

No. 25-968

In the Supreme Court of the United States

KISHORE KUMAR KAVURU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER

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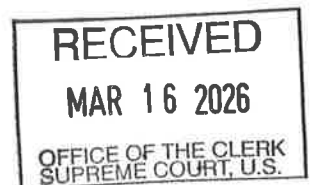


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Pursuant to Supreme Court Rule 15.8, Petitioner Kishore Kumar Kavuru respectfully submits this supplemental brief to call the Court's attention to two recent decisions issued after the filing of the petition for writ of certiorari. These decisions materially reinforce the structural separation-of-powers concerns presented here and underscore that the Questions Presented warrant review.

1. *Geo Group, Inc. v. Menocal*, 607 U. S. ____ (2026)

In *Geo*, this Court clarified that federal contractors cannot be held liable for conduct that the Government has lawfully “authorized and directed.” *Geo Group, Inc. v. Menocal*, 607 U. S. ____ (2026), slip op., at 8. The Court held that “the possibility that courts might impose liability for conduct that Congress authorized presents some conflict between those two branches of Government.” *Ibid.*

Kavuru's conviction rests on precisely such a conflict.

Congress enacted the Immigration and Nationality Act (INA) and the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). 20 C. F. R. §655.731(c)(6)(i) was promulgated in 2000 to implement changes made to the INA by the ACWIA, which expressly permitted H-1B nonimmigrants to “enter into employment” after arrival, including “by waiting for an assignment, reporting for orientation or training, going to an interview or meeting with a customer, or studying for a licensing examination, and includes all activities thereafter.” See Pet. at 8; App. 24. That regulation remains in force.

2. *Learning Resources, Inc. v. Trump*, 607 U. S. ____ (2026)

In *Learning Resources*, this Court held that when the Executive asserts authority implicating a core Article I power, “executive officials [are required] to identify “clear” congressional authorization” if they “deviate from “routine” statutory interpretation principles”. 607 U. S. ____ (2026). This Court refused to read ambiguous statutory language (“regulate ... importation”) as effecting a “transformative expansion” of executive power over tariffs. It emphasized that Congress does not “relinquish its core powers through vague language,” particularly where the asserted authority “is likely to generate other serious practical consequences”.

The same structural principle governs here.

The government, in Kavuru’s case, identified no clear congressional authorization for criminalizing conduct expressly permitted by regulation. That asserted authority has already produced criminal convictions of multiple small and mid-sized H-1B employers, and additional prosecutions continue to proceed on the same theory. Allowing Kavuru to pursue appellate review would permit judicial consideration of the issue through the lens of Congress’s enacted framework and prevent the continued imposition of criminal liability for conduct Congress has not criminalized.

If statutory language cannot be read to affect a sweeping delegation of tariff authority touching the “core congressional power of the purse,” it likewise cannot justify judicial expansion of federal criminal liability beyond the regulatory framework Congress enacted.

§655.731(c)(6)(i), affirmatively authorizes post-arrival job seeking. As covered in the Petition (at 2-3), six federal court decisions have interpreted the same substantive question in accordance with Congress's mandate, in Kavuru's favor. However, that statutory analysis is effectively nullified if the court of appeals treats the incorporated text as surplusage.

Geo Group and *Learning Resources* underscore that neither the government nor the courts may impose liability for conduct Congress has authorized, or expand their powers by departing from "ordinary principles of statutory interpretation" absent clear congressional authorization. At minimum, the questions presented warrant this Court's review. These decisions reinforce that the questions presented in the Petition are "adequate to deserve encouragement to proceed further" (*Slack* at 484) because the conflict is unmistakable, serious, and is at the highest level, i.e. the ruling below conflicts with a federal regulation enacted to implement a Congressional Act, that affirmatively permits the conduct at issue. The denial of a certificate of appealability would foreclose appellate review of a constitutional claim arising from the separation of powers and the Fifth Amendment Due Process Clause, despite Congress having directly addressed the precise issue through its Acts and regulation. This issue remains, and will continue to remain, "debatable" unless and until 20 C.F.R. § 655.731(c)(6)(i), incorporated by reference into 18 U.S.C. § 1546(a)'s language as "regulation prescribed thereunder", is rescinded, retroactively amended, or superseded by subsequent legislation, none of which has occurred. And any such amendment or authorization must come from