

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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V.O.S. SELECTIONS, INC., PLASTIC SERVICES AND PRODUCTS, LLC, dba Genova Pipe, MICROKITS, LLC, FISHUSA INC., TERRY PRECISION CYCLING LLC,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, EXECUTIVE OFFICE OF THE PRESIDENT, UNITED STATES, PETE R. FLORES, Acting Commissioner for United States Customs and Border Protection, in his official capacity as Acting Commissioner of the United States Customs and Border Protection, JAMIESON GREER, in his official capacity as United States Trade Representative, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, HOWARD LUTNICK, UNITED STATES CUSTOMS AND BORDER PROTECTION,

Defendants-Appellants.

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THE STATE OF OREGON, THE STATE OF ARIZONA, THE STATE OF COLORADO, THE STATE OF CONNECTICUT, THE STATE OF DELAWARE, THE STATE OF ILLINOIS, THE STATE OF MAINE, THE STATE OF MINNESOTA, THE STATE OF NEVADA, THE STATE OF NEW MEXICO, THE STATE OF NEW YORK, THE STATE OF VERMONT,

Plaintiffs-Appellees,

v.

PRESIDENT DONALD J. TRUMP, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, KRISTI NOEM, Secretary of Homeland Security, in her official capacity as Secretary of the Department of Homeland Security, UNITED STATES CUSTOMS AND BORDER PROTECTION, PETE R. FLORES, Acting Commissioner for United States Customs and Border Protection, in his official capacity as Acting Commissioner for U.S. Customs and Border Protection, UNITED STATES,

Defendants-Appellants.

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On Appeal from the United States Court of International Trade  
Nos. 25-66, -77, Judges Katzmman, Reif, and Restani

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**EMERGENCY MOTION FOR A STAY PENDING APPEAL  
AND AN IMMEDIATE ADMINISTRATIVE STAY**

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Yesterday evening, the Court of International Trade (CIT) issued an unprecedented and legally indefensible injunction permanently barring the United States from implementing tariffs involving dozens of countries, from the United Kingdom to the People's Republic of China to the European Union — tariffs that are central to the President's foreign-policy and economic agendas. The court permanently enjoined the President's executive orders regarding tariffs and compelled the Executive Branch to issue administrative orders unwinding the tariffs in 10 calendar days.

This Court should immediately stay that judgment, which is rife with legal error and upends President Trump's efforts to eliminate our exploding trade deficit and reorient the global economy on an equal footing. The injunction unilaterally disarms the United States in the face of the longstanding predatory trade practices of other countries — who, notwithstanding the injunction, remain free to impose punitive tariffs on American products and hobble our economy. The injunction threatens to unwind months of foreign-policy decision-making and sensitive diplomatic negotiations, at the expense of the Nation's economic well-being and national security. The political branches, not courts, make foreign policy and chart economic policy, yet the injunction injects the CIT into the center of our Nation's foreign policy and

disables the President from using a critical tool that Congress authorized him to wield, in the middle of time-sensitive negotiations with multiple foreign countries over future trade agreements.

So grave are the stakes for the Nation that four members of the President's Cabinet took the extraordinary step of submitting declarations to the CIT, before its ruling, substantiating the immediate, catastrophic harms that would flow from enjoining the President's tariff authority. The Secretary of Commerce explained that an injunction would "undermine" recent agreements and "jeopardiz[e] the dozens of similar arrangements" that are being negotiated. A76. The Secretary of the Treasury agreed that an injunction "could shatter" ongoing "negotiations with dozens of countries" and embolden others to retaliate against the United States. A86. The U.S. Trade Representative feared that an injunction could leave trading partners free "to further distort the conditions of competition for U.S. exporters." A90-91. And the Secretary of State warned that an injunction would "cause significant and irreparable harm to U.S. foreign policy and national security." A80. If the injunction remains in effect, the successful agreements the President has reached with multiple countries could be immediately unraveled.

Yet, remarkably, the CIT issued a permanent injunction without any consideration of these declarations, which document quintessential irreparable harms. Nor did the court even discuss the equitable requirements for issuing a permanent injunction – a textbook error that alone warrants vacating or staying the injunction. *See Starbucks Corp. v. McKinney*, 602 U.S. 339, 351 (2024); *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

On the merits, the injunction rests on a dangerously flawed interpretation of the President’s tariff authority. Since 1941, Congress has authorized the President to “regulate importation” of foreign goods whenever he declares a national emergency. This Court’s predecessor, in an opinion by this Court’s first Chief Justice, upheld President Nixon’s invocation of that authority to impose broad tariffs in response to a global balance-of-payments deficit. *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560 (C.C.P.A. 1975) (Markey, C.J.). And Congress knew of that holding when it incorporated the operative 1941 statutory language into the current statute, which gives the President “essentially the same” power. *Regan v. Wald*, 468 U.S. 222, 228 (1984); *see Dames & Moore v. Regan*, 453 U.S. 654, 671-672 (1981). It is difficult to imagine clearer authority for the President to invoke the current statute – the International Emergency Economic Powers Act (IEEPA) – to impose just

the sort of broad tariffs that President Nixon imposed. Yet the CIT, flouting *Yoshida*, enjoined tariffs that President Trump determined are imperative to protect America's economy and national security.

A stay pending appeal, and an immediate administrative stay, are necessary to prevent immediate, irreparable harm to the Nation. And a stay would not harm plaintiffs, who can be made whole through a refund, including interest, if tariffs paid during these appeals are ultimately held unlawful. Absent at least interim relief from this Court, the United States plans to seek emergency relief from the Supreme Court tomorrow to avoid the irreparable national-security and economic harms at stake. Plaintiffs oppose this motion.<sup>1</sup>

## STATEMENT

### A. Statutory Background

1. Congress has long delegated to the President authority to regulate importation during national emergencies. The 1917 Trading With the Enemy Act (TWEA), Pub. L. No. 65-91, 40 Stat. 411, authorized the President to “regulat[e]” “import[ation]” of foreign goods during wartime. *Id.* § 11, 40

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<sup>1</sup> The government last night filed a stay motion in the CIT. Given the extraordinary harms the CIT's order imposes, the government cannot wait for a ruling before filing this motion.

Stat. at 422-423. Later, Congress amended TWEA to allow the President to “regulate ... importation” of foreign goods not just in wartime but “during any other period of national emergency” he declares. First War Powers Act, Pub. L. No. 77-354, tit. III, § 301, 55 Stat. 838, 839-840 (1941).

In 1971, President Nixon invoked TWEA to impose tariffs in response to a balance-of-payments deficit. Finding that “a prolonged decline in the international monetary reserves of the United States” had “seriously threatened” the Nation’s “trade and international competitive position,” and thus its “security,” he “declare[d] a national emergency” and assessed a 10% supplemental tariff on eligible imports. Pres. Proc. No. 4074, 85 Stat. 926 (1971). In *Yoshida*, this Court’s predecessor upheld that tariff.

2. In the 1970s, Congress revised the TWEA framework by enacting two statutes. *First*, the National Emergencies Act (NEA), Pub. L. No. 94-412, 90 Stat. 1255 (1976), “authorize[s] the President “to declare [a] national emergency” for the purpose of all “Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power.” 50 U.S.C. § 1621(a).

The NEA does not substantively limit the President’s determination of when a national emergency exists. Instead, Congress retained oversight of



such determinations through its power to “terminate[]” a declared emergency through “a joint resolution,” 50 U.S.C. § 1622(a)(1), on a set timetable, *id.* § 1622(b). Otherwise, an emergency “terminate[s] on the anniversary of the declaration of that emergency” absent a renewed Presidential determination. *Id.* § 1622(d).

*Second*, Congress amended TWEA by removing the President’s peacetime emergency powers under that Act, Pub. L. No. 95-223, § 101(a), 91 Stat. 1625, 1625 (1977), and replaced them with IEEPA. *Id.* tit. II, §§ 201-208, 91 Stat. at 1626-1629. IEEPA’s operative provision authorizes the President to “regulate ... any ... importation ... of ... any property in which any foreign country or a national thereof has any interest ... or ... any property[] subject to the jurisdiction of the United States.” 50 U.S.C. § 1702(a)(1)(B).

Section 1702’s language “directly draw[s]” from TWEA, *Dames & Moore*, 453 U.S. at 671-672, and the authority it confers is “essentially the same as” under TWEA, *Regan*, 468 U.S. at 228. But IEEPA specifies somewhat “different” “conditions and procedures for” the “exercise” of that authority. *Id.* IEEPA provides that the President’s § 1702 authority “may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national

security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.” 50 U.S.C. § 1701(a).

## **B. Factual Background**

These cases concern various presidential emergency declarations and actions taken by the President to address those emergencies.

1. *Canada and Mexico.* In January 2025, the President declared the flow of contraband drugs like fentanyl, and the resulting public-health crisis, to be a national emergency. Pres. Proc. 10,886, 90 Fed. Reg. 8,327 (Jan. 29, 2025). The President “expanded the scope of the national emergency declared in that proclamation to cover” conduct by the Canadian and Mexican governments that in his judgment had contributed to the crisis and thus constituted “an unusual and extraordinary threat . . . to the national security and foreign policy of the United States.” Exec. Order No. 14,193, 90 Fed. Reg. 9,113, 9,114 (Feb. 7, 2025); Exec. Order No. 14,194, 90 Fed. Reg. 9,117, 9,118 (Feb. 7, 2025). The President invoked his power under IEEPA to impose a 25% tariff on most Canadian and Mexican imports in response to that emergency, concluding “that action under other authority to impose tariffs [was] inadequate to address this unusual and extraordinary threat.” *Id.*

The President subsequently issued additional executive orders pausing most of the tariffs, citing Canada and Mexico's immediate steps to alleviate their role in the emergency and the need for additional time to assess those measures. Exec. Order No. 14,197, 90 Fed. Reg. 9,183 (Feb. 10, 2025); Exec. Order No. 14,198, 90 Fed. Reg. 9,185 (Feb. 10, 2025). The President later exempted from tariffs all Canadian and Mexican goods that qualify for duty-free entry under the United States-Mexico-Canada Agreement (USMCA). Exec. Order No. 14,231, 90 Fed. Reg. 11,785 (Mar. 11, 2025); Exec. Order No. 14,232, 90 Fed. Reg. 11,787 (Mar. 11, 2025).

2. *China.* The President further "expand[ed] the scope of the national emergency declared in" the initial proclamation to include conduct by the government of the People's Republic of China (PRC). Exec. Order No. 14,195, 90 Fed. Reg. 9,121 (Feb. 7, 2025). The President found that the PRC "has subsidized and otherwise incentivized PRC chemical companies to export fentanyl and related precursor chemicals that are used to produce synthetic opioids sold illicitly in the United States"; that "the PRC provides support to and safe haven for PRC-origin transnational criminal organizations (TCOs) that launder the revenues from the production, shipment, and sale of illicit synthetic opioids"; that "[m]any PRC-based chemical companies ...

go to great lengths to evade law enforcement”; and that “[t]he flow of contraband drugs like fentanyl to the United States through illicit distribution networks has created a national emergency, including a public health crisis in the United States.” *Id.* at 9,121.

As with Canada and Mexico, the President determined that the PRC’s conduct “constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States.” *Id.* at 9,122. He accordingly imposed a 10% duty on most goods imported from the PRC, *id.* at 9,122-9,123, then increased the duty to 20% when he determined that “the PRC has not taken adequate steps to alleviate the illicit drug crisis through cooperative enforcement actions,” Exec. Order. No. 14,228, 90 Fed. Reg. 11,463, 11,463 (Mar. 7, 2025). The President later imposed duties on low-value imports from the PRC because many PRC-based shippers “hide illicit substances and conceal the true contents of shipments sent to the United States through deceptive shipping practices” and may “avoid detection” if low-value shipments are exempt from tariffs. Exec. Order. No. 14,256, 90 Fed. Reg. 14,899, 14,899 (Apr. 7, 2025).

3. *Reciprocal Tariffs.* The President declared an additional emergency in April, citing “a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners’ economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits.” Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,041 (Apr. 2, 2025). The President further determined that “large and persistent annual U.S. goods trade deficits have led to the hollowing out of our manufacturing base” and a litany of other serious harms – deficits “caused in substantial part by a lack of reciprocity in our bilateral trade relationships.” *Id.*

The President accordingly acted “to rebalance global trade flows” by imposing a 10% tariff (effective April 5) “on all imports from all trading partners,” with certain exceptions. *Id.* at 15,045. The President also imposed additional country-specific tariffs (effective April 9). *Id.*

On April 9, the President suspended most country-specific tariffs for 90 days, citing many countries’ steps “toward remedying non-reciprocal trade arrangements.” Exec. Order No. 14,266, 90 Fed. Reg. 15,625, 15,626 (Apr. 15, 2025). But he raised the tariff rate for imports from the PRC to respond to retaliation by the PRC. *Id.*; see also Exec. Order No. 14,259, 90 Fed.

Reg. 15,509 (Apr. 14, 2025). More recently, the President suspended the additional PRC tariffs for 90 days “[i]n recognition of the intentions of the PRC to facilitate addressing the national emergency.” Exec. Order No. 14,298, 90 Fed. Reg. 21,831 (May 21, 2025).

### **C. This Litigation**

1. These appeals concern two cases. In *V.O.S. Selections*, companies challenged the reciprocal tariffs, seeking a temporary restraining order, a preliminary injunction, and summary judgment. A three-judge CIT panel denied a temporary restraining order, *V.O.S.* Dkt. 13, then consolidated briefing on the preliminary injunction and summary judgment. Meanwhile, a group of States led by Oregon separately sued in the CIT, seeking to enjoin both the reciprocal tariffs and the contraband-drug-related tariffs. The same CIT panel consolidated briefing in that case, A25, and held hearings in both.

2. Yesterday evening, the CIT issued a single opinion in *V.O.S.* and *Oregon*. The CIT held that IEEPA’s authorization to “regulate ... importation” did not support the reciprocal tariffs (which the CIT dubbed the “Worldwide and Retaliatory Tariffs,” A22). The CIT noted *Yoshida*’s holding that the phrase “regulate ... importation” as used in TWEA “includes the power to ‘impos[e] an import duty surcharge,’” A38 (quoting 526 F.2d at

576), but nonetheless concluded that that language did not authorize “the President to impose whatever tariff rates he deems desirable” because “such a reading would create an unconstitutional delegation of power.” A39. The CIT further held that Congress’s enactment of the Trade Act of 1974, which includes authority to address certain balance-of-payments issues, implicitly “removes the President’s power to impose remedies in response to balance-of-payments deficits, and specifically trade deficits, from the broader powers granted to a president during a national emergency under IEEPA.” A43.

As to the contraband-drug-related tariffs (the so-called “Trafficking Orders”), the CIT focused on IEEPA’s provision that the President’s powers under that statute “may be exercised to deal with” foreign threats as to which a national emergency is declared. A45. The CIT held that whether the President’s chosen means of addressing the declared emergencies “deal with” those emergencies was judicially reviewable, A46-52, and that the contraband-drug-related tariffs “do not ‘deal with’ their stated objectives” because they do “not evidently relate to foreign governments’ efforts ‘to arrest, seize, detain, or otherwise intercept’ bad actors within their respective jurisdictions,” but instead “aim to create leverage to ‘deal with’ those objectives” through negotiation. A54; *see* A55.

Turning to remedy, the CIT stated that the tariff orders would “be vacated and their operation permanently enjoined.” A57. The CIT further compelled the United States to restore prior tariff rates within 10 days. *Id.* The CIT declared that “[t]here is no question here of narrowly tailored relief” because the challenged orders “are unlawful as to all.” *Id.*

## **ARGUMENT**

A stay pending appeal depends on “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 426 (2009). Here, those factors strongly favor the government.

### **I. The Government Is Likely To Prevail On The Merits**

#### **A. IEEPA Clearly Authorizes These Tariffs**

The statutory text, history, and binding precedent confirm that Congress empowered the President to impose tariffs in response to declared emergencies, and that these tariffs fall well within the bounds of the President’s broad powers under IEEPA.



1. *Yoshida* interpreted the substantively identical statutory text of IEEPA’s predecessor statute—the power “to ‘regulate importation’”—and held that it includes the power to “impos[e] an import duty surcharge.” 526 F.2d at 576; *see id.* at 575. That holding tracks the ordinary meaning of “regulate”: 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.” *Regulate*, Black’s Law Dictionary 1156 (5th ed. 1979). That interpretation controls here, since this Court follows *Yoshida* and other holdings of its predecessor court. *See South Corp. v. United States*, 690 F.2d 1368, 1370 (Fed. Cir. 1982) (en banc).

Congress removed any doubt about this interpretation by incorporating the “regulate importation” language into IEEPA after *Yoshida*. “Congress is presumed to be aware of an administrative or judicial interpretation of a statute,” *Lorillard v. Pons*, 434 U.S. 575, 580 (1978), and “when Congress ‘adopt[s] the language used in [an] earlier act,’” courts “presume that Congress ‘adopted also the construction given’” to that language, *Georgia v. Public.Resource.Org*, 590 U.S. 255, 270 (2020). Indeed, the House Report on IEEPA cited *Yoshida* and explained its holding. H.R. Rep. No. 95-459, at 5.

2. The CIT seemingly agreed that IEEPA authorizes the President to impose *some* tariffs, yet held that IEEPA does not authorize the President to impose *these* tariffs based on major-questions doctrine and nondelegation concerns. A35. That is manifestly wrong.

a. The major questions doctrine addresses the “particular and recurring problem” of “*agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.*” *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (emphasis added). But those concerns dissipate when, as here, Congress delegates authority directly to the President—“the most democratic and politically accountable official in Government,” *Seila Law LLC v. CFPB*, 591 U.S. 197, 224 (2020). See, e.g., *Mayes v. Biden*, 67 F.4th 921, 933 (9th Cir.), *vacated as moot*, 89 F.4th 1186 (9th Cir. 2023).

Further, the concerns animating the major questions doctrine are inapplicable. That doctrine counsels “skepticism” where “an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’” *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014), particularly where there is an apparent “‘mismatch[.]’” between the breadth of the asserted power and the “narrow[ness]” of the statute in which the agency claims to have discovered it, *Biden v. Nebraska*,

600 U.S. 477, 517-518 (2023) (Barrett, J., concurring), and where the asserted power falls outside the agency’s “wheelhouse,” *id.* But IEEPA is on its face a broad, deliberate delegation of power for the President in the domains of foreign policy and national security – areas that implicate the President’s expertise and independent constitutional authority, *see, e.g., Department of the Navy v. Egan*, 484 U.S. 518, 529-530 (1988). *Cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-637 (1952) (Jackson, J., concurring in the judgment).

b. Similarly, the nondelegation doctrine poses no obstacle. The constitutional avoidance canon applies only when an interpretation raises “serious constitutional doubts” and the statutory is “susceptible” to another interpretation. *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Neither is true here.

*First*, there is no serious nondelegation concern because Congress has not delegated unintelligible or unbounded power in IEEPA. *Yoshida* rejected a nondelegation challenge to IEEPA’s predecessor. 526 F.2d at 580-581. And this Court rejected a nondelegation challenge to a similar delegation of tariff authority: Section 232 of the Trade Expansion Act of 1962, which “‘empowers and directs the President to act to alleviate threats to national security

from imports.’” *PrimeSource Building Prods. v. United States*, 59 F.4th 1255, 1257-1257, 1263 (Fed. Cir. 2023). Every court of appeals to have considered the question has upheld IEEPA against nondelegation challenges. *See United States v. Shih*, 73 F.4th 1077, 1092 (9th Cir. 2023) (collecting cases), *cert. denied*, 144 S. Ct. 820 (2024).

For good reason: The Supreme Court has long held that the nondelegation doctrine is inapplicable in the foreign-affairs context. *See, e.g., United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 314-329 (1936). When Congress delegates “authority over matters of foreign affairs,” it “must of necessity paint with a brush broader than that it customarily wields in domestic areas.” *Zemel v. Rusk*, 381 U.S. 1, 17 (1965). Regardless, the powers IEEPA grants “are explicitly defined and circumscribed,” *United States v. Arch Trading Co.*, 987 F.2d 1087, 1093 (4th Cir. 1993); *see United States v. Dhafir*, 461 F.3d 211, 217 (2d Cir. 2006)—conditioned on the President’s determination of a particular type of threat to the Nation and limited to measures of the type Congress determined were potentially appropriate. The President asserts not unlimited tariff authority but tariff authority to deal with emergencies once certain conditions are met. And Congress retained the power to oversee the President’s determination of an emergency and his chosen response.

*United States v. Amirnazmi*, 645 F.3d 564, 576 (3d Cir. 2011). “[T]hese statutory restrictions strike ‘a careful balance between affording the President a degree of authority to address the exigencies of national emergencies and restraining his ability to perpetuate emergency situations indefinitely.’” *Shih*, 73 F.4th at 1092.

*Second*, the CIT did not identify a “plausible construction” of the statutory text, *Jennings*, 583 U.S. at 296, that would avoid its nondelegation concern. As discussed above, the CIT gave no consistent meaning at all to the phrase “regulate ... importation.” Rather, the CIT concluded that the imposition of tariffs sometimes qualifies as “regulat[ing] ... importation ... of ... property,” 50 U.S.C. § 1702(a)(1)(B), and sometimes does not, depending on the nature of the tariffs. But “[i]n all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning.” *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019). If the power to “regulate ... importation” includes the power to impose tariffs—as the CIT recognized it could—then the court should have proceeded to deferentially assess whether these tariffs related to the declared emergencies. Instead, the court asserted the power to refashion IIEPA’s core operative provision so that tariffs sometimes constitute “regulat[ions]” of “importation” and

sometimes not. The avoidance canon does not allow courts to “rewrite” statutes in that manner. *Jennings*, 583 U.S. at 286.

3. Finally, the CIT construed Section 122 of the Trade Act of 1974, which “grants the President authority to impose restricted tariffs in response to ‘fundamental international payment problems,’ including ‘large and serious balance-of-payments deficits,’ and unfair trading practices,” as impliedly “limiting any such authority in the broader emergency powers under IEEPA.” A40.

That reasoning fails. Courts “approach federal statutes touching on the same topic with a ‘strong presumption’ they can coexist harmoniously. Only by carrying a ‘heavy burden’ can a party” establish “that one statute ‘displaces’ a second.” *Department of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024). That burden is not satisfied here. IEEPA’s emergency powers are “merely complementary,” *id.*, to the powers in Section 122, which are both narrower (in being limited to tariffs that respond to only one type of concern) and broader (in not being limited to declared emergencies). The CIT flouted basic statutory-interpretation principles in reading Section 122 as an implied exception to the later-enacted IEEPA’s broad powers.

**B. The Contraband-Drug-Related Tariffs Are Reasonably Related To The Emergencies The President Identified**

The CIT further erred in second-guessing the President's judgment that these tariffs are needed to address the national emergencies he declared.

1. Courts cannot properly review the President's decision to declare a national emergency, which implicates quintessential foreign-policy and national-security judgments entrusted to the Executive. As *Yoshida* recognized, "courts will not review the bona fides of a declaration of an emergency by the President." 526 F.2d at 581 n.32; accord *Chang v. United States*, 859 F.2d 893, 896 n.3 (Fed. Cir. 1988); *Shih*, 73 F.4th at 1092. "Matters relating 'to the conduct of foreign relations ... are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.'" *Regan*, 468 U.S. at 242. And the President's determination of what constitutes an "extraordinary and unusual" threat is incapable of meaningful judicial review, because of both its discretion-laden nature and the lack of judicially manageable standards. See *Webster v. Doe*, 486 U.S. 592, 599-601 (1988); *Baker v. Carr*, 369 U.S. 186, 217 (1962).

2. The CIT did not question the President's judgment as to the existence of national emergencies, yet invalidated the contraband-drug-related

tariffs for purportedly not “deal[ing] with” those emergencies, 50 U.S.C. § 1701. But courts cannot scrutinize “[w]hether the President’s chosen method of addressing perceived risks is justified from a policy perspective.” *Trump v. Hawaii*, 585 U.S. 667, 686 (2018). Such scrutiny is “inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere.” *Id.*; accord *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010).

Thus, in *PrimeSource*, this Court refused to “second-guess the facts found and measures taken by the President” under Section 232, which ““empowers and directs the President to act to alleviate threats to national security from imports.”” *Id.* at 1257-1258, 1263; *see id.* at 1263. And where this Court has entertained statutory challenges to a Presidential action “[i]n international trade controversies of this highly discretionary kind” implicating “foreign affairs,” it limited the scope of those challenges and emphasized that ““the President’s findings of fact and the motivations for his action are not subject to review.”” *Maple Leaf Fish Co. v. United States*, 762 F.2d 86, 89 (Fed. Cir. 1985). To be sure, *Yoshida* suggested broader review of the “extent to which the action taken” by the President bore “a reasonable relation to the power delegated” by Congress “and to the emergency giving rise to the



action,” 526 F.2d at 578-579. But that aspect of *Yoshida* has been superseded, and even if it had not, it still would not support the CIT’s intrusive analysis.

The CIT thus manifestly erred in flyspecking the nexus between the contraband-drug-related tariffs and the emergencies the President declared. The CIT held that the tariffs “do not ‘deal with’ their stated objectives” because they merely “aim to create leverage to ‘deal with’ those objectives.” A54. But creating leverage “in negotiating the resolution of a declared national emergency,” *Dames & Moore*, 453 U.S. at 673, is a central point of IEEPA. The CIT did not dispute that the tariffs were imposed for that purpose or that they have had that effect, and its conclusion that the creation of leverage to negotiate over solutions to a crisis is not a way of “dealing with” that crisis is profoundly incorrect.

### **C. The CIT Ignored Equitable Requirements For Injunctive Relief**

This Court could also stay the injunction for a simple, independent reason: The CIT issued a sweeping, unprecedented, economy-threatening permanent injunction against the challenged tariffs without applying the traditional four-factor test for injunctive relief that requires considering the equities and public interest. Indeed, the CIT said not a word about the

equitable requirements of irreparable harm or balancing the equities. *See Starbucks*, 602 U.S. at 346; *eBay*, 547 U.S. at 391. The Supreme Court has repeatedly held that courts lack authority to depart from the traditional equitable factors unless Congress provides otherwise, and Congress did not do so here.

## **II. The Equitable Factors Favor A Stay**

The remaining stay factors overwhelmingly favor the government. A stay is necessary to prevent the injunction from causing extraordinary, immediate, irreparable harm to our economy and national security, and a stay would not harm plaintiffs. The equitable factors thus weigh decisively in the government's favor, and "the public interest and balance of equities factors merge" where "the government is the party" against whom an injunction is sought, *MediNatura, Inc. v. FDA*, 998 F.3d 931, 945 (D.C. Cir. 2021).

1. As members of the President's Cabinet have attested, the CIT's order would irreparably harm the economic and national security of the United States. The Secretary of Commerce explained that the injunction "would undermine the United States-United Kingdom trade deal that was negotiated in reliance on the President's emergency tariff authority," plus the recent "China trade agreement," and "would jeopardize the dozens of

similar arrangements with foreign-trading partners that” are being negotiated. A76. “Each of these negotiations,” the declaration explained, “is premised on the credible threat of enforcement of the IEEPA tariffs,” and the injunction could compromise that threat, so that “foreign counterparts will have reduced incentives to reach meaningful agreements[.]” *Id.* That could “leave the American people exposed to predatory economic practices by foreign actors[] and threaten national security.” A78.

The Secretary of State, Secretary of the Treasury, and U.S. Trade Representative similarly explained that the trade negotiations “currently ongoing ... with dozens of countries” are “in a delicate state” and could be “shattered[]” by an injunction against the tariffs. A85-86 (Treasury); *see* A81 (State); A90 (Trade). Some negotiations, like those with the United Kingdom, have led to “framework agreements” subject to further “negotiat[ion] on details,” while others “have not yet reached a framework agreement.” A86 (Treasury); *see* A90 (Trade); A81 (State). Those negotiations “are premised on the ability of the President to impose tariffs under IEEPA.” A81 (State). Worse, those Cabinet members projected, an injunction could lead trading partners to take retaliatory actions that the credible threat of further tariffs would otherwise have deterred. A86 (Treasury); A82 (State). The

Trade Representative described that prospect as “a foreign policy disaster scenario,” A91, and the Secretary of State observed that it “would cause significant and irreparable harm to U.S. foreign policy and national security,” A80.

These harms are plainly irreparable. Absent a stay, even if this Court ultimately upholds the tariffs, the CIT’s permanent injunction may have compromised delicate, time-sensitive foreign negotiations, perhaps irrevocably. And, absent a stay, the government will receive reduced revenue that it will be unable to recoup if the tariffs are ultimately upheld – another irreparable harm. *See Department of Educ. v. California*, 145 S. Ct. 966, 968-969 (2025) (per curiam).

2. Conversely, a stay would not cognizably harm plaintiffs. If tariffs imposed on plaintiffs during these appeals are ultimately held unlawful, then the government will issue refunds to plaintiffs, including any post-judgment interest that accrues. *See Sunpreme Inc. v. United States*, 2017 WL 65421, at \*5 (C.I.T. Jan. 5, 2017) (“there is virtually no risk to Plaintiff that it would not be made whole should it prevail”). The balance of harms is not close.

3. At a minimum, this Court should stay the injunction as to non-parties. Article III requires that “a plaintiff’s remedy must be ‘limited to the inadequacy that produced his injury,’” *Gill v. Whitford*, 585 U.S. 48, 66 (2018), and traditional equitable principles require that injunctions be “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs,” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The Supreme Court has thus stayed relief running solely to nonparties that was unnecessary to provide relief to the plaintiffs. *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921 (2024).

The CIT ran roughshod over those principles, declaring that there is “no question here of narrowly tailored relief” because the tariffs would be equally unlawful as to both plaintiffs and non-plaintiffs. A57. The mere fact that a court might reach the same legal conclusion as to non-parties does not justify the entry of relief wholly unnecessary to remedy a plaintiff’s injury.

## CONCLUSION

This Court should stay the CIT's judgment pending appeal and grant an immediate administrative stay.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,193 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in 14-point Book Antiqua, a proportionally spaced typeface.

/s/ Daniel Winik

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