

Asylum Law: Major Changes and Developments Two Years into the Biden Administration

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Migrant Protection Protocols (MPP) (2018-2020)

2018: DHS announces the Migrant Protection Protocols.

2019: Implementation of MPP: Policy guidance detailing the enforcement of Section 235(b) (2)(C) of INA.

March 2020: MPP courts shut down due to Covid. Hearings suspended. DHS and EOIR officially announce the program will be suspended indefinitely in July 2020.

February 2021: DHS announces the beginning of the process to unwind MPP. Processing into the US persons in Mexico with active cases.

June 2021: Secretary Mayorkas issues a memorandum terminating MPP. DHS expands the processing into the U.S. for those in Mexico with in-absentia orders or whose cases were terminated.

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Migrant Protection Protocols (MPP) (2018-2022)

August 2021: U.S. District Court for the Northern District of Texas rules in *Biden v. Texas* that June termination memorandum was not issued in compliance with the APA. Orders DHS to reimplement MPP "in good faith."

December 2021: DHS begins enrolling persons into MPP. Fifth Circuit denies vacating district court injunction ordering reinstatement of MPP. Biden administration requests the Supreme Court to review the decision of the Fifth Circuit Court of Appeals.

April 26, 2022: US Supreme Court hears oral arguments in *Biden v. Texas*.

June 30, 2022: SCOTUS holds that Biden Administration can proceed with unwinding MPP.

State of Play after *Biden v. Texas*

- District Court injunction vacated on 8/8/2022.
- No new enrollments on MPP. Winding down very slowly.
- MPP participants in Mexico will be disenrolled when return to US for next court hearing.
- People will continue their removal proceedings in the US.
- Merits hearings being rescheduled inconsistently.
- Participants issued I-94s and COV/COA forms.
- Participants with criminal history, or who are subject to reinstatement of removal, will remain in detention.

Title 42 Expulsions

- American Immigration Council reports 1.87 million expulsions under the program through April 2022, or roughly 60 percent of all CBP encounters between 4/2020 and 4/2022.
- April 2022: CDC issues new public health determination and orders termination of previous Title 42 order. Implementation to go into effect 5/23/22.
- May 2022: District Court for the Western District of Louisiana issues injunction suspending the implementation of the Title 42's termination. *Arizona v. CDC*. No. 6:22-cv-885:
- *Texas vs. Rochelle*, No 6:22-cv-13: Parallel case pending in the Southern District of Texas) Emergency Motion to Postpone or Preliminarily Enjoin Termination Order (4/22/2022)
- Innovation Law Lab's request to halt injunction in the Fifth Circuit denied on June 16th, 2022.

Title 42 Expulsions

- Patchy implementation
- Targeted countries Honduras, El Salvador , Guatemala, Haiti.
- Still seeing case-by-case exemptions, based on public safety, humanitarian, health, and vulnerable population such as LGBTQ.
- 2 groups categorically exempted:
 - (1) Family units who express fear to return (*Huisha-Huisha* exemption, not properly screened by DHS officials). *Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (DC 2022)
 - (2) Ukrainian nationals (after April 2022; streamlined process to enter US).
- Even with all the litigation and exemptions, CBP keeps expelling migrants under T42 at their own discretion.

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