



Milbank Insights

Supreme Court and Appellate Practice

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By Neal Katyal, Colleen Roh Sinzdek and Samantha Ilagan



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Background

Today, in *Learning Resources, Inc. v. Trump*—a case argued by Milbank LLP partner Neal Katyal—the Supreme Court struck down the President’s sweeping tariffs in a 6-3 decision.

The case arose out of the tariffs imposed by President Trump last year under the International Emergency Economic Powers Act (IEEPA). Beginning in February 2025, the President issued a series of Executive Orders relying on IEEPA to impose tariffs ranging from 10% to 145% on most imports worldwide. IEEPA’s statutory text never mentions “tariffs” or “duties,” but the government claimed that the statute nonetheless authorizes unlimited tariffs because it grants the President the power to “regulate ... importation” in the face of an “extraordinary and unusual” threat. The Court rejected the government’s contention.

What does the tariffs decision say?

The decision held that IEEPA does not give the President the power to impose tariffs, meaning that the tariffs the Administration has imposed and collected under the statute since February 2025 are invalid. Writing for the six-Justice majority, Chief Justice Roberts explained that tariffs are taxes, and the Constitution gives Congress—not the President—the power to tax. The Court found that Congress had not delegated that tariff power through IEEPA because the statutory text grants the President the authority to “regulate” importation, not to tax it. The Court observed that taxation and regulation have long been understood as distinct powers, and it recognized that in the statutes where Congress *has* delegated tariff authority, it has done so expressly and with limits. The Court also found it significant that the government could point to no other statute in which Congress has delegated the power to tax through the term “regulate,” and that no prior President has used IEEPA to impose tariffs. Summing up, the Court held that, “IEEPA does not authorize the President to impose tariffs,” and that—in recognizing as much—the Court does nothing more than fulfill the “limited role assigned to [it] by Article III of the Constitution.” Majority Slip Op. 20.

In a section of the Chief Justice’s opinion joined only by Justices Barrett and Gorsuch, the Chief Justice held that reading IEEPA to grant the unlimited tariff authority the President claimed would violate the major questions doctrine. That doctrine prevents the President from claiming “broad expansive power on an uncertain statutory basis.” Majority Slip Op. 8. The Chief Justice explained that “the Government admits—indeed, boasts—the economic and political consequences of the IEEPA tariffs are astonishing,” and the text of IEEPA is not nearly clear enough to authorize those dramatic results. Justice Kagan, joined by Justices Sotomayor and Jackson, wrote separately to note that she fully concurs with the majority’s determination that the plain text of IEEPA forecloses the imposition of tariffs, but that she does not agree with the application of the major questions doctrine. Justices Barrett and Gorsuch also wrote separate concurrences to explain their understanding of the major questions doctrine; Justice Jackson concurred to explain how legislative history supports the majority’s decision; and Justices Thomas, Alito, and Kavanaugh dissented.

What does the decision mean for refunds?

The majority decision does not mention refunds at all, but Justice Kavanaugh’s dissent suggests that the United States “may be required to refund billions of dollars to importers who paid the IEEPA tariffs” under the majority’s decision. Kavanaugh Dissent Slip Op. 6. That is likely right because the general rule is that a party can obtain a refund of an improperly collected tax or tariff, and the Customs and Border Protection (CBP) agency has an administrative scheme for obtaining refunds of wrongly imposed tariffs. That scheme is established by statute and backed up by judicial review. See, e.g., 19 U.S.C. § 1514; 28 U.S.C. § 1581(a). Moreover, when a prior tariff scheme was found unconstitutional, the Supreme Court recognized the parties’ ability to get refund relief in the Court of International Trade (CIT) through the CIT’s residual authority. See *United States v. U.S. Shoe Corp.*, 523 U.S. 360, 365-366 (1998). Indeed, in this particular case, the government conceded already that refunds would be available for the VOS Plaintiffs. Those with potential refund claims should act quickly to preserve them because the standard CBP administrative scheme has tight time limits and procedural requirements, and the government may attempt to strictly enforce those requirements in an attempt to minimize their refund payouts. The government may also attempt to find other ways to evade its refund obligations. In his press conference today, the President suggested that, because the majority opinion did not mention refunds, questions about refunds will be “litigated for years.” Milbank has an active team working to obtain refunds under the Court’s new ruling.

What does the decision mean for the President's authority to impose tariffs under other statutes?

There are other statutes that specifically permit the President to impose tariffs, but subject to specific limits IEEPA does not include. Today's decision does not affect the President's tariff power under those other statutes, nor does it invalidate any current tariffs that were imposed under statutes other than IEEPA. Indeed, in his dissent, Justice Kavanaugh suggested that the majority's decision "might not substantially constrain a President's ability to order tariffs going forward" because the President could impose essentially the same tariffs under other statutes, including "the Trade Expansion Act of 1962 (Section 232); the Trade Act of 1974 (Sections 122, 201, and 301); and the Tariff Act of 1930 (Section 338)." Kavanaugh Dissent Slip Op. 5-6. The majority acknowledged the dissent's suggestion and declined to decide whether President Trump's tariffs could in fact be imposed under other statutes. Majority Slip Op. 16 n.4. But the majority observed that those statutes "contain various combinations of procedural prerequisites, required agency determinations, and limits on the duration, amount, and scope of the tariffs they authorize." *Ibid.* That language leaves room for challenges to tariffs imposed under these other statutes that do not satisfy the prescribed limits.

The President has already announced that he will attempt to impose new tariffs under these other statutes. In his post-decision press conference, President Trump stated that he will impose a 10% worldwide tariff increase under Section 122, which will likely go into effect in three days. He also stated that his Administration is initiating the investigations necessary to impose tariffs under some of the other statutes. The lawfulness of these new tariffs is likely to be challenged in the CIT, which has exclusive jurisdiction over suits arising from tariff statutes.

What does this mean for the rule of law?

The 6-3 decision, joined by Justices appointed by Presidents on both sides of the aisle, demonstrates that the Supreme Court will continue to hold the Executive Branch to the statutory and constitutional limits on its authority, vindicating the rule of law and the fundamental separation of powers principles on which our Constitution is based. The Court carefully policed Executive power during the Biden administration, invalidating several major Executive Branch initiatives based on the Court's determination that Congress had not clearly delegated the requisite authority. Today, the Court applied the same basic principles to invalidate President Trump's IEEPA tariffs, and we anticipate that the Court will continue to apply those same principles to presidential actions in the future. As our team has emphasized throughout this litigation, the case is not about any particular President, rather it has always been about the Presidency.

Milbank partner Neal Katyal successfully argued the tariffs case at the Supreme Court and before the en banc Federal Circuit on behalf of a group of small businesses suffering from the tariffs. He was joined by a Milbank team including partner Colleen E. Roh Sinzduk, associates Sami Ilagan, Jessica Huang and Chase Hanson, former associate Ezra Louvis, and research assistants Kami Arabian and Holland Bald. The Milbank team worked alongside the Liberty Justice Center, led by Sara Albrecht, and a team of other esteemed lawyers.

Milbank continues to closely follow developments in connection with the tariff litigation and refund recovery efforts, and Milbank attorneys are available to support clients with any tariff-related needs. We will also be hosting a webinar discussing the decision and its impact on Monday, February 23 at 4:30 PM ET. Additional details will follow.

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