

**IN THE SUPREME COURT OF THE UNITED STATES**

Chad F. Wolf, <i>et al.</i> ,	)	
<i>Applicants,</i>	)	
	)	
	)	
v.	)	No. 19A-960
	)	
Innovation Law Lab, <i>et al.</i> ,	)	
<i>Respondents.</i>	)	
_____	)	

**DECLARATION OF GIL KERLIKOWSKE  
FORMER COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION**

I, Gil Kerlikowske, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I make this declaration based on my personal knowledge and if called to testify I could and would do so competently and truthfully to these matters.
  
2. I served as Commissioner of U.S. Customs and Border Protection (CBP) between 2014 and 2017. In that capacity, I was the highest ranking official at CBP. I oversaw approximately 60,000 employees and managed a multi-billion dollar budget to implement CBP’s core missions of border security, counterterrorism, and trade enforcement. CBP was and is one of the world’s largest law enforcement organizations. In addition to my tenure at CBP, I have worked in law enforcement for over 40 years, having started out as a police officer. My experience includes serving as the director of White House Office of National Drug Control Policy from 2009 to 2014, a Cabinet-level position; serving as chief of the Seattle Police Department from 2000 to 2009; serving as deputy director of the U.S. Department of Justice’s Office of Community Oriented Policing Services from 1998 to 2000; and serving as Police Commissioner in Buffalo, NY, from 1994-1998.

3. I am aware that on March 6, 2020, the government moved this Court to stay the district court's injunction of the Migrant Protection Protocols (MPP) in this case, *Innovation Law Lab v. Wolf*, No. 19A-960. I have reviewed the submissions in support of the U.S. government's request for a stay, including the declaration of Rodney S. Scott, and the stay motion briefing at the Ninth Circuit. I disagree with some of the views expressed by Mr. Scott, and some of the arguments advanced by the government, as explained below.

4. I am struck by both the lack of specificity and the lack of reference to historical parallels when Mr. Scott makes predictive judgments about how components of DHS would be unable to manage a purported influx of 25,000 migrants.

5. In my experience, DHS and its component agencies have managed large influxes before. In fiscal year 2014, for instance, the organization---led by the efforts of U.S. Border Patrol---managed an influx of more than 68,000 unaccompanied minors from Central America in a short time period. This influx was handled without anywhere near the number of holding facilities available today, nor with the assistance of other agencies that are currently deployed, such as the military. Influxes are an expected part of DHS's mission, as migration patterns from Central and Latin America vary depending on the geopolitical situation of the region. In short, it is simply part of DHS's job to prepare for and address the sorts of influxes described in the government's submission to this Court.

6. Moreover, CBP is better-resourced today than it was in 2014 to handle these types of scenarios. For example, the agency then had a budget of approximately \$10 billion; its budget was about \$15 billion in 2019.

7. I do not share the view that the reinstatement of the injunction would result in an unmanageable rush of thousands of people to the border, particularly as the injunction unwinds MPP prospectively and in a piecemeal fashion—not providing entry to anyone who presents at a port of entry. CBP would have the capacity to manage such a change in policy in a matter of weeks, if not days. While an abrupt reinstatement of the injunction could perhaps result in confusion, such concerns are overstated. Especially if CBP and the government were provided time to inform the public about changes in policy, I am confident CBP could adeptly manage the reinstatement of the injunction. CBP and the Department of State have long used comprehensive programs to inform people, particularly in Central America, about changes in laws at the border. This includes communicating via local media, radio, advertisements on public transit, and so on. Navigating any consequences of changes in the laws at the border are a core part of CBP's work and any portrayal otherwise is inaccurate.

8. I also find Mr. Scott's assessment of how smuggling organizations would respond to a Ninth Circuit-only injunction by shifting migration patterns into Arizona and California speculative. CBP collects and analyzes vast amounts of data about apprehensions. Thus, when Mr. Scott's declaration briefly refers to Brazilians shifting their migration patterns during the rollout of MPP, there should be no reason not to provide specific data to support any claim of a major effect on migration patterns. Again, changes in migration patterns do happen and CBP's basic mission and practice is to adapt and respond to any such changes. To the extent Mr. Scott predicts migrants already at the border near Texas will move west thousands of miles to attempt entry within the Ninth

Circuit, doing so is no small feat because, as just one reason, these border regions are quite dangerous.

9. MPP fails to insure that asylum seekers' basic needs are met while waiting in Mexico, that they have access to counsel, and a safe place to live while they request protection. Because the program fails to guarantee safe conditions in which individuals can meaningfully pursue their right to apply for asylum, it appears to create a chilling effect that deters *all* asylum applicants—even those with legitimate claims for protection.

10. It is my opinion that this Court should not allow speculative claims concerning CBP's lack of capabilities to impact its considerations on the reinstatement of the injunction. CBP is well equipped to manage an unwinding of the MPP program.

I, Gil Kerlikowske, swear under penalties of perjury that the foregoing declaration is true and correct to the best of my knowledge and belief.

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DKW

Gil Kerlikowske

3/8/2020

Date

Charleston, SC

Location