Title 42, used by both the Trump and Biden Administrations to expel migrants at the border without opportunity to seek asylum, was set to expire today. On Monday Supreme Court Chief Justice John Roberts issued a temporary hold on the policy in response to an appeal by state leaders. Yesterday the Biden Administration urged the Court to let Title 42 expire and reject the appeal. Despite this, the administration also suggested that if the Court denies the states’ request before Friday that Title 42 remain intact until December 27, therefore delaying the expiration of the law for at least six days.

The law, which permits the Centers for Disease Control and Prevention director to suspend entry into the United States in the interest of protecting public health, was invoked at the start of the COVID-19 pandemic and was set to terminate in May 2022 as the pandemic subsided. The termination was previously blocked by a lawsuit brought by state attorneys general, and after six additional months and a federal court order calling the rule “arbitrary and capricious,” the law was struck down again in November 2022. The Biden Administration was allowed five weeks to wind down the policy, but state leaders now fear that the administration lacks a plan to handle the end of Title 42.

Since the start of the COVID-19 pandemic, Title 42 has allowed for border security to turn away approximately 2.5 million people. Expelling these individuals without a chance for asylum did not deter them: Under the law, individuals can try crossing the border again mere hours after their initial apprehension. It therefore shouldn’t surprise readers to hear that in fiscal year 2021 about a third of people apprehended at the border had already attempted to cross at least once that year.

Currently, up to 8,000 migrants are being apprehended at the southern border per day and it is estimated that once Title 42 expires that number may jump to 14,000. The consensus among policymakers is that a strategy is needed to mitigate a potential flood of migrants to the border once Title 42 is rescinded.

So, what has been done to ease the transition from Title 42? The answer: A whole lot of talk and not a lot of action, hence the last-minute emergency appeal.

While there ought to be a replacement policy at the ready, the only available concrete plan seems to be an update by the Biden Administration to a Southwest Border Security and Preparedness memo from April 2022. The update outlines goals such as surging resources to the border, increasing processing efficiency, and imposing consequences for unlawful entry. While these strategies would likely ease incoming pressures at the border, they have yet to be implemented.

Title 42 is now operating on borrowed time. Continuous emergency appeals are not a sustainable solution to U.S. border traffic, and unsurprisingly, it is difficult to justify the use of a pandemic response policy two and a half years after the initial public health emergency declaration. It is time for the Biden Administration to start implementing its southwest border plans and to shelve Title 42 until the next pandemic.