



## *Department of Homeland Security et al. v. Thuraissigiam: What You Need to Know*

Updated June 30, 2020

On March 2, 2020, the Supreme Court of the United States heard oral arguments in the case Department of Homeland Security et al. v. Thuraissigiam, to decide whether asylum seekers who have been issued expedited removal orders can seek federal review of those orders.

### **What are the facts of this case?**

Vijayakumar Thuraissigiam is a citizen of Sri Lanka and a Tamil, an ethnic minority group in Sri Lanka. In February 2017, he entered the United States through the Mexico-California border and was arrested by U.S. Customs and Border Patrol (CBP) twenty-five yards north of the border. The Department of Homeland Security (DHS) placed Thuraissigiam in expedited removal proceedings. Thuraissigiam claimed a fear of persecution in Sri Lanka, and CBP referred him to an interview with an asylum officer (AO). The AO concluded that Thuraissigian had not shown a credible fear of persecution, and a supervisor and immigration judge affirmed this determination. In January 2018, Thuraissigiam filed a petition for habeas corpus on the basis that the USCIS officer failed to elicit the proper information to determine credibility. The U.S. District Court for the Southern District of California found that his claim was not reviewable under 8 U.S.C. §1252(e)(2); he appealed to the Ninth Circuit Court of Appeals who reversed and remanded based on the conclusion that Thuraissigiam was deprived of a meaningful opportunity for review, violating the Suspension Clause of the Constitution. DHS appealed, and the Supreme Court agreed to hear the case.

### **What did the Supreme Court decide?**

On June 25, 2020, with Justice Alito writing for the majority, the Supreme Court of the United States held 7-2 that the 8 U.S.C. § 1252 (e)(2) (the federal immigration statute that limits *habeas corpus* proceedings over the expedited removal process) does not violate the Due Process Clause nor the Suspension Clause (the constitutional clause that provides that a person may present the writ of habeas corpus to bring legal and constitutional challenges to government action absent extraordinary circumstances, such as a national emergency), and therefore, an asylum seeker in respondent's position who is in expedited removal after a negative credible fear finding may not seek review in federal courts of that finding. The majority explained that because habeas review in 1789 was available only for those seeking to be released from federal custody, Thuraissigiam could not use habeas as a means to request an immigration remedy to remain in the United States.

Justices Sotomayor and Kagan dissented. In her dissent, Justice Sonia Sotomayor argued that the majority "declares that the Executive Branch's denial of asylum claims in expedited removal proceedings shall be functionally unreviewable through the writ of habeas corpus, no matter

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whether the denial is arbitrary or irrational or contrary to governing law. That determination flouts over a century of this Court’s practice.” “Further, Justice Sotomayor regards the decision as “handcuff[ing] the Judiciary’s ability to perform its constitutional duty to safeguard individual liberty.”

### **What is expedited removal?**

Expedited removal is one of three speedy deportation programs in the immigration statute that allows the Department of Homeland Security (DHS) to remove people from the United States without a hearing or review. Expedited removal can be applied to people who enter the United States without proper documents or by fraud (and are inadmissible for one of these reasons) who have not admitted or paroled into the United States.

### **What happens to an asylum seeker who is subject to expedited removal?**

An asylum seeker who is in expedited removal and who expresses a fear of persecution in his or her home country based on one of the protected grounds (race, nationality, religion, political opinion, or a particular social group) is by law entitled to a credible fear screening with an AO. A credible fear screening involves the AO asking the asylum seeker questions about why they have been persecuted or why they fear persecution if they would be returned. The determination made by the AO on whether the asylum seeker has a credible fear of persecution is able to be reviewed by an immigration judge. During the duration of the credible fear screening process, the asylum seeker is detained. If they do not pass their credible fear screening or this determination is upheld by the immigration judge, they can be hastily deported from the country.

### **What are the criticisms around this case?**

There is concern surrounding the stripping of due process rights of asylum seekers arriving to the United States who are being detained, now without the opportunity for a fair hearing in court. Attorney for the respondent, Lee Gelernt of the ACLU stated: “This ruling fails to live up to the Constitution’s bedrock principle that individuals deprived of their liberty have their day in court, and this includes asylum seekers. This decision means that some people facing flawed deportation orders can forcibly be removed with no judicial oversight, putting their lives in grave danger.”

### **For More Information:**

- [SCOTUS Blog, Opinion Analysis](#)
- [American Immigration Council, Immigration Impact](#)
- [ACLU, Dep’t of Homeland Security vs. Thuraissigiam](#)