Nos. 24-1287 & 25-250

IN THE

Supreme Court of the United States

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

v.

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

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

v.

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

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

BRIEF OF NATIONAL TAXPAYERS UNION FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS IN NO. 24-1287 AND RESPONDENTS IN NO. 25-250

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INTEREST OF *AMICUS CURIAE*[1]

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels.

Bryan Riley, who leads NTUF's Free Trade Initiative, has years of experience researching ways in which trade policy affects U.S. taxpayers and the economy. He has testified before congressional committees and federal agencies on a variety of topics ranging from the impact of Section 232 and Section 301 tariffs to ways the federal government can promote U.S. economic and national security by working to expand mutually beneficial trade.

NTUF therefore holds an institutional interest in this Court's ruling in this case.

[1] Pursuant to Supreme Court Rule 37, counsel for *Amicus* represents that none of the parties or their counsel, nor any other person or entity other than *Amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

For half a century, the U.S. has had low tariffs. When President Trump first came to office in 2017, the average U.S. tariff rate was 1.4 percent. When he started his second term in early 2025, the average U.S. tariff rate was 2.4 percent. As a result of the actions challenged here, the average U.S. tariff rate today is nearly 18 percent. *See* Yale Budget Lab, "State of U.S. Tariffs," Sep. 26, 2025, https://tinyurl.com/49bbvwxa.

This major policy change largely happened not by a law passed by Congress, nor by the mechanisms prescribed by Congress in the Trade Act of 1974, but by presidential emergency executive orders.

The vast majority of economists agree that tariffs reduce economic welfare. Therefore, the impact of terminating these tariffs would not be "catastrophic" and "ruinous," as the government alleges, but instead would improve our country's economic well-being and prosperity. The benefits would include:

- Increased economic growth.
- Average tax savings of $25,000 per household over the next 10 years.
- Lower input costs and increased exports for American farmers.
- More affordable inputs for companies producing goods in the United States.
- Better relations with U.S. allies.
- Increased levels of exports and foreign investment in the United States.

ARGUMENT

I. TRADE DEFICITS ARE NOT UNUSUAL AND NOT AN EMERGENCY.

The government alleges that trade deficits "constitute an unusual and extraordinary threat to the national security and economy of the United States." Gov't Br. 9. But trade deficits are not a sudden or unexpected development, and are in fact a routine and ordinary event, the opposite of an emergency. The U.S. has run trade deficits continually for 49 years.

As a recent letter signed by 463 economists, including nine Nobel laureates, former Senator Phil Gramm (R-TX), and economists from every administration from Jimmy Carter and Ronald Reagan to Donald Trump's first term and Joe Biden, observed:

> "This allegation is not backed by sound economic theory or empirical evidence. Trade deficits primarily reflect underlying macroeconomic factors such as the U.S. savings rate and the desire of our trading partners to invest in the United States. The United States has experienced trade deficits for 49 consecutive years, yet, during this period, real GDP, national wealth, and median incomes have all grown substantially. Moreover, U.S. industrial capacity reached a historic high in August. Even if you believe trade deficits are harmful, no serious claim can be

> made that they are either ‘catastrophic’ or constitute a ‘national emergency.’
>
> “In technical terms, the U.S. current account deficit is offset by a surplus in the capital account. There is no inherent threat to our economy if our trading partners invest in U.S. companies or buy Treasury bonds instead of purchasing American-made exports. In fact, it is not uncommon for the U.S. trade deficit to increase when the economy is growing and to decrease when it is not. The significant reduction in the trade deficit during the Great Recession is the most prominent recent example.”

National Taxpayers Union, “463 Economists: Biggest Trade Threat Is If Tariffs Are Left in Place,” Oct. 9, 2025, http://ntu.org/economists. Concern over trade deficits is also not a new issue and would have been familiar to the Founders. Adam Smith’s seminal work *The Wealth of Nations* (1776) argued against the then-conventional wisdom that negative trade flows were harmful:

> “Nothing, however, can be more absurd than this whole doctrine of the balance of trade, upon which, not only these restraints, but almost all the other regulations of commerce are founded. When two places trade with one another, this doctrine supposes that, if the balance be even, neither of them either loses or gains; but if it leans in any degree to one side, that one of them loses

> and the other gains in proportion to its declension from the exact equilibrium. Both suppositions are false."

ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776), Book IV, Chapter III, https://tinyurl.com/29zyxdjv.

The government's brief suggests that the United States is at the "brink of a major economic and national-security catastrophe" because "The United States' annual goods trade deficit had exploded to $1.2 trillion per year—increasing over 40 percent in the past 5 years alone." Gov't Br. 6. However, this increase was a result of unprecedented import growth due to the global pandemic. After adjusting for inflation, the U.S. goods trade deficit declined from 2022 to 2024. *See* Daniel Smith, Paul Bingham, Daniel Hackett, & Jeffrey Smith, "Multiperspective Analysis of Pandemic Impacts on U.S. Import Trade: What Happened and Why?," JOURNAL OF THE TRANSPORTATION RESEARCH BOARD 2677, no. 2, 50-61 (Feb. 2023).

The stark size of a $1.2 trillion trade deficit changes when accounting for the growing size of the U.S. economy. The goods trade deficit as a percentage of GDP in 2024 was 4.12 percent, below the post-2000 average. *See* U.S. Bureau of Economic Analysis, "National Income and Product Accounts: Table 2.4.5U–Gross Domestic Product by Industry," https://tinyurl.com/3jvp4hxt. By this more comprehensive measure, the trade deficit is not exploding. It has been virtually unchanged for the last 10 years and is lower now than it was in 2001. *See id.*

And despite a trade deficit that persisted throughout his first term, President Trump repeatedly claimed the economy was historically strong. *See, e.g.*, Donald J. Trump, "Farewell Address," Jan. 19, 2021, https://tinyurl.com/nz25nc9b ("We also built the greatest economy in the history of the world.").

II. STRIKING DOWN THE TARIFFS WOULD NOT BE CATASTROPHIC.

Terminating the IEEPA tariffs would simply return us to the comparatively low level of tariffs that were in place at the start of the year.

A. The Tariffs Will Hurt, Not Help, Military Readiness.

Imports from U.S. allies, which add to our trade deficit, can actually strengthen our defense-industrial base. According to an August 28, 2025, Defense Department (DoD) memorandum, "The Department of Defense routinely acquires items and materials from foreign sources indispensable to meet defense needs that are not readily available or produced in sufficient quantities within the United States." U.S. Department of Defense, Memorandum for Commander, United States Cyber Command (Attn: Acquisition Executive), Commander, United States Special Operations Command, USA001692-25-DPCAP, Aug. 25, 2025, https://tinyurl.com/yc2xpa2y.

DoD finds it necessary to provide tariff exemptions for products and components supplied by countries that have reciprocal defense procurement agreements with the Department of Defense and for other foreign supplies for which the contractor estimates that duty will exceed $300 per shipment, and for end products from countries that have free trade agreements with the United States. *See* Defense Acquisition Regulations System, DFARS 252.225-7013 (Duty-Free Entry). On July 15, 2025, the Senate Committee on Armed Services endorsed this policy, pointing out that broad-based import duties hinder military procurement and potentially compromise U.S. national security priorities.

> "The committee emphasizes that defense-related acquisitions from qualified sources under Reciprocal Defense Procurement Agreements should remain exempt from any tariffs or trade restrictions. *The committee urges the Department of Defense and relevant interagency stakeholders to preserve existing exemptions and ensure that future trade actions do not hinder defense procurement or compromise national security priorities.*"

U.S. Senate Committee on Armed Services, S. Rept. 119-39: National Defense Authorization Act for Fiscal Year 2026, to accompany S. 2296, Jul. 15, 2025, https://tinyurl.com/3yba7kp5 (emphasis added). On October 6, 2025, the United States Senate affirmed this policy by a vote of 77 to 20. S. 2296, National Defense Authorization Act for Fiscal Year 2026, 119th Cong. (2025).

This is not the first time the Defense Department has expressed concern about the negative impact of overly broad-based tariffs on U.S. national security. In 2018, in response to an investigation into the national security impact of steel imports, Defense Secretary James Mattis wrote: "DoD continues to be concerned about the negative impact on our key allies of the recommended options within the reports … It is critical that we reinforce to our key allies that these actions are focused on Chinese overproduction and countering their attempts to circumvent existing antidumping tariffs – not the bilateral U.S. relationship." U.S. Department of Defense, Response to Steel and Aluminum Policy Recommendations (Memorandum for the Secretary of Commerce), Dec. 15, 2017, https://tinyurl.com/2s388aez.

The benefits imports provide to U.S. national security have long been recognized by the federal government. In the midst of the Cold War, President Dwight D. Eisenhower, who had formerly served as Supreme Commander of the Allied Expeditionary Force in Europe during our World War II victory, often discussed the importance of trade and imports to U.S. national security:

> "It is important for our people to understand that we are not a completely self-dependent nation, that there is a whole array of important minerals and products that we must obtain from the other parts of the world. These areas are important to us both from our security and economic viewpoint. We must liberalize our trade policies or keep them liberal so that this trade can be advanced and increased all the time. As we grow, we need more trade. All along the line through trade we make other countries

> stronger in their industrial and-economic output and standards."

Dwight Eisenhower, Remarks at the Annual Meeting of the Chamber of Commerce of the United States, May 2, 1960, https://tinyurl.com/4nv5p2jr. And:

> "[F]oreign trade means much more than the obtaining of vital raw materials from other nations. It means effectively strengthening our friends in the world at large--strengthening them not only to fortify their own economies--not only to be independent of direct financial aid from wealthier nations--but also to buy from us what we must sell to the world. By making it possible for our friends to sell their products to us, we thus at once help them to be strong and enable them to earn the dollars by which they can, in turn, help our economy to be healthy and progressive. Clearly, we need these friends abroad, just as they need us."

Dwight Eisenhower, Address in New Orleans at the Ceremony Marking the 150th Anniversary of the Louisiana Purchase, Oct. 17, 1953, https://tinyurl.com/5482mk2n. President Eisenhower's position echoed the warning issued by President Harry S. Truman as the country emerged from the wreckage of World War II and the Great Depression:

> "The United States is opposed to governmental policies fostering autarchy, for itself as well as for others. Encouragement of uneconomic domestic

> production and unjustified preferential treatment of domestic producers destroys trade and so undermines our national economic strength. A large volume of soundly based international trade is essential if we are to achieve prosperity in the United States, build a durable structure of world economy and attain our goal of world peace and security."

Harry S. Truman, Statement by the President Upon Signing the Strategic and Critical Materials Stockpiling Act, Jul. 23, 1946, https://tinyurl.com/ydtctudw.

B. The Tariffs Will Hurt, Not Help, Foreign Relations.

In 1930, 1,028 economists warned about the dangers of enacting the Smoot-Hawley Tariff Act. In addition to their economic arguments, they noted, "Finally, we would urge our Government to consider the bitterness which a policy of higher tariffs would inevitably inject into our international relations. A tariff war does not furnish good soil for the growth of world peace." Their warning was reiterated by economists in 2018. *See* National Taxpayers Union, "NTU Tariffs Letter," May 3, 2018, https://tinyurl.com/5n8j53z8.

Secretary of State Marco Rubio states that "[s]uspending the effectiveness of the tariffs would lead to dangerous diplomatic embarrassment, which emboldens allies and adversaries alike" and that terminating IEEPA tariffs "would likewise interrupt ongoing negotiations midstream." Gov't Br. 5. Nonetheless, history shows that tariffs are not a prerequisite to negotiating trade agreements.

The United States concluded negotiations for the Uruguay Round with 122 countries and negotiated multiple bilateral agreements without the use of IEEPA tariffs. *See, e.g.*, World Trade Organization, "Understanding the WTO: The Uruguay Round," https://tinyurl.com/2b7bwxj6. All of these agreements were more comprehensive in nature than the agreements being negotiated by the current administration, and all were subsequently approved by Congress.

The government further contends that "the denial of tariff authority would expose our nation to trade retaliation without effective defenses and thrust America back to the brink of economic catastrophe." Gov't Br. 11. Yet, foreign retaliation is, by definition, a response to U.S. actions. If the IEEPA tariffs are removed, the threat of foreign retaliation will be eliminated.

The argument that tariffs are needed as leverage to achieve a variety of goals would seem to be confounded by their repeated modifications, capriciousness, and the resulting uncertainty. The tariffs on Canada and Mexico were announced on February 1 to take effect on February 4, suspended on February 3 for 30 days, took effect March 4, were suspended for auto imports from March 5 to April 2, and suspended broadly on March 6 until April 2, then extended indefinitely on April 2. *See* Erica York & Alex Durante, "Trump Tariffs: Tracking the Economic Impact of the Trump Trade War," Tax Foundation, Oct. 3, 2025, https://tinyurl.com/e6e3dwr4. *See also* Fox News, "Trump ends Canada trade talks over 'FAKE' Ronald Reagan tariff ad: 'Egregious,'" Oct. 23, 2025, https://tinyurl.com/3tscs69h; Kyle Handley, "Uncertainty is the New Trump Tariff–and Everybody Loses," Cato Institute, Jun. 11, 2025, https://tinyurl.com/5n7ensfj ("In standard economic models, volatility harms investment in two ways. First, if policy shocks arrive frequently, firms delay hiring, capital purchases, or new product launches. Second, if tariffs range from zero to over 100 percent, the cost of making the wrong investment at the wrong time grows."); Scott Lincicome, "Don't Count on Tariff Revenue to Cover the 'One Big Beautiful Bill,'" Cato Institute, May 27, 2025, https://tinyurl.com/4drktfy2 ("As long as tariffs are a bargaining chip, they can't be considered reliable government revenue.").

C. The Tariffs Will Ultimately Hurt, Not Help, the Economy and the Federal Budget.

Contrary to the claim that "With tariffs, we are a rich nation; without tariffs, we are a poor nation," Gov't Br. 2, a 2001 survey of American Economic Association members found that 95 percent agreed that tariffs and quotas usually *reduce* economic welfare. *See* Doris Geide-Stevenson & Álvaro La Parra-Pérez, "Consensus among economists 2020," 55 JOURNAL OF ECONOMIC EDUCATION 4, 461-478 (2024).

According to World Bank data, as of 2022, countries with average tariffs of 1.5 percent or less included relatively wealthy countries like Singapore, Australia, the United Kingdom, Switzerland, and members of the European Union. Countries with tariffs greater than 15 percent included relatively poor countries like The Gambia, Gabon, Chad, Cameroon, the Republic of Congo, and Equatorial Guinea. *See* World Bank, "Tariff rate, applied, weighted mean, all products (%)," https://tinyurl.com/yc8hj5kw. The last time U.S. tariffs were this high, the country was in the midst of the Great Depression.

The Administration has referenced economic benefits from the tariffs in amounts ranging up to $15 trillion or even higher. Gov't Br. 3. This statement could refer to foreign investment pledges or federal revenues generated by tariffs.

1. Harm to Foreign Investment.

If the statement refers to foreign investment pledges, it does not account for the fact that IEEPA tariffs reduce the amount our trading partners can earn by exporting to the United States, thereby *reducing* the amount they can invest in the U.S. economy. Claims of commitments from other countries to pay $15 trillion would be equivalent to more than half of U.S. Gross Domestic Product.

Elsewhere the government argues against such foreign investment, saying that "[b]y the end of 2024, foreigners owned approximately $26 trillion more of U.S. assets than Americans owned of foreign assets"—a 'catastrophic reversal' that 'financed foreign control of American manufacturing, supply chains, and economic life, weakening the independence of our Nation.'" In short, their argument is that the tariffs are necessary to reduce foreign ownership of

American assets, but the Supreme Court must keep the tariffs in place to allow more foreign investment.

Here is how Republican commissioners on the 2000 Trade Deficit Review Commission, including former Chairman of the Council of Economic Advisers Murray Weidenbaum, former Federal Reserve member Wayne D. Angell, former Defense Secretary Donald Rumsfeld, former U.S. Trade Representative Carla A. Hills, former World Bank Chief Economist Anne O. Krueger, and former USTR and World Bank president Robert B. Zoellick explained this issue:

> "A decade of large current account deficits has led to the United States accumulating the world's largest negative net international investment position (that is, the value by which foreign holdings in the United States exceed U.S. holdings in foreign nations). The change of the United States from a positive to a negative net international investment position has often been referred to as the United States becoming the 'world's biggest debtor nation.' This term can be exceedingly misleading. *In fact, calling the United States the 'world's leading investment destination' is more accurate*."

U.S. Trade Deficit Review Commission, "Chapter 4: Republican Commissioners' Views—Are Large Trade and Current Account Deficits Sustainable?" (2000), https://tinyurl.com/42u68bhn (emphasis added). Nobel laureate Milton Friedman testified to the TDRC that "The remarkable performance of the United

States economy in the past few years would have been impossible without the inflow of foreign capital, which is a mirror image of large balance of payments deficits." U.S. Trade Deficit Review Commission, "Chapter 2: Republican Commissioners' Views—Causes of the U.S. Trade and Current Account Deficits" (2000), https://tinyurl.com/mvk9pea3. Nobel laureate Paul Krugman recently made a nearly identical point, writing that trade deficits since the 1990s "have mostly reflected the fact that the United States offers better investment opportunities than other advanced economies." Paul Krugman, "A Balance of Payments Primer, Part I," Mar. 23, 2025, https://tinyurl.com/2cbyxkr6.

2. Harm to the Federal Budget.

Throughout 2025, the Administration has touted the benefits of tax cuts. *See, e.g.*, President Donald J. Trump, "Address Before a Joint Session of the Congress," Mar. 4, 2025, https://tinyurl.com/ytfk9cwd ("[T]he next phase of our plan to deliver the greatest economy in history is for this Congress to pass tax cuts for everybody."); Hearing to Consider the Anticipated Nomination of Scott Bessent, of South Carolina, to be Secretary of the Treasury Before the Senate Committee on Finance, 119th Cong. (Jan. 16, 2025) (testimony of Scott Bessent) ("If Congress fails to act, Americans will face the largest tax increase in history, a crushing 4 trillion tax hike."). These are admirable, and correct statements, and National Taxpayers Union supported the One Big Beautiful Bill Act. *See* Thomas Aiello, "House Should Pass One Big Beautiful Bill Act, Deliver on Tax Relief," National Taxpayers Union, May 16, 2025, https://tinyurl.com/mr4y32wa.

However, if left in place, the IEEPA tariffs will be "the largest peacetime tax increase in modern history." Michael R. Strain, "Tariffs Won't Bring Back US Manufacturing," American Enterprise Institute, May 1, 2025, https://tinyurl.com/2druw84t. Based on CBO projections, the $3.3 trillion in tariff revenues over the next 10 years is equal to an average of $25,000 per U.S. household, or $200 a month. *See* U.S. Congressional Budget Office, "An Update About CBO's Projections of the Budgetary Effects of Tariffs," Aug. 22, 2025, https://www.cbo.gov/publication/61697. So far in calendar year 2025, the U.S. government has collected $198.7 billion in tariff revenue, double the previous year. *See* Rachel Snyderman, Andrew Lautz, Caleb Quackenbush, Upamanyu Lahiri, "How Much Are U.S. Tariffs Raising in Revenue," Bipartisan Policy Center, Apr. 2025 (updated Oct. 2025), https://tinyurl.com/m35kajnw.

If tax cuts are beneficial, then terminating the IEEPA tariffs should also be viewed as beneficial, since tariffs are simply taxes on imports. *See, e.g.*, U.S. Customs and Border Protection, "Customs Duty Information," May 14, 2024, https://tinyurl.com/3xzzum7j/; U.S. International Trade Administration, "Import Tariffs & Fees Overview and Resources," Jul. 31, 2019, https://tinyurl.com/mmhzhhyj; Kevin M. Camp, "How Tariffs Relate to BLS Import and Export Price Indexes," U.S. Bureau of Labor Statistics, May 2020, https://tinyurl.com/26dat2z7. Under U.S. law, tariffs are paid by Americans, not by foreign countries. *See* 19 U.S.C. § 1505 (payment of duties and fees). Tariffs are an especially harmful form of taxation, since they are non-transparent, regressive taxes that hit poor households the hardest.

While the government mentions that tariff revenues are needed to reduce federal budget deficits, *see* Gov't Br. 11, none of the national emergency declarations at issue here refer to budget deficits. Further, these amounts are gross, not net; officials have proposed to use tariff revenues to address negative economic effects of the policy and for a variety of programs including farm subsidies, taxpayer rebates, food assistance, military pay, child care programs, a border wall, replacing income taxes, and creating a sovereign wealth fund. *See* Bryan Riley, Breaking Down the Latest Government Reports on Tariffs, National Taxpayers Union, Sep. 18, 2025, https://tinyurl.com/2jkxv434.

Recent economic research confirms that tariffs are an inefficient way to address budget deficits. Economist Arthur Laffer popularized the Laffer Curve, explaining that past a certain rate, higher tax rates reduce tax revenues. This was the basis for President Ronald Reagan's reductions in high marginal tax rates. Exceptionally high tariffs would operate on the revenue-losing side of the Laffer Curve. One study estimates the efficiency costs associated with high tariffs, calculating efficiency costs at approximately 30 percent of revenue raised at current tariff rates, and efficiency costs of 90 percent of revenue raised at revenue-maximizing tariff rates. *See* Kimberly Clausing & Maurice Obstfeld, "Trump's tariffs as fiscal folly," Centre for Economic Policy Research, Oct. 2025, https://tinyurl.com/3jp6vder.

IEEPA tariffs also hit businesses. For the first seven months of the year, more than half of U.S.

imports were either industrial supplies or capital goods used by American producers to make goods in the United States. *See* U.S. Census Bureau, "Imports of Goods by Principal End-Use Category: Not Seasonally Adjusted," 2025, https://tinyurl.com/5bsa9jyk. National Taxpayers Union has pointed out that following the announcement of the Liberation Day tariffs, the stock market fell by 12.4 percent. *See* Bryan Riley, "Tariff Ruling Triggers Misguided Response," National Taxpayers Union, Sep. 8, 2025, https://tinyurl.com/37hzxdr2. While the market has since rebounded, removing the threat of new IEEPA tariffs would encourage even greater growth. *See, e.g.*, Erica York & Alex Durante, "Trump Tariffs: Tracking the Economic Impact of the Trump Trade War, Tax Foundation, Oct. 3, 2025, https://tinyurl.com/e6e3dwr4 (concluding that ending the IEEPA tariffs would raise long-term GDP by 0.7 percent and preserve 655,000 jobs).

Previous trade agreements focused on cutting U.S. tariffs and boosting access to foreign markets. In contrast, recent agreements have increased U.S. barriers. This reduces the amount trading partners can earn by selling goods to Americans, thereby reducing export opportunities for U.S. producers and international investment in the United States, even in the absence of foreign retaliation.

It is for these reasons that the Congressional Budget Office concluded that, if left in place, the IEEPA tariffs "will, on net, reduce the size of the U.S. economy. In addition, businesses facing higher costs will, in CBO's assessment, pass some of their costs on to consumers, putting temporary upward pressure on inflation." *See* U.S. Congressional Budget Office, "CBO's Current View of the Economy from 2025 to 2028," Sept. 12, 2025, https://tinyurl.com/h5cwwwx6.

Even in the unlikely event that all tariff revenues are used to reduce federal budget deficits, the results would be relatively insignificant. The main driver of increasing budget deficits is not a lack of revenues but substantial projected increases in federal spending. According to the Tax Foundation's Garrett Watson and Alex Durante:

> "The US fiscal trajectory is on an unsustainable path over the next 35 years, regardless of whether the IEEPA tariffs are struck down or maintained. The possible 'financial ruin' and entitlement insolvency that the administration references is driven by the large and growing structural gap between projected entitlement spending and federal revenue overall, which dwarfs the revenue lost by striking the IEEPA tariffs down."

Alex Durante & Garrett Watson, "Financial Ruin? Why Losing IEEPA Tariff Revenue Won't Change the Long-Term U.S. Fiscal Trajectory," Tax Foundation, Sep. 24, 2025, https://tinyurl.com/3fac5emy. Cato Institute's Dominik Lett echoed this conclusion: "The path to fiscal stability runs through entitlement reform and spending control, not sustained reliance on executive-imposed tariffs." Dominik Lett, "Revoking IEEPA Tariffs Will Not 'Lead to Financial Ruin,'" Oct. 3, 2025, https://tinyurl.com/5yc7bu7b. At this time, tariff revenues do not even cover interest on the national debt.

3. Harm to the Manufacturing Base and Supply Chain Resiliency.

The Administration also cites a defensible concern often raised by policymakers: that "[i]ncreased reliance on foreign producers for goods also has compromised U.S. economic security by rendering U.S. supply chains vulnerable to geopolitical disruption and supply shocks," Gov't Br. 7, in turn because "[l]arge and persistent annual U.S. goods trade deficits have led to the hollowing out of our manufacturing base." *Id.* However, real U.S. manufacturing value added reached an all-time high last year. *See* U.S. Bureau of Economic Analysis, "GDP by Industry," Oct. 18, 2025, https://tinyurl.com/2t8cmcx6. Real U.S. industrial capacity also reached an all-time high last year. *See* Federal Reserve Bank of St. Louis, "Industrial Capacity: Total Index," https://tinyurl.com/mv2xzz8s.

Arbitrary tariffs and selective onshoring, however, also result in disruption to economic growth, geopolitical instability, and supply chain disruptions. The 2022 report, "Building Resilience into the Nation's Medical Product Supply Chains," produced by the National Academies of Sciences, Engineering, and Medicine in response to the global pandemic, warned that concentrating production in one region of the United States, as opposed to having multiple global suppliers, will itself lead to supply disruptions:

> "Locating production of the various steps in places with cost or capability advantages can facilitate lower prices,

> higher quality, wider variety, and more innovation. On-shoring a global supply chain by moving all production stages to domestic sites would therefore have consequences. Most prominently, on-shoring could increase costs and reduce affordability of medical products . . . Finally, even if we could overcome the economic obstacles and risks of supply concentration, it would be irresponsible to on-shore medical products if there were more cost-effective ways to achieve medical product supply chain resiliency."

National Academies of Sciences, Engineering, and Medicine, "Building Resilience into the Nation's Medical Product Supply Chains," 2022, https://tinyurl.com/nzrpjwmu; *see also* John G. Murphy, "How Broad-Based Tariffs Put U.S. Growth, Prosperity at Risk," U.S. Chamber of Commerce, Mar. 27, 2025, https://tinyurl.com/2r4p28cb ("Approximately 56% of all U.S. imports are raw materials, components, and capital goods used by domestic manufacturers."; Joey Politano, "Trump's Blockade of America," Apricitas Economics, Mar. 4, 2025, https://tinyurl.com/4mjmke2z ("The lack of exclusions for any goods—even energy, raw minerals, basic foodstuffs, etc—and the public-facing posture of 'maximum uncertainty' makes the tariffs counterproductive as industrial policy. Finally, from a geopolitical perspective, the decision to put brutal tariffs on Canada and Mexico only serves to breed animosity and push once-close allies away.").

4. Harm to Agriculture.

Similarly, another justification for the use of emergency power is to strengthen the agricultural sector because "a nation [cannot] long survive if it cannot produce its own food." Gov't Br. 8. But tariffs on supplies needed by our agricultural sector, including fertilizer, herbicides, and steel used to produce farm equipment, make it more difficult to produce food in the United States.

In addition, the indirect loss of markets due to U.S. tariffs reduces farm income. The U.S. Department of Agriculture projects that farm exports will decline from $196 billion in FY 2024 to $173 billion in FY 2025 and fall further to $169 billion in FY2026. *See* U.S. Department of Agriculture, "Outlook for U.S. Agricultural Trade," Report No. AES-133, Aug. 28, 2025), https://tinyurl.com/4rdajdt9.

To offset the damage generated by its trade actions, the leaders on both ends of Pennsylvania Avenue are proposing a new farm bailout package. *See* Jeff Mason, Maiya Keidan, & Leah Douglas, "Trump Says U.S. Will Distribute Aid to Farmers Until Tariffs Kick in to Their Benefit," Reuters, Sep. 25, 2025, https://tinyurl.com/yc53xpsk. Terminating the IEEPA tariffs would simply return us to the comparatively low level of tariffs that were in place at the start of the year, thereby benefitting our agricultural sector.

III. THE CHALLENGED ACTIONS ARE UNPRECEDENTED.

A. The Founders Would Not Recognize a Presidential Power to Impose Tariffs.

The U.S. Constitution, in Article I, Section 8, empowers Congress "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States." The same section also empowers Congress to "regulate Commerce with foreign Nations." U.S. CONST. art. I, § 8.

Tariff rates were set through legislation, from the Tariff Act of 1789, 1 Stat. 29 (the first major legislation enacted by Congress) until the Smoot-Hawley Act of 1930. In a few limited circumstances, Congress authorized the President to increase or decrease tariff rates in certain defined situations. In the Embargo Act of 1806, Congress authorized the President to suspend it by proclamation for a limited period "if in his judgment the public interest should require it." In 1892, this Court upheld provisions of the McKinley Tariff that authorized the President to impose tariffs on U.S. imports of certain products if other countries imposed tariffs on U.S. exports of those same products, stating that the presidential power in that instance "does not, in any real sense, invest the president with the power of legislation . . . He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect." *Marshall Field & Co. v. Clark*, 143 U.S. 649, 693 (1892).

Generally, however, members of Congress debated, and were pressed by lobbyists, to set tariff rates and establish exemptions product-by-product and country-by-country. A 5 percent revenue tariff, also known as customs duties, was the first major enactment by Congress in 1789. *See, e.g.*, David P. Currie, THE CONSTITUTION IN CONGRESS: THE FEDERALIST PERIOD, 1789-1801 at 55-60 (1997). In 1791, Treasury Secretary Alexander Hamilton sent Congress a proposal for a system of protective tariffs; even this champion of strong central government did not contemplate an inherent presidential power to impose them without Congress. *See* ALEXANDER HAMILTON, REPORT ON THE SUBJECT OF MANUFACTURES (1791). To help repay the cost of the War of 1812, Congress enacted the Dallas Tariff of 1816, 3 Stat. 189, usually considered to be the first protective tariff, with rates of approximately 20 percent on manufactured goods but not on raw material imports.

Tariff revenue declined as a proportion of federal revenue after an 1871 peak and was especially eclipsed as a revenue source after 1913. The main revenue sources for the federal government in early U.S. history were tariffs, excise taxes on the purchases of certain goods, and land sales. Between 1820 and 1910, tariff revenue was an average of 1.5 percent of gross domestic product (GDP), ranging from 0.4 percent (1843) to 2.7 percent (1871). Sales of public lands averaged 0.1 percent of GDP, and excise taxes were mostly zero until the Civil War. While it is therefore true that tariffs constituted the vast majority of federal revenue until the Civil War, this is because federal spending then was less than 3 percent of GDP. (Federal spending is over 25 percent of GDP today.) Excise taxes became a routine and significant source of revenue from 1862 onward, followed by the corporate income tax in 1909 and the individual income tax in 1913.

Increasingly since the Reciprocal Tariff Act of 1934, 48 Stat. 943, Congress has repeatedly passed statutes authorizing the exercise of presidential power in limited ways on tariff actions, generally to reduce tariffs. In particular, the Trade Act of 1974, 19 U.S.C. § 2101 *et seq.*, "covers, in great detail, what the executive branch may do if an act, policy or practice of a foreign country is unjustifiable and burdens or restricts United States commerce." Eugene Volokh & Philip Zelikow, "Does The Smoot-Hawley Act Justify the Trump Tariffs? No, Says Philip Zelikow," Reason Volokh Conspiracy, Jun. 3, 2025, https://tinyurl.com/yrcfcfuk.[2]

The International Emergency Economic Powers Act of 1977, 50 U.S.C. 1701 *et seq.*, authorizes the President to declare a national emergency to respond to an "unusual and extraordinary" foreign threat, and if necessary, to freeze assets or block international transactions if necessary to respond to that foreign threat. IEEPA was a revision of the previous

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[2] Professors Volokh and Zelikow further explain that a 1922 and 1930 power authorizing the President to impose a tariff if a foreign country "places any burden or disadvantage upon the commerce of the United States" was never invoked, arguably repealed by the 1934 law, and definitely superseded by the Trade Expansion Act of 1962, 19 U.S.C. § 7. *See id.*

presidential emergency power statute, the Trading with the Enemy Act of 1917, 40 Stat. 411, enacted during World War I. Presidents had invoked that law to ban gold hoarding (1933), seize steel plants during the Korean War (1950), and to effectuate what became the "Nixon Shock" (ending the gold standard and imposing price controls and a 10 percent global tariff) (1971). Many of these were controversial, with legal challenges, and IEEPA sought to clarify and narrow the presidential emergency power.

No past president has invoked the IEEPA to impose tariffs, nor does it authorize setting aside congressionally enacted tariff rates. IEEPA invocations have been to sanction, embargo, or freeze assets of foreign governments, terrorist organizations, or hostile nationals as part of foreign policy emergencies. That the statute specifically authorizes restrictions on importing and exporting currency or securities, and otherwise freezing or confiscating foreign property, suggests that broad sweeping tariffs on all goods and services are beyond the statute's scope.

Presidents have frequently invoked their extensive powers with respect to foreign affairs, as exercise of inherent aspects of a sovereign country in their role as head of state. However, courts have skeptically viewed presidents seeking broad, undefined power to act in the absence of congressional action (or, in this case, at odds with the mechanisms prescribed by the Trade Act of 1974). *See, e.g.*, *West Virginia v. Environmental Protection Agency*, 597 U.S. 697, 723 (2022) ("Thus, in certain extraordinary cases, 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."); *Zivotofsky v. Kerry*, 576 U.S. 1, 84-85 (2015) (Scalia, J., dissenting) ("A President empowered to decide all questions relating to these matters, immune from laws embodying congressional disagreement with his position, would have uncontrolled mastery of a vast share of the Nation's foreign affairs. That is not the chief magistrate under which the American People agreed to live when they adopted the national charter."); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 652 (1952) (Jackson, J., concurring) ("In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute.").

B. High Protective Tariffs Have Been Unpopular and Short-Lived in American History.

While some claim that high protective tariffs were a mainstay of past American policy, such policies existed only for four brief periods. Early on, the Founders recognized high tariff rates would neither maximize revenue nor "encourage" manufacturing but instead strangle trade: James Madison observed that "[i]f the duties should be raised too high, the error will proceed as much from the popular ardor to throw the burden of revenue on trade as from the premature policy of stimulating manufacturing." Letter from James Madison to Edmund Pendleton, Apr. 19, 1789. According to an analysis by the Cato Institute, tariffs in America's first century "strove to balance maximizing revenue under low impost-style rates on heavily imported goods and affording 'incidental' protection to specific industries through differentiated rates." Phillip W. Magness, "The Problem of the Tariff in American Economic History, 1787-1934," Cato Institute, Sep. 26, 2023, https://tinyurl.com/4zbddjuv.

On four occasions in the succeeding decades, US policymakers departed from this view that tariffs should primarily raise revenue, and on all four occasions, these highly protective tariffs proved short-lived. Each was a congressional enactment. *See* Joseph Bishop-Henchman, "High Protective Tariffs Have Been Short-Lived in American History," Cato Institute, Apr. 8, 2025, https://tinyurl.com/2s35etm9.

- Tariff of Abominations, 4 Stat. 308 (1828–32). Congress passed the "Tariff of Abominations" with rates reaching 50 percent. Unlike the previous protective tariff that only applied to imports of manufactured goods, this tariff also applied to imports of raw materials and farm products. The bill indeed proved unpopular and contributed to Andrew Jackson's 1828 defeat of President John Quincy Adams, who had reluctantly signed it into law. Jackson ultimately cut the 1828 rates in half in the Tariff of 1832, and approved an 1833 law that steadily reduced tariff rates to the 1816 level by 1842.

- Black Tariff, 5 Stat. 548 (1842–46). Congress passed the "Black Tariff" restoring the higher 1832 rates after President John Tyler had vetoed two earlier and higher tariff bills. After US imports and global trade sharply dropped, Tyler's Whig Party lost 49 House seats to the Democratic Party in the 1842 election and the Senate and the presidency in the 1844 election. The new administration, after a study of tariff rates in 1845, repealed the Black Tariff in 1846.

- McKinley Tariff, 26 Stat. 567 (1890–94). Future President William McKinley, then a Representative and Chair of the House Ways & Means Committee, ushered the tariff through, raising rates to approximately 50 percent. The unpopular tariff helped the opposition Democratic Party pick up a landslide of 83 House seats and the majority in the 1890 elections, and Harrison lost re-election in 1892. The Panic of 1893 occurred after the tariff disrupted access to international commodities and markets for US wheat. Congress drafted new legislation to reduce tariffs, which was signed into law in 1894 by President Grover Cleveland.

- Smoot-Hawley Tariff, 46 Stat. 590 (1930–34). Congress passed and Republican President Herbert Hoover signed the Smoot-Hawley Tariff into law in June 1930, substantially increasing tariff rates to over 50 percent on industrial and agricultural goods. Stocks declined as the law moved each step towards passage, and 1,028 economists famously petitioned Hoover not to sign the law. Industrial production briefly rose, but global trade sharply dropped by 66 percent, which harmed farmers and reduced employment in export industries. Between 1929 and 1933, exports fell 61 percent, imports fell 66 percent,

> US GDP dropped 46 percent, and unemployment rose from 8 percent at the law's passage to ultimately reach 25 percent. Foreign retaliation, the collapse in global trade, and the economic difficulty of countries dependent on it are seen as contributing factors to the rise of Japanese militarism in 1931, Britain's fall from the gold standard and adoption of colonial preference in 1931, and the end of democracy in Germany in 1931–33.
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> In the US, the Democrats picked up 52 House seats in the 1930 election, and Hoover and the Republicans lost the 1932 election in a landslide, with both Senator Smoot and Representative Hawley losing their seats. The new Democratic administration adopted the Reciprocal Tariff Act of 1934, allowing the president to negotiate tariff reductions, and tariff rates fell sharply in succeeding decades. The introduction of the income tax in 1913 and its expansion during World War II to apply to most Americans also reduced the significance of tariffs as a federal revenue source.

See id. Notably, peaks in US revenue from tariffs were not in those years but in 1826 (2.7 percent of GDP) and 1871 (again 2.7 percent of GDP), during years of comparatively lower tariff rates. Tariff revenue rose after 1842's enactment but fell after 1828 (from $23 million to $22 million in 1830), after 1890 (from $229 million to $177 million in 1892), and after 1930 (from $587 million to $327 million in 1932). *See id.* This suggests high tariff rates may be on the right-hand, or revenue-losing, side of the Laffer Curve, reducing revenue as rates get higher due to the negative economic effects of the high tariff rates.

C. The President Has Legal Avenues to Pursue His Policies.

Although President Trump has suggested that the invalidation of the IEEPA tariffs would deprive the United States of tariffs, *see, e.g.*, Tyler Olson, "Trump warns US could be 'struggling for years' if Supreme Court rules against him on tariffs," Fox Business, Oct. 20, 2025, https://tinyurl.com/mr2cceef, he would still have policy options at his disposal. The executive branch could pursue tariffs in a way that comports with U.S. law and the Constitution of the United States.

While the best outcome for the United States would be the termination of costly tariffs, the Trump Administration may seek legislation from Congress or rely on other statutes, including Section 301 of the Trade Act of 1974, and Section 232 of the Trade Expansion Act of 1962.

The administration could also work with Congress to reauthorize Trade Promotion Authority (TPA), which has provided numerous presidents with enhanced and expedited authority to pursue trade deals with other nations. As described on the website of the Office of the U.S. Trade Representative:

> "Since 1974, Congress has enacted TPA legislation that defines U.S. negotiating objectives and priorities for trade agreements and establishes consultation and notification requirements for the President to follow throughout the

> negotiation process. At the end of the negotiation and consultation process, Congress gives the agreement an up or down vote, without amendment. TPA reaffirms Congress's overall constitutional role in the development and oversight of U.S. trade policy."

Office of the U.S. Trade Representative, "Trade Promotion Authority," https://tinyurl.com/3eabs3kp. Although the most recent TPA statute expired in 2021, it was utilized by President Trump during his first term to negotiate the U.S.-Mexico-Canada, or USMCA, trade deal, an agreement described by President Trump as "the largest, fairest, most balanced, and modern trade agreement ever achieved" after it was approved by Congress. President Donald J. Trump, "Remarks by President Trump at a Signing Ceremony for the United States-Mexico-Canada Trade Agreement," Jan. 29, 2020, https://tinyurl.com/43va66np.

In short, terminating IEEPA tariffs would not terminate the ability of the federal government to impose tariffs, negotiate trade deals, and conduct foreign policy.

CONCLUSION

For the foregoing reasons, *Amicus* NTUF requests that this Court affirm that IEEPA does not authorize the imposition of tariffs and remand for entry of final judgment against the Government.

Respectfully submitted,

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