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US IMMIGRATION & NATIONALITY LAW

MAJOR QUESTIONS DOCTRINE IN IMMIGRATION CASES AFTER THE SUPREME COURT RULING IN THE TARIFFS CASE

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In a previous blog, we addressed the major questions doctrine, an idea articulated by the Supreme Court in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022). The major questions doctrine holds that "in certain extraordinary cases" where it is unclear whether an agency action was authorized by Congress, "given both separation of powers principles and a practical understanding of legislative intent, the agency must point to 'clear congressional authorization' for the authority it claims". We have advocated for the major questions doctrine as a tool that can be used to challenge the Trump administration's sweeping changes to the immigration landscape through executive power.

The major questions doctrine, which is triggered when executive actions have major economic or political significance, was very recently employed by the Supreme Court to invalidate a Trump administration policy. On February 20, 2026, in *Learning Resources, Inc. v. Trump*, 24-1287, (02/20/2026), the Supreme Court struck down the tariffs imposed by the Trump administration. In his majority opinion, Chief Justice John Roberts leaned heavily on the major questions doctrine, writing: "Th stakes dwarf those of other major questions cases…he President must "point to clear congressional authorization" to justify his extraordinary assertion of the power to impose tariffs…He cannot." The Court was not persuaded by the government's argument that the major questions doctrine does not apply to emergency statutes, stating that: "Where Congress has reason to be worried about its powers 'slipping through its fingers,'…we in turn have every reason to expect Congress to use clear language to effectuate unbounded delegations". Additionally, the Court held

that the major questions doctrine is applicable notwithstanding the President's authority to handle foreign affairs matters. The Court reasoned that only Congress can regulate tariffs ordinarily, despite tariffs always have foreign policy implications, and any delegation of this power by Congress would surely have been outlined explicitly. The Court concluded that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs, holding that "IEEPA's grant of authority to 'regulate . . . importation' falls short" of conferring such authority, and that "IEEPA contains no reference to tariffs or duties. The Government points to no statute in which Congress used the word 'regulate' to authorize taxation".

Justice Kagan's concurring opinion, however, emphasized that one does not need to rely on the major questions doctrine to challenge Trump administration policies. Justice Kagan objected to "...the demand for a special brand of legislative clarity" introduced in the line of cases elucidating the major questions doctrine. Instead, she argued that "the proper way to interpret a delegation provision is through the standard rules of statutory construction", or "examining a delegation provision's language, assessing that provision's place in the broader statutory scheme, and applying a 'modicum of common sense' about how Congress typically delegates". Applying a standard statutory interpretation analysis, Justice Kagan concluded that "he crucial provision of IEEPA, when viewed in light of the broader statutory scheme and with a practical awareness of how Congress delegates tariff authority, does not give the President the power he wants".

Extrapolating the Supreme Court's reasoning to the immigration context, the major questions doctrine could be employed to challenge Trump administration policies like restricting birthright citizenship, or implementing a $100,000 fee for many H-1B visa applications. The Presidential Proclamation implementing the new fee points to INA 221(f) as the authority for the policy. INA 221(f) states that "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." This fee would radically reshape the H-1B visa program, qualifying as an "extraordinary case" in which the major questions doctrine should apply. The $100,000 fee poses severe consequences for not

only foreign professionals seeking H-1B visas, but also U.S. employers that hire H-1B workers, many of whom will now be practically unable to avail of the H-1B visa program. However, nothing in INA 221(f) authorizes the president to impose new fees for visa applications, let alone practically eviscerate a visa category. If Congress intended for the president to have the authority to dismantle entire visa categories, it would surely have granted him that power explicitly.

Although Justice Kagan makes a compelling argument that one can rely on statutory construction rather than the major questions doctrine, we believe that the major questions doctrine may give plaintiffs a better chance to slice through INA 221(f) that has previously been upheld in *Trump v. Hawaii* as giving the president broad power over immigration.

The fee was upheld in federal district court in *Chamber of Commerce v. DHS*, with the court making only a passing reference the major questions doctrine. In footnote 8, the court states that "During the hearing, which lasted over two hours, the major questions doctrine was not mentioned once. Any argument that a substantive version of the major questions doctrine is relevant to this issue has thereby been forfeited…" In a second lawsuit filed in the U.S. District Court for the Northern District of California to challenge the $100,000 fee, *Global Nurse Force v. Trump*, which has not yet been decided and see here a link to the pleadings, plaintiffs have forcefully argued that interpreting INA §§ 212(f) and 215(a) to authorize the president to establish the $100,000 fee would "violate the major questions doctrine because these provisions contain no clear Congressional authorization for this action of great political and economic significance. And, there is no basis for delegated authority for the President to raise and spend money as he sees fit."Following the Supreme Court's decision in *Learning Resources*, however, the major questions doctrine may become a more robust tool for future challenges to the fee and in other immigration cases.

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