



Mullin v. Al Otro Lado: Supreme Court Determines That “Metering” Policy Is Lawful

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On June 25, 2026, the Supreme Court in *Mullin v. Al Otro Lado* ruled that an alien seeking to enter the United States at a port of entry but stopped on the Mexican side of the U.S.-Mexico border by a U.S. immigration officer is not statutorily entitled to be inspected by an immigration officer, and then permitted to apply for asylum if the circumstances warrant.

Generally, an alien presenting himself or herself at a port of entry is inspected by an immigration official and, under 8 U.S.C. § 1158(a)(1), an alien who “arrives in the United States” may apply for asylum. It is during this inspection that an alien may express either an intent to apply for asylum or a fear of persecution. Beginning in 2016 and for a number of years thereafter, the Department of Homeland Security’s (DHS’s) U.S. Customs and Border Protection (CBP) had in place a “metering” policy that limited the number of aliens who could enter and be processed each day at designated ports of entry along the U.S. southwest border. The metering policy implemented by CBP to limit the flow of individuals who could enter at the port of entry eventually involved immigration officials “establish[ing] and operat[ing] physical access controls at the borderline, including as close to the U.S.-Mexico border as operationally feasible.” A group of asylum seekers and an advocacy group sued in federal district court to challenge this policy, arguing that CBP’s enforcement of the metering policy was unlawful as it deprived aliens attempting to enter the United States of their ability to seek asylum in the United States. They alleged that this policy “amount[ed] to a constructive denial of access to the asylum process.” In the course of the litigation, a federal district court ruled that CBP’s metering policy was unlawful, and a divided panel of the U.S. Court of Appeals for the Ninth Circuit (“Ninth Circuit”) affirmed that determination. In *Al Otro Lado*, the Supreme Court by a 6-3 vote reversed the Ninth Circuit’s decision, holding that, based on an “ordinary-meaning reading,” the statutory provisions requiring the inspection and processing of an alien who “arrives in the United States” apply only to those who have crossed the border and not to those who remain in Mexico. Although the metering policy was formally rescinded in 2021, the Trump Administration has indicated an interest in retaining the option of reinstituting the policy to address the possibility of increased border encounters in the future, and the *Al Otro Lado* decision may clear an important legal hurdle to the policy’s implementation. This Legal Sidebar examines the *Al Otro Lado* case and the Supreme Court’s decision.

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Statutory Framework

The dispute over CBP's metering policy largely centers on 8 U.S.C. § 1158, which concerns asylum applications, and 8 U.S.C. § 1225, which governs the inspection of aliens seeking admission by immigration officers, establishes an expedited removal process for arriving aliens determined to be inadmissible, and requires the referral of certain aliens for a hearing for further consideration of an application for asylum. Three statutory provisions are particularly relevant:

1. 8 U.S.C. § 1158(a)(1), which states that “[a]ny alien who is physically present in the United States *or who arrives in the United States* (whether or not at a designated port of arrival . . .), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title” (emphasis added);
2. 8 U.S.C. § 1225(a)(1), which provides that “[a]n alien present in the United States who has not been admitted *or who arrives in the United States* (whether or not at a designated port of arrival . . .) shall be deemed for purposes of this chapter an applicant for admission” (emphasis added); and
3. 8 U.S.C. § 1225(a)(3), which directs that all aliens “who are *applicants for admission or otherwise seeking admission . . . shall be inspected* by immigration officers” (emphasis added).

The Metering Policy

The metering policy implemented by CBP in 2016 generally limited the number of aliens who could enter and be processed at U.S. ports of entry. The agency developed this policy to address overcrowding, health, and safety concerns at certain ports of entry that resulted from a surge in asylum seekers at those locations. Under metering, immigration officers directed aliens who had not yet crossed the international boundary line into the United States to wait in Mexico until the agency had sufficient capacity and resources to inspect and process them. It has been reported that nongovernmental organizations and Mexican authorities maintained lists of people who were awaiting CBP processing. When CBP had the operational capacity, immigration officers informed Mexican authorities that they could send specified numbers of aliens to ports of entry for inspection. In 2020, CBP suspended metering following implementation of a public health order that restricted the entry of aliens at the border in light of the COVID-19 pandemic, subject to certain exceptions. Following legal challenges discussed in more detail below, CBP rescinded the metering policy on November 1, 2021, and directed officials to streamline processing at U.S. ports of entry. Notwithstanding this rescission, litigation over the underlying policy continued, and the second Trump Administration indicated interest in “retain[ing] the option” of employing metering “when border conditions justify doing so.”

Procedural History

In 2018, Al Otro Lado, Inc., an immigrant advocacy organization, and thirteen asylum seekers (the plaintiffs) challenged CBP's metering policy in the U.S. District Court for the Southern District of California. Among other contentions, the plaintiffs argued that the policy violated 8 U.S.C. §§ 1158(a)(1), 1225(a)(3), and 1225(b)(1)(A)(ii), which are provisions that allow aliens physically present or arriving in the United States to pursue asylum, require inspection of applicants for admission, and require immigration officers to refer asylum seekers subject to expedited removal for a credible fear interview. The plaintiffs argued that the agency's metering policy violated the Administrative Procedure Act (APA) because it “unlawfully withheld or unreasonably delayed” statutorily mandated agency actions. The plaintiffs also claimed that CBP violated their constitutional right to due process by denying or delaying

their “access to the asylum process.” The plaintiffs [asked](#) the court to declare the metering policy as unlawful.

On September 2, 2021, the district court [ruled](#) that CBP’s metering policy violated the APA because it ran afoul of its “statutorily mandatory duties” under §§ 1158(a)(1) and 1225 to inspect and process an asylum seeker who “arrives in the United States.” The court also [held](#) that the policy infringed on the individual plaintiffs’ right to due process and rejected the government’s argument that the Fifth Amendment’s due process protections did not apply to them because they were physically outside U.S. territory when turned away. Subsequently, on August 5, 2022, the court issued a [declaratory judgment](#) making it unlawful, “absent any independent, express, and lawful statutory authority,” for CBP officers to refuse to provide “inspection or asylum processing” to aliens “who are in the process of arriving” at U.S. ports of entry.

On October 23, 2024, in a 2-1 decision, the Ninth Circuit [affirmed](#) the district court’s determination that the metering policy was unlawful. On May 14, 2025, the Ninth Circuit [denied](#) the government’s petition for rehearing en banc and issued an amended 2-1 decision affirming the district court’s ruling. In the majority opinion, the court [rejected](#) the government’s claim that immigration officials have no statutory duty to process aliens who have not crossed the border into the United States. The court [held](#) that the provisions found in §§ 1158(a)(1), 1225(a)(1), and 1225(a)(3) that require inspection and asylum consideration for an alien who “arrives in the United States” [apply](#) to those who are [stopped](#) at the border—even if they have not crossed the U.S.-Mexico boundary line. The court also determined that the long-standing [presumption against the extraterritorial application](#) of statutes was inapplicable because the plaintiffs sought to apply these provisions domestically to conduct by immigration officials occurring on the U.S. side of the border. The court [concluded](#) that the “wholesale refusal” to carry out statutorily mandated inspections of arriving aliens was unlawful withholding of agency action in violation of the APA. Having addressed the plaintiffs’ statutory claims, the court [declined](#) to consider the district court’s determination that the metering policy was unconstitutional, and vacated that portion of the lower court’s decision.

The Supreme Court’s Decision

The government filed a [petition](#) asking the Supreme Court to review the Ninth Circuit’s May 14, 2025, decision. On November 17, 2025, the Court [granted](#) the petition, framing the issue in the case as “whether an alien who is stopped on the Mexican side of the U.S.-Mexico border ‘arrives in the United States’ within the meaning of 8 U.S.C. §§ 1158(a)(1)(A), 1225(a)(1), and 1225(a)(3).” On March 24, 2026, the Court heard [oral argument](#) in the case. On June 25, 2026, in a 6-3 decision, the Supreme Court [reversed](#) the Ninth Circuit’s decision.

Majority Opinion

In the [majority opinion](#) authored by Justice Alito (joined by Chief Justice Roberts and Justices Thomas, Gorsuch, Kavanaugh, and Barrett), the Court first briefly [addressed](#) whether the case was [moot](#) in light of CBP’s rescission of the metering policy in 2021 after the initial lawsuit was filed. Citing the government’s representation that it would likely resume that policy in the future if conditions at the border warranted its resumption, the Court determined that there continued to be a live controversy to decide.

On the merits of the case, the Court [held](#) that, for purposes of the inspection and asylum screening provisions found in 8 U.S.C. §§ 1158(a)(1) and 1225(a), “[a]n alien ‘arrives in the United States’ only when he crosses the border” into this country. In reaching that conclusion, the Court [considered](#) the ordinary meaning of the phrase “arrives in the United States” and [explained](#) that “a person arrives in a destination when he enters within its area—not before.” For example, the Court [illustrated this point](#) by explaining that “a letter does not arrive in a mailbox while it remains in the mail carrier’s hand just inches

away.” The Court [rejected](#) the plaintiffs’ argument that the meaning of “arrives” changes if someone or something blocks entry into a particular location.

The Court also [examined](#) the statutory language of §§ 1158(a)(1) and 1225(a)(1) and surrounding provisions to confirm that Congress intended that the phrase “arrives in the United States” means to physically enter this country. The Court [observed](#) that, while §§ 1158(a)(1) and 1225(a)(1) refer to an alien who “arrives in the United States,” certain other immigration enforcement-related statutes refer to an alien’s [attempted entry](#) or [arrival near](#) a land border. In the Court’s view, the fact that Congress did not include similar language in §§ 1158(a)(1) and 1225(a)(1) reinforced the conclusion that the ordinary meaning of “arrives in the United States” (i.e., actual entry) applied to those provisions.

The Court [considered](#) the plaintiffs’ contention that construing the phrase “arrives in the United States” to mean physical entry would make that phrase redundant because, for purposes of determining an alien’s ability to seek asylum, § 1158(a)(1) refers to an alien “who is physically present in the United States *or* who arrives in the United States” (emphasis added). The Court [explained](#) that, while the [rule against surplusage](#) generally cautions against interpreting a statutory provision in a manner that makes part of it inoperative or redundant, it “is not an iron rule” and [does not supersede](#) the general principle that courts should look to the [ordinary meaning](#) of statutory text. The Court determined that, to the extent the population of aliens covered by the phrases “arrives in the United States” and “physically present in the United States” overlapped, any redundancy could be [explained](#) by the fact that Congress, in enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (which created the current version of §§ [1158\(a\)\(1\)](#) and [1225\(a\)](#)), wanted to ensure that arriving aliens who were subject to the then-new expedited removal process could continue to pursue asylum.

Additionally, the Court [held](#) that the [presumption against the extraterritorial application of statutes](#) undercut the plaintiffs’ argument that the phrase “arrives in the United States” refers to an alien who has not yet crossed the border. Under that principle, the Court [explained](#), federal statutes are presumed not to apply outside the United States “unless Congress clearly expresses a contrary intent.” The Court [observed](#) that “[n]othing in the text of §1158(a)(1) or §§1225(a)(1) and (a)(3) manifests an unmistakable congressional intent to require that aliens be inspected and allowed to apply for asylum while they are still outside the United States.” The Court also [determined](#) that these provisions focus on procedures occurring on the U.S. side of the border rather than on foreign conduct—further suggesting that they have no extraterritorial reach.

The Court also [rejected](#) the plaintiffs’ claim that the metering policy violates [international treaty obligations](#), under which an alien may not be returned to a country “[where his life or freedom would be threatened](#)” because of a protected ground. The Court [explained](#) that, in *Sale v. Haitian Center Council, Inc.*, it previously held that these treaty obligations did not apply with respect to aliens apprehended outside U.S. territory. The Court further [rejected](#) the plaintiffs’ contention that metering creates incentives for aliens to enter the United States unlawfully, declaring that these concerns were “overstated and in any event cannot defeat the best reading of the text.” The Court [remarked](#) that an asylum seeker “would need a powerful reason” to illegally enter the United States immediately given that metering merely delays when an alien may arrive at a U.S. port of entry, whereas illegal entry may result in criminal penalties and other adverse immigration consequences that carry greater risk.

The Court [held](#) that “an alien standing in Mexico does not ‘arrive in the United States,’” and that the statute does not entitle such alien to seek asylum or to be subject to inspection by immigration officials.

Concurring Opinion

In a concurring opinion, Justice Thomas [argued](#) that the district court’s [order](#) declaring that metering was unlawful potentially violated [8 U.S.C. § 1252\(f\)\(1\)](#), which limits courts’ authority “to enjoin or restrain the operation of” certain statutes related to the inspection, detention, and removal of aliens, except with

respect to an individual alien. In Justice Thomas's [view](#), although the court's order did not specifically require the government to take any action, its declaration that metering was unlawful effectively required immigration officials to inspect aliens attempting to arrive at U.S. ports of entry, and thus had "the practical effect of 'restraining' the Government in the same way that an injunction would," arguably in violation of § 1252(f)(1). Justice Thomas also [argued](#) that, by requiring immigration officials to bring certain aliens into the United States, the district court's order raised serious constitutional questions as to whether it intruded on what Justice Thomas [described](#) as "the President's inherent authority to exclude aliens from the country."

Dissenting Opinions

In a [dissenting opinion](#), Justice Sotomayor (joined by Justices Kagan and Jackson) [argued](#) that the plain text, overall statutory scheme, implementing regulations, and legislative history related to the inspection and asylum provisions of 8 U.S.C. §§ 1158(a)(1) and 1225(a) show that Congress intended for these procedures [to apply to](#) "all noncitizens in the process of arriving, even if they have not yet stepped foot into U.S. territory." Justice Sotomayor also argued, among other things, that the majority's interpretation of "arrives in the United States" as covering only those who entered U.S. territory [renders that phrase superfluous](#) given that these provisions describe a separate category of those who are "present in the United States." In a separate [dissenting opinion](#), Justice Jackson agreed with Justice Sotomayor's analysis, but argued that it was inappropriate for the Court to consider the legality of metering because the 2021 rescission of that policy rendered the case moot and there was no legal dispute for the Court to resolve.

Considerations for Congress

While the Supreme Court's decision in *Mullin v. Al Otro Lado* clarified the statutory inspection requirements at the border, Congress could also consider clarifying the statutory framework. For example, Congress may consider whether or under what circumstances immigration officials may regulate or limit the movement and flow of asylum seekers attempting to enter the United States, whether through metering, a digital appointment system, or some other mechanism. In the alternative, Congress could clarify the meaning of "arrives in the United States" for purposes of determining whether CBP's inspection and screening obligations are triggered. Some Members of Congress have introduced bills addressing some of these issues. For example, in the 119th Congress, the Stop the Cartels Act ([H.R. 1915](#)) would establish "[refugee application and processing centers](#)" abroad and [bar asylum](#) to applicants from Central American countries that have one of these centers. The Permanent Trump Secure Border Act ([H.R. 9199](#)) would take a different approach by authorizing DHS to prohibit the entry of certain aliens at a land or maritime border for a period of time if deemed necessary "to achieve operational control" of the border. Similarly, in the 118th Congress, the Secure and Protect Act of 2023 ([S. 425](#)) would have established "refugee application and processing centers" in Mexico and Central America, while the House-passed Secure the Border Act of 2023 ([H.R. 2](#)) and the Border Safety and Security Act of 2023 ([S. 696](#), [H.R. 29](#)) would have authorized the suspension of entry of aliens at the border. Additionally, in the 117th Congress, the Bipartisan Border Solutions Act of 2021 ([S. 1358](#), [H.R. 2839](#)) would have created "[regional processing centers](#)" in "high traffic sectors" along the southwest border to interview and screen prospective asylum applicants.

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