

No. 19-294

IN THE
Supreme Court of the United States

USAMA JAMIL HAMAMA, et al.,
Petitioners,
v.
REBECCA ADDUCCI, et al.,
Respondents.

**On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit**

REPLY BRIEF FOR PETITIONERS

MIRIAM J. AUKERMAN AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN 1514 Wealthy Street SE Grand Rapids, MI 49506	MARGO SCHLANGER <i>Counsel of Record</i> 625 South State Street Ann Arbor, MI 48109 (734) 615-2618 margo.schlanger@gmail.com
KIMBERLY L. SCOTT WENDOLYN W. RICHARDS MILLER, CANFIELD, PADDOCK & STONE, PLC 101 N. Main Street, 7th Floor Ann Arbor, MI 48104	ANAND BALAKRISHNAN LEE GELERT JUDY RABINOVITZ AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad Street, 18th Floor New York, NY 10004
DAVID JOHNSON 573 Hawksnest Drive South Haven, MI 49090	DAVID D. COLE AMERICAN CIVIL LIBERTIES UNION FOUNDATION 915 15th Street NW Washington, DC 20005

REPLY BRIEF FOR PETITIONERS

Respondents agree that this case asks whether a provision of the Immigration and Nationality Act (INA) is unconstitutional under the Suspension Clause as applied to Petitioners. Resp. Brief in Opp. (BIO), at I. The same question is presented in *Dep't of Homeland Sec. v. Thuraissigiam*, No. 19-161 (Oct. 18, 2019), scheduled for argument March 2, 2020. The two cases concern different INA provisions—8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(e)(2), respectively. But both cases turn on two basic legal questions: (1) the extent to which the Suspension Clause applies to removal decisions, and (2) whether the statutes in question provide adequate substitutes for habeas. As such, the Court's resolution of *Thuraissigiam* is likely to affect the proper disposition of this case, and this petition should be held pending the disposition of *Thuraissigiam*, and, if appropriate, the judgment vacated and remanded for further consideration by the court of appeals.

Respondents do not contest the importance of the issue, and instead simply argue that the Sixth Circuit decision was correct—making arguments identical to those they have advanced in *Thuraissigiam*. Compare BIO 12-15 (arguing that the Suspension Clause is not implicated because Petitioners are not seeking relief from detention), *Thuraissigiam*, Pet. Br. 27-35 (arguing that the Suspension Clause is not implicated because *Thuraissigiam* is not seeking relief from detention). And the government acknowledges that “the methodology that this Court adopts in

Thuraissigiam for determining whether the Suspension Clause protects certain types of habeas relief” could affect the issue’s resolution in this case. BIO 17. The question should be decided on the basis of the full briefing the Court will have in *Thuraissigiam*, and not in connection with the threshold issue of whether to grant a petition for certiorari. That *Thuraissigiam* will address the Suspension Clause issue in an expedited removal context, rather than the ordinary removal context here, does not mean that *Thuraissigiam* will not affect this case, especially where the government has made identical arguments in both cases. The government does not argue otherwise.

Instead, Respondents argue that the Sixth Circuit’s conclusion also rests on an independent ground—namely, that the petition-for-review process is an “adequate alternative to an action in habeas” Pet. App. 10a—and that ground, they assert, will not be affected by resolution of *Thuraissigiam*. BIO 17 (arguing that *Thuraissigiam* will “have no clear bearing on that question”). But the issue whether the statutory review provided in the INA is an adequate substitute for the habeas required by the Suspension Clause is also squarely presented in *Thuraissigiam*. The government in *Thuraissigiam* expressly argues that the statutory provision at issue there provides an adequate alternative to habeas. See *Thuraissigiam*, Pet. Br. 40-48 (arguing that the expedited removal statute is an “adequate and effective” alternative to habeas review). Thus, *Thuraissigiam* is likely to affect resolution of this

issue as well.

Moreover, whether a statutory review scheme is an adequate substitute for the scope of review required by the Suspension Clause, the so-called “independent ground” here, is necessarily a function of the initial question presented in both cases—what judicial review is required by the Suspension Clause. Whether a substitute is adequate will depend, in the first instance, on the scope of review the Suspension Clause requires. Thus, the second issue presented in *both* cases—the adequacy of statutory review—cannot be disaggregated from the first issue presented in *both* cases—what review is constitutionally required.

As a result, the Court’s resolution of *Thuraissigiam* is likely, at a minimum, to shed important light on both basic issues presented in this case: what review is required by the Suspension Clause, and whether the statute is an “adequate alternative.” Consequently, the resolution of *Thuraissigiam* is likely to affect not just the Sixth Circuit’s primary holding in this case, but its (cursory) alternative holding as well.

The full impact of *Thuraissigiam* will not be clear, of course, until it is decided. But given the extensive overlap in legal issues presented by the two cases, the Court should hold this petition pending decision in *Thuraissigiam*, followed by a grant/vacate/remand order if appropriate.

Respectfully submitted,

Miriam J. Aukerman
AMERICAN CIVIL
LIBERTIES UNION FUND
OF MICHIGAN
1514 Wealthy Street SE
Grand Rapids, MI 49506

Margo Schlanger
Counsel of Record
625 South State Street
Ann Arbor, MI 48109
(734) 615-2618
margo.schlanger@gmail.com

Kimberly L. Scott
Wendolyn W. Richards
MILLER, CANFIELD,
PADDOCK & STONE, PLC
101 N. Main Street,
7th Floor
Ann Arbor, MI 48104

Anand Balakrishnan
Lee Gelernt
Judy Rabinovitz
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004

David Johnson
573 Hawksnest Drive
South Haven, MI 49090

David D. Cole
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street NW
Washington, DC 20005

Date: December 17, 2019