

Supreme Court lets Biden scrap Trump policy that barred 70,000 asylum seekers from US

Texas failed to stop the end of 'Remain in Mexico,' which kept migrants across the border, often in dangerous camps.

WASHINGTON — The Supreme Court on Thursday gave the Biden administration the OK to terminate the Trump-era "Remain in Mexico" policy, which kept at least 70,000 Central American migrants from entering the United States to pursue asylum claims.

The 5-4 ruling from Chief Justice Roberts held that "the Government's rescission of [Remain in Mexico] did not violate" federal immigration law.

That was a defeat for Texas and Missouri, which had persuaded lower courts to block two efforts by President Joe Biden to scrap the policy, implemented in January 2019. Both times, lower courts ruled that Biden's Homeland Security Department didn't follow proper procedures.

Activists with opposing views on immigration viewed the case, Biden vs. Texas, as a major test of executive discretion. Those who opposed Donald Trump's hardline approach hoped the ruling encourages Biden to dismantle other holdover policies, including Title 42, invoked early in the COVID-19 pandemic and used to bar 2 million migrants.

Indeed, Gov. Greg Abbott, lamenting the ruling, warned that it "will only embolden the Biden Administration's open border policies."

The Biden administration argued that Trump's policy itself was an exercise in discretion and, therefore, subject to reversal by another president.

"This policy was always a terrible and inhumane idea," said Bill Holston, executive director at Human Rights Initiative of North Texas, a legal nonprofit in Dallas. "It made it virtually impossible for people who had legally claimed asylum at the border to pursue their claims in court. And it subjected them to extreme violence as they waited in dangerous border conditions. It's policies like this

which have driven people to take ever more dangerous routes to the United States.”

“That results in the tragic loss of life like we just saw in San Antonio,” when 53 migrants packed into a tractor-trailer died in triple-digit heat on Monday, he said.

Abbott also cited that tragedy but argued that retaining and enforcing Remain in Mexico “would deter thousands more migrants from making that deadly trek” and avert loss of migrant lives.

Texas Attorney General Ken Paxton called the ruling “unfortunate” and “wrongly decided.” He accused Biden of “allowing hundreds of thousands of illegals to pour over the border month after month” while the case was pending. “Today’s decision makes the border crisis worse.”

But Aaron Reichlin-Melnick, policy director at the American Immigration Council, lauded the court for slamming the door on “the radical proposition that no administration could ever end the Remain in Mexico program.”

Senator Ted Cruz@SenTedCruz

Disappointed in SCOTUS ruling allowing Biden to eliminate Remain in Mexico.

I pray he makes the right decision and keeps the policy, given our unprecedented border crisis.

South Texas is seeing the impact of an open border already.

Removing this would be disastrous.

Rosalío Sosa, a pastor who heads a network of shelters in Chihuahua state across from El Paso, in Ciudad Juárez, Palomas and Ascensión, called the ruling “divine intervention on behalf of migrants.”

“Remain in Mexico was not just cruel, but deadly,” he said. He added that, because Mexico is so dangerous for migrants, for many, “it made more sense to take their chances crossing the desert.”

Under the policy, formally known as the Migrant Protection Protocols, or MPP,

asylum seekers from countries other than Mexico who arrive at the Southwest border — either at or between ports of entry — were returned to Mexico to await a hearing in U.S. immigration court.

Many ended up in dangerous and unsanitary refugee camps, including an especially squalid camp in Matamoros that was emptied and razed after Biden took office and halted enrollments in MPP. Human Rights First tracked over 1,500 reported kidnappings and attacks against migrants enrolled in the program. The State Department has issued its highest security warning for Matamoros' Tamaulipas state, south of McAllen, a major migration corridor.

Sosa estimated that more than 7,500 enrolled migrants are stuck in northern Mexico, adding that normalizing the asylum process “takes away a key marketing tool for smugglers, who prey on the desperation and frustration of these migrants.”

Mixed signals from Congress

At oral arguments April 26, the justices seemed confounded by mixed signals from Congress: chronic funding shortages for detention space and inconsistency in statutes, some of which say federal authorities “may detain” migrants and others that say “shall detain.”

The administration contended that, if Congress wanted to bar all asylum seekers from being released into the country pending hearings, it would have to provide funds to house them all — and it has never done so.

Conservative Justice Brett Kavanaugh joined Roberts and the court's three liberals, including Stephen Breyer, whose retirement took effect at noon Thursday.

In a concurring opinion, Kavanaugh noted that, given the shortage of detention space, immigration laws allow for parole into the United States as migrants await hearings. The return-to-Mexico approach also is lawful. But neither is mandatory.

“Because the immigration statutes afford substantial discretion to the Executive, different Presidents may exercise that discretion differently,” he wrote.

Four conservatives dissented. Justice Amy Coney Barrett preferred to send the fight back to a lower court but agreed with the majority on the merits, providing

something of an asterisk on the vote tally.

“It is a bittersweet victory, after so many lives have been lost to atrocious immigration deterrence policies both on the federal level and in the state of Texas,” said Fernando Garcia, executive director of the Border Network for Human Rights in El Paso.

Rep. Raul Ruiz, D-Calif., chair of the Congressional Hispanic Caucus, called the ruling “a step in the right direction” but added that “work remains to build a more fair and humane asylum process. We must do more to prevent tragedies like what we saw unfold in San Antonio.”

U.S. law gives asylum seekers the right to make their claim on U.S. soil. But it can take years to get a hearing.

Trump and others who want to restrict illegal migration have asserted that countless migrants exploit the delays to stay in the U.S. indefinitely and that many have bogus claims for asylum.

Trump’s policy was intended to address that.

Biden ended new MPP enrollments the day he took office. By then, about 70,000 migrants had been expelled over two years, including at least 16,000 children who arrived with a relative. Unaccompanied children were exempt from expulsion.

Mexican citizens are subject to expulsion or detention under other provisions.

Within five months, the Biden administration allowed 13,000 people previously enrolled into the United States to await their hearings.

Homeland Security Secretary Alejandro Mayorkas fully rescinded Remain in Mexico on June 1, 2021.

Texas and Missouri sued, accusing DHS of failing to follow correct procedures.

On Aug. 15, U.S. District Court Judge Matthew Kacsmaryk, a Trump appointee in Amarillo, ordered DHS to enforce the policy until the government had enough capacity to detain all migrants subject to detention. The New Orleans-based 5th Circuit Court of Appeals upheld the order.

Mayorkas issued an Oct. 29 memo terminating MPP for a second time, insisting he followed every procedure to the letter.

The administration lost again, and the program resumed under court order.

From Dec. 6 to April 30, the most recent data available, 5,014 migrants were enrolled in MPP. Of those, 2,914 were returned to Mexico. Most (62%) are from Nicaragua, followed by Cubans (15%) and Colombians (7%).

Thursday's Supreme Court ruling deemed the Oct. 29 rescission by DHS was lawful.

Justice Samuel Alito wrote in a dissent that homeland security officials are obliged to keep asylum seekers outside the country to await adjudication.

"When it appears that one of these aliens is not admissible, may the Government simply release the alien in this country and hope that the alien will show up for the hearing at which his or her entitlement to remain will be decided? Congress has provided a clear answer to that question, and the answer is no," he wrote.

Dallas, Houston and 23 other local governments around the country supported Biden's bid to overturn Remain in Mexico. In a friend of the court brief, they called it unfair to keep migrants away from pro bono legal aid that many cities offer, which would vastly improve their chances of being granted asylum.

Just 2.4% of 1,109 Remain in Mexico cases decided so far this year resulted in a grant of asylum, compared with about half of cases in the regular immigration court system, according to data kept by researchers at Syracuse University.

Under court order, the Biden administration reluctantly resumed the MPP in December.

Mexico won concessions in exchange for ongoing cooperation: COVID-19 vaccination for all migrants subject to the policy; a commitment to complete their cases within 180 days, which required dozens more immigration judges; and better access to lawyers for migrants, especially those who express fear about returning to Mexico.

Mexico's role in executing the policy was a major focus at oral arguments. Several justices voiced deep skepticism about Texas' insistence that the Biden

administration has no flexibility on how it handles asylum seekers, given the shortage of detention space and the reliance on the cooperation of a foreign government.

“Mexico can change its mind any day,” Justice Elena Kagan said, asserting that, under Texas’ theory, officials in Austin and Mexico City hold vetoes over U.S. asylum policy.

That view carried the day.

“The foreign affairs consequences of mandating the exercise of contiguous-territory return ... confirm that the Court of Appeals erred,” Roberts wrote in the majority opinion.

Rep. Michael McCaul of Austin, the senior Republican on the House Foreign Affairs Committee, has blasted Biden for trying to lift the Remain in Mexico rule. Reverting to so-called catch and release, he said recently on Fox News, will magnify the problem of illegal migration, already at record levels under Biden.

Half of the migrants caught in March were expelled under Title 42, a public health measure invoked under Trump because of COVID-19 and renewed under Biden, to the dismay of immigration advocates.

The Centers for Disease Control and Prevention terminated Title 42 effective May 23. Attorneys general from Texas and two dozen other states sued. A Trump-appointed federal judge in Louisiana issued a temporary order that has kept the quarantine in place.

Staff writer Dianne Solis reported from Dallas. Border correspondent Alfredo Corchado contributed reporting.

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Source:

<https://www.dallasnews.com/news/politics/2022/06/30/supreme-court-strikes-down-trump-policy-that-forces-asylum-seekers-to-stay-in-mexico/>

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