

In fact, recent presidential administrations, regardless of party affiliation, have identified certain transnational and domestic economic and natural resource matters as potential national security interests or threats: energy market disruptions; promotion of domestic research, development, and manufacturing in emerging technologies; and restricted access to international markets.²³

The Supreme Court, for its part, has afforded the political branches substantial deference with respect to national security matters, including with respect to the factual findings and policy decisions of the Executive Branch.²⁴ As noted above, courts have also recognized that where “the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.”²⁵ Such is the case here, where Congress explicitly authorized the President to make national security determinations, at his discretion and only with the added requirement that “[t]he President shall report to Congress with respect to each exemption (or extension thereof).”²⁶

2. *President Trump, Congress, and the previous administration have all recognized the critical importance of copper to the national security of the United States*

President Trump has recognized that “the United States has ample copper reserves, yet our smelting and refining capacity lags significantly behind global competitors,” finding that foreign “dominance” of copper smelting and refining “poses a direct threat to United States national security

“national security . . . refers to protecting nations and citizens,” and that states “aspire to a broad and integrated management of risks, often including all threats to public safety that require coordinated, nationwide responses,” including threats like “energy security,” “global pandemics,” and “man-made emergencies”).

²³ See The White House, *National Security Strategy of the United States of America* 17–23 (2017), <https://perma.cc/D9MV-FQSJ>; The White House, *National Security Strategy* 2, 15, 16–17 (2015), <https://perma.cc/2NMM-QYH5>; The White House, *A National Security Strategy of Engagement and Enlargement* 7, 8 (1995), <https://perma.cc/4QCK-4QMN> (explaining that the United States’ “security requirements . . . start with our physical defense and economic well-being” while also identifying that “[a]n emerging class of transnational environmental and natural resource issues is increasing affecting international stability”).

²⁴ See *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010) (“But when it comes to collecting evidence and drawing factual inferences in” the areas of national security and foreign relations, “the lack of competence on the part of the court is marked, and respect for the Government’s conclusions is appropriate.” (internal quotation marks and citation omitted)); *id.* at 34–35 (recognizing that “[i]n th[e] context” of national security and foreign relations, “conclusions must often be based on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government”); *Winter v. Nat. Def. Res. Council*, 555 U.S. 7 (2008) (deference to the President after explicit finding: “The President determined that continuation of the exercises as limited by the Navy was ‘essential to national security.’”); see also *Dep’t of Navy v. Egan*, 484 U.S. 518, 530 (1988) (“[C]ourts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs.”).

²⁵ See *supra* n.15.

²⁶ 42 U.S.C. § 7412(i)(4).