



# EXPLAINER

CONGRESSIONAL  
PROGRESSIVE  
CAUCUS CENTER

## Frequently Asked Questions (FAQs) on *Biden v. Texas* and “Remain in Mexico”

Last updated July 28, 2022

### Author:

Ricardo Pacheco, Legislative Affairs Associate  
([ricardo@progressivecaucuscenter.org](mailto:ricardo@progressivecaucuscenter.org))

### Background

In January 2019, former President Donald Trump implemented the [Migrant Protection Protocols](#) (MPP), otherwise known as the “Remain in Mexico” policy. Under MPP, migrants seeking asylum at the United States-Mexico border were given notices to appear in immigration court, but were forced to wait in Mexico until their proceedings. Previously, asylum seekers had been allowed into the U.S. and were either held in immigration detention or released on parole for the duration of their immigration proceedings.

President Joe Biden announced his intention to terminate this policy in January 2021 and [stopped](#) forcing new asylum seekers to remain in Mexico. The following month, President Biden began allowing MPP enrollees into the U.S. and signed [Executive Order 14010](#), which directed relevant agencies to determine whether to terminate or modify MPP. This prompted a lawsuit from Texas and Missouri, which sought to keep MPP in place. In June 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas released a [memo](#) officially terminating the program. In August 2021, however, a ruling from the U.S. District Court for the Northern District of Texas halted the Administration’s efforts and prevented MPP enrollees from being allowed into the U.S. This case made its way to the U.S. Supreme Court, which [ruled on June 30, 2022](#) that the Biden Administration *does* have the authority to end MPP. However, the Supreme Court sent the case back to the lower courts to consider whether the program was terminated properly.

This explainer answers some common questions about the future of MPP and the treatment of asylum seekers, following the Supreme Court ruling.

### 1. What is MPP?

The [Migrant Protection Protocols](#) originated under the Trump Administration, purportedly to “address the urgent humanitarian and security crisis at the Southern border,” stop the “exploitation of our generous immigration laws,” and “restore a safe and orderly immigration process.” Under the policy, migrants

seeking asylum in the U.S. were forcibly returned to Mexico to wait throughout the duration of their immigration proceedings.

## **2. What impact has MPP had on asylum seekers?**

MPP has had a disastrous effect on migrants seeking asylum in the U.S.; according to [Human Rights Watch](#):

*Since the start of "Remain in Mexico" asylum seekers returned to Mexico have been put at risk of kidnapping, extortion, and rape; have been denied access to basic services like health care and education; and have had their right to seek asylum in the United States systematically violated.*

Under the Trump Administration, [more than 71,000](#) asylum seekers—including at least [16,000 children and nearly 500 infants](#)—were forced to wait in Mexico for their immigration hearings, often in inhumane and dangerous conditions. During this time, Human Rights First tracked at least [1,544](#) publicly reported cases of kidnappings, murder, torture, rape, and other violent attacks against people returned to Mexico. In 2021, Human Rights First tracked at least [8,705](#) reports of kidnappings and other violent attacks against asylum seekers who were returned to Mexico under MPP and Title 42, the Trump-era “public health” policy that allows the government to immediately expel asylum seekers.

In addition, asylum seekers subjected to MPP experienced the same challenges that characterize the U.S. immigration system as a whole. [Human Rights Watch](#) cites “a [lack of access to counsel](#), [barriers to legal representation](#), [lack of transparency](#) in immigration proceedings, and [limited legal protections](#) for asylum seekers.” Under the Trump Administration, 97 percent of individuals whose cases were decided under MPP [did not have an attorney](#), and fewer than one percent of these people were granted asylum.

## **3. What has the Biden Administration done to end MPP?**

On his first day in office, President Biden stopped forcing new asylum seekers to remain in Mexico and subsequently signed [Executive Order 14010](#), ordering DHS to process migrants already enrolled in MPP and to determine whether to end the program. [DHS released a memo](#) officially terminating MPP in June 2021 and issued a revised memo that [October](#). However, an appellate court ignored that October memo and sided with Texas and Missouri in their aforementioned lawsuit. This forced the Administration to continue implementing MPP, even though it had already begun allowing MPP enrollees to be processed into the U.S. to pursue their immigration cases, leaving those asylum seekers in limbo.

## **4. Why did this case come before the Supreme Court?**

Before reaching the Supreme Court, both the U.S. District Court for the Northern District of Texas and the U.S. Court of Appeals for the Fifth Circuit sided with Texas

and Missouri, finding that the Biden Administration likely violated the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA) by ending MPP. The Administration appealed to the Supreme Court, which agreed in February 2022 to hear and fast-track the case. The questions before the Supreme Court were whether federal immigration law required the Administration to maintain MPP, and whether the October 2021 decision to end the program had any legal effect.

## **5. What was the Supreme Court's decision?**

The [Supreme Court sided 5-4](#) with the Biden Administration, finding that the government has the *power* to end the program, but did not decide whether the government ended the program *correctly*. The Court also held that the U.S. District Court for the Northern District of Texas did not have the jurisdiction to issue an injunction stopping the Administration from ending the program. The Court sent the case back to the lower courts to consider whether the Administration complied with administrative law under the APA when DHS ended MPP.

## **6. Does this mean MPP is over?**

Not exactly. While the Biden Administration can move forward with the October 2021 memo ending MPP, it must wait until the Supreme Court sends its certified judgment to the Fifth Circuit, which usually takes about 28 days—as soon as this week. The Biden Administration must continue implementing MPP until then.

## **7. When can we expect MPP to end?**

In theory, the Biden Administration can end MPP as soon as the Supreme Court sends the certified judgment to the Fifth Circuit, which typically takes around 28 days. However, again, the Supreme Court left the question of whether DHS complied with the APA to the lower courts. It is unclear whether the Administration will try to end the program immediately or if it will wait for the lower court to rule on this question.

## **8. What happens to the asylum seekers enrolled in MPP and currently waiting in Mexico?**

They are still being processed under MPP until the Biden Administration can officially rescind the program. Asylum seekers who arrive at the border are also processed under MPP. When the program ends, asylum seekers will again be processed under [Title 8 of the U.S. Code](#), which is composed of laws dealing with immigration and nationality. The Administration has, however, attempted to improve the processing of asylum seekers in the interim. In the October 2021 memo, DHS laid out [strategies](#) to better manage migration, including a dedicated docket to more efficiently adjudicate asylum claims. The department is also implementing the Asylum Officer Rule, which authorizes U.S. Citizenship and

Immigration Services officers to adjudicate asylum applications and grant asylum to migrants who establish a fear of persecution or torture during their credible fear screening.

**9. Does the Supreme Court’s ruling affect other immigration-related policies like Title 42?**

No, Title 42 remains in effect. While the Biden Administration has also tried to end Title 42, a federal judge for the U.S. District Court for the Western District of Louisiana blocked that termination on May 20, 2022. The judge ruled that the federal government likely violated the rulemaking requirements of the APA and that lifting Title 42 would cause “irreparable harm” to the states. The federal government is complying with the court’s injunction.

It is worth noting, however, that while the Supreme Court’s *Biden v. Texas* ruling does not have a direct impact on other policies, the *precedent* that the ruling sets could affect how other courts rule on issues like Title 42. Specifically, the Supreme Court held in *Biden v. Texas* that lower courts have limited authority to issue “injunctive relief” from—that is, to block—federal immigration policies. Moving forward, this could constrain lower courts that might otherwise attempt to block Administration action on immigration.

**10. Has the Biden Administration announced next steps on MPP after the *Biden v. Texas* ruling?**

Not at the time of publication. [Reporting](#) suggests that the Biden Administration is waiting for the certified judgment from the Supreme Court before it officially ends the program. In a [press release](#), DHS announced that it will continue its “efforts to terminate the program as soon as legally permissible.”

***The Congressional Progressive Caucus Center thanks FWD.us for their comments and insights.***