JAMIESON GREER SAYS TRUMP'S TRADE DEFICIT EMERGENCY WASN'T AS SERIOUS AN EMERGENCY "AS MAYBE THOUGHT"

Against the background of empty ports, stalled shipping traffic, and impending business failures, Trump has capitulated on his trade embargo with China. Treasury Secretary Scott Bessent and Trade Representative Jamieson Greer will announce an even bigger rollback of tariffs than the 80 or 50% tariffs Trump floated last week, to 30% (which is the 10% tariffs imposed worldwide, plus the 20% that purports to be a punishment for China's role in providing precursors for fentanyl).

> The U.S. and China agreed to slash punishingly high tariffs on each other's goods, a major thaw in trade relations that resets the tone between the world's two largest economies from outright conflict to constructive engagement.
>
> After weekend talks in Geneva:
>
> - *President Trump's "reciprocal" tariff on China will fall to 10% from 125%.*
> - *A separate 20% tariff the president imposed over what he described as China's role in the fentanyl trade will remain.*
> - *Beijing will cut its*

> *retaliatory levies on U.S. goods to 10% from 125%.*
> - *The U.S. said the reductions would last for 90 days while the two sides begin further talks.*
>
> The agreement lowered tariffs levels more than Wall Street expected and came after just two days of talks.

In announcing this "deal," Greer offered up thin excuses for capitulating within hours.

> It's important to understand how quickly we were able to come to an agreement, which reflects that perhaps the differences were not so large as maybe thought. That said, there was a lot of groundwork that went into these these two days.
>
> Just remember why we're here in the first place is the United States has a massive $1.2 trillion trade deficit. So the President declared a national emergency, and imposed tariffs. We're confident that the deal we struck with our Chinese partners will help us to resolve – work toward resolving that national emergency.

"Perhaps the differences were not so large as maybe thought" – thought *by whom*, Greer doesn't say. But Greer does note that the President was the guy who declared those differences that were not so large as maybe thought to be an emergency.

Trump thought it was an emergency. Now Greer says it wasn't, as it turns out.

Once it became clear that Trump had *caused* a far

bigger emergency by declaring one, it took just hours to rethink the claimed emergency.

The focus on the emergency may cause the Administration headaches going forward (which may be why Greer attempted to offer an excuse).

That claimed emergency is the basis via which Trump usurped Congress' authority to set tariffs.

> By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.)(NEA), section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and section 301 of title 3, United States Code,
>
> I, DONALD J. TRUMP, President of the United States of America, find that underlying conditions, including a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners' economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits, constitute an unusual and extraordinary threat to the national security and economy of the United States. That threat has its source in whole or substantial part outside the United States in the domestic economic policies of key trading partners and structural imbalances in the global trading system. I hereby declare a national emergency with respect to this threat.

A series of lawsuits challenging Trump's tariffs — in this case, one brought by a wine importer, VOS Selections, and other small businesses, supported by right wing funders, in which Greer

is a named defendant – have argued the trade deficit is not an emergency. [docket]

> The President has no authority under IEEPA to issue the tariffs. IEEPA does not even mention tariffs. No other President has asserted this authority. IEEPA was passed to limit the President's emergency powers. If Congress wanted to grant the President the authority to issue tariffs in IEEPA, it could have, as it has done so elsewhere. But when Congress does give the President tariff authority, it does so subject to strict statutory limits.
>
> Legitimate use of IEEPA is limited to cases of emergencies where there is an "unusual and extraordinary threat." But the national emergency the President has declared—the existence of bilateral trade deficits with some countries—is not an emergency, nor is it unusual or extraordinary. The United States has had some amount of trade deficit in goods for most of the last century, while having the most economic success of any country in history.
>
> Moreover, the power claimed by the President here is extreme: he claims the power to unilaterally impose infinite tariffs of his choosing on any country he chooses—even countries with which we run a trade surplus. Any grant of such authority by Congress to the President should qualify as a major question subject to the strictest judicial scrutiny—which this claim of authority under IEEPA cannot survive.

The government, in response, has argued that it – like other Executive authorities – is not subject to court review.

> More to the point, courts have consistently held that the President's

> emergency declarations under the National Emergencies Act, and the adequacy of his policy choices addressing those emergencies under IEEPA, are unreviewable. "Although presidential declarations of emergencies . . . have been at issue in many cases, no court has ever reviewed the merits of such a declaration." Ctr. for Biological Diversity v. Trump, 453 F. Supp. 3d 11, 31 (D.D.C. 2020) (emphasis in original). And the Federal Circuit has recognized that an inquiry to "examine the President's motives and justifications for declaring a national emergency" under IEEPA "would likely present a nonjusticiable political question." Chang v. United States, 859 F.2d 893, 896 n.3 (Fed. Cir. 1988); see, e.g., Yoshida, 526 F.2d at 579 ("courts will not normally review the essentially political questions surrounding the declaration or continuance of a national emergency"); United States v. Shih, 73 F.4th 1077, 1092 (9th Cir. 2023) (refusing to review declaration of emergency under IEEPA); In re 650 Fifth Ave. & Related Props., 777 F. Supp. 2d 529, 575 n.16 (S.D.N.Y. 2011) (concluding that whether the government of Iran's actions and policies constituted an "unusual and extraordinary threat to the national security, foreign policy, and economy of the United States" was an unreviewable judgment "reserved to the executive branch"); Beacon Products Corp. v. Reagan, 633 F. Supp. 1191, 1194-95 (D. Mass. 1986) (concluding that whether Nicaragua posed sufficient threat to trigger the President's IEEPA power to impose an embargo on the country was a nonjusticiable political question).
>
> Reviewing the legitimacy of the underlying emergency—a foreign-affairs and nationalsecurity matter

> constitutionally and statutorily committed to the President—would require "the court to assess the wisdom of the President's judgment concerning the nature and extent of that threat, a matter not susceptible to judicially manageable standards." Beacon Products, 63 F. Supp. at 1195. Thus, the President's "motives, his reasoning, his finding of facts requiring the action, and his judgment, are immune from judicial scrutiny." Florsheim, 744 F.2d at 796; see United States v. George S. Bush & Co., 310 U.S. 371, 380 (1940) ("For the judiciary to probe the reasoning which underlies this Proclamation would amount to a clear invasion of the legislative and executive domains.").

Normally, such an argument would carry a lot of sway with courts.

But in a parallel invocation of Presidential authority, judges already are pointing to Trump's fickleness as evidence that his justifications for exercising Executive authority are bullshit. In her opinion granting Perkins Coie summary judgement against Trump's attack on the law firm, Beryl Howell noted that the only thing that happened between the time Trump claimed Paul, Weiss lawyers could not be trusted with security clearances and when he decided they could be was their agreement to provide $40 million in pro bono legal services. [docket]

> Second, and tellingly, the Paul, Weiss EO contained a virtually identical security clearance review provision to the one at issue in this case. Compare EO 14230 § 2, 90 Fed. Reg. at 11781, with Paul, Weiss EO § 2, 90 Fed. Reg. at 13039. As discussed, see supra Part III.B.1(b), the Paul, Weiss EO was revoked only seven days after its issuance when President Trump reached a

> "deal" with that firm. See generally Paul, Weiss Revocation Order, 90 Fed. Reg. 13685. While the Paul, Weiss Revocation Order summarized that firm's agreement to, inter alia, "adopt[] a policy of political neutrality with respect to client selection and attorney hiring; tak[e] on a wide range of pro bono matters representing the full political spectrum; commit[] to merit-based hiring, promotion, and retention . . .; dedicat[e] the equivalent of $40 million in pro bono legal services during [President Trump's] term in office . . .; and other similar initiatives," none of these agreedupon policy or practice changes appear to explain or address how any national security concerns sufficient to warrant the Paul, Weiss EO could have changed so rapidly. Id. § 1, 90 Fed. Reg. at 13685. The speed of the reversal and the rationale provided in the Paul, Weiss Revocation Order, which focused only on agreements to advance policy initiatives of the Trump Administration, see id., further support the conclusion that national security considerations are not a plausible explanation for Section 2.

As Roger Parloff noted, Paul Clement made a similar point in arguing that the EO against Wilmer Hale must be overturned (I'm fairly certain he has made this more general observation about how the Paul, Weiss flipflop made the retaliatory EOs more vulnerable).

> I think it's crystal clear, he proceeds, that it's all tied together. Section 1 explains what motivated all the sections.
>
> What happened with the law firm of Paul Weiss Rifkind Wharton & Garrison adds further support for viewing the order as a whole, he argues. Paul Weiss faced the same operative provisions in an

> executive order issued on March 14. But on March 21, a later executive order repealed the whole thing. It didn't keep, say, the security clearances or restrictions on government buildings while rescinding other sections.
>
> Clement thinks that's particularly telling with respect to the security clearances, he says. When you look to the agreement Paul, Weiss made with the president, there wasn't anything specific mentioned about national security or the national interest or anything else. It was mostly about providing $40 million in pro bono services that were more to the president's liking.

This trade deficit emergency Trump declared remains the claimed basis for the 10% tariffs still levied against China and most other countries in the world (as a wine importer, tariffs on those *other* countries, not China — Austria, Italy, Greece, Lebanon, Morocco, Spain, France, Portugal, Mexico, Argentina, Germany, Croatia, Hungary, and South Africa — are the ones that pose a problem for VOS Selections).

And now his Trade Representative has gone on TV to proclaim that maybe what was claimed to be an emergency was "not so large as maybe thought."

I look forward to plaintiffs invoking Greer's admission going forward.