

March 10, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. S.E.
Washington, D.C. 20528-0525

Dear Secretary Mayorkas,

We write today to express our grave concerns about the U.S. Department of Homeland Security's (DHS) continued efforts to re-implement the Migrant Protection Protocols (MPP) program. We recognize that DHS has only reinstated this program after Judge Kacsmaryck's order to implement it in "good faith."¹ However, comments made by DHS staff in a recent briefing to the authorizing and oversight Committees of Congress raise significant questions about DHS' compliance with Judge Kacsmaryck's order.

Since MPP has been re-implemented, we have repeatedly asked for information on the number of MPP enrollees who have claimed a fear of return in their *non-refoulement* interviews (NRIs), either during initial enrollment in MPP or post-enrollment, and the guidance DHS officials use to make these determinations. While DHS has provided us with information on the number of migrants who have been disenrolled from MPP pursuant to a fear claim, DHS has not yet shared the guidance or information we have requested.

On February 15, 2022, DHS officials held a briefing with the Senate and House oversight and authorizing Committees.² During this briefing, DHS officials informed our staffs that DHS is not currently keeping records of which vulnerability a MPP enrollee is claiming in an NRI during initial enrollment in MPP or after returning to the U.S. post-enrollment.

Insofar as the DHS officials' comments are true, DHS' unwillingness to track this information or retain these records seemingly contradicts statements that DHS has made in its implementation guidance and to the public. First, in announcing the court-ordered implementation of MPP, a DHS press release stated: "DHS announced key changes to MPP to address humanitarian concerns raised by the Government of Mexico and shared by the U.S. Government."³ Second, your implementation guidance notes: "DHS will put in place mechanisms to continuously evaluate MPP's operations and effectiveness, and to make ongoing adjustments, as needed, in

¹ Texas v. Biden, No. 2:21-CV-067-Z, 2021 WL 3603341, at *27 (N.D. Tex. Aug. 13, 2021).

² Briefing from U.S. Dep't. of Homeland Sec. U.S. Customs and Border Prot., U.S. Immigration and Customs Enforcement, and U.S. Dep't. of State (February 15, 2022) (congressional participants included the Senate Comm. on Homeland Sec., Senate Comm. the Judiciary, House Comm. on Homeland Sec., and House Comm. on the Judiciary).

³ Press Release, U.S. Dep't. of Homeland Sec., DHS Justice, and State Prepare for Court-Ordered Reimplementation of MPP (Dec. 2, 2021), <https://www.dhs.gov/news/2021/12/02/dhs-justice-and-state-prepare-court-ordered-reimplementation-mpp>.

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order to improve the integrity and operation of MPP, including in response to humanitarian concerns.”⁴ Third, your October 29, 2021, and June 1, 2021, rescission memos for MPP express your concern about the humanitarian impacts of MPP.⁵ The documentary record suggests that DHS is exceedingly concerned about the humanitarian impacts of MPP, but the comments made by DHS officials during the February 15 briefing about DHS’ lack of records pertaining to MPP’s humanitarian impacts suggest otherwise.

If DHS is truly concerned about the humanitarian impacts of the re-implemented MPP program, then it seems unconscionable that DHS would not keep records pertaining to the specific types of vulnerabilities exhibited by the individuals it screens under this program. These records would certainly be of interest to the Courts that have mandated DHS re-implement this program in “good faith” and to the Committees in Congress to whom you report.

To better assess DHS’ efforts to comply with the court order to re-implement MPP in “good faith” and its commitment to humanitarian protections in the re-implemented MPP program, we request the following information:

1. A list of all records kept by DHS and its components pertaining to MPP;
2. Copies of all guidance used by U.S. Border Patrol to determine whether a migrant should be placed in MPP or whether the migrant should be processed through an alternate Title 8 pathway;
3. Copies of all guidance used by U.S. Border Patrol to determine whether a migrant is amenable for MPP during processing;
4. Copies of all guidance used by U.S. Border Patrol to determine that a migrant has a vulnerability that would disqualify him or her from participation in MPP;
5. Copies of all guidance used by U.S. Citizenship and Immigration Services to assess a migrant’s fear of return to Mexico and evidence of a disqualifying vulnerability during the initial MPP-related *non-refoulement* interview;

⁴ Memorandum from Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans, U.S. Dep’t. of Homeland Sec. to U.S. Customs and Border Prot., U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, and Office of Operations Coordination (Dec. 2, 2021) (on file with author), https://www.dhs.gov/sites/default/files/2022-01/21_1202_plcy_mpp-policy-guidance_508.pdf.

⁵ Dep’t of Homeland Sec., *Explanation of the Decision to Terminate the Migrant Protection Protocols* (Oct. 29, 2021) (“ . . . Implementing with modifications designed to address some of the access-to-counsel, safety, and other humanitarian considerations, consistent with demands from the GOM. (These modifications are currently being planned pursuant to the court’s order to implement MPP in good faith.)”); *see also* Memorandum from Alejandro N. Mayorkas, Sec’y of Homeland Sec. to Tae D. Johnson, et al. (Oct. 29, 2021) (“ . . . that approach [implementing a modified form of MPP] would come at tremendous opportunity cost, detracting from the work taking place to advance the vision for migration management and humanitarian protection articulated in Executive Order 14010.”), https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf.

6. Copies of all guidance used by U.S. Citizenship and Immigration Services to assess a migrant's fear of return to Mexico and evidence of a disqualifying vulnerability during any subsequent MPP-related *non-refoulement* interview;
7. Copies of all guidance used by any DHS personnel or contractors to evaluate a migrant's claimed vulnerability during and after a MPP-related *non-refoulement* interview; and
8. Data on the number of migrants who have claimed a vulnerability, the specific vulnerability claimed, the stage of the MPP lifecycle at which such vulnerability was claimed, and whether a USCIS adjudicator found that the migrant had the claimed vulnerability.

In addition to the information requests above, we ask the following questions:

9. When a migrant claims a vulnerability during the *non-refoulement* interview prior to their return to Mexico, does current MPP guidance require that the vulnerability also be mentioned in the migrant's credible fear screening? If not, why not?
10. If a migrant makes a vulnerability claim but is subsequently enrolled in MPP, do USCIS asylum officers treat the initial amenability determination with deference if that migrant makes another fear claim post-enrollment? If not, why not?
11. If a migrant makes a vulnerability claim, is enrolled in MPP, and then makes a different vulnerability claim post-enrollment, how do USCIS asylum officers evaluate the post-enrollment vulnerability claim and, in doing so, to what extent do they take into account the migrant's pre-enrollment vulnerability claim?
12. For any migrant who claims a vulnerability and is disenrolled from MPP pursuant to that vulnerability, are immigration judges required during their proceedings to determine whether the migrant's claim to asylum is based in part or wholly on that vulnerability? If not, why not?

Finally, a DHS website instructs MPP enrollees to provide information regarding why they "should now be taken out of MPP" and instructs enrollees to email MPPRequest@hq.dhs.gov with information.⁶ The normal MPP enrollment process is run through U.S. Border Patrol and USCIS, not DHS headquarters. To better understand, we ask the following questions:

13. How many requests have been sent to this email address? How many of those requests have been approved and how many have been denied?
14. Which officials at DHS headquarters review the requests sent to this email address? Which officials at DHS component agencies review the requests sent to this email address?

⁶ *Information and Reminders for Individuals in MPP*, DEP'T OF HOMELAND SEC. (last updated Feb. 8, 2022), <https://www.dhs.gov/information-and-reminders-individuals-mpp>.

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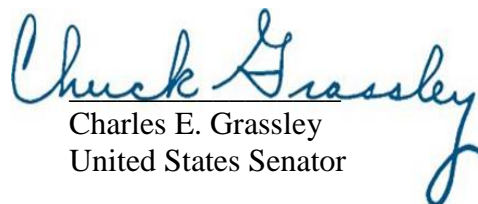
15. What guidance do reviewing officials use to adjudicate the requests sent to this email address?
16. Does a request for a migrant to be taken out of MPP that is sent to this email address require a vulnerability claim? If not, why not?
17. What is the screening process for requests sent to this email address? Do all requests sent to this email address lead to a *non-refoulement* interview?
18. Do DHS political appointees or political appointees at a DHS component agency have access to this email address? If so, please share a list of the each political appointee who has access to this email address.
19. Have DHS political appointees or political appointees at a DHS component agency discussed any requests sent to this email address? If so, please share a list of each political appointee and the specific request email.

We request that you respond to us by no later than 5:00pm on March 24, 2022. Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,



James Lankford
United States Senator



Charles E. Grassley
United States Senator