



TESTIMONY OF

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BEFORE

U.S. House of Representatives  
Committee on Homeland Security  
Subcommittee on Border Security, Facilitation, and Operations

ON

“Examining the Court-Ordered Reimplementation of the Remain in Mexico Policy”

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Chairwoman Barragán, Ranking Member Higgins, and Members of the Subcommittee, it is my honor to appear before you today to testify about the role of U.S. Customs and Border Protection (CBP) in the court-ordered reimplementation of the Migrant Protection Protocols (MPP).

I am proud to be here representing the men and women of CBP, who serve the American people 24 hours a day, seven days a week. Based on my personal experiences of over 37 years in border security, I can attest that CBP remains committed to balancing the need for enforcing our nation's laws, protecting U.S. economic interests, safeguarding the health of the American people and our workforce, and providing appropriate safety, security, and care for those in our temporary custody.

The Department of Homeland Security (DHS), in consultation with its Components, and following negotiations with the Government of Mexico coordinated by the Department of State, has been responsible for establishing guiding policies and parameters of MPP. Implementation of the day-to-day operations of MPP involves several U.S. and Mexican Departments and agencies, with support from the International Organization for Migration (IOM).<sup>1</sup> Within DHS, CBP plays a central role in MPP, coordinating closely with our law enforcement and adjudicatory partners to ensure effective, consistent, and humane application of immigration laws, policies, and procedures.

For CBP, MPP has two basic operational parts – initial enrollments and facilitating the passage of MPP enrollees through ports of entry (POEs) on their way to and on their return from immigration court hearings. The enrollment process includes the initial apprehension or encounter; the determination of whether the individual is subject to MPP; subsequent communication to MPP enrollees of enrollment requirements; the coordination of a *non-refoulement* interview and consultation with services providers for those enrollees who express a fear of return to Mexico; the coordination of court hearing dates and times; and the transport and return of the individual enrolled in MPP to Mexico to await a hearing. The return of MPP enrollees for court hearings involves processing them for temporary entry at designated POEs, transferring custody to U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations (ICE ERO) for transportation to and from hearings (where necessary), and processing enrollees for their return to Mexico.

Migrants from Western Hemisphere countries other than Mexico who are apprehended by U.S. Border Patrol (USBP) in the United States after crossing without authorization between POEs may be assessed to determine whether they may be subject to MPP. In March 2020, to reduce the spread of COVID-19, DHS, in conjunction with the Department of Justice's Executive Office for Immigration Review (DOJ EOIR), paused all immigration court hearings for individuals enrolled in MPP. Consistent with the January 20, 2021, memorandum issued by Acting Secretary David Pekoske, CBP temporarily suspended new enrollments into MPP pending

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<sup>1</sup> Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Service (USCIS), U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO) and Office of the Principal Legal Advisor (OPLA), in addition to the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), and the Department of State.

further review.<sup>2</sup> On February 2, 2021, President Biden issued Executive Order (EO) 14010, *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*.<sup>3</sup> In this Executive Order, President Biden directed the Secretary of Homeland Security to “promptly review and determine whether to terminate or modify the program known as the Migrant Protection Protocols” and “promptly consider a phased strategy for the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those individuals who have been subject to MPP.”<sup>4</sup> In response, Secretary Mayorkas initiated a comprehensive review of MPP. CBP subsequently terminated MPP processes in accordance with Secretary Mayorkas’ June 1, 2021, memorandum.<sup>5</sup> Following a court order on August 13, 2021, permanently enjoining DHS from implementing or enforcing the June 1 memorandum,<sup>6</sup> CBP participated in the DHS-led interagency effort to reimplement MPP.

New MPP enrollments under the court-ordered reimplementation of MPP commenced on December 6, 2021, in the El Paso Sector, with noncitizens reporting for their scheduled immigration court hearings beginning on January 3, 2022. MPP enrollments expanded to the San Diego Sector on January 3, 2022, with noncitizens reporting for their scheduled immigration court hearings beginning February 1, 2022. On January 20, 2022, MPP enrollments expanded to the Rio Grande Valley Sector, with noncitizens reporting for their scheduled immigration court hearings beginning February 15, 2022. On February 28, 2022, MPP enrollments expanded to the Laredo Sector, with noncitizens reporting for their scheduled immigration court hearings beginning tentatively on March 28, 2022.

As DHS continues to work in good faith to reimplement MPP consistent with the court order, MPP enrollments are expected to resume in other Southwest Border locations and returns to Mexico facilitated at seven ports of entry in San Diego and Calexico, California; Nogales, Arizona; and El Paso, Eagle Pass, Laredo, and Brownsville, Texas.

## **Enrollment Process**

In accordance with the December 2, 2021, DHS Guidance Regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols,<sup>7</sup> CBP Officers and USBP Agents, with appropriate supervisory review, determine whether an encountered or apprehended individual should be processed under MPP or under other procedures (e.g., expedited removal) on a case-by-case basis. Inadmissible noncitizens encountered at the Southwest Border within 96 hours of crossing between POEs are subject to placement in MPP if they are nationals of any country in the Western Hemisphere other than Mexico.

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<sup>2</sup> Memorandum from David Pekoske, Acting Sec’y of Homeland Sec., *Suspension of Enrollment in the Migrant Protection Protocol Program* (Jan. 20, 2021).

<sup>3</sup> Exec. Order No. 14010, 86 Fed. Reg. 8267 (Feb. 2, 2021).

<sup>4</sup> *Id.* At 8720

<sup>5</sup> <https://www.dhs.gov/publication/dhs-terminates-mpp-and-continues-process-individuals-mpp-united-states-complete-their>

<sup>6</sup> <https://www.dhs.gov/news/2021/08/24/dhs-statement-supreme-court-decision-mpp>

<sup>7</sup> [https://www.dhs.gov/sites/default/files/2022-01/21\\_1202\\_pley\\_mpp-policy-guidance\\_508.pdf](https://www.dhs.gov/sites/default/files/2022-01/21_1202_pley_mpp-policy-guidance_508.pdf)

The following persons are exempted from processing under MPP: unaccompanied children (UC),<sup>8</sup> U.S. lawful permanent residents; noncitizens with an advance parole document or in parole status; noncitizens with criminal history; noncitizens of law enforcement interest to the U.S. or Mexican Governments; and noncitizens with particular vulnerabilities, such as those with a known mental or physical health issue; a disability or a medical condition related to pregnancy; particular vulnerabilities given their advanced age; and those at increased risk of harm in Mexico due to their sexual orientation or gender identity.

Upon initial MPP enrollment, CBP collects biometrics<sup>9</sup> and all available biographic information for the case file and proactively asks questions to determine whether the individual possesses a fear of return to Mexico. If, in response to those questions, or at any other time while in the United States, an individual expresses a fear of harm if returned to Mexico, the individual is referred to U.S. Citizenship and Immigration Services (USCIS) for a *non-refoulement* interview. Unless waived, individuals are to receive 24 hours to consult with a legal services provider prior to the *non-refoulement* interview. This 24-hour period for consultation takes place in DHS facilities, and DHS is to ensure that individuals have access to legal resource packets, the ability to use telephonic or virtual means to contact counsel in a confidential space, and interpretation services if needed. Individuals who establish that there is a “reasonable possibility” that they will be persecuted on account of a statutorily protected ground (race, religion, nationality, membership in a particular social group, or political opinion) or that they will be tortured in Mexico are not subject to MPP and will not be returned to Mexico.

CBP coordinates with ICE ERO and DOJ EOIR liaison officers to schedule the initial master calendar court hearing dates. When individuals are enrolled in MPP, they are issued a Notice to Appear (NTA) with the time and location of their initial court hearing, and an informational tear sheet instructing them as to what time to appear at the designated POE to allow sufficient time for processing, transportation, and if necessary, meeting with their attorney or accredited representative either in person or via remote communication prior to the hearing. CBP also provides MPP enrollees with a DOJ EOIR list of pro bono or low-cost legal service providers, specific to the court location where the case is docketed.

MPP enrollees remain in CBP custody until return to Mexico can be arranged. All individuals enrolled in MPP who meet COVID-19 vaccine eligibility criteria are offered vaccinations and provided access to food, water, and restroom facilities. Proof of a COVID-19 vaccination is required for all individuals (age 5 and over) for reentry to the United States. CBP provides the Mexican National Migration Institute (INM) with an advance list of individuals who will be returned so that Mexican immigration officials can prepare documentation that temporarily permits the individuals to remain in Mexico pending their immigration proceedings in the United States. Following local agreements, CBP uses designated times and locations to coordinate the return of MPP enrollees to Mexico.

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<sup>8</sup> 6 U.S.C. § 279(g)(2).

<sup>9</sup> CBP collects biometrics on all individuals age 14 and older during the intake process.

## **Return Process for Court Hearing**

Individuals enrolled in MPP wait in Mexico until their assigned court date. The MPP enrollee is responsible for obtaining transportation back to the POE, but in some cases, IOM and Government of Mexico services facilitate transportation from specified locations in Mexico to the POE. MPP enrollees are instructed to arrive at the designated POE so that there is sufficient time before their scheduled hearings to meet with any retained counsel or legal representation in advance of the hearing. Any attorneys<sup>10</sup> or witnesses coming from Mexico to attend removal proceedings or meet with clients must present themselves at a POE to be inspected and admitted to the United States, or considered for parole, consistent with all U.S. laws and policies. Attorneys and witnesses do not accompany MPP enrollees through the inspection process; they are processed separately and must arrange their own transportation to the hearing facility.

At the POE, CBP officers use biometrics to verify the returning individual's identity, ensure requisite documents are in place, and process the individual to enter the United States for the immigration court hearing. CBP officers may use the CBP One™ App to conduct identity verifications. This allows DHS users to submit a photograph to return biographic details of an individual including name, date of birth, A-number (alien number) if any, and citizenship. If CBP One™ is not available, CBP officers will utilize other available means to conduct the required biometric verification.

Once identity verification is complete, ICE ERO assumes custody and is responsible for the transportation or escort of MPP enrollees between the POE and court location, as well as the custody and care of the enrollees during all court proceedings. DOJ EOIR conducts the hearing with ICE's Office of the Principal Legal Advisor (ICE OPLA) representing the U.S. Government in proceedings. If the individual receives a final order of removal from an immigration judge, or is granted protection or relief from removal, they will be processed in accordance with ICE ERO policies and procedures. If the individual's removal proceedings remain ongoing, ICE ERO will transport the individual back to the POE for coordination of return to Mexico. MPP enrollees typically return to the United States for multiple hearings.

DHS established temporary immigration hearing facilities (IHF) in Laredo and Brownsville in September 2019 to facilitate removal proceedings at the actual POE. Although these facilities were partially demobilized when MPP enrollments were suspended, the facilities were redeployed in the Fall of 2021 and are fully operational. With MPP enrollees physically in the IHF, immigration judges conduct proceedings by video teleconference, and processes are designed to be as consistent as possible with DOJ EOIR guidance for in-person immigration court proceedings in permanent facilities. Just as in DOJ EOIR facilities, individuals at IHFs have the opportunity to meet with counsel or legal representatives ahead of their hearings in a confidential setting. Because the facilities are located within the physical space of existing POEs, access must be prioritized for those critical to the hearings, such as witnesses, family members, interpreters, and attorneys and accredited representatives who are representing individuals in these proceedings.

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<sup>10</sup> In order to practice before DOJ EOIR, the attorney must be licensed in a U.S. state, territory, or the District of Columbia, or be accredited by DOJ EOIR.

After the hearing, ICE ERO transports or escorts the enrollee to the POE. CBP then returns any of the enrollee's possessions that were held at the POE and, if a new hearing date was scheduled, issues a new tear sheet with instructions on the date, time, and POE to which they must report for their next hearing date. The individual is then processed for return to Mexico.

Again, if at any time while in the United States the MPP enrollee affirmatively states a fear of return to Mexico, they are referred to USCIS for a *non-refoulement* interview. If USCIS determines that there is a reasonable possibility that the individual will be persecuted or tortured in Mexico, the individual is disenrolled from MPP and CBP coordinates with ICE ERO to determine whether the individual may be maintained in custody or paroled, or if another disposition is appropriate. In this situation, the individual may not be subject to expedited removal, and may not be returned to Mexico to await further proceedings.

CBP will again provide INM with an advance list of MPP enrollees who will be returned so that it can prepare documentation that temporarily permits the individuals to remain in Mexico until their next hearing date.

CBP established dedicated MPP teams consisting of a combination of Office of Field Operations (OFO) and USBP personnel who are available to assist port and station personnel with questions or concerns about implementing MPP procedures. In addition, CBP welcomes assistance from the DHS Office of the Immigration Detention Ombudsman, which provides on-site visitation to MPP enrollees to observe implementation of MPP and reviews access to legal counsel. Each participating port and station have a designated MPP point of contact to ensure effective communication and coordination within CBP and with our federal and international partner agencies.

## **Conclusion**

CBP will continue to work with our partners to ensure MPP is applied appropriately, consistent with policy, and that MPP enrollees, including those who fear returning to Mexico, are provided clear information about their rights and responsibilities under MPP, and are treated with civility and in accordance with U.S. law and our mission. We will also continue to assess and reassess our performance, processes, and procedures to find areas where we can further improve MPP and better collaborate with our partners across the Department and federal government.

Thank you for the opportunity to testify. I look forward to your questions.