



COMMENTARY Immigration

Federal Judge Reinstates “Remain in Mexico,” Ruling Biden Broke Law in Terminating Policy

Aug 17th, 2021 3 min read

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KEY TAKEAWAYS

The Administrative Procedure Act requires executive branch agencies to explain and justify their actions with “reasoned decisionmaking.”

Kacsmaryk ruled that the Biden administration violated the Administrative Procedure Act when it cancelled the Remain-in-Mexico policy.

The case also highlights the importance of the Administrative Procedure Act to litigators challenging the Biden administration’s excesses.

Federal district judge Matthew Kacsmaryk on Friday granted judgment in favor of Texas and Missouri against the Biden administration in their lawsuit over the president’s termination of the Migrant Protection Protocols (commonly called the “Remain in Mexico” policy). The takeaway is that unless President Joe Biden prevails in an emergency appeal, the policy will be reinstated on Friday, Aug. 20.

Kacsmaryk ruled that the Biden administration had violated the Administrative Procedure Act and a part of the immigration laws called Section 1225 when it cancelled Remain in Mexico.

The Administrative Procedure Act requires executive branch agencies to explain and

justify their actions with “reasoned decisionmaking.” As the Supreme Court has explained, that means that they must “examine the relevant data and articulate a satisfactory explanation for [their] action including a rational connection between the facts found and the choice made.”

In a meticulous opinion relying exclusively on facts and statements provided by the Biden administration itself, Kacsmaryk found that the Biden administration fell woefully short of this standard when it cancelled Trump’s Remain-in-Mexico policy.

Because of the Administrative Procedure Act, the Biden administration was required to consider the benefits that the policy created. The Department of Homeland Security had previously found that the policy was highly effective at returning illegal aliens to Mexico calling it “an indispensable tool.” When the Biden administration cancelled the policy, it simply ignored those findings.

Likewise, the administration was required to consider the harms that cancelling the policy would cause. Again, the Department of Homeland Security warned Biden that cancelling the policy “would lead to a resurgence of illegal aliens” trying to cross the border and would encourage “smuggling operations [that] would exploit the rescission.” And again, Biden ignored these warnings.

The administration was also required to consider whether and to what extent Texas and Missouri had come to rely on the policy. It did not. The administration was required to consider more limited policies short of total cancellation. It did not.

So too was the administration required to explain the basis for factual statements it made when it terminated the policy. It did not. Finally, the administration was required to acknowledge the effect that terminating the policy would have on its compliance with the immigration laws. It did not.

For all these reasons, Kacsmaryk ruled that the Biden administration violated the Administrative Procedure Act when it cancelled the Remain-in-Mexico policy.

But that’s not all the administration did wrong.

Judge Kacsmaryk ruled that the administration also violated Section 1225 of the

immigration laws. That law requires the government to either detain or return to Mexico aliens crossing the border pending their immigration proceedings. Because the Biden administration cancelled the Remain-in-Mexico policy, its only lawful option was mandatory detention. The administration, however, admitted to Kacsmaryk that it “does not have the capacity” to comply with this law. The surge of migrants is simply too overwhelming.

Accordingly, Kacsmaryk ruled that under these circumstances “terminating [Remain in Mexico] necessarily leads to the systemic violation of Section 1225 as aliens are released into the United States because Defendants are unable to detain them.”

To remedy the Biden administration’s unlawful conduct, Kacsmaryk vacated the administration’s termination of the Remain-in-Mexico policy. He also ordered the administration to restart enforcement of that policy and to file monthly reports proving that it is doing so.

Kacsmaryk stayed his order for one week to allow the administration time to file an emergency appeal, if it wished.

Kacsmaryk deserves praise not only because he meticulously and rigorously applied the law here, but also because he did so in record time. This case went from filing to trial and judgment (with a 53-page opinion) in exactly four months. The federal judiciary is chock-full of brilliant, hardworking judges, but Kacsmaryk accomplished something incredible even by their high standards.

The case also highlights the importance of the Administrative Procedure Act to litigators challenging the Biden administration’s excesses. That law was frequently used—and abused— by courts to block Trump administration policies. But what’s sauce for the goose is sauce for the gander, and now those very same court decisions are, predictably, coming back to bite Biden.

Conservative litigators take note: the Biden administration is acting fast and carelessly. The Administrative Procedure Act is your new best friend.

This piece originally appeared in The Daily Signal
