U.S. Constitutional Law I(D)

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On March 2, the Trump administration issued a statutorily required war powers report, stating:

> United States forces conducted precision strikes against numerous targets within Iran including ballistic missile sites, maritime mining capabilities, air defenses, and command and control capabilities. These strikes were undertaken to protect United States forces in the region, protect the United States homeland, advance vital United States national interests, including ensuring the free flow of maritime commerce through the Strait of Hormuz, and in collective self-defense of our regional allies, including Israel.

International Law

Article 51 of the U.N. Charter identifies "the inherent right of individual or collective self-defence" in response to "an armed attack" as the only exception to what is otherwise a blanket prohibition on the use of force between states (outside of U.N. Security Council authorization), ensconced both in the U.N. Charter and in customary international law. Both the United States and Israel in turn embrace a broader view of this inherent right of self-defense than many others in the international community.

Most authorities agree that the inherent right of self-defense extends to threats of imminent armed attacks as well as actual ones. As articulated by the International Court of Justice, much of the international community maintains that the right of self-defense applies only to actual or threats of imminent armed attacks that surpass a certain threshold of scale and effects and that, to satisfy requirements for necessity and proportionality under international law, any responsive use of force must be a last resort and narrowly tailored to removing other threats of imminent armed attack.

The United States, however, has long dissented from these views. It generally maintains that "any illegal use of force" can trigger the right to self-defense and that assessments of imminence should incorporate a variety of factors, including the "nature and immediacy of the threat" and "whether the anticipated attack is part of a pattern of continuing armed activity." Moreover, the United States has argued that the use of force is a permissible response so long as a state has explored reasonably available alternatives and that the necessity and proportionality of any military response should be evaluated in line with what is required to address the overall threat posed by a hostile actor.

Trump specifically discussed the "objective" of "defend[ing] the American people by eliminating imminent threats from the Iranian regime" without clarifying exactly what those threats may be. Similarly, U.S. Central Command has described the official goal of U.S. military operations as "dismantl[ing] the Iranian regime's security apparatus [while] prioritizing locations that posed an imminent threat[,]" suggesting an individual self-defense rationale.

The problem with these legal arguments, however, is that they are hard to square with the facts available to the public. Both Israel and the United States described Iran's nuclear and ballistic missile capabilities as severely diminished following this past summer's military campaign, suggesting that any threat they may pose had, if anything, become substantially less imminent in recent months. Iran was actively engaged in ongoing negotiations with the United States at the time of the strikes that third-party facilitators described as making progress, drawing into question the extent to which a military response was clearly necessary. Intelligence agencies had also reportedly assessed that Iran had not yet made a decision to resume the pursuit of a nuclear weapon. Nor had Iran been as active in engaging in direct or indirect hostilities against Israel or the United States in recent months, in part because so much of its military capacity (and that of its

proxies) has been degraded through other recent military engagements with Israel. Perhaps there is more compelling information available to U.S. officials through intelligence or other sensitive channels. But if not, the case is far from compelling.

Domestic War Powers

[T]he March 2 war powers report makes clear that the president is relying on his own authority under Article II of the Constitution to act against Iran, not any statutory enactment like the 2001 Authorization for Use of Military Force ("AUMF"), which some officials floated as a possible legal basis for action against Iran during the first Trump administration.

The executive branch has—over frequent objections by legal scholars—long maintained that the president has substantial independent constitutional authority to direct the use of military force against foreign adversaries. While some presidents have claimed a near plenary ability to pursue such action, most recent presidential administrations—including Trump's during his first term—have generally described this authority as extending, "at least insofar as Congress has not specifically restricted it," to situations where the president determines (a) military action would "serve sufficiently important national interests" and (b) the "nature, scope, and duration" of anticipated military operations will not "constitute a war requiring prior specific congressional approval under the Declaration of War Clause."

Congress has "specifically restricted" this authority in one regard: As part of the 1973 War Powers Resolution, it requires that, once U.S. armed forces are "introduced … into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances[,]" the president must "terminate" the use of those forces within 60 days (extendable to 90 days in certain circumstances), unless Congress has "enacted a specific authorization for such use[,]" extended the time period by statute, or is physically unable to meet. While some past presidents have suggested that this restriction is unconstitutional, more recent executive branch assessments have generally disagreed, at least outside the context of the national self-defense exception.

Notably, the Trump administration has released an opinion by the Department of Justice's Office of Legal Counsel that provides a domestic legal justification for the U.S. military operation that captured Venezuelan leader Nicolás Maduro. This opinion confirms that the second Trump administration accepts the two-part test applied by recent prior administrations. But the opinion also sheds light on how permissively this test will likely be applied moving forward, including in regard to the current Iran operation.

The first "national interest" prong of the executive branch's two-part test is relatively straightforward, as Iran's nuclear weapons and ballistic missiles programs—the official targets of the U.S. and Israeli military operations, alongside other elements of Iran's security apparatus—have been longstanding points of bipartisan concern for the United States (among other countries). The risk that military action could destabilize Iran or trigger a regional backlash obviously weighs in the other direction and could lead some to reasonably conclude that, on the whole, the proposed operations are contrary to U.S. interests in the region. However, as the Maduro opinion reflects, recent executive branch legal opinions have only asked whether "the President could *reasonably determine* that the action serves important national interests[,]" a highly deferential standard that gives credence to the president's views so long as there is any reasonable basis for reaching them. It is hard to conclude that such a basis does not exist with Iran, even if there are also grounds on which someone might reasonably—and perhaps even more persuasively—disagree. In short, the intent of the legal standard is not to second-guess the president's policy judgment, but just to ensure it is not baseless.

The second "nature, scope, and duration" prong, however, raises some harder questions. From the outset, Trump himself has described this latest round of military operations—which was preceded by one of the largest regional military build-ups in recent memory—as "massive and ongoing," with the potential to last for weeks and involve a substantial number of U.S. fatalities. Perhaps more importantly, pursuing strikes on Iran raises a clear and well-recognized risk of escalating into a broader regional conflict, which may now be manifesting across the region. Given that presidents most often use their Article II authority for more limited U.S. military actions, these descriptions should give one pause as to whether undertaking such a broad action is truly within the president's sole constitutional authority.

Yet the Maduro opinion sheds light on how the Trump administration will likely argue that it is. First, the opinion maintains that the scale of U.S. military deployment necessary to qualify as a war for constitutional purposes is a high one, and specifically points to the precedent of the 20,000 U.S. personnel deployed in Bosnia and Haiti in the 1990s as a relatively permissive baseline.

Second, in evaluating whether the risk of escalation into a broader conflict could give rise to a war for constitutional purposes, the opinion identifies U.S. casualties in the Vietnam War [58,281] and the second Iraq War [4,431] as points of reference for determining where the possible constitutional threshold might lie. The fact that the Iran operation primarily involves air power, not ground troops, is another factor the Maduro opinion suggests weighs strongly in favor of its constitutionality, as such operations pose less risk to U.S. military personnel. And while past executive branch legal opinions have often cited that a military operation might result in regime change as a factor weighing in favor of a need for congressional authorization, the Maduro opinion expressly rejects the authorization requirement if the proposed operation is limited and remains unlikely to involve U.S. military forces in "substantial and sustained hostilities[.]"

The end result is an extraordinarily narrow focus on the threat that a planned military operation may present to U.S. military personnel as the primary variable for determining whether congressional authorization is required. Earlier opinions were clear that this assessment "turns on no single factor" and incorporated various other considerations, including the scale of expected casualties by the United States and whether a proposed military action is defensive in nature. Among other considerations, this holistic approach reflects the fact that the Framers gave Congress the authority to declare war (among other war-related powers) in order to not just limit casualties among U.S. service members, but to serve as a check on a president's overseas adventurism.

Instead, by embracing a narrow focus on the threat to U.S. service members, the Trump administration has rendered the nature, scope, and duration test highly permissible. So long as the president can colorably assert that the scale of potential harm to U.S. soldiers will remain below that of a major armed conflict—something that can often be readily accomplished against weaker states by, for example, using air power or special operations personnel that capitalize on superior U.S. military capabilities—the president can claim that nearly any military operation is within his sole legal authority to direct, no matter the other consequences for the United States or the rest of the world.

The Maduro opinion does still recognize constitutional constraints on the president's authority to deploy substantial ground troops into hostile circumstances for extended periods without prior congressional authorization, though exactly where it believes the lines should be drawn is unclear. Yet, the fact that the Trump administration now refuses to rule out a ground troop deployment suggests that this limitation may not stay a hypothetical.

A more immediate constraint may be the 60-to-90-day time limitation imposed by the 1973 War Powers Resolution, particularly given the Trump administration's recent suggestions that military operations could continue for an extended period. If U.S. participation in "hostilities" continues past this fixed period without congressional authorization, the Trump administration will arguably be in violation of Congress's explicit statutory limitation. Of course, several prior presidential administrations have interpreted the War Powers Resolution in ways that allow certain military operations to continue past this date. The most relevant to the current operation in Iran may be the Obama administration's view—offered in relation to its military operations in Libya—that posited that the War Power Resolutions' definition of "hostilities" did not reach certain limited air power campaigns.

Opposition in Congress

Even before military operations began, the House of Representatives and Senate were scheduled to debate a pair of bipartisan resolutions—a concurrent resolution (H. Con. Res. 38) in the House, co-sponsored by Rep. Thomas Massie (R-Ky.) and Rep. Ro Khanna (D-Cal.), and a joint resolution (S.J. Res. 104) in the Senate, co-sponsored by Sen. Tim Kaine (D-Va.) and Sen. Rand Paul (R-Ky.)—that would put limits on the Trump administration's ability to pursue military action against Iran without congressional authorization if enacted. History suggests that these debates are unlikely to be more than the first step in efforts to rein in the Trump administration, if that is what Congress decides to do.

While separate, the two measures set to be debated are closely related and intended to work together on a political, if not legal, level. Both resolutions are intended to take advantage of the 1973 War Powers Resolution, albeit in different ways. As originally enacted, the War Powers Resolution included a set of expedited procedures that allowed members of both chambers to introduce concurrent resolutions—a measure requiring only approval by the House and Senate, not signature by the president—directing that U.S. military forces "be removed" from situations of actual or imminent hostilities. The War Powers Resolution in turn directed the president to comply with any such concurrent resolution, essentially providing a mechanism by which Congress could direct the president to end hostilities without having to overcome a possible presidential veto. But in a 1983 decision in *INS v. Chadha*, the Supreme Court cast the constitutionality of such provisions into serious doubt. A few years later, Congress responded by adding another set of expedited procedures to the War Powers Resolution for joint resolutions, which do require signature (and thus risk a veto) by the president, giving them the full force of law and complying with *INS v. Chadha*. But for political reasons related to their enactment, the procedures adopted apply in only the Senate, not the House. …

The different procedures available to the two pending resolutions is likely to inform how the relevant resolutions are likely to be used. The concurrent resolution in the House is likely to serve primarily as a vehicle to force House-wide procedural (and potentially substantive) votes to draw attention to the issue and force members to take a public stance, potentially exposing opposition among the president's supporters. But it's unlikely to be taken up by the Senate as, even if it were enacted, the executive branch would almost certainly argue that it has no legal effect under *INS v. Chadha*. The joint resolution, meanwhile, will serve the same purpose in the Senate and, if ultimately adopted, will then become the main legislative vehicle in the House. It won't benefit from any expedited procedures there, which may make it difficult to get it past the Republican House leadership, which can usually dictate the legislative agenda.

Of course, even if both chambers pass the joint resolution, this is unlikely to be the end of the

road. If intent on military intervention, Trump will almost certainly veto. This will in turn require the support of two-thirds of both chambers to override, a threshold that is likely to be extraordinarily difficult to meet in today's Congress.

Even a vetoed joint resolution—or an enacted concurrent resolution that lacks the force of law—would stand as evidence that the "the expressed or implied will of Congress" is opposed to the president's actions, a factor that generally weighs against the president's legal authority to undertake actions in areas of shared or uncertain constitutional authority like war powers. An unequivocal statutory prohibition, however, would put the president's actions into clear conflict with Congress, circumstances in which presidential authority is supposed to be at its "lowest ebb" and subject to the greatest constitutional scrutiny. Importantly, such interbranch conflict also creates the scenario in which some federal courts have suggested they would have an obligation to overcome their usual reticence over war powers and reach the merits of a dispute, increasing the risk that the executive branch's legal positions will be subjected to judicial review. That said, unless such measures can secure the support of a substantial supermajority in both chambers, any such statutory limits are unlikely to be installed by the joint resolution being debated this week.

Without a supermajority-level of support, statutory restrictions on the president's military operations are likely to require a different legislative vehicle that can bypass a presidential veto. The most common strategy for doing so is to incorporate relevant proposals into omnibus legislation that provides something the executive branch needs, making it too costly to veto. The usual candidates in the national security space are the annual defense authorization and appropriations bills, but these are not set to be debated until much later this year. In the short term, a more viable possibility may be the hotly debated legislation to fund the Department of Homeland Security.

Just debating joint and concurrent resolutions can itself help build momentum and support for proposed restrictions. The War Powers Resolution's expedited procedures allow critics of the administration to force public votes on such proposals, which can in turn compel members of Congress to take a stance on the Trump administration's actions. This can help reveal the extent to which members of Congress—including members of his own party—do not support Trump's actions. During the extended congressional debate over the first Trump administration's Yemen policies, this strategy not only built enough support to enact certain statutory limitations on the president's actions through annual defense legislation, but the political fallout from such visible opposition among congressional Republicans eventually pressured the Trump administration to shift some of its policies in ways not compelled by legislative action.

Shannon Brincat & Juan Zahir Naranjo Cáceres, Neither preemptive nor legal, US-Israeli strikes on Iran have blown up international law, The Conversation, 2/28/26

Article 2(4) of the UN Charter prohibits the use of force against the territorial integrity or political independence of any state. Preemptive self-defence, as we have argued previously, has extremely narrow prescriptions under the Caroline doctrine. It requires a threat to be "instant, overwhelming, and leaving no choice of means". No such conditions existed with Iran on February 28.

Central to the current crisis is that it was Trump who ended the Joint Comprehensive Plan of Action (JCPOA) in 2018, which had regional support for controlling Iran's nuclear program. The US director of national intelligence testified in March 2025 that Iran was not pursuing nuclear weapons, which the head of the International Atomic Energy Agency affirmed.

US intelligence also reportedly indicated it would take three years for Iran to build a nuclear weapon. Moreover, US and Israeli strikes on Iran last year had put the program back by months. Trump claimed Iran's nuclear program had been obliterated.

Regime change by force is unlawful

Trump said the attacks were intended to end Iran's nuclear weapons program and bring about regime change. Trump urged Iranians to "take over your government", while Israeli Prime Minister Benjamin Netanyahu declared the goal was to "remove the existential threat posed by the terrorist regime in Iran".

Forcible regime change violates the foundational principles of state sovereignty and non-intervention under the UN Charter.

Diplomacy as deception

Launching strikes during active negotiations violates the principle of good faith in Article 2(2) of the UN Charter. As the Arms Control Association noted, Iranian policymakers had already accused the US of bad faith after the June 2025 strikes disrupted previously scheduled talks.

Iran's Foreign Ministry denounced the February 28 attacks as striking during negotiations, violating international law.

Geoffrey Corn & Orde Kittrie, You bet this is a war of choice. Just not America's, Wash. Post, 3/11/26

As reflected in Article 51 of the U.N. Charter, all states have a right to act in self-defense in response to an actual or imminent unlawful armed attack. Iran's assaults against U.S. personnel, bases, ships and Israel, which have been ongoing for at least the past several years, triggered that right, as reflected in the military responses ordered by Trump and President Joe Biden against the regime and its proxies. That U.S. right of self-defense continues until Iran's willingness or capacity to continue such aggression ends.

There are strong arguments that the conflict has been ongoing for the 47 years since the Iranian Revolution. Unquestionably, this armed conflict has persisted over the past several years.

Before the current hostilities, Iran's most recent actions against the U.S. occurred on Feb. 3, when an Iranian drone "aggressively approached" and was shot down by a U.S. aircraft carrier in the Arabian Sea. Hours later, two gunboats operated by Iran's Islamic Revolutionary Guard Corps (IRGC) threatened to seize a U.S.-flagged tanker in international waters.

According to a 2024 report by Biden's Director of National Intelligence, between October 2023 and November 2024, "the Iranian military helped facilitate" at least 190 attacks against U.S. military forces by Iranian-aligned militants. During 2025, the Iranian-backed Houthis repeatedly attacked U.S. naval ships in the Red Sea. Also in 2025, Iranian proxies attacked U.S. personnel in Iraq and Syria.

During the same period, Iran brought its "shadow war" to U.S. soil. The Biden and Trump justice departments have documented Iranian plots to assassinate Trump, former secretary of state Mike Pompeo, former national security adviser John Bolton and Iranian American women's rights activist Masih Alinejad.

These facts justify the conclusion that the U.S. and Iran were already engaged in an armed conflict when the current round began. As a result, international law does not require the U.S. to refrain from further military action against Iran until just before the IRGC launches another assault.

Lindsay Wise & Anvee Bhutani, Senate Gives Green Light to Trump's Iran Attacks, Wall St. J., 3/4/26

The GOP-controlled Senate rejected a resolution that sought to limit President Trump's ability to conduct military operations against Iran without congressional approval, with nearly all Republicans officially throwing their support behind Trump's open-ended mission against the Islamic Republic.

Senators voted Wednesday to block the measure from advancing, with 47 in favor and 53 opposed, largely along party lines. Democratic Sen. John Fetterman of Pennsylvania voted with Republicans against the measure, while GOP Sen. Rand Paul of Kentucky was the sole Republican who voted in favor.

The resolution, sponsored by Sen. Tim Kaine (D., Va.) would have directed the president to terminate the use of U.S. armed forces in hostilities against Iran or any part of the Iranian government or military unless Congress declared war or voted to authorize the operations.

Another war-powers resolution, similar to the one that failed in the Senate, is expected to get a vote in the House on Thursday. It, too, is expected to fail, with few Republicans expected to buck the Trump administration.

Even if the resolutions had passed both chambers of Congress and made it to the president's desk, Trump likely would have vetoed it. Without supermajorities of two-thirds to override a veto in both the House and Senate, the resolutions' effect would have been mostly symbolic.

Anvee Bhutani, Democrats Move to Force Flurry of Senate Votes on Iran War, Wall St. J., 3/9/26

A group of Democrats—including Sens. Cory Booker (D., N.J.), Tim Kaine (D., Va.), Adam Schiff (D., Calif.), Tammy Baldwin (D., Ore.), Chris Murphy (D., Conn.) and Tammy Duckworth (D., Ill.)—have each filed new measures under the war-powers resolution that would require U.S. forces to withdraw from the conflict unless Congress votes to authorize it.

Because war-powers measures are considered "privileged," they allow individual senators to bypass leadership control and bring a motion directly to the Senate floor, forcing debate and a vote. Democrats say the tactic could allow them to push the issue repeatedly—even daily—until lawmakers confront the question of whether the U.S. should remain engaged in the conflict.

"This is not a one and done," Kaine said Monday evening.

The group of lawmakers said they are also weighing other procedural tools available to individual senators that could slow Senate business. Republicans in the GOP-controlled Senate have blocked similar war-powers resolutions, largely along party lines, arguing that President Trump was acting within his constitutional authority when the U.S. joined Israel in launching strikes against Iran.

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.[30]

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

I

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. The second was "large and persistent" trade deficits. The President determined that the first threat had "created a public health crisis," and that the second had "led to the hollowing out" of the American manufacturing base and "undermined critical supply chains." He invoked his authority under IEEPA to respond.

Enacted in 1977, IEEPA gives the President economic tools to address significant foreign threats. 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." And he must "declare[] a national emergency" under the National Emergencies Act. 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."

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.

Since imposing each set of tariffs, the President has issued several increases, reductions, and other modifications.

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. It is both a "power to destroy," *McCulloch* v. *Maryland*(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* (1899).

The power to impose tariffs is "very clear[ly] ... a branch of the taxing power." *Gibbons* v. *Ogden* (1824). "A tariff," after all, "is a tax levied on imported goods and services." And tariffs "raise[] revenue"—the defining feature of a tax. Indeed, the Framers expected that the Government would for "a long time depend ...

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

chiefly on" tariffs for revenue. The Federalist No. 12. 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.

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; 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. They did not vest any part of the taxing power in the Executive Branch.

The Government thus concedes, as it must, that the President enjoys no inherent authority to impose tariffs during peacetime. 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.

2

We have long expressed "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *West Virginia* v. *EPA* (2022) (quoting *Utility Air Regulatory Group* v. *EPA* (2014)). In *Biden* v. *Nebraska* (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. 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. And in *National Federation of Independent Business* v. *OSHA*(2022), 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. see also, *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.* (2021); *King* v. *Burwell* (2015); *Utility Air*.

We have described several of these cases as "major questions" cases. *Nebraska*; *West Virginia*; *FDA* v. *Brown & Williamson Tobacco Corp.* (2000) (citing S. Breyer, Judicial Review of Questions of Law and Policy (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*. But "context" counseled "skepticism." That context included

not just other language within the statute, but "constitutional structure" and "common sense." *Nebraska* (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*.

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," inherent in uses of this "most complete and effectual weapon," The Federalist No. 58. And if Congress were to relinquish that weapon to another branch, a "reasonable interpreter" would expect it to do so "'clearly.'" *Nebraska* (Barrett, J., concurring) (quoting *Utility Air*).

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 …. And it has conditioned exercise of the tariff power on demanding procedural prerequisites.

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. All it takes to unlock that extraordinary power is a Presidential declaration of emergency, which the Government asserts is unreviewable. And the only way of restraining the exercise of that power is a veto-proof majority in Congress. That view, if credited, would "represent[] a 'transformative expansion' " of the President's authority over tariff policy, *West Virginia* (quoting *Utility Air*), and indeed—as demonstrated by the exercise of that authority in this case—over the broader economy as well. It would replace the longstanding executive-legislative collaboration over trade policy with unchecked Presidential policymaking. Congress seldom effects such sea changes through "vague language." *West Virginia*.

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*.[31] Presidents have, by contrast, regularly invoked IEEPA for other purposes. At the same time, they have invoked other statutes—but never IEEPA—to impose tariffs, on products ranging from car tires to washing machines. And those tariffs did not "even beg[in] to approach the size or scope" of the IEEPA tariffs at issue here. *Nebraska* (quoting *Alabama Assn.*). 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*, (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*(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* (quoting *Brown & Williamson*). The President's assertion here of broad "statutory power over the national economy" is "extravagant" by any measure. *Utility Air*. 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. . . . As in those cases, "a reasonable interpreter would [not] expect" Congress to "pawn[ ]" such a "big-time policy call[] ... off to another branch." *Nebraska* (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. 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

[31] Indeed, even before IEEPA was enacted, only one President [Nixon] relied on its predecessor, the Trading with the Enemy Act (TWEA), to impose tariffs—and then only as a post hoc defense to a legal challenge.; United States v. Yoshida Int'l, Inc.(CCPA 1975). Those tariffs were also of limited amount, duration, and scope.

"whole point" was to provide "substantial discretion to ..... respond to unforeseen emergencies." 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* (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. And as the Framers understood, emergencies can "afford a ready pretext for usurpation" of congressional power. *Youngstown* (Jackson, J., concurring). Where Congress has reason to be worried about its powers "slipping through its fingers," we in turn have every reason to expect Congress to use clear language to effectuate unbounded delegations—particularly of its "one great power."

The Government's and the principal dissent's proposed foreign affairs exception fares no better. 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* (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. But "flip[ping]" the "presumption" under the major questions doctrine, 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. The Framers gave that power to "Congress alone"—notwithstanding the obvious foreign affairs implications of tariffs. 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. 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*. 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." 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*. 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." 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.

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." 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, then the other eight verbs in §1702(a)(1)(B) are simply wasted ink. …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. 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. 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*." 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. 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.

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*. 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.[32]

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. 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 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. . . .

Finding no support in the statute the President invoked, the Government turns to one he did not: IEEPA's predecessor, TWEA. 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.*. When Congress enacted IEEPA two years later, the Government contends, it conveyed that same authority (except without the limits).

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. A single, expressly limited opinion from a specialized intermediate appellate court does not clear that hurdle.[33] The tariff authority asserted by President Nixon, moreo-

[32] The principal dissent surmises that the President could impose "most if not all" of the tariffs at issue under statutes other than IEEPA. 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. We do not speculate on hypothetical cases not before us.

[33] The Government, citing the IEEPA House Committee Report, contends that Congress "indisputably knew of " *Yoshida*'s interpretation of TWEA. 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." 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.

ver, was "far removed" from TWEA's "original purposes" of sanctioning foreign belligerents. 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. Brief for Professor Aditya Bamzai as *Amicus Curiae*. 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 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.* . . .

Finally, the Government invokes *Dames & Moore* v. *Regan* (1981), but that case offers no support. *Dames & Moore* was exceedingly narrow,[34] 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. 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.

Justice Gorsuch, concurring. 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. The major questions doctrine is not "anti-administrative state." It is pro-Congress.

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. 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.

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

[34] This is not quite "no, no, a thousand times no," but should have sufficed to dissuade the principal dissent from invoking the case, with respect to the quite distinct legal and factual issues present here.

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.

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, 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* (concurring opinion). Instead, the doctrine might be thought of as a "commonsense principl[e] of communication" that counsels "skepticism" when executive officials claim extraordinary powers derived from Congress.

[I]n her view … "commonsense principles of communication" can sometimes help resolve disputes over the meaning of statutory terms. The difficulty is, our major questions cases are different. None of these cases can be readily explained by "commonsense principles of communication." *Nebraska* (Barrett, J., concurring). 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.

I am certain of one thing: Our cases hold a clear statement is required to support a claim to an extraordinary delegated power. Nor do I see cause for being quite so reluctant about acknowledging this. The common law recognized many clear-statement rules.

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. They agree that the doctrine is grounded in the Constitution. . . . But, my colleagues say, IEEPA provides the clear statement needed to sustain the President's tariffs.

Alternatively, they submit, we shouldn't apply the major questions doctrine to any statute, like IEEPA, that implicates "foreign affairs." And this exception, they add, is particularly warranted here because Congress has historically granted the President large discretion in setting tariffs. Once again, the points are thoughtful and merit careful consideration.

My dissenting colleagues maintain[] [that] 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. The dissent formulates these clues largely as I would. 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? 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). But the words "regulate ... importation" were added to TWEA in 1941.. Congress used the same language in IEEPA in 1977. 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. A single time, and one never tested in this Court.

Second, how has the executive branch interpreted IEEPA in the past? The dissent says Presidents have long understood IEEPA to permit them to impose tariffs. 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. And, once more, it points to President Nixon's invocation of TWEA to support his 1971 tariffs during lower court proceedings …. Whatever one makes of this history, it hardly reveals the kind of contemporaneous and consistent executive interpretation that might advance the dissent's cause. 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.

Fourth, is the President "relying on oblique, elliptical, or cryptic language"? The dissent says no because "[t]his case does not involve elephants in mouse-holes." Put another way, the dissent insists, the provisions of IEEPA before us are not "ancillary" ones, but are designed to convey significant powers.. 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." 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."

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.

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.

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." 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. Same goes for "tax on imported goods." Or any similarly clear term or phrase. But IEEPA includes no such language.

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. 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." From this rule, it follows that Congress may give all its tariff powers to the President because "[i]mporting is a matter of privilege." And, as a result, this case does not implicate any "separation of powers" concerns at all.

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. 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. . . .

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. 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. 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. 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.

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.

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.

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?

Third, even if a distinction between true legislative powers and "other kinds of power[s]" were proper, 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.

That seems doubtful. Tariffs may have been among the King's prerogative powers during the reign of Edward I. But even before the year 1400, Parliament had achieved some "victory over the King in the matter of imposing import duties." And after the Glorious Revolution of 1688, as this Court has put it, Parliament "secured supremacy in fiscal matters." "By the time of the American Revolution, trade regulation was thus a prime topic of *legislative* concern" in Britain..

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. . . . And, of course, it

was duties on foreign tea that triggered the Boston Tea Party. Are we really to believe that the patriots that night in Boston Harbor considered the whole of the tariff power some kingly prerogative?

*

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.

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.

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* (Barrett, J., concurring).[35]

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. Our only disagreement may be over the level of clarity required before a particular interpretation can be deemed the most natural one.

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. 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* (Barrett, J., concurring). And while the policy may be desirable

[35] Contrary to JUSTICE GORSUCH's suggestion, this approach to the major questions doctrine does not risk "conflating unenacted legislative intent with the law." 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).

or even constitutionally inspired, judges should hesitate to impose disciplining rules on Congress.

Granted, strong-form canons exist elsewhere in the law.. I do not propose to abandon these canons, nor have I taken the position that adopting them necessarily exceeds the judicial power. But I am skeptical about adding new ones to the mix. 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.

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. . . .

I objected, in the principal cases cited, to the demand for a special brand of legislative clarity. See *West Virginia* (Kagan, J., dissenting); *Nebraska* (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. 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. 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. 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.

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.[36] 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. . . .

For all those reasons, straight-up statutory construction resolves this case for me; I need no

[36] 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. Given how strong his apparent desire for converts, 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. Contrary to JUSTICE GORSUCH's suggestion, 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.

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.

Justice Jackson, concurring in part and concurring in the judgment.

Like The Chief Justice's opinion, the principal dissent declines the help of legislative history. The dissent concludes that IEEPA and TWEA are "best understood" as authorizing tariffs, and that any other interpretation would "not make much sense." 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.

In short, in these cases, the legislative history provides helpful evidence of "what Congress was trying to do" in IEEPA. Given that evidence, we need not speculate or, worse, step into Congress's shoes and formulate our own views about what powers would be best to delegate to the President for use during an emergency. 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.

Justice Thomas, dissenting.

I join Justice Kavanaugh's principal dissent in full. 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 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* (1825) (opinion for the Court by Marshall, C. J.)

I

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* (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. They cannot be delegated even if Congress delegates them unambiguously.

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 (2020) (McConnell); accord, *Zivotofsky* v. *Kerry* (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." By one count, 13 of the 29 powers given to Congress in Article I were powers that "Blackstone described as 'executive' powers." …

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* (2023) (Thomas, J., dissenting) (quoting *United States* v. *Curtiss-Wright Export Corp.* (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. External affairs, then, are not susceptible to being "directed by antecedent, standing, positive Laws" made by one nation. 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.

The power to regulate external affairs was accordingly not viewed as within the core legislative power at the founding. See *Zivotofsky* (opinion of Thomas, J.). Blackstone described powers over "intercourse with foreign nations" as "prerogative" powers naturally belonging to the King. Locke agreed that this power "must be lodged" with the "executive." *Zivotofsky* (opinion of Thomas, J.) (citing Locke). Baron de Montesquieu classified all powers "in respect to things dependent on the law of nations" as part of "the executive power." The "legislative" power, by contrast, "applied only within the realm."

The power to regulate external affairs included power over foreign commerce. The power to impose duties on imports was a conventional method for governing foreign trade. It originated as a "prerogative right" of the King.

II

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* (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* (majority opinion), but whether it implicates core private rights. . . .

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." Foreign commerce was governed by the law of nations, which is a law of "sovereigns," not of "private individuals." Vattel. 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.

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 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. 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. . . . 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.

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.

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* (2022).

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* (1952) (concurring opinion) (quoting *United States* v. *Curtiss-Wright Export Corp.* (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 suebstantially 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; the Trade Act of 1974; and the Tariff Act of 1930. 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.

I

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."

[Moreover], 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. 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. . . .

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—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

[The] text, history, and precedent [are] 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. 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. . . .

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.

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

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 Chief Justice's opinion's application of the major questions doctrine in this case is incorrect for two alternative and independent reasons.

A

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*. 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."

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*.[37]

The question then is whether the generally worded statute supplies "clear congressional authorization" for the Executive to exercise that specific—but not explicitly mentioned—

[37] 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.

major power. Here, for example, does the generally worded statutory authorization for the President to "regulate . . . importation" clearly authorize the President to impose tariffs?

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* (Barrett, J., concurring).

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.

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.

Second, courts examine the "agency's past interpretations of the relevant statute." *West Virginia*. The Executive's "track record can be particularly probative" in the major questions context. *Biden* v. *Nebraska* (Barrett, J., concurring). A "contemporaneous and long-held Executive Branch interpretation of a statute is entitled to some weight." *West Virginia* (Gorsuch, J., concurring). 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." . . .

Third, courts assess whether "there is a mismatch between an agency's challenged action and its congressionally assigned mission and expertise,"—in other words, whether an agency is trying to regulate "outside its wheelhouse …" 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* (Gorsuch, J., concurring). As the Court has often said, Congress does not "hide elephants" in statutory "mouseholes." *Whitman* v. *American Trucking Assns.* (2001). . . .

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.

That authority was plain as day in 1977.[38]

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, or OSHA's when it implemented a vaccine requirement even though it had "never before adopted a broad public health regulation of this kind."

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. 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*; OSHA sought to implement a nationwide vaccine mandate, *NFIB*; the FDA tried to regulate cigarettes, *Brown & Williamson*; and the Attorney General attempted to regulate physician-assisted suicide, *Gonzales*. . . .

Fourth, the President is not relying on oblique, elliptical, or cryptic language. This case does not involve "elephants in mouseholes." 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. 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 back

This Court's recent decision in *Biden* v. *Missouri* (2022), strongly supports the President's position here. That case involved a challenge to

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[38] The Court downplays the significance of the prominent Nixon and Ford tariffs. 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 in1977. 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 …. 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.

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. 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. 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. (Thomas, J., dissenting). The clarity of the congressional authorization in today's case is far stronger than in *Biden* v. *Missouri*.

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.

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

[T]here is an alternative and independent reason why the major questions doctrine does not apply here: This is a foreign affairs case. [T]his 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. 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.

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.* (1936). 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*. 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."

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. . . .

This tariffs case plainly falls into the foreign affairs category. IEEPA "directly and expressly relate[s] to foreign affairs." 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. . . .

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."

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* (Jackson, J., concurring). . . .

Related precedent further demonstrates that the major questions doctrine has not traditionally applied in the national security or foreign policy contexts. [I]n 1981 in *Dames & Moore*, the Court did not apply the major questions doctrine, even though the Court had recently applied that principle in a significant domestic policy case. 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." 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. 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. 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. 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. 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.

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 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.

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* (opinion of Thomas, J.); *Youngstown* (Jackson, J., concurring); *Curtiss-Wright*; *Panama Refining*.