

**EXAMINING THE COURT-ORDERED REIMPLEMENTA-
TION OF THE REMAIN IN MEXICO POLICY**

HEARING
BEFORE THE
SUBCOMMITTEE ON
BORDER SECURITY, FACILITATION,
AND OPERATIONS
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
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EXAMINING THE COURT-ORDERED RE- IMPLEMENTATION OF THE REMAIN IN MEX- ICO POLICY

Wednesday, March 2, 2022

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER SECURITY,
FACILITATION, AND OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., via Webex, Hon. Nanette Diaz Barragán [Chairwoman of the Subcommittee] presiding.

Present: Representatives Barragán, Correa, Clarke, Higgins, Guest, Bishop, and Clyde.

Also present: Representative Katko.

Chairwoman BARRAGÁN. The Subcommittee on Border Security, Facilitation, and Operations will be in order. Without objection, the Chair is authorized to declare a recess at any time.

Thank you for joining today's hearing to examine the court-ordered reimplementations of the Migrant Protection Protocols, MPP. Donald Trump's Remain in Mexico policy, or MPP, was inhumane. Rather than upholding U.S. asylum laws, he dismantled the asylum process and forced migrants to wait in dangerous conditions in Mexico until their asylum hearing. Under President Trump, there were more than 1,500 documented reports of kidnapping, torture, murder, rape, and assault amongst the 70,000 migrants he enrolled into MPP. That is why the Biden administration is working to terminate this program.

Earlier this year, I was thrilled to welcome some of those MPP enrollees into the United States under President Biden's wind-down. Unfortunately, since that time, a Texas district court ordered the Department to restart the Remain in Mexico policy. To date, we have seen about 700 enrolled into MPP in the San Diego, Rio Grande Valley, El Paso, and Laredo Sectors.

I visited some of these migrants last week in San Diego and Tijuana, and I was disappointed with what I saw. When this reimplementations was rolled out, we were told that the program would be improved. We were told that there would be more access to legal counsel and it would be more humane for migrants.

An important role of Congress and this committee is to conduct oversight of executive agencies. We are here today to examine how the administration has handled the reimplementations of MPP and whether they have met the high standards required for working

with migrants presenting asylum claims. I argue that more work needs to be done.

While at the port of entry in San Diego, I spoke to an elderly father who travelled through Central America to seek asylum with two young adult sons. He was entering the United States for his court hearing. One of his children was kidnapped on the journey to the United States and is still missing. Upon arriving at the border, he and his remaining son were separated. His 23-year-old son was allowed to stay with family in the United States. This man was enrolled in MPP. This man was elderly, illiterate, and could not speak English, nor could he write or read in Spanish. Despite his vulnerabilities, he was told to wait in Mexico.

Despite the emphasis this administration places on family unity and the trauma these men had already suffered, this family was separated. This family separation was not a unique incident. We have heard similar reports from across the border, including of pregnant women being separated from their husbands and partners. This is not in line with our values. I urge this administration to expand its definition of a family unit, beyond just minor children and their guardians, to keep families together.

Unfortunately, family separation wasn't the only problem I saw at the port of entry. The elderly migrant asked for my help and repeatedly showed me his Notice to Appear. However, I was told I couldn't take a picture of his information. I was told we could follow him to court and get it. So, my staff followed him to court, and this man repeatedly asked for her help. She wasn't even allowed to speak with him or take a picture of his information. If this is how a Member of Congress is treated, what does access look like for lawyers and advocates?

I would also like to mention my concerns with CBP's implementation of the vaccine policy for MPP. Currently, migrants receive the second dose of the vaccine at the port of entry, on their way into court. Those who refuse to receive a U.S.-approved vaccine, are denied entry. Yet, as most of us know, side effects from the vaccine often start within hours. As we saw on our trip, most of these migrants are representing themselves. The vast majority request another fear screening while at court. Those of us privileged enough to participate in this hearing today were likely told to take it easy after receiving the vaccine. In comparison, these migrants are expected to conduct potentially life-altering interviews. These migrants remain in Federal custody the entire time they are in the United States. I ask the administration to take another look at how their vaccine program and protocols impact a migrant's ability to present their asylum claims and fear of return to Mexico.

In addition, it was clear there were communication gaps between the various agencies and organizations working on MPP. These gaps had real consequence for migrants. For example, as CBP officers explained to me, the migrants had to approach the port of entry with the International Organization for Migration to be admitted for court. I then walked into Mexico with migrants who were being deported and listened to IOM and the State Department tell us, and these migrants, that they could present themselves to the port of entry at the designated time with their NTA, which isn't happening.

Now, for some migrants, this gap in communication means missing court, a possible closed case, and removal in absentia.

I also travelled to a migrant shelter in Tijuana where some MPP enrollees stay until their court date. I spoke to MPP enrollees and learned most could not secure a lawyer, despite calling the contact list provided by the Department. Migrants are given 24 hours to secure a lawyer, yet there is no guarantee that a lawyer is even available or will answer the call. If a lawyer is secured, it can be difficult, if not impossible, for the migrant and lawyer to adequately communicate about a decision that can literally be one of life or death.

We must do better. To start, legal access for enrollees must be meaningful, and not only exist on paper. The agencies implementing this program must give migrants clear and consistent rules and guidelines. While I appreciate the administration's work to create meaningful changes to MPP and terminate the program, more needs to be done. I look forward to hearing from our witnesses how the administration plans to resolve the many issues remaining with the implementation of the Remain in Mexico policy.

With that, the Chair now recognizes the Ranking Member of the subcommittee, Mr. Higgins of Louisiana, for an opening statement. [The statement of Chairwoman Barragán follows:]

STATEMENT OF CHAIRWOMAN NANETTE BARRAGÁN

MARCH 2, 2022

Thank you for joining today's hearing to examine the court-ordered reimplementation of the Migrant Protection Protocols (MPP). Donald Trump's Remain in Mexico policy was inhumane. Rather than upholding U.S. asylum laws, he dismantled the asylum process and forced migrants to wait in dangerous conditions in Mexico until their asylum hearing. Under President Trump, there were more than 1,500 documented reports of kidnapping, torture, murder, rape, and assault amongst the 70,000 migrants he enrolled into MPP. This is why the Biden administration is working to terminate this program.

Earlier this year, I was thrilled to welcome some of those MPP enrollees into the United States under President Biden's wind-down. Unfortunately, since that time a Texas district court ordered the Department to restart the Remain in Mexico policy. To date, we've seen about 700 enrolled into MPP in the San Diego, Rio Grande Valley, El Paso, and Laredo Sectors.

I visited some of those migrants last week in San Diego and Tijuana, and I was disappointed with what I saw. When this reimplementation was rolled out, we were told that the program would be improved. We were told that there would be more access to legal counsel, and it would be more humane for migrants.

An important role of Congress and this committee is to conduct oversight of Executive Agencies. We are here today to examine how the administration has handled the reimplementation of MPP—and whether they've met the high standards required for working with migrants presenting asylum claims. I argue that more work needs to be done.

While at the Port of Entry in San Diego, I spoke to an elderly father who travelled through Central America to seek asylum with two young adult sons. He was entering the United States for his court hearing.

One of his children was kidnapped on the journey to the United States and is still missing. Upon arriving at the border, he and his remaining son were separated. His 23-year-old son was allowed to stay with family in the United States. This man was elderly, illiterate, and could not speak English—nor could he read or write in Spanish. Despite his vulnerabilities, he was told to wait in Mexico.

Despite the emphasis this administration places on family unity, and the trauma these men had already suffered, this family was separated. This family separation was not a unique incident. We've heard similar reports from across the border, including of pregnant women being separated from their husbands and partners. This is not in line with our values. I urge this administration to expand its definition

of a family unit, beyond just minor children and their guardians, to keep families together.

Unfortunately, family separation wasn't the only problem I saw at the port of entry. The elderly migrant asked for my help and repeatedly showed me his Notice to Appear. However, I was told I couldn't take a picture of his information. My staff followed him to court, and this man repeatedly asked her for help. She wasn't allowed to speak with him or take a picture of his information.

If this is how a Member of Congress is treated, what does access look like for lawyers and advocates?

I'd also like to mention my concerns with CBP's implementation of the vaccine policy for MPP. Currently, migrants receive the second dose of the vaccine at the port of entry, on their way into court. Those who refuse to receive a U.S.-approved vaccine are denied entry. Yet as most of us know, side effects from the vaccine often start within hours. As we saw on our trip, most of these migrants are representing themselves. The vast majority request another fear screening while at court.

Those of us privileged enough to participate in this hearing today were likely told to take it easy after receiving the vaccine. In comparison, these migrants are expected to conduct potentially life-altering interviews. These migrants remain in Federal custody the entire time they are in the United States. I ask that the administration take another look at how their vaccine program and protocols impact a migrant's ability to present their asylum claims and fear of return to Mexico.

In addition, it was clear there were communication gaps between the various agencies and organizations working on MPP. These gaps had real consequences for migrants. For example, CBP officers explained to me that migrants had to approach the Port of Entry with the International Organization for Migration to be admitted for court. I then walked into Mexico with migrants who were being deported and listened to IOM and the State Department tell us, and these migrants, that they could present themselves to the port of entry at the designated time with their NTA.

For some migrants, this gap in communication means missing court, a possible closed case, and removal in absentia. I also travelled to a migrant shelter in Tijuana where some MPP enrollees stay until their court date. I spoke to MPP enrollees and learned most could not secure a lawyer, despite calling the contact list provided by the Department. Migrants are given 24 hours to secure a lawyer, yet there is no guarantee that a lawyer is even available or will answer the call. And if a lawyer is secured, it can be difficult, if not impossible, for the migrant and lawyer to adequately communicate about a decision that can literally be one of life or death.

We must do better. To start, legal access for enrollees must be meaningful, and not only exist on paper. And the agencies implementing this program must give migrants clear and consistent rules and guidelines. While I appreciate the administration's work to create meaningful changes to MPP and terminate the program, more needs to be done. I look forward to hearing from our witnesses how the administration plans to resolve the many issues remaining with the implementation of the Remain in Mexico policy.

Mr. HIGGINS. Thank you, Madam Chair. It is good to be reconvened in the committee hearing room. I am looking forward to when we can gather as a committee in person again and I beg your support on that endeavor. Thank you for having today's hearing.

Since the start of the 117th Congress, this subcommittee, the Border Security, Facilitation, and Operations Subcommittee, has held 4 hearings. Yet, not a single hearing that directly addresses border security until today, despite the fact that, arguably, most Americans would likely agree that border security is one of the main concerns of the average American today. The impact upon our Nation is difficult to measure. So, I am glad we are having today's hearing. We have a lot to discuss what I think is long overdue. This should have been one of the busiest subcommittees in Congress and, yet, here we are with our first hearing to actually address the border security crisis. There have been over 2.1 million documented border encounters at our Southwest Border since President Biden has been in office, and that number continues to rise.

I would like to thank your Federal Government partners for being here today. Although I am disappointed that our Federal partners requested to testify on a Federal Government-only panel, thereby excluding our Minority witness from the conversation. I believe it is important for our Federal partners to hear directly from State and local governments to work closely with those jurisdictional authorities, especially the border States. We need to be able to candidly discuss across jurisdictional boundaries how the Biden administration policies are impacting every sovereign State.

One year into President Biden's term, we have witnessed a total disintegration in law and order at the Southern Border. The cartels run the border. Democrat policies have turned America's border into a porous superhighway where crime and drugs and human smuggling into our communities and neighborhoods is abundantly clear that Secretary Mayorkas, and the Biden White House, and the Democrats in Congress have no intent to support the front-line agents on the border with the necessary policies and resources to restore operational control of the border.

Cartel control of our border is not Federal operational control in the sovereignty of our Nation. Instead of arresting and prosecuting those who violate our laws, CBP enforcement personnel have been restricted from doing their jobs. This crisis at the Southwest Border could have been avoided if the current administration were to aggressively enforce the laws that were in place and kept key Trump-era security policies fully intact.

Since the President took office, not counting for the rising number of getaways, which my sources have at 35 percent, encounters have surpassed 150,000 for the 11th straight month. These record numbers stem from the Biden administration's failure to No. 1, secure the border, and No. 2, to discourage illegal immigration into the United States.

We are discussing the migrant concerns as if there is no difference in America any longer between legal immigration and illegal crossing of our sovereign borders. The current crisis is a direct result of President Biden's actions, including suspension of the border wall construction, implementation of Executive action aimed at halting deportations, reinstituting the failed Obama-era prosecutorial discretion policy, the attempt to end the Migrant Protection Protocols, which we are discussing today, and expanding large-scale catch-and-release. The crisis this administration has created could have been averted or stopped at any time and still can be. We could stop this thing in 2 weeks if the Biden administration would fully reimplement common-sense policies like MPP.

Although my colleague has stated that MPP participants were in a dangerous circumstance in Mexico, let me say they made the choice to begin a dangerous journey when they headed to America illegally. Our friends to the south are not necessarily—are not necessarily considering themselves as a dangerous nation. The MPP program, also known as Remain in Mexico policy, was originally initiated in January 2019 under the Trump administration. When MPP was first introduced, the United States returned to Mexico certain non-Mexican citizens and foreign nationals while their removal proceedings were pending. This program was successful resulting in decreased illegal border crossings, which enabled the

U.S. Border Patrol to actually patrol our Southwest Border and remove almost 70,000 illegal migrants from our country.

This crisis is not just about migrants seeking asylum in the United States. Unfortunately, criminals, including murderers, child predators, weapons traffickers, drug traffickers, all the business that the cartels push, is flowing across our border. According to a DHS official, since October 2021, there were over 220,000 documented cases of illegal aliens who were deemed got-aways. That fits loosely with my percentage that my understanding is about 35 percent of the total documented interactions. Criminals and drug cartels are benefiting the most from the Biden administration's border failures.

According to a report by the Federal Commission on Combatting Synthetic Opioid Trafficking, Mexico is now the dominant source of fentanyl supply to the United States. Just this past year alone, CBP has seized over \$760 million worth of fentanyl, and this is barely making a dent. This is what was seized. For example, it has been reported that overdose now is the leading cause of death for Americans aged 18 to 45 years old. This should be a wake-up call to President Biden's administration to end this madness and restore common-sense law enforcement at our border.

The reimplementing of the MPP program can provide CBP the assistance it needs as it attempts to resecure our Nation's borders. In August 2021, a Federal court required the Biden administration to reimplement the MPP program in good faith, but there has been no evidence of any good-faith effort. In addition to Secretary Mayorkas openly seeking to terminate the MPP program for a second time, despite the court order, there was an average of only 13 individuals per day being enrolled in the program in January 2022. That is abhorrent. To put that in perspective, in the same time frame in January 2022, CBP had an average of almost 5,000 encounters per day at the Southwest Border. No one could call this current effort to reimplement MPP an actual good-faith effort.

I expect to hear more about this administration's plan to reimplement the court-ordered MPP program in genuine good faith. We cannot let politics get in the way of sound governing or ignoring Constitutional obligation to secure our sovereign border. I look forward to the witnesses' testimony today and I thank them for appearing before us. Madam Chair, I yield back.

[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

MARCH 2, 2022

Thank you, Madam Chair, and thank you for having today's hearing. Since the start of the 117th Congress, the Border Security, Facilitations, and Operations Subcommittee has held 4 hearings yet the subcommittee has not held a single hearing that directly addresses border security until today. Since January 2021 and under President Biden's leadership, there have been over 2.1 million border encounters at our Southwest Border and the number continues to rise.

I would like to thank our Federal Government partners for being here today. Although, I am disappointed to hear that our Federal partners requested to testify on a Federal Government-only panel, thereby excluding our Minority witness from the conversation. I believe it is important for our Federal partners to hear directly from the State and local governments, especially the border States, how the administration policies are impacting their States.

One year into President Biden's term, we have witnessed the total disintegration of law and order at the Southern Border. Democrat policies have turned America's border into a porous superhighway for crime, drugs, and human smuggling into our communities and neighborhoods. It is abundantly clear that Secretary Mayorkas, the Biden White House, and the Democrats in Congress have zero intent to support front-line agents with the necessary policies and resources to restore operational control at the border.

Instead of arresting and prosecuting those who violate our laws, CBP enforcement personnel have been hamstrung from doing their jobs. This crisis at our Southwest Border could have been avoided if this administration were to aggressively enforce the laws in place and kept key Trump-era security policies fully intact.

Since the President took office, not counting the rising number of gotaways, encounters surpassed 150,000 for the eleventh month straight. These record numbers stem from the Biden administration's failure to: (1) Secure the border, and (2) discourage illegal immigration to the United States. The current crisis is a direct result of Biden's actions, including:

- suspension of border wall construction,
- implementation of Executive Action aimed at halting deportations,
- re-instituting the failed Obama-era prosecutorial discretion policy,
- the attempt to end the Migrant Protection Protocols,
- and expanding large-scale catch and release.

The crisis this administration has created could have been averted or stopped at any time, and still can be, if the Biden administration fully reimplements common-sense policies like MPP.

The MPP program, also known as the "Remain in Mexico" policy, was originally initiated in January 2019 under the Trump administration. When MPP was first introduced, the United States returned to Mexico certain non-Mexican citizens and foreign nationals, while their removal proceedings were pending. This program was successful, resulting in decreased illegal border crossings, which enabled the U.S. Border Patrol to actually patrol our Southwest Border and remove almost 70,000 illegal migrants from our country.

This crisis is not just about migrants seeking asylum in the United States; unfortunately, criminals, including murderers and child predators, weapons, drugs are also flowing across our border. According to a DHS official, since October 2021, there were over 220,000 documented cases of illegal aliens who were deemed "gotaways."

Criminals and drug cartels are benefiting the most from the Biden administration's border failures. According to a report by the Federal Commission on Combating Synthetic Opioid Trafficking, Mexico is now the dominant source of fentanyl supply to the United States. Just this past year alone, CBP has seized over \$760,000,000 worth of fentanyl, and this is barely making a dent. For example, it has been reported that overdose is now the leading cause of death for Americans aged 18 to 45 years old. This should be a wake-up call for the Biden administration to end the madness.

The reimplementing of the MPP program can provide CBP the assistance it needs as it attempts to resecure our Nation's borders. In August 2021, a Federal court required the Biden administration to reimplement the MPP program in good faith, but there has been no evidence of any good-faith effort. In addition to Secretary Mayorkas openly seeking to terminate the MPP program for a second time despite the court order, there was an average of only 13 individuals per day being enrolled into the program in January 2022. To put that in perspective, in the same time frame in January 2022, CBP had an average of almost 5,000 encounters per day at the Southwest Border.

No one could call this a good-faith effort.

I want to hear more about this administration's plan to reimplement the court-ordered MPP program in genuine good faith. We cannot let politics get in the way of sound governing or ignoring Constitutional obligations. I look forward to the witnesses' testimony today and I thank them for appearing before us.

I yield back.

Chairwoman BARRAGÁN. Thank you, Mr. Ranking Member. I am a little disappointed with the comments about this is the first hearing on border security because I—you and I have direct communication. You have my cell phone number. This is the first time I am hearing. We have had two hearings on unaccompanied children at the border, which is a border issue. We have had seaport hearings. We had moved a hearing at your request because you could

not attend, which I happily did. But that did then take another spot, you know, for us to have to move it. So, I am more than happy to work with you and we are going as quickly as we can on hearings. So, I welcome your, you know, your communication with me on it.

So, I thank you for, you know, for your statement, but I just wanted to also mention, you know, we provided the Minority the opportunity to have a witness today. The Minority was informed this was a hearing with Federal witnesses on MPP on January 18. You all had plenty of time to choose a Federal witness. We didn't hear anybody until Friday. That really left little time for us to have a discussion with the Department.

Last, you all approved your witness to be on a second panel, which we are only going to do one round of questions so we can get to your witness as quickly as possible. So, we are trying to be fair and, again, you know, we—I am here to work with you and work with the Minority to make sure that, you know, we are doing all we can on this subcommittee. So, if you want to say something, Mr. Higgins, I am going to go ahead and yield to you before I move to Ranking Member Katko.

Mr. HIGGINS. That is very kind of the gentlewoman to yield. Let me just state in the interest of bipartisan endeavor, that I appreciate your comments. I just suggest that this subcommittee has been, perhaps, not as engaged as we could be. I sit here in a committee hearing room with my Republican colleague, Representative Guest, and none others.

So, we are completely prepared to engage and move forward to address the challenges of border security that face our Nation and that have, indeed, disintegrated our border States' ability to function as sovereign States without devoting a tremendous amount of manpower and treasure to securing their own borders because the Federal Government has failed. So,——

Chairwoman BARRAGÁN. OK.

Mr. HIGGINS [continuing]. I look——

Chairwoman BARRAGÁN. So,——

Mr. HIGGINS [continuing]. Forward to our discussions today and I thank you for the opportunity to comment.

Chairwoman BARRAGÁN. OK. Well, for the record, the Chairwoman is here, virtually, along with other Republican Members. So, the fact that it is a full or virtual, people can go in person or virtual, people have every opportunity.

With that and in the interest of time, I am going to—the Chair will recognize the Ranking Member of the full committee, the gentleman from New York, Mr. Katko, for opening statement.

Mr. KATKO. Thank you, Madam Chair, and it is good to see you again. I am pleased that the Border Security, Facilitation, and Operations Subcommittee is holding a hearing today related to the crisis on our Southwest Border, specifically, regarding the reimplementation of the critical Migrant Protection Protocols, otherwise known as the Remain in Mexico policy.

I want to thank our witnesses for being here today and I look forward to hearing about the on-going efforts to fully reimplement this program. The Biden administration started 2022 with a record number of Southwest Border encounters in the continuing crisis

along our Northern and Maritime Borders. Every month, U.S. Customs and Border Protection is reporting concerning figures, not just in encounter numbers, but also in arrests of individuals with known criminal histories, gang members, weapons seizures, and illicit drugs, not to mention those that may be on a terror watch list. Fentanyl is plaguing communities across our Nation and in my hometown in central New York, poisoning far too many Americans and becoming the leading cause of death of young adults. Think about that, the leading cause of deaths in the age group from 18 to 40. That is a stunning statistic.

Also concerning is a reported increase in the number of what we call got-aways. Those are individuals seen on Customs and Border Patrol technology illegally crossing the border and entering into the United States without being encountered by Border Patrol agents.

The administration's required by Federal court order to reimplement the Migrant Protection Protocols in good faith. However, recent data shared with the committee has been dismal, to say the least. According to statistics provided by Border Patrol, there was a per-day average of nearly 5,000 Southwest Border encounters. Yet, the average number of legal migrants enrolled in Migrant Protection Protocols per day was only 13, only one-fourth of 1 percent of those caught. That is not right.

Today, I would like to hear from our Federal partners at the Department of Homeland Security and the Department of State how their respective agencies are, in good faith, and I stress the term, good faith, reimplementing the Migrant Protection Protocols and the numbers shown—as the numbers above show otherwise.

Not only is the surge of migrants at the border putting a strain on Border Patrol agents, but on local law enforcement and community resources as well. The number of border crossings has reached a shocking level. For example, border encounters in Yuma, Arizona went up by more than 2,000 percent since 2020. This is why fully reimplementing the Remain in Mexico policy is critical to stemming the flow of illegal crossings and will allow Customs and Border Protection to regain operational control at our Southern Border.

Again, I am not here to cast aspersions on anyone, but it strains the imagination to think that if this Migrant Protection Protocols were being reimplemented as the court ordered, there would be a hell of a lot more than less than 1 percent of the individuals being put in MPP protocols.

So, I am looking forward to hearing about, if I have to get off this early, I trust that the Ranking Member can pursue this area for me with vigor. With that, I yield back. Thank you very much.

[The statement of Ranking Member Katko follows:]

STATEMENT OF RANKING MEMBER JOHN KATKO

MARCH 2, 2022

Thank you, Madam Chair. I am pleased that the Border Security, Facilitations, and Operations Subcommittee is holding a hearing today relating to the crisis on our Southwest Border, specifically regarding the reimplementation of the critical Migrant Protection Protocols, otherwise known as the Remain in Mexico policy. I want to thank our witnesses for being here today, and I look forward to hearing about the on-going efforts to fully reimplement the program.

The Biden administration started 2022 with a record number of Southwest Border encounters and a continuing crisis along our Northern and Maritime Borders. Every

month, U.S. Customs and Border Protection (CBP) is reporting concerning figures, not just in encounter numbers, but also in arrests of individuals with known criminal histories, gang members, weapon seizures, and illicit drugs. Fentanyl is plaguing communities across our Nation, and in my home town of Central New York, poisoning far too many Americans and becoming the leading cause of death of young adults.

Also concerning is the reported increase in the number of “gotaways,” individuals seen on CBP technology illegally crossing the border and entering into the interior of the United States, without being encountered by Border Patrol agents.

The administration is required by Federal court order to reimplement MPP in good-faith, however, recent data shared with the committee has been dismal to say the least. According to statistics provided by CBP, there was a per day average of nearly 5,000 Southwest Border encounters, yet the average number of illegal migrants enrolled in MPP per day was only 13—only a quarter of 1 percent!

Today, I would like to hear from our Federal partners at the Department of Homeland Security and the Department of State how their respective agencies are reimplementing MPP in “good faith” as the numbers show otherwise.

Not only is the surge of migrants at the border putting a strain on Border Patrol agents, but on local law enforcement and community resources as well. The number of border crossings has reached a shocking level. For example, border encounters in Yuma, Arizona went up by more than 2,000 percent since 2020. This is why fully reimplementing the Remain in Mexico policy is critical to stemming the flow of illegal crossings and will allow CBP to re-gain operational control of our Southern Border.

Once again, I look forward to the witnesses’ testimony and I thank them for appearing before us. I yield back.

Chairwoman BARRAGÁN. Thank you and thank the full committee’s Ranking Member. I want to make sure that Members are reminded that the subcommittee will operate according to the guidelines laid out by the Chairman and the Ranking Member in their February 3, 2021, colloquy. Additional Members may submit statements for the record.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

MARCH 2, 2022

Good afternoon.

I thank Chairwoman Barragán for holding this important hearing to examine the reimplementation of the Migrant Protection Protocols (MPP), also known as “Remain in Mexico.”

Donald Trump started this misguided policy to advance his anti-immigrant agenda.

Like family separation, MPP is another cruel, Trump-era policy that has left a stain on our Nation’s tradition of protecting refugees and asylum seekers.

MPP forces vulnerable migrants to wait in dangerous conditions in Mexican border towns until their asylum hearing.

Many migrants have been victims of kidnappings, extortion, and assaults while being forced to remain in Mexico under MPP.

Our border policies must be humane and reflect our values.

We must treat people with respect and dignity, while following international law and honoring our obligations toward asylum seekers.

MPP does not live up to those values. We have heard President Biden say just that. Hours after being inaugurated, he suspended new enrollments into the program.

The administration began to wind down MPP and processed migrants with pending cases into the United States.

Like many, I applauded when DHS officially terminated the Remain in Mexico policy.

Unfortunately, a Federal Court in Texas ordered the Department to re-start the program.

The administration has appealed the Court decision and issued a new MPP termination memo, which will go into effect once the current injunction is lifted.

The Department has been forced to restart the MPP program, but the administration has worked with the government of Mexico and international organizations to make changes to the program, mostly for the better.

For example, the Department committed to certifying that migrants have access to legal representation.

While this is a welcome step, I continue to have significant concerns about implementation.

If lawyers are not available to take migrants' calls or do not have sufficient time to consult with migrants, the access not meaningful.

We look forward to hearing how the Department intends improve legal access going forward.

DHS also directed employees to screen migrants for vulnerabilities and expanded the categories of asylum seekers considered too vulnerable to be returned to Mexico. This is, too, is a welcome improvement.

However, not all of the changes have been for the better.

Notably, the Department has chosen to expand eligibility for enrollment into MPP to nationals of any country in the Western Hemisphere, other than Mexico.

This includes Haitian migrants and other non-Spanish speaking individuals, who are particularly vulnerable in Mexico.

This change to the program was not required by court order, and it is disturbing to see the Department choose to expand a program it opposes.

Furthermore, the committee's oversight has raised questions about implementation of many of the Department's promises, as well as coordination between the agencies and organizations carrying out the Remain in Mexico Policy.

Particularly in light of these challenges, it is imperative that we conduct rigorous oversight of the Federal agencies and partners responsible for re-implementing the policy.

That is what we are here to do today.

I am grateful that the Supreme Court has agreed to expeditiously review the lower court's ruling requiring the Department to reimplement MPP.

I am hopeful for a positive outcome that will allow the termination of this terrible policy.

Until then, the Federal Government must work to ensure the safety of migrants enrolled in MPP and improve implementation of the program and protections for migrants.

I look forward to hearing from our witnesses on how the administration is taking action to accomplish this.

Chairwoman BARRAGÁN. Now, I would like to take the opportunity to welcome our first panel of witnesses.

Mr. Blas Nuñez-Neto is acting assistant secretary for border and immigration policy at the U.S. Department of Homeland Security. Mr. Benjamin "Carry" Huffman is the acting chief operating officer at U.S. Customs and Border Protection. Ms. Emily Mendrala is the deputy assistant secretary for Western Hemisphere affairs at the U.S. Department of State.

Without objection, the witnesses' full statements will be inserted in the record. I now ask each witness to summarize his or her statement for 5 minutes, beginning with Mr. Nuñez-Neto.

STATEMENT OF BLAS NUÑEZ-NETO, ACTING ASSISTANT SECRETARY, BORDER AND IMMIGRATION POLICY, DEPARTMENT OF HOMELAND SECURITY

Mr. NUÑEZ-NETO. Chairwoman Barragán, Ranking Member Higgins, and Members of the subcommittee, thank you for the opportunity to appear before you today to discuss the court-ordered reimplementation of the Migrant Protection Protocols, or MPP.

I would like to begin by noting that Secretary Mayorkas has made clear that MPP is not aligned with this administration's values and poses an unjustifiable human cost on migrants and pulls resources away from more important efforts that seek to address

the root causes of irregular migration and comprehensively manage irregular migratory flows at our border.

Despite this, and consistent with our support for the rule of law, DHS has moved forward expeditiously with the court-ordered reimplementation of this program. As of this week, MPP returns are now occurring in 4 locations across the entire Southwest Border. We also continue to expand enrollment numbers despite dealing with the unprecedented global COVID-19 pandemic that has impacted operations on both sides of the border.

As part of the court-ordered reimplementation of MPP, we have made a number of changes that attempt to address the grave humanitarian concerns associated with the previous implementation, concerns shared by this administration and the government of Mexico. First, DHS is committed to excluding particularly vulnerable individuals from being put in harm's way. This includes individuals with known mental and physical health issues, disabilities, or advanced age, among other factors. Second, we have enhanced the policies and procedures that protect individuals from being returned to Mexico who fear facing torture or persecution there. CBP personnel now affirmatively ask enrollees about their fear of being returned to Mexico, something that brings this process more in line with international norms. We have also lowered the screening standard for individuals who express a fear of persecution or torture in Mexico.

Third, DHS and DOJ are committed to providing individuals subject to MPP with reasonable and meaningful opportunities to access legal services. This includes providing them with 24 hours to speak to a legal representative before undergoing a non-refoulement interview and also facilitating access to legal orientation programs and counsel before they attend their court hearings.

Fourth, we are working to ensure that individuals enrolled in MPP receive a ruling on their cases to the greatest extent possible within 180 days to minimize the time they spend in Mexico. Fifth, as my Department of State colleague will explain, we have worked closely with the government of Mexico and international organizations to enhance the safety and security of individuals returned to Mexico. Sixth, we have created a case review process for individuals who believe they clearly should not be subject to MPP.

I want to be exceptionally clear, however, that this administration recognizes these changes, while significant, are not sufficient to address the concerns we have identified with the program and we will continue to fight the court's ruling. As Secretary Mayorkas noted in his second termination memo, there is no version of MPP that can fully address the inherent flaws of the program and the human costs it imposes on migrants who may have legitimate claims to protection in the United States.

DHS will continuously evaluate MPP's operations and effectiveness and make adjustments, as needed, as we comply with the court order. We are also committed to transparency and have been publishing a detailed monthly report on MPP operations.

Last, as the Biden-Harris administration and Secretary Mayorkas have repeatedly acknowledged, the United States is a Nation with borders and laws that must be enforced. It is also a Nation that was built by immigrants. This administration is, as a

result, committed to securing our borders while also offering protection to those fleeing persecution and torture.

That said, our efforts to address irregular migration cannot solely be focused on our borders. Our immigration laws have not been updated in decades. During this time, we have seen a dramatic change in the nature and magnitude of migratory flows. These changes have only accelerated during the COVID-19 pandemic. We are committed to working with Congress to transform our flawed and outdated immigration system so that we can both better secure our borders and create fair, orderly, and humane pathways for migrants seeking protection or opportunity in the United States.

Thank you and I look forward to answering whatever questions the committee may have.

[The prepared statement of Mr. Nuñez-Neto follows:]

PREPARED STATEMENT OF BLAS NUÑEZ-NETO

MARCH 2, 2022

INTRODUCTION

Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the subcommittee, thank you for the opportunity to appear before you today.

I have been serving as the acting assistant secretary for border and immigration policy since October 1, 2021. My permanent role is the chief operating officer at U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), which I began on March 5, 2021. Since August 24, 2021, I have been concurrently serving as the vice chair for the Secretary of Homeland Security's Southwest Border Taskforce. I also previously served at DHS as an advisor to CBP Commissioner Gil Kerlikowske from January 12, 2015 to January 16, 2017.

Before discussing the court-ordered reimplementation of the Migrant Protection Protocols (MPP), I want to highlight the fact that Secretary of Homeland Security Alejandro N. Mayorkas has repeatedly stated that MPP has endemic flaws and should be terminated. These flaws include that it imposed unjustifiable human costs on migrants, subverted the asylum system, pulled resources and personnel away from other priority efforts, and failed to address the root causes of irregular migration. DHS continues to vigorously defend its decision to terminate MPP in court and has taken the extraordinary step of asking for expedited review by the U.S. Supreme Court. In the interim, however, DHS is required to abide by the order to reimplement the program in good faith and it continues to do so, demonstrating this administration's commitment to the rule of law.

As we move forward with this court-ordered reimplementation of MPP, DHS is seeking to do so in the most humane way possible. I want to make clear, however, that this administration recognizes that these changes, while significant, are not sufficient to address the concerns with the program that Secretary Mayorkas has identified, and that no matter what measures are put in place to attempt to protect migrants enrolled in MPP, we cannot ensure their safety and security in Mexico.

We will continue to challenge the court's ruling, even as we abide by the court order to reimplement MPP in good faith.

TERMINATING MPP

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. EO 14010 directed the Secretary of Homeland Security to "promptly review and determine whether to terminate or modify the program known as the Migrant Protection Protocols."

During the course of his first review, Secretary Mayorkas identified a number of critical factors that contributed to his final conclusions to terminate MPP:

- While DHS originally intended the program to more quickly adjudicate legitimate asylum claims and clear asylum backlogs, over the course of the program, asylum backlogs actually increased before both the U.S. Citizenship and Immi-

gration Services (USCIS) Asylum Offices and the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR).

- The focus on speed was not matched with sufficient efforts to ensure that conditions in Mexico enabled migrants to attend their immigration proceedings.
- As a result, a high percentage of cases resulted in an order of removal in absentia (approximately 44 percent, based on DHS data) which raised significant questions about whether the process provided enrollees an adequate opportunity to appear for proceedings to present their claims for relief and whether conditions faced by some MPP enrollees in Mexico—including, for example, the lack of stable access to housing, income, and safety—resulted in the abandonment of potentially meritorious protection claims.
- MPP as initially implemented did not sufficiently improve border management so as to justify the program's extensive operational burden and other shortfalls. The program also imposed additional responsibilities on border personnel and resources that detracted from other aspects of DHS's critically important mission sets.

Having completed the comprehensive and thorough review required by the EO, Secretary Mayorkas concluded that MPP should be terminated and issued a memorandum to that effect on June 1, 2021.

On August 13, 2021, the U.S. District Court for the Northern District of Texas determined that the Secretary's June 1 memorandum was not issued in compliance with the Administrative Procedure Act of 1946 because it failed to address all relevant considerations. As a result, the District Court vacated the June 1 memorandum in its entirety, remanded the matter to DHS for further consideration, and ordered DHS to re-implement MPP. DHS sought a stay of this injunction to the Fifth Circuit, which was denied by both the Fifth Circuit and then the Supreme Court.

As a result, Secretary Mayorkas began a second comprehensive review of MPP. During this process, the Secretary once again carefully reviewed the arguments, evidence, and perspectives presented by those who support re-implementation of MPP, those who support terminating the program, and those who have argued for continuing MPP in a modified form.

After this review, Secretary Mayorkas again determined that MPP should be terminated. Secretary Mayorkas considered perspectives the District Court determined were insufficiently addressed in the June 1 memorandum, including claims that MPP discouraged unlawful border crossings, decreased the filing of non-meritorious asylum claims, and facilitated more timely relief for asylum seekers, as well as predictions that termination of MPP would lead to a border surge, cause DHS to fail to comply with alleged detention obligations under the Immigration and Nationality Act, impose undue costs on States, and put a strain on U.S.-Mexico relations.

Throughout the course of this second review, Secretary Mayorkas examined multiple factors that informed the Government's decision to terminate the MPP. These factors included:

- As described by an assortment of independent findings, including those made by non-governmental organizations and U.S. courts, MPP placed migrants in harm's way. Significant evidence indicates that individuals awaiting their court hearings in Mexico under MPP were subject to extreme violence and frequently became targets for transnational criminal organizations that profited by exploiting migrants' vulnerabilities.
- As previously designed and implemented, MPP's non-refoulement screening process was inadequate. Issues included individuals not being affirmatively asked questions about fear of return to Mexico, insufficient access to counsel, and use of the "more likely than not" standard during non-refoulement screenings, a standard typically reserved for adjudication on the merits of withholding of removal and Convention Against Torture claims before an Immigration Judge.
- Individuals in MPP faced numerous barriers in accessing counsel and receiving sufficient information about their court hearings. There were several problems in communicating accurate and up-to-date information to enrollees about rescheduled court hearings. Opportunities for attorneys to meet with their clients, outside of those meetings organized at the hearing locations, were limited due to, among other constraints, complications associated with cross-border communication and U.S. attorneys not being licensed to practice law in Mexico.
- Due to these factors, among others, many individuals in MPP were unwilling or unable to remain in Mexico during the course of their removal proceedings. Comparing noncitizens enrolled in MPP to similar noncitizens (i.e., non-Mexican single adults and family units who were issued notice to appear) from the same period who were not enrolled in MPP, EOIR granted relief to 3.4 percent of non-

MPP enrollees who had been issued NTAs versus 1.1 percent of MPP enrollees. This discrepancy suggests that at least some MPP enrollees with meritorious claims either abandoned or were unable to adequately present their claims given the conditions faced by migrants in Mexico and barriers to legal access.

- Additionally, MPP was originally intended to reduce burdens on border security personnel and resources and to help clear the backlog of unadjudicated asylum claims. In reality, however, Secretary Mayorkas observed that backlogs in immigration courts and asylum offices grew significantly during the period that MPP was in effect. MPP also diverted resources from other priority Department missions by requiring DHS to build, maintain, and operate the infrastructure and processes supporting MPP.
- MPP also played a particularly outsized role in diplomatic engagements with the government of Mexico (GOM), diverting attention from more productive efforts to fight transnational criminal and smuggling networks and address the root causes of irregular migration and forced displacement.
- Last, MPP also diverts DHS's resources from the administration's priority efforts to implement effective, fair, and durable asylum reforms that reduce adjudication delays and tackle the immigration court backlog. For example, both the Dedicated Docket, designed so that immigration judges can adjudicate cases within 300 days, and the Asylum Officer rule, which will substantially streamline the asylum process, rely on the same USCIS personnel.

As a result, on October 29, 2021, Secretary Mayorkas issued a new memorandum terminating MPP that will be implemented as soon as practicable pending a final judicial decision to vacate the injunction. As part of our vigorous efforts to challenge this injunction, on December 28, 2021, the U.S. Government (USG) filed with the U.S. Supreme Court a petition for a writ of certiorari seeking expedited review of the judgment of the *Fifth Circuit in Texas v. Biden*, which rejected DHS's arguments and left the injunction in place. DHS's petition for writ of certiorari was granted by the Supreme Court on February 18, 2022, and oral arguments are anticipated in April. For as long as the injunction remains in place, DHS is bound to comply with it and make good faith efforts to reimplement MPP.

Ultimately, while recognizing that MPP may potentially have contributed to some reduced migratory flows, Secretary Mayorkas concluded that the program imposes unjustifiable human costs, pulls resources and personnel away from other priority efforts, and fails to address the root causes of irregular migration. The Secretary also noted that MPP is inconsistent with the values and approaches taken by the Biden-Harris administration, which is pursuing a series of policies that disincentivize irregular migration while incentivizing safe, orderly, and humane pathways for persons seeking to enter the United States. These policies—including the on-going efforts to reform the U.S. asylum system and address the root causes of irregular migration in the region—seek to achieve sustainable, long-term change by addressing long-standing problems that have plagued the U.S. immigration system for decades. Once fully implemented, Secretary Mayorkas believes that these policies will address migratory flows more effectively while holding true to our Nation's values.

OPERATIONAL CHANGES TO MPP

DHS, working with our Federal and international partners, has taken multiple steps to re-implement MPP while attempting to address some of the most profound humanitarian concerns that MPP presents. These changes are intended to minimize the harms associated with the program to the greatest extent feasible, but as Secretary Mayorkas has repeatedly confirmed, no changes short of termination are sufficient to fully address the inherent flaws and human costs of MPP.

First, both the U.S. and Mexican Governments are committed to protecting particularly vulnerable individuals from being returned to Mexico and put in harm's way. Although GOM is not responsible for reimplementing MPP nor upholding U.S. court decisions, its cooperation is critical to operationalize the program. Unaccompanied children cannot be enrolled in MPP. Additionally, those with particular vulnerabilities including those with known physical and mental health issues, disabilities, and advanced age are not eligible for MPP. When CBP officials observe or learn of a particular vulnerability, they make case-by-case decisions about whether the vulnerability falls within an exception to enrollment. When there is doubt as to whether a vulnerability merits exception to enrollment, CBP has been instructed to err on the side of excepting the individual from MPP.

Second, DHS has enhanced policies and procedures to protect from return those who may be subject to torture or persecution in Mexico. CBP officials are now required to proactively ask individuals subject to MPP if they fear being returned to

Mexico. In the prior implementation, individuals were not asked these questions and had to instead affirmatively assert a fear of return to Mexico. Individuals who express a fear of being returned to Mexico are referred to USCIS for a non-refoulement interview. Rather than the “more likely than not” standard that was used in the previous version of MPP, USCIS officials now use the lower “reasonable possibility” standard. Importantly, they are provided access to telephones and are generally given 24 hours to consult with a legal representative in advance of their interview. It continues to be the case that individuals enrolled in MPP can tell a USG official that they fear return to Mexico at any time while they are in the United States, including during initial processing, court hearings, or any other encounters with USG officials.

Third, DHS and DOJ are taking additional steps to provide individuals subject to MPP with reasonable and meaningful opportunities to meet with counsel or a legal representative. Upon enrollment, individuals are provided a legal resource packet. As already stated, individuals who express a fear of return to Mexico have 24 hours prior to their USCIS non-refoulement interviews to consult with legal representatives on the telephone. Under current operational guidance, CBP is to provide individuals enrolled in MPP with access to telephones during their time in custody, and volunteers from law firms and legal service providers are providing migrants with free telephonic legal consultations. At the request of an individual in MPP, legal representatives may participate by telephone in USCIS non-refoulement interviews. DHS and DOJ are coordinating returns to the United States for court hearings to allow individuals enrolled in MPP with substantial time to meet with counsel on the day of the hearing, and DOJ is providing access to the Legal Orientation Program for individuals in MPP. Counsel may be present at the noncitizens’ court hearings by video or in person. Additionally, the Department of State is working with international organizations to increase access to legal and other informational resources via shelters in Mexico, including through provision of WiFi and outfitting of private spaces that can be used to consult remotely with legal representatives or others.

RE-IMPLEMENTATION TO DATE

On December 6, 2021, DHS began to enroll individuals in MPP and subsequently return them through a port of entry (POE) in El Paso, and court hearings began at the El Paso Immigration Court for individuals enrolled in MPP on January 3, 2022. On January 3, 2022, DHS began to enroll individuals in MPP and subsequently return them through a POE in San Diego, and court hearings began at the San Diego Immigration Court on February 1, 2022. On January 20, 2022, DHS began to enroll individuals in MPP and subsequently return them through a POE in Brownsville, and court hearings began at the Brownsville Immigration Hearing Facility on February 15, 2022. On February 28, 2022, DHS began to enroll individuals in MPP and will subsequently return them through a POE in Laredo, and court hearings will begin on or about March 28, 2022 at the Laredo Immigration Hearing Facility. DHS intends to continue incremental expansion of returns across the Southwest Border in the coming months contingent on GOM’s continued agreement to receive returns and location-specific reception capacity.

As of February 28, a total of 1,602 individuals have been enrolled in MPP and 893 of them have been returned to Mexico, while 181 are still being processed. Not all individuals who are enrolled in MPP are actually returned to Mexico since some are disenrolled due to a particular vulnerability or a positive determination in their non-refoulement interview.

Of the 1,602 enrollments, only 1 was a family unit individual (who was later disenrolled), while the rest were single adults. To date, all individuals enrolled have been Spanish speakers primarily from Nicaragua, Venezuela, Cuba, Colombia, and Ecuador. In principle, anyone from the Western Hemisphere (other than Mexico) is potentially eligible for MPP processing if they are not an unaccompanied child or fall into another vulnerable group.

Of the 1,602 enrollments, 82 percent (1,313) claimed a fear of harm in Mexico during initial enrollment and were referred to USCIS for a non-refoulement interview, 225 of which resulted in a positive determination (17 percent). The remaining 83 percent of those who claimed fear either received a negative determination (69 percent), had their cases administratively closed (12 percent), or remain pending (2 percent). Individuals disenrolled from MPP generally still have a pending Notice to Appear before EOIR and continue their removal proceedings while remaining in the United States. During their non-refoulement interviews, 2 percent were legally represented.

DHS will continuously evaluate MPP operations and effectiveness and make necessary adjustments to improve the integrity and operations of the program, and the safety of those who are enrolled in it. As part of these efforts, DHS has created a case review process for individuals who believe they should not have been subject to MPP or should no longer be subject to MPP due to a particular vulnerability or a changed circumstance. Individuals or their representatives can email DHS with information about why the individual's enrollment is believed to have been incorrect or how the individual's circumstances have changed since enrollment, and DHS will promptly review their cases.

CONCLUSION

As the Biden-Harris administration and Secretary Mayorkas have repeatedly acknowledged, the United States is a nation with borders and laws that must be enforced, and it is also a nation that was built by immigrants. This administration is, as a result, committed to securing our borders while also offering protection to those fleeing persecution and torture. The Secretary has been clear that, in his view, MPP is not the best strategy for achieving either of these goals—even with the significant changes that have been made that seek to mitigate its inherent flaws.

Despite the Secretary's views concerning MPP, DHS is bound by court order to make good-faith efforts to implement it until the injunction is lifted—and we have been complying with this court order.

That said, efforts to address irregular migration cannot solely be focused on our borders. Our immigration laws have not been updated in decades, and during this time we have seen a dramatic change in the nature and magnitude of migratory flows. These changes have only accelerated during the COVID-19 pandemic. This administration is committed to working with Congress to transform our flawed immigration system so that we can better secure our borders and create fair, orderly, and humane pathways for migrants seeking protection or opportunity. A key part of these efforts involves the critical work our colleagues at the State Department are engaged in to create regional approaches to addressing migration that recognize it is a shared responsibility of all countries in the Hemisphere. DHS hopes to work alongside Members of this committee and this Congress to develop sustainable solutions to better manage migration at the border and in the region.

Thank you. I am pleased to answer your questions.

Chairwoman BARRAGÁN. Thank you for your testimony. I now recognize Mr. Huffman to summarize his statement for 5 minutes. Mr. Huffman.

STATEMENT OF BENJAMINE “CARRY” HUFFMAN, ACTING CHIEF OPERATING OFFICER, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. HUFFMAN. Thank you. Good afternoon, Chairwoman Barragán, Ranking Member Higgins, and Ranking Member Katko, and distinguished Members of the subcommittee. It is an honor to testify today on behalf of the U.S. Customs and Border Protection and discuss CBP's role in the implementation of the Migrant Protection Protocol program, or MPP, across our Southern Border.

I currently serve as CBP's acting chief operating officer. While I am new to this role, my career in border security has spanned 37 years. It is fair to say it has been a career that has taken me across our hemisphere conducting this line of business. To that end, the border has always been a dynamic environment, but there is one constant I am reminded of every day, the men and women of CBP have a complex, important, and frequently dangerous mission. It is a mission we are called up to perform with the spirit of vigilance, service, integrity, and honor. I am honored to serve on the leadership team of one of the Nation's premier law enforcement agencies. Due to the challenges we face today, it is also the most humanitarian law enforcement agency in the country, possibly the world.

I would like to point out that since the beginning of 2021, CBP has performed over 13,000 life-saving rescues in sometimes extremely dangerous conditions and terrain. Spent hundreds of millions of dollars providing medical support, and provided care for over 146,000 unaccompanied children, our most vulnerable migrant population. These are just a few examples of the care and compassion that defines CBP's values of vigilance, service, integrity, and honor.

In regards to MPP, our primary responsibility involves enrollment of individuals and facilitating them through the ports of entry prior to and following their hearings. CBP's operational framework is grounded by three key principles essential to our mission. First, enforce the law and implement policy. Second, ensure individuals in our custody are provided care and afforded rights. Third, work collaboratively with our interagency and international partners.

First, CBP is a law enforcement organization. We are committed to enforcing our Nation's law and implementing the policies of the Executive branch. I personally have worked under 7 administrations, and while strategies change, there has always been a commitment to enforcing the rule of law. To that end, CBP carries out its responsibilities in accordance with the U.S. laws and the DHS MPP policy guidance. CBP officers and Border Patrol agents determine whether an encounter or apprehended individual should be processed under MPP or under other procedures such as expedited removal. These determinations are made on a case-by-case basis and with the appropriate supervisory review.

Trust in the rule of law is a pillar of our Nation and CBP is committed to faithfully executing its responsibility, which brings me to my second point, which is commitment to providing care and communicating afforded rights to individuals throughout the entire MPP process.

During an MPP determination, CBP procedures are designed to identify the correct processing pathway for every migrant as soon as possible. This includes providing multiple opportunities to identify migrants in vulnerable populations. Once enrolled, we provide individuals with a list of legal service providers, including information on low-cost or free legal services. We also care for the health and welfare of migrants, which includes providing COVID vaccinations for MPP enrollees. Additionally, if at any time MPP enrollee states that he or she has fear of persecution or torture on return to Mexico, that migrant is referred to a U.S. Citizenship and Immigration Services asylum officer for screening. CBP is committed to providing care and communicating rights to individuals throughout the MPP process.

Third, it is important to recognize the interagency and international efforts in this area. CBP is one of many organizations involved in implementing MPP, and we must work effectively with all of our partners. DHS establishes guiding policies and parameters of MPP, and implementation is coordinated among multiple agencies. Within DHS, CBP works closely with USCIS and ICE. We also coordinate closely with the Department of Justice Executive Office for Immigration Review, the Department of State, and the government of Mexico's National Institute of Migration. Clear

and timely communication with non-governmental organizations is also a critical part of this partnering effort.

Among other mandates, this administration has set a benchmark of allowing all MPP enrollees to have a hearing within 180 days. We work closely with our interagency colleagues to help us take swift and decisive action to enroll migrants, facilitate hearings, and meet administration's priorities.

The border has always been a dynamic and complex environment. For CBP, we will continue to do our part in upholding the rule of law, ensuring individuals are properly cared for, and being a trusted partner to all of the entities working on this effort. Thank you for the opportunity to appear today and I look forward to your questions.

[The prepared statement of Mr. Huffman follows:]

PREPARED STATEMENT OF BENJAMINE C. "CARRY" HUFFMAN

MARCH 2, 2022

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, 7 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).¹ 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 fur-

¹ 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.

ther review.² 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*.³ 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.”⁴ In response, Secretary Mayorkas initiated a comprehensive review of MPP. CBP subsequently terminated MPP processes in accordance with Secretary Mayorkas’ June 1, 2021, memorandum.⁵ Following a court order on August 13, 2021, permanently enjoining DHS from implementing or enforcing the June 1 memorandum,⁶ CBP participated in the DHS-led interagency effort to reimplement MPP.

New MPP enrollments under the court-ordered reimplement 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 7 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,⁷ 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.

The following persons are exempted from processing under MPP: Unaccompanied children (UC);⁸ 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 biometrics⁹ 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

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

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

⁴ Id. at 8720.

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

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

⁷ https://www.dhs.gov/sites/default/files/2022-01/21_1202_plcy_mpp-policy-guidance_508.pdf.

⁸ 6 U.S.C. § 279(g)(2).

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

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 re-entry 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.

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 attorneys¹⁰ 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 pro-

¹⁰In 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.

ceedings 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.

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.

Chairwoman BARRAGÁN. Thank you, Mr. Huffman, for your testimony. I now recognize Ms. Mendrala to summarize—sorry—Ms. Mendrala to summarize her statement for 5 minutes.

STATEMENT OF EMILY MENDRALA, DEPUTY ASSISTANT SECRETARY, WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. MENDRALA. Thank you. Chairwoman Barragán, Ranking Member Higgins, Ranking Member Katko, and Members of the Border Security, Facilitation, and Operations Subcommittee, thank you for inviting me to testify before you today. As deputy assistant secretary for the Bureau of Western Hemisphere Affairs at the State Department, I am honored to have this opportunity to discuss the Department's role in the implementation of the Migrant Protection Protocols, or MPP.

This year marks the bicentennial of bilateral relations between the United States and Mexico. Our two governments share deep commitments to humane and orderly migration, transnational security, and economic prosperity in the Western Hemisphere. The

Biden-Harris administration has repeatedly stated that MPP has endemic flaws, imposes unjustifiable human costs, and pulls resources and personnel away from other priority efforts. As the appeals process continues, we are working closely with the government of Mexico in accordance with the court order requiring us to make good-faith efforts toward reimplanting MPP.

On December 2, 2021, the government of Mexico publicly announced its independent decision to accept individuals returned from the United States to Mexico under the reimplementation of MPP. The U.S. Government announced measures to mitigate safety and protection risks to MPP enrollees, addressing humanitarian concerns also shared by the government of Mexico.

The U.S. Government leveraged the State Department's expertise supporting humanitarian programs to make available relevant support to MPP returnees in Mexico as we do for other vulnerable migrants or asylum seekers. The Department's Bureau of Population, Refugees, and Migration, or PRM, supports on-going programming through humanitarian partners in Mexico for shelter, legal orientation programs, psychosocial services, access to Wi-Fi, and other support for which all vulnerable migrants, including MPP enrollees, are eligible. The Department of State is also supporting access to COVID-19 testing for MPP migrants prior to arrival at a port of entry to reenter the United States to attend court.

In the previous implementation of MPP, some MPP enrollees were preyed upon by criminal groups upon reentry to Mexico. To mitigate this risk, the State Department is supporting facilitation of humane transportation for MPP enrollees in Mexico between shelters and ports of entry. Our international organization partner provides this transport assistance. Return times are coordinated to minimize travel within Mexico after dark or before sunrise. The government of Mexico provides security escorts for transport to further minimize risks.

In negotiations with Mexico, we arranged for a dignified and organized reception in Mexico where Mexican authorities immediately provide MPP enrollees with documentation upon arrival that allows them to access local services and permission to work legally in the country. The Department of State, our international organization partners, provide assistance to ensure access to local services based on eligibility as determined by the government of Mexico.

As we continue to work closely with the government of Mexico in accordance with the court order, the administration maintains that MPP contains endemic flaws and poses unjustifiable human costs and pulls resources and personnel away from other priority efforts. The United States and Mexico share an interest in sustainable solutions that humanely reduce irregular migration and forced displacement in, from, and through the region. This requires a comprehensive, long-term approach that works to address the root causes of irregular migration and forced displacement, while simultaneously enhancing collaborative regional approaches to expand access to international protection and other legal migration pathways and to humanely manage unprecedented mixed migration flows through consistent border enforcement, visa regimes, and other tools.

Madam Chairwoman, Ranking Member, and Members of the Border Security, Facilitation, and Operations Subcommittee, thank you again for the opportunity to testify and I look forward to your questions.

[The prepared statement of Ms. Mendrala follows:]

PREPARED STATEMENT OF EMILY MENDRALA

MARCH 2, 2022

Chairwoman Barragán, Ranking Member Higgins, and Members of the Border Security, Facilitation, and Operations Subcommittee—thank you for inviting me to testify before you today. As deputy assistant secretary for the Bureau of Western Hemisphere Affairs at the State Department, I am honored to have this opportunity to discuss the Department's role in the implementation of the Migrant Protection Protocols (MPP).

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On December 2, 2021, the government of Mexico publicly announced its independent decision to accept individuals returned from the United States to Mexico under the re-implementation of MPP. The U.S. Government announced measures to mitigate safety and protection risks to MPP enrollees—addressing humanitarian concerns also shared by the government of Mexico. The U.S. Government leveraged the State Department's expertise supporting humanitarian programs to make available relevant support to MPP returnees in Mexico as we do for vulnerable migrants or asylum seekers. The Department's Bureau of Population, Refugees, and Migration (PRM) supports on-going programming through humanitarian partners in Mexico for shelter, legal orientation programs, psychosocial services, access to Wi-Fi, and other support for which all vulnerable migrants, including MPP enrollees, are eligible. PRM is also supporting access to COVID-19 testing for MPP migrants within 3 days prior to arrival at a POE to re-enter the United States to attend court.

In the previous implementation of MPP, some MPP enrollees were preyed upon by criminal groups upon reentry to Mexico. To mitigate this risk, State/PRM is supporting facilitation of humane transportation for MPP enrollees in Mexico between shelters and ports of entry. Our international organization partner provides this transport assistance. Return times are coordinated to minimize travel within Mexico after dark or before sunrise. The Government of Mexico provides security escorts for transports to further minimize risks.

In negotiations with Mexico, we arranged for a dignified and organized reception in Mexico where Mexican authorities immediately provide MPP enrollees with documentation upon arrival that allows them access to local services and permission to work legally in the country. PRM international organization partners provide assistance to ensure access to local services based on eligibility as determined by the government of Mexico.

As we continue to work closely with the government of Mexico in accordance with the court order, the administration maintains that MPP contains endemic flaws, imposes unjustifiable human costs, and pulls resources and personnel away from other priority efforts. The United States and Mexico share an interest in sustainable solutions that humanely reduce irregular migration and forced displacement in, from, and through the region. This requires a comprehensive long-term approach that works to address the root causes of irregular migration and forced displacement while simultaneously enhancing collaborative, regional approaches to expand access to international protection and other legal migration pathways and to humanely manage unprecedented mixed migration flows through consistent border enforcement, visa regimes, and other tools.

Madame Chairwoman, Ranking Member, and Members of the Border Security, Facilitation, and Operations Subcommittee—thank you again for the opportunity to testify. I look forward to your questions.

Chairwoman BARRAGÁN. Thank you so much for your testimony. I want to thank the witnesses, all of you, for your testimony. I will

remind the subcommittee that we will each have 5 minutes to question the panel. I will start with myself and then we will alternate with the first question going to you, Mr. Huffman of CBP. Mr. Huffman, are migrants allowed to share information regarding the Notice to Appear and other MPP-related documents with advocates?

Mr. HUFFMAN. Yes, ma'am, they are to those advocates that have been recognized to represent them, certainly they can share their information.

Chairwoman BARRAGÁN. Mm-hmm. Would a sitting Member of Congress be allowed to photograph an individual's NTA if that individual grants permission?

Mr. HUFFMAN. So, ma'am, I think it has been a long-standing procedure for CBP, and has for years, to protect the—in the interest of protecting the migrant—the security and the privacy of migrants. When they are in our custody, in our care, they are not allowed then to be photographed or take those pictures as you described what happened to you the other day. I mean, I regret it that you didn't—you weren't satisfied with your interaction that day, but just to be clear, that is not—that is how we have always done it with folks that are in our custody or in our care is to limit access to others outside the—not certified to represent them in those cases.

Chairwoman BARRAGÁN. OK. Mr. Huffman, just so you are aware, this was not trying to take a picture of the migrant. This was the migrant trying to give me his information so I could follow up on the separation of him and his son and was offering it to me. So, I just, you know, I think it is—as a lawyer, when there is an attorney-client privilege, the privilege belongs to the client. In this case, I think the privacy belongs to the migrant if they, you know, want somebody to follow up and I don't see the harm in doing that. Again, it was not a picture of the migrant. It was simply a picture of his Notice to Appear to get his information down.

OK. My second question goes to Mr. Nuñez-Neto. Would you say that this administration prioritizes keeping families together?

Mr. NUÑEZ-NETO. Yes, Chairwoman, DHS is committed to preserving family unity.

Chairwoman BARRAGÁN. OK. Now, I just want to remind you like during my oversight trip, I met with a migrant who was, as I mentioned, illiterate and separated from his 23-year-old son and he was enrolled in MPP. How does that align with the policy of keeping families together?

Mr. NUÑEZ-NETO. Thank you, Chairwoman, for that question. As you know, the definition of a family unit that DHS uses is based on the TVPRA definition of an unaccompanied child. It basically notes that a parent or a legal guardian traveling with the minor children is a family unit. Parents traveling together with adult children have traditionally not been treated as a family unit at the border. They have been treated as single adults. That said, we have directed CBP to ensure wherever possible that individuals who are traveling together and are subject to MPP, should either be enrolled together or disenrolled together if they have familial ties. As Chief Huffman would likely point out, however, this can be pretty

difficult to operationalize, you know, in the border depending on when and how people cross.

Chairwoman BARRAGÁN. OK. Well, I want to just encourage you and the administration to rethink the family unit definition, and as you mentioned, trying to keep families together. It just was a little challenging to see a vulnerable elderly man being the one that was an MPP and separated.

I just want to follow up to my second question as well, can DHS or CBP, do you have the power to alter the guidelines on how to define a family?

Mr. NUÑEZ-NETO. Chairwoman, we are happy to work with you and the committee on what our current policies are and maybe have a conversation around, you know, what we can do to better reflect our shared concern about family—families being kept together.

Chairwoman BARRAGÁN. OK. Maybe my question is kind-of just directed on who has the authority to change that definition? Is it DHS? Is it CBP? Is it somebody else?

Mr. HUFFMAN. On behalf of CBP, I don't believe we have the authority to change that definition. I think that is a policy issue and then as Mr. Nuñez-Neto reflected, it is codified in the TVP—TV Protected Trafficking Victims Protection Act, as well. So, that would be a policy-level decision, perhaps even a legislative change. I am not really sure.

Chairwoman BARRAGÁN. OK. My understanding is that DHS has the written guidance on MPP guidelines and so, it would be DHS, but we can, you know, talk about that off-line more.

I want to move on to question—well, with my time expiring here, with only 7 seconds left, I am going to—I am going to go ahead and wrap up. I just thank our witnesses for being here and your willingness to answer questions. Votes are going to be called around 20 minutes or so. So, I want to make sure we give everybody ample time to get questions in as much as they can before they have to run to vote.

So, with that I will wrap up and I will now recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, you are recognized for your 5 minutes.

Mr. HIGGINS. I thank the Chairwoman. Mr. Nuñez-Neto, in your written testimony, you say that as of February 28, a total of 1,602 individuals have been enrolled in MPP and 893 of them have been returned to Mexico, while 181 are still being processed. But not all individuals who are enrolled in MPP are actually returned to Mexico since some are disenrolled due to a particular vulnerability or a positive determination of their non-refoulement interview. The numbers here seem very low. At the reference from January 2019 through January 2021, nearly 70,000 individuals were enrolled in MPP and the program was stopped. Now it allegedly is being re-instituted.

Most Americans get the sense, as we reasonably assess this alleged good-faith effort to reinstitute MPP, as reflective of the court order, most Americans would reasonably assess that a good-faith effort is being slow-rolled at best or being resisted perhaps would be more accurate. Sir, do you support MPP as a policy or do you oppose it?

Mr. NUÑEZ-NETO. Thank you, Ranking Member. As I have noted in my written testimony and oral statement, this administration opposes the MPP, but is committed to reimplementing it per the——

Mr. HIGGINS. OK. So,——

Mr. NUÑEZ-NETO [continuing]. Court order in good faith.

Mr. HIGGINS [continuing]. Thank you. Thank you for that clarification. So, why would—why would we expect DHS to legitimately comply with the court order in good faith when it is clear that DHS leadership opposes MPP as a policy? I think it is, I mean, we expect compliance with the law. That means to fully comply with the law means to bring all your authority to bear on compliance with that law. That would be the definition of a good-faith effort. But what we are seeing in these numbers are certainly translate to a lack of actual effort to comply.

How long do you think it would take for MPP to be fully implemented? In fact, what would the numbers need to be for you to say it is now fully reimplemented given the fact that we are trending another 2 million-plus illegal crossings this year? What would be a success? You say, how should America measure a good-faith effort to reimplement MPP reflective of the court order that exists?

Mr. NUÑEZ-NETO. Thank you, Ranking Member. I would like to point out that the previous implementation of MPP took a number of months to ramp up and increase enrollments. We are actually in line with their numbers for the first couple of months of implementation. That said, we are implementing MPP during a global pandemic and the government of Mexico has required that individuals be tested and quarantined when they are returned to Mexico. That has limited to some extent our ability to enroll. We are hopeful that as the pandemic eases and restrictions begin to be raised, that we will be able to increase enrollments a little faster. We are committed——

Mr. HIGGINS. Well, let me——

Mr. NUÑEZ-NETO [continuing]. To doing this in good faith, sir.

Mr. HIGGINS [continuing]. Let me just in the interest of time, let me just clarify that our understanding is that the illegal immigrants that are not returned to Mexico that are released into the interior of America are not tested for COVID. That is my understanding. They are distributed across the United States without getting tests. So, I appreciate you pointing out that we are dealing with COVID. We are now well into the third year or 14 days to flatten the curve. So, we are all very familiar with the barriers that COVID has presented.

But the sanctity of our sovereign border is at stake. We are losing our Nation at the Southern Border.

Under MPP, Mr. Nuñez-Neto, my final question, please explain what happens to migrants who are specifically disenrolled in MPP when they do not appear in front of an immigration court as specified in their custody paperwork? What happens if they don't show up for court?

Mr. NUÑEZ-NETO. Sir, individuals who are disenrolled from the MPP would be processed under a different Title 8 pathway, and that could include expedited removal or some other authority. For individuals who are enrolled in MPP and who do not show up for

their court hearing, some of that really depends on the immigration judge and, you know, the OPLA ICE attorneys' determination. But we are already seeing some in absentia orders of removal being issued.

Mr. HIGGINS. That would be by ICE? You are saying they would be referred to ICE?

Chairwoman BARRAGÁN. The gentleman's time has expired.

Mr. HIGGINS. Thank you, Madam. Perhaps he could answer that final question.

Chairwoman BARRAGÁN. Well, I specifically cut my questions. I stopped without even asking another question when I had 7 seconds left because I want to make sure we get to the Minority's witness as quickly as we can because there is going to be a huge interruption with votes. My concern is who will be engaged in returning.

Mr. HIGGINS. Yes, ma'am.

Chairwoman BARRAGÁN. So, I am going to——

Mr. HIGGINS. That was a yes or no question, but I understand. I yield.

Chairwoman BARRAGÁN. OK. The witness is welcome to in his next question to answer the question if he would like. The Chair will now recognize other Members for questions they may wish to ask the witness. As previously outlined, I will recognize Members in order of seniority, alternating between Majority and Minority.

Members are reminded to unmute themselves when recognized for question. The Chair recognizes, for 5 minutes, the gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Madam Chair. I want to thank all of our witnesses for being here with us today. You have a difficult job. We all have a very challenging job. I kind-of agree with Mr. Higgins. We have, you know, the numbers are probably very significant. But I do believe that we can protect our border and accept more refugees to the United States, after all, we are a country of immigrants.

You know, as part of my job here being on Homeland, I try to go out and look at the field to see what you all are doing, what your challenges are. Last year, I went out to El Paso, Texas to address the refugee challenges there and I remember I met the two young ladies, Yuri and Yareli, the 3- and 5-year-old girls that had been thrown over the border by smugglers. Mr. Huffman, if it wasn't for your smart and alert border officers, those young ladies would have perished out in the desert. So, thank you and thank them.

You know, I met with Central American ambassadors in the past few months, and one of them was telling me that probably 80 percent of those refugees from his country, by the time they get to the United States border, 80 percent of the women are sexually violated and molested. It is an ugly road, but when you are hungry, when your life is threatened, you take risks.

You know, I wish I could say this thing is going to get better, but I took a tour out to Tijuana, San Ysidro border crossing about a month ago. As I was crossing the border, I started up a conversation with a Border Patrol border agent, and he jokingly asked me if I knew Russian. I asked him, I said, what is your punchline, bro? He said, you see those 20 vehicles in secondary inspection? I said,

yes, I do. He says, they are full of Ukrainian and Russian immigrants, and a lot of those guys try to run the border with their vehicles, and we have stopped them. My point to you is, given what is going on in Russia right now, given what is going on in Ukraine, given what is going on in other parts of the world, this problem is not going away. We have to figure out, like Mr. Higgins said, how to protect our borders. But like I would say, how to open up our borders to refugees that we can accept and be part of our great country and our great society.

I concur with the Chairperson. I have opposed the Remain in Mexico policy for a lot of reasons and part of it is that I have seen that it doesn't work. I know President Biden ended this policy, but apparently now he is expanding it. So, you know, without debating this a little bit, the facts are the facts. Without debating this, I would ask you, gentlemen, and as witnesses, just help us come up with a solution here. Can we come up with ways to have these refugees possibly, you know, apply for refugee status in their home country? What can we do to keep them safe? It breaks my heart when I see human beings that look my family, that look like my neighbors be in such dire straits. Mr. Nuñez-Neto, what do you think? What can we do in the 2 minutes I have left? Thank you.

Mr. NUÑEZ-NETO. Thank you for that question, sir. I agree wholeheartedly with you that there is more that needs to be done. As I noted in my opening statement, you know, we haven't reformed our immigration system in decades. Our laws are simply outdated and have not kept up with the changes that we have seen at the border. We are seeing surges of migration happen—

Mr. CORREA. I would probably say, sir, that our immigration laws have not changed and kept up with the reality of the world.

Mr. NUÑEZ-NETO. That is right.

Mr. CORREA. Continue.

Mr. NUÑEZ-NETO. No, I agree completely, sir. That is why I think, you know, you have seen administrations of both parties move through executive action to make changes. I do not believe that is the way—

Mr. CORREA. Very quickly—I am sorry to cut you off. Mr. Huffman, like I mentioned to you, out in El Paso, your agents were excellent using that electronic infrared night stuff to patrol the borders. What can we do better in that respect?

Mr. HUFFMAN. So, I appreciate you recognizing the acts of our agents. As I mentioned in my thing, I do believe we are the most humanitarian law enforcement agency in the country because of the circumstances we have been put into and we have been placed into that role. The reliance on that technology is great and the support we get from Congress to allow us to increase our reliance on technology to give us greater situation on what is going on around on the Southwest Border is huge. Those kind of things help us effect those type of rescues, plus help us secure the border, and address the narcotics smuggling issue, all those things together. The technology, and the personnel, and the infrastructure, are key to our success on the Southwest Border—

Mr. CORREA. How much time—

Mr. HUFFMAN [continuing]. In addition to—

Mr. CORREA [continuing]. Do I have left, Madam Chair?

Chairwoman BARRAGÁN. Thank you. Your time has expired. I was about to chime in as he was completing his——

Mr. CORREA. Thank you very much.

Chairwoman BARRAGÁN [continuing]. His response. The gentleman yields.

Mr. CORREA. Yes.

Chairwoman BARRAGÁN. The Chair recognizes, for 5 minutes, the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Madam Chairwoman. Mr. Nuñez-Neto, I want to talk a few minutes and walk through a couple things. It appears from your testimony, your written testimony, a brief history that on February the 2nd, President Biden issued an Executive Order directing Secretary Mayorkas to review MPP. Five months later, on June the 1st of 2021, Secretary Mayorkas concluded and issued a memorandum that the program should be terminated. Following that there was a court challenge to that on August the 13th 2021. The Federal court from the Northern District of Texas ordered this program to continue or to be reimplemented. There was an appeal of that both to the 5th Circuit and later to the Supreme Court, both of which were denied. You say there in your testimony, you say DHS is required to abide by the order to reimplement the program in good faith, and has continued to do so, demonstrating this administration's commitment to the rule of law.

So, looking at recent border figures, in December of last year, the total number of encounters along the Southwest Border was 179,219 individuals. In January, that number dropped to 153,941. So, taking the January figures for total numbers of encounters at 179,219, and then looking at the individuals from the statistics I have that were enrolled in the program and actually returned to Mexico, I see only 191 individuals. So, if my math is correct, that would be less than 1/10 or almost right at 1/10 of 1 percent of every encounter that was returned to Mexico in December. Looking at January's figures, again in January, 153,941. There were 212 that were returned in the initial program, and another 42 in the post-reentry. Again, a staggering figure of barely over 1/10 of 1 percent.

So, with figures that are so low that they barely register, it is difficult for me and other Members on this committee for us to believe that you are acting in good faith to reinstitute this program. I want to give you a brief opportunity to explain how those figures being so miniscule, how we can have faith that you are doing what you say you are doing, which is acting in good faith and following the law. Because that is what, as law enforcement officers at the Department of Homeland Security, we are required to follow the law whether we like it or not. You have been very clear. You don't like the law. You think it is a bad law. You think it should go away. The Secretary thinks that. The President thinks that. The court has now ordered you to do that and it seems to us that you are just saying we don't care what the Federal court says, we will deport a handful of people, but it is less than 1/10 of 1 percent. So, please share with me, please convince me during these next couple of minutes, as to how you and how the Department is acting in good faith on a policy that you are very clear you don't like, you disagree with, and you wish you didn't have to apply.

Mr. NUÑEZ-NETO. Yes, thank you, Representative. I would like to point out just right off the bat that we are still implementing the CDC's Title 42 Public Health Authority at the border. So, in the month of January, as you noted, roughly half of the individuals we encountered of that number you cited were actually expelled under Title 42 and were not processed under Title 8 authorities. That said, you know, as I noted in my previous answer, under the Trump administration, it took a few months for MPP to ramp up enrollments. It is a new program. It takes a while for us to get started. We are doing this during a pandemic and Mexico has imposed some restrictions on how we can return people, including when and the kind of testing and quarantine that needs to be available on the Mexican side for them to accept people.

So, we are committed to increasing enrollments. We are working with DOJ to add immigration judges and courtrooms. We are working internally to streamline our processes. We have been expanding across the border and just started in Laredo, Texas this week. So, sir, with all due respect, we are implementing in good faith and are committed to continuing to expand enrollments in the coming months.

Mr. GUEST. Thank you. Very quickly, Mr. Huffman, thank you first for your service. I want to ask you if you agree with this statement, the director of the Arizona Department of Homeland Security, who is in our second panel, made this statement. When applied properly, MPP helps protect the lives of every Arizona communities and those throughout the Nation. When MPP—with MPP, law enforcement spends less time chasing the same traffickers, smugglers, and coyotes, and more time protecting Arizona and America. Do you agree with that statement?

Mr. HUFFMAN. So, again, thank you for the question and the opportunity to respond to that. I haven't heard the statement previously, but as I think even the Secretary recognized, there was some success with MPP of reducing flows across the Southwest Border, although there was a lot of other things going on at the same time to understand how MPP was really, I don't want to say pressure-tested under the circumstances we have now, but as my colleague from DHS said, we are committed to implementing in good faith as best we can. We continue to find efficiencies at the border to make it work better and faster. One of the challenges is it involves the synchronization of many organizations outside of just CBP and DHS to make it work, to reconstruct that, and get it in place is taking a little bit of time. But it is consistent with the numbers—if you measure against the same time from the same time period last time to this time, so far the numbers are pretty consistent. We hope to ramp up as we increase, as you mentioned the availability for court, but we are working hard to get there as fast as we can.

Chairwoman BARRAGÁN. The gentleman's—

Mr. GUEST. Thank you, Madam Chairman. I yield back.

Chairwoman BARRAGÁN. Thank you. The gentleman yields back. The Chair recognizes, for 5 minutes, the gentleman from North Carolina, Mr. Bishop, for 5 minutes.

Mr. BISHOP. Thank you, Madam Chairman. Mr. Nuñez-Neto, I noticed that your testimony began, Mr. Guest followed up, and Ms.

Mendrala's testimony also began with making clear that you disapprove the policy behind the MPP. Of what relevance is that? You would agree with me wouldn't you that if you have got an obligation under law, that you have to perform the obligation under law without regard to whether you like or not. Isn't that true?

Mr. NUÑEZ-NETO. That is true, sir, and we are, as I have noted, complying in good faith with the court order and we believe very much in the rule of law.

Mr. BISHOP. Yes, but you didn't answer my question. Of what relevance is it and why do you start off your statement by making clear that you disapprove the law that you are required by court to follow?

Mr. NUÑEZ-NETO. We disapprove of this program and the President and the Secretary have made quite clear that MPP is not aligned with this administration's values, and actually distracts from some of the important priorities that we have that we believe will have a similar effect on reducing border flows, sir.

Mr. BISHOP. So, now you have repeated your preference. But again, my question is, you are supposed to carrying out the law. The Constitution requires you faithfully to execute the law. So, my question is, not why you believe—not why your preferences are what your preferences are, but why do you start your testimony before this committee concerning compliance with MPP, compliance with the court's order, why do you begin it by telling us what your preferences are?

Mr. NUÑEZ-NETO. Sir, we believe the law supports our position that the Secretary has the authority to terminate MPP. We are committed to fighting the court's order all the way up to the Supreme Court, if needed, and have done so already, and will continue to do so, and are looking forward to the arguments before the Supreme Court, which will happen in April.

Mr. BISHOP. Would it be—but that doesn't change the fact of what your legal duty is now, does it, sir? You are under an obligation by order of a court. In fact, the U.S. Supreme Court has declined to grant a stay from that order, right?

Mr. NUÑEZ-NETO. That is correct, sir, and that is why we have moved forward with implementation and are reimplementing in good faith with the court's order.

Mr. BISHOP. Would it be possible to sabotage a policy with which you disagree even while professing that you are proceeding in good faith to execute it?

Mr. NUÑEZ-NETO. All I can say to that, sir, is that we are committed to implementing in good faith. We have worked around the clock many thousands of hours across the U.S. Government to re-implement this program that we disagree with. We are committed to continuing to comply in good faith and continue to increase enrollments even as we fight this court order.

Mr. BISHOP. Yet we have the sheer data that indicates that given the level of illegal migration at the border, almost none of the persons being encountered are being put into MPP.

Mr. Huffman, I would like to ask you, I noted that as being implemented, if there is a—people will be disqualified from MPP or not put into MPP if they have a physical or mental issue or some other disability, but a physical or mental issue. What would pre-

vent lawyers from—that are furnished to prospective enrollees, from coaching them to say that they are depressed or have anxiety? Would that then—if they then repeated that to a CBP agent, would that keep them from being going into MPP?

Mr. HUFFMAN. Sir, thank you for the question and for that. So, not really having privy to what their consultation with the attorneys are, but certainly people have been enrolled and then disenrolled when vulnerabilities were found out at a later time. How they arrived at those vulnerabilities, or how they became, I don't really have insight into. But the scenario you described, I guess is certainly possible.

Mr. BISHOP. So, well, then what are the prophylactic devices or prophylactic measures to make sure you are not susceptible to just fraudulent manufacturing of evidence or indications like that to keep somebody from being enrolled in MPP?

Mr. HUFFMAN. Sir, we try to focus on those when we are deciding who is going to be the best suitable candidate to be enrolled into the program would be least likely having any vulnerabilities that would show up at a later date because for us to enroll someone, and then have to disenroll them, is a—it takes time, operational time away from the work. So, we focus on those that we are confident will—we have a high likelihood to get through the program and not become vulnerable or declared vulnerable at a later date.

Mr. BISHOP. So, I don't hear any protection for that whatsoever, which to me, it sort-of gives the lie to entire notion of a good-faith compliance. If you start off your statement by saying you don't want to, you know, you despise the program. You note your obligatory obligation to faithfully to—excuse me—to execute in good faith and dispose one notion to the courageous CBP right there. There is no defense for that. You can just evade it at will. That is what I think is happening. So, I yield back.

Chairwoman BARRAGAN. Thank you. The gentleman yields back. The Chair will now recognize, for 5 minutes, the gentleman from Georgia, Mr. Clyde, you are now recognized.

Mr. CLYDE. Thank you, Madam Chairwoman. OK. This question I have is for Ms. Mendrala. Thank you for your testimony, ma'am. Twice in your statement, you say the Biden-Harris administration has repeatedly stated that MPP has endemic flaws and poses unjustifiable human costs and pulls resources and personnel away from other priorities. Now, can you justify that statement for me? I mean, do you support—first off, do you support MPP?

Ms. MENDRALA. Thank you for the question, sir. As my colleague from DHS recently stated, the administration has repeatedly—

Mr. CLYDE. Ma'am?

Ms. MENDRALA. Can you hear me? Hello, can you hear me?

Chairwoman BARRAGAN. We can hear you. We can hear you.

Mr. CLYDE. I have got you now.

Ms. MENDRALA. OK. As my colleague from DHS has repeatedly said, the administration has stated on several occasions that the—that it does disagree with the policy of MPP but is, nevertheless, committed to the rule of law and to implement in good faith the court order to reimplement MPP.

Mr. CLYDE. OK. But you say it has endemic flaws and poses unjustifiable human costs. All right. I mean, I am not seeing unjusti-

fiable human costs. I am not seeing endemic flaws in the MPP. In fact, I think it is a vital program that is both fair and necessary. The MPP is the law of the land and the courts have rightly ordered DHS to implement it. So, that is what DHS needs to be doing and doing it wholeheartedly.

The purpose of the MPP is to ensure people that are coming illegally across our border stay in Mexico. Those who have that desire and that request for asylum that they stay outside our country so that they don't just forget to show up for their asylum hearing and end up in our country as an illegal, as an illegal immigrant. So, I think it is a very important program. I think that the administration is way off-base in fighting this program. Obviously, it is the law. It is legal. It is fair. It is humane, all right? I don't believe the court would have ordered it to be implemented if it was—if it imposed unjustifiable human costs. I think that is totally inappropriate—or had endemic flaws.

My next question for you. In your testimony, you say, state PRM is supporting facilitation of human transportation for MPP enrollees in Mexico between shelters and ports of entry. Our international organization partner provides this transportation assistance. So, who pays for this? Are there tax dollars involved?

Ms. MENDRALA. Yes, sir. It is funded by the Department of State through our Bureau of Population, Refugees, and Migration.

Mr. CLYDE. OK. So, there are tax dollars involved here. All right. So, what you are saying then is you are paying for transportation in another country, in Mexico, to bring these people from wherever they are to the port of entry. You know, they got to the border by themselves the first time they showed up. Now, here we are paying using taxpayer dollars to bring them for wherever they are in Mexico back to the border for their hearing. Now, what is your obligation under the law to provide that transportation?

Ms. MENDRALA. Sir, the court ordered us to reimplement in good faith MPP and do so recognizing that the government of Mexico is a party to that agreement. Over the course of several months, we negotiated with the government of Mexico the terms of reimplementing MPP. The government of Mexico had several concerns with the prior iteration of MPP implementation, humanitarian concerns with which we agreed. One of the concerns was that individuals returned under MPP fell victim oftentimes to criminal organizations upon their return. So, we took several steps in consort with the government of Mexico to improve the humanitarian conditions for those MPP enrollees in Mexico.

Mr. CLYDE. So, what you are saying then is that without the United States paying that transportation, that MPP probably would not have been negotiated between Mexico and the United States? Is that right?

Ms. MENDRALA. We negotiated several aspects of humanitarian treatment of MPP enrollees in Mexico and security concerns were at the top of that list. Mexico is also providing security accompaniment to those transportation routes to and from ports of entry. The Department of State is also working with international organization partners to facilitate shelter, to improve Wi-Fi access at shelters so individuals can have access to counsel while in Mexico and other services as well.

Mr. CLYDE. You know, I wish we treated our United States citizens that well. I just don't see it. I just don't see treating folks who have broken the law, as they have done here, and giving them all these benefits is all that does is encourage more people and more people and more people to illegally enter this country and that is a disgrace. I yield back.

Chairwoman BARRAGÁN. The gentleman yields back. Given that votes have not been called, we are going to take this opportunity to close out the first panel.

I just want to remind all our viewers that it is not illegal to head to America to go to the border and apply for asylum and seek asylum. Unfortunately, the opportunity to present yourself at the border to do that is not happening so, this—we need to get back to that and maybe that will help having people come between ports of entry, which is what we are talking about here today.

So, I want to thank the panelists on the first panel for being here, for appearing, for your testimony. You are now excused. I am going—

Mr. CLYDE. Madam Chair, point of clarification on your comment, please?

Chairwoman BARRAGÁN. Yes, sir.

Mr. CLYDE. We are talking about people here that are not arriving at a port of entry. We are talking about people here who are illegally crossing the border between ports of entry, and that is—

Chairwoman BARRAGÁN. Mr. Clyde, that is—

Mr. CLYDE. Yes.

Chairwoman BARRAGÁN [continuing]. That is exactly—

Mr. CLYDE. Go ahead.

Chairwoman BARRAGÁN [continuing]. My point. My point is—

Mr. CLYDE. Right, OK.

Chairwoman BARRAGÁN [continuing]. That.

Mr. CLYDE. That is illegal.

Chairwoman BARRAGÁN. My point is that people are coming between ports of entry because right now, the border is closed and not allowing people to legally come and present themselves at a port of entry to claim asylum, which has been the law and the process. So, that is what I was pointing out. So, you and I are kind of on the same page just we are saying it differently.

I want to move on to our second panelist because it is—it is a guest of our Ranking Member here. I want to make sure he has an opportunity to ask questions of his guest. So, thank you, Mr. Clyde. The first panel is now excused. Thank you again for appearing.

I now welcome our second panel. Mr. Tim Roemer is the director of the Arizona Department of Homeland Security for the State of Arizona. Without objection, the witness's full statement will be inserted in the record. I now ask Mr. Roemer—so, I now ask Mr. Roemer's witness—our witness to summarize his statement for 5 minutes. You are now recognized.

STATEMENT OF TIMOTHY ROEMER, DIRECTOR AND CHIEF INFORMATION SECURITY OFFICER, DEPARTMENT OF HOMELAND SECURITY, STATE OF ARIZONA

Mr. ROEMER. Chairwoman Barragán, Ranking Member Higgins, and distinguished Members of the committee, good afternoon and thank you for the opportunity to testify. I would like to summarize my statement for the record by focusing my opening remarks on Arizona's support for border security and how the border crisis in our home State affects the rest of the Nation from a National security, public safety, and humanitarian perspective.

I would like to first start by thanking the brave men and women of CBP and all law enforcement on the front lines of the border that work tirelessly to protect our State and Nation, day and night. Their efforts are sincerely appreciated and we must come together to do more from a policy and legislative perspective to support their efforts. The dedication of these brave men and women along the border is what stands in the way of dangerous criminals reentering the country, many with previous convictions of violent crime within the United States, the seizure of deadly drugs on their way into our communities across the Nation, and the rescue of migrants struggling to make it safely into our country.

This past year, we saw many records being broken and it is heartbreaking to watch knowing all too well that many were avoidable with stronger action. From a record-breaking number of drug overdose deaths to a record number of migrant deaths, our border has become increasingly deadly. The Migrant Protection Protocols are a thoughtful policy that protects migrants looking to the United States of America for a better life. We need strong, lasting, and consistent application of not just MPP, but also immediate action on the part of the Federal Government to protect our communities, both on the border and throughout the Nation. This isn't just a matter of border security. It is a matter of National security and public safety.

In Arizona, we are on the front lines and the front door to this National crisis. Our border communities, cities, towns, sheriffs, police chiefs, and health care facilities are on the front lines of this National emergency. They are the first to suffer from border policy that is not well-reasoned. Dangerous and deadly drugs, human smuggling, and cartel actions thrive off of an unsecured border and patchwork enforcement of even helpful policies.

An unsecured Southern Border creates a public safety crisis, not just in Arizona but across local, State, Tribal, and Federal jurisdictions throughout the country. When applied properly, MPP helps protect the lives of every Arizona community and those throughout the Nation. Consistent application of strong border security policies including MPP gives Federal law enforcement authorities the ability to stop the individuals who are taking advantage of the asylum system and allows the system to work better for those in need. MPP allows authorities to take significant action, as opposed to the catch-and-release tactics from the past that are sadly becoming all too real again today. With MPP, law enforcement spends less time chasing the same trafficker, smuggler, and coyotes and more time proactively and effectively protecting Arizona and America from

dangerous drugs and transnational criminal organizations who continue to profit off of vulnerable populations.

In an operation just this December, Arizona DPS seized over 664 pounds of methamphetamine and 37 pounds of fentanyl. These drugs were being transported from southern Arizona toward Phoenix and the street value of these drugs seized in just this one operation was \$5.1 million. As Governor Ducey has said, drugs are slipping through the cracks and into the bloodstream of our communities. The cartels are using America as a business venture and are continuing to capitalize on Federal policies and an insecure border.

Arizona ranchers, farmers, law enforcement, victim services, non-profit organizations, and community members, our officials, and our State officials, are impacted by MPP. MPP and border security is not an immigration issue, but a humanitarian issue. Humans are treated as transnational items by transnational criminal organizations and having patchwork mismanaged, the border security policy is not only insufficient, but irresponsible. The cartels continue to profit billions of dollars off of human smuggling and MPP is a critical tool to keep migrants safe.

In closing, Arizona has done and continues to do everything within our legal authority to provide law enforcement and communities with the resources they need to protect our border. While border security is not a simple problem to solve, we need to come together to find these solutions. Thank you again for allowing me the opportunity to testify, and I am happy to answer your questions.

[The prepared statement of Mr. Roemer follows:]

PREPARED STATEMENT OF TIMOTHY ROEMER

WEDNESDAY, MARCH 2, 2022

Chairwoman Barragán, Ranking Member Higgins, distinguished Members of the subcommittee, and other Members in attendance, good afternoon and thank you for allowing me to testify on the Migrant Protection Protocols (MPP) and how this policy has impacted Arizona, our communities, and our efforts to combat the opioid crisis and dangerous criminal activity coming across our Southern Border.

MPP is a thoughtful policy that protects migrants looking to the United States of America for a better life and those living in the USA. This is a common-sense policy the Biden administration repealed without thought about the implications to communities and States along the border and those migrants it is meant to protect. The Biden administration only began considering reinstating the policy once such action was court-ordered.

Chairwoman Barragán, Members, we need strong, lasting, and consistent application of the Migrant Protection Protocols but also immediate action on the part of the Federal Government to protect our communities—both on the border and throughout the Nation. This isn't just a matter of border security—it's a matter of National security.

In Arizona, we are the front door to this National crisis. Our border communities, cities, towns, sheriffs, police chiefs, and health care facilities are on the front lines of this National emergency and are the first to suffer from border policy that is not well-reasoned.

Dangerous and deadly drugs, human smuggling, human trafficking, labor trafficking, firearms smuggling, and cartel actions thrive off an unsecured border and patchwork enforcement of even helpful policies.

An unsecured Southern Border creates a public safety crisis not just in Arizona but across local, State, Tribal, and Federal jurisdictions throughout our country.

When applied properly, MPP helps protect the lives of every Arizona community and those throughout the Nation. Consistent application of strong border security policies, including MPP, gives Federal law enforcement authorities the ability to stop individuals from taking advantage of the asylum system and allows the system to work better for those in need. In addition, MPP allows authorities to take sub-

stantial action instead of “Catch-And-Release” tactics from the past that are sadly becoming all too real again today.

With MPP, law enforcement spends less time chasing the same trafficker, smuggler, and coyotes and more time proactively and effectively protecting Arizona and America from dangerous drugs and transnational criminal organizations who continue to profit off vulnerable populations.

Policies like MPP and Title 42 kept the situation at the border under control. Unfortunately, the Biden administration’s reversal of these policies chipped away at the progress made securing the border under the previous administration to make a political statement while putting public safety at risk.

Meanwhile, we all saw a record number of drug overdose deaths Nation-wide in 2021. The Center for Disease Control and Prevention reports over 100,306 drug overdose deaths in our country last year. This is a 28.5 percent increase from the previous year. Furthermore, the data shows that estimated opioid overdose deaths increased to 75,673 in the 12 months ending in April 2021, up from 56,064 the year before. Overdose deaths from synthetic opioids, primarily fentanyl, and psychostimulants such as methamphetamine, also increased in the 12 months ending in April 2021. Cocaine deaths increased as well.

As Governor Ducey has said, “These drugs are slipping through the cracks and into the bloodstream of our communities.”

In 2021, the DEA seized more than 9.5 million pills in Arizona, a substantial increase from the 6 million they seized in 2020.

In December 2021, the DEA, Scottsdale Police, and the Arizona Attorney General’s Office worked to seize more than 1.7 million pills in a 2-month-long drug bust investigation.

In a separate operation in December, the Arizona Department of Public Safety Troopers seized over 664 pounds of methamphetamine and 37 pounds of fentanyl. Troopers seized these drugs along smuggling routes between southern Arizona and Phoenix. These drugs were being smuggled to Phoenix to be then sold Nation-wide. The street value of the drugs seized during the operation is over \$5.1 million.

The cartels use America as a business venture and continue to capitalize on Federal policies and an insecure border.

Arizona ranchers, farmers, law enforcement, victim services, non-profit organizations, community members, local leaders, and elected officials in our communities and State are all impacted by the migrant population. MPP and border security is not an immigration issue but a humanitarian issue.

Transnational criminal organizations routinely treat vulnerable humans as transactional and reusable goods. Therefore, having a patchworked and mismanaged approach to border security policy, including MPP, is not only insufficient but irresponsible.

Transnational criminal organizations (TCO) profit billions of dollars on human smuggling. Officials estimate TCOs profited \$3 billion from those smuggled into Arizona last year alone. These profits are fueling the drug smuggling operations of the cartels.

The albeit temporary repeal of MPP and similar policies have put vulnerable children in danger.

One family spent 6 hours in a storm on a small boat, with kids getting horribly sick. The family was kidnapped by a drug cartel and forced to pay a ransom to live during the journey.

Another family was torn apart forever when a mother and her 10-year-old daughter were found dead, and her 2-year-old son was the only member to survive the dangerous journey. The 2-year-old son was turned over to the Federal Government’s custody—and as Governor Ducey has said, the Federal Government doesn’t make a very good parent.

MPP is a critical tool to keep migrants safe—but it must be accompanied by consistent use and a consistent message enforcing the rule of law.

According to a 2020 report from Doctors Without Borders, over 57 percent of interviewed migrants and asylum seekers experienced some type of violence, including cases of assault, extortion, torture, and sexual assault. These crimes are devastating and directly result from the administration’s misleading messaging that our Nation’s borders are open.

In my role, I have visited the border several times throughout my career and purposely several times during these last 2 years to see first-hand how the policies are impacting border security and the humanitarian crisis.

U.S. Border Patrol made nearly 1.66 million arrests for unlawful crossings on the U.S.-Mexico border during the fiscal year 2021, the highest annual number of apprehensions on record. As the number of migrants crossing increases, so does the number of criminals ready to exploit these vulnerable individuals.

Arizona encompasses two enormous, dangerous, geographically, politically, and economically complex CBP sectors, Tucson and Yuma. Here in Arizona, I hear from our law enforcement officials and community leaders every day as they recount the unfathomable number of apprehensions. Yet, across the Southwest Border, we are seeing a record number of apprehensions, leading to an unknown number of getaways and migrants.

This last year, the Yuma Sector apprehended a Saudi immigrant with ties to a known terrorist organization.

Criminal organizations are smart. They are aware of the narrative and practice of Federal policies and feed off of any perceived weak points. The art of misdirection and knowing when to fight your battles is not a secret held close. The Art of War is also a cautionary tale in these situations. TCOs know how to overwhelm the already exacerbated and preoccupied Federal law enforcement who diligently do their duties as directed by the Biden administration. TCOs know how to get dangerous drugs, personnel, and materials into and out of the United States by using innocent migrants as distraction tactics during their dangerous operations.

In closing, Arizona has done and continues to do everything within our legal authority to provide law enforcement and communities with resources to help secure our border and protect our communities. Still, Arizona and our Nation need the Federal Government to do its job and secure the Nation's border.

This starts with ensuring common-sense policies like the Migrant Protection Protocols are enforced in a strong, consistent, and reliable fashion.

While border security is not a simple problem to solve, strong rhetoric, consistent policies, and lasting application of MPP is one action the Biden administration could take TODAY to protect Arizonans and Americans across the country.

I'd like to thank the brave men and women of law enforcement from CBP and all law enforcement on the front lines of the border that work tirelessly to protect our State and Nation day and night. Their efforts are sincerely appreciated, and we must come together to do more from a policy and legislative perspective to support their efforts.

Thank you again for allowing me the opportunity to speak to this distinguished committee on this important topic.

Chairwoman BARRAGÁN. Thank you, Mr. Roemer, for your testimony. As Mr. Roemer is Ranking Member Higgins' witness, I will start by recognizing him for questions. The Chair will now recognize Mr. Higgins, the Ranking Member, for 5 minutes.

Mr. HIGGINS. I thank our Chairwoman. Mr. Roemer, thank you for being here today to speak of behalf of the challenges our Nation faces at the Southern Border. Your perspective from the State of Arizona and you with your official duties gives you an excellent—gives you an excellent view to the realities that face our Nation.

May I ask you to talk about the policies of the Biden administration and how they are affecting your State? For instance, can you talk about MPP and whether fully implementing, or reimplanting MPP would make a significant difference in dealing with the surge, and how your perspective of that relates to the kind-of anemic numbers that we are seeing from this alleged good-faith effort out of the administration?

Mr. ROEMER. Well, thank you Ranking Member Higgins for your question. I believe if we just look at the metrics and the data on this issue, the answer is there for us, which is that MPP was implemented in 2019. If you look at 2019 and 2020 metrics of Southwest Border apprehensions and you combine those 2 years combined, it still is not anywhere near the number of apprehensions we saw on our Southwest Border just last year in fiscal year 2021. That proves to me that MPP when implemented and used effectively, does work. It does allow our Border Patrol and law enforcement on the border to spend more time out there in law enforcement actions and less time of the processing, which does make us safer. When they are out there doing proactive work, is when our

Nation and our State are at our strongest. But when they are just tied up doing processing at the sheer numbers that we have seen, it puts them in a difficult position and it affects all of our communities around the Nation.

Mr. HIGGINS. Do you see the criminal network responding proactively be very aware to the absence of regular patrol and law enforcement on the border when those law enforcement personnel have been pulled to processing duties? You seeing—

Mr. ROEMER. Yes.

Mr. HIGGINS. You are seeing that the cartel recognizes that and knows that and ramps up their own actions?

Mr. ROEMER. Yes, Ranking Member Higgins, absolutely. Unfortunately for us, the cartels are very good at the business side of this. They are very well-versed and experienced. What they do is they use a couple of different techniques to allow migrants to go over the border in certain numbers to pull resources and then they use that opening to either bring in dangerous narcotics and dangerous drugs into our communities, or they use that time to use the dangerous individuals. So, we have seen them using that tactic.

The DPS operation I noted in my remarks was in partnership with local law enforcement and Governor Ducey's directive to do more to secure our State and our Nation, we surged DPS and the National Guard to a portion of the border east of Yuma. We were able to quickly seize massive amounts of drugs, were well over 500 pounds in that operation that were coming into the Nation. We know based on our own intelligence, that what was happening is the cartels were sending the big groups through San Luis and Yuma to tie up law enforcement while they then ran the dangerous drugs or dangerous individuals to the east.

Mr. HIGGINS. Exactly. Finally, sir, because we are going to try and move quickly here, and I thank the Chairwoman for allowing us to do so, in my remaining 45 seconds here, can you describe to the committee just what you see on the ground in Arizona from your local communities? How are your local communities feeling the impact of this unprecedented illegal crossing at our Southern Border and criminal activity?

Mr. ROEMER. Ranking Member Higgins, they are frustrated, and many are. We saw the mayor of Yuma, Arizona declare an emergency based on the high numbers that are coming through Yuma Sector. So, they are extremely frustrated. They see the impacts that it is having on their health care facilities, on their hospitals, on their law enforcement's ability to respond to emergencies, and they share that with us directly. The Governor is listening to those local leaders and local law enforcement and that is why we are surging resources to the border to help protect the State and the Nation.

Mr. HIGGINS. Thank you, sir, for your candid answers today and for being here. Madam Chair, I yield.

Chairwoman BARRAGÁN. Thank you, Mr. Ranking Member Higgins. The Chair will now recognize other Members for questions they may wish to ask the witness. As previously outlined, I will recognize Members in order of seniority, alternating—well, I am not going to alternate between Majority and Minority. I am going to give the preference to the Minority since this is a Minority wit-

ness. I am going to skip myself and just wait for my comments, given that votes have been called. So, I will go after Mr. Bishop and Mr. Clyde go as I am just closing out remarks. So, with that said, in order to get to my colleagues here, the Chair will recognize, for 5 minutes, the gentleman—let me just check to see who I have on here—the gentleman from North Carolina, Mr. Bishop, you are up first.

Mr. BISHOP. Thank you, Madam Chairman. Mr. Roemer, I am sorry you weren't together with the previous panel. Did you get a chance to hear the interactions and the testimony from the previous panel?

Mr. ROEMER. Yes, sir, I did. Thank you very much.

Mr. BISHOP. Yes, sir, thank you. Mr. Correa, who is now no longer on the screen, I don't think, very admirably and candidly described the suffering and the inhumanity that has resulted from in no way stanching the flow of this 2 million illegal immigrants into the United States. Even if, you know, not all 2 million are being released into the United States rootless and so forth, the suffering that Mr. Correa correctly described from everything I hear, is, you know, 80 percent of females being raped, young girls being raped. He talked about the young girls being dropped off from the wall that the Nation saw and was shocked by. This is happening every day.

I just wonder, you know, I have never heard Mr. Nuñez-Neto, despite repeated testimony before the committee or subcommittee, or any other Biden administration witness ever express a personal preference or a concern about the inhumanity to which millions now of migrants are being subjected by having this uncontrolled Southern Border. I just wonder, sir, in your experience, are you aware of any logic that would—by which one who is purportedly concerned with inhumanity allegedly visited upon people who are enrolled in MPP by not having Wi-Fi, or lawyers, or transportation, how that would possibly be seen as justifying discontinuing MPP, when the result is to have this unbelievably, unconstrained flow of migrants who are suffering all the other inhumanity that Mr. Correa described? Do you perceive any logic that explains that?

Mr. ROEMER. Well, Congressman Bishop, I thank you for the question. You know, really I applaud, you know, all Members of Congress for their important, you know, work on this issue. From a humanitarian crisis, sure, absolutely, with all due respect, I completely understand the humanitarian concerns. It is something that is there. However, with that said, MPP when implemented properly, does actually protect the individuals coming into the Nation. What I have seen on the ground is that the drug cartels and transnational criminal organizations are ruthless criminals. We need every tool implemented to the full extent of the law to combat these criminals.

We see it, you know, day in and day out. I think MPP based on the metrics I cited previously, does work. I will give you a quick statistic. If you look at CBP data on the dangerous individuals that have been caught coming across the border and you look at fiscal year 2021, there were 60 individuals arrested with a previous conviction for homicide or manslaughter. That is 60 just in fiscal year 2021 alone. I went back and I tallied up the previous 5 years on

that topic, and I counted 19. So, 19 in the previous 5 years with a previous homicide or manslaughter conviction and 60 in fiscal year 2021. Already in this next fiscal year, we have seen 22 so far this year. Then in addition to that, in the publicly-available data, I see 1,178 that had previous assault charges and 488 with sexual offenses.

So, my point with the statistics are is that what we are seeing is these dangerous transnational criminal organizations are not just bringing in dangerous drugs through the border. They are bringing in dangerous individuals as well. Policies like MPP allow law enforcement to get back to their law enforcement duties and not be caught up in processing. That is what I see on the ground as having a significant impact on this important issue.

Mr. BISHOP. Well, I thank you for those comments. They are extraordinarily cogent. I just, it continues to elude me why Members of the Majority on this committee and DHS on the Biden administration is pleased or satisfied to see the U.S. Government become the logistics arm for the Mexican cartels, and yet, expresses no end of remorse, rather than viewing it as an opportunity to implement MPP in a manner that is consistent with all the humanitarian concerns that they are troubled by. But that, unfortunately, is not what we are seeing. I appreciate your testimony very much, and I yield back.

Chairwoman BARRAGÁN. Thank you, Mr. Bishop. I will save my 5 minutes and my remarks until after the gentleman from Georgia, Mr. Clyde, is recognized. Mr. Clyde, you are recognized for 5 minutes, given that votes have been called and I want to make sure you get your 5 minutes of time.

Mr. CLYDE. Well, thank you, Madam Chairwoman. Mr. Green, are you aware of any legal ports of entry that are closed?

Mr. ROEMER. No, sir, I am not.

Mr. CLYDE. OK, all right. I didn't think so. I didn't think there were any legal ports of entry that were closed. So, there should be no reason that an illegal—or that an immigrant who wants to come here under a case of asylum couldn't go to a legal port of entry. Is that correct?

Mr. ROEMER. Yes, sir, that is my understanding.

Mr. CLYDE. OK, all right. So, let me ask you another question about—a question about MPP. Obviously, you know, the Trump administration was the one who implemented it and then on February 5, 2021, President Biden issued Executive Order 14010 to suspend it. Then he had Secretary Mayorkas review it and then on June 1, 2021, Secretary Mayorkas determined that MPP should be terminated and issued a memorandum on that effect—or to that effect. Less than 2½ months later, the U.S. District Court in Northern Texas determined that that was not legal, and the Secretary was not in compliance with the Administrative Procedures Act and ordered the DHS in good faith to reimplement the MPP program.

So, there is already a roadway for the implementation of the MPP program. It had only been just a few months since it was officially terminated before it was ordered to be reinstituted. So, how long do you think it should have taken or should have taken to reimplement this particular program that had only been shut off literally for 2½ months?

Mr. ROEMER. Well, sir, I think it should have been implemented, you know, reimplemented immediately because the statistics show that it works. So, I will also note that per my previous comments about the cartels, what they are doing is they are controlling who comes across the border. Our best estimates is that the transnational criminal organizations charge between \$5,000 and \$10,000 per person to come across the border. In Arizona last fiscal year, we had about 305,000 apprehensions that we know about of people coming across the border. If we do the math and we say \$10,000 a person at over 300,000 people coming in across the border, that doesn't even account for the recidivism rate or the get-aways, we are looking somewhere in the ballpark of these transnational criminal organizations profiting approximately \$3 billion on human smuggling alone. Those figures are what fuel their pockets and the drugs to then be trafficked and smuggled into the United States.

So, they are using the human smuggling side to fuel other dangerous criminal enterprises and that is really what is considered most significant and of concern to us on the ground. That is why we have seen the Governor take significant action.

Mr. CLYDE. Those are absolutely terrible statistics. Imagine if our Government—basically that is exactly what is happening. Our Government is funding these criminal organizations, these cartels through allowing illegal immigration to occur to the tune of \$3 billion. It is stunning. You know, we as a Government have to do better. I don't think that we are actually helping the immigrant at all by allowing them to come illegally when the legal ports of entry are truly open. With that, thank you, and I yield back.

Chairwoman BARRAGÁN. Thank you. Thank you for the questions. I am now going to yield myself and recognize myself for 5 minutes. I will start the clock now.

I almost don't know where to begin. I am not sure I can get through in 5 minutes to respond to the slew of inaccurate information that has been put out there.

Mr. Roemer, you mentioned that you are relying on statistics and then you cite to, you know, criminals and when we are talking here about MPP. So, let me begin to help you get an understanding of why the statistics that you are providing are not apples to apples and why they are inaccurate.

First of all, you are talking about 2019 numbers and you are comparing 2019 numbers. I just remind you there was something called a pandemic and COVID and borders were shut down between here and Central America starting in March 2020. People were unable to leave their country, and the administration started putting people into Title 42. They were turning people away because of COVID and they were using Title 42 and not putting them into MPP. So, if you want to take the statistics and data from 2019 and start comparing them when you still have the implementation, by the way, of Title 42, something I don't even agree with, then it is not accurate to rely on those statistics and to make those comparisons.

So, it bothers me to kind-of hear these comparisons being made without the explanation of why more people were not put into MPP that is because they were put into Title 42 and comparing years

where you had a pandemic and COVID. Now, that is one of the reasons why I think when you talk about the number of apprehensions at the border don't equal in 2019 and 2020 what they are in 2021, that you just can't make that because we still have Title 42 where people are still being put in there and being turned away.

The other thing is that you went on to mention at great length information about criminals and, you know, the concerns of people's records. Migrants with a criminal history cannot be enrolled in MPP. That is true now. That is true under Trump. This program is not intended to deter criminals and so, that is—I really don't see the relevance other than the continuation of folks on the other side who don't believe in the values I believe on immigration, and to trying to criminalize migrants who are fleeing violence in their home countries and coming over. In America, it is completely legal to head to America and to present yourself at a port of entry to claim asylum.

Now, we have heard repeatedly that the ports of entry are open. You were even asked this question whether ports of entry were open. Ports of entry are only open to those traveling with travel documents. Ports of entry are not open for migrants to come and present themselves and present their claim of fear to get into the system to claim asylum. That is not happening. Mr. Roemer, if you are not aware of this, I am going to make an offer to take you to the border so that you could see how people cannot do it. I have done it before. I have traveled with these groups. I have seen first-hand people are being turned away at the border who are trying to present themselves legally. It is not allowed. It is not being allowed, OK?

So, this notion that the ports of entry are open, this notion that the border is open, is completely false. It is open to Americans. It is open to people who have documents. But it is not open. That is one reason that I and immigration advocates are calling for immigration reform and are calling for this administration to eliminate Title 42 and to get back to the process of what is legal in this country. What is legal in this country is to allow migrants to come to a port of entry, for example, San Ysidro and to say I am here to apply for asylum to get into the system and to be allowed to be admitted into this country pending their court hearing. That is not happening. That is not happening, OK?

So, again, I just had to make sure that we, you know, I took this opportunity to do that because, you know, this division on immigration is often based on misinformation and people who take facts and distort them and it is just very troubling.

So, with that, I don't really have any questions for you, Mr. Roemer. I wanted to take my 5 minutes. I wasn't even going to use my 5 minutes but after the line of questioning and what I was hearing, I had to take the opportunity to make sure to correct, (A) the record, and (B) what I have been seeing at the border and what I know to be the case.

So, I want to take this opportunity to close out our second panel. I want to thank the witnesses for their testimony. The testimony has been valuable and I appreciate the panelists on the first panel and the second panel. I want to thank the Members for their questions.

Without objection, I want to submit statements for the record from the Women's Refugee Commission, the Human Rights First, the Hope Border Institute, Coalition for Humane Immigrant Rights, California Welcoming Task Force, and the Center for Gender and Refugee Studies.

[The information follows:]

STATEMENT OF THE WOMEN'S REFUGEE COMMISSION

MARCH 2, 2022

Dear Members of the House Homeland Security Subcommittee on Border Security, Facilitation, and Operations: The Women's Refugee Commission ("WRC") submits this statement to the House Homeland Security Subcommittee on Border Security, Facilitation, and Operations for the March 2, 2022 hearing, "Examining the Court-Ordered Reimplementation of the Remain in Mexico Policy."

WRC is a non-profit organization that advocates for the rights of women, children, and families fleeing violence and persecution. We are leading experts on the needs of refugee women and children and the policies and programs that can protect and empower them. The Migrant Rights and Justice ("MRJ") Program focuses on the right to seek asylum in the United States and strives to ensure that migrants and refugees, including women and children, are provided with humane reception in transit to and in the United States, given meaningful access to legal protection, and are protected from exposure to gender discrimination or gender-based violence.

Since 1996, MRJ staff have made numerous visits to the Southwest Border region, including along Mexico's Northern Border, as well as to immigration detention centers for adult women and families and to shelters housing unaccompanied children throughout the country. WRC has interviewed hundreds of detained women, families, and children seeking asylum in the United States.¹ Based on the information that we collect on these visits and our analysis of the laws and policies relating to these issues, we advocate for improvements, including by meeting with government officials and service providers and by documenting our findings through fact sheets, reports, backgrounders, and other materials. We make recommendations to address identified or observed gaps or ways in which we believe the corresponding department or agency can improve its compliance with the relevant standards.

We commend the subcommittee for conducting this vital hearing. WRC, alongside scores of other faith, immigration, human rights, and organizations, agree with and have consistently corroborated Secretary of Homeland Security's assessment that the human toll that the Remain in Mexico ("RMX") policy causes is "intolerable."²

¹ Reports of our findings include: Women's Refugee Commission, *Prison For Survivors: The Detention of Women Seeking Asylum in the United States*, (2017); Women's Refugee Commission, Lutheran Immigration and Refugee Service, and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*, (2017); Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values, Again: A Report on the Renewed Practice of Family Immigration Detention*, (2014); Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, (2010); Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*, (2010); Women's Refugee Commission, *Innocents in Jail: INS Moves Refugee Women From Krome to Turner Guilford Knight Correctional Center*, (2001); Women's Refugee Commission, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center*, (2000); and Women's Refugee Commission, *Liberty Denied: Women Seeking Asylum Imprisoned in the U.S.*, (1997).

² Alejandro N. Mayorkas, *Migrant Protection Protocols (MPP) Termination Memo* (Oct. 29, 2021), <https://www.dhs.gov/publication/migrant-protection-protocols-termination-memo>. See Women's Refugee Commission and IMUMI, *Stuck in Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2, 2022), <https://www.womensrefugeecommission.org/research-resources/stuck-in-uncertainty-and-exposed-to-violence-the-impact-of-us-and-mexican-migration-policies-on-women-seeking-protection-in-2021/>; Women's Refugee Commission, *WRC Response to Request for Input on Family Separation* (Jan. 25, 2022), <https://www.womensrefugeecommission.org/research-resources/wrc-response-to-request-for-input-on-family-separation/>; "Immigrants' Rights Organizations Urge the Biden Administration to Permanently End Remain in Mexico and Title 42 Policies," (Dec. 17, 2021), <https://www.womensrefugeecommission.org/research-resources/immigrants-rights-organizations-urge-the-biden-administration-to-permanently-end-remain-in-mexico-and-title-42-policies/>; Women's Refugee Commission, *Asylum Denied: Remain in Mexico 2.0* (Dec. 15, 2021), <https://www.womensrefugeecommission.org/research-resources/asylum-denied-remain-in-mexico-2-0/>; "Coalition Letter on US Department of Homeland Security's Stated Intention to Issue a New Memorandum Ending the Migrant Protection Protocols (Remain in Mexico) Program,"

Continued

Under the last iteration of the Remain in Mexico policy, over 70,000 individuals were sent back to wait for their U.S. immigration hearings in dangerous Mexican border cities.³ Advocates tracked over 1,500 kidnappings and other violent crimes that occurred to individuals in Remain in Mexico—some of which occurred while individuals were in transit to the port of entry for their U.S. court hearing.⁴ In the prior iteration of the policy, fewer than 8 percent of individuals were able to secure access to legal counsel. Despite existing guidance exempting people with known physical or mental health issues from Remain in Mexico, WRC witnessed individuals with severe health conditions who were enrolled anyway.⁵ Without access to housing or other basic services in Mexico, thousands of individuals in Remain in Mexico were forced to wait in squalid conditions in makeshift migrant encampments.⁶

The former iteration of RMX also led to different forms of family separations. In some cases, families, including biological parents and children, were separated by Customs and Border Protection (“CBP”) through RMX. CBP would process some family members into the United States for their immigration proceedings and return other members to Mexico to wait for their U.S. court hearings. These separations inflicted immense irreparable trauma on families and created huge due process barriers during immigration proceedings. WRC documented numerous cases of this type of family separation.⁷ For example, CBP officials ripped apart Alvaro, an indigenous Guatemalan man who spoke little Spanish, and his son, Enzo, claiming that their birth certificates and documents were false. CBP sent Alvaro back to Ciudad Juárez through Remain in Mexico and Enzo to an Office of Refugee Resettlement shelter. It took nearly 3 months of anguish and the help of pro bono immigration attorneys for the father and son to be reunited. In other cases of family separation, for families who were returned to Mexico through RMX, parents were forced to make the impossible decision to send their children across the border to safety in the United States.⁸ According to WRC’s analysis of CBP data on individuals entering the United States without inspection subsequent to being returned to Mexico under the prior iteration of RMX, 900 children crossed the U.S. Southern Border alone after being returned to Mexico with their families.⁹

In August 2021, a Texas judge ordered the Biden administration to restore RMX “in good faith.”¹⁰ The administration appealed that order and issued a new memo terminating RMX in October 2021.¹¹ We further expand on pressing issues concerning the reimplementations of Remain in Mexico below.

(Oct. 14, 2021), <https://www.womensrefugeecommission.org/research-resources/coalition-letter-us-department-homeland-security-stated-intention-issue-new-memorandum-ending-migrant-protection-protocols-remain-in-mexico/>; “Urgent Actions the Biden Administration Must Take Following Supreme Court Decision on Migrant Protection Protocols (MPP),” (Aug. 30, 2021), <https://www.womensrefugeecommission.org/research-resources/urgent-actions-the-biden-administration-must-take-following-supreme-court-decision-on-migrant-protection-protocols-mpp/>; “Civil Society Organizations Call on the Mexican Government to Reject Any Reinstatement of Migrant Protection-Protocols (MPP),” (Aug. 24, 2021), <https://www.womensrefugeecommission.org/research-resources/civil-society-organizations-call-on-the-mexican-government-to-reject-any-reinstatement-of-migrant-protection-protocols/>.

³ U.S. Customs and Border Protection, *Migrant Protection Protocols FY22*, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols>.

⁴ Human Rights First, *Delivered to Danger* (Feb. 19, 2021), <https://www.humanrightsfirst.org/campaign/remain-mexico>.

⁵ Women’s Refugee Commission, *Chaos, Confusion, and Danger: The Remain in Mexico Program in El Paso* (May 16, 2019), <https://www.womensrefugeecommission.org/research-resources/chaos-confusion-and-danger/>.

⁶ See Nicole Narea, “The abandoned asylum seekers on the US-Mexico border,” *Vox* (Dec. 20, 2019), <https://www.vox.com/policy-and-politics/2019/12/20/20997299/asylum-border-mexico-us-iom-unher-usaid-migration-international-humanitarian-aid-matamoros-juarez>.

⁷ Women’s Refugee Commission, *Separation of families via the ‘Migrant Protection Protocols’*, (Aug. 20, 2019), <https://www.womensrefugeecommission.org/research-resources/separation-of-families-via-the-migrant-protection-protocols/>.

⁸ Kids in Need of Defense, *Forced Apart: How the ‘Remain in Mexico’ Policy Places Children in Danger and Separates Families* (Feb. 24, 2020), <https://supportkind.org/wp-content/uploads/2020/02/MPP-KIND-2.24updated-003.pdf>.

⁹ U.S. Customs and Border Protection, *Migrant Protection Protocols Fiscal Year 2022* (see “Individuals Apprehended Entering the US Without Inspection Subsequent to Being Returned to Mexico through MPP”), <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols>.

¹⁰ *Texas v. Biden* (Aug. 13, 2021), <https://www.documentcloud.org/documents/21042967-81321-ruling-in-texas-missouri-v-biden-administration>.

¹¹ Alejandro N. Mayorkas, *Migrant Protection Protocols (MPP) Termination Memo* (Oct. 29, 2021), <https://www.dhs.gov/publication/migrant-protection-protocols-termination-memo>.

EXPANSION OF NATIONALITIES ELIGIBLE FOR ENROLLMENT IN REMAIN IN MEXICO

Under the administration's reinstatement of Remain in Mexico, individuals from all Western Hemisphere countries besides Mexico are subject to placement in the program, significantly expanding it.¹² Under the Trump administration, RMX was originally applicable only to Spanish speakers.¹³ However, the Department of Homeland Security ("DHS") routinely returned individuals from Central and South America who spoke Indigenous languages to Mexico, and later began returning Brazilians under the program.¹⁴ The Biden administration's decision to expand RMX, which was not ordered by the Court, and in particular its decision to include Haitians, is alarming. Haitian and other Black migrants and asylum-seeking individuals face pervasive, targeted anti-Black racism and discrimination in Mexico and are at particular risk for harm upon return to Mexico.¹⁵

FAILURE TO ACCURATELY EXEMPT INDIVIDUALS BASED ON VULNERABILITIES

In the newest iteration of Remain in Mexico, the U.S. Government once again promised to exclude "vulnerable individuals" from the policy. In the prior iteration of RMX, a DHS Civil Rights and Civil Liberties ("CRCL") report from 2019 revealed that CBP officers violated the DHS principles and sent individuals with medical issues back to Mexico.¹⁶ WRC also witnessed this violation first-hand, observing the case of a 4-year-old Honduran child with Guillain-Barre syndrome who was non-verbal and could not walk on her own. Despite her obvious health issues, this child was nevertheless unconscionably placed into RMX with her mother and older sister.¹⁷

The new DHS policy guidance outlined exemptions from Remain in Mexico for individuals with known mental and physical health issues, advanced age, or those vulnerable to increased risk based on sexual orientation or gender identity. However, within the first month of the program's reimplementation, attorneys identified more than two dozen individuals who were enrolled in the program who should have been exempted, including LGBTQ individuals and people suffering from known medical conditions.¹⁸ DHS created a redress mechanism where individuals placed in the RMX can request a review of their enrollment.¹⁹ However, DHS first returned some individuals to Mexico prior to the creation of this mechanism, and since then it is unclear if all individuals enrolled in RMX have been made aware of this mechanism. Furthermore, even a short period enrolled in the program for "vulnerable" individuals eligible for exemption could be dangerous for their safety and well-being.

¹² Robert Silvers, *Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols* (Dec. 2, 2021), <https://www.aila.org/infonet/dhs-releases-guidance-on-court-ordered>.

¹³ Juany Torres, Priscilla Lugo, Emma Israel, and Jessica Eller, *Migrant Protection Protocols* (May 2020), <https://www.strauscenter.org/wp-content/uploads/MPP-Two-Pager-2020-4-1.pdf>.

¹⁴ TRAC Immigration, *Details on MPP (Remain in Mexico)* (Nov. 2021), <https://trac.syr.edu/phptools/immigration/mpp/>.

¹⁵ S. Priya Morley et al., "There is a Target on Us"—*The Impact of Anti-Black Racism on African Migrants at Mexico's Southern Border*, IMUMI and Black Alliance for Just Immigration (2021), <https://imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>; S. Priya Morley et al., *A Journey of Hope: Haitian Women's Migration to Tapachula, Mexico*, IMUMI, Haitian Bridge Alliance, and the Center for Gender and Refugee Studies (2021), <https://cgrs.uchastings.edu/sites/default/files/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>.

¹⁶ Hamed Aleaziz, "A Leaked US Government Report Documents How People With Medical Conditions And Disabilities Were Forced Into The 'Remain In Mexico' Program," *Buzzfeed News* (Oct. 21, 2021), <https://www.buzzfeednews.com/article/hamedaleaziz/leaked-report-remain-in-mexico-children>.

¹⁷ Women's Refugee Commission, *Chaos, Confusion, and Danger: The Remain in Mexico Program in El Paso* (May 16, 2019), <https://www.womensrefugeecommission.org/research-resources/chaos-confusion-and-danger/>.

¹⁸ Adolfo Flores and Hamed Aleaziz, "U.S. Border Authorities Have Incorrectly Placed Immigrants With Medical Conditions In The Relaunched 'Remain In Mexico' Program, Attorneys Say," *Buzzfeed News* (Dec. 20, 2021), <https://www.buzzfeednews.com/article/adolfoflores/us-border-authorities-wrongly-sought-to-force-asylum>.

¹⁹ U.S. Department of Homeland Security, *MPP Additional Resources* (Feb. 10, 2022), <https://www.dhs.gov/mpp-additional-resources>.

LACK OF DUE PROCESS AND MEANINGFUL LEGAL REPRESENTATION

WRC is deeply concerned that Remain in Mexico is fundamentally incompatible with due process²⁰ and that individuals in Remain in Mexico face nearly insurmountable hurdles in securing meaningful legal representation or accessing protection. The reimplementation of Remain in Mexico provides that individuals in the program are given 24 hours to consult an attorney prior to their non-refoulement interview (“NRI”) in CBP custody, but many are unable to reach an attorney in that time frame.²¹ In addition, CBP facilities generally lack confidential spaces for these sensitive consultations. The most recent DHS data shows that the majority of individuals are unable to consult an attorney during the NRI process and the majority of individuals who express fear are sent back to Mexico.²² In December 2021 and January 2022, while 87 to 89 percent of RMX enrollees claimed fear, about 75 percent of NRIs resulted in negative fear decisions. Advocates have documented that individuals in RMX have said they did not receive a clear explanation of the NRI process by CBP.²³

In addition, barriers to accessing legal support make it extremely difficult, if not nearly impossible, for RMX enrollees to have a fair opportunity to present their case in court. The prior implementation of RMX put attorneys who crossed into Mexico to meet with their clients in danger,²⁴ and many shelters in Mexico are not equipped to provide confidential meeting spaces. According to the DHS implementation guidance for the current iteration of RMX, “CBP will provide MPP enrollees information provided by the Department of State about where they can locate places in Mexico to engage in telephonic or video communications with counsel.” Virtual legal representation—including via videoconferencing on televisions or tablets—creates significant barriers for attorneys to effectively communicate with and represent their clients.²⁵

SAFETY CONCERNS IN MEXICO

WRC and other civil society organizations are concerned that enrollees will continue to face significant risks and exposure to violence in northern Mexico while waiting for their cases to be heard in the United States. In December 2021, advocates documented that many of the first individuals enrolled in this iteration of Remain in Mexico suffered harm in Mexico, including kidnapping and violence at the hands of Mexican officials, before being selected for the program.²⁶ Since RMX’s reinstatement in December 2021, individuals have been returned to Matamoros (with government-provided transportation to Monterrey), Tijuana, and Ciudad Juárez, with the expectation that individuals will soon also be sent back to Nuevo Laredo. The State Department’s current Travel Advisory for Mexico includes a “Do Not Travel” warning level for the Mexican State of Tamaulipas (where Matamoros and Nuevo Laredo are located); a “Reconsider Travel” warning level for the Mexican States of Baja California (where Tijuana is located); and Chihuahua (where Ciudad Juárez is located), due to crime and kidnapping.²⁷ In 2021, the Mexican government

²⁰ Approximately 1 percent of individuals returned to Mexico in the first iteration of RMX were granted relief, an egregiously low grant rate that demonstrates the due process barriers inherent in the policy.

²¹ Julia Neusner and Ana Ortega Villegas, “Nothing Humane About This Process:” Biden Administration Launches “Remain in Mexico” Revamp at El Paso Port of Entry, Human Rights First (Dec. 16, 2021), <https://www.humanrightsfirst.org/blog/nothing-humane-about-process-biden-administration-launches-remain-mexico-revamp-el-paso-port>.

²² Office of Immigration Statistics at the Department of Homeland Security, *Migrant Protection Protocols Cohort Report* (Feb. 2022), https://www.dhs.gov/sites/default/files/2022-02/22_0215_plcy_mpp_cohort_report_feb2022.pdf.

²³ Yael Schacher, *MPP as a Microcosm: What’s Wrong with Asylum at the Border and How to Fix It*, Refugees International (Feb. 11, 2022), <https://www.refugeesinternational.org/reports/2022/2/10/mpp-as-a-microcosm-whats-wrong-with-asylum-at-the-border-and-how-to-fix-it>.

²⁴ Human Rights First, *Remain in Mexico Restart Threatens Safety of Attorneys and Humanitarian Workers* (Nov. 30, 2021), <https://www.humanrightsfirst.org/resource/remain-mexico-restart-threatens-safety-attorneys-and-humanitarian-workers>.

²⁵ Women’s Refugee Commission, *Asylum Denied: Remain in Mexico 2.0* (Dec. 15, 2021), <https://www.womensrefugeecommission.org/research-resources/asylum-denied-remain-in-mexico-2-0/>.

²⁶ Human Rights First, *Inhumane Again: Remain in Mexico Rollout Confirms Endemic Flaws of Unfixable Policy* (Dec. 2021), <https://www.humanrightsfirst.org/sites/default/files/Inhumane%20Again%20Remain%20in%20Mexico%20Rollout%20Confirms%20Endemic%20Flaws%20of%20Unfixable%20Policy.pdf>.

²⁷ U.S. Department of State Bureau of Consular Affairs, *Mexico Travel Advisory*, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

classified Tijuana and Ciudad Juárez as the two most violent municipalities in Mexico due to the cities' high homicide rates.²⁸

DIFFICULTIES ACCESSING SERVICES IN MEXICO

In the first iteration of Remain in Mexico, the U.S. and Mexican governments failed to fulfill their promise to ensure access to housing and services for individuals returned to Mexico. According to the DHS policy guidance for this iteration of Remain in Mexico, the Department of State will “assist in coordinating safe transportation in Mexico to and from the [ports of entry]” and coordinate with the Government of Mexico to ensure access to shelters in Mexico.²⁹ However, the Department of State has yet to publicly release details about assistance with transportation and shelter for individuals enrolled in Remain in Mexico, including the allocation of funding to international organizations.

THE INCOMPLETE WINDDOWN OF THE FIRST ITERATION OF REMAIN IN MEXICO

From February to August 2021, the Biden administration worked in collaboration with international organizations, regional task forces, and local nonprofit organizations on a wind-down process that allowed approximately 13,000 individuals returned to Mexico under the first iteration of Remain in Mexico policy to continue their immigration cases in the United States rather than waiting in Mexico. The Department of Homeland Security suspended the process due to the court order and said that it would not resume the wind-down as long as the injunction remains in place, stranding families and adults who had been waiting in dangerous conditions in Mexico for their U.S. immigration proceedings since 2019.³⁰

ON-GOING BARRIERS TO ACCESS TO PROTECTION AT THE U.S. SOUTHERN BORDER

There are on-going barriers to access to protection at the U.S.-Mexico border separate from Remain in Mexico's reimplementation. Since March 2020, a provision of health law has been misused to summarily block and expel most individuals arriving at the U.S. Southern Border, either back into Mexico or even directly to home countries where they may face persecution, including Haiti, Honduras, Guatemala, El Salvador, and Brazil. This policy, known as Title 42, has been resoundly rejected by thousands of medical professionals,³¹ hundreds of civil society and human rights organizations,³² and more than 100 Members of Congress.³³ Due to Title 42, currently there is no way virtually no way for individuals to approach a port of entry and seek asylum,³⁴ leading people to cross the border along dangerous routes between ports of entry to seek safety.³⁵

CONCLUSION

Despite efforts to mitigate the harms of the policy, the reimplementation of Remain in Mexico has not resolved its fundamental flaws with the policy: Individuals continue to wait for their U.S. immigration hearings in dangerous Mexican border cities; individuals continue to face near-insurmountable barriers to due process and

²⁸ Lidia Arista, “En 22 de los 50 municipios prioritarios suben hasta 50 percent los homicidios dolosos,” *Expansión Política* (Jan. 20, 2022), <https://politica.expansion.mx/mexico/2022/01/20/en-22-municipios-prioritarios-suben-homicidios-dolosos>.

²⁹ Robert Silvers, *Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols* (Dec. 2, 2021), <https://www.aila.org/infonet/dhs-releases-guidance-on-court-ordered>.

³⁰ Adolfo Flores and Hamed Aleaziz, “Remain In Mexico” Asylum-Seekers Thought There Was Hope Under Biden, But Despair Is Sinking Back In,” *Buzzfeed News* (Sept. 10, 2021), <https://www.buzzfeednews.com/article/adolfoflores/asylum-seekers-remain-in-mexico-biden>.

³¹ Physicians for Human Rights, “1,300+ Medical Professionals from 49 U.S. States and Territories Call on CDC to End ‘Junk Science’ Border Expulsion Policy” (Oct. 28, 2021), <https://phr.org/our-work/resources/u-s-medical-professionals-demand-cdc-end-title-42/>.

³² “Immigrants’ Rights Organizations Urge the Biden Administration to Permanently End Remain in Mexico and Title 42 Policies” (Dec. 17, 2021), <https://www.womensrefugeecommission.org/research-resources/immigrants-rights-organizations-urge-the-biden-administration-to-permanently-end-remain-in-mexico-and-title-42-policies/>.

³³ “Booker, Bush Lead 100 Congressional Colleagues in Urging President Biden to Reverse Inhumane Immigration Policies Impacting Black Migrants” (Feb. 16, 2022), <https://www.booker.senate.gov/news/press/booker-bush-lead-100-congressional-colleagues-in-urging-president-biden-to-reverse-inhumane-immigration-policies-impacting-black-migrants>.

³⁴ Women’s Refugee Commission, *Restoring Access to Asylum: Safely Reopening Ports of Entry at the US-Mexico Border* (Oct. 19, 2021), <https://www.womensrefugeecommission.org/research-resources/restoring-access-to-asylum-safely-reopening-ports-of-entry-at-the-us-mexico-border/>.

³⁵ David J. Bier, *How the U.S. Created Cuban and Haitian Illegal Migration*, Cato Institute (Feb. 15, 2022), <https://www.cato.org/blog/how-us-created-cuban-haitian-illegal-migration>.

meaningful access to legal representation; and the U.S. Government has not consistently applied exemptions based on its own vulnerabilities guidance. We provide the following recommendations to Members of this subcommittee regarding the reimplementation of Remain in Mexico.

RECOMMENDATIONS

Members of Congress should conduct regular and robust oversight over the relevant agencies responsible for implementing Remain in Mexico to ensure that the Biden administration takes all lawful and appropriate steps to uphold its promise to end the unlawful and dangerous policy once and for all and to ensure that:

- The Department of Homeland Security renews its efforts to bring individuals subjected to the previous iteration of Remain in Mexico into the United States to continue their immigration cases in safety, rather than continuing to wait in Mexico.
- The Department of Homeland Security continues to release monthly updates on the cohorts of individuals enrolled in RMX, and works to incorporate data from the Executive Office for Immigration Review (“EOIR”) on hearing outcome/legal representation and from Immigration and Customs Enforcement (“ICE”) on transfer outcomes for individuals disenrolled from RMX.
- Customs and Border Protection properly and consistently screens individuals for potential exemptions from the Remain in Mexico program across sectors.
- Customs and Border Protection does not interfere with access to legal representation during NRIs and provides confidential spaces for legal consultations prior to NRIs and immigration court hearings.
- All relevant agencies, including the Department of State, disclose the amount of funding provided to international organizations to support individuals returned to Mexico in Remain in Mexico and release regular reports on the support provided to individuals returned to Mexico, including transportation, housing, video and telephone conferencing, and know-your-rights sessions.
- The Department of Homeland Security works with the Department of State to track all reported kidnappings and other violent crimes suffered by individuals returned to Mexico in Remain in Mexico.
- Members of Congress should continue to conduct periodic monitoring trips to U.S. and Mexican border cities where individuals are returned to visit CBP facilities and Mexican shelters, immigration courts—including tent courts used for Remain in Mexico hearings—and to meet with international organizations and local legal and humanitarian service nonprofit organizations supporting or representing those in Remain in Mexico.
- We also urge Members of Congress, including this committee, to ensure that DHS expeditiously takes steps to end the use of Title 42 expulsions and promptly restores access to asylum at the Southern Border, including at ports of entry.

We thank you for your consideration and time reviewing the Remain in Mexico policy’s reimplementation. We look forward to engaging further with Members of this subcommittee to ensure necessary oversight is conducted of this policy.

STATEMENT OF HUMAN RIGHTS FIRST

MARCH 2, 2022

Human Rights First thanks the House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations for holding a hearing on “Examining the Court-Ordered Reimplementation of the Remain in Mexico Policy.”

Since 1978, Human Rights First has worked to protect and promote fundamental human rights. We have long advocated for U.S. compliance with international refugee and human rights law in addition to providing pro bono legal representation—in partnership with many of the Nation’s leading law firms—to asylum seekers in U.S. asylum and immigration court proceedings. Since 2019, Human Rights First has issued a series of human rights reports (March 2019, August 2019, October 2019, December 2019, May 2020, December 2020, and January 2022) and factsheets (January 2020, April 2021, and December 2021) documenting the harms inflicted by the Remain in Mexico (RMX) policy and its reimplementation—as well as the similar Title 42 policy, which also evades the refugee laws enacted by Congress and endangers refugees seeking asylum. Human Rights First has also joined a series of amicus briefs in cases challenging the Remain in Mexico policy (October 2020, January 2021, August 18, 2021, August 23, 2021, and September 2021). In addition, Human Rights First’s attorneys have represented asylum seekers subjected to the

RMX policy, including the first—and one of the very few—refugees who received asylum through the inherently flawed RMX.

The Biden administration has rightly concluded that significant due process issues are “endemic to the [RMX] program’s design” and that it should be ended. However, the administration’s stated position is at odds with its decision to expand the Remain in Mexico policy to include additional nationalities and its decision to evade refugee law by using the similarly dangerous Trump administration Title 42 policy to block and expel people seeking protection at the border. Use of these policies to circumvent international refugee protection obligations and U.S. refugee law is counterproductive and sets a dangerous example for other countries and future administrations. The United States should lead by example, upholding the right to asylum at its own borders as it looks to other countries to do the same—including as people flee from Ukraine in search of protection.

As outlined below, Congress has a critical role to play in ensuring that the Executive branch and the Department of Homeland Security uphold and comply with the refugee laws that Congress enacted, as well as the Refugee Convention and its Protocol, and end Trump-era policies that trample on those laws and legal treaty commitments. Congress must hold the Biden administration accountable to its refugee protection obligations.

REMAIN IN MEXICO ENDANGERS MIGRANTS AND ASYLUM SEEKERS

Returning migrants and asylum seekers to Mexico to await their U.S. immigration court hearings is dangerous and inhumane. Under the Trump administration, RMX resulted in massive human rights violations against migrants and asylum seekers forcibly returned to Mexico. During the 2 years that the Trump administration implemented RMX, Human Rights First tracked at least 1,544 publicly-reported cases of kidnappings, murder, torture, rape, and other violent attacks against people returned to Mexico. They include a Honduran woman and her 7-year-old daughter who were abducted from inside the Mexican migration office in Nuevo Laredo immediately after DHS returned them to Mexico following an RMX immigration court hearing, a Salvadoran asylum seeker who was killed in Tijuana in November 2019 after having been returned under RMX, and a 19-year-old Cuban asylum seeker who was shot and killed in Ciudad Juárez in May 2021. The U.S. Department of Homeland Security (DHS) concluded in its October 2021 memorandum terminating RMX that “significant evidence indicates that individuals were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harms’ way while awaiting their court hearings in Mexico.”

The Biden administration also continues to use the Trump-era Title 42 policy to block and expel migrants and asylum seekers to danger in Mexico and the countries they fled under the pretext of protecting public health—a policy that the State Department’s top legal expert determined was illegal and has been repeatedly condemned as specious by leading public health experts. The U.S. Department of State advises American citizens to avoid travel to the very border regions of Mexico where asylum seekers are returned under Remain in Mexico and Title 42. As of February 2022, the Mexican border state of Tamaulipas remained at a designated Level Four “Do Not Travel” threat level as “[o]rganized crime activity—including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault—is common along the northern border” and “[h]eavily armed members of criminal groups often patrol areas of the State and operate with impunity, particularly along the border region from Reynosa to Nuevo Laredo.” In addition, the State Department advisory reports that in Baja California “[t]ransnational criminal organizations compete in the border area to establish narco-trafficking and human smuggling routes,” warns of “[b]attles for territory between criminal groups” in Chihuahua state which borders New Mexico and Texas, and acknowledges that to Arizona’s south “Sonora is a key location used by the international drug trade and human trafficking networks.”

Since President Biden took office, Human Rights First has tracked at least 8,705 additional reports of kidnapping, rape, human trafficking, torture, and other violent attacks against migrants expelled to or blocked in Mexico due to the Title 42 policy. Migrants and asylum seekers the Biden administration is returning to Mexico under RMX are forced to endure escalating dangers in Mexico. For example, in January 2022 a Venezuelan asylum seeker told Human Rights First he was beaten and robbed in Ciudad Juárez as he was returning to his shelter after obtaining a COVID-19 test to be able to attend his RMX hearing. Other RMX enrollees have been robbed in shelters in Mexico after DHS returned them. Mexican authorities, including police and immigration officers, perpetrate and refuse to investigate vio-

lent attacks against asylum seekers and migrants, including through collusion with powerful cartels that use their control over Mexican territory to kidnap, torture, and extort returned/expelled asylum seekers who are targeted due to their status as migrants as well as their race, gender, sexual orientation, and ties with family in the United States. These targeted attacks are not limited to the U.S.-Mexico border region.

Cartels and other organized criminal groups subject migrants and asylum seekers to kidnappings, extortion, and other violence throughout the country, including in central and southern Mexico.

REMAIN IN MEXICO BLOCKS REFUGEES FROM ASYLUM PROTECTION AND CANNOT PROVIDE FAIR ACCESS TO THE U.S. ASYLUM SYSTEM

Under the Trump administration, RMX denied asylum seekers due process and drastically restricted access to counsel, legal information, and the ability of asylum seekers to attend and participate in their own immigration hearings. Just to reach U.S. immigration courts, asylum seekers were forced to risk kidnapping and violence. Many were abducted while traveling through border regions to attend hearings or directly outside ports of entry before or after their hearings. As a result of the policy's inherent flaws, in absentia removal orders were issued in at least 44 percent of RMX cases. Immigration judges have ordered asylum seekers in RMX deported when they missed court hearings even after being informed that the asylum seekers were kidnapped in Mexico. As a result of these dangers, refugees with protection needs have given up on their cases rather than risk their lives to attend court, and some have even returned to their home countries at risk of further persecution because of the harms they had suffered while trapped in Mexico.

Many U.S. attorneys and humanitarian groups have been unable to travel to dangerous Mexican border regions to represent asylum seekers stranded under RMX because of the risks to their safety. Their fears are justified. As Human Rights First explained in a November 2021 factsheet, U.S.-based attorneys have been threatened with kidnapping and violence in connection with their representation of people in RMX. Given the many security, logistical, due process and ethical impediments to legal representation that are inherent to RMX, the vast majority of RMX returnees were not able to find lawyers, according to immigration court data analyzed by the Syracuse University Transactional Records Access Clearinghouse (TRAC). As of December 2020, 97 percent of individuals in RMX whose cases had been decided did not have an attorney. By contrast, in non-RMX proceedings, only 9 percent of non-detained asylum seekers whose cases concluded in fiscal year 2018 did not have legal representation at any point during their proceedings. Of the nearly 70,000 people placed in RMX under the Trump administration, only 523 people—less than 1 percent—were granted relief while in RMX.

THE BIDEN ADMINISTRATION'S REIMPLEMENTATION OF RMX HAS NOT ADDRESSED THE POLICY'S FUNDAMENTAL, UNFIXABLE FLAWS

The inherently flawed RMX policy cannot be made safe, as its reimplementation by the Biden administration has already made clear. Customs and Border Protection (CBP) officers continue to return migrants and asylum seekers to grave danger in Mexico, including individuals who were previously harmed or threatened there, including by Mexican government officials. More than 90 percent of the more than 673 people placed by CBP in RMX since December 2021 are from Nicaragua (59 percent), Venezuela (23 percent), and Cuba (10 percent)—countries from which many are fleeing repressive regimes and deepening political and humanitarian crises. Very few have been able to find attorneys to represent them in immigration court to assist them in preparing their applications for asylum. The changes to RMX procedures implemented by the Biden administration cannot fix its fundamental flaws. Indeed, the UNHCR representative to the United States stated, in response to the reimplementation of RMX, that “the announced adjustments to the policy are not sufficient to address [UNHCR’s] fundamental concerns” about the safety and due process rights of asylum seekers subjected to RMX.

Soon after its reinstatement in December 2021, the asylum officers’ union described the RMX policy as “irredeemably flawed” and stated that its restart “makes our members complicit in violations of U.S. Federal law and binding international treaty obligations of non-refoulement that they have sworn to uphold.” The Round Table of Former Immigration Judges wrote, “there has been no greater affront to due process, fairness, and transparency than the MPP, or ‘Remain in Mexico’ policy. Instituted under the Trump administration, it appears to have been motivated by nothing other than cruelty.”

Return to Danger, Risk of Refoulement

CBP officers continue to return migrants and asylum seekers to grave danger in Mexico, including individuals who were previously harmed there, where they are at risk of onward refoulement by Mexican officials.

In a January 2022 report, “A Shameful Record,” Human Rights First documented cases of people returned by CBP to Ciudad Juárez under RMX after severe harm in Mexico. For example, a Nicaraguan asylum seeker who had been recently kidnapped near the border in Mexico and tortured by electrocution and beatings for 3 weeks was sent back to Mexico by CBP in December 2021. Nearly all of the 16 RMX returnees Human Rights First interviewed in Ciudad Juárez in December 2021 reported having suffered violence, kidnappings, and/or extortion in Mexico—including at the hands of Mexican police or other government officers. Likewise, the Border Project, which provided legal consultations to individuals being returned to Ciudad Juárez in December 2021, reported that more than 70 percent of the 87 individuals that Border Project attorneys spoke to had been persecuted by Mexican police and other government officials. As the Border Project noted in a communication to Human Rights First, this level of violence by Mexican officials “raises serious concerns about the Biden administration’s assurances that the Government of Mexico will assist in protecting the migrants returned” under RMX.

Asylum seekers returned to Mexico by the Biden administration are at grave risk of chain refoulment, i.e., illegal return, to countries where they would face persecution or torture. The Mexican government has deported asylum seekers whom the Biden administration had expelled or blocked from seeking U.S. protection under Title 42—including some who presented documentation showing they had legal status in Mexico. Though the Biden administration is offering to bus people returned to the dangerous border city Matamoros under RMX to Monterrey, a city in Mexico’s interior, they remain at risk of violent crime or chain refoulment. For example, a Venezuelan asylum seeker told Human Rights First that Mexican police twice extorted him in Monterrey before he was placed in RMX and returned to Mexico in December 2021. This Venezuelan asylum seeker also reported that Mexican immigration authorities in Monterrey had threatened and forced him and other asylum seekers on to a bus to the south of Mexico, where Mexican immigration officers detained him, even though he had documentation showing he was legally present in Mexico. The asylum seeker was released in southern Mexico with instructions to leave Mexico within 10 days or face deportation to Venezuela.

Flawed Fear Screenings

RMX fear of return to Mexico screenings remain fundamentally flawed at every stage. The Biden administration has chosen to use a heightened screening standard, instead of the credible fear standard set by Congress for the expedited removal process, for RMX non-refoulement interviews (NRI). The “reasonable possibility” standard applied in these preliminary telephonic screenings is equivalent to what asylum seekers must show to establish eligibility for asylum after a full immigration court hearing. These interviews are conducted while individuals are being held—often for days—in freezing CBP holding cells and generally without counsel present—only 20 (3 percent) of 595 people in RMX who claimed fear of return to Mexico in December 2021 and January 2022 had an attorney present for their NRI. Unsurprisingly, few individuals have been found to have a fear of return to Mexico under RMX. According to DHS data, 88 percent of migrants and asylum seekers placed in RMX in December 2021 and January 2022 expressed fear of return to Mexico, but only 14 percent of those screened were found to face “a reasonable possibility” of harm in Mexico, despite DHS’s own recognition that people in RMX are targeted for kidnappings and other violent crimes. The extraordinarily low percentage of individuals receiving positive RMX fear determinations under the Biden administration is nearly identical to when these screenings were conducted under an even more heightened standard by the Trump administration (13 percent of individuals subjected to RMX between January and October 2019 were found to have a fear of return to Mexico).

Information from the Border Project and Human Rights First interviews with individuals returned to Mexico under RMX indicate that CBP officers interfere with meaningful access to counsel for RMX fear screenings including by pressuring individuals in RMX to waive their opportunity to speak with an attorney, failing to inform individuals in RMX of their opportunity to access counsel prior to a nonrefoulement interview, and blocking individuals in RMX from hiring or consulting private legal counsel. Many individuals returned to Mexico in December 2021 described the non-refoulement interview as confusing and chaotic. They told Human Rights First that they did not understand the purpose of the interview and were unsure who they had spoken with on the phone during the interview. For instance, a Nicaraguan asylum seeker said that he had a conversation by telephone

while detained in CBP custody but did not know whether he had spoken with a government official or had received a consultation with a legal office. Indeed, none of the 18 people Human Rights First interviewed in December 2021 after they were returned to Ciudad Juárez under RMX were certain whether they had spoken with a lawyer prior to being returned to Mexico, even though free legal consultations were available to anyone in RMX at the time.

Failure to Screen for Vulnerabilities

DHS has also returned to Mexico individuals with serious medical conditions and LGBTQ persons, despite DHS guidance exempting from RMX “those with a known mental or physical health issue” and “those at increased risk of harm in Mexico due to their sexual orientation or gender identity.” People with health issues wrongly returned by CBP to Mexico under RMX include a man with cancer. In December 2021 Human Rights First found that CBP officers were failing to ask health screening questions and falsely recording on the “Initial Health Interview Questionnaire” that migrants and asylum seekers placed in RMX have reported that they do not have any serious medical conditions. None of the 18 individuals in RMX who Human Rights First interviewed in Ciudad Juárez in December 2021 had been asked the 11 health screening questions on the form. Some were not asked any health-related questions, while others said that CBP officers inquired only generally about health issues. None of the RMX enrollees Human Rights First interviewed were asked any questions about their gender identity or sexual orientation.

Separating Families

CBP continues to separate families, returning some family members through RMX to danger in Mexico. In December 2021, the Border Project identified approximately 10 RMX returnees who had been separated from a spouse or adult children. One man who was returned to Mexico under RMX told the Border Project that he had been separated from his wife, who was 6 months pregnant and suffering from epilepsy and asthma. A Venezuelan asylum seeker told Human Rights First that he had been separated from his adult brother and uncle approximately 10 RMX returnees who had been separated from a spouse or adult children. One man who was returned to Mexico under RMX told the Border Project that he had been separated from his wife, who was 6 months pregnant and suffering from epilepsy and asthma. A Venezuelan asylum seeker told Human Rights First that he had been separated from his adult brother and uncle. DHS has also used the illegal Title 42 expulsion policy to separate countless families.

Throwing Out Belongings

In addition, CBP is returning individuals without their belongings. Multiple individuals reported to Human Rights First that CBP officers discarded their personal possessions and that they were returned to Ciudad Juárez in December 2021 under RMX without their clothing, shoes, coats, or medication among other personal items—in violation of CBP’s detention standards. This cruel and unnecessary practice exacerbates the challenges RMX enrollees face when left to wait for months in unfamiliar Mexican cities with few resources to support themselves.

Due Process Barriers, Lack of Representation

The Biden administration’s reimplementation of RMX has not addressed its inherent due process denial. Like the first iteration of RMX, a very small number of individuals in RMX have managed to secure legal counsel. For example, only 6 percent (5 of 82) of asylum seekers had legal counsel when they appeared at the El Paso immigration court for the first 2 days of RMX hearings in early January 2022, according to a court observer with Refugees International. By comparison, 93 percent of asylum seekers had legal counsel in non-RMX asylum proceedings in fiscal year 2022 so far. Many asylum seekers returned to Mexico under RMX have reported that attorneys on the U.S. Government-provided list of legal service providers are not taking RMX cases (often due to security concerns) or do not have capacity to assist them. RMX court observers in El Paso and San Diego report that the first RMX hearings were confusing and chaotic. Observers in both courts heard RMX enrollees tell judges that they tried but were unable to find legal counsel.

Since the Biden administration’s reimplementation of RMX, immigration court judges have already issued in-absentia removal orders for some individuals who were not able to attend RMX hearings in January 2022. Judges rescheduled hearings for others who were unable to attend, but it is unclear how their new hearing dates will be communicated, as people in RMX often lack stable housing cannot always receive mail. Despite the Biden administration’s claim that its version of RMX would be more transparent, DHS has limited access to RMX proceedings, improperly

threatening an attorney monitoring RMX hearings in January 2022 with legal action for publicizing her observations (then later retracting the threat).

REMAIN IN MEXICO IS ILLEGAL AND CANNOT BE MADE LAWFUL

By returning asylum seekers to wait in danger in Mexico under the Remain in Mexico program, the U.S. Government is violating U.S. immigration law and international treaty commitments to avoid refoulment. As extensive research by Human Rights First and other human rights groups have documented, the U.S. Government's RMX policy (in addition to the Title 42 policy) returns people to highly dangerous regions of Mexico where they have subsequently faced, or are likely to face, horrific danger, including murder, rape, torture, kidnapping, human trafficking, and other violence. These returns violate the U.S. Government's non-refoulement obligations under Article 33 of the 1951 Convention relating to the Status of Refugees (binding on the United States through its accession to the 1967 Protocol relating to the Status of Refugees), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and customary international law, which prohibit returning people to countries where they would be at risk of persecution, torture, or other serious harm.

CONTINUING ILLEGAL EXPULSIONS UNDER THE DEADLY TITLE 42 POLICY

At the same time the Biden administration is using RMX to return people seeking U.S. humanitarian protection to Mexico, it continues to embrace and defend, rather than end, the Trump administration's Title 42 policy, which misuses public health authority to violate U.S. non-refoulement obligations, block asylum at U.S. ports of entry, and expel people seeking refuge to danger in Mexico and the countries they fled. The suffering of families, adults, and children subjected to this policy continues to mount, with at least 8,705 kidnappings and other attacks on people blocked or expelled to Mexico under Title 42 since President Biden took office. Since September 2021, the Biden administration used this policy to illegally expel more than 18,000 Haitians to life-threatening insecurity in Haiti. The U.S. Department of State's top legal expert, former Yale Law School Dean Harold Koh, resigned from the Department in October 2021 after concluding that the Biden administration's continued use of Title 42 to expel people seeking protection is "illegal and inhumane."

Epidemiologists and public health experts have continued to condemn the misuse of Title 42, explaining in September 2021 that the Centers for Disease Control and Prevention (CDC) order "does not provide adequate public health justifications for expelling asylum-seeking families at the border" and that "expulsions magnify the risks of COVID-19 transmission." In a September 2021 letter to Biden administration officials and the CDC director, public health experts again expressed concern that the CDC has "endorsed and extended the implementation of the scientifically baseless and politically motivated Title 42 order." The United Nations High Commissioner for Refugees has urged the United States to "swiftly lift the public health-related asylum restrictions that remain in effect at the border and to restore access to asylum for the people whose lives depend on it, in line with international legal and human rights obligations."

ACTION NEEDED BY CONGRESS

Congress has a critical role to play in upholding U.S. refugee law and treaties, urging all possible steps to end the Remain in Mexico policy and its expansion, and urgently pressing for an end to the similar Title 42 policy and others Trump-era policies that evade refugee law, effectively block refugees from U.S. asylum and endanger their lives. Congress should:

- Continue to conduct oversight and strongly urge the Biden administration to comply with U.S. and international refugee law, definitively end the Remain in Mexico policy, stop misusing Title 42 to evade refugee law, and fully restore asylum processes at the Southern Border—including at ports of entry, and to take all necessary administrative and judicial steps needed to do so. Congress should also request updates on action the administration has taken to end other Trump-era policies including the asylum entry and transit bans, the "Death to Asylum" rule, and the interim final rule implementing Asylum Cooperative Agreements (ACAs).
- Update and reintroduce the Refugee Protection Act, to ensure U.S. asylum laws uphold U.S. commitments under Article 33 of the 1951 Convention relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights.

- While the inherently flawed and unfixable Remain in Mexico and/or Title 42 policies continue to be implemented, conduct oversight and advance recommendations to U.S. agencies to ensure that:
 - DHS (through information it receives from asylum seekers through USCIS, CBP, and/or ICE interviews and communications) and the U.S. State Department track all reported incidents of kidnappings and other violence against individuals after they are returned to Mexico via RMX or Title 42, and harms suffered by persons expelled to other countries—including Haiti—under Title 42 without being provided with access to the safeguards of U.S. refugee law;
 - DHS and CBP allow, provide, and facilitate unimpeded access to in-person legal consultations and legal representation to people in its custody, including in connection with RMX NRI interviews, eliminate the limit on time permitted to consult with legal counsel, and prohibit the conduct of any fear interviews without the presence of in-person legal counsel when an asylum seeker requests such representation; and
 - DHS and CBP allow and provide NRI interviews at POEs upon request by asylum seekers or their counsel, and take steps to ensure that CBP appropriately screens, identifies, and exempts individuals who should be exempt from placement in Remain in Mexico under DHS's internal implementation guidelines.
- Conduct official visits to Mexican, Guatemalan, and Honduran border towns where asylum seekers have been returned/expelled, CBP facilities and Border Patrol stations on the southern U.S. border, immigration detention centers, immigration courts, and humanitarian organizations in the border region assisting asylum seekers and migrants. Examine potential structural improvements to anticipate, plan for, and manage humanitarian protection and uphold compliance with U.S. refugee law and treaties, such as a new or reconfigured and elevated U.S. agency with a humanitarian and refugee protection mission, expertise, and capacities.

ATTACHMENT*

STATEMENT OF THE HOPE BORDER INSTITUTE (HOPE)

MARCH 1, 2022

The Hope Border Institute (HOPE) thanks the House Homeland Security Committee for holding a hearing on the reimplementation of Remain in Mexico. HOPE is a Catholic social justice organization working bi-nationally in El Paso, Texas and Ciudad Juárez, Chihuahua to uphold the right to asylum and dignity for people on the move in our region. In addition to research and advocacy for asylum restoration and rights-respecting border policy, we operate the Border Refugee Assistance Fund to provide humanitarian support for migrants and asylum seekers forced to remain in Ciudad Juárez, Mexico. As a borderland organization, we are all too familiar with the harms that result from the externalization of asylum and are advocating for a full restoration of the asylum system and an end to policies that deny people on the move access to U.S. territory.

In 2019, the Migrant Protection Protocols (MPP) changed the landscape of asylum in our region. Over 20,000 people were placed into the first version of the program in El Paso and Ciudad Juárez, including highly vulnerable individuals such as families with children, indigenous people and mentally disabled people. The cruelty of the program lay in the fact that people were stranded with few resources in an extraordinarily dangerous environment where kidnapping, extortion, assault, and other forms of violence against migrants were commonplace. Access to attorneys was severely limited and the challenge of navigating the complex asylum system while living in danger meant that pursuing and winning an asylum case was next to impossible.

The restart of MPP—and the unnecessary termination of the wind-down program, leaving thousands of people stranded in Mexico with no opportunity for parole—has been a devastating step backwards for asylum seekers. While the Biden administration is under court order to restart the program, its expansion to nationals of all Western Hemisphere countries and continued human rights violations during implementation are discouraging signs.

*The document has been retained in committee files and is available at <https://www.humanrightsfirst.org/sites/default/files/ShamefulRecord.pdf>.

Changes to the structure of the program have not ameliorated serious concerns about human rights and dignity. MPP never has been and never will be a rights-respecting program. People we have spoken to and accompanied in both versions of the program describe compelling root causes that drove them from their homes, violence and extortion throughout their journey in Mexico, fear of being forced to stay in Mexico, and a desire to reunite with family in the United States and build a new life in peace.

At the moment, with the Title 42 expulsion policy in place for the indefinite future, MPP has perversely become the only de facto opportunity for asylum at the U.S.-Mexico border, an alarming fact because MPP is so deeply flawed and does not represent true access to asylum. This results in a discriminatory impact on those who are subject to Title 42 (such as people from Mexico, Guatemala, and Honduras), while putting those who are subject to MPP in a deeply unsafe position where their chances of securing representation and winning an asylum case are extremely low. HOPE's research has documented some of these human rights concerns through conversations with individuals living in shelters and observation of MPP court proceedings.

SAFETY, HUMAN RIGHTS, AND VULNERABILITY

In January and February of this year, HOPE conducted interviews with asylum seekers who are currently enrolled in MPP and living in a shelter operated by the Mexican Federal Government in Ciudad Juárez. These interviews surfaced major concerns with the implementation of the program, in particular the impact on individuals' physical and mental health and their access to due process in court. Notably, most of those we interviewed fled home because of persecution and their political opposition to authoritarian governments in Nicaragua and Cuba that the U.S. Government has spoken out against.

- The asylum seekers described feeling deeply unsafe in Mexico and refused to leave the shelter for fear of being kidnapped or extorted. A significant number also expressed fear of living within the shelter due to the presence of Mexican police and soldiers and noted that the shelter was unhygienic, the food was inadequate and they did not have access to medical care while sick with illnesses like chickenpox. Despite requesting non-refoulement interviews and sharing their experiences with asylum officers of being extorted, robbed, and kidnapped along the journey through Mexico, they were returned anyway.
- Many asylum seekers presented vulnerabilities that should have exempted them from MPP, including a Black indigenous man from Nicaragua whose dominant language is a dialect called Miskito, another man who is bisexual and one man who has a health issue in his lungs. Two of the men had expressed these vulnerabilities to asylum officers or immigration agents in the United States but were returned to Mexico; the bisexual man was afraid to disclose his sexuality to asylum officers or immigration agents for fear of being discriminated against.
- The majority of those interviewed had left their country because of persecution related to political affiliation. One man from Nicaragua worked as an electoral count manager (fiscal) for an opposition political party. After raising inconsistencies with vote counts during the 2021 elections, police and paramilitaries stalked him at his home and he fled in fear of his life. He was experiencing major psychological distress after being placed in MPP and did not feel safe or well living in the shelter. Another man from Cuba worked as a math and physics teacher and was persecuted for his refusal to participate in communist party activities and incorporate the party agenda into his curriculum. After he participated in the July 11–12 protests in Cuba, he was detained and questioned by police for a full day with no food or water, was fired from his job and said that state agents in civilian clothes from the committee de la defensa de la revolución harassed his family at their home.
- People placed into MPP are given limited info packets about MPP and the asylum process, but the paperwork is in a mixture of Spanish and English, making it difficult for monolingual Spanish speakers to understand everything. One man from Cuba who was unrepresented said he was learning about asylum and preparing for his case by watching YouTube videos. Another person noted that he knows several people in MPP who cannot read or write, making it extremely difficult for them to prepare a case and understand the written materials they were given.
- Many of those we interviewed described mental and physical health issues stemming from shelter conditions as well as an extreme fear of leaving the shelter for any reason. A particular concern was having to leave the shelter to ob-

tain a COVID test in order to attend court. No transportation is offered to clinics or testing labs in Cd. Juárez, forcing them to leave the shelter against their will simply to meet the prerequisite for attending court.

OBSTACLES TO DUE PROCESS IN COURT

In addition to interviews with people enrolled in the program, HOPE observed several days of MPP court proceedings in January and February 2022.

- None of those we observed had legal representation. At least one man said that he had attempted to contact pro bono attorneys on the contact list but was unable to reach them.
- Nonprofit service providers in El Paso have declined to take on many MPP cases because of lack of capacity and obstacles to due process, but they are still listed on the pro-bono, low-cost legal access list. This gives respondents the impression that substantial legal services are available when in fact they are not.
- On January 31, two men from Colombia were deported in absentia after failing to appear for their court hearing in El Paso. Despite the fact that shelter and transportation to the ports of entry are coordinated with the Department of Homeland Security, the U.S. State Department and the International Organization for Migration (and thus the Government would presumably have information about why the men were unable to appear in court), no information was provided to the judge and the men were deported. This is especially concerning because deportations in absentia were frequent in the first version of MPP, often because individuals had been kidnapped on the way to ports of entry, had become ill or felt too unsafe to leave their residence to present at the ports.
- People in court expressed confusion about basic elements of the asylum process, such as which country's governments are involved in decision making and whether requesting more time to find an attorney would prohibit them from having a non-refoulement interview about fear of return to Mexico.
- People in court were anxious to express fear of return to Mexico and ensure they would have non-refoulement interviews (NRI's). Government data on MPP reveals that following initial enrollment in January 2022, 89 percent of individuals requested non-refoulement interviews (NRI's), but 73 percent of the NRI's resulted in a negative fear determination.
- Judges incorrectly asked respondents on several occasions whether they live in Casa del Migrante, a private shelter in Cd. Juárez that does not currently house people in MPP. Because "casa del migrante" can refer to both the specific Casa del Migrante or a generic "casa de migrante" or migrant shelter, respondents have tended to answer the question in the affirmative when they are actually living in a federally-operated shelter with a different name.

It is clear from our research that grave human rights issues are still present within the Migrant Protection Protocols and that new safeguards to ensure the safety, well-being, and due process of people in the program are not adequate. The program's founding intent was to deny access to asylum and to make people so desperate and unsafe in Mexico that they would give up and return home. We can and must do better to offer protection to people fleeing from grave harm and looking to the United States as a last resort.

RECOMMENDATIONS

We recommend that Congress:

- End funding for the Migrant Protection Protocols.
- Work with the administration to resume the MPP wind-down process that was in place in 2021 to allow people in the first version of MPP to be paroled in from Mexico, from third countries and countries of origin.
- End Title 42 and a current patchwork approach to asylum protections at the border that discriminates based on nationality while leaving the most vulnerable at risk.
- Restore full access to asylum at ports of entry without resorting to metering and other forms of externalization, including reliance on NGO's to screen individuals in Mexico for extreme vulnerabilities.
- Build capacity to safely process asylum seekers at the border in a dignified manner and release people to reunite with family or sponsors in the U.S. interior. This should not include mass detention or indefinite stays in processing facilities.
- Partner with community organizations in border communities to facilitate safe release and travel for asylum seekers. Expand funding for community-based case management systems that assist people in accessing social services at their

destination and offer legal representation and support with attending court hearings.

The El Paso border community is ready and willing to welcome asylum seekers and people on the move with dignity, as we have done for generations. Putting vulnerable people who fled for their lives in harm's way and denying their right to seek protection on U.S. soil is not the answer to changing migration patterns and the root causes of migration.

Thank you for the opportunity to submit this statement.

LETTER FROM THE COALITION FOR HUMANE IMMIGRANT RIGHTS (CHIRLA)

MARCH 2, 2022.

Chair NANETTE DIAZ BARRAGÁN,
Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, Washington, DC 20515.

Ranking Member CLAY HIGGINS,
Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, Washington, DC 20515.

Chair BENNIE THOMPSON,
Ranking Member JOHN KATKO,
Committee on Homeland Security, Washington, DC 20515.

Re: Hearing "Examining the Court-Ordered Reimplementation of The Remain In Mexico Policy"

DEAR CHAIRS BARRAGÁN & THOMPSON & RANKING MEMBERS HIGGINS & KATKO: On behalf of the Coalition for Humane Immigrant Rights (CHIRLA), the largest State-wide immigrant rights organization in California, I submit this statement for the record for today's hearing entitled "Examining The Court-Ordered Reimplementation of the Remain In Mexico Policy." As an organization serving the immigrant community for the past 35 years, CHIRLA has worked to gain and maintain both trust and credibility as a reliable source of accurate information of events both in California and south of the U.S.—Mexico border.

Since December 2018, CHIRLA has monitored both the initial "Remain in Mexico" policy (Migrant Protection Protocols, MPP 1.0) and more recently the impact of the court-ordered re-implementation of MPP 2.0. In both instances, CHIRLA bears witness to how the Orwellian nomenclature used for this program is wholly matched by the sheer cruelty of its impact on immigrants who are put through its grinding process.

Indeed, CHIRLA's base analysis of MPP is mostly shared by the Biden Administration, and this is what makes the ongoing court-ordered implementation, which is effectively an extension of MPP, both baffling and disconcerting. As a candidate, President Biden identified MPP as the first "detrimental asylum policy" that needed to be ended.¹ After first suspending new enrollments in MPP, pursuant to Executive Order 14010, DHS Secretary Mayorkas on June 1, 2021 and then again on October 29, 2021 issued memos on the "termination" on MPP.² The basic reason for the termination was the clear and convincing evidence of MPP "imposing substantial and unjustifiable human costs on the individuals who were exposed to harm while waiting in Mexico."³

CHIRLA'S ROLE IN MEXICO

Since 2017, CHIRLA has run an international program based in Mexico, from the border with the United States, to Mexico City and currently in Tapachula, Chiapas near the border with Guatemala. In the course of this work, CHIRLA's team regularly encounters MPP enrollees as well as other immigrant victims of the U.S. asylum system's decimation.

CHIRLA'S PERSPECTIVE ON POLICY SOLUTIONS

Aside from the ongoing multi-year process, led by the Biden Administration and Vice President Kamala Harris, of dealing with the root causes in Central America and elsewhere that compel immigrants to migrate, we believe there are immediate

¹ <https://joebiden.com/immigration/>.

² https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf.

³ Id. p. 2.

actions that the Federal Government can take to improve the situation. These include:

1. *First Reduce the Scope of MPP 2.0 and then Terminate It (Again).*—There is no reason for the Biden Administration to have expanded the eligible pool beyond MPP 1.0's Spanish-speaking countries and Brazil. The expansion will impact e.g. Haitians, already being expelled en masse using Title 42.
2. *End the Use of Title 42 to Expel Immigrants Arriving at the Border.*—Title 42 remains the central pillar of the anti-asylum regime built by the Trump Administration. While this has been ended for children, it has not for families arriving together or for single adults.
3. *Restitution for Victims of MPP 1.0 and 2.0.*—The Biden Administration in its initial wind down of MPP allowed pending MPP enrollees to actually apply for asylum, with some 13,000 being processed into the United States for further adjudication. However, there are tens of thousands of other MPP victims who missed court hearings due to fear, kidnapping, and more and were thus ordered deported in absentia. These individuals also need an option to apply for asylum as was their original intent.⁴

IDEL ANTONIO—VICTIMIZED BY MPP 2.0

Recently, a member of the CHIRLA family has been subject to the cruelty and arbitrariness of MPP 2.0. His name is Idel Antonio, and this is his story:

- He participated in the protests against the Cuban Government in November 2021. He has since been targeted and has seen friends jailed;
- Despite not wanting to leave Cuba, where he has 3 young children, fear of the government compelled him to leave;
- In Mexico, he endured extortion, constant movement around the country, corrupt officials, and attempted kidnappings;
- Unaware of the new MPP, and out of fear of persecutors in Mexico, he attempted to cross the border.
- He did not mention the full extent of the crimes he endured in Mexico, though he did express fear.
- Moreover, he was unable/unaware of the possibility of securing legal counsel, and therefore failed the fear interview and was placed in MPP 2.0.
- Although he was sent to a “permanent” shelter in Ciudad Juárez, he continues to live in fear of his Mexican persecutors;
- Idel Antonio's case highlights the impossibility of “justly” implementing this monstrous program.

Thank you for considering CHIRLA's statement.

Please contact our General Counsel, Carl Bergquist, at cbergquist@chirla.org, and our International Program Manager, Arturo Viscarra, at aviscarra@chirla.org, should you have any questions.

Sincerely,

ANGELICA SALAS,

Executive Director, Coalition for Humane Immigrant Rights (CHIRLA).

STATEMENT OF THE CALIFORNIA WELCOMING TASK FORCE

MARCH 2, 2022

“The California Welcoming Task Force calls for an end to the inhumane and illegal Migrant Protection Protocols program. It is time to rebuild our asylum system to welcome human beings with dignity.”

SAN DIEGO.—Three years ago the United States implemented the Migrant Protection Protocols (“MPP”) program forcing individuals seeking asylum to return to dangerous Mexican border cities where their well-being and lives are in danger. MPP is a ruthless and unjust policy impacting the lives of vulnerable people.

Despite initially taking steps to end MPP, the Biden administration has reimplemented the policy and expanded it to include any person from the Western Hemisphere. Individuals from countries such as Haiti and Jamaica who were previously excluded from the program can now be exposed to well-documented discrimination and harm in Mexico. The administration's attempts to make this inhumane policy humane are not only futile, but they have also demonstrably failed. We denounce the reimplementation and expansion of this policy.

⁴<https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

The California Welcoming Task Force can attest to the harsh reality and failures of the MPP program:

- On January 5, 2022, two Colombian men who sought asylum in the United States days earlier were sent back to Tijuana, Mexico under the program. Members of the California Welcoming Task Force identified several problems with their processing, including dehumanizing conditions in U.S. Customs and Border Protection (CBP) custody, lack of access to counsel, lack of access to health care and lack of access to necessities in Tijuana. The shelter where they were placed in Tijuana has not received the support necessary to guarantee access to clean water, for example.
- Two women seeking asylum were sent back to Tijuana under Remain in Mexico and so far the U.S. Department of Homeland Security (DHS) has refused to approve requests for their removal from Remain in Mexico to allow them to safely seek asylum within the United States. Migrant women in Tijuana are often targets of kidnapping, assault, or even sex trafficking.
- A person seeking asylum forced by Customs and Border Protection into the program who contacted an attorney with Immigrant Defenders Law Center while still in custody told the attorney that they were a member of the LGBTQ community. DHS had said that, under the current implementation of Remain in Mexico, such individuals would not be enrolled in Remain in Mexico. After intervening, the attorney was able to get the individual removed from enrollment, but only after significant time and resources were invested by the legal service organization interviewing the individual and communicating with DHS.
- An asylum seeker who was injured by a government official for expressing his political opinion was placed into the Migrant Protections Protocol. With his arm in a sling, he informed border officials of the recent surgery and physical pain in his arm. Despite clearly needing protection from the United States and to be with family in the United States, he was placed in MPP and sent to Tijuana. During the non-refoulement interview border officials took off his sling and bandage.
- We have observed court hearings where MPP respondents were not properly served with important court documents by the Department of Homeland Security.
- Attorneys have spoken with MPP respondents who were unable to attend their court hearing due to misinformation on transportation arrangements by IOM to the San Ysidro Port of Entry. Others missed their court hearing after being misinformed to present themselves directly to the San Ysidro Port of Entry instead of arranging transportation with IOM.
- MPP respondents who pass the fear of Mexico interview (non-refoulement interview) are held in Border Patrol stations for extensive periods of time, sometimes up to 5 days. Border Patrol stations have no showers and conditions are harsh.
- MPP respondents have informed us they were told to sign documents while in Border Patrol custody that they did not understand and were not in their native language.

Dehumanizing and illegal immigration policies must end. We must end Remain in Mexico. We must welcome human beings with dignity.

STATEMENT OF THE CENTER FOR GENDER & REFUGEE STUDIES (CGRS)

MARCH 2, 2022

The Center for Gender & Refugee Studies (CGRS) defends the human rights of refugees seeking asylum in the United States. We undertake strategic litigation to advance sound asylum laws and protect due process rights. Our current docket includes Federal lawsuits challenging anti-asylum border policies, including Remain in Mexico, and high-impact appellate cases that present opportunities to restore paths to protection. Additionally, we provide free expert consultation, comprehensive litigation resources, and cutting-edge training Nation-wide to attorneys and advocates working with asylum seekers. We also advocate for the fair and dignified treatment of asylum seekers and promote policies that honor our country's legal obligations to refugees.

We are grateful that the House Homeland Security Subcommittee on Border Security, Facilitation, & Operations is examining the court-ordered reimplementations of the Remain in Mexico policy, formally known by its Orwellian name, the "Migrant Protection Protocols" (MPP). We appreciate this opportunity to provide a statement for the record.

CGRS is deeply familiar with the cruelty and illegality of MPP, having challenged many aspects of its first iteration in *Innovation Law Lab v. Mayorkas* and *Immigrant Defenders Law Center et al. v. Mayorkas*. In both cases we represent individual plaintiffs who have experienced the horrors of Remain in Mexico first-hand and legal service providers who have struggled to represent them. CGRS has supported the Biden administration's efforts to end the policy by submitting amicus briefs in *Texas v. Biden* before the Fifth Circuit Court of Appeals and the Supreme Court.

CONGRESS MUST RECOGNIZE THAT REMAIN IN MEXICO VIOLATES U.S. AND
INTERNATIONAL LAW

When the Trump administration launched MPP in 2019, it completely upended long-standing practices toward people seeking asylum at the U.S. Southern Border. It was an unprecedented policy change that made it impossible for most asylum seekers arriving at the border to safely pursue their protection claims in the United States. MPP was widely criticized by U.S. legal experts, Department of Homeland Security (DHS) employees, and international bodies, including the UN Refugee Agency (UNHCR) and the Inter-American Commission on Human Rights. They explained that, by returning asylum seekers to dangerous conditions and undermining their ability to mount a successful asylum case, MPP violated the United States' non-refoulement obligations under the 1967 Refugee Protocol and the Convention Against Torture—that is, our promise not to return people to persecution or torture. These commitments have been reflected in both statutory law and Federal regulations.

The courts agreed. As counsel in *Innovation Law Lab v. Mayorkas*, CGRS successfully challenged the legality of the first version of MPP. In April 2019 the District Court for the Northern District of California granted a preliminary injunction, which would have temporarily halted the policy. The Ninth Circuit Court of Appeals initially stayed the injunction—allowing MPP to remain in effect—but restored it in February 2020, ruling unequivocally that MPP violates both U.S. and international law. The Trump administration then appealed to the Supreme Court, which put the injunction on hold as it considered the case, leaving the policy in place until the Biden administration formally terminated it in June 2021. Following the termination, the Supreme Court sent the case back to the district court, which vacated the injunction as moot. The case remains pending.

REIMPLEMENTATION OF MPP IS BASED ON THE LOWER COURTS' MISUNDERSTANDING OF
THE FACTS AND THE LAW

The Biden administration's decision to terminate MPP was based on a sound analysis of the law and recognition of the untenable conditions created by the policy. DHS Secretary Alejandro Mayorkas' second memorandum terminating MPP cited copious evidence that the policy's humanitarian and due process defects were "endemic to the program's design" and beyond reform. In contrast, the legal positions adopted by the U.S. District Court for the Northern District of Texas, and upheld by the Fifth Circuit Court of Appeals, grossly distorted the law and the facts. If the Supreme Court allows the Fifth Circuit's decision to stand, it will send a dangerous message that a single court ruling can arbitrarily override laws enacted by Congress.

CGRS joined partners in submitting an amicus brief on behalf of non-profit organizations and former immigration judges in *Biden v. Texas*, supporting the administration's decision to terminate Remain in Mexico. Our amicus brief highlights fatal flaws in the lower court decisions, which fault Secretary Mayorkas for failing to consider MPP's "benefits"—namely, its purported success in deterring migration and fraudulent asylum claims. The evidence in the case reveals the opposite to be true. No matter what cruel policy the Trump administration devised—from family separation, to MPP, to Title 42—violence and insecurity in their home countries have continued to force people to seek refuge in the United States. MPP merely denied asylum seekers safe access to the U.S. immigration court system, trapping desperate families and adults in precarious conditions that exposed them to further violence and depriving them of a meaningful opportunity to present their asylum claims.

Far from bringing greater integrity to the asylum process, the program's procedural deficiencies, compounded by the inherent dangers in northern Mexico, made it impossible for most asylum seekers to access legal representation and prevented many from even making it to immigration court. Under the Trump administration, only 7 percent of people placed in Remain in Mexico were able to obtain a lawyer, compared with 60 percent of asylum seekers applying inside the United States. As the sobering evidence in the Texas case shows, many placed in MPP were kidnapped

at the time of their hearings and denied protection through no fault of their own. Of the nearly 70,000 asylum seekers enrolled in Trump's MPP, just 523 were granted asylum.

Remain in Mexico continues to cause incalculable violence and suffering. The Remain in Mexico policy has caused enormous harm to people seeking asylum. People returned to Mexico under MPP are frequently kidnapped and assaulted by cartels and other organized crime groups that regard asylum seekers as prime targets. Extortion of people subject to MPP is so routine, experts have likened the policy to "a stimulus package for cartels." Human rights investigators have documented numerous cases of pregnant women, children, LGBTQ+ people, and people with disabilities suffering horrific abuses after being returned to Mexico under MPP. While the Biden administration pledged to make humanitarian improvements to the program, MPP 2.0 has been plagued with the same problems as the original policy. Conditions in Mexico remain incredibly dire for people seeking asylum. Since President Biden took office, Human Rights First has documented at least 8,705 public reports of violent attacks—including rape, kidnapping, and murder—against people blocked from requesting protection at the U.S. border and/or expelled to Mexico under the Title 42 policy.

Unsurprisingly, in MPP 2.0's first 2 months of implementation, 88 percent of asylum seekers placed in the program have expressed fear of return to Mexico. Border officials have rejected 75 percent of these fear claims, despite copious evidence of the harm that befalls asylum seekers forced back over the border. Human rights investigators report that the Biden administration is returning even people who have already experienced severe violence in Mexico.

THE TEXAS CASE DOES NOT PRECLUDE THE BIDEN ADMINISTRATION FROM PROVIDING
REDRESS TO THOSE SUBJECTED TO MPP 1.0

Even while the *Texas v. Biden* case proceeds, CGRS and our partners continue to litigate a separate case, *Immigrant Defenders Law Center et al. v. Mayorkas*, which challenges on-going harms suffered by asylum seekers who remain stranded outside the United States due to the effects of the policy's first incarnation under Trump. Individual plaintiffs in the case recently filed a motion for class certification, requesting that they be allowed to represent a class of similarly situated individuals who had their cases terminated or received final removal orders after being deprived of meaningful access to the U.S. asylum process under MPP 1.0. Our lawsuit alleges that the Biden administration unnecessarily and unlawfully suspended the wind-down process that had previously enabled many such individuals to re-enter the United States to pursue their asylum claims. The following quotes and excerpts from our plaintiffs' declarations offer a glimpse of the horrific circumstances facing asylum seekers returned to Mexico. Their experiences represent just the tip of the iceberg that is the profound trauma inflicted by Remain in Mexico under both the Trump and Biden administrations.

- "My daughter and I lived in horrible conditions in the migrant camp in Matamoros, and I was kidnapped and raped while we waited in Mexico for my immigration court hearings," our plaintiff Dania Doe stated in her declaration. "I thought we were going to die . . . I begged [U.S. officials] not to return us to Mexico, but they did not listen . . . I was never able to find an attorney to represent me in my immigration case, and the immigration judge denied my asylum claim."
- "Nobody explained why they were returning us to Mexico or what would happen," our plaintiff Sofia Doe stated in her declaration. "I missed my third immigration hearing because I was experiencing complications with a high-risk pregnancy and had just been released from the hospital. As a result, my family and I received in absentia removal orders. In addition, my husband was assaulted while he was working in Mexico, and he has now been missing since early December . . . I feel alone, afraid, and trapped in Mexico."
- "I would never wish this experience on anyone," our plaintiff Francisco Doe said in a recent statement. "It has been so difficult since the first day, when they just left us here to survive by ourselves. People don't know about the suffering we've experienced here. I just want to be safe and reunited with my family in the U.S."
- "MPP was such a lie because I never had any opportunity to present my case," our plaintiff Gabriela Doe said in a recent statement. "I am so frustrated and scared, and I am so afraid that something will happen to me here in Mexico. This has been so difficult for me, especially since I am just trying to protect my young daughter and have nevertheless seen her suffer because of MPP. This has been the terror of our lives, and I just want our lives to continue and to

free my daughter of this agony. We are in agony every day, being in limbo and not knowing what we can do.”

CONCLUSION

Federal law, as well as our treaty commitments, require the United States to ensure that noncitizens are not returned to countries where they face persecution or torture. Congress must ensure through oversight and appropriations that the inhumane and unlawful Remain in Mexico policy is ended, once and for all. Congress should also ensure that the Biden administration does everything in its power to mitigate the harms of MPP 1.0 by providing redress to people subjected to the original version of the policy and ensuring that they have a meaningful opportunity to present their claims for protection.

Chairwoman BARRAGÁN. The Members of the subcommittee may have additional questions for the witnesses and we ask that you respond expeditiously in writing. The Chair reminds Members that the committee record remains open for 10 days. Without objection, the committee will stand adjourned. Thank you.

[Whereupon, at 3:42 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM CHAIRWOMAN NANETTE DIAZ BARRAGÁN FOR THE DEPARTMENT OF HOMELAND SECURITY

Question 1. During my recent oversight trip, Border Patrol agents stated that they only ask migrants about fear of returning to Mexico and not whether they meet specific vulnerabilities that would exempt them from MPP.

Why is this the case and will DHS consider changing this?

Answer. Determining whether an individual has a particular vulnerability, such as a known physical or mental health issues, advanced age, and at increased risk of harm in Mexico because of their sexual orientation or gender identity, is separate from determining whether an individual has a fear of returning to Mexico.

There are multiple points in the screening and enrollment process during which U.S. officials may become aware that a potential enrollee in MPP may have vulnerabilities that should except them from MPP, including following the health screening or upon notification by a representative or legal consultant assisting migrants placed in MPP. When such vulnerabilities are identified, individuals are disenrolled from MPP. Individuals who are enrolled in MPP but believe they should not be due to a vulnerability or fear of potential persecution or torture in Mexico may contact DHS at the following email inbox: MPPRequest@hq.dhs.gov.

If at any point while enrolled in MPP, an individual in the United States expresses to a U.S. Government official a fear of harm if returned to Mexico, the individual will be referred to U.S. Citizenship and Immigration Services (USCIS) for a non-refoulement interview. Individuals who demonstrate a reasonable possibility of being persecuted on account of a statutorily-protected ground or tortured upon return to Mexico will not be subject or remain subject to MPP.

Question 2a. While in San Diego, CBP informed us that migrants had to arrive at the port of entry with the International Organization for Migration (IOM) for their court appearance. However, the IOM and State Department were telling migrants that they could arrive at the port of entry on their own or with advocates from other organizations.

What is the policy and how will this communication lapse be addressed?

Question 2b. What actions will the administration take to help migrants who arrived at the port of entry on their own at the designated time but were not allowed in by CBP? Is the administration even tracking this group?

Answer. Individuals enrolled in MPP are provided documents by the U.S. Government that indicate the next time and date of their hearing, and the location and time the individual needs to arrive at a specified port of entry to access the court hearing. There are shelters run by the government of Mexico and non-governmental organizations; however, individuals may choose to reside in a location of their choice. While transportation is provided from designated locations to and from the port of entry (POE) to enter the United States for their court hearings, it is not a requirement, and individuals may elect to arrive to the port of entry on their own means. Some individuals choose to arrive at the POEs of their own accord, and they are processed into the United States to attend their court hearings. Individuals who do not meet health requirements or who arrive late may be rescheduled for a new hearing. We are unaware of any situation where an individual in MPP who arrived on their own at the proper time and location and who met all health requirements was not processed by the U.S. Customs and Border Protection (CBP).

Question 3. What special accommodations does CBP provide illiterate migrants, or migrants who speak indigenous languages native to certain areas of Mexico and Central America, to ensure they understand the process and the documents they are signing?

Answer. CBP officials provide migrants a legal resource packet and verbally explain the MPP process in a language that is understood by the migrant, using interpreters as needed. For migrants who cannot understand and speak English, inter-

preters are provided by the U.S. Government and at no cost to the migrant. Interpreters are available to migrants during their initial encounter and processing, and non-refoulement interview conducted by U.S. Citizenship and Immigration Services, and court hearings. Individuals in MPP also view a video in Spanish which explains basic information about MPP.

Question 4. Does DHS, the State Department, or the IOM track the number of individuals who decide to disenroll from MPP and remain in Mexico or return to their country of origin? If so, can you provide information on when and where individuals who have decided to disenroll from MPP have gone?

Answer. The U.S. Department of Homeland Security (DHS) has no way to track how many individuals chose to abandon their immigration cases, nor the reasons that might lead to that decision. DHS defers to the U.S. Department of State any information that might be available about migrant communication with the International Organization for Migration and to the Department of Justice for statistics related to requests to withdraw applications for admission during immigration proceedings.

Question 5. How is the reimplementation of MPP impacting the other priority missions on the Southwest Border, such as processing legal trade and travel at ports of entry?

Answer. Each time an MPP enrollee returns to the United States to attend a court proceeding, which could happen multiple times over the life of a case, DHS personnel are required to conduct additional rounds of processing. None of this is required for those in removal proceedings outside of MPP.

The labor-intensive process of bringing migrants back into the United States for their court proceedings directly impacts staffing at the 4 U.S. ports of entry where migrants reenter, taking front-line personnel away from other key missions such as facilitating lawful cross-border trade and travel. In addition, DHS has devoted significant resources and personnel to building, managing, staffing, and securing specialized immigration hearing facilities to support DOJ's Executive Office for Immigration Review. As Secretary Mayorkas has stated, any perceived benefits of the policy do not justify the costs, particularly given the way in which MPP detracts from other regional and domestic goals, foreign-policy objectives, and domestic policy initiatives that better align with the administration's values.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR THE DEPARTMENT OF HOMELAND SECURITY

Question 1. Why are so few individuals being found to have a fear of return to Mexico during their NRI despite reports of thousands of kidnappings and attacks against migrants and asylum seekers returned to Mexico this past year?

Answer. If, at any point in the removal process, an individual enrolled in MPP and present in the United States expresses to a U.S. Government official a fear of harm if returned to Mexico, the individual is referred to USCIS for a non-refoulement interview. Individuals who demonstrate a reasonable possibility of being persecuted on account of a statutorily-protected ground (race, religion, nationality, political opinion, or membership in a particular social group) or tortured upon return to Mexico will not be subject or remain subject to MPP. USCIS officers are provided trainings on the appropriate standard to apply in these interviews. Fears of generalized violence do not meet the "reasonable possibility" standard, which requires the noncitizen to demonstrate that they will be individually persecuted on account of a particular protected ground.

As detailed in the most recent report covering data through February 2022, a total of 1,357 individuals claimed fear following their initial enrollment in MPP, accounting for 86 percent of the 1,569 noncitizens enrolled. About 70 percent of those fear claims resulted in a negative fear decision. DHS publishes monthly data about the reimplementation of MPP on the DHS website.

Question 2. Why did DHS make the choice to expand the program to non-Spanish speaking individuals, like Haitians? These individuals are particularly vulnerable, and I find that choice very concerning.

Answer. The United States and Mexico remain concerned about the change in migration patterns and the number of migrants irregularly migrating to the United States. As such, both the U.S. and Mexican governments agreed to include nationals of any Western Hemisphere country other than Mexico in the court-ordered reimplementation of MPP in order to not categorically exclude any nationality from the region, lest that be exploited by human smugglers for recruitment purposes.

As of the date of this hearing, no Haitians have been enrolled in the court-ordered reimplementation of MPP.

Question 3. While we appreciate DHS is taking steps to provide migrants with counsel, we have heard concerns that access to counsel in this program is not meaningful. There are very few lawyers available and 24 hours to consult is too little time to prepare. How does DHS intend to strengthen legal access?

Answer. The Biden-Harris administration is deeply committed to ensuring individuals have meaningful opportunities to access counsel. DHS and DOJ both work closely with legal service providers to facilitate access at both the non-refoulement interview and hearing stages.

All noncitizens enrolled in MPP are provided with 24 hours to consult with a legal representative or consultant prior to their non-refoulement interview while the non-citizen is in CBP custody. A noncitizen may request to waive the 24-hour consultation period. If a noncitizen requests to waive this consultation period, the asylum officer confirms that the noncitizen knowingly and voluntarily waived the 24-hour period. Extending the 24-hour consultation period would further lengthen the non-citizen's time in custody, leading to noncitizens spending extended periods of time in Border Patrol facilities unsuitable for this purpose.

At the time of the non-refoulement interview, asylum officers ask every noncitizen if they have a legal representative or consultant. If a noncitizen has a legal representative or consultant, that person may attend the interview telephonically. Interviews may be rescheduled to allow for the presence of the legal representative or consultant as long as it does not unreasonably delay processing. Asylum officers also confirm that noncitizens who did not waive the consultation period were provided with a legal services provider list and access to telephones during the 24-hour period.

Question 4. How is DHS headquarters ensuring that CBP sector chiefs are implementing the practices and protocols set by headquarters?

Answer. DHS and CBP work together on MPP reimplementation, to include public and internal guidance provided to those implementing this program. In any instance where DHS or CBP leadership identify areas of MPP reimplementation that need correcting, those corrections are made expeditiously.

QUESTIONS FROM RANKING MEMBER CLAY HIGGINS FOR BLAS NUÑEZ-NETO

Question 1a. In Mr. Nuñez-Neto's written testimony he says, "As of February 28, a total of 1,602 individuals have been enrolled in MPP and 893 of them have been returned to Mexico, while 181 are still being processed. Not all individuals who are enrolled in MPP are actually returned to Mexico since some are disenrolled due to a particular vulnerability or a positive determination in their non-refoulement interview."

Looking at these numbers, less than 60 percent of those originally enrolled in MPP were returned to Mexico. Returns for December, January, and February together totaled less than 900. Given that less than 60 percent of those enrolled in MPP were returned to Mexico, should there be an examination of how migrants are chosen to be initially enrolled in MPP?

Answer. In order to ensure MPP reimplementation is humane, migrants who have a particular vulnerability or establish a fear of being returned to Mexico are disenrolled from MPP. It is not always evident who has vulnerability or fear when the enrollment process is initiated. However, DHS continues to refine and improve MPP reimplementation including examining how to better identify those who are likely to be good candidates for MPP enrollment, while also ensuring that MPP is applied humanely and consistently.

Question 1b. How long does DHS believe it will take for MPP to be fully reimplemented across all Sectors?

Question 1c. For DHS to consider MPP fully reimplemented, how many individuals will be being enrolled per day?

Answer. Even in the last administration, MPP returns have never occurred in all sectors along the Southwest Border (SWB). Currently, MPP returns are occurring in strategic locations along the SWB agreed to by both the U.S. and Mexican governments. DHS maintains the ability to enroll anyone encountered by USBP along the entire SWB into MPP for return to Mexico at any designated locations. DHS is closely coordinating the court-mandated reimplementation of MPP with the government of Mexico to address security concerns and operational constraints. The number of enrollees continues to increase consistent with the DOJ's court capacity and the capacity of our partners in Mexico to safely receive individuals returned to Mexico. Whether, when, and how to continue expand MPP enrollments or whether, when, and how to begin returns at new locations, are issues that are under constant consideration in coordination with all the MPP reimplementation partners.

Question 1d. Under MPP 2.0, please explain what happens to migrants, who are specifically disenrolled in MPP, when they do not appear in front of an Immigration Court as specified on their custody paperwork?

Answer. Individuals who are disenrolled from the Migrant Protection Protocols remain in removal proceedings under Section 240 of the Immigration and Nationality Act and are required to attend future court hearings. Given the unique nature of each case, it is impossible to provide an answer for what happens in every instance when an individual fails to appear in court. However, generally, if documentary evidence supports it, U.S. Immigration and Customs Enforcement (ICE) attorneys will seek an in absentia removal order if an individual fails to appear in court.

Question 1e. When considering enrolling an individual into MPP, what guidance does Border Patrol use to determine whether or not an individual is eligible for the 24-hour consultation hold?

Answer. If an individual enrolled in MPP and present in the United States expresses to a U.S. Government official a fear of harm if returned to Mexico, the individual is referred to USCIS for a non-refoulement interview. Individuals who demonstrate a reasonable possibility of being persecuted on account of a statutorily-protected ground (race, religion, nationality, political opinion, or membership in a particular social group) or tortured upon return to Mexico will not be subject or remain subject to MPP. In such a situation, individuals are processed into the United States for the remainder of their removal proceedings.

All noncitizens enrolled in MPP are provided with 24 hours to consult with a legal representative or consultant prior to their non-refoulement interview. A noncitizen may request to waive the 24-hour consultation period. If a noncitizen requests to waive this consultation period, the asylum officer confirms that the noncitizen knowingly and voluntarily waived the 24-hour period.

Question 2. In Mr. Nuñez's testimony, he states that there has only been one family unit individual (who was later disenrolled). Is there a plan to enroll family units?

Answer. DHS makes every effort, as permitted under the law, to preserve family unity. There is nothing in the public guidance that precludes enrollment of family units.

Question 3a. In Mr. Nuñez's testimony, he mentions a list of vulnerabilities that include those with known physical and mental health issues, disabilities, and advanced age are not eligible for MPP. When CBP officials observe or learn of a particular vulnerability, they make case-by-case decisions about whether the vulnerability falls within an exception to enrollment.

Is DHS keeping records of what the vulnerabilities are that are being claimed?

Question 3b. How is DHS ensuring that individuals do not claim fake vulnerabilities?

Question 5a. On the vulnerable exemptions for individuals who are being enrolled in MPP: Please provide to the committee the complete list of all vulnerabilities that are considered under MPP.

Question 5b. What standard does DHS use for the individual's claimed vulnerability? Is it a reasonable fear? A creditable fear? Please explain.

Question 5c. Could you walk through the distinct steps DHS uses to screen a migrant for a vulnerability that would result in the individual's disqualification from MPP?

Question 5d. Can a migrant claim one vulnerability initially—that is denied, be enrolled in MPP, and subsequently claim a different vulnerability after enrollment? If so, how are those claims treated and is there of record of vulnerabilities claimed?

Answer. Particularly vulnerable individuals, to include those with known physical or mental health issues, advanced age, and at increased risk of harm in Mexico because of their sexual orientation or gender identity, are exempted from MPP on a case-by-case basis. While DHS tracks the number of individuals disenrolled from MPP, the collected data is not broken down by vulnerability type.

However, vulnerability is different from fear. Individuals are proactively asked questions about fear of return to Mexico and provided time to consult with legal representatives if they raise a fear. The standard for non-refoulement interviews is the "reasonable possibility," in line with certain other USCIS screening processes.

If an individual enrolled in MPP and present in the United States expresses to a U.S. Government official a fear of harm if returned to Mexico, the individual is referred to USCIS for a non-refoulement interview with an asylum officer. Individuals who demonstrate a reasonable possibility of being persecuted on account of a statutorily-protected ground or tortured upon return to Mexico will not be subject or remain subject to MPP. All asylum officers who conduct MPP non-refoulement interviews (NRIs) have completed extensive training and have experience interviewing asylum seekers. Prior to conducting MPP NRIs, all asylum officers and supervisory asylum officers received MPP-specific training.

If an individual believes their circumstances changed significantly since they were first placed in MPP such that they should be removed from MPP, or that they clearly should not have been enrolled in MPP due to a particular vulnerability, they may submit a request to DHS for consideration on a case-by-case basis.

Question 4a. DHS demobilized several MPP facilities in January 2021—immediately after President Biden took office.

Why did this occur and what costs has DHS incurred as the Department has stood these facilities back up?

Answer. DHS spent a one-time cost of roughly \$7.9 million to fully re-establish the Immigration Hearing Facilities (IHF) used for MPP, with an additional \$6.4 million a month for IHF operational costs. The IHFs were never completely demobilized and have existed since their initial procurement in the summer of 2019.

The IHFs in Brownsville and Laredo, TX began operations around mid-September 2019. These facilities continued operating as IHFs through April 17, 2021. At that time, CBP assumed the original IHF contract from ICE and converted the facilities into Centralized Processing Centers. The modification resulted in a reduced facility footprint to approximately 30% of the original IHF size at a cost of \$2 million per month. The Brownsville and Laredo facilities were re-converted to IHFs effective November 4, 2022.

Question 4b. Where did the money from standing these facilities back up come from?

Answer. ICE is funding this effort from its fiscal year 2022 base resources to CBP via Interagency Agreement.

Question 6. Please explain how the Department of Homeland Security intends to, “to reimplement MPP in good faith” as required by Federal court order.

Answer. The administration continues to vigorously challenge the court injunction that requires reimplementation of MPP, and the termination will be effective as soon as practicable once the injunction is lifted.

To comply with the court order, DHS is closely coordinating the court-mandated reimplementation of MPP with the government of Mexico to address security concerns and operational constraints. We continue to increase the number of individuals returned to Mexico at each designated port of entry as is operationally feasible and continue to closely coordinate the court-mandated reimplementation of MPP with the government of Mexico to address security concerns and operational constraints.

QUESTIONS FROM RANKING MEMBER CLAY HIGGINS FOR BENJAMINE “CARRY” HUFFMAN

Question 1. We heard from Border Patrol agents on the ground along the Southwest Border that DHS had instructed that certain individuals with existing family ties in the United States is not allowed to be enrolled or disenrolled in MPP.

Please explain why these individuals are not eligible for MPP, despite not expressing a credible or reasonable fear, or having a vulnerability. Moving forward under MPP 2.0, will individuals with family ties in the United States be exempt from MPP?

Answer. This is incorrect. An individual’s family ties in the United States have no bearing on whether they are enrolled in Migrant Protection Protocols (MPP) where they are otherwise suitable for enrollment in the program. Rather, the Guidance Regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols states that: “Family units will not be separated for the purposes of MPP enrollment” (emphasis added). Simply put, members of family units arriving at the Southwest Border will either all be enrolled together in MPP or will all be placed together into a different processing pathway.

Noncitizens who are excepted from MPP are:

- Unaccompanied children (UC), as defined in 6 U.S.C. 279(g)(2);
- 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.

The following individuals will be presumed to be excepted from processing under MPP due to their particular vulnerabilities:

- Those with a known mental or physical health issue, including a disability or a medical condition related to pregnancy;
- Those with particular vulnerabilities given their advanced age; and

- Those at increased risk of harm in Mexico due their sexual orientation or gender identity.

Question 2a. According to U.S. Customs and Border Protection's (CBP's) Southwest Border encounter numbers, in January 2022, there were almost 5,000 encounters per day. And the January 2022 MPP enrollee numbers were less than 13 per day.

How does CBP make the decision to enroll a migrant in MPP versus a different Title 8 processing pathway (like expedited removal or issuing a notice to appear for immigration proceedings)?

Answer. CBP agents and officers make a case processing disposition determination, to include enrollment in a specific processing pathway, at the time of apprehension or encounter taking into account the totality of the circumstances, to include available downstream processing resources such as U.S. Immigration and Customs Enforcement (ICE) detention capacity and criteria. Inadmissible noncitizens encountered within 96 hours of crossing between the ports of entry may be subject to placement in MPP if they are nationals of any country in the Western Hemisphere other than Mexico and are otherwise suitable for enrollment in the program pursuant to the DHS Guidance Regarding the Court-Ordered Reimplementation of the Migrant Protection protocols. The U.S. Government is currently enrolling individuals into MPP in good faith to comply with the court order. Enrollments are based on the DHS guiding principles.

Question 2b. One of CBP's roles in the implementation of MPP is determining whether an individual is subject to MPP. How does CBP determine of those almost 5,000 individuals who will be enrolled in MPP?

Answer. As of March 17, the U.S. Border Patrol (USBP) is expelling approximately 50 percent of daily apprehensions pursuant to the Centers for Disease Control and Prevention (CDC) Title 42 public health order (CDC Order). Individuals not subject to the CDC Order, including those not eligible for either expulsion under Title 42 such as unaccompanied children (UC) may be processed under any available Title 8 processing disposition and enrolled in any applicable processing pathway. Available dispositions and pathways include but are not limited to Expedited Removal, Reinstatement of Prior Order of Removal, and Warrant of Arrest/Notice to Appear. CBP agents and officers make a case processing disposition determination, to include enrollment in MPP, at the time of apprehension or encounter considering the totality of the circumstances, to include available downstream processing resources such as U.S. Immigration and Customs Enforcement (ICE) detention capacity and criteria. Inadmissible noncitizens encountered within 96 hours of crossing between the ports of entry may be subject to placement in MPP if they are nationals of any country in the Western Hemisphere other than Mexico and are otherwise suitable for enrollment in the program pursuant to the DHS Guidance Regarding the Court-Ordered Reimplementation of the Migrant Protection protocols.

QUESTION FROM CHAIRWOMAN NANETTE DIAZ BARRAGÁN FOR EMILY MENDRALA

Question. Does DHS, the State Department, or the IOM track the number of individuals who decide to disenroll from MPP and remain in Mexico or return to their country of origin? If so, can you provide information on when and where individuals who have decided to disenroll from MPP have gone?

Answer. Response was not received at the time of publication.

QUESTIONS FROM RANKING MEMBER CLAY HIGGINS FOR EMILY MENDRALA

Question 1a. In Mr. Nuñez-Neto's written testimony he says, "Additionally, the Department of State is working with international organizations to increase access to legal and other informational resources via shelters in Mexico, including through provision of WiFi and outfitting of private spaces that can be used to consult remotely with legal representatives or others."

What are the organizations involved and how much has each received to take part in this effort?

Question 1b. Could you go into more detail on what services are being funded, and at what levels?

Question 1c. How does this funding level compare to State Department funding of the original MPP program?

Question 1d. What is the State Department's overarching strategy and spending plan for MPP-related projects?

Question 1e. How much funding has the State Department provided to international organizations and non-profits for the reimplementation of MPP?

Answer. Response was not received at the time of publication.

Question 2. Please explain how the Department of State intends to, “to reimplement MPP in good faith” as required by Federal court order.

Answer. Response was not received at the time of publication.

QUESTIONS FROM CHAIRWOMAN NANETTE DIAZ BARRAGÁN FOR TIMOTHY ROEMER

Question 1. During my recent oversight trip, Border Patrol agents stated that they only ask migrants about fear of returning to Mexico and not whether they meet specific vulnerabilities that would exempt them from MPP.

Why is this the case and will DHS consider changing this?

Answer. Response was not received at the time of publication.

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What is the policy and how will this communication lapse be addressed?

Answer. Response was not received at the time of publication.

Question 2b. What actions will the administration take to help migrants who arrived at the port of entry on their own at the designated time but were not allowed in by CBP? Is the administration even tracking this group?

Answer. Response was not received at the time of publication.

Question 3. What special accommodations does CBP provide illiterate migrants, or migrants who speak indigenous languages native to certain areas of Mexico and Central America, to ensure they understand the process and the documents they are signing?

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Answer. Response was not received at the time of publication.

Question 5. How is the reimplementation of MPP impacting the other priority missions on the Southwest Border, such as processing legal trade and travel at ports of entry?

Answer. Response was not received at the time of publication.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR TIMOTHY ROEMER

Question 1. Why are so few individuals being found to have a fear of return to Mexico during their NRI despite reports of thousands of kidnappings and attacks against migrants and asylum seekers returned to Mexico this past year?

Answer. Response was not received at the time of publication.

Question 2. Why did DHS make the choice to expand the program to non-Spanish speaking individuals, like Haitians? These individuals are particularly vulnerable, and I find that choice very concerning.

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Question 3. While we appreciate DHS is taking steps to provide migrants with counsel, we have heard concerns that access to counsel in this program is not meaningful. There are very few lawyers available and 24 hours to consult is too little time to prepare. How does DHS intend to strengthen legal access?

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Question 4. How is DHS headquarters ensuring that CBP sector chiefs are implementing the practices and protocols set by headquarters?

Answer. Response was not received at the time of publication.