of-payments deficit means that the United States is sending more money out than it is taking in.

Unlike IEEPA, Section 122 explicitly grants the President authority to impose tariffs. However, Section 122 also places limitations on any tariffs enacted under its authority. To address one of the above-mentioned payments problems, the President may enact a temporary tariff. The tariff cannot exceed 150 days, unless approved by Congress. 19 U.S.C. § 2132(a)(3). The tariff rate may not exceed 15% *ad valorem*. An *ad valorem* tariff is calculated based on the total value of the goods, rather than their quantity or weight. In other words, the tariff may not exceed 15% of the total value of the imported goods. Section 122 requires that the tariff rate be applied "consistently with the principle of nondiscriminatory treatment." 19 U.S.C. § 2132(d)(1). This means that the rate must generally apply equally to all countries. However, when a country has "large or persistent balance-of-payments surpluses," the President may target them specifically.

Using the authority granted by Section 122, the Trump Administration announced a 10% *ad valorem* import duty on articles being imported into the United States. The administration asserts that the Section 122 tariffs are necessary to correct "a large and serious balance-of-payments deficit." The announcement explains that the United States is currently in an overall account deficit and running a deficit in each component of the current account. To support this claim, the Trump Administration asserts that: 1) the annual U.S. goods trade deficit reached 40% during 2024; 2) the U.S. made less on exported capital and labor than other countries made by exporting capital

and labor to the U.S. and; 3) more money is currently being transferred out of the United States than is being transferred in. According to the announcement, these issues "endanger U.S. economic and national security."

The announcement additionally lists certain exemptions from the Section 122 tariff rate. The exemptions include but are not limited to: certain critical minerals; natural resources unavailable in the United States; beef, tomatoes, and oranges; pharmaceuticals; certain electronics; certain aerospace products; and informational materials. Additionally, goods traded according to the agreement between the United States, Mexico, and Canada will be exempted. As discussed above, the Section 122 tariffs face a 150-day statutory-limit, which could potentially be extended by Congress. This means that the tariffs could at least be active until July 20, 2026.

The Section 122 tariffs have already faced legal challenges. A coalition of twenty-four states filed a lawsuit challenging the Section 122 tariffs on March 5, 2026. The suit, filed in the CIT, argues that Section 122 does not authorize the Trump Administration's tariffs. The complaint argues that a trade deficit is not a balance-of-payments deficit, and therefore Section 122 does not apply. According to the states, the administration is "contorting" the term balance-of-payments and "cherry-picking only the negative components." They argue that when foreign capital and financial investments into the United States are included, the actual balance-of-payments is only 0.2% of the United States' gross domestic product, which the states characterize as "essentially a rounding error." The states claim that Section 122 does not authorize tariffs based on a trade deficit and that the administration cannot "redefine" the term balance-of-payments to justify the Section 122 tariffs. The plaintiffs conclude by requesting the CIT to declare the Section 122 tariffs unlawful, vacate them, and order refunds of tariffs already collected.

Whether the Section 122 tariffs will survive this challenge remains to be seen. As of the time of writing, the tariffs have been in effect for just over a month, and many questions remain unanswered. Section 122 imposes a 150-day limit, but Congress could extend that period. Even if Congress were to extend the deadline, the tariffs could be overturned by the courts. Further, President Trump has indicated that the rate will be increased to 15%. Whether Section 122 authorized the recent tariffs is an issue for the federal courts to decide, which could take some time.

Potential Section 301 Tariffs

On March 17, 2026, the Office of the United States Trade Representative (USTR) initiated an investigation of foreign countries under Section 301 of the Trade Act of 1974 (Section 301). According to a USTR press release, the investigation focuses on "acts, policies, and practices of various economies" related to structural excess capacity in manufacturing sectors. Structural excess capacity occurs when production capacity exceeds domestic and global demand. The USTR

claims that this excess capacity will lead to "overproduction and large or persistent trade surpluses, as well as underutilized and unused capacity, in manufacturing sectors." According to the USTR, this poses "a serious challenge to U.S. efforts to re-shore supply chains and provide good-paying jobs for American workers." While the USTR has explained why it launched the investigation, many may still be unclear about how Section 301 works and what could come next.

Section 301, at its core, is designed to address "unfair" foreign trade policies and enforce international trade agreements. Section 301 applies when the USTR determines that "the rights of the United States under any trade agreement are being denied." Section 301 also applies when "an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or is unjustifiable and burdens or restricts United States commerce."

A Section 301 investigation can be initiated by the USTR itself or by a private party. Private parties must file a petition describing the unfair trade practice and how it is harming the U.S. economy. Once filed, the USTR has 45 days to decide whether to begin a formal investigation. The USTR must publish a notice in the Federal Register when self-initiating an investigation. The USTR is also required to seek public comment on proposed actions. For non-trade agreement investigations, a final determination will generally be issued 12 months after an investigation begins.

If the USTR finds through investigation that a country has violated a trade agreement or implemented an act, policy, or practice that is unjustifiable, Section 301 authorizes certain actions. Most notably, the USTR may impose tariffs. Under Section 301 the USTR is authorized to impose duties or "other import restrictions" on the goods of a foreign country for "such time as the Trade Representative determines appropriate."

The USTR announced that it has self-initiated a Section 301 investigation. The USTR will investigate China, the European Union, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India for the above-mentioned structural excess capacity concerns. If the USTR determines that the policies or practices of the countries under investigation are actionable under Section 301, it may act under the statute, including imposing tariffs.

This is a broad investigation, and it will likely be some time before any official action is announced. However, any actions taken could have significant economic consequences. Individuals interested in submitting a public comment on the investigation may do so here. The deadline to submit written comments is April 15, 2026.

Conclusion

In the aftermath of the *Learning Resources* decision, many questions remained unanswered. However, some answers have emerged in the weeks since. While not finalized, the CAPE system may provide an avenue for importers seeking IEEPA refunds. Despite ongoing legal challenges, President Trump's Section 122 tariffs suggest that tariffs remain a central part of the administration's trade strategy. This is further reinforced by the USTR's decision to initiate a broad Section 301 investigation against U.S. trading partners. It remains to be seen what the investigation will ultimately find and what actions may follow. Regardless, importers and consumers should stay informed about these developments and monitor further changes in U.S. trade policy.

To learn more about the IEEPA tariffs, click here.

To read the full text of the Trade Act of 1974, click here.

To learn more about enrolling in the ACH program, click here.

Federal Court Strikes Down 2019 & 2024 ESA Regulations (published 4.16.26)

On March 30, 2026, a federal court in California issued a ruling to overturn several Endangered Species Act ("ESA") regulations adopted by the Trump administration in 2019 and the Biden administration in 2024. The plaintiffs in ***Ctr. for Biological Diversity v. U.S. Dep't of Interior*, No. 24-cv-04651 (N.D. Cal. Mar. 30, 2026)** challenged six rules in total with the court ultimately concluding that four violated the statutory text of the ESA. Earlier this year, the United States Fish and Wildlife Service ("FWS") together with the National Marine Fisheries Service ("NMFS") proposed a slate of new ESA regulations intended to restore the rules established under the first Trump administration. While those rules have yet to be finalized, it is possible that the recent court ruling may offer some insight into how courts may ultimately treat those regulations.

ESA Overview

The ESA was enacted in 1973 for the purpose of conserving species at risk of extinction and the habitats upon which those species depend. 16 U.S.C. § 1531(b). The statute is jointly administered by FWS and NMFS (collectively, "the Services") which are responsible for creating and maintaining a list of species that are classified as either "threatened" or "endangered" depending on the level of risk those species face. 16 U.S.C. § 1533. Once a species is added to that list, it becomes protected under the ESA.

When the Services list a species for protection under the ESA, they must also designate critical habitat for the species. 16 U.S.C. § 1533(a)(3)(A)(i). The ESA defines critical habitat as specific geographical areas which are "occupied by the species, at the time it is listed […] on which are found those physical or biological features essential to the conservation of the species" or areas which are not occupied by the species at the time of listing but the Services have determined are "essential for the conservation of the species." 16 U.S.C. § 1532 (5)(A).

Along with requiring the Services to list species under the ESA and designate critical habitat for those species, the ESA also requires all other federal agencies to consult with the Services to avoid harming listed species or designated critical habitat. Specifically, the ESA requires each federal agency to ensure that any action it "authorize[s], fund[s], or carrie[s] out" is "not likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of" critical habitat. 16 U.S.C. § 1536(a)(2). To initiate this process, the agency taking action will determine whether its action "may affect" listed species. 50 C.F.R. § 402.13. If the agency concludes that its action "may affect" a listed species, it must reach out to the Services to determine whether the action is

"likely to adversely affect" the species. 50 C.F.R. § 402.13 If so, then the Services must engage in formal consultation, a process which requires the consulting Service to prepare a document known as a Biological Opinion ("BiOp"). 50 C.F.R. § 402.13 The BiOp will evaluate more thoroughly the expected impacts of the agency's action and if it concludes that the action is likely to jeopardize the continued existence of a protected species or result in the destruction or adverse modification of critical habitat, it must also include mitigation measures the agency can take to avoid causing such negative impacts. 50 C.F.R. § 402.13. When making a determination about the impacts an agency action may have on listed species, the Services must base their conclusions on "the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2).

Background to the Case

Since 2019, the ESA has experienced several rounds of regulatory changes. In August 2019, the Services issued final rules to change the procedures related to the listing of species under the ESA and the consultation process between the Services and other federal agencies. A closer look at those changes is available here. The plaintiffs in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* filed a lawsuit to challenge those 2019 regulations. However, following a change in Presidential administration, the court sent the matter back to the Services for review, bringing that lawsuit to an end. In 2024, the Services adopted new regulations which, according to the plaintiffs, resolved some of their concerns with the 2019 regulations but ultimately retained certain issues while introducing others. More information on the 2024 regulatory changes can be found here.

After the new regulations were finalized in 2024, the plaintiffs filed the current lawsuit to challenge six specific provisions that had been either introduced in 2019 and retained in 2024 or introduced for the first time in 2024. Following another change in Presidential administration in 2025, the Services sought to have the case either paused or dismissed, citing another round of updated ESA regulations that had been proposed in 2025 which the Services expect to finalize before the end of 2026. However, the court concluded that neither pausing or dismissing the case would be appropriate, noting that it would be better for the court to "provide the [Services] with its reading" before the new regulations are final so that the Services can take into account any "problems" the court might find.

Many of the regulatory changes proposed in 2025 were identical to those that had been made in 2019 before being modified in 2024. Although various lawsuits were filed to challenge the 2019 rules, they were largely paused or dismissed after the Services announced that they would revisit those regulations following the transition from the Trump administration to the Biden administration. For that reason, no court ever fully considered whether the 2019 rules complied with the ESA. The recent decision in *Ctr. for Biological*

Diversity v. U.S. Dep't of Interior represents the first time a court has considered the legality of those regulations and may provide some insight into how the rules proposed in 2025 may be viewed by courts after they are finalized.

Recent Court Decision

The plaintiffs in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* asked the court to review six ESA regulations and consider whether they violated the statutory requirements of the ESA. Four of those regulations are related to the consultation process while the other two are concerned with the designation of critical habitat. Of those six, the court found that four violated the ESA and should be overturned. The other two were upheld.

"Effects of the Action"

During agency consultation with the Services, the ESA requires the Services to evaluate the effects of the agency action on listed species and critical habitat to determine whether jeopardy of a species or the destruction or adverse modification of critical habitat is likely to occur. 16 U.S.C. § 1536. Before 2019, the ESA regulations defined "effects of the action" as "the direct and indirect effects of an action on the species or critical habitat." 50 C.F.R. § 402.02 (2018). The 2019 rules changed the definition of "effects of the action" to "all consequences to listed species or critical habitat that are caused by the proposed action" and clarified that a "consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur." 50 C.F.R. § 402.02 (2019). The Services left this definition in place when it amended the regulations in 2024.

The plaintiffs argue that this violates the ESA's requirement that the Services rely on the best scientific data available when considering the impacts an agency's action may have on listed species and that it the phrase "reasonably certain to occur" conflicts with the ESA requirement that the Services consider whether jeopardy of a species is "likely" to occur. The court agreed with the plaintiffs on both arguments. First, the court concluded that the 2019 rule violates the ESA's "best available data" requirement because the ESA "imposes a mandatory duty on the Services to analyze the likelihood of jeopardy or harm to habitat using the best available data." According to the court, the best scientific data available may not be the same as impacts that are "reasonably certain to occur." Next, the court concluded that the provision of the 2019 regulation that requires the Services to only consider those impacts to species and habitat which are "reasonably certain to occur" is contrary to the ESA requirement that Services consider whether jeopardy of a species or harm to habitat is "likely." Because what is "likely" may not necessarily include what is "reasonably certain to occur," the court held that this regulation violated the ESA and should be overturned.

Consideration of Mitigation Measures

When drafting a BiOp, the ESA regulations require the Services to take into account "any beneficial actions" taken or proposed to be taken by the action agency. 50 C.F.R. § 402.14(g)(8). The purpose of this rule is to ensure that the Services consider any activities that are beneficial to listed species that the consulting agency plans to include as part of its proposed action when determining what the impacts of that action could be to protected wildlife. In 2019, the Services amended the ESA rules to clarify that the Services should take such beneficial activities into consideration without "any additional demonstration of binding plans." 50 C.F.R. § 402.14(g)(8). In other words, the 2019 rules require the Services to give proposed beneficial activities the same consideration as any other portion of the agency action even if the agency has not committed to carrying out those activities.

The plaintiffs argued that this violates the ESA's requirement that the Services "insure" against jeopardy of listed species by "forcing them to consider amorphous, non-binding mitigation plans in making no-jeopardy findings." In it's opinion, the court agreed with the plaintiffs, concluding that the 2019 rule violated the ESA because it does not satisfy the statutory requirement that the Services "insure" against harm to species or habitat. According to the court, the ESA requires beneficial activities to be excluded from consideration unless they are binding.

Definition of "Destruction or Adverse Modification"

Under the ESA, the Services must "insure" that federal agency actions will not cause jeopardy to listed species or "destruction or adverse modification" to designated critical habitat. 16 U.S.C. § 1536(a)(2). Prior to 2019, the ESA regulations defined "destruction or adverse modification" as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species." 50 C.F.R. § 402.02 (2018). In 2019, that definition was amended to "a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole* for the conservation of a listed species." 50 C.F.R. § 402.02 (2019). That definition was retained in the 2024 regulations.

The plaintiffs argue that introducing the language "as a whole" violates the ESA by replacing the statutory requirement to avoid all destruction or adverse modification of critical habitat with a regulatory provision that allows at least some destruction or adverse modification of critical habitat. The court agreed, concluding that the text of the ESA "prohibits adverse modification entirely" and that the 2019 rule violated that requirement by permitting at least some adverse modification to critical habitat.

Duty to Request Reinitiation of Consultation

Before 2024, the ESA regulations concerning agency consultation required both the agency taking action or the consulting Service to request reinitiation of consultation under certain circumstances. 50 C.F.R. § 402.16(a) (2023). In 2024, the Services amended their regulations so that only the agency taking action is required to request reinitiation of consultation. The plaintiffs claim that the Services unlawfully rescinded their duty to request reinitiation of consultation, arguing that the Services failed to provide adequate reasons to support amending the regulations. In 2024, the Services stated that they were amending the regulation to clarify that only the action agency has the authority and responsibility to initiate or reinitiation consultation. The court was not persuaded by that reasoning. According to the court, while the text of the ESA does not allow the Services to compel any federal agency to engage in consultation, nothing in the pre-2024 rule gave the Services that authority. The rule required the Services to request reinitiation in certain circumstances but did not grant the Services the authority to require the federal agency to reinitiate consultation. Because the Services failed to provide a persuasive reason for changing a rule that had been in place for 25 years, the court found the change to be unlawfully arbitrary and concluded that it should be overturned.

Rules Upheld

Finally, the court considered the last two regulations challenged by the plaintiffs. While the court overturned the first four regulations it considered, it upheld the last two after concluding that they did not violate the ESA.

The ESA defines “threated species” as “any species which is likely to become an endangered species within the foreseeable future[.]” 16 U.S.C. § 1532(20). Before 2024, the ESA regulations required the Services to defined “foreseeable future” as extending “only so far into the future as the Services can reasonably determine that both the future threats and the species’ responses to those threats are likely.” 50 C.F.R. § 424.11(d) (2023). In 2024, the Services amended that definition to “as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats.” 50 C.F.R. § 424.11(d) (2025). In making this change, the Services replaced language requiring that they “reasonably determine” that threats to a species are “likely” with language that the Services make “reasonably reliable predictions” about those same threats. The plaintiffs argued that the new language contradicts the ESA requirement that the Services base their conclusions on the “best available data,” but the court disagreed. In its ruling, the court concluded that the two phrases “appear synonymous” and that to determine whether an effect is “likely” requires making a “reliable prediction” about that effect. Because the court determined that the pre-2024 rule and the amended rule are functionally equivalent, it concluded that the rule should be upheld.

Finally, the court considered the plaintiffs' challenge to an ESA regulation concerning the designation of critical habitat. The text of the ESA requires the Services to designate critical habitat at the same time it lists a species "to the maximum extent prudent and determinable." 16 U.S.C. § 1533(a)(3). Before 2024, the ESA regulations identified two limited circumstances where designating critical habitat at the same time a species is listed would not be prudent and determinable. In 2024, the Services modified the regulation to include two other circumstances where designating critical habitat would not be necessary. The plaintiffs argue that the new rule violates the ESA by unlawfully expanding the conditions under which the Services may find that designating critical habitat is not prudent and determinable. However, the court disagreed, citing previous court decisions which held that the Services could only make a not-prudent finding with respect to critical habitat would be beneficial to the species. Because the two additional circumstances outlined in the 2024 ruling described situations where reaching a not-prudent finding would be beneficial to the species, the court found that the regulation complied with the ESA and should be upheld.

Going Forward

Since 2019, the ESA has seen several rounds of regulatory updates. So far, this is the first time a court has reviewed any of the updated rules on the merits to consider whether they comply with the statutory requirements of the ESA. In 2025, the Services launched a new round of regulatory changes, many of which mirror the changes made in 2019. While those rules have yet to be finalized, the ruling in *Ctr. for Biological Diversity v. U.S. Dep't of Interior* may offer some insight into how courts will treat those regulations once they are final. For those who are regulated under the ESA, remaining informed on regulatory changes is helpful to understand how the law will be implemented going forward.

To view the court's decision in *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, click here.

To view the text of the ESA, click here.

For more NALC resources on the ESA, click here.

Supreme Court Agrees to Hear Pesticide Preemption Lawsuit (published 1.27.26)

The United States Supreme Court has announced that it will hear oral arguments in *Durnell v. Monsanto*, a case filed by a Missouri plaintiff who claims that exposure to the herbicide Roundup and its active ingredient glyphosate caused him to develop non-Hodgkin's lymphoma. The case is one of thousands that have been filed over the last decade against Monsanto Company (now owned by Bayer) by plaintiffs who claim that using Roundup caused them to develop cancer and that Monsanto failed to warn consumers about the alleged health risk. For its part, Bayer has argued that the state law claims raised by plaintiffs in these cases are preempted by federal pesticide law and should be dismissed. After years of litigation, that question will now be presented to the Supreme Court. However, the Court rules in this case will have an impact not only on ongoing litigation involving Roundup and glyphosate but may set a precedent for lawsuits involving other pesticide products.

Background: Roundup Lawsuits and *Durnell*

Roundup is one of the most widely used herbicides in the United States. It was developed in the 1970s and has been available in the United States for decades. Glyphosate, the active ingredient in Roundup, was first approved by the Environmental Protection Agency ("EPA") since 1974. Roundup is used both in agricultural and non-agricultural settings. Since the 1990s, Roundup has been an essential part of Monsanto's Roundup Ready system which paired use of the herbicide with glyphosate-resistant crop seeds to allow direct applications during the growing seasons. Commercial formulations of Roundup have been used in home and municipal landscaping for years.

Since 2015, tens of thousands of lawsuits have been filed against Bayer by plaintiffs claiming that the use of Roundup caused them to develop cancer. These cases have been filed in state courts and raise what products liability claims that arise out of state law, specifically the civil tort of failure to warn. In response, Bayer has argued that federal pesticide law preempts state law products liability claims and that such claims should be dismissed. While only a handful of the cases filed against Bayer have gone to trial, juries and judges alike have been split on the issue. While some juries have issued verdicts in favor of Bayer, finding that the pesticide manufacturer complied with the law and is not liable for a plaintiff's injuries, others have returned verdicts in favor of the plaintiffs and awarded damages in amounts exceeding $2 billion. Similarly, of the three circuit courts that have been asked to determine whether federal pesticide law preempts the plaintiffs' state law claims, the Third Circuit has held that the claims are preempted while the Ninth and Eleventh Circuits have held that they are not.

The plaintiff in *Durnell* originally filed his lawsuit against Bayer in 2019. He filed his case in state court in Missouri where he lives and where Monsanto is headquartered. Like other plaintiffs in pesticide liability cases, the plaintiff in *Durnell* raised several state law products liability claims including failure to warn. At trial, the jury concluded that Monsanto had failed to warn the plaintiff of possible health risks of using Roundup and awarded him $1.25 million. Bayer appealed that verdict to the Missouri Court of Appeals which affirmed the jury order and held that the plaintiff's failure to warn claim was not preempted by federal law. Bayer then attempted to appeal that ruling to the Missouri Supreme Court which declined to hear the case. Now, the matter comes before the United States Supreme Court.

Arguments Before the Supreme Court

Both the plaintiff and Bayer have made arguments to the Supreme Court that have become familiar to those keeping up with how pesticide liability cases have evolved in recent years. Each argument focuses on the text of the Federal Insecticide, Rodenticide, and Fungicide Act ("FIFRA") and a previous Supreme Court case to either support or refute the argument that federal pesticide law preempts state law claims of failure to warn.

FIFRA is the primary federal law regulating pesticide use in the United States. Under FIFRA, a pesticide cannot be sold or distributed in the United States until it has been approved for use by the Environmental Protection Agency ("EPA"). To approve a pesticide, EPA must determine that the product will not cause "unreasonable adverse effects" on the environment when used as intended. 7 U.S.C. § 136a(c)(5)(C). FIFRA defines "unreasonable adverse effects" as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide[.]" 7 U.S.C. § 136(bb). To meet this standard, EPA will assess the human health impacts of pesticides it is seeking to register, including assessing the carcinogenicity of the product and its active ingredients.

Along with providing for the registration of pesticide products, FIFRA also describes the authority that states have to regulate approved pesticides. Under FIFRA, a state may "regulate the sale or use of any federally registered pesticide[.]" 7 U.S.C. § 136v(a). However, FIFRA also provides that states "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from" those required by federal law. 7 U.S.C. § 136v(b). In other words, while FIFRA allows states to regulate the sale and use of federally registered pesticides, it does not allow states to set requirements for the labeling or packaging of a registered pesticide that differs from the labeling and packaging approved by EPA. Additionally, FIFRA prohibits the sale and distribution of any pesticide which is "misbranded." 7 U.S.C. § 136j(a)(1)(E). Under FIFRA, a pesticide is

considered misbranded if its label does not include a warning statement which may be necessary to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).

Failure to warn is a type of civil tort that is typically raised in products liability cases. As with most civil torts, failure to warn arises out of state law and is enforced at the state level. When a plaintiff raises a claim of failure to warn, they are not arguing that a product they used was defective, but rather that the product manufacturer failed to provide adequate warnings or instructions about the safe use of the product. To succeed on failure to warn, a plaintiff will generally need to demonstrate two things. First, that the manufacturer did not adequately warn consumers about a particular risk, and second that the risk was either known or knowable in light of the best available knowledge at the time the product was manufactured and distributed.

In the past, the Supreme Court has only once addressed FIFRA's prohibition on states to impose labeling requirements that differ from those approved by EPA and how it interacts with products liability claims that arise under state law. In ***Bates v. Dow Agrosciences LLC*, 544 U.S. 431**, the Supreme Court held that a pesticide labeling requirement imposed by state law would be preempted by FIFRA if the requirement is "in addition to or different from" the labeling and packaging requirements imposed under FIFRA. The Court noted that a state law requiring a pesticide label to include the word "DANGER" when its federally registered label is required to include the word "CAUTION" would be preempted by FIFRA. However, the Court also noted that a state requirement for pesticide labeling would not be preempted if it was "equivalent to, and fully consistent with, FIFRA's misbranding provisions."

In appealing *Durnell* to the Supreme Court, Bayer asked the Court to consider whether FIFRA preempts the plaintiff's state law failure to warn claim. Bayer argues that the claim is preempted. It first cites FIFRA's requirement that states may not require a pesticide's label to bear language that is "in addition to or different from" federal labeling requirements. According to Bayer, the only way it could fully resolve the plaintiff's claims would be to amend the label for Roundup products sold in Missouri to include a cancer warning which is not required by the federal label. Not only does the federal label for Roundup not include a cancer warning, but Bayer also notes that EPA has never made a finding that either Roundup or glyphosate are carcinogenic to humans. Relying on the ruling in *Bates*, Bayer argues that the plaintiff's failure to warn claims should be preempted because to resolve them, Bayer would be required to put a cancer warning on its Roundup labels which would differ from the labeling language required under federal law.

The plaintiff argues exactly the opposite. According to the plaintiff, his failure to warn claims are not preempted by FIFRA because they run parallel to FIFRA's misbranding

provisions. Also relying on *Bates*, the plaintiff in *Durnell* argues that Supreme Court precedent has already established that a state law products liability claim will not be preempted by FIFRA if it is equivalent to and consistent with FIFRA's prohibition on the sale of misbranded pesticides. According to the plaintiff, his failure to warn claim is consistent with FIFRA's misbranding prohibitions because FIFRA considers a pesticide to be misbranded if it does not include a warning necessary to protect health and the claim of failure to warn was raised to argue that Bayer failed to provide a necessary health warning to users of Roundup. Because failure to warn raises a claim that is consistent with FIFRA's misbranding provisions, the plaintiff asks the Supreme Court to rule that the claim is not preempted.

While these arguments directly mirror claims raised by Bayer and other plaintiffs in other cases involving federal preemption of failure to warn claims in pesticide liability cases, *Durnell* adds a twist that slightly differentiates it from those cases. Unlike other plaintiffs, the plaintiff in *Durnell* asserts that his failure to warn claims were not brought over the labels affixed to each individual unit of Roundup, but rather to the marketing materials that Monsanto used to advertise Roundup in the 1990s and 2000s. The plaintiff claims that he bought and used Roundup based on commercials and print advertising that stated using Roundup was completely safe and featured people applying Roundup while wearing only tee shirts and shorts. Because FIFRA applies only to pesticide labeling, not marketing materials, the plaintiff argues that his lawsuit differs from previous litigation where the question of whether FIFRA preempts failure to warn has been raised. Bayer maintains that there is no difference between *Durnell* and prior preemption cases because it would still need to update labels for units of Roundup sold in the state of Missouri to include a cancer warning to fully redress the plaintiff's claim.

Going Forward

As of the publication of this article, the Supreme Court has not scheduled a date to hear oral arguments in *Durnell*. It is not yet clear when a final ruling in the case can be expected. Whatever the outcome, whether the Court agrees with the plaintiff and finds that FIFRA does not preempt the state law claim of failure to warn or sides with Bayer and finds that FIFRA does preempt such claims, the final decision in this lawsuit will affect not only the thousands of currently pending pesticide liability cases but is also likely to affect any such lawsuits filed in the future. While the bulk of pesticide liability cases filed over the last decade have involved Roundup and glyphosate, other pesticides such as paraquat and chlorpyrifos have also been the focus of such lawsuits. Despite settling thousands of pesticide liability lawsuits, Bayer still has thousands more actively pending against it. The

company has indicated that if the matter is not resolved, it could threaten the future availability of Roundup for agricultural uses.

Although it is too early to predict how the Supreme Court will rule, prior to agreeing to hear *Durnell*, the Court asked the federal government to weigh in. In December, the Solicitor General filed an amicus brief both urging the Supreme Court to take up the case and clarifying that the federal government believes that FIFRA preempts the plaintiff's failure to warn case.

The National Agricultural Law Center will provide in-depth updates as this case proceeds.

To view Bayer's petition to the Supreme Court, click here.

To view the plaintiff's response, click here.

To view the Solicitor General's amicus brief, click here.

For more information on pesticide liability lawsuits from the National Agricultural Law Center, click here.

WOTUS Update: EPA & Corps Propose New Definition (published 12.02.25)

On November 17, 2025, the Environmental Protection Agency ("EPA") together with the United States Army Corps of Engineers ("the Corps") announced a proposed rule to redefine the term "waters of the United States" under the Clean Water Act ("CWA"). The intent of the proposal is to bring the definition of waters of the United States, commonly referred to as WOTUS, in line with the United States Supreme Court 2023 decision ***Sackett v. EPA*, 566 US 120 (2023)**. This proposal marks the sixth time since 2015 that the regulatory definition of WOTUS has changed and is likely to prompt litigation after it is formally finalized. The proposal has been published the Federal Register and is currently open for public comment through January 5, 2026.

Background CWA, Current WOTUS Rule, and *Sackett*

The CWA of 1972 is the leading federal water pollution statute in the United States. The purpose of the Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To achieve this goal, the CWA has established permitting programs to limit the amount of pollution discharged into waters and wetlands. Under the National Pollution Elimination System ("NPDES") program, it is illegal for anyone to discharge a pollutant from a discernable, concrete source into "navigable waters" without first receiving a permit from EPA. 33 U.S.C. § 1342. Similarly, the 404 permitting program prohibits the discharge of "dredged or fill material" into "navigable waters" without a permit from the Corps. 33 U.S.C. § 1344. Crucially, both the NPDES and 404 permitting programs cover activities that occur within "navigable waters." Although the term "navigable waters" is a legal term of art which is generally understood to refer to waters which can be used to facilitate interstate or foreign commerce, the CWA defines the term as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). However, the CWA does not define the term "waters of the United States." Instead, it has been left up to EPA and the Corps to define the term.

In the decades since the CWA was passed, crafting a lasting definition of WOTUS has been a struggle for the agencies and courts, and the formal regulatory definition has changed several times. A full timeline of the different definitions of WOTUS is available here. Most recently, the definition of WOTUS was revised in 2023, first through a finalized rulemaking conducted by EPA during the Biden administration, and then again following the Supreme Court's ruling in *Sackett v. EPA*. Under the initial 2023 final rule, the definition of WOTUS included five categories of waters: (1) traditional navigable waters that could be used in interstate for foreign commerce, the territorial seas, and interstate waters including interstate wetlands; (2) impoundments of waters otherwise identified as WOTUS; (3) tributaries of traditionally navigable waters or impoundments that met either the relatively

permanent standard or significant nexus test articulated by the Supreme Court in ***Rapanos v. US*, 547 US 715 (2006)**; (4) wetlands adjacent to any WOTUS with "adjacent" understood to mean neighboring, bordering, or contiguous; and (5) all other lakes, ponds, streams, and wetlands that satisfied either the relatively permanent standard or significant nexus test. Further information on the initial 2023 WOTUS definition can be found here.

The initial 2023 WOTUS rule fully incorporated both the relatively permanent standard and the significant nexus test which stem from the Supreme Court's decision in *Rapanos v. US*. In that case, the Supreme Court was asked to consider the degree to which wetlands could be included in the definition of WOTUS. The Court was unable to reach a majority opinion, instead issuing a plurality opinion and a concurring opinion. The plurality opinion articulated the relatively permanent standard which would extend the definition of WOTUS to those waters which are "relatively permanent, standing or continuously flowing" and then to those wetlands which share a "continuous surface connection" with such waters. The concurring opinion, on the other hand, crafted the significant nexus test which extended the WOTUS jurisdiction to those wetlands that share a "significant nexus," with a water that is already recognized as a WOTUS. A significant nexus would exist if a wetland "significantly affect[s] the chemical, physical, and biological integrity" with a recognized WOTUS.

Weeks after the first 2023 definition of WOTUS was finalized, the Supreme Court released its decision in *Sackett v. EPA*. Like in *Rapanos v. US*, the Court in *Sackett v. EPA* was asked to consider to what extent wetlands should be included in the WOTUS definition. Specifically, the plaintiffs specifically asked the Supreme Court to formally overturn the significant nexus test and adopt the relatively permanent standard. Ultimately, the Court did just that, concluding that the term "waters" in "waters of the United States" refers to "only those relatively permanent, standing or continuously flowing bodies of water […] described in ordinary parlance as streams, oceans, river, and lakes" and to wetlands that are "indistinguishable" from such waters due to a continuous surface connection.

Following the Supreme Court's decision in *Sackett v. EPA*, EPA issued what is known as the Conforming Rule to revise the WOTUS definition in light of the Court's ruling. Issued in August 2025, the Conforming Rule cut references to the significant nexus test from the WOTUS definition and clarified that the word "adjacent" with respect to adjacent wetlands meant "having a continuous surface connection." The rule also noted that only those tributaries of navigable waters which satisfy the relatively permanent standard would be considered WOTUS. To learn more about the Conforming Rule, click here.

When the Trump administration took office in 2025, it announced an intention to revisit numerous environmental regulations, including the definition of WOTUS. After holding a

series of listening sessions with stakeholders across the county, EPA and the Corps have released their latest proposal to redefine the term.

Proposed WOTUS Definition

According to EPA, its latest WOTUS proposal has two primary goals: to bring the definition in line with *Sackett v. EPA* and to provide more clarity to landowners and the public as to which waters fall under the CWA's permitting jurisdiction. To that end, it is proposing to include five categories of waters in the definition of WOTUS and is introducing new definitions intended to clarify when a water is relatively permanent and what constitutes a continuous surface connection.

Under the proposal, the following categories of waters would be considered WOTUS:

(1) Traditionally navigable waters which may be used to facilitate interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and the territorial seas.
(2) Impoundments of waters otherwise identified as WOTUS.
(3) Tributaries of traditionally navigable waters which are relatively permanent, standing or continuously flowing.
(4) Wetlands adjacent to a traditionally navigable water or tributary.
(5) Lakes and ponds that do not fall into the above categories but which are relatively permanent, standing or continuously flowing and share a continuous surface connection with a traditionally navigable water or tributary.

Importantly, the proposal would not include interstate waters as a category of WOTUS. This is a departure from previous WOTUS definitions, almost all of which have included interstate waters as WOTUS. These categories also differ from previous WOTUS definitions by specifying that waters which fall under category five must not only be relatively permanent but must also share a continuous surface connection with a traditionally navigable water or tributary to be considered WOTUS. Under past definitions, the continuous surface connection standard was applied only to wetlands.

Along with making changes to the categories of waters considered WOTUS, the proposed rule also includes new definitions for the terms "relatively permanent," "continuous surface connection," and "tributary." Under the proposed rule, "relatively permanent" would be defined as "standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season." EPA notes that "the wet season" would refer to a predictable and extended period of time when surface water is present in a geographical feature in response to an annual wet season when precipitation is greater than average. However, that would not include what are

known as “ephemeral waters” which are geographic features that contain surface water only in direct response to precipitation. Under this definition of relatively permanent, a river which periodically dries out in the late summer months, but which flows during the winter and spring after increased rain and snowmelt could be considered a WOTUS, while a creek that is dry most of the time and flows only after a heavy rain would likely not be considered a WOTUS.

The proposed rule would define “continuous surface connection” as “having surface water at least during the wet season and abutting (*i.e.*, touching) a jurisdictional water.” EPA clarifies that this definition presents a two-pronged test which requires a wetland or waterbody to both: (1) abut, as in directly touch, a traditionally navigable water or tributary; and (2) have surface water at least during the wet season. Wetlands or waters with a sub-surface connection to a recognized WOTUS – meaning connected to a WOTUS by water that is not on the surface but is not deep enough underground to be considered groundwater – would not be considered a WOTUS under this definition. Additionally, EPA notes that CWA permitting jurisdiction would only be extended to the portion of a wetland which retains surface water at least during the wet season.

Finally, the proposal would define “tributary” as “a body of water with relatively permanent flow, a bed and bank, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that convey relatively permanent flow.” Under this definition, a tributary to a traditionally navigable water that has a discernable bank and bed, and which has surface water at least during the wet season could be considered a WOTUS. However, a water without a bank and bed, such as a grassed waterway, would likely not be considered a WOTUS even if it held surface water year-round.

Besides defining what a WOTUS is, the proposal also strengthens language describing what a WOTUS is not. Particularly relevant to agriculture, the proposal would strengthen existing exclusions for prior converted cropland. The term “prior converted cropland” comes from the Wetland Conservation provisions of the 1985 Farm Bill, better known as Swampbuster. Prior converted cropland refers to wetland areas which were converted to agricultural land capable of producing a crop prior to December 23, 1985. Although prior converted cropland is currently excluded from the definition of WOTUS, the proposed rule would clarify that such land would only lose that exclusion and become subject to CWA jurisdiction if it were abandoned and reverted to a wetland that met the definition of “adjacent wetland” under WOTUS.

Next Steps

The proposed rule was published in the Federal Register on November 20, 2025, formally initiating a period of public comment that is currently set to end on January 5, 2026. While public comments may address any part of the proposal, EPA is specifically requesting comment on the following: whether WOTUS should be limited to only traditionally navigable waters and those wetlands that share a continuous surface connection with such waters; whether "relatively permanent" should include only those waters that contain surface water year-round instead of waters that contain surface water at least during an annual wet season; and whether a wetland must have a continuous surface connection with a navigable water or tributary year-round to be considered a WOTUS.

After the period of public comment concludes, EPA and the Corps will review the comments it receives before drafting and issuing a final rule. Once the rule becomes finalized, it is very likely that it will be challenged in court. Since 2015, all final regulations defining WOTUS have led to lengthy legal battles that often result in separate WOTUS definitions being applied across the country as the court cases proceed. Importantly, the last time a court was asked to consider whether the regulatory definition of WOTUS complied with the text of the CWA, the doctrine of *Chevron* deference was still the law of the land. Under *Chevron* deference, courts were instructed to defer to agency interpretations of ambiguous statutory language so long as the interpretation was reasonable. However, in 2024, the Supreme Court overturned *Chevron* deference in its landmark decision ***Loper Bright Enters. v. Raimondo*, 603 US 369 (2024)**. According to the Supreme Court, judges should not defer to agency statutory interpretations but should themselves state what the law is. This means that judges asked to consider whether a future WOTUS definition complies with the CWA may rely on judicial interpretations of the statute rather than agency interpretations.

The new proposed WOTUS definition has kicked off another cycle of attempting to define a crucial, but ambiguous term that determines when someone needs a CWA permit and when they do not. Whether the final definition will satisfy EPA's goals of crafting a durable definition remains to be seen.

To view the proposed WOTUS rule and learn how to submit a comment, click here.

To view the current definition of WOTUS, click here.

To view the text of *Sackett v. EPA*, click here.

To view the text of the CWA, click here.

For more CWA resources from the National Agricultural Law Center, click here.

Preliminary Injunction Halts Enforcement of West Virginia's Food Dye Ban (published 2.3.26)

On December 23, 2025, a District Judge in the Southern District of West Virginia ruled that the state is temporarily prohibited from enforcing its synthetic food dye ban while the law is being challenged in court. This law, enacted as HB 2354 and codified at W. Va. Code § 16-7-2, 4; 18-5D-3A, is being challenged by the International Association of Color Manufacturers (IACM). While the litigation remains ongoing, this article will discuss the court's most recent ruling.

Background on HB 2354

In 2025, West Virginia enacted HB 2354, a bill that addressed synthetic color dyes. Specifically, this bill was two-fold and included both a provision banning the use of certain synthetic color dyes statewide and prohibiting foods with these ingredients from being included in a "meal served in a school nutrition program." The bill had a two-step implementation scheme with the school portion going into effect last year, and the statewide ban going into effect in 2028.

The statewide ban portion included language that declared foods with ingredients that are "poisonous or injurious" to health to be adulterated. W. Va. Code § 16-7-2(b)(7). This language is followed by an enumerated list of "poisonous or injurious" ingredients that includes, "butylated hydroxyanisole, propylparaben, FD&C Blue No.1, FD&C Blue No.2, FD&C Green No.3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6." In West Virginia, adulterated foods are prohibited from being sold and violators are guilty of a misdemeanor and will be fined upon conviction. W. Va. Code § 16-7-4. However, this law includes an exception for sellers of foods with the enumerated ingredients if the seller makes less than $5,000 in aggregate of food per month. This portion of the law is set to go into effect on January 1, 2028.

The second part of the law, codified at W. Va. Code § 18-5D-3A, bans the following color dyes from being served in school nutrition program meals – Red Dye No. 3, Red Dye No. 40, Yellow Dye No. 5, Yellow Dye No. 6, Blue Dye No. 1, Blue Dye No. 2, and Green Dye No. 3. This provision did not prohibit the sale of food items with these ingredients as part of a school fundraiser off school premises or on school premises at least one-half hour after the end of the school day. The school meal portion of the law went into effect on August 1, 2025.

Background of color additives

The Food and Drug Administration (FDA) defines color additives as "a dye, pigment or other substance, which is capable of imparting color when added or applied to a food, drug, or cosmetic to the human body." They are distinguished from food additives by the Federal Food, Drug and Cosmetic Act (FDCA), and must be approved by FDA before they can be used in food. Color additives are classified into two categories – naturally occurring and synthetic. A synthetic color dye is manmade and is required by the FDA to be certified as safe before it is included in food. While a naturally occurring color additive must also be approved by the FDA before it is used, it is exempted from the safety certification process that synthetic dyes must undergo.

There are nine synthetic color dyes approved for use in foods by the FDA – three of which the agency is in the process of revoking. The approval for the nine can be found at 21 CFR § 74.101-706. Seven of the nine approved synthetic dyes are included in the enumerated list of prohibited ingredients in West Virginia's law. The other two enumerated ingredients are not classified as color additives by the FDA. Butylated hydroxyanisole is classified as a food additive, and propylparaben is an ingredient classified under the "Generally Recognized As Safe" pathway. To learn more about the federal government's current color dye scheme, click here to read NALC article "FDA Announces Plan to 'Phase Out' Synthetic Dyes."

The Case

Two months after the school meal provision of HB 2354 went into effect, the trade association, International Association of Color Manufacturers (IACM), challenged its constitutionality. IACM has been the singular association "representing the interests of the color additives industry, both natural and synthetics," since 1972. Its members include manufacturers, producers, and users in the color industry. The case is *International Association of Color Manufacturers v. Singh.*

In its complaint, IACM is claiming HB 2354's unconstitutionality in three ways. First, IACM claims the law is a violation of the Equal Protection Clause because it "targeted color additives without any rational basis for finding that they are . . . unsafe in any way." Second, they claim the law is a prohibited bill of attainder that "singl[es] out for prohibition and criminal sanction the named color additives" without a proper judicial proceeding. Last, the complaint claims that the law is unconstitutionally vague in violation of the Due Process Clause.

This litigation is ongoing, and the merits of IACM's challenge remain undecided. However, this article will further discuss a recent decision in the case – the Judge's ruling on IACM's request for a preliminary injunction.

A preliminary injunction is a motion that may be granted before or during a trial with the goal of preserving the status quo before a final judgement. For a preliminary injunction to be issued, a plaintiff must satisfy four factors: 1) that the plaintiff is likely to succeed on the merits, 2) that he is likely to suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in his favor, and 4) that an injunction is in the public interest. However, when the defendant is the government, the last two factors are combined.

Success on the Merits

The Court first looked at IACM's three claims to see if they would be likely to succeed on the merits. For the equal protection claim, the Court determined that IACM was not likely to succeed because "there was at least a debatable question regarding the safety of the named color additives" brought before the West Virginia legislature. An equal protection claim arises from the Fourteenth Amendment to the U.S. Constitution and provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of law." Specifically, this clause requires equal treatment for individuals in similar situations. However, unless a law burdens a fundamental right or a suspect class, it will be upheld if "it bears a rational relation to some legitimate end." Through looking at the legislative history, the Court determined that enough discussion about the potential safety risks of color additives occurred to create a rational basis for HB 2354's enactment.

Next, the Court determined that IACM was also unlikely to succeed on their bill of attainder claim. An unconstitutional bill of attainder occurs when a legislative act singles out an individual or narrow group of people for punishment without a judicial proceeding. There are three elements that must be met for a legislative act to be considered a bill of attainder: 1) the law must impose punishment, 2) it must target specific individuals or identifiable groups, and 3) it must do so in a manner that bypasses judicial protections. Here, the Court found that HB 2354 is not an unconstitutional bill of attainder. The Court determined that the law applies to anyone who adulterates food, and not just the specific manufacturers or users of the enumerated color additives. Further, the Court found the bill does not impose punishment without judicial protection because it includes language that clarifies a punishment will not be levied until after conviction.

Last, the Court looks to IACM's claim of unconstitutional vagueness and determines that IACM would be successful. Specifically, the Court finds that HB 2354 is unconstitutionally vague because it fails to define "poisonous and injurious" and does not prohibit other color additives not included in the enumerated list from being classified as such. The doctrine of void for vagueness applies when a statute fails to "give a person of ordinary intelligence adequate notice of what conduct is prohibited" or does not "include sufficient standards to prevent arbitrary and discriminatory enforcement." Manning v. Caldwell for City of

Roanoke, 930 F.3d 264, 272 (4th Cir. 2019). Thus, a statute that does not clearly state what actions it is prohibiting would be considered vague because it does not give adequate notice to the public and might lead to unfair enforcement.

Here, along with its lack of definition for poisonous or injurious, the Court took issue with the following language in HB 2354, "poisonous or injurious to the health, *including* butylated hydroxyanisole, propylparaben, FD&C Blue No. 1 . . ." (emphasis added). In particular, the Court found that a failure to define "poisonous or injurious" paired with the insertion of a "nonexclusive" enumerated list of FDA-approved color additives would "leave the door open for arbitrary enforcement." In other words, the Court believes HB 2354 is vague because it does not make clear what color additives would be classified as "poisonous and injurious." Further, since there is no standard that clarifies which color additives are prohibited, additional color additives could be considered "poisonous and injurious" without the public having adequate notice.

Though this ruling analyzed the claims of IACM and made assertions of their likely outcomes, it is not a ruling on the merits. However, a ruling like this is often an indicator of the direction a judge might go later when the merits are actually being decided.

Irreparable Harm

Next, the Court looked at a preliminary injunction's second factor, irreparable harm. For an injunction to succeed, the person seeking it must prove that it is likely to suffer irreparable harm in its absence. Harm that cannot be fully rectified by the trial's final judgement is considered irreparable, and economic harms will only be deemed irreparable if they are unrecoverable. Here, the Court finds that IACM has made sufficient showing that its members will suffer irreparable economic harm if this injunction fails. The Court specifies that the uncertainty surrounding HB 2354, because of its likely unconstitutional vagueness, is sufficient to establish irreparable harm. The Court explains that IACM's members would suffer harm if they spent significant resources changing their processes, updating equipment, or developing new products for a law that is likely unconstitutional.

Balance of Equities and Public Interest

Last, the court considers the third and fourth factors of a preliminary injunction – the balance of equities and public interest. In a case where the defendant is the government, these two factors are merged, thus the Court analyzes them together. The goal of a preliminary injunction is to "keep the status quo," and this factor will consider if the hardships imposed on the plaintiff outweighs the public's interest in having the law enforced. Here, the Court determines that it would be unfair to require IACM's members to comply with HB 2354 given that it is likely unconstitutional. Further, because the statewide

ban portion of HB 2354 is not yet being enforced by West Virginia's Department of Health, the Court believes that granting this injunction will not harm the public and will not disturb the status quo.

Impacts of the injunction

Because of the factors discussed, the Court grants IACM the preliminary injunction. This means that while the litigation remains ongoing, West Virginia's Department of Health will not be able to enforce the statewide ban portion of HB 2354. However, the Court notes in a footnote of its decision that the injunction will not apply to the school meal portion of the law. They make clear that this distinction is because IACM only "demonstrated that Section 16-7-2(b)(7)," the statewide ban portion, "is likely unconstitutionally vague." Thus, the West Virginia Board of Education will be permitted to continue enforcing the school meal portion of the law.

Conclusion

This case remains ongoing, and at this time, no trial date has been set. As more state legislatures consider passing similar legislation to West Virginia's, it is likely that this will not be the only litigation pertaining to the matter. To stay up to date on this case and the actions of state legislatures nationwide, click here to subscribe to NALC's biweekly newsletter, "The Feed."

Texas Food Law Litigation Updates: Part 2 (published 3.3.26)

Though 2026 is young, the year has already seen a few interesting judicial rulings related to food law coming out of the state of Texas. Specifically, courts in the Western District of Texas have issued two decisions on preliminary injunctions – granting one and denying the other. This article is the second in a two-part series covering recent litigation updates in Texas. The first article can be read here.

Cell-cultured Protein Ban

The first case involves a challenge to a Texas law that sought to temporarily ban the sale of "cell-cultured proteins" in Texas. SB 261, passed in the 2025 Texas legislative session, defined cell-cultured protein as "a food product derived from harvesting animal cells and artificially replicating those cells in a growth medium to produce tissue." Per the law, the prohibition on selling cell-cultured meat went into effect on September 1, 2025, and will last until September 1, 2027. The law is codified into the Texas code at Tex. Health & Safety Code §§ 431.002(5-a), 431.02105(a). Texas is one of seven states to have passed a ban on the sale of cell-cultured meat. To learn more about other state alternative protein laws, click here to view NALC's Alternative Protein Laws State Compilation.

The day after SB 261 went into effect, it was challenged in court. The plaintiffs are Wild Type, Inc. d/b/a Wildtype (Wildtype) and UPSIDE Foods, Inc. (Upside) – two companies based out of California who produce and sell cultivated meat. Wildtype produces cultivated salmon, and Upside produces cultivated chicken. The plaintiffs claim that SB 261 violates the Dormant Commerce Clause and the Supremacy Clause of the US Constitution.

January 2026 Ruling

On January 16, 2026, the court heard oral arguments on a number of motions in this case. Following the arguments, the court orally ruled on all motions; however, it also released an order explaining the decisions. The motions that were heard included Defendant Garza's Motion to Dismiss for Lack of Jurisdiction; Defendants Paxton, Young, and Shuford's Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Claim; and Plaintiffs' Motion for Preliminary Injunction. Specifically, the judge granted Defendant Garza's Motion to Dismiss and Granted in-part the Motion to Dismiss from Defendants Paxton, Young, and Shuford. This means that Defendant Garza, the County Attorney for Travis County, will no longer be a party in this case. As for the other defendants, the court granted in-part their motion to dismiss. This means that while it dismissed part of the claims against them, the case will still be allowed to continue on some of the Plaintiff's claims. Specifically, the court dismissed Upside's claims that SB 261 is preempted by the federal poultry laws, but found

that both plaintiffs may still bring their claim that SB 261 violated the Dormant Commerce Clause.

In determining these rulings, the court specifically looked to Upside's claim that the Poultry Product Inspection Act (PPIA) preempted SB 261. The PPIA is the federal law that "regulates the processing, inspection, distribution, labeling, and sale of poultry products sold in interstate commerce," and it is administered by the US Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS). Specifically, the PPIA includes an express preemption clause that states "requirements within the scope of this chapter with respect to premises, facilities and operations of any official establishment which are in addition to, or different than those made under this chapter may not be imposed by any State."

Express preemption claims will be evaluated by looking to the scope of the express preemption clause and determining if the challenged state law falls within the scope. Here, the court determined that the scope of the PPIA's express preemption claim extended to food safety activities and any behaviors that would cause the adulteration of a product. Under that standard, the court finds that SB 261 does not fall within the scope of the PPIA's clause because SB 261 is a "complete sales ban" that has no impact on food safety nor behaviors that might adulterate a chicken product. Thus, the court found that the PPIA would not preempt SB 261 and that claim should be dismissed.

Last, the court turned to the Plaintiff's motion for a preliminary injunction. In making this motion, Upside and Wildtype were asking the court to prohibit Texas from enforcing this law while the litigation is ongoing. A preliminary injunction will have four elements: 1) moving party must show they are likely to succeed on the merits, 2) that they will suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in their favor, and 4) that an injunction is in the public interest. Here, the court determined that the Plaintiffs do not meet the irreparable harm element because Plaintiff's do not have significant "contractual business already in place in Texas." Additionally, the court finds that it would not be in the balance of equities to grant this preliminary injunction for two companies with very little business in Texas. Further, since two of the four elements are not met, the court declines the opportunity to analyze all four and denies the preliminary injunction.

Effect of the ruling

The court's decision to deny plaintiff's motion for preliminary injunction does not mean the case is resolved, nor is it a determination on the case's merits. This decision's effect is that the state of Texas will have the ability to enforce the ban on cell-cultured proteins while the litigation remains ongoing. Further, because of the court's decision to deny Defendants

Paxton, Young, and Shuford's motion to dismiss against the Dormant Commerce Clause claim, the case will continue on that claim. However, Upside and Wildtype have appealed the denial of a preliminary injunction to the 5th Circuit. While it remains unclear at this time how the 5th Circuit will rule, it is likely that no judgement on the merits will occur until the preliminary injunction issue is first settled.

MAHA Law

Also, in its 2025 legislative session, Texas passed SB 25, which has been referred to as Texas' "MAHA bill." This name is referencing the fact that many of the policy changes included in this legislation are aligned with priorities of the "Make America Healthy Again" movement. This law includes a section that requires food manufacturers to bear a particular disclosure statement if their food product contains any of 44 listed ingredients. Tex. Health & Safety Code § 431.0815. Specifically, the disclosure must say, "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom." This portion of SB 25 will not go into effect until January 1, 2027, and its scope is limited to food product labels developed or copyrighted after the effective date. To learn more about the legislation itself, click here to read NALC article "'MAHA' Movement: New Texas and Louisiana Laws."

On December 5, 2025, a group of nonprofit associations that represent food and beverage manufacturers brought a lawsuit challenging the constitutionality of SB 25's labeling provision. Specifically, the plaintiffs make four claims 1) that SB 25's labeling requirement is a violation of the First Amendment, 2) that it is preempted by federal law, 3) that it is unconstitutionally vague, and 4) that it violates the Dorman Commerce Clause.

Like the litigation on Texas' cell-cultured meat ban, this case remains ongoing. However, the court recently published an order that ruled on the plaintiff's request for a preliminary injunction. As previously mentioned, a preliminary injunction is a pretrial motion that can order a party to cease or begin doing a specific action. For a preliminary injunction to be successful, the moving party must satisfy four elements: 1) that they are likely to succeed on the merits, 2) that they will suffer irreparable harm unless the injunction is issued, 3) that the balance of equities tips in their favor, and 4) that an injunction is in the public interest.

Likelihood of Success on the Merits

To determine if the first element of a preliminary injunction is met, the court first looked to see if plaintiffs would be likely to succeed on their claim that SB 25's labeling requirement violates the First Amendment. The First Amendment of the US Constitution prohibits laws

that abridge the freedom of speech and includes protections against content-based regulations. A content-based regulation is one that will compel a particular message and require an individual or entity to alter the content of their speech. These laws are presumed to be unconstitutional unless the government can prove "they are narrowly tailored to serve compelling state interests" under the standard of strict scrutiny.

Here, the court notes that SB 25 compels the manufacturers of foods and beverages to convey a word-for-word, government-scripted message on their food labels. As a result, the court finds that strict scrutiny is likely to be the standard applied. When strict scrutiny is applied, the burden shifts, and now the government must prove that its actions were constitutional (as opposed to the plaintiffs having to show that the actions were unconstitutional). The court noted that the government failed to meet its burden, instead focusing almost entirely on a different argument. Because the government did not meet its burden under that analysis, if the strict scrutiny standard is applied, the statute would be unconstitutional on First Amendment grounds.

Instead, the government primarily focused its argument on a claim that the court should consider the case under the intermediate scrutiny argument. Intermediate scrutiny would be applied here if a court classified SB 25's labeling provision as commercial speech rather than content-based regulation. While the court does not assess whether it is commercial speech or content-based here, it walks SB 25 through an intermediate scrutiny analysis by applying the four-part test established in *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). It's four elements include 1) is the speech misleading or does it concern unlawful activity, 2) is there a substantial government interest, 3) does the regulation advance the government interest asserted, and 4) is it narrowly tailored to achieve the interest.

Here, the court determines that there is a substantial government interest in promoting the consumption of better food ingredients by citizens of Texas. However, the court does not believe that SB 25's labeling provision asserts this interest in a "narrowly tailored" way. It finds there are less restrictive ways Texas could accomplish this goal. As an example, the court states that Texas could have conducted a public advertising campaign warning of these dangers. Thus, the four elements of *Central Hudson* are not met, and the court determines SB 25's labeling provision would likely not pass intermediate scrutiny. Since the court found that the provision would likely not pass either a strict scrutiny or intermediate scrutiny evaluation, it concludes that the plaintiffs have shown a substantial likelihood of success on their First Amendment claim.

Before moving on to the other elements though, the court also evaluates the likelihood of success on plaintiff's vagueness and preemption claims. Both of these claims are related

to a portion of SB 25's labeling provision that would make the provision ineffective if the US Food and Drug Administration or the USDA issued a law or regulation that prohibited the use, imposed conditions of use, or determined the safety of one of the 44 listed ingredients. Tex. Health & Safety Code § 431.0817. The court determines that plaintiffs have not shown they are likely to succeed on their vagueness challenge because they have not produced enough evidence to show that food or beverage manufacturers would be unclear on what triggers the preemption clause. Further, the court finds that the plaintiffs would likely not succeed on their claim that SB 25's labeling provision is preempted by *current* federal laws because neither the Food, Drug, and Cosmetics Act nor the Nutrition Labeling and Education Act "directly conflict" with the Texas law. Though the court finds that success on the merits is not likely with the claims of vagueness and preemption, the first element of a preliminary injunction is met through the likelihood of success on the First Amendment claim.

Irreparable Harm

Next, the court looked to the second factor of a preliminary injunction, irreparable harm. To meet this element, the person seeking a preliminary injunction must prove they are likely to suffer irreparable harm if the law is enforced. In cases involving the First Amendment, courts recognize that the loss of free speech constitutes an irreparable injury, even if the injury only occurs for a short period of time. Here, since the court found it was likely that plaintiffs would succeed on their First Amendment claim, the court determines that irreparable harm is satisfied. Thus, the second element of a preliminary injunction is met.

Balance of Equities and Public Interest

Last, the court looked to the third and fourth elements of a preliminary injunction. In cases where the government is the defendant, these two factors merge. This element will consider whether the hardships imposed on the moving party outweigh the public's interest the law's enforcement. Here, since the hardship suffered is a likely infringement upon First Amendment freedoms, the court determines that this outweighs any public interest in SB 25's enforcement. Accordingly, the court finds that the third and fourth factors of a preliminary injunction are met.

Effects of the ruling

Since the four factors were satisfied, the court grants the plaintiffs a preliminary injunction and the state of Texas will be prohibited from enforcing the labeling provisions of SB 25 while the litigation is ongoing. A decision on a preliminary injunction is not a ruling on the merits, but might be an indicator of the direction a court might go in the future. A trial date has not yet been set for this case, and it currently sits in the discovery phase of the lawsuit.

Conclusion

Since neither of the court's most recent rulings on SB 261 or SB 25 were final judgements, there will likely continue to be noteworthy updates in both cases. To stay up-to-date on these lawsuits and other issues related to food law, click here to subscribe to NALC's biweekly newsletter, "The Feed."

'MAHA' Movement: Defining Ultra-processed Foods (published 10.21.25)

This month California Governor Gavin Newsom signed AB 1264 into law. This landmark legislation creates a statutory definition of ultra-processed foods (UPF) and makes California the first state in the nation to ban certain UPFs from being served in schools. AB 1264's enactment follows recent announcements from the US Department of Agriculture (USDA) and the Food and Drug Administration (FDA) that the federal agencies are collaborating to create a definition for UPFs. This article will discuss both the California law and compare it with another popular food classification system.

Background of UPFs and NOVA

The new California enactment is the first time UPFs have been officially defined by law. This is noteworthy because there is no otherwise universally accepted definition of UPF, whether in law or in science. However, there are several food classification systems that attempt to define it. The system most applied in scientific literature is called Nova, the Portuguese translation for the word "new." Nova was created by researchers at the University of Sao Paulo, Brazil in the format of a 2010 publication titled, "A new classification of foods based on the extent and purpose of their processing." It expanded on work published the year before by Brazilian epidemiologist Carlos Monteiro, a collaborator on the Nova publication, in which Monteiro first termed the phrase UPF. The 2010 publication extended the concept of UPFs into the Nova system and further classified foods into three categories based on "the extent and purpose of the industrial processing applied to them."

In 2019, Monteiro further expanded Nova in a publication for the UN Decade of Nutrition. Now, Nova recognizes four categories of food. The categories include unprocessed or minimally processed; processed culinary ingredients; processed foods; and UPFs. Unprocessed or minimally processed includes edible parts of plants or animals, fungi, algae and water. Food can be still be classified in this category if it underwent minimal processing such as roasting, boiling, non-alcoholic fermentation, or pasteurization. Processed culinary ingredients include oils, butter, lard, sugar, and salt. These are substances that are derived from group 1 foods or else from nature by processes like pressing, refining, grinding, milling, and drying. Processed foods are foods that are made by adding a group 2 substance to a group 1 food and are generally recognized as modified versions of the group 1 food. This could include canned vegetables, tinned fish preserved in oil, whole fruit preserved in syrup, and most freshly baked breads. Under the Nova system, UPFs are defined as "formulations made mostly or entirely from substances derived from foods and additives, with little if any intact group 1 food." Examples of UPF food under the

Nova system include soft drinks, sweet or savory packaged snacks, and pre-prepared frozen dishes.

As mentioned before, Nova is not the only food classification system that defines UPFs, but it was the first and is the most applied in scientific literature. Food and Agriculture Organization of the United Nations' publication titled "Ultra-processed foods, diet quality, and health using the NOVA classification system" contains a helpful chart in Annex 1 that outlines some of the different systems.

California's AB 1264

With a goal of making school meals healthier, California enacted AB 1264. This law, along with creating a legal definition for UPFs, prohibits certain foods meeting the definition from being served in California's public schools. This is the first time a state has both sought to statutorily define UPFs and ban their use in schools. However, this is not the first time California has passed landmark legislation related to the ingredients of food served in schools. In 2024, California was the first state to prohibit the sale of food and beverages containing synthetic color additives in schools. In 2025, several states passed similar legislation, many of whom did so under the mantle of "Make America Healthy Again" (MAHA). Though the California initiatives were not enacted under the "MAHA" mantle, AB 1264, in a way similar to the synthetic dye ban, might serve as a model for how other states attempt to define UPFs. To learn more about California's school synthetic dye prohibition, click here to read NALC article "State Food Laws Enacted in 2024." To lean more about other state "MAHA" actions, click here to read NALC article, "'MAHA' Movement: New Texas and Louisiana Laws."

Definition of UPFs

Along with defining UPFs, AB 1264 bans certain foods that meet that definition from being served in school meals. Specifically, the law bans "restricted school foods" and "UPFs of concern" from being served in elementary, middle, or high schools after July 1, 2035. The classification of foods as being "restricted school foods" or "UPFs of concern" depends on whether the foods meet the definition of UPFs laid out in the California law. Thus, to understand which foods are prohibited, this article will first discuss California's definition of UPFs.

AB 1264 will codify the following definition of UPFs at Cal. Health & Safety Code § 104661. UPFs are food or beverages that contain:

- A substance available in FDA's Substances Added to Food database that has a FDA-defined technical effect, and

- *Either* 1) high amounts of saturated fat, sodium, or added sugar, *or* 2) a non-nutritive sweetener

FDA's Substances Added to Food is a searchable database that includes many of the types of ingredients regulated by the FDA. For example, the database includes food additives, color additives, and Generally Recognized as Safe substances that are listed in FDA regulations. California's new UPF definition applies to a substance found in the database that is designed to have any of the following technical effects, surface-active agents; stabilizers and thickeners; propellants, aerating agents, and gases; colors and coloring adjuncts; emulsifiers and emulsifier salts; flavoring agents and adjuvants (excluding spices and other natural seasonings and flavorings); flavor enhancers (excluding spices and other natural seasonings and flavorings); and nonnutritive sweeteners. The definitions of these technical effects can be found in 21 CFR § 170.3(o).

To meet the UPF definition, a food or beverage must contain one of the substances with a defined technical effect and contain *either* 1) high amounts of saturated fats, sodium, or added sugar *or* 2) a nonnutritive sweeter. Specifically, the law defines a product with a high amount of saturated fat as a food or beverage deriving 10 percent or greater of its total energy from saturated fat. Similarly, high sodium food or beverages contain a ratio equal to or greater than 1:1 milligrams of sodium to calories. Finally, added sugar products meeting the definition include food or beverages with at least 10 percent of total energy derived from added sugars. Thus, under California's UPF definition, a food containing a substance with a defined technical effect that derives 12 percent of its total energy from added sugars would be a UPF.

Further, California's definition would also include a food that contains 1) a substance with a defined technical effect and 2) a non-nutritive sweetener. A non-nutritive sweetener is defined as a substance with less than 2 percent of the caloric value of sucrose per equivalent unit of sweetening capacity. 21 CFR § 170.3(o)(19). California lists several examples of a non-nutritive sweetener including sucralose, steviol glycosides, and lactitol.

The law clarifies that raw agricultural commodities, unprocessed locally grown or raised agricultural products, minimally processed prepared foods, class 1 milk, alcoholic beverages, medical foods, infant formula, and commodity foods specifically made available by the USDA do not qualify as UPFs. Additionally, the law explains that salt, sodium chloride, spices or other natural seasonings or flavorings, nor natural color additives "shall not by themselves cause a food or beverage to be categorized as a UPF."

"Minimally processed prepared foods" is defined in Cal. Food & Agri. Code § 49015(a)(4) as food that prepared using 1) traditional processes to make food edible, to preserve it, or to

make it safe for human consumption, or 2) physical processes that do not fundamentally alter the raw product or that only separate a whole, intact food into component parts. Traditional processes could include smoking, roasting, freezing, drying, and fermenting. Physical processes could include grinding meat, separating eggs, and pressing fruits to produce juice. Thus, under California law, foods that undergo these processes do not meet the standard of "ultra-processed."

Examples of UPFs

Using California's definition, this article will evaluate the following foods and beverages to determine if they would classify as UPFs.

- Goldfish – Pepperidge Farm's Goldfish backed snack crackers would be considered a UPF because the product contains 1) Riboflavin, a database substance that functions as a color or coloring adjunct and flavor enhancer, and 2) has a 250mg of sodium and 140 calories – a ration greater than 1:1.
- Dino Nuggets – Tyson Foods' Frozen (chicken) Dino Nuggets would be considered a UPF under the California standard because the product contains food starch, a stabilizer or thickener, a high amount of sodium with 430mg of sodium and 210 calories.
- Mac & Cheese – Based on the nutrition facts of Kraft's Original Mac & Cheese Macaroni and Cheese Dinner, it would qualify as an UPF. The ingredient list contains Sodium Triphosphate, a substance designed as an emulsifier or emulsifier salt, and contains greater than a 1:1 sodium to calorie ratio with 530mg of sodium and 220 calories in a serving.
- Corn Dogs – Based on the nutrition facts of State Fair's Classic Corn Dogs, this food would qualify as an UPF. The product contains Sodium Diacetate which is a substance designed as a flavoring agent and adjuvant, and the product contains more than 10% of total energy from saturated fat.
- Gatorade – The lemon-lime flavor of Gatorade would qualify as a UPF because it contains 1) FD&C Yellow 5, a substance designed to function as a color or coloring adjunct, and 2) more than 10% of its total energy from added sugars.
- Apple Juice – Mott's 100% Original Apple Juice would not meet the California definition of a UPF because as juice produced from the pressing of a fruit, it falls under the "minimally processed prepared food" exception. However, regardless of the exception, it would still not be a UPF because it does not meet the definition's two-part test. While the apple juice contains ascorbic acid, a substance designed to function as a stabilizer or thickener, it has 0 percent added sugars and saturated

fats, has a sodium to calorie ratio under 1:1, and does not contain a non-nutritive sweetener.

Prohibiting specific UPFs from schools

Along with creating a definition for UPFs, the California law also prohibits "restricted school foods" and "UPFs of concern" from being served in schools. UPFs of concern include food that 1) meets the law's outlined UPF definition and 2) is classified as "of concern" through regulations adopted by the California Department of Public Health (CDPH). Restricted school foods are defined very broadly by the law as a food or beverage that contains one or more of the listed substances with a defined technical effect and is also restricted from service or sale in schools via CDPH regulations.

The law directs the CDPH to define both UPFs of concern and restricted school foods after considering several factors. Seven factors are listed in the law and include questions like, "whether the substance or group of substances are banned or restricted in other state, federal, or international jurisdictions due to concerns about adverse health consequences," "whether the food has been modified to be high in saturated fat, added sugar, or salt," and "whether the food meets the requirements of [FDA's] final rule . . . titled 'Food Labeling: Nutrient Content Claims; Definition of Healthy.'" CDPH's consideration of the listed factors must be "guided by a rigorous examination of available reputable peer-reviewed scientific evidence" and must be completed by June 1, 2028. By July 1, 2029 schools must begin to phase out both restricted school foods and UPFs of concern, and by July 1, 2032 a vendor shall not offer restricted school foods or UPFs of concern to a school.

CDPH is required to review the regulations and update definitions every five years. Additionally, the law creates reporting requirements for vendors of food products sold to a school. The vendor reporting requirements will go into place on February 1, 2028 and must be submitted yearly until February 1, 2032.

CA vs Nova

California's definition of UPFs is different from the standard created in Nova because it outlines tangible characteristics that a food must possess to be classified as a UPF. For instance, California's definition classifies food as an UPF is it contains a specific substance with a defined technical effect or if it contains a certain amount of added sugars. Conversely, Nova categorizes food based on a broad spectrum of the type and extent of processing it underwent. However, Nova is vague about what level of processing crosses into the UPF threshold. For example, in the UN Decade of Nutrition article UPFs are classified as those with "additives that imitate or enhance the sensory qualities of foods." However, the article also blurs the line between UPFs and processed foods by stating that

"additives in UPFs include some also used in processed foods, such as preservatives, antioxidants and stabilizers." While Nova is a helpful tool in categorizing foods into four groups, it is not a nuanced definition like the California law.

Federal Agencies Seek to Define UPFs

The timing of the enactment of AB 1264 is significant because the USDA and FDA are currently collaborating to establish a definition of UPFs. On July 23, 2025, the agencies published a press release announcing a joint Request for Information to "gather information and data to help establish a federally recognized uniform definition for UPFs." This initiative follows statements in the Make Our Children Healthy Again Assessment, published by the Make America Healthy Again Commission, that UPF overconsumption is one of the driving factors of what the assessment calls the "childhood chronic disease crisis." The agencies have not indicated that they plan to prohibit UPFs in school meals, as California has done, but they have stated a uniform definition will "allow for consistency in research and policy." The RFI is publicly available for comments until Oct. 23, 2025.

Though California's law and the state's initiative is not categorized under the mantle of "MAHA," its enactment might have an effect on the definition USDA and FDA create. Further, as other state legislatures begin their 2026 sessions in the upcoming months, they might model California's law in their own UPF definitional attempts.

To learn more about the FDA's Final "Healthy" Rule, click here to read NALC article "FDA Releases Final 'Healthy' Rule."

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IN FOCUS

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Committee on Foreign Investment in the United States (CFIUS)

The Committee on Foreign Investment in the United States (CFIUS) is an interagency body chaired by the Secretary of the Treasury. It serves the President in overseeing the potential national security risks of certain foreign direct investment (FDI) in the U.S. economy. CFIUS jurisdiction includes the review of mergers, acquisitions, and takeovers that could result in foreign control of a U.S. business; certain noncontrolling investments in businesses involved in critical technologies, critical infrastructure, or sensitive personal data (so-called "TID U.S. businesses"); and certain real estate transactions. At the recommendation of CFIUS, the President may suspend or prohibit transactions that threaten to impair U.S. national security.

The United States is the world's largest foreign investor and recipient of FDI. U.S. policy has supported a rules-based and open investment environment domestically and globally to promote U.S. economic growth and ensure the U.S. position as a premier FDI destination. Amid this backdrop, CFIUS has reviewed a small subset of foreign investment with an exclusive focus on national security. The focus of CFIUS's national security actions has evolved over time in response to emerging issues and concerns. Congressional focus on CFIUS has intensified since 2016 amid growing attention to the potential national security ramifications of investments by firms directed, controlled, or funded by a foreign government, notably the People's Republic of China (PRC), and in strategic sectors. Members are engaged in oversight of CFIUS reforms that Congress mandated in 2018 and some have introduced legislation to address perceived gaps in CFIUS's jurisdiction and actions.

CFIUS Authorities and Composition

CFIUS derives its authorities from Section 721 of the Defense Production Act (DPA), as amended (50 U.S.C. §4565), and implementing regulations (31 C.F.R. Chapter VIII). CFIUS initially was created and operated through a series of executive orders. In 1988, Congress passed the "Exon-Florio" amendment to the DPA (50 U.S.C. App. §2170), which codified the review process, at the time largely driven by concerns over Japanese firms' acquisitions of U.S. defense-related firms. In 2007, amid concerns over the proposed purchase of commercial operations of six U.S. ports by a firm based in the United Arab Emirates, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49), which formally gave CFIUS statutory authority.

In 2018, Congress passed the Foreign Investment Risk Review Modernization Act (FIRRMA, Title XVII, P.L. 115-232), which expanded CFIUS's jurisdiction and review process in key ways. FIRRMA was intended to "strengthen and modernize" CFIUS and enhance its ability to address concerns involving nonpassive, noncontrolling investments (e.g., minority stake) in TID business and real estate transactions (e.g., land purchases) in proximity to military installations, or part of maritime ports or airports. Foreign investors with ties to countries that are part of the "five eyes" alliance—Australia, Canada, New Zealand, and the United Kingdom—may be exempt from some of the rules.

CFIUS consists of nine members: Secretary of the Treasury (chair); Secretaries of State, Defense, Homeland Security, Commerce, and Energy; Attorney General; U.S. Trade Representative; and Director of the Office of Science and Technology Policy. The Secretary of Labor and Director of National Intelligence (DNI) are nonvoting, ex officio members. Five White House offices observe or participate in CFIUS, as appropriate (e.g., the Council of Economic Advisers and National Security Council). The President can appoint other officials to serve on a case-by-case basis.

CFIUS Review Process

The review process begins with notification to CFIUS by the parties to the transaction, which is a voluntary step except in certain cases. Even when notification is not mandatory, firms have an incentive to do so to receive potential "safe harbor" from CFIUS, which limits future CFIUS action on a transaction after it is cleared. Non-notified transactions remain subject indefinitely to future CFIUS review and possible divestment or other actions mandated by the President. As directed by FIRRMA, CFIUS has increased attention and resources to monitoring non-notified transactions of concern. CFIUS may also unilaterally initiate a review.

> The President can exercise authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he/she finds that (1) credible evidence exists that the foreign person might take action that threatens to impair national security, and (2) no other laws provide "adequate and appropriate authority" to protect the national security risks.

Notification. A party's filing of a transaction can be submitted as (1) a declaration (an abbreviated, short-form filing (30-day CFIUS assessment) or (2) a traditional written notice (45-day CFIUS review). Declarations and notices are distinguished by submission length, timeline for CFIUS' consideration, and CFIUS's options for disposition of the submission. Filing is mandatory in select cases where a transaction involves (1) a foreign government acquiring a "substantial interest" in a TID U.S. business, and (2) a TID U.S. business that produces, designs, manufactures, etc. a critical technology subject to export licensing/controls. In 2026, Treasury proposed a Known Investor Program (KIP) that may streamline filing processes and offer benefits for certain foreign investors that frequently file with CFIUS.

National Security Review. Treasury and a co-lead agency conduct a 45-day review (30-day review for declarations) to determine the effects of the transaction on U.S. national security, informed by a DNI threat analysis. CFIUS's "risk-based assessment" considers the threat, vulnerabilities, and

consequences to national security related to the transaction. In its assessment, CFIUS is to consider an illustrative list of national security factors. Factors for consideration in statute include the domestic production needed for national defense; control of domestic industries and commercial activity by foreign citizens; effects on sales of military goods or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; U.S. technological leadership in areas affecting national security; and effects on U.S. critical infrastructure and critical technologies. In 2022, President Biden issued E.O. 14083 to elaborate and expand on such factors. These include effects on the resilience of critical supply chains and technological leadership; aggregate industry investment trends; cybersecurity risks; and risks to U.S. sensitive data.

National Security Investigation. The initial review proceeds to a 45-day investigation if CFIUS finds that a transaction threatens U.S. national security and the risk has not been mitigated; is foreign-government controlled; or would result in foreign control of any U.S. critical infrastructure. A 15-day extension is allowed in "extraordinary circumstances." CFIUS can negotiate and impose mitigation conditions on the parties to address its concerns; a lead agency is tasked with monitoring compliance with such agreements. CFIUS Enforcement and Penalty Guidelines, issued in 2022, and regulatory updates in 2024, emphasize monitoring and compliance with mitigation measures as priorities.

Presidential Decision. If CFIUS determines a transaction poses unresolved concerns, it may recommend to the President that the deal be prohibited, unless the parties abandon the transaction. The President has 15 days to act. Presidents have prohibited 11 transactions to date, most in the past decade (**Table 1**). President Trump issued orders in 2025 and 2026 to block two PRC acquisitions of U.S. firms. Trump also reopened a CFIUS review and reversed a Biden order that prohibited Japan's Nippon Steel from acquiring U.S. Steel Corp. A national security agreement gives the U.S. government some rights in U.S. Steel.

Table 1. Presidential Blocks of Foreign Transactions

Year	U.S. Business	Acquirer	Sector
1990	MAMCO	CATIC	Aerospace
2012	4 wind farms	Ralls Corp. (Sany Group)	Renewables
2016	Aixtron SE	Grand Chip (China IC Fund)	Semiconductor
2017	Lattice	Canyon Bridge Capital Partners	Semiconductor
2018	Qualcomm	Broadcom	Semiconductor
2020	StayNTouch, Inc.	Shiji Information Technology Co.	Software
2020*	Musical.ly	ByteDance	Digital platform
2024	Real estate	MineOne	Crypto mining
2025*	U.S. Steel	Nippon Steel	Steel
2025	Jupiter Systems	Suirui Int'l	AV equipment
2026	EMCORE	HieFo Corp.	Semiconductor

Source: Presidential orders and *Federal Register*.
Note: * Orders ultimately were not enforced.

Recent Activity

CFIUS must report annually to Congress on its activities (**Table 2**). In most years since FIRRMA was enacted, there has been an increase in transactions reviewed. In 2024, CFIUS reviewed 325 filings (116 declarations, and 209 notices). CFIUS cleared 91 declarations and requested parties submit a subsequent notice in 15% of cases. Six declarations involved real estate. Over half of total notices proceeded to an investigation. In 49 cases, parties withdrew the notice during the investigation to address issues, and the majority refiled. CFIUS adopted mitigation measures for 25 notices (12% of total). In 7 cases, parties abandoned the deal after CFIUS was unable to resolve its concerns, or after the parties refused proposed measures. In 2024 CFIUS assessed four penalties for breaches of mitigation terms.

Table 2. Transactions Reviewed by CFIUS, 2019-2024

	2019	2020	2021	2022	2023	2024
Declarations	94	126	164	154	109	116
Notices	231	187	272	286	233	209
Investigations	113	88	130	163	128	116
Withdrawals	30	28	72	87	57	49
Presidential Decision*	1	1	0	0	0	2

Source: CFIUS Annual Report to Congress for CY2024, Aug. 2025.
Note: * Reported based on the year review was initiated. Filing numbers are greater than the number of distinct transactions, for example, due to the withdrawal and refile process.

Issues for Congress

Congress remains engaged in oversight of implementation of FIRRMA and CFIUS activities. Some Members say that PRC state-directed investments require a proactive and strategic approach. Some say that PRC investments in new operations and emerging technologies may evade or fall outside current authorities. Some Members have introduced bills to expand CFIUS jurisdiction over agricultural land; ban some investments by the PRC and foreign adversaries; and add the Secretary of Agriculture as a CFIUS member. These efforts stem in part from reports of PRC land buying and Treasury's 2022 decision that CFIUS did not have jurisdiction to review a PRC firm's land purchase in North Dakota near a U.S. Air Force base. (Treasury since has added some military bases subject to CFIUS' real estate jurisdiction.) Congress also enacted legislation on outbound investment to China (P.L. 119-60). Other issues include

- How well is CFIUS balancing an open U.S. investment posture with the aim to protect national security? How should CFIUS protect critical technologies in ways that promote competitiveness and a market-driven economy?
- Post FIRRMA, how sufficient are CFIUS's authorities to achieve current and emerging policy objectives? How has E.O. 14083 affected CFIUS reviews in practice?
- There may be incentives to file declarations instead of notices due to their fast turnarounds. What types of transactions is CFIUS clearing through declarations?
- How is the Commerce Department's role in identifying emerging technologies for export controls affecting CFIUS reviews?
- In what ways has CFIUS improved coordination with U.S. allies and partners in information sharing and in investment screening efforts as mandated by FIRRMA?
- How will KIP reforms affect CFIUS decisionmaking and review outcomes?

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Solar Smarts for Landowners: An Overview

By Rusty Rumley

While not a new subject, solar leasing is a topic that will garner increased attention because of the additional funds from the Inflation Reduction Act (IRA) becoming available at the beginning of 2023. The IRA incentivizes the adoption of solar through several mechanisms such as the 30% solar tax credit for installing solar on a residence, but the primary one affecting solar leasing on a commercial scale is the 30% business investment tax credit. This credit is expected to spur demand for more commercial solar projects over the next decade and landowners can expect to be approached by representatives of these future projects for leasing opportunities.

What is a solar lease?

The typical commercial solar lease is where an outside party approaches a landowner to negotiate placing solar panels, substations, power lines, roads and other necessary infrastructure on their property for a significant period of time (twenty-five to thirty-five years with optional extensions are common) for a specified rental rate per acre per year or with some form of revenue sharing much like a royalty payment for an oil or gas lease.

These leases tend to be complicated and due to the length of the lease it is important to have an experienced attorney look over any potential contract before signing. While the leases tend to be long, twenty to forty pages is not uncommon, there are some clauses that need to be reviewed carefully.

Typical Clauses and Things to be Aware of in Solar Leases

Different companies use different lease agreements; however, there are similarities between the various contracts. Understanding these clauses can help when consulting with an experienced attorney about potential lease options.

Signing a lease agreement does not guarantee a solar lease.

Signing a solar lease guarantees that the solar developer has the option to go forward with the construction of a solar project, but it does not guarantee that they will build it. Solar companies may approach many landowners and sign lease agreements that lock the landowner into an initial agreement where the solar company can gather data and decide which site will best fit their needs. During the initial period the landowner typically has to grant them access to the property and refrain from signing any other agreements that might interfere with the solar lease. If by the end of the initial period the company has not started construction then the agreement typically expires, the landowner is able to keep any payments that have already been made, and the landowner can sign new lease agreements with other solar companies.

Income from the Solar Lease

What have your neighbors been offered? Many leases have a confidentiality clause, but those are typically only binding after the contract has been signed. Rental rates can vary dramatically so researching current rates is critical before signing a solar lease. Another issue this often not thought of is how will your rental rate increase over time? Remember that these agreements can last for

more than three decades. The revenue you receive might be adequate in 2023, but will that same sum be a fair rental rate in 2037? Escalation clauses address this issue by building into the agreement an orderly increase in the rental rate over the life of the lease agreement.

Property taxes

Property that is assessed and tax as agricultural property generally has a lower property tax rate than residential or commercial property. If a solar project is developed on your property then a county assessor may determine that the property is in commercial energy production rather than agricultural production which could significantly increase your annual property tax. This should be an area that is addressed in a lease agreement. Does the solar company pay the increase in taxes due to the solar development or will the landowner bear this cost?

Liability for Damage to the Solar Equipment

What about protecting the solar panels and other equipment on the leased property? Some leases make the landowner liable for any damages to equipment on the leased property. Can you guarantee that nobody will damage the equipment? Many solar projects construct fencing around the perimeter and it may be prudent to make the company responsible for any damage that occurs on their leased property.

Decommissioning the Project

Solar projects can easily last twenty-five to thirty-five years; however, at some point the project will no longer be economically viable. Who will pay for cleanup at the end of the lease period? Many contracts are silent as to which party bears the cost of removing the solar equipment and restoring the land to its prior condition. A good lease agreement should specify which party will be responsible for decommissioning the project and some ever require the solar company to establish a bond to pay for cleanup at termination. A lawyer can be extremely helpful in negotiating these types of arrangements.

Conclusion

There are numerous things that a landowner should think about before signing a solar lease and this article covers some of the important things to consider. Having an experienced attorney go through the lease is crucial because the time to negotiate is before signing the contract. For more information on the subject of solar leases click **here**.

To read the Inflation Reduction Act of 2022, click **here**.

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

Solar Leasing for Landowners: Payment Structures

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Solar leasing is the practice of renting tracts of land to install solar panels and infrastructure to generate electricity from sunlight. The typical commercial solar lease is where an outside party approaches a landowner to negotiate placing solar panels, substations, power lines, roads and other necessary infrastructure on their property for a significant period of time (twenty-five to thirty-five years with optional extensions are common) for a specified rental rate per acre per year or with some form of revenue sharing much like a royalty payment for an oil or gas lease.

Because landowners and solar companies are free to negotiate terms, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that all leases contain. Available commercial solar leases were gathered and analyzed to create this blog series about common clauses and to layout the variety of terms within those common clauses. The following post details common components of the payment structure of solar leases.

Common Payment Structures

Solar companies establish payment structures in their proposed lease agreements, and this is typically one of the first sections that a landowner will review. Many solar companies exist across the country resulting in diverse payment structures. While most lease agreements will vary, there are some common approaches that most companies follow. A very common approach to solar leases is to divide the lease into separate phases and pay different rates or through different calculations according to the phase of the solar lease. Some leases may pay a fixed rate based on the potential megawatts of power that the project could generate or even pay a royalty payment of some percentage of the power actually produced while many leases pay a fixed amount per acre per year. Other factors, such as state laws can also impact lease agreements. For example, both Tennessee and Florida statutorily require solar

lease agreements to include statements of the lease's compensation structure.[1] It is critical to carefully examine the lease and understand what compensation you are entitled to either during the life of the lease or if payment depends on the current phase of the lease agreement.

Simple Payment Structure

Simple payment structures may focus on one phase, such as the production phase, to compensate the property owner. For example, one lease agreement we reviewed requires payment based on the potential amount of energy produced:

> "… the annual rent of Seventy-five hundred dollars ($7,500) per megawatt (AC) of Installed Power (as defined herein) payable to Landlord, in advance, in annual installments."

This type of payment structure exposes the landowner to a major potential risk. Not all lease agreements turn into a completed solar project. There may be years after signing the initial agreement before a final decision on a project is made. Will the landowner be compensated for this time period? Simple payment structures may not take into account the time and complexity of building a solar project, so landowners need to ensure that they are adequately compensated for what they provide even if the project is never completed.

Payments Based on Lease Phases

Solar leases, and the developments themselves, are complicated projects that will take years to start producing power. It is common to break up lease agreements into different phases and the compensation methods and amount for the phases may differ dramatically. Common phases are the option phase, the construction phase, the operations phase and the decommissioning phase. Lease agreements may use some, or all, of the phases above. Exact names may differ from lease to lease, but the practical effects are similar.

The Option Phase

An option phase is the time period between the signing of the agreement and the beginning of the construction phase. Some of these phases can be as short as six months, while others may last for years. During the option phase, most leases contain no guarantee that the leased land will actually be used for a solar project.

[1] *See* Tenn. Code Ann. § 66-9-204; *see also* Fla. Stat. § 520.23 (2023).

The company may enter into contracts with several landowners while they decide which land to initiate their project on. The company will also need to sort out many practical issues such as permits, loans, power purchase agreements and a myriad of other things necessary for a successful solar project. Because rental payments in the future are unknown, it is beneficial to require rent payments during the option period. Example:

> "As consideration for the Option, during the Option Period, Grantee shall pay to Landowner option payments (collectively, the "Option Payments" and each an "Option Payment") in the amount of (i) US $2,500 (the "Initial Option Payment"), due and payable on the date that is forty-five (45) days after the Effective Date and (ii) thereafter, US $625 per calendar quarter, due and payable on the first day of the applicable calendar quarter."

Construction Phase

This phase of construction typically begins when they start bringing in construction equipment and materials and will last until solar project is actively producing power. During the option phase there may be minimal disruption to the landowner's use of their property, but during the construction phase the landowner may have very limited access to a significant portion of their property. Payments for this phase tend to be more substantial than the payments from the option phase because of the loss of access to the property. Examples:

- Payment is to begin when construction begins, and payment is to be made per acre.
- Landowner shall be paid $20,000 annually during Construction period.

Operations Phase

This phase begins when the construction is complete and the project begins producing power commercially. This phase can last for decades and ends when the project goes into the decommissioning phase. It is important to carefully review the contract to see how long it can last. Many contracts also include language where a specified period of time is guaranteed (20 years) and the company is entitled to extend this phase at their own discretion (company has an option to extend the agreement by five or ten years at their sole discretion). Payment calculations during the operations phase can also vary substantially. Many contracts pay on a per acre per year basis, but other contracts are paid on installed megawatts or a royalty payment based on the actual amount of power generated. Because of the length of this phase in the lease it is a common practice build in an escalation clause to keep up with inflation. Examples:

- $2,200 per acre of Easement Area per year during the Operations Period, escalating at a rate of 2% per annum.
- …$1,000 per acre per year for the Rent Payment of the leased property. Starting on the third (3rd) anniversary of the first Rent Payment Date, and for each annual anniversary thereafter, the annual Rent shall be increased by three percent (3%) over the Rent otherwise then in effect.

Decommissioning Phase

This phase begins at the end of the operations phase and, hopefully, concludes when all of the solar project infrastructure has been removed from the property and the premises has been returned to the state that it was in before the construction phase began. Many older agreements do not address the decommissioning phase and landowners may need to negotiate for payment and additional security to ensure proper decommissioning. Because of the length of these leases the original parties that signed the agreement may no longer be available (or the project could be sold to another company) so it is critical to document each party's responsibilities in the contract. One common approach to ensure that funds are available to pay for decommissioning is to require a bond from the solar company that can cover cleanup at the end of the lease. It also may be a wise idea to have payments for the property to continue through the decommissioning phase to incentivize the company to move forward. Example:

- Rental Payment of $1,500 per acre per year shall continue until all solar infrastructure has been removed from the premises at the conclusion of the agreement.

Conclusion

Overall, it is important that the solar lease agreement accurately encapsulates the terms agreed on by the parties. It is important to have an attorney that is knowledgeable about solar leases to thoroughly review the agreement for the landowner because once the contract is signed it is very difficult to make any changes. The long lease period means that anything left out of the agreement is something that the landowner, and potentially their heirs, will have to deal with for years to come.

To see more articles in this series click here.

To read the Inflation Reduction Act of 2022, click **here**.

To read the Farmland Owner's Guide to Solar Leasing, click here.
To read Understanding Solar Energy Agreements, click here.

Solar Smarts for Landowners: Property Owner Rights/Use

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Solar leasing is the practice installing solar panels on large areas of land leased from a third party to generate electricity from sunlight. Commercial solar leasing is a topic that has garnered increasing attention because of the high rental rates in many areas of the country. Large-scale commercial solar leases include several unique aspects that make them differ from the typical residential solar contract. Because landowners and solar companies are free to enter a contract containing whatever terms the parties agree on, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that many leases contain. We gathered and analyzed many available commercial solar leases to create this blog series about the most common clauses and layout the variety of terms found within those common clauses. The following post details common clauses involving the landowner's rights and use of the land during the lease; however, it is important to have an attorney thoroughly review any contract before it is signed. To read the overview post on Solar Smarts for Landowners click here.

Access and Use of the Property Clauses

Land carries an intrinsic value for farmers that is often difficult to put into words. Protecting the land and farming land that is not being used under a solar lease is often a priority when negotiating any lease. This makes it important to consider whether the lease agreement significantly limits the landowner's access to, or use of, their property. Many leases contain an "owner access" or property use restriction clause that specifies what actions can be taken by both the solar developer and the landowner. Having clear expectations from both sides of the agreement can limit potential conflicts in the future. In our research, some solar leases may adequately address many of these issues while others are lacking in detail. If there are specific uses and activities that the landowner wishes to continue, the lease agreement should expressly include those rights before anything is signed. Below are sample clauses from various solar leases that we have selected to use as examples as well as commentary about the clauses:

- Landlord shall not make any material changes to the property that would impact the soil quality of the Easement area or block the sunlight.

This clause provides very little guidance to the lease parties and is written entirely in favor of the solar developer. What impacts soil quality and what should be avoided to not block sunlight? Adding clear expectations with specific descriptions of prohibited activities would help to clarify this clause. The landowner will also want assurances on how they can continue to use their property in a way that does not violate the lease agreement. These issues will be addressed as we look at different clauses. Example two:

- "During the Development Term, owner shall have the right to continue to use the Property for agricultural, ranching, timber harvesting, and/or other reasonable purposes so long as the Property is maintained substantially in accordance with its current condition and in compliance with all applicable laws."

This clause allows the property owner to continue using the property for normal farming activities during the development term of the lease. It is important to note that this clause only applies to the development term, not the entire lease. Once construction begins the landowner will lose access to some property but notice that the exact property at issue is not described in this clause. To learn more about the different phases of a solar lease read our guide to Understanding Solar Energy Agreements here.

If a landowner wishes to retain rights to use the land in these ways throughout the entirety of the lease term, the lease agreement should reflect that and include a similar clause applicable to the construction and operation terms. One issue that frequently arises is that due to the nature of the construction phase, the project may need more of the land than when the project moves into the operation phase. The solar developer will need extra space to store equipment and supplies during the construction phase, and the landowner should make sure that they will be compensated for this additional temporary usage. During this phase the landowner is unlikely to be able to continue farming this property. Because the development phase can take years to complete the landowner would like to be able to farm their property in the meantime and receive sufficient notice before the solar lease moves into the construction phase. For pasture this notice may be short, but for row crops the landowner should negotiate for a longer notice period so that they do not lose

a growing crop. Regardless of the notice period, it is important to include language specifying damages when a solar lease moves into the construction phase.

A lease may also include an owner access clause that specifies the process to be followed for the landowner to access the leased premises.

For example:

- "During the Construction and Operation Term and any Extended Term with respect to any Property, Owner shall have the right to reasonably access such Property at reasonable intervals and at reasonable times and upon at least forty-eight hours' prior advance written notice to Lessee to inspect such Property. Any such access shall not materially interfere with Lessee's use of such Property for Solar Energy Purposes and occupancy of such Property in any manner."

This clause clarifies the steps to be taken for the landowner to access the property and also places a restriction on the actions taken by the landowner while on the property. The property owner may want to inspect their property to make sure that the property is being taken care of, but this is also a potentially dangerous place to be with either construction equipment during the construction phase or dangerous amounts of electricity during the operation term so the solar developer will want to protect themselves as well.

Ultimately, a solar lease also grants access to the land to many individuals who are likely strangers to the landowner. Employees from the solar company, maintenance workers, and others will be accessing the land over the course of several decades. This is likely unfamiliar to rural landowners and can cause additional stress and impose increased liability. A lease may specifically limit what can be grown on the land (timber is typically prohibited since it may create shade), what can be built on the land (barns, houses or other structures that could create shade) and other uses, such as hunting rights, may be restricted or significantly limited.

It is important to negotiate the access and usage of the property that the landowner will feel comfortable with before signing any agreement. Once the agreement is signed then it is very difficult to change the agreement in the future.

Maintenance of the Property

Most leases establish which party is responsible for maintenance of the property. Some leases require the tenant to maintain the property, while others hold the landowner responsible for keeping the land in proper order.

For example:

- "Landlord shall maintain its property adjacent to the Leased Premises in good condition and state of repair to avoid interference with Tenant's use of the Leased Premises and the Easement. Landlord shall not construct or permit to be constructed structures or plant or permit to be planted trees adjacent to the Leased Premises that will impede solar access to Solar Farm."
- Landlord shall maintain the property in a good condition, including the property in the immediate vicinity of the System.
- Operator (tenant) shall maintain the property in a neat and clean condition. Operator shall repair any cattle guards, fences, or gates damaged in connection to the Operator's activities on the property.

Many solar agreements split the duty for maintenance of the property. The solar developer is often responsible for the property that is being actively used by the project (this land is almost aways fenced in to limit access) and the property owner is responsible for maintaining the property outside the fence. Many solar developers will also reserve the right to maintain land immediately outside of the project so that they can cut down vegetation that could create shade or a fire hazard. Specifying responsibilities between the parties can make relations better over the life of the lease agreement.

Conclusion

A property owner should consider how the lease terms impact their ability to use their land. Issues such as use of the surrounding land and maintenance of the property may seem like far away concepts during the lease negotiation, but the terms created during these negotiations will dictate how the land will be used and maintained for decades to come.

To read other articles in the Solar Smarts for Landowners series click **here**.

To read Understanding Solar Energy Agreements by Shannon Ferrell, click **here**.

To read about Land Use Conflicts between Wind and Solar Renewable Energy and Agricultural Uses, click **here**.

Solar Smarts for Landowners: Miscellaneous Clauses

Solar leasing is the practice of installing solar panels on large areas of land leased from a third party to generate electricity from sunlight. Commercial solar leasing is a topic that has garnered increasing attention because of the high rental rates in many areas of the country. Large-scale commercial solar leases include several unique aspects that make them differ from the typical residential solar contract. Because landowners and solar companies are free to enter a contract containing whatever terms the parties agree on, the clauses and terms vary greatly from lease to lease. However, there are several common clauses that many leases contain. We gathered and analyzed many available commercial solar leases to create this blog series about the most common clauses and layout the variety of terms found within those common clauses. The following post details common clauses regarding miscellaneous topics such as assignment/subleasing provisions, confidentiality clauses, binding arbitration clauses, insurance requirements, and oil, gas, and mineral rights.

Assignment/Subleasing

Most, if not all, of these leases include a clause that allows the developer to assign, transfer, or sublease their interest in the property without the consent of the landowner. Some leases require limited or no notice to sublease or assign the developer's interest to another party. Landowners may be able to negotiate for more notice on an assignment or sublease, but it is doubtful that the developer will forego this ability. Solar leases are long-term contracts that can last for decades and developers will want, or need, the flexibility to transfer the project to another party. What does this practically mean for the landowner? Other than negotiating for more notice potentially, this type of clause illustrates the importance of capturing the full agreement in writing. A landowner may have a wonderful relationship with the initial developer, but subsequent operators may not be so accommodating. The landowner's success in navigating future challenges with the solar company depends on the language that is negotiated before the lease is executed.

Confidentiality Clauses

Solar companies often ask that landowners not discuss the details of their agreements with their neighbors or nearby landowners. Some leases specifically include confidentiality clauses that prohibit either party from disclosing to a third party the financial details of the agreement, especially during the option period. Landowners are also often prohibited from revealing the lessee's product design,

methods of operation and construction to any third party. These clauses are included to protect the unique features of a solar company's business model from competing companies and potentially in negotiating different pay rates with different neighbors. There are several different issues that landowners and their attorneys should be aware of with confidentiality clauses.

First, this does not stop the landowner from seeking legal advice on the lease. In fact, a landowner may be able to use this clause to negotiate with the developer on paying some, or all, of the landowner's attorney fees for reviewing the lease because they are creating legal liability for the landowner. In some parts of the country developers may be willing to reimburse attorney fees for the landowners and not in other parts, but it is an issue that your attorney should explore.

Second, the landowner should be able to consult with other people such as family members, accountants, tenants and lenders before signing the agreement as the contract needs to be executed for the confidentiality clause in the lease to come into force. Some developers may have other types of documents, such as Non-Disclosure Agreements (NDAs), that are introduced earlier in the negotiations and those agreements should be carefully reviewed by the landowner's attorney before they are signed.

It is important to be aware of any confidentiality requirements in your agreement to avoid liability for breach of contract.

Arbitration and Venue

Ideally, lease agreements would sufficiently encapsulate the agreement of the parties, and the parties would not have any issues that lead to disputes. However, no contract can address all potential problems that may arise during a lease that is likely to last more than a quarter of a century. Leases often include arbitration clauses that require parties to resolve any disputes through binding arbitration rather than in court. Before entering a lease agreement that requires arbitration, a landowner should consider whether they are willing to surrender their right to have the case heard in court. These binding arbitration clauses are often more favorable to the solar companies because a landowner is much more likely to win a jury trial in his or her hometown against a large solar corporation.

Here is an example of a binding arbitration clause:

> "Any Dispute that is not settled to their mutual satisfaction within the applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties."

Venue, or forum selection, is another clause that your attorney should carefully review. Venue clauses decide the location where a contract dispute will be litigated. If the solar lease does not specify where venue should occur, then the default answer is where the breach of contract happened. This is usually going to be the county or parish where the solar lease is located which typically favors the landowner. Developers that do not have an arbitration clause will usually want to have any court actions held in a location that is more favorable to them. The landowner's attorney should carefully review these sections of the agreement to fully protect the landowner's interests as much as practicable in case of a later dispute.

Insurance/Indemnification

It is important to ensure that, in the case of an accident that causes loss, both parties are protected. The most common lease requires the developer to maintain an insurance policy that covers injury to person and property. These clauses typically include a minimum policy amount. For example, a $2 million minimum for each individual occurrence and $5 million in umbrella liability insurance. This requirement ensures that the solar developer will be able to pay for any damages that arise from its actions or injuries on the property.

Additionally, landowners are subject to premises liability and owe a certain duty of care to those who enter their land. This duty of care would extend to employees of the solar company, maintenance workers, and any other individual who enters the land in relation to the solar project. Solar leases should include indemnity clauses in which the developer agrees to indemnify and hold harmless the landowner for any losses caused by injury to another person or piece of property. This is important because it is possible that an accident may occur in the 30+ year span these agreements typically last, and the landowner does not want to be held liable for personal injury in relation to the project. Some early solar leases have indemnity clauses that protect the developer at the landowner's expense and those should be avoided whenever possible. The landowner should not be held responsible if, for example, teenagers shoot at solar panels from the road and cause damage. A well drafted lease will put the risk of liability on the developer since they are the ones with control over that property during the life of the solar lease.

Mineral Rights and Solar Leases

It is very common in some states that both mineral developments (usually oil and gas exploration) and solar development are happening in the same area at the

same time. Solar developers will want the exclusive right to use the property for their solar project and may ask landowners for some form of assurance in the lease that they will have sole rights to the property. This may not be something that the landowner can guarantee. People that own the surface estate (the landowners) may not own the mineral estate (the valuable minerals underneath the surface) if those rights have been severed. In many states the mineral estate is the dominant estate over the surface estate, and they may use a "reasonable amount" of the surface as necessary to extract their minerals. This means that if the landowner has only the surface rights to their property, then they cannot, and should not, guarantee that the solar developer will have exclusive rights to the surface because they cannot exclude a mineral owner from extracting those minerals. With modern drilling techniques there is more flexibility on where the wellhead can be located, but the landowner should not agree to clauses that they may not be able to honor. Developers in states with active mineral exploration should be aware of this issue; however, the landowner's attorney should also seek to minimize the risk by recognizing this risk in the lease agreement.

Conclusion

Ultimately, landowners and solar companies may include any clauses they wish in a lease agreement. It is best to enter into a comprehensive agreement that addresses all material issues and topics in order to protect both the landowner and the developer. Any term that is written in the lease is enforceable against both parties, and it will be more difficult, if not impossible to enforce terms that are not included in the written agreement. Landowners spend much of their time looking at the payment clause of a solar lease, but the other miscellaneous clauses can impact the overall success of the lease agreement.

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