

Supreme Court sides 6-3 with Trump administration on immigration asylum border policy

Justice Ketanji Brown Jackson said the court shouldn't have taken the case at all.

[Jordan Rubin](#)



A divided Supreme Court sided with the Trump administration in a case about the federal government's power to turn away asylum seekers if they're still on the Mexican side of the U.S.-Mexico border.

The case hinged on the interpretation of [federal law](#) that says a person can apply for asylum if they are "physically present in the United States" or if the person "arrives in the United States."

Justice Samuel Alito wrote the [majority opinion](#) for the court's GOP appointees Thursday. He said a person standing in Mexico doesn't arrive in the United States by attempting, and failing, to set foot in this country. Rather, he said they arrive in the U.S. only when they cross the border. Therefore, the majority concluded that federal law does not entitle someone standing in Mexico to apply for asylum and does not require an immigration officer to inspect them.

Joined by Justices Elena Kagan and Ketanji Brown Jackson, Justice Sonia

Sotomayor said in dissent that the majority “blesses the Executive Branch’s decision to slam the door shut on all who are fleeing persecution, despite the detailed inspection and asylum system that Congress enacted and commands.”

Focusing on the “arrives in” part, the government’s lawyer told the justices at the [March hearing](#) that a person can’t “arrive in” the U.S. if they’re “still standing in Mexico. That,” the government said, “should be the end of this case.” A lawyer for immigrants said the government’s reading would render the law “nonsensical” and would keep the U.S. from living up to its ideals and treaty obligations to people fleeing persecution.

Until 2016, noncitizens seeking asylum at ports of entry on the U.S.-Mexico border would cross onto U.S. soil and wait in line for inspection. But toward the end of the Obama administration, the government approved the “metering” policy, under which border agents turn away people who lack valid travel documents if the agents deem a port of entry to be full. The first Trump administration expanded and formalized the policy. The Biden administration rescinded it.

In a separate solo dissent, Jackson highlighted that the metering policy hasn’t been in place for several years, and so the opinion is an “advisory” one that courts aren’t supposed to issue. She said the high court should never have even taken up the case. “I respectfully dissent from the Court’s unwise decision to plow ahead nevertheless,” she wrote.

The majority said the case wasn’t moot because even though the government has rescinded the policy, it’s not “absolutely clear” that it wouldn’t reimpose the policy if it could.

It takes four justices to grant review of a petition. The justices took this one after a divided panel on the U.S. Court of Appeals for the 9th Circuit [ruled against the government](#), with two Obama-appointed judges in the majority and a Trump-appointed judge in dissent.

The panel majority said the government's interpretation would make the law redundant by giving the same meaning to both "arrives in" and "physically present." The majority also said the government's stance would make for "a radical contraction" of asylum rights "because it would give the Executive Branch vast discretion to prevent people from applying by blocking them at the border."

Trump-appointed circuit Judge [Ryan Nelson](#) said in dissent that, far from being illogically redundant, the law takes a "belt-and-suspenders approach" that "cleanly supports the statute's plain meaning" in the government's favor. A larger panel of judges on the San Francisco-based circuit declined to rehear the case, over dissent by Trump-appointed Judge David Bress that was joined by several judges, most of whom are fellow GOP appointees who backed Nelson's dissent and said the panel majority ruling "is clearly wrong and has created — and will continue to create — untold interference with the Executive Branch's ability to manage the southern border."