JUSTICE THOMAS, concurring.

I join the Court's opinion in full. The Court correctly holds that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. The statute's text is clear, the structural context is dispositive, and no amount of appeals to foreign affairs or emergency powers can override the Constitution's allocation of the taxing power exclusively to Congress. I write separately to emphasize two fundamental points that warrant particular clarity: first, that this case implicates core constitutional principles of separation of powers that transcend mere statutory construction; and second, that the nondelegation doctrine—properly understood—provides an independent ground for invalidating the claimed authority here.

I

The Court's textual analysis is sound and sufficient to resolve this case. IEEPA authorizes the President to "regulate . . . importation" of goods in response to specified emergencies. 50 U.S.C. § 1702(a)(1)(B). As the Court explains, "regulate" does not mean "tax." The surrounding verbs in the statute—"investigate, block, regulate, direct and compel, nullify, void, prevent or prohibit"—all describe restrictions or prohibitions, not revenue-raising measures. When Congress wishes to authorize tariffs, it says so explicitly, as it has done repeatedly in Title 19 of the U.S. Code.

This distinction matters immensely. Tariffs are taxes. They are imposts—duties levied on imported goods that ultimately fall on American consumers and businesses. The Framers understood this. They placed the power to "lay and collect Taxes, Duties, Imposts and Excises" squarely in Article I, Section 8, vesting it in Congress alone. U.S. Const. art. I, § 8, cl. 1. They did so for reasons rooted in the founding principles of our Republic: taxation without representation was the chief grievance that precipitated the American Revolution. Our Constitution ensures that the power to tax remains with the people's elected representatives, subject to regular elections and political accountability.

The government's argument would have us believe that Congress, in 1977, silently transferred one of its most fundamental constitutional powers to the Executive through language that does not even hint at taxation. That reading is not merely implausible—it is constitutionally suspect. As I have previously explained, when constitutional lines are blurred by ambiguous statutory language, we must interpret statutes to avoid serious constitutional doubts. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Here, reading IEEPA to authorize tariffs would raise grave separation-of-powers concerns that we should not lightly assume Congress intended to create.

II

Beyond the textual analysis, I write to emphasize that the nondelegation doctrine provides an independent—and, in my view, more fundamental—basis for rejecting the government's position.

A

The nondelegation doctrine is rooted in the first sentence of Article I: "All legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I, § 1. This vesting clause is exclusive. It does not say "some" legislative powers or "most" legislative powers. It says "all" legislative powers. Legislative power—the power to make law—cannot be delegated to another branch. To hold otherwise would be to permit Congress to transfer to the Executive the very powers the Constitution withholds from him.

I have previously expressed my view that this Court's modern nondelegation jurisprudence has drifted far from the original meaning of the separation of powers. *Gundy v. United States*, 588 U.S. 128, 142 (2019) (Gorsuch, J., dissenting, joined by Roberts, C.J., and Thomas, J.). Our decision in *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394 (1928), established the "intelligible principle" test, holding that Congress may delegate authority to the Executive so long as it "lay[s] down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform." *Id.* at 409. Even under that permissive standard, however, the delegation must be accompanied by meaningful constraints that channel executive discretion. *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 472 (2001).

If IEEPA were read to authorize tariffs—a reading I reject on textual grounds—it would fail even *Hampton*'s lenient test. The statute provides no guidance regarding when tariffs should be imposed, at what rate, on which goods, or for how long. The only limit is the requirement of an "unusual and extraordinary threat." 50 U.S.C. § 1701(a). But as the Court correctly explains, that phrase cannot bear the weight the government places on it. If

trade deficits that have persisted for decades, or drug trafficking that has been a concern for generations, qualify as "unusual and extraordinary threats," then virtually any economic condition could trigger the President's claimed tariff authority. A standard that broad is no standard at all.

B

The problems with the government's reading become even clearer when we consider the nature of the power claimed. Tariff-setting is quintessentially legislative. It involves policy choices of the most fundamental kind: whether to impose economic burdens on the American people, in what amounts, for what purposes, and how to balance competing domestic and international interests.

The Founding generation understood tariffs as taxes, pure and simple. Alexander Hamilton devoted much of *The Federalist No. 12* to explaining that "duties on imported articles" would form "the principal branch of revenue" for the new federal government. The Federalist No. 12, at 73 (C. Rossiter ed. 1961). The first Congress enacted the Tariff Act of 1789 as one of its earliest pieces of legislation. That statute imposed specific duties on enumerated articles, ranging from distilled spirits to nails to salt. Act of July 4, 1789, ch. 2, 1 Stat. 24. Congress set the rates, Congress determined the goods to be taxed, and Congress could alter those choices through the ordinary legislative process.

Throughout our history, major tariff debates have been resolved by Congress. The Tariff of 1828—the "Tariff of Abominations"—sparked a constitutional crisis that nearly led to nullification, but it was Congress that enacted it and Congress that ultimately revised it. The Smoot-Hawley Tariff of 1930, whether wise or unwise, was the product of congressional deliberation and decision. When Congress has chosen to delegate tariff authority to the President, it has done so with specific standards and meaningful constraints. Section 232 of the Trade Expansion Act of 1962, for example, authorizes the President to adjust imports that threaten national security, but only after a formal investigation by the Secretary of Commerce and only upon findings that support the national security justification. 19 U.S.C. § 1862.

The government points to historical practice as supporting broad presidential tariff authority. But history cuts the other way. Until the twentieth century, Presidents had virtually no independent tariff authority. When Congress did begin delegating limited tariff powers, it always did so expressly and with clear boundaries. The government's claimed authority here—to impose sweeping, indefinite tariffs affecting trillions of dollars in commerce based on an ill-defined emergency standard—has no historical precedent.

C

I recognize that some Members of this Court may believe that the *Hampton* "intelligible principle" test is itself too permissive and that a return to the original understanding of nondelegation is warranted. See *Gundy*, 588 U.S. at 142-81 (Gorsuch, J., dissenting). I agree. The Founders understood that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." The Federalist No. 47, at 301 (J. Madison). Preventing such accumulation required not merely that the three powers be vested in different departments, but that each department exercise only its own power and not transfer that power to another.

On the original understanding, Congress may confer discretion on executive officers regarding the implementation and enforcement of laws, but it may not delegate the authority to make the policy choices that define the law itself. The line between permissible and impermissible delegation lies in the distinction between legislating and executing the law. Congress legislates when it makes the fundamental policy decisions that govern conduct. The Executive executes when it applies those legislative choices to particular circumstances, fills in details, or makes factual findings necessary to trigger legislated consequences.

Tariff-setting falls squarely on the legislative side of that line. Deciding whether to tax imports, which goods to tax, at what rates, and for what duration involves the core policy choices that the Constitution assigns to Congress. These are not details to be filled in or particular applications of a general legislative standard. They are the substance of the legislative power itself.

Even if we do not yet overrule *Hampton* and return to the original understanding, this case should be decided by applying *Hampton* faithfully. The "intelligible principle" test, properly understood, still requires that Congress make the fundamental policy choices and that delegated authority be cabined by meaningful standards. Reading IEEPA to authorize open-ended, indefinite tariffs based on a President's unilateral declaration of an

"unusual and extraordinary threat" would obliterate that requirement.

III

The government's final refuge is the claim that foreign affairs somehow exempts the President from normal separation-of-powers constraints. I reject that argument entirely.

It is true that the President has significant constitutional authority in the realm of foreign affairs. He is "Commander in Chief" of the armed forces. U.S. Const. art. II, § 2, cl. 1. He "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties." *Id.* He "shall receive Ambassadors and other public Ministers." *Id.* § 3. These grants of power reflect the Framers' judgment that the Executive is better suited than Congress to conduct diplomacy, command military forces, and respond with speed and decision to foreign threats.

But the President's foreign affairs powers are not unlimited. They do not include the power to tax. They do not include the power to appropriate funds. They do not include the power to declare war. All of those powers remain with Congress under Article I. The fact that a domestic policy choice—such as tariff-setting—may have foreign affairs implications does not transform it into an executive function.

The Framers specifically rejected the notion that foreign affairs would be an exclusively executive domain. Unlike the British King, who possessed broad prerogatives in foreign relations, the American President shares foreign affairs authority with Congress. Congress has the power to "regulate Commerce with foreign Nations," U.S. Const. art. I, § 8, cl. 3, to "define and punish . . . Offences against the Law of Nations," *id.* cl. 10, and to "declare War," *id.* cl. 11. The Senate must ratify treaties. *Id.* art. II, § 2, cl. 2. These provisions reflect the Framers' deliberate choice to divide foreign affairs powers between the political branches.

Moreover, when the Executive acts in the domestic sphere—even if motivated by foreign policy concerns—he remains bound by the separation of powers. This Court has never recognized a general foreign affairs exception to constitutional structure. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), President Truman invoked the urgent needs of the Korean War to justify seizing domestic steel mills. The Court rejected that justification, holding that emergency conditions do not authorize the President to exercise powers the Constitution denies him. *Id.* at 585-89. Justice Jackson's influential concurrence explained that presidential power is "at its lowest ebb" when the President "takes measures incompatible with the expressed or implied will of Congress." *Id.* at 637 (Jackson, J., concurring).

Here, as in *Youngstown*, the President claims sweeping domestic authority—the power to tax American citizens and businesses—based on foreign affairs concerns. But Congress has spoken extensively on tariff policy in Title 19, establishing a detailed framework that includes specific procedures, substantive limitations, and temporal constraints. The President's end-run around that framework cannot be justified by invoking the foreign affairs power.

The government cites *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), for the proposition that the President enjoys enhanced authority in foreign affairs. But *Curtiss-Wright* involved a congressional delegation of authority that expressly authorized the President to embargo arms sales to specific nations engaged in armed conflict. *Id.* at 311-12, 315-20. The Court's broad dicta about inherent executive power in foreign affairs was unnecessary to the decision and should not be read to create a general exception to separation-of-powers principles. [additional authority needed]. In any event, *Curtiss-Wright* did not involve taxation, and it certainly did not suggest that the President could impose domestic taxes based on foreign policy concerns without clear congressional authorization.

The Constitution's text and structure are clear: Congress holds the power of the purse, including the power to impose tariffs. That allocation applies regardless of whether the asserted justification for tariffs is domestic economic policy, foreign relations, or national security. The President may recommend tariff legislation to Congress, he may negotiate with foreign nations over trade terms, and he may implement tariff statutes that Congress enacts. But he may not tax on his own authority.

IV

Finally, I wish to address briefly the implications of today's decision for presidential emergency powers more generally.

The government's theory in this case is not merely that IEEPA authorizes tariffs in one particular emergency. The logic of the government's position is that IEEPA grants the President a roving commission to address any economic problem he deems an "unusual and extraordinary threat" through any means he believes will "regulate" importation—including taxation. Under this theory, any President, at any time, could impose tariffs of any magnitude for any duration, so long as he first declares an emergency and asserts some connection between the tariffs and a threat to national security, foreign policy, or the economy.

That reading would effectively repeal Congress's tariff authority under Article I, Section 8. It would reduce the extensive framework Congress has built in Title 19—with its careful procedures, explicit standards, and built-in limitations—to a nullity. Why would any President bother with Section 232's lengthy investigation process or Section 301's procedural requirements when he could simply declare an emergency under IEEPA and impose tariffs immediately?

This Court should not interpret statutes to render other statutes superfluous. See *Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013). Nor should we interpret statutes to grant the Executive a blank check that effectively nullifies Congress's legislative authority. See *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) ("We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'").

The proper understanding of IEEPA—as a targeted sanctions statute that permits the President to freeze assets, prohibit transactions, and impose embargoes on foreign adversaries during genuine emergencies—preserves both IEEPA's legitimate role and Congress's constitutional authority over tariffs. That understanding respects the separation of powers while giving the President meaningful tools to respond to true crises.

* * *

For these reasons, which are consistent with and complementary to the Court's thorough analysis, I join the Court's opinion in full. The challenged tariffs exceed the authority granted by IEEPA, and the judgment of the Court of Appeals must be reversed.