

# Supreme Court will hear Biden administration plan to rescind Trump immigration policy on asylum seekers

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The Supreme Court on Friday said it will expedite review of the Biden administration’s attempt to get rid of President Donald Trump’s policy requiring asylum seekers along the southern border to wait in Mexico for their cases to be decided, with a ruling by the end of the court’s term this summer.

The justices put on a fast track review of the plan to do away with the “Remain in Mexico” policy known as Migrant Protection Protocols (MPP). Lower courts said the Biden administration did not provide an adequate reason for getting rid of the Trump policy, and that its own procedures regarding asylum seekers who enter the country were unlawful.

Last summer, the Supreme Court refused to stop the rulings by a Texas federal judge and the U.S. Court of Appeals for the 5th Circuit, over the objections of the court’s three liberals. The administration says it has complied with the orders, but told the Supreme Court that full consideration by the court was necessary because the lower courts had usurped the powers of the president.

Lower courts in effect have commanded the Biden administration to continue the policies of the last president “in perpetuity,” Solicitor General Elizabeth B. Prelogar told the Supreme Court [in her filing](#).

“And they have done so despite determinations by the politically accountable Executive Branch that MPP is not the best tool for deterring unlawful migration; that MPP exposes migrants to unacceptable risks; and that MPP detracts from the Executive’s foreign-relations efforts to manage regional migration,” she wrote.

The justices called for expedited briefing in the case so it can be heard in April, the last month for oral arguments this term.

The Trump administration implemented the program to curb what it said was a flood of meritless asylum claims by migrants seeking to avoid deportation and be released into the United States.

Shortly after taking office in January, President Biden said the administration would not continue enrolling migrants in the MPP and ordered a review of the program. He and immigration rights groups had criticized immigration policies implemented by the Trump administration as counterproductive and at odds with the nation's historical practices.

"I'm not making new law. I'm eliminating bad policy," Biden said at the time.

But U.S. District Judge Matthew Kacsmaryk said last year the administration did not adequately explain its reasons for canceling the policy, and said the administration's new procedures violated federal immigration law. A federal appeals court upheld his decision.

After the Supreme Court refused to intervene in August, the Biden administration reopened negotiations with Mexico and said it would reimplement the MPP.

But it has done so slowly, and with a narrow scope that has angered Republican critics.

Since the program's return on Dec. 6, most of the asylum seekers sent back to Mexico have been young adult men from Nicaragua and Venezuela, and the Biden administration has exempted those considered vulnerable because of mental and physical health issues, advanced age, sexual orientation or gender identity.

Biden officials returned 403 asylum seekers to Mexico in December and January, according to the administration's most recent MPP report. Nicaraguan nationals accounted for 59 percent of those enrolled, while Venezuelans were 23 percent, and Cubans 10 percent, according to the report.

President Donald Trump returned nearly 70,000 asylum seekers to Mexico in 2019 and 2020.

The Biden administration says it is complying with the district court order to restore MPP "in good faith," and that its ability to send back migrants has been limited by Mexican authorities and the coronavirus pandemic.

The Title 42 public health law, which allows border officials to bypass normal immigration proceedings and rapidly "expel" migrants, remains the administration's primary border management tool, officials say.

Under Biden, U.S. officials and immigration judges are now asking migrants if they fear a return to Mexico, rather than waiting for them to independently express those concerns. That triggers additional safeguards and interviews with U.S. officials.

About three-quarters of the asylum seekers placed in MPP have said they are afraid to go back to Mexico, but fewer than 15 percent were determined to be in danger and exempted from the program, according to the latest figures in the report.

Migrants sent back to Mexico under Trump were frequently preyed upon by kidnappers, extortionists and other criminals while waiting months for court hearings that never came.

Under the latest version of the program, U.S. and Mexican officials are working with the United Nations' International Organization for Migration to provide safe transport to and from U.S. border crossings, as well as to secure shelter facilities in Mexico.

The challenge to do away with MPP comes from Texas and Missouri. They convinced the lower courts that the Department of Homeland Security failed to consider MPP's benefits and the impact of immigration on the states.

When the Supreme Court refused to stop the lower court orders last August, it said in a short order that the administration "failed to show a likelihood of success on the claim that the memorandum rescinding the Migrant Protection Protocols was not arbitrary and capricious."

The unsigned order referred to a 2020 Supreme Court decision that cited similar reasons in blocking Trump from ending the Obama administration's program shielding some young undocumented immigrants from deportation, the Deferred Action for Childhood Arrivals (DACA).

In her filing asking the Supreme Court to take up the MPP case, Prelogar said DHS laid out its reasons for ending MPP in a memo "comprehensively addressing the district court's concerns."

The case is *Biden v. Texas*.

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