



The Daily Dish

Lessons from SCOTUS and the MPP

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Eakinomics: Lessons from SCOTUS and the MPP

Tuesday the Supreme Court (SCOTUS) [declined to stay](#) a ruling by a Texas federal judge, with the effect of restoring the Trump-era policy requiring asylum seekers to remain in Mexico while their applications are processed by U.S. immigration courts. The ruling essentially concluded that the Biden Administration had acted arbitrarily and capriciously in reversing the Trump-era rulemaking. What can we learn from this episode??

To recap the timeline, the Migrant Protection Protocols (MPP), otherwise known as Remain in Mexico, stemmed from the Trump Administration seeking to alter the “catch and release” status quo for asylum seekers. In [December 2018](#), it introduced the MPP, with [Department Homeland Security \(DHS\)](#) claiming authority (through Section 235 of the Immigration and Nationality Act, or INA) that the United States can return an individual to a contiguous country through the duration of his or her pending removal proceeding under Section 240 of INA. In January 2019, DHS started implementing the MPP in Tijuana and extended it city by city along the border. By October 2019, around 50,000 asylum seekers had been returned to Mexico. Ultimately, over 70,000 asylum seekers have entered the MPP and fewer than 27,000 remained on February 2, 2021, when President Biden suspended the MPP due to “counterproductivity to an orderly and humane immigration system.” The program eventually ended in June 2021, allowing asylum seekers to reunite with family in the United States while awaiting their trials.

In response to the surge of illegal migration at the southern border, Texas and Missouri sued the Biden Administration to reinstate the MPP, and the Texas judge found that the administration did not give adequate reasoning when rescinding the policy and therefore violated the Administrative Procedure Act. As noted at the outset, the Supreme Court affirmed the judge’s decision. The Biden Administration has two options from here: DHS Secretary Alejandro Mayorkas can rewrite the explanation for why the administration terminated the program, or the administration must start negotiating with Mexico in order to reinstate the Trump-era policy.