

## 21-954 BIDEN V. TEXAS

DECISION BELOW: 20 F.4th 928

LOWER COURT CASE NUMBER: 21-10806

QUESTION PRESENTED:

This case concerns the Migrant Protection Protocols (MPP), a former policy of the Department of Homeland Security (DHS) under which certain noncitizens arriving at the southwest border were returned to Mexico during their immigration proceedings. On June 1, 2021, the Secretary of Homeland Security issued a memorandum terminating MPP. The district court vacated the Secretary's termination decision and remanded the matter to the agency on two grounds: (1) that terminating MPP violates 8 U.S.C. 1225 because DHS lacks capacity to detain all the inadmissible noncitizens it encounters who purportedly must be detained under that provision, and (2) that the Secretary had not adequately explained his decision. The court entered a permanent injunction requiring DHS to reinstate and maintain MPP unless Congress funds sufficient detention capacity for DHS to detain all noncitizens subject to mandatory detention under Section 1225 *and* until the agency adequately explained a future termination.

On October 29, 2021, after thoroughly reconsidering the matter on remand, the Secretary issued a new decision terminating MPP and providing a comprehensive explanation for the decision. The court of appeals nevertheless affirmed the injunction, endorsing the district court's reading of Section 1225 and holding that the Secretary's new decision could not be considered because it had no legal effect. The questions presented are:

1. Whether 8 U.S.C. 1225 requires DHS to continue implementing MPP.
2. Whether the court of appeals erred by concluding that the Secretary's new decision terminating MPP had no legal effect.

THE CASE WILL BE SET FOR ARGUMENT IN THE SECOND WEEK OF THE APRIL 2022 ARGUMENT SESSION. EXPEDITED BRIEFING.

ORDER OF MAY 2, 2022:

THE PARTIES ARE DIRECTED TO FILE SUPPLEMENTAL BRIEFS ADDRESSING THE FOLLOWING QUESTIONS: (1) WHETHER 8 U. S. C. §1252(f)(1) IMPOSES ANY JURISDICTIONAL OR REMEDIAL LIMITATIONS ON THE ENTRY OF INJUNCTIVE RELIEF, DECLARATORY RELIEF, OR RELIEF UNDER 5 U. S. C. §706. (2) WHETHER SUCH LIMITATIONS ARE SUBJECT TO FORFEITURE. (3) WHETHER THIS COURT HAS JURISDICTION TO CONSIDER THE MERITS OF THE QUESTIONS PRESENTED IN THIS CASE.

CERT. GRANTED 2/18/2022