

May 18, 2021

Hon. Antony Blinken  
Secretary  
U.S. Department of State  
2201 C Street, NW  
Washington, DC 20520

Hon. Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Hon. Alejandro N. Mayorkas  
Secretary  
U.S. Department of Homeland Security  
301 7th Street, SW  
Washington, DC 20528

**Re: Wind Down of the Migrant Protection Protocols**

Dear Secretary Blinken, Attorney General Garland, and Secretary Mayorkas:

Our faith-based, humanitarian, legal services, immigration, and human rights organizations and law school clinics welcome the steps taken by the administration to begin to wind down the illegal and cruel Migrant Protection Protocols (MPP). We applaud the humane reception of the more than [10,000](#) people brought to safety in the United States to date, but we are deeply concerned by the slowing pace of MPP processing at some ports of entry and the lack of an announcement of or any public information on the next phase of the MPP wind down. In February 2021, the Department of Homeland Security (DHS) announced that individuals who do not have “active” MPP cases should “[await further instructions](#),” referring to the processing of individuals with “active” MPP cases as “the [first phase](#) of a program to restore safe and orderly processing at the southwest border.” We write to provide our recommendations—building upon those many of our [groups](#) made in March—on actions the administration should immediately take to continue and improve the process to end MPP. We also request further engagement and coordination with our groups to ensure people seeking refuge can find safety in the United States.

We continue to urge DHS to improve current MPP wind down processing and immediately move ahead with a second phase to include all individuals subjected to MPP, increase MPP processing sites, ensure safe, accessible transportation for those being processed out of MPP, address continued issues with the registration process, better coordinate with bi-national humanitarian and legal service providers assisting asylum seekers, and provide necessary support for border communities welcoming asylum seekers.

In addition, as many of our [groups](#) have [repeatedly written](#) to this administration, DHS must stop the misuse of Title 42 to [block and expel](#) asylum seekers, including many Indigenous and [Haitian](#) families and adults, to persecution and other danger. The Title 42 policy is damaging public health, exacerbating threats to migrants in Mexican border towns and causing [thousands](#) of family separations that endanger the lives of migrant children. Its continued use to block asylum protections at the border damages the

administration's public health credibility and undermines its professed adherence to science and transparency.

DHS should immediately restore refugee protections at the border, as required by U.S. law and treaty commitments, and process requests for asylum, including at and between ports of entry. The agency should ensure that asylum seekers who have been waiting months or years to request protection as a result of the Trump administration's policies of limiting asylum processing at ports of entry through metering and Title 42 are swiftly processed and redress provided for asylum seekers [denied protection](#) under other illegal Trump administration policies. It is crucial that the administration's decisions and plans be clearly, effectively, and publicly communicated to ensure asylum seekers understand how they will be brought to safety and to avoid further confusion at the border.

## **Recommendations on the Migrant Protection Protocols Wind Down**

### Initiate a Second Phase of the Wind Down That Includes All Families and Adults Subjected to MPP

The next phase of the [wind down of MPP](#) must include all individuals subjected to this horrific, illegal policy, including those who received *in absentia* removal orders, had their cases terminated, were unfairly denied protection (whether or not their cases are on appeal), or have "inactive" cases caused by government procedural errors. These families and individuals should be transited to safety in the United States, swiftly processed and released on parole into the community, and provided a fair opportunity to request asylum<sup>1</sup> and other humanitarian protections.<sup>2</sup> The Trump administration's MPP policy denied these families and individuals due process and wrongly blocked many refugees from protection.

- To avoid ongoing family separations, families and individuals in MPP should be processed together with all accompanying family members, including those who were not placed in MPP or who have inactive MPP cases.
- To facilitate the inclusion of all individuals subjected to MPP in the MPP wind down, DHS should create a formal process for attorneys and unrepresented individuals with inactive MPP cases to request reopening or issuance of a new notice to appear (NTA) from Immigration and Customs Enforcement (ICE) attorneys, at Customs and Border Protection (CBP) ports of entry, through the CONECTA registration process, and through other appropriate avenues. ICE's Office of Principal Legal Advisor should issue official guidance to ICE trial attorneys on cases of individuals previously placed in MPP, including on the issuance of new NTAs and filing of motions to reopen, as outlined below.
- *In absentia* removal order cases: In coordination with DHS, the Department of Justice (DOJ) should use its [existing legal authority](#) to rescind all *in absentia* removal orders under MPP. DHS should issue new NTAs for all individuals issued *in absentia* orders of removal who want to pursue their

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<sup>1</sup> The administration should [refer](#) all asylum seekers in immigration court proceedings for full asylum interviews with U.S. Citizenship and Immigration Services asylum officers. These asylum office interviews can be scheduled for asylum seekers in MPP whose cases are transferred to immigration courts in the interior after those proceedings are [terminated](#). The administration should ensure that the one-year-filing deadline for asylum applications is waived for all individuals in MPP for asylum office interviews and immigration court proceedings.

<sup>2</sup> For instance, DHS should ensure that Venezuelan nationals who were outside the United States - because the U.S. government had forced them to remain in Mexico under MPP - on the date DHS designated Venezuelans for Temporary Protected Status (TPS) are deemed eligible for this protection.

immigration cases. *In absentia* removal orders issued under MPP were fundamentally flawed. Many asylum seekers received *in absentia* orders of removal [because they were kidnapped](#) at the time of their hearings or otherwise unable to return to court because their children had been [kidnapped](#), they feared further [violence](#), lack of proper [notice](#), [illness](#), or because they were [blocked](#) by CBP officers at ports of entry.

- **Denied cases:** DHS should file motions to reopen immigration court proceedings for all individuals denied relief under MPP who register for the MPP wind down. Because some immigration judges are denying requests to reopen even when joined by DHS, the issuance of new NTAs in these cases may be the only way to ensure meaningful access to the asylum process. MPP proceedings were plagued by substantial due process violations, including nearly insurmountable barriers to legal representation, and judges wrongfully denied many asylum cases including under unlawful Trump administration policies, such as the now-enjoined [third-country transit asylum ban](#).<sup>3</sup> Considering these barriers, it is not surprising that of the thousands of decided MPP cases, relief was granted in only [523](#) cases.
- **Other terminated or inactive cases:** DHS should issue new NTAs for individuals who register for the MPP wind down where their MPP case was terminated because of [due process violations](#) by DHS or is inactive because DHS failed to file an NTA. Over 10,000 MPP cases were terminated because of DHS procedural violations, and in the overwhelming majority of those cases DHS never filed a new NTA, leaving protection claimants with no opportunity to seek asylum. Issuance of new NTAs is more efficient than case-by-case requests for reopening and ensures that unrepresented asylum seekers can request protection. Immigration judges have denied requests from the few represented individuals in MPP with terminated cases who have sought reopening, and directed them to file motions to reconsider with the Board of Immigration Appeals (BIA). This lengthy appeal process would leave asylum seekers stranded in life-threatening conditions in Mexico, unnecessarily overwhelm the BIA docket, unduly burden legal services providers, and make protection inaccessible to most people in MPP, very few of whom are represented or otherwise able to file such a request.

#### Address MPP Cases of Families and Adults Already in the United States

Some families and individuals in MPP [fled](#) to the United States while still in MPP proceedings—often to escape persecution, violence, and inhumane conditions in Mexico and to reunite with family members in the United States—including people whom CBP had forcibly separated from their spouses and children as part of the MPP process. These individuals who have already found safety in the United States should be included in the wind down process, provided parole, and should in no case be subject to prosecution for unauthorized entry.

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<sup>3</sup> An October 30, 2020 federal court [order](#) requires the government to take immediate steps to reopen or reconsider asylum denials due to the third-country transit asylum ban for people subjected to metering prior to the implementation of the transit ban who are or were in expedited or regular removal proceedings. In addition, the government must make all reasonable efforts to identify metered individuals affected by the transit ban who continue to seek access to the U.S. asylum process. Because many individuals with decided MPP cases were subjected to both metering and the transit ban, the government should consider reopening all denied MPP cases (where the asylum seeker does not object or would not be otherwise prejudiced) to ensure full compliance with its obligation under the court's order.

- Active cases: For individuals in the United States who register for the MPP wind down, DHS should file requests with the Executive Office for Immigration Review to transfer these cases to the immigration court nearest to where the individual is currently residing, as is occurring with other MPP cases currently included in the wind down. DHS should clarify whether a recent [flyer](#) issued by the immigration court to individuals who “c[a]me to the United States after waiting in Mexico under” MPP was intended to provide guidance to individuals in this circumstance.
- Non-active cases: These cases should be addressed as appropriate to their circumstances (*in absentia*, denial, termination, etc.), as discussed above, and DHS should move to transfer them to the immigration court nearest to where the individual is currently residing. DHS should not consider entry of individuals with MPP removal orders to the United States as triggering any statutory bars.

#### Ensure the Safety of People Traveling to the U.S.-Mexico Border for Processing out of MPP

Many families and individuals in MPP who face life-threatening harms in dangerous border regions have attempted to relocate to other parts of Mexico and the region to wait for their U.S. court proceedings. Now they are being forced to again undertake dangerous journeys to return to the U.S.-Mexico border for MPP processing. A lack of safe, accessible transportation to the U.S.-Mexico border for MPP processing has unnecessarily delayed the processing of many individuals in MPP and jeopardized their [safety](#). For instance, with no MPP processing occurring along the Arizona-Mexico border, individuals in MPP who are stranded in Sonora must travel hundreds of miles through dangerous cartel-controlled territory to reach MPP processing sites, sometimes on very short notice.

- DHS and DOS should work with the International Organization for Migration (IOM), civil society organizations, and the government of Mexico to ensure that proper documentation is provided and safe transportation is arranged—at no cost to individuals in MPP—to U.S. ports of entry for MPP processing.
- Expand MPP processing to Nogales and other U.S. ports of entry to reduce the risks and costs of travel to current MPP processing ports.
- Permit MPP processing at U.S. consulates, which can also issue parole documents, to ensure safe travel to the United States for individuals located far from U.S.-Mexico border ports of entry.

#### Improve Efficiencies in the Processing and Release of Families and Adults in MPP

The pace of CBP processing of people being transited out of MPP has slowed at some ports of entry and taken in some cases, including when new NTAs are issued, inordinate amounts of time, leaving families and individuals needlessly waiting longer in danger in Mexico or detained in [unsafe](#) CBP holding cells. Individuals in MPP also continue to report frequent issues with CONECTA, including failures by UNHCR to call people at scheduled times, inability to contact UNHCR for assistance with the CONECTA process, processing of individuals in a seemingly arbitrary order rather than in the order they were enrolled in MPP, and confusing instructions for registration. The opaque process has left many individuals who were placed early on in MPP—who should have been at the front of the line for processing—waiting indefinitely in danger while those enrolled much later are processed, causing further confusion, desperation, trauma and dangerous crossings.

- Because individuals in MPP have previously been processed by CBP, DHS should already have necessary information to prepare parole, court transfer, and other immigration documents in advance to reduce processing times and maximize the daily number of individuals processed out of MPP. Processing for family members not previously in MPP or for individuals requiring new NTAs can and should be completed in a matter of [hours](#).<sup>4</sup>
- DHS should operate under a presumption of prompt release on parole to reduce the transmission of COVID-19 in custody, limit the trauma of detention for arriving asylum seekers, and reduce government spending on detention.
- CBP should permit attorneys access to MPP clients being processed at ports of entry to quickly address legal questions that arise during—and needlessly delay—processing.
- DHS should work with UNHCR to streamline CONECTA registration and clarify processes for individuals in MPP, including providing public, written guidelines on CONECTA pre-processing and criteria for requests to expedite processing due to urgent medical, safety, or other vulnerabilities. Some non-profit [organizations](#) have implemented hotlines to assist individuals in MPP with registration, but additional efforts by DHS and UNHCR to facilitate rapid and accurate registration are essential.

#### Ensure People Processed Out of MPP Receive Appropriate Services and Can Support Themselves While Their Cases Are Pending

Humanitarian service providers along the U.S.-Mexico border have largely taken on responsibility to facilitate the humane transition of individuals in MPP to life in the United States despite increasing security concerns and threats in Mexico. While the federal government has allocated some funds through FEMA for nonprofit, faith-based, and other organizations that provide humanitarian relief at the southern border, additional support and coordination are needed to enable these organizations to continue to facilitate processing for individuals in MPP and provide them with food, shelter, and other support. DHS should also promptly grant requests for work authorization to allow people processed out of MPP to support themselves and their families while their cases are being adjudicated.

- DHS should ensure that border shelters and other humanitarian service providers receive necessary support, funding, and at least 24-hours notice of changes in policies that will impact their operations. The agency should also continue to take steps to identify and distribute financial and other support to crucial civil society partners providing food, housing, medical care, and mental health support as well as arranging onward transportation for asylum seekers.
- The U.S. Department of State (DOS) and DHS must work with Mexican government and international organizations, in consultation with civil society groups, to ensure that during any continued wait in Mexico, asylum seekers have access to food, health care, shelter, protection from violence, and freedom from arbitrary arrest and deportation.

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<sup>4</sup> Unsealed government [documents](#) filed in response to litigation challenging CBP’s practice of metering asylum seekers confirm that CBP has long been able to expeditiously process asylum seekers and unaccompanied children at ports of entry within hours, for instance: Brownsville (2.5 hours); Hidalgo (1-4 hours); Progresso (2-4 hours); Roma (1-2 hours).

- The government should inform asylum seekers of their potential eligibility for work authorization—based either on their pending asylum applications or parole into the United States, provide fee waivers, and promptly adjudicate requests for work authorization.

#### Enhance Public Communication to Ensure Individuals in MPP Can Access the MPP Wind Down Process

As the process to end MPP continues, DHS and DOS must better communicate publicly to ensure that all eligible individuals receive information about and can register for the wind down process. Immigration court information on pending MPP cases indicates that individuals in MPP speak at least [40](#) languages, including many Indigenous languages. Members of indigenous communities, including those placed in MPP, face substantial barriers in applying for asylum because of inadequate interpretation, due process [violations](#), and lack of culturally-appropriate services. The failure of the government to ensure language access makes these individuals even more vulnerable to exploitation and pushes some to undertake dangerous crossings in search of safety in the United States.

- The Biden administration should ensure that [communications](#) on how to access the MPP wind down options above are provided in multiple languages and issued widely, as it has done, for example, with an estimated [28,000](#) radio advertisements since January 2021 in Spanish, Portuguese, and six Indigenous languages transmitted throughout Central and South America aimed at dissuading migrants and asylum seekers from coming to the United States.
- DHS should establish procedures and institute ongoing training to ensure that CBP officers and Border Patrol agents properly identify the language asylum seekers best understand, including in particular Indigenous communities, and utilize appropriate interpretation services.
- To ensure individuals with limited access to technology or limited literacy are able to register for the wind down process, the administration should work with UNHCR to support additional outreach to local shelter and services providers and the creation of options for in-person CONECTA registration in key locations.

#### Ensure Coordination and Engagement

The lack of inter-agency communication and the lack of transparency with humanitarian and legal service providers has led to unnecessary confusion and inefficiencies. For instance, the lack of coordination between DHS and DOJ on reopening MPP cases is causing immigration judges to deny motions to reopen that are unopposed by DHS trial attorneys. Immigration court denials needlessly compound wait times and place additional unnecessary administrative burdens on the BIA as individuals are forced to file appeals. Clearly communicating the administration's processes and plans would help to alleviate this confusion and improve the ability of local organizations to provide legal and humanitarian support vital to the successful wind down of MPP.

- All government stakeholders from DHS, DOJ, and DOS should improve communications with legal service providers to reduce misinformation and expedite implementation of subsequent phases of the MPP wind down, including providing points of contact for questions.
- The administration should convene bi-weekly calls including officials from the White House, DHS, DOS, DOJ, the Office of Refugee Resettlement, state and local agencies, IOM, UNHCR, and UNICEF, along with representatives of regionally formed Welcoming Committees and Task Forces

and national and local organizations working in the United States and Mexico to transit asylum seekers in Mexico to safety in the United States.

We would welcome the opportunity to continue to raise and assist in addressing emerging concerns with the administration's wind down of MPP.

Respectfully,

Adelante Pro Bono Project  
Aldea - The People's Justice Center  
Al Otro Lado  
American Immigration Council  
American Immigration Lawyers Association  
Amnesty International USA  
Asylum Seeker Advocacy Project (ASAP)  
AsylumWorks  
Bellevue Program for Survivors of Torture  
Border Kindness  
Bridges Faith Initiative  
Casa del Migrante en Tijuana, A.C.  
Casa Ruby  
Center for Gender & Refugee Studies  
Center for Victims of Torture  
Central American Resource Center of Northern CA - CARECEN SF  
Children's Defense Fund of Texas  
Church World Service  
Coalition on Human Needs  
Columbia Law School Immigrants' Rights Clinic  
Comunidad Maya Pixan Ixim  
El Instituto para las Mujeres en la Migración (IMUMI)  
Florence Immigrant & Refugee Rights Project  
FWD.us  
Haitian Bridge Alliance  
HIAS  
Hope Border Institute  
Houston Immigration Legal Services Collaborative  
Human Rights First  
Human Rights Initiative of North Texas  
Immigrant Defenders Law Center  
Immigration Equality  
Innovation Law Lab  
International Rescue Committee  
Jesuit Refugee Service/USA  
Kids in Need of Defense  
Kino Border Initiative / Iniciativa Kino para la Frontera  
Latin America Working Group (LAWG)  
Migrant Center for Human Rights  
Mississippi Center for Justice  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project (NIP-NLG)

NETWORK Lobby For Catholic Social Justice  
Oxfam America  
Physicians for Human Rights  
Project Blueprint  
Southern Border Communities Coalition  
Tahirih Justice Center  
Texas Impact  
VECINA  
Voices from the Border  
Washington Office on Latin America (WOLA)  
Witness at the Border