



Supreme Court Hears Oral Arguments in Trump v. V.O.S. Selections, Inc. and Learning Resources, Inc. v. Trump Concerning Trafficking and Reciprocal Tariffs

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November 6, 2025

On November 5, 2025, the U.S. Supreme Court heard oral arguments in the consolidated case of *Trump v. V.O.S. Selections, Inc.* and *Learning Resources, Inc. v. Trump*. This case is about presidential power. Specifically, the Court is faced with the question of whether the International Emergency Economic Powers Act of 1977 (IEEPA) can be correctly interpreted as authorizing President Trump's imposition of tariffs addressing national emergencies declared with respect to human trafficking, illicit drug trafficking, and non-reciprocal trade practices and trade deficits. The Court also faces the question of whether, constitutionally, Congress lawfully delegated that power to the President via IEEPA. Three lower courts have ruled that IEEPA did not authorize President Trump's imposition of the tariffs. During oral arguments, a majority of the Court seemed inclined to agree.

The stakes of this case are high. So far during his second term, President Trump has repeatedly relied on IEEPA to impose tariffs (including tariffs beyond those contested in this case), modify and suspend the tariffs, and use his ability to do so as leverage in negotiating bilateral trade agreements with trading partners. If the Supreme Court sustains lower court rulings invalidating the tariffs, a centerpiece of President Trump's trade policy agenda will be upended, and he will likely need to turn to other trade laws that generally afford the President more limited authority to act. Toward the end of oral arguments, Justice Barrett also alluded to the high stakes of this case for companies that have paid and continue to pay the tariffs at issue: Will they be entitled to refunds? What would a refund process entail? Beyond its high political profile, the Court's decision in this case could also significantly shape our understanding of the balance of power between the President and Congress.

Takeaways from Oral Arguments

The justices' questions and commentary during oral arguments are not always nor necessarily predictive of how they may ultimately rule. The oral arguments did, however, clarify the central issues that the Court is considering. A majority of the Court appeared to be skeptical that IEEPA could be construed as authorizing the President to impose tariffs on any country, at any rate, and for any duration as the President deems necessary.

1. The Court Is Grappling with Two Main Legal Issues: Whether Congress Authorized

Tariffs under IEEPA and Whether the Statute's Delegation of Power to the President Was Constitutional

At the outset, the justices – including six justices who peppered the Solicitor General with questions before he could answer the first one posed by Justice Thomas – homed in on the question of whether Congress did (the statutory interpretation question) or could (the constitutional non-delegation question) cede its power to impose revenue-raising tariffs to the president by enacting IEEPA. The Court will generally resist invalidating an action as unconstitutional if it can instead do so on statutory grounds, but our summary here begins with the constitutional issue because that was the overarching focus of the justices' inquiries during oral argument.

Did Congress constitutionally delegate, via IEEPA, its power to tax and its power to regulate foreign commerce to the President?

While the case began at the trial court level as one focused primarily on the textual interpretation of IEEPA, yesterday's oral arguments revealed the extent to which the case has morphed into a question of separation of powers – how Congress can lawfully delegate its power to tax or regulate foreign commerce in the form of imposing revenue-raising tariffs. In particular, the Court is wrestling with the tension between the Constitution's Article I grant to Congress of the powers to tax and regulate foreign commerce with Article II's grant to the President the power to conduct foreign affairs. Tariffs, as the Court and the parties observed, appear relevant to all three of these powers.

Of the nine justices, at least Chief Justice Roberts and Justices Sotomayor, Kagan, Barrett, and Jackson appeared to be leaning toward “no” in deciding at least the constitutional question. Several others, including Justice Gorsuch, also appeared reluctant to uphold the tariffs because doing so could, as a practical matter, enable a one-way transfer of power from Congress to the President that would be exceptionally difficult for Congress to reclaim.

The Government contends that the neither the judicial (and somewhat overlapping) major questions doctrine nor nondelegation principle preclude the Court from concluding that Congress authorized the President to impose tariffs using IEEPA. Under the major questions doctrine, when the Government attempts to invoke broad authority with vast economic and political significance, courts may have reason to be skeptical that Congress intended to confer such broad power. Relatedly, under the nondelegation doctrine, courts require Congress to articulate an “intelligible principle” by which another branch of government is expected to conform when Congress delegates its power to that branch. These doctrines are intended to preserve the Constitution's separation of powers between the three branches of the federal government. The majority of the U.S. Court of Appeals for the Federal Circuit (CAFC) held that the Government's argument runs afoul of the major questions doctrine, and four CAFC judges also wrote separately adding that IEEPA cannot be construed as delegating to the President the power to impose tariffs because the law lacks any limits on such an action.

In dealing with these separation of powers principles during oral arguments, Chief Justice Roberts and other members of the Court struggled with whether IEEPA properly delegated Congress's core constitutional powers to impose taxes and regulate foreign commerce. Several justices engaged in a line of questions on the concept of taxation, asking about the significance of the IEEPA tariffs in raising revenue, or conversely, whether the tariffs are permissible if and to the extent that their purpose or predominant effect is something other than to raise revenue. At one point, the Solicitor General raised the concept of a “regulatory” tariff in an effort to make such a distinction. The Chief Justice and others also pointed out the unprecedented nature of President Trump's attempt to use IEEPA to impose tariffs and noted that in other statutes, Congress provided clear rules and limits on

the executive branch's authority to impose tariffs.

Ultimately, the justices' questions revealed the tension between the revenue-raising nature of the tariffs (implicating Congress's Article I powers) and the use of the tariffs as leverage by the President in conducting foreign affairs (implicating the President's Article II powers) – although, remarkably, there was more discussion on the taxation element than on the extent to which the tariffs have been used in bilateral negotiations.

Justice Gorsuch appeared to be skeptical of the Government's suggestion that the major questions doctrine and nondelegation doctrine do not apply because tariffs implicate the President's foreign affairs power. Along with Justice Barrett, he grappled with the practical difficulty of Congress's ability to attain a veto-proof majority necessary to reclaim its power if the Court were to conclude that IEEPA lawfully delegated the power to the President to impose tariffs. On the other hand, Justice Gorsuch also questioned whether Congress's broad delegation of its powers under the Indian Commerce Clause could inform its delegation of its powers under the Foreign Commerce Clause.

Is IEEPA correctly interpreted as authorizing the President to impose tariffs?

The Government's chief argument is that IEEPA's plain language authorizing the President to "regulate . . . importation" means that the President can use the law to impose tariffs. Most of the justices did not seem to be persuaded by that argument. The arguments centered on the statute's omission of the word "tariff," Congress's intent in enacting IEEPA (i.e., whether Congress intended to cabin and constrain the President's power or acquiesced to a broad understanding of the President's power), and the lack of other statutes in which "regulate . . . importation" is interpreted as authorizing tariffs. IEEPA's omission of "tariffs" as a means of regulating imports seemed important to several members of the Court who noted that in other areas of the U.S. Code dealing with tariffs, Congress included detailed and precise language. Other members of the Court, such as Justices Thomas, Alito, and Kavanaugh, questioned whether IEEPA reasonably contains fewer details and explicit references to "tariffs" precisely because it is intended to broadly authorize the President to adequately respond to foreign emergencies. Justices Kavanaugh and Barrett also pressed the challengers of the tariffs to explain the apparent tension between interpreting IEEPA as not authorizing the President to impose tariffs yet permitting the President to exact more trade-restrictive measures, such as an embargo.

Notably, even this statutory interpretation discussion caused the justices to revisit the separation of powers issue. Justices Thomas and Alito questioned whether the major questions and nondelegation doctrines bar the President's use of IEEPA to impose tariffs given that the statute permits the president to impose more stringent measures. While the parties challenging the tariffs claim that the statute must be interpreted to either always allow tariffs or to never allow tariffs (the latter being their position), some justices questioned how there could be no "middle ground" if the law itself was predicated on the existence of an emergency. In other words, if the statute contemplates a scenario where an emergency warrants a full embargo, shouldn't it also permit some lesser action (such as a one percent tariff) that would be appropriate in response to another type of emergency? In that sense, as the questioning showed, the justification for the tariffs may, in fact, be just as important as the power to impose the tariffs (or lack thereof).

Several justices, including Justice Barrett, also questioned IEEPA's and other laws' references to "licenses" and other terms. Such language could, as Justice Barrett and others remarked, clarify whether and how action under IEEPA can control imports and whether the revenue-raising effect of a tariff – which implicates Congress's constitutional power to tax – would differentiate that action from

a license (permissible under IEEPA's plain language) or licensing fee in a meaningful way.

The Court also probed the significance of the distinctions in meaning and usage of other terms in IEEPA and its predecessor statute, the Trading with the Enemy Act (TWEA). IEEPA and TWEA share similar language and certain legislative history. Several justices questioned how much significance to place on this legal and historical backdrop, including President Nixon's ability to use TWEA to implement a 10 percent across-the-board tariff and the CAFC predecessor court's upholding of that action in *Yoshida International v. United States*. Our earlier [summary](#) discusses that history and *Yoshida* in greater detail. The Solicitor General noted that prior Presidents did not face the same emergency circumstances nor necessarily share President Trump's policy preference for using tariffs. Justice Kavanaugh appeared more inclined than other justices to find that President Nixon's use of TWEA is instructive and supports upholding the tariffs.

2. The Court Is Unlikely to Provide Much Direction on Remedy If the Tariffs Are Held Unlawful

While companies might be most interested in understanding what will happen if the Court affirms the lower court rulings invalidating the tariffs, the Court hardly offered any hints. Indeed, not until well into the oral arguments did Justice Barrett broach whether the Government should be required to refund the tariffs paid, what process that might entail, and if it would simply be a "mess." As the Court often does, it largely avoided wading into the details of relief, particularly in cases such as this where the remedy would likely involve administrative details beyond the Court's competency – and was not briefed by the parties. As a practical matter, that means that the many questions about a potential remedy (i.e., retroactivity and reliquidation, automatic or as-requested refunds, applicability to non-parties, etc.) remain unanswered.

As discussed further below, the CAFC instructed the U.S. Court of International Trade (CIT) to reexamine the scope of the remedy, which the CIT has yet to do while the Supreme Court's decision is pending. In keeping with its general tendency to direct lower courts to weigh in on the issue of a remedy in the first instance, and to streamline and expedite its decision-making process in this case, it appears likely that the Court will rely on the lower courts to set the path forward in the event the Court agrees to invalidate the tariffs.

During the pendency of the Government's appeals in these cases, the trafficking tariffs and reciprocal tariffs have remained in effect. Going forward, companies should continue to ensure their compliance with all tariffs owed, monitor the status of these cases and other tariff litigation, and maintain accurate recordkeeping and tracking of duties paid.

How Did We Get Here?

Various businesses and 12 state attorneys general filed these lawsuits challenging the President's use of IEEPA in fashioning the tariffs at issue. The tariffs can be characterized as falling into two buckets. The first bucket includes "trafficking tariffs," which the President imposed in January and February 2025 on most imported goods from Canada, China, and Mexico to address what the President declared to be national emergencies caused by inflows of illicit drugs, such as fentanyl, from the three countries as well as human trafficking from Mexico. These tariffs ranged from 10 to 25 percent. The second bucket of tariffs includes so-called "reciprocal tariffs" imposed on imports from nearly all countries, including a baseline rate of 10 percent and other tariff rates generally ranging from 11 to 50 percent, to address a national emergency caused by a lack of reciprocity in trade practices and trade deficits.

In May 2025, the U.S. District Court for the District of Columbia in *Learning Resources, Inc. v. Trump*, and a three-judge panel of the CIT in *V.O.S. Selections, Inc. v. Trump* both ruled that the trafficking and reciprocal tariffs were unlawful. The Government appealed the CIT's decision to the CAFC. In an en banc opinion (i.e., decided by the entire court), the CAFC **sustained** the CIT's decision invalidating the tariffs, but vacated and remanded the portion of the decision for reconsideration of the issue of the proper remedy of the tariffs paid. Specifically, pointing to the Supreme Court's June 2025 decision in *Trump v. CASA, Inc.*, in which the Court held that federal courts may no longer issue universal injunctions pursuant to their equitable authority, the CAFC instructed the CIT to reconsider the proper remedy rather than the granting of a universal injunction preventing the Government from enforcing the tariffs. The CIT has yet to weigh in on that issue, which may be the next task if the Supreme Court affirms the lower courts' rulings. Our earlier summary of the CAFC's decision can be found [here](#).

[Kelley Drye's International Trade team](#) will continue to monitor this case and other litigation over tariffs. Please do not hesitate to reach out with questions concerning this case, the tariffs at the center of the litigation and other tariff programs, and the practical implications for your business.