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# The Most Important Immigration Rulings of 2022 and the Forecast for 2023

By Elizabeth Jacobs

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Over the past few years, federal judges have played an increasingly powerful role in the U.S. government's ability to implement immigration policies and programs. 2022 was no different. Here is a recap of some of last year's most important judicial decisions that have helped or hindered immigration enforcement efforts (or lack thereof) across the United States. Understanding these rulings is crucial to forecasting what's to come in 2023.

## *United States v. Texas*

**The Policy Challenged:** On September 30, 2021, Secretary of Homeland Security Alejandro Mayorkas issued a policy memorandum, titled "Guidelines for the Enforcement of Civil Immigration Law", which established a non-exhaustive list of factors that DHS officers must take into account before investigating, questioning, arresting, detaining, prosecuting, or removing aliens in the United States (collectively known as "enforcement action"). While the memorandum purports to not "compel a specific action to be taken", the policy directly obstructs the rule of law by explicitly assuring that an alien's illegal immigration status alone will not compel any DHS enforcement action.<sup>1</sup>

Specifically, Secretary Mayorkas limited DHS's enforcement priorities to include only aliens who pose a threat to national security, public safety, or border security, as the guidance narrowly defined those terms. Under these categories, DHS officers are only permitted to consider illegal or criminal aliens for removal who have engaged in terrorism or espionage; pose a current threat to public safety; or who have been apprehended after recently crossing the border illegally (after the relatively recent and arbitrary date of November 1, 2020).

The DHS policy goes further, instructing DHS officers to apply a non-exhaustive list of mitigating and aggravating factors when considering whether to initiate or advance an enforcement action against aliens who pose a "current threat to public safety" on account of their criminal histories. While officers may consider factors such as the sophistication or seriousness of an alien's crimes as permitting enforcement, the policy memorandum encourages DHS officers to refuse to act (regardless of statutory mandates) if sufficient mitigating factors exist. As a result of this and similar non-enforcement policies put in place since January 2021, removals of both criminal and illegal aliens have dropped to historic lows, all while border crossings have reached record-breaking highs.<sup>2</sup>

The states of Texas and Louisiana filed suit, challenging the legality of the DHS policy in the U.S. District Court for the Southern District of Texas.<sup>3</sup> The states asserted that the policy memorandum violates both federal immigration law and the Administrative Procedure Act (APA), which requires agencies to follow certain steps when taking agency actions, including substantive policy changes.

Notably, the states argued that the policy memorandum conflicted with the Immigration and Nationality Act (INA) §§ 236(c) and 241(a), both of which provide that the government "shall" detain or remove an alien who has committed certain crimes in the United States or is subject to an order of removal, respectively. Because the DHS policy limits detention and removal absent review of "the entire criminal and administrative record" to determine

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whether those enforcement actions are warranted, the states argued that the Mayorkas policy violates federal law. On June 10, 2022, Judge Drew Tipton vacated the department's September 29 memorandum.<sup>4</sup>

**The Ruling:** On July 6, 2022, the Fifth Circuit Court of Appeals denied DHS's request that it stay Judge Tipton's order, agreeing with the district court that DHS's policy memorandum violated both procedural and substantive federal law.<sup>5</sup> The court of appeals rebuked DHS's theory, stating, "the limitless principle of law that DHS would have us draw... is untenable and wholly unsupported,"<sup>6</sup> and emphasized that "Congress defines the scope of the agency's discretion."<sup>7</sup> The court of appeals also agreed that the both "the language found within [the policy memorandum] and the mechanisms of implementing it establish that it is indeed binding, thus removing DHS personnel's discretion to stray from the guidance or take enforcement action against an alien on the basis of a conviction alone."<sup>8</sup>

**What's Next?** DHS appealed the *vacatur* of the policy memorandum to the U.S. Supreme Court and is awaiting its decision. The Court heard oral arguments on the case on November 29, 2022.<sup>9</sup>

## *Biden v. Texas*

**The Policy Challenged:** The Migrant Protection Protocols program (MPP, more commonly known as "Remain in Mexico") was implemented by then-DHS Secretary Kirstjen Nielsen in January 2019. Relying upon authority in INA § 235(b)(2)(C), MPP allowed DHS to return certain aliens caught entering the United States illegally or without proper documentation back to Mexico to wait for their removal hearings.<sup>10</sup> Under the Trump administration, nearly 70,000 aliens were returned to Mexico pursuant to the program.<sup>11</sup> If an alien was granted asylum, they were allowed into the United States; if asylum was denied and the alien had no other lawful basis to remain in the United States, they were removed.<sup>12</sup>

The program cut off the most significant pull-factor for illegal border crossing and asylum fraud: the likelihood of being released into the United States. Unsurprisingly, illegal border crossings fell sharply after the agency implemented the deterrence policy, but even though it was explicitly permitted by statute, MPP was subject to numerous legal challenges during the Trump administration.<sup>13</sup>

Immediately upon taking office, President Biden announced he would suspend the program.<sup>14</sup> DHS issued a memorandum officially terminating MPP on June 1, 2021.<sup>15</sup>

The states of Texas and Missouri challenged DHS's suspension and later termination of MPP in the U.S. District Court for the Northern District of Texas, asserting that in doing so, DHS had violated both the INA and the APA.<sup>16</sup> Specifically, the states argued that DHS's decision to terminate the program forced DHS to violate the INA's mandatory detention requirements and abuse its narrow authority to parole aliens in the United States.

The states also asserted that DHS's actions were arbitrary and capricious because DHS failed to adequately consider (1) how using MPP would allow DHS to avoid violating the INA's clear detention mandate; (2) MPP's deterrent effect in reducing dangerous attempted illegal border crossings; (3) MPP's reduction of unmeritorious asylum claims; (4) whether the rescission of MPP is causing DHS to violate the INA's limits on its parole authority, and (5) the impact the rescission of MPP would have on the states and their reliance interests, among other concerns.

On November 18, 2021, Judge Matthew Kacsmaryk largely agreed with the states' arguments and issued a preliminary order to stop the administration's termination of MPP until the case could be considered on its merits.<sup>17</sup>

On October 29, 2021, Secretary Mayorkas issued a second memorandum terminating the program in an attempt to bolster its legal footing.<sup>18</sup> Both the district court and Fifth Circuit Court of Appeals, however, agreed that the Biden administration's termination of MPP violated federal law.<sup>19</sup> Both courts made this determination in part because they determined that DHS's refusal to operate MPP forced DHS to release inadmissible aliens into the United States en masse, directly disobeying federal law.

In another strongly worded opinion, the Fifth Circuit Court of Appeals referred to DHS's practice as its "pretended power to parole aliens while ignoring the limitations Congress imposed on the parole power."<sup>20</sup> The court explained that the INA

allows DHS to parole aliens only on a case-by-case basis for “urgent humanitarian or significant public benefit” reasons and went as far as to describe the government’s legal theory to be as “dangerous as it is limitless”. DHS appealed this ruling to the Supreme Court.

**The Ruling:** The Supreme Court issued an opinion on June 30, 2022, holding that the Biden administration’s termination of MPP did not violate the INA and that the secretary of Homeland Security has the discretionary authority to return an alien to a foreign contiguous territory (in this case Mexico).<sup>21</sup> The Court also ruled that the October 29 memorandum was a “final agency action”, meaning the memorandum is separately reviewable and not merely *post hoc* rationalization of DHS’s June 1 memorandum. As a result, the Court remanded the issue of whether the October 29 memorandum complied with the APA back to the district court to consider in the first instance.

Taking another look at the October 29 memorandum, district court Judge Kacsmaryk issued a *second* preliminary injunction of the Biden administration’s effort to terminate MPP on December 15, 2022.<sup>22</sup> Judge Kacsmaryk reasoned that DHS’ actions again were likely “arbitrary and capricious”, stating that “the October 29 Memoranda do not appear to demonstrate a ‘rational connection between the facts found and the choice made’ to terminate MPP.”

**What’s Next?** The U.S. District Court for the Northern District of Texas must now consider the case on its merits. We expect the district court to rule against DHS, given the rationale provided on December 16 justifying its stay on MPP’s termination, as well as the court of appeals’ prior reasoning. Given the significance of the legal issues presented in this litigation, the matter is likely to make its way back to the Supreme Court for a final resolution.

## *Texas v. United States*

**The Policy Challenged:** The Obama administration, through issuance of a three-page policy memorandum, created the Deferred Action for Childhood Arrivals (DACA) program on June 15, 2012.<sup>23</sup> DACA provides immigration benefits, including lawful presence, employment authorization, and forbearance from deportation to certain aliens who are in the United States illegally. In addition to other eligibility criteria, beneficiaries must have been under the age of 31 on or before June 15, 2012 and have entered United States prior to 2007, thus the DACA-eligible population is now between the ages of 26 to 42 years old. As of 2022, using DACA, DHS has allowed over 825,000 of aliens in the United States illegally to work and obtain numerous public benefits, with an estimated eligible population of up to 1.7 million aliens.<sup>24</sup> On September 28, 2021, DHS reported that over 660,000 individuals were enrolled in the program.

In May 2018, while litigation challenging the Trump administration’s rescission of DACA was ongoing, several states, led again by Texas, filed a lawsuit against DHS challenging DACA’s implementation in the first instance.<sup>25</sup> On July 16, 2021, the U.S. District Court for the Southern District of Texas ruled that DACA’s creation violated the notice-and-comment requirement under the APA.<sup>26</sup> The ruling went further, however, to hold that the program is also substantively invalid. As the court explained: “While the law certainly grants some discretionary authority to the agency, it does not extend to include the power to institute a program that gives deferred action and lawful presence, and in turn, work authorization and multiple other benefits to 1.5 million individuals who are in the country illegally.”<sup>27</sup>

While appealing this decision, DHS codified DACA by issuing a final regulation as an attempt to legitimize the program and strengthen the agency’s legal posturing.<sup>28</sup> DHS acknowledged the full extent of the district court ruling in a footnote in the proposed DACA regulation, writing, “The district court in [*Texas*] also concluded that ‘DACA is an unreasonable interpretation of the law because it usurps the power of Congress to dictate a national scheme of immigration laws and is contrary to the INA.’”<sup>29</sup> Brazenly, DHS responded by stating, “The Department respectfully disagrees,” and went on to reiterate the same view of DACA that the district court had rejected. The final DACA regulation went into effect on October 31, 2022.

**The Ruling:** On October 5, 2022, the Fifth Circuit Court of Appeals ruled the original DACA program violated both procedural and substantive law, stating that “Congress determined which aliens can receive these benefits, and it did not include DACA recipients among them. We agree with the district court’s reasoning and its conclusions that the DACA Memorandum contravenes comprehensive statutory schemes for removal, allocation of lawful presence, and allocation of work authorization.”<sup>30</sup> The court of appeals remanded the case to the lower district court to reconsider the legal challenge as it applies to DHS’s new DACA regulation.<sup>31</sup>

The Fifth Circuit decision allows current DACA recipients to maintain and renew their DACA status and work authorization while the case is pending resolution in the district court. DHS, however, is prohibited from approving new (or “initial”) DACA applications. Despite this order, USCIS has decided to continue to accept initial applications, but will not process them, and will process only renewals while the court order is in effect.

**What’s Next?** Because the policy codified by the DACA regulation is nearly identical to the original program established in 2012 via memorandum, it is unlikely to survive the district court’s review and will continue to make its way through the federal court system. In its July 2021 decision, the district court signaled that a regulation codifying the program would not survive legal scrutiny so long as it continued to directly conflict with numerous federal statutes.<sup>32</sup> The court explained that, “Against the background of Congress’ ‘careful plan,’ DHS may not award lawful presence and work authorization to approximately 1.5 million aliens for whom Congress has made no provision.” The court resolutely concluded that Congress has expressly not authorized DACA.<sup>33</sup>

## *Louisiana v. CDC*

**The Policy Challenged:** Title 42 is a section of the United States Code that pertains to public health and welfare. It includes provisions related to a wide range of topics, including disease prevention and control. In March 2020, as a response to the Covid-19 pandemic, the Centers for Disease Control and Prevention (CDC) issued an order under its Title 42 authorities to allow DHS to quickly expel aliens who have entered the United States illegally or sought admission without proper documents, to limit the further transmission of Covid into the country and prevent the transmission of new variants.<sup>34</sup> CDC reissued those Title 42 orders several times thereafter (subject to modifications and amendments), well into the Biden administration.<sup>35</sup>

On April 1, 2022, the Biden administration announced its plans to end the use of its expulsion authority under Title 42, effective May 23, 2022.<sup>36</sup> Two days later, the states of Arizona, Louisiana, and Missouri filed suit against CDC in the U.S. District Court for the Western District of Louisiana, alleging that its termination of Title 42 violated the APA, by failing to adequately consider states’ reliance interests in the government maintaining the CDC orders.<sup>37</sup>

**The Ruling:** On May 20, 2022, district court Judge Robert Summerhays issued an injunction blocking the Biden administration’s attempt to end the CDC orders issued under Title 42. He held that the CDC violated the APA by failing to engage in notice-and-comment rulemaking. With respect to immigration enforcement, the court found that CDC’s termination of its Title 42 order would “result in increased border crossings and that, based on government estimates, the increase may be as high as three-fold”, or nearly 18,000 individuals a day.<sup>38</sup>

**What’s Next?** The plaintiff states in *Louisiana v. CDC* are now seeking to intervene in a separate challenge to Title 42, *Huisha-Huisha v. Mayorkas* (explained below) to protect their interests in the government’s continued implementation of the CDC’s Title 42 orders. In particular, they have argued that the Biden administration is colluding with plaintiffs in *Huisha-Huisha* “to recreate” the government’s termination order without engaging in notice-and-comment procedures required by the APA.

## *Huisha-Huisha v. Mayorkas*

**The Policy Challenged:** The plaintiffs, described as “a group of asylum-seeking families who fled to the United States”, are challenging the legality of the CDC’s Covid-19 Title 42 expulsion orders.<sup>39</sup> The plaintiffs brought their challenge in the U.S. District Court for the District of Columbia, arguing that Title 42 did not allow for removal proceedings and that they “would face grave harms if they were expelled without being allowed to apply for humanitarian relief”. On September 16, 2021, Judge Emmet Sullivan enjoined the expulsion of illegal entrant adults travelling with children in “family units” under Title 42.

The government appealed Judge Sullivan’s September 16 order, and on March 4, 2022, the D.C. Circuit affirmed DHS’s authority to expel illegal migrants under Title 42, but not to places where those aliens would be persecuted or tortured, and therefore required the government to conduct fear screenings for any covered alien who claimed a fear of return.<sup>40</sup>

**The Ruling:** The matter was returned to Judge Sullivan, and on November 15, 2022, he vacated and enjoined the CDC’s Title 42 orders, ruling that they were “arbitrary and capricious” and violated the law when issued because they were not imple-

mented properly.<sup>41</sup> Judge Sullivan also granted the government’s request to stay his order until December 20, 2022, to allow the government “to prepare for the transition from Title 42 to Title 8 (immigration) processing.”<sup>42</sup>

Shortly after, a group of state plaintiffs, led by Texas and Arizona, filed a motion to intervene in the lawsuit.<sup>43</sup> The states asserted that, “[b]ecause invalidation of the Title 42 Orders will directly harm the States, they now seek to intervene to offer a defense of the Title 42 policy so that its validity can be resolved on the merits, rather than through strategic surrender.”

The D.C. Circuit denied that motion to intervene, prompting the states to file an emergency application for a stay with the Supreme Court. Again, the states asserted that the Biden administration is colluding with plaintiffs to end the CDC Title 42 order with the “same lack of notice-and-comment compliance as the enjoined rule.”<sup>44</sup>

**What’s Next?** The Supreme Court granted the states’ application for review, but the only issue before the Court is the D.C. Circuit’s denial of the states’ request to intervene, not the merits of their claim that Judge Sullivan erred in enjoining and vacating Title 42.<sup>45</sup> The justices set the matter on an expedited briefing schedule that will allow them to hear arguments in February 2023.

The Court explained that the effect of this ruling was to preclude “giving effect to the District Court order setting aside and vacating the Title 42 policy; the stay itself does not prevent the federal government from taking any action with respect to that policy”. Accordingly, if the Fifth Circuit vacates Judge Summerhays’ order (prohibiting termination of the CDC order) in *Louisiana v. CDC*, the Biden administration may proceed to end its use of Title 42 authorities at the border.

## *Patel v. Garland*

**Background:** This case involved an alien who entered the United States illegally in the 1990s and applied to U.S. Citizenship and Immigration Services (USCIS) for a discretionary green card.<sup>46</sup> USCIS denied his request after the agency determined that the alien was ineligible for a green card because he had falsely claimed to be a U.S. citizen on a Georgia driver’s license application. Aliens who lie about being U.S. citizens in order to obtain federal or state benefits are generally prohibited by law from adjusting their immigration status to that of a lawful permanent resident (otherwise known as green card holders).<sup>47</sup>

Patel argued before an immigration judge that his false citizenship claim was a mistake, but the court did not find the alien to be credible and denied his request.<sup>48</sup> As a result, Patel, who remained in the United States without a lawful immigration status, was issued a removal order. The Eleventh Circuit Court of Appeals refused to consider Patel’s appeal on this issue after it determined that federal law explicitly barred its ability to review these types of cases.

**The Ruling:** The Supreme Court ruled, 5-4, that federal courts could not review factual findings related to discretionary relief, drastically limiting appellate courts’ ability to review findings made by immigration courts. Specifically, the Court ruled that federal courts do not have jurisdiction to consider whether immigration officers or judges made correct factual findings in an adjustment of status decision.<sup>49</sup>

Justice Amy Coney Barrett, who wrote the majority’s opinion, explained, “Federal courts have a very limited role to play in this process. With an exception for legal and constitutional questions, Congress has barred judicial review of the Attorney General’s decisions denying discretionary relief from removal.”<sup>50</sup> Advancing a stricter interpretation of the statute than what both the government and alien had argued, Judge Barrett stated, “Both the Government’s and Patel’s arguments read like elaborate efforts to avoid the most natural meaning of the text.”<sup>51</sup> Federal courts, nevertheless, retain the authority to review certain constitutional legal issues that arise from these types of cases.

**What’s Next?** While this matter has reached its final resolution, the Court’s ruling will limit judicial activism in what are otherwise unreviewable immigration cases.

## *GEO Group, Inc. v. Newsom*

**The Policy Challenged:** In 2019, California enacted Assembly Bill (AB) 32, which prohibits any person from operating “a private detention facility within the state.”<sup>52</sup> As a result, AB 32 would have prevented U.S. Immigration and Customs Enforcement (ICE)’s contractors from continuing to run detention facilities in the state.

The law was challenged by the federal government and GEO Group, a private prison company operating two immigration and two criminal detention centers in California. They argued that AB 32 was both preempted by federal law and violated intergovernmental immunity principles by directly regulating and discriminating against the federal government, in violation of the Supremacy Clause of the U.S. Constitution.<sup>53</sup> The U.S. District Court for the Southern District of California upheld the law as it applied to immigration detention facilities, but held that it was preempted as it applied to criminal detention facilities, finding that federal criminal law explicitly authorized private criminal detention facilities.

When analyzing the impact of the law on immigration detention, the district court applied a “presumption against preemption” on the basis that AB 32 regulated what the district court considered to be a traditional area of state power: health and safety. The district court did not, however, find that Congress had expressed sufficient “clear and manifest purpose” to allow use of private detention facilities in the immigration context to overcome this presumption. The plaintiffs appealed the district court’s decision to the Ninth Circuit Court of Appeals.<sup>54</sup>

**The Ruling:** On September 26, 2022, the Ninth Circuit, sitting *en banc*, held that AB 32 violates the Supremacy Clause of the U.S. Constitution. The Ninth Circuit concluded that AB 32 improperly overrode the federal government’s decision, “pursuant to discretion conferred by Congress”, to use private contractors to run its immigration detention facilities and would give California “virtual power of review” over ICE’s detention decisions.<sup>55</sup> The circuit court determined that “whether analyzed under intergovernmental immunity or preemption, California cannot exert this level of control over the federal government’s detention operations.”<sup>56</sup> It also held that “no presumption against preemption” applied to this case because immigration detention is exclusively an area of federal concern.<sup>57</sup>

**What’s Next?** Although the Ninth Circuit correctly determined that immigration detention operations cannot be dictated by state legislatures, the Biden administration continues to skirt mandatory detention laws, abuse its parole authority, and expand use of what is known as “Alternatives to Detention” (ATD).<sup>58</sup> Resolution of *United States v. Texas* (challenging the Biden administration’s non-enforcement policy) and *Texas v. Biden* (challenging the Biden administration’s termination of the “Remain in Mexico” program) may provide significant guidance regarding the extent to which the DHS must comply with Congress’s mandates regarding aliens subject to removal from the United States.

# What We Can Expect to See in 2023?

The executive branch's ability to limit enforcement actions and provide immigration benefits under the guise of "prosecutorial discretion" will continue to be tested in the courts in 2023. More interestingly, the Supreme Court has an opportunity to address the Biden administration's tactic of "rulemaking-by-collective-acquiescence," what Chief Justice Roberts referred to as the government's strategy to accept defeat in litigation in order to make policy changes without complying with procedures required by the APA.<sup>59</sup> Whether this tension will provide state plaintiffs greater leverage in challenges against Biden administration policies remains to be seen.

The CDC's order under Title 42 should remain in effect until at least the summer of 2023, and the Supreme Court will take up the states' request to intervene in *Arizona v. Mayorkas* during its February 2023 argument session.<sup>60</sup> The continuation of Title 42, however, could be undermined if a reviewing court vacates Judge Summerhays' order staying the policy's termination or if the Biden administration decides to properly engage in notice-and-comment rulemaking in another attempt to terminate the program.

The Biden administration will also face an uphill battle in 2023 in the Fifth Circuit Court of Appeals defending its termination of MPP. Because of the significance of the issues surrounding this litigation and worsening conditions on the southern border, we expect this case to make its way to the Supreme Court for resolution.

Likewise, we should also expect the federal courts to come closer to a final resolution of the decade-long DACA controversy. The courts are now tasked to evaluate the Biden administration's DACA regulation (rather than the 2012 implementing memorandum) on the merits.<sup>61</sup> Previous rulings from the Fifth Circuit, however, suggest that the Biden administration will need to seek Supreme Court review if it wishes to maintain the program through the new year.<sup>62</sup>

Additionally, state plaintiffs will continue to play a leading role in challenging new policies and regulations from the Biden administration. The Supreme Court has indicated on numerous occasions a willingness to consider states' rights to sue the federal government on issues related to immigration and border security. Currently, Texas and Arizona are leading the charge in challenging<sup>63</sup> the asylum and credible fear process interim final rule, which made sweeping changes to regulations governing the credible fear process to allow asylum officers, rather than immigration judges, to issue final grants of asylum for recent border crossers claiming a fear of return.<sup>64</sup>

USCIS may also face legal challenges from businesses and alien advocates on its new fee rule, which has increased application and petition fees across the immigration system.<sup>65</sup> The agency, which is almost entirely fee-funded, is required to review its fee structure every two years. USCIS, however, has not been able to update its fees since 2016 because of interference imposed by litigation during Trump administration.

Finally, we expect the U.S. District Court for the Northern District of Florida to issue a ruling on the state of Florida's lawsuit against the Biden administration's mass-parole policy in 2023.<sup>66</sup> The lawsuit, which was filed in February 2022, challenges the Biden administration's border policies, including its expansion of parole and mass release of aliens subject to mandatory detention. The state argues that the administration's policies violate federal law and are raising the cost of services (such as education, health care, and unemployment services) in the state. U.S. District Judge T. Kent Wetherell heard opening arguments on January 9, 2023 and is expected to rule on the decision in the coming months.

## End Notes

- <sup>1</sup> “Memorandum for Tae D. Johnson, Acting director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Guidelines for the Enforcement of Civil Immigration Law”, September 30, 2021.
- <sup>2</sup> Jon Feere, [“The Biden Administration is Cooking the Books on Illegal Immigrant Arrests”](#), Center for Immigration Studies, March, 24, 2022; [“Southwest Land Border Encounters”](#), U.S. Customs and Border Protection, December 2022.
- <sup>3</sup> *Texas v. United States*, Case No. 6:12-CV-00016 (S.D. Tex. 2021).
- <sup>4</sup> *Texas v. United States*, Civil Action No. 6:21-CV-00016, June 10, 2022.
- <sup>5</sup> *Texas v. United States*, Case No. 22-40367 (5th Cir. 2022).
- <sup>6</sup> *Ibid.* at slip op. 25.
- <sup>7</sup> *Ibid.* at slip op. 18.
- <sup>8</sup> *Ibid.* at slip op. 30.
- <sup>9</sup> Supreme Court of the United States, [Oral Argument – Audio](#), *United States v. Texas*, November 29, 2022.
- <sup>10</sup> “Memorandum for L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, et al., from Kirstjen M. Nielsen, Secretary, U.S. Department of Homeland Security, Re: Policy Guidance for Implementation of the Migrant Protection Protocols”, January 25, 2019; The Trump administration did not place Mexican nationals, unaccompanied alien children (UACs), or other vulnerable populations into MPP.
- <sup>11</sup> [“MPP \(Remain in Mexico\) Deportation Proceedings – All Cases”](#), Transactional Records Access Clearinghouse, November 2022.
- <sup>12</sup> Migrant Protection Protocols Memo, at 2-4.
- <sup>13</sup> [“Southwest Land Border Encounters”](#), U.S. Customs and Border Protection, December 2022.
- <sup>14</sup> “Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border”, Executive Order No. 14010, 86 Fed. Reg. 8267, February 2, 2021.
- <sup>15</sup> “Memorandum for Troy Miller, Acting Commissioner, U.S. Customs and Border Protection, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Termination of the Migrant Protection Protocols”, June 1, 2021.
- <sup>16</sup> *Texas v. Biden*, Case No. 2:21-CV-00067 (N.D. Tex. 2021).
- <sup>17</sup> *Texas v. Biden*, Case No. 2:21-CV-067-Z (N.D. Tex. 2021).
- <sup>18</sup> “Memorandum for Tae D. Johnson, Acting Director, U.S. Immigration and Customs Enforcement, et al., from Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Re: Termination of the Migrant Protection Protocols”, October 29, 2021.



- <sup>19</sup> *Texas v. Biden*, Case No. 2:21-CV-067-Z (N.D. Tex. 2021); *Texas v. Biden*, No. 21-10806 (5th Cir. 2021).
- <sup>20</sup> *Texas v. Biden*, No. 21-10806 (5th Cir. 2021).
- <sup>21</sup> *Biden v. Texas*, 142 S. Ct. 2528 (June 30, 2022).
- <sup>22</sup> *Texas v. Biden*, Case No. 2:21-CV-067-Z (N.D. Tex. 2022).
- <sup>23</sup> “Memorandum for David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et al., from Janet Napolitano, Secretary, U.S. Department of Homeland Security, Re: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children”, June 15, 2012.
- <sup>24</sup> Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53736 (September 28, 2021).
- <sup>25</sup> See *Dep’t of Homeland Security v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020).
- <sup>26</sup> *Texas v. United States*, 549 F. Supp. 3d 572, 624 (S.D. Tex. 2021).
- <sup>27</sup> *Ibid.*, at 605.
- <sup>28</sup> Deferred Action for Childhood Arrivals, 87 Fed. Reg. 53152 (August 10, 2022).
- <sup>29</sup> Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53736, n.178 (September 28, 2021).
- <sup>30</sup> *Texas v. United States*, 50 F.4th 498 (5th Cir. 2022).
- <sup>31</sup> *Ibid.*, at 531.
- <sup>32</sup> *Texas v. United States*, 549 F. Supp. 3d 572, 614 (S.D. Tex. 2021).
- <sup>33</sup> *Ibid.* at 615.
- <sup>34</sup> “Order Suspending the Introduction of Certain Persons From Countries Where a Communicable Disease Exists”, U.S. Department of Health and Human Services, Center for Disease Control and Prevention, March 17, 2020.
- <sup>35</sup> [“CDC Orders”](#), U.S. Department of Health and Human Services, Center for Disease Control and Prevention, December 30, 2022.
- <sup>36</sup> [“Statement by Secretary Mayorkas on CDC’s Title 42 Order Termination”](#), U.S. Department of Homeland Security, April 1, 2022.
- <sup>37</sup> *Louisiana v. CDC*, Case No. 6:22-cv-00885 (W.D. La. 2022).
- <sup>38</sup> *Ibid.* at slip op. 9.
- <sup>39</sup> *Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146 (D.D.C. 2021).
- <sup>40</sup> *Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022).
- <sup>41</sup> *Huisha-Huisha v. Mayorkas*, Civil Action 21-100 (D.D.C. November 15, 2022).
- <sup>42</sup> *Huisha-Huisha v. Mayorkas*, Civil Action 21-100 (EGS), “Unopposed Emergency Motion for Temporary Stay of the Court’s Nov. 15, 2022, Order” (D.D.C. November 16, 2022).

- <sup>43</sup> *Huisha-Huisha v. Mayorkas*, Civil Action 21-100 (EGS), “Motion to Intervene By the States of Arizona, Louisiana, Alabama, Alaska, Kansas, Kentucky, Mississippi, Nebraska, Ohio, Oklahoma, South Carolina, Texas, Virginia, West Virginia, and Wyoming” (D.D.C. November 21, 2022).
- <sup>44</sup> *Arizona v. Mayorkas*, No. 22A524, “Emergency Application for Stay Pending Certiorari” (December 19, 2022).
- <sup>45</sup> *Arizona v. Mayorkas*, No. 22A524, Order (December 19, 2022).
- <sup>46</sup> *Patel v. Garland*, 142 S. Ct. 1614 (2022).
- <sup>47</sup> 8 U.S.C.S. § 1182(a)(6)(C)(ii)(I).
- <sup>48</sup> *Patel v. Garland*, 142 S. Ct. 1614 (2022).
- <sup>49</sup> *Ibid.* at 1626.
- <sup>50</sup> *Ibid.* at 1618.
- <sup>51</sup> *Ibid.* at 1623.
- <sup>52</sup> California Assembly Bill No. 32 (2019).
- <sup>53</sup> *GEO Group, Inc. v. Newsom*, No. 19-CV-2491 JLS (WVG) (D. Cal. 2020).
- <sup>54</sup> *GEO Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022).
- <sup>55</sup> *Ibid.* at 751-752.
- <sup>56</sup> *Ibid.* at 751.
- <sup>57</sup> *Ibid.* at 753.
- <sup>58</sup> [“Alternatives to Detention”](#), U.S. Immigration and Customs Enforcement, December 23, 2022.
- <sup>59</sup> *Arizona v. City & Cnty. of San Francisco*, 142 S. Ct. 1926 (2022).
- <sup>60</sup> *Arizona v. Mayorkas*, No. 22A524, Order (December 19, 2022).
- <sup>61</sup> *Texas v. United States*, 50 F.4th 498 (5th Cir. 2022).
- <sup>62</sup> *Ibid.*; see *Texas v. United States*, 549 F. Supp. 3d 572, 624 (S.D. Tex. 2021).
- <sup>63</sup> See *Texas v. Mayorkas*, Case No. 2:22-CV-094-Z (N.D. Tex. 2022); *Arizona v. Garland*, Civil Action No. 6:22-cv-01130-DCJ-CBW (W.D. La. 2022).
- <sup>64</sup> See “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers”, 87 Fed. Reg. 18078, March 29, 2022.
- <sup>65</sup> “Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements”, U.S. Citizenship and Immigration Services, Doc. No. 2022-27066, January 2023.
- <sup>66</sup> *Florida v. Mayorkas*, Case No. 3:21-cv-1066-TKW-EMT (N.D. Fla. 2022).