

19-1212 MAYORKAS V. INNOVATION LAW LAB

DECISION BELOW: 951 F.3d 1073

LOWER COURT CASE NUMBER: 19-15716

QUESTION PRESENTED:

This case concerns a Department of Homeland Security (DHS) policy, known as the Migrant Protection Protocols (MPP), which applies to aliens who have no legal entitlement to enter the United States but who depart from a third country and transit through Mexico to reach the United States land border. MPP is an exercise of DHS's express authority under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, to return those aliens temporarily to Mexico during the pendency of their removal proceedings. See 8 U.S.C. 1225(b)(2)(C). The district court issued a universal preliminary injunction barring DHS from implementing MPP. The court of appeals affirmed. The courts concluded that MPP likely violates the INA and the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 5 U.S.C. 701 *et seq.*

The questions presented are:

1. Whether MPP is a lawful implementation of the statutory authority conferred by 8 U.S.C. 1225(b)(2)(C).
2. Whether MPP is consistent with any applicable and enforceable non- refoulement obligations.
3. Whether MPP is exempt from the APA requirement of notice-and-comment rulemaking.
4. Whether the district court's universal preliminary injunction is impermissibly overbroad.

ORDER OF FEBRUARY 3, 2021:
THE MOTIONS TO HOLD FURTHER BRIEFING IN ABEYANCE AND TO REMOVE
THE CASES FROM THE FEBRUARY 2021 ARGUMENT CALENDAR ARE GRANTED.

CERT. GRANTED 10/19/2020