EMERGENCY POWERS, TARIFFS, AND JUDICIAL REVIEW AFTER THE SUPREME COURT'S TARIFF DECISIONS

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This paper examines the limits of presidential authority to impose tariffs under the International Emergency Economic Powers Act (IEEPA) following a Supreme Court decision invalidating tariffs imposed by Donald Trump through executive orders. The Court held that the tariffs exceeded the powers delegated to the executive branch under IEEPA, which permits the president to regulate commerce during a national emergency arising from a foreign threat. Although a majority concluded that the tariffs constituted executive overreach, the justices sharply disagreed over the legal reasoning, producing multiple competing majority opinions and a vigorous dissent.

This paper argues that when the President invokes IEEPA to impose tariffs, an authority which is historically and constitutionally vested in Congress, courts must engage in meaningful judicial review of the asserted "national emergency." Treating emergency declarations as categorically beyond judicial scrutiny allows temporary statutory powers to evolve into permanent economic policy, undermining the separation of powers and Congress's authority under Article I of the United States Constitution.[2] *Judicial review of emergency declarations is, therefore, not only permissible but constitutionally required to preserve the balance between the political branches.*

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[2] U.S. Const. art. I, § 8, cls. 1, 3.

INTRODUCTION

In a 6–3 decision, the Supreme Court of the United States struck down sweeping tariffs imposed by Donald Trump through a series of executive orders.[3] The dispute arose after the administration implemented two sets of tariffs on foreign goods. The first, deemed "trafficking tariffs," targeted imports from China, Canada, and Mexico as part of an effort to stem the flow of fentanyl into the United States. The second, "reciprocal tariffs," applied broadly to imports from numerous countries and were justified as a response to large trade deficits allegedly threatening the nation's economy and national security.

The administration relied on the International Emergency Economic Powers Act (IEEPA) of 1977,[4] a statute that authorizes the president to regulate certain economic transactions during a national emergency involving a foreign threat. The Court concluded that the tariffs exceeded the authority delegated by the statute. Yet the decision revealed deep divisions among the justices. While a majority agreed that the tariffs were unlawful, the Court fractured over the reasoning, producing multiple

[3] Amy Howe, *Supreme Court Strikes Down Tariffs*, SCOTUSBLOG (Feb. 20, 2026, 4:21 PM), https://www.scotusblog.com/2026/02/supreme-court-strikes-down-tariffs/.
[4] International Emergency Economic Powers Act, Pub. L. No. 95-223, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. §§ 1701–1708).

opinions reflecting competing views about statutory interpretation, executive power, and the scope of the major questions doctrine.

These disagreements highlight a broader constitutional problem: the increasing use of emergency authorities to justify significant economic policymaking. Tariffs historically fall within Congress's power to regulate commerce under Article I of the United States Constitution,[5] yet modern statutes have delegated limited emergency powers to the executive branch.[6] When presidents invoke those statutes expansively, courts must determine whether such actions fall within the statutory delegation or impermissibly displace congressional authority.

When the president invokes the IEEPA to impose tariffs, courts must engage in meaningful review of the asserted national emergency. Treating emergency declarations as categorically beyond judicial scrutiny allows temporary powers to evolve into permanent economic policy, undermining the separation of powers. Judicial review of emergency declarations is therefore not only permissible but constitutionally required.

This paper proceeds in four parts. Part I examines the constitutional allocation of tariff authority and the historical role of Congress in regulating foreign commerce. Part II analyzes the structure and purpose of IEEPA, as well as the limits of its emergency powers. Part III evaluates the Supreme Court's decision and the competing approaches taken by the justices. Part IV argues that courts must review the validity of emergency declarations when they are used to justify sweeping economic measures, such as tariffs.

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[5] U.S. Const. art. I, § 8, cl. 3.

[6] Andres B. Schwarzenberg, Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* (2025), https://www.congress.gov/crs-product/R45618.

I. THE TARIFFS AND THE CASE BEFORE THE COURT

A. *The "Trafficking" and "Reciprocal" Tariffs*

The dispute that culminated in the Supreme Court's decision began when Trump issued several executive orders imposing tariffs. The first set of tariffs, called "Trafficking Tariffs," was targeted at products that originated from China, Canada, and Mexico in an attempt to stop the flow of fentanyl into the United States. As a justification for these tariffs, Trump claimed that large trade deficits were an "unusual and extraordinary threat to national security and the economy of the United States."[7] This language is borrowed from the IEEPA.[8] The second set of tariffs, known as "Reciprocal Tariffs," imposed a 10% tariff on imports from all countries and an even higher rate on imports from many others. The tariffs were framed as "reciprocal" measures as they were intended to counter foreign tariffs.[9] Despite their different rationales, both measures relied on IEEPA's emergency powers. The legality of that reliance ultimately became the central issue before the Supreme Court.

B. *Statutory Basis: IEEPA*

Congress enacted the International Emergency Economic Powers ACT (IEEPA) in 1977 to give the president authority to respond to extraordinary foreign threats.[10] The statute allows the president to regulate economic transactions after declaring a national emergency involving an "unusual and extraordinary threat" originating outside the United States. Historically, presidents have used the IEEPA to freeze assets, impose sanctions on foreign countries, and restrict financial transactions. However, tariffs have rarely been imposed under the IEEPA, as they are not

[7] Exec. Order No. 14,257, 90 Fed. Reg. 15,625 (Apr. 2, 2025).
[8] 50 U.S.C. § 1701(a).
[9] Howe, *supra* note 3.
[10] 50 U.S.C. §§ 1701–1708.

fundamentally characterized as sanctions or restrictions and instead function primarily as taxes on imports. For example, in *Dames & Moore v. Regan,* 453 U.S. 654 (1981), the Supreme Court upheld the Carter administration's decision to freeze Iranian assets in response to the 1979 Iranian Hostage Crisis, holding that such actions were authorized under the IEEPA. Importantly, the measures approved in *Dames & Moore* only allowed the president to utilize financial restrictions to address a specific national security emergency, rather than impose broad economic measures on imports. This limited authorization suggests that the IEEPA does not grant the president sweeping authority to impose tariffs, which normally falls under the jurisdiction of the legislative branch under Article I's power over taxation and foreign commerce.[11]

C. *Procedural History*

Challenges to the tariffs quickly emerged from businesses and importers affected by the new duties. Several companies filed lawsuits in the Court of International Trade, arguing that the tariffs exceeded the authority granted under IEEPA and violated the constitutional allocation of Congress's ability to control tariffs. The plaintiffs argued that even if IEEPA permits the president to regulate economic transactions during emergencies, the statute does not authorize taxing imports.

The Court of International Trade agreed with the challengers and concluded that the tariffs were unlawful.[12] The court reasoned that Congress had not delegated tariff authority through the IEEPA and that allowing such a broad interpretation would dramatically expand presidential power over trade policy. The government appealed the

[11] U.S. Const. art. I, § 8, cls. 1, 3.

[12] *V.O.S. Selections, Inc. v. United States*, No. 25-00066, slip op. at 1 (Ct. Int'l Trade May 28, 2025), *aff'd sub nom. Trump v. V.O.S. Selections, Inc.*, 149 F.4th 1312 (Fed. Cir. 2025).

decision to the United States Court of Appeals for the Federal Circuit, which affirmed the lower court's ruling. Given the economic significance of the tariffs and the constitutional questions presented, the Supreme Court granted certiorari to resolve the dispute.

The case thus presented two closely related issues. First, the Court was asked to determine whether the IEEPA authorizes the president to impose tariffs during a national emergency. Second, the Court confronted a broader question concerning the role of courts in reviewing presidential emergency declarations. These questions implicate fundamental principles of separation of powers and the proper allocation of economic authority between Congress and the executive branch.

II. THE SUPREME COURT'S FRACTURED DECISION

A. *The Majority's Holding*

In a 6–3 decision, the Supreme Court concluded that the tariffs exceeded the authority delegated to the president under IEEPA. Writing for the Court, the majority emphasized that although the statute allows the president to regulate certain economic transactions, it does not explicitly authorize the imposition of tariffs. Because tariffs have historically been enacted by Congress through legislation, the Court required clear statutory authorization before allowing the executive branch to impose such duties.

The majority's reasoning reflects a longstanding principle of constitutional law: presidential authority must ultimately derive from either the Constitution itself or from statutes enacted by Congress. When the president acts without clear statutory authorization, courts must examine whether the action intrudes upon powers assigned to Congress. This framework was famously articulated in Youngstown Sheet & Tube Co. v.

Sawyer,[13] in which the Court invalidated President Truman's attempt to seize steel mills during the Korean War. Justice Jackson's concurring opinion explained that presidential authority is at its lowest ebb when the executive acts without congressional authorization or contrary to congressional policy.

Applying this framework, the Court concluded that interpreting IEEPA to permit sweeping tariffs would represent a dramatic expansion of executive authority. Because Congress had enacted numerous statutes governing tariff policy but had not explicitly granted such authority through IEEPA, the Court declined to infer such a delegation.

B. *Competing Majority Rationales*

Although a majority agreed that the tariffs were unlawful, the justices disagreed about the reasoning underlying the decision. Some members of the Court emphasized traditional principles of statutory interpretation, arguing that the text and structure of IEEPA simply do not authorize tariffs. According to this view, the statute's focus on regulating transactions cannot reasonably be interpreted to include the imposition of duties on imports.

Other justices suggested that the case was instead subject to the major questions doctrine, a principle of administrative law requiring clear congressional authorization before agencies or the executive branch undertake actions with vast economic or political significance. In recent years the Court has invoked this doctrine in cases involving major regulatory initiatives, including West Virginia v. EPA.[14] Under this approach, the imposition of sweeping tariffs affecting the entire national economy would require explicit congressional approval.

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[13] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring).

[14] *West Virginia v. EPA*, 597 U.S. 697 (2022).

These differing rationales reflect an ongoing debate within the Court about how aggressively courts should police the boundaries of executive power. Some justices prefer narrow statutory interpretations, while others rely on broader constitutional doctrines designed to protect the separation of powers.

C. *The Dissents*

The dissenting justices took a markedly different view of the president's authority under IEEPA. In their view, the statute grants the president broad power to regulate economic transactions involving foreign actors during national emergencies. Because tariffs affect the conditions under which goods enter the United States, the dissent argued that they fall within the statute's broad grant of authority.

The dissenters also emphasized the need for judicial deference in matters involving national security and foreign policy. Courts, they argued, lack the institutional competence to evaluate complex economic threats or international crises. In previous cases, the Court has recognized the executive branch's comparative advantage in these areas. For example, in Trump v. Hawaii,[15] the Court deferred to the executive branch's national security determinations regarding immigration restrictions.

From this perspective, the majority's decision risks unduly constraining the president's ability to respond quickly to emerging threats. Nevertheless, the majority rejected this argument, concluding that even in the context of national emergencies, executive authority must remain grounded in statutory authorization.

IV. THE DANGER OF UNREVIEWED EMERGENCY DECLARATIONS

A. *The Problem of Indefinite Emergencies*

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[15] *Trump v. Hawaii*, 585 U.S. 667 (2018).

Modern emergency statutes raise a significant structural concern: national emergencies can persist indefinitely.[16] Once declared, emergencies often remain in effect for years or even decades, allowing presidents to exercise extraordinary powers long after the original crisis has subsided.[17] This phenomenon risks transforming emergency authorities into ordinary tools of governance.

IEEPA itself illustrates this problem. Numerous emergency declarations issued under the statute remain active long after their initial justification.[18] While Congress retains the ability to terminate emergencies through legislation, political realities often make such action difficult. As a result, emergency powers may persist without meaningful oversight.

This paper contends that allowing the executive branch to invoke such powers without judicial review would undermine the constitutional structure designed to prevent the concentration of authority in a single branch of government. Emergency powers are intended to address extraordinary situations, not to provide an alternative mechanism for implementing major economic policies.

B. *Why Emergencies Cannot Be Categorically Nonjusticiable*

Some defenders of broad executive authority argue that courts should not review the validity of presidential emergency declarations. According to this view, such determinations are inherently political and beyond the competence of the judiciary. Yet this argument misunderstands the nature of judicial review.

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16 BRENNAN CTR. FOR JUSTICE, *A Guide to Emergency Powers and Their Use* (2021), https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use.

17 Schwarzenberg, *supra* note 6.

18 *See* 50 U.S.C. § 1622.

Courts need not second-guess the wisdom of national security policy to review whether statutory conditions have been satisfied. Judicial review simply ensures that the executive branch acts within the limits established by Congress. The Supreme Court has long recognized the judiciary's responsibility to enforce constitutional and statutory boundaries. In *INS v. Chadha*[19] for example, the Court emphasized that separation of powers requires each branch of government to operate within its constitutionally assigned sphere.

For this reason, treating emergency declarations as categorically nonjusticiable would effectively eliminate an important safeguard against executive overreach. Judicial review is therefore necessary to preserve the balance between the political branches.

V. A FRAMEWORK FOR MEANINGFUL JUDICIAL REVIEW

A. *Judicial Review Without Policymaking*

The Supreme Court's decision, while correct in striking down the tariffs, left an important question unresolved: it told us what IEEPA does not authorize, but offered no guidance on how courts should evaluate emergency tariffs going forward. None of the opinions, majority or concurring, articulated a standard for reviewing the validity of the emergency declarations themselves. The majority focused narrowly on statutory interpretation, and the concurrences debated the major questions doctrine, but no justice squarely addressed the institutional question of how courts should conduct meaningful review without overstepping into policymaking. That gap is what this paper seeks to fill. The framework proposed here is therefore not derived from the Court's reasoning but is advanced as an independent argument for how courts ought to proceed when IEEPA is invoked to justify sweeping economic measures.

[19] *INS v. Chadha*, 462 U.S. 919 (1983).

Allowing courts to review emergency tariffs does not mean that judges should decide trade policy. Courts are not equipped to determine the best tariff rate or evaluate complex economic policy choices. Those decisions belong to Congress and, within statutory limits, the executive branch. Instead, the role of courts is narrower: ensuring that when the president invokes IEEPA, the action actually falls within the authority Congress delegated.

When the executive imposes tariffs under an emergency statute, courts should ask whether the president is truly exercising emergency authority or whether the statute is being used to implement a broader trade policy. This type of review does not require courts to evaluate the wisdom of the policy. Rather, it requires courts to determine whether the executive action fits within the statutory limits set by Congress. Without some level of judicial review, the requirement of a "national emergency" risks becoming little more than a label that allows the executive to exercise powers that were meant to be temporary and limited.

Judicial review in this context, therefore, protects the constitutional balance between the branches. It allows the president to respond quickly to genuine foreign threats while ensuring that Congress retains its primary role in regulating foreign commerce.

B. *A Three-Part Standard for Emergency Tariffs*

To balance these concerns, courts should apply a limited three-part framework when evaluating tariffs imposed under IEEPA. This framework focuses on the relationship between the emergency declaration and the tariffs themselves. Rather than second-guessing economic policy, courts would examine whether the tariffs remain tied to the conditions that justify the exercise of emergency authority. Three factors are especially important: nexus, proportionality, and temporality.

First, courts should ask whether there is a meaningful nexus between the declared emergency and the tariffs. IEEPA allows the president to regulate economic activity only when an unusual foreign threat creates a national emergency.[20] The tariffs imposed in response should therefore be connected to the threat identified by the executive branch. If tariffs target industries or countries that have little relation to the emergency, the connection between the emergency declaration and the economic measure becomes weak. Requiring a nexus ensures that emergency powers remain tied to the situation that justified them in the first place.

Second, courts should consider proportionality, asking whether the tariffs are reasonably tailored to the threat or instead operate as sweeping economic measures. Emergency powers are meant to address specific crises, not to serve as a substitute for ordinary trade policy. When tariffs apply broadly across many countries or sectors of the economy, they begin to resemble general economic policymaking rather than a targeted emergency response. Proportionality review helps ensure that the scope of the tariffs reflects the scope of the emergency.

Finally, courts should consider temporality, ensuring that tariffs imposed under emergency authority remain temporary. Emergency powers are justified because they respond to extraordinary circumstances, but those circumstances are expected to change over time. If tariffs imposed under IEEPA remain in place indefinitely, they risk turning emergency authority into a permanent tool of trade policy. Requiring that such measures be time-limited or periodically reassessed helps preserve the temporary nature of emergency powers.

[20] 50 U.S.C. § 1701(a).

Together, these three considerations—nexus, proportionality, and temporality—allow courts to review emergency tariffs without becoming policymakers themselves. The framework ensures that emergency powers remain connected to genuine threats while preventing them from evolving into long-term economic policy outside the ordinary legislative process.

CONCLUSION

The Supreme Court's decision striking down the Trump administration's tariffs under IEEPA marks an important but incomplete victory for the separation of powers. The Court correctly recognized that tariff authority is constitutionally vested in Congress and that IEEPA cannot be stretched to authorize sweeping economic measures without clear statutory delegation. Yet the decision left unanswered a deeper question: when the president does invoke IEEPA, what role should courts play in reviewing the emergency declaration itself?

This paper has argued that the answer must be meaningful judicial review. Treating emergency declarations as categorically beyond judicial scrutiny would allow the executive branch to use the language of crisis to justify permanent economic policy, precisely the kind of institutional drift the Constitution was designed to prevent. The three-part framework proposed here, nexus, proportionality, and temporality, offers courts a principled path forward that enforces statutory limits without asking judges to second-guess trade policy.

Emergency powers were designed to be exceptional. When they become routine, the constitutional structure that depends on their exceptionality begins to erode. Courts must be willing to enforce the boundaries of the statutes they interpret. Without that check, IEEPA risks becoming not a tool for responding to foreign crises but a standing invitation for unchecked executive economic policymaking by the other branches. The Constitution does not permit that outcome, and courts should not either.