

# Supreme Court Decides *Department of Homeland Security v. Thuraissigiam*, No. 19-161

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On June 25, 2020, the U.S. Supreme Court decided *Department of Homeland Security v. Thuraissigiam*, holding that the Illegal Immigration Reform and Immigrant Responsibility Act's limitations neither violated due process nor unconstitutionally suspended the writ of habeas corpus by precluding courts from using a writ to review immigration officials' decision that an alien seeking entry into the country did not have a credible fear of persecution.

Respondent Vijayakumar Thuraissigiam, a Sri Lankan national, was stopped at the border trying to enter the United States. A border official who questioned him to determine whether he had a credible fear of being persecuted if he was returned to Sri Lanka reported that he denied fearing persecution based on his political opinions, race, or other protected characteristics. A supervising officer agreed with the asylum officer's finding of no credible fear and signed a removal order. After taking additional testimony from Respondent, an immigration judge affirmed on a *de novo* review.

Respondent then filed a federal habeas petition asserting that he feared persecution based on his political views and Tamil ancestry, that these fears establish a credible fear of persecution which would allow him to make an asylum claim, that immigration officials deprived him of an opportunity to establish his credible-fear claim, and that immigration officials failed to apply the correct standard when assessing his claims. The United States District Court for the Southern District of California dismissed his petition, holding that 8 U.S.C. §§ 1252(a)(2) & (e)(2) barred review and that they did not violate the Suspension Clause. The Ninth Circuit reversed, holding that section 1252(e)(2) violated the Suspension Clause and that Respondent was entitled to procedural due process protections.

The Supreme Court granted review and reversed. The Court held that Section 1252(e)(2) did not violate the Suspension Clause because, at the time the Constitution was adopted, the writ of habeas corpus was limited to challenging the legality of one's detention. It did not entitle a petitioner to claim the right to enter into a country, remain in a country, or obtain administrative review leading to those results. Because Respondent's habeas petition did not seek release from custody or otherwise challenge his detention, any habeas writ guaranteed by the Suspension Clause remained available to Respondent, irrespective of the limitations section 1252(e)(2) placed on habeas review.

The Court further concluded that Section 1252(e)(2) did not violate Respondent's due process rights. Aliens who have not yet been granted entry to the United States have only those due process rights granted by Congress. Because respondent had been afforded those rights, Section 1252(e)(2) did not violate due process.

The Court remanded the case to the Ninth Circuit with instructions that the petition for a writ of habeas corpus be dismissed.

Justice Alito delivered the opinion of the Court, in which Chief Justice Roberts and Justices Thomas, Gorsuch, and Kavanaugh joined. Justice Thomas filed a concurring opinion. Justice Breyer filed an opinion concurring in the judgment, in which Justice Ginsburg joined. Justice Sotomayor filed a dissenting opinion, in which Justice Kagan joined.

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