

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

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April 27, 2022

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Mayorkas:

We write to conduct oversight over the Department of Homeland Security's (DHS) reimplementation of the Migrant Protection Protocols (MPP). The Biden Administration has repeatedly tried to end MPP as it continues to roll back policies designed to ensure border security and disincentivize illegal crossings. Despite being ordered by a federal court to work in good faith to reimplement MPP, we learned on a recent trip to the southern border that Border Patrol agents across multiple sectors call into question DHS's commitment to full reimplementation. This raises questions about whether the Biden Administration's DHS political appointees and the White House are actively working to sabotage MPP to facilitate the release of even more illegal border crossers into the U.S.

Republican Members of the Oversight Committee recently toured border facilities and spoke with officials in the San Diego, El Centro, and Yuma sectors.<sup>1</sup> Multiple U.S. Customs and Border Protection (CBP) officials told Members that new requirements imposed on MPP by the Biden Administration rendered it useless in their sector.<sup>2</sup> One high-level CBP official told us they are limited to an arbitrary 10 enrollments in MPP per day in one sector, and the additional bureaucratic requirements increased the average enrollment processing time from 1.5 hours to over 8 hours per migrant.<sup>3</sup> Because the U.S. Border Patrol agents and facilities are so overwhelmed with the historic numbers of illegal border crossings, it is much faster to simply process those migrants for release into the interior of the U.S.<sup>4</sup> Agents speculate that release into the interior is the actual intent of Biden Administration officials, not a defect of the process.<sup>5</sup> If true, these reports reveal gross mismanagement and intentional thwarting of our system of law and order by political appointees in the Biden Administration.

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<sup>1</sup> H. Oversight and Reform Comm. Republicans (Ranking Member James Comer, et al.), Southwest Border Tour (Apr. 11-12, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

<sup>5</sup> *Id.*

The premise behind MPP is simple: require inadmissible aliens to wait in Mexico while their U.S. immigration case is adjudicated instead of permitting them to be released into the interior of the U.S.<sup>6</sup> Otherwise, those aliens would be free to enter the country where their cases would take years to complete given a significant backlog on the non-detained docket, which now stands at over 1.7 million cases.<sup>7</sup> By removing the incentive to illegally cross into the U.S. and apply for asylum with a meritless claim, MPP worked successfully to reduce the flow of illegal border crossers into the U.S. as it was expanded in the latter half of 2019 and 2020 before the COVID-19 pandemic.<sup>8</sup> Approximately 70,000 migrants had been enrolled in the program until the Biden Administration ceased enrollments on January 20, 2021.<sup>9</sup>

The Immigration and Nationality Act provides clear statutory authority for MPP, stating that for aliens arriving from contiguous territory over land, the U.S. government “may return the alien to that territory pending a proceeding under section 240 [Removal Proceedings before an Immigration Court].”<sup>10</sup> Despite its legality and usefulness in enhancing border security, the Biden Administration ceased MPP enrollments in on its first day in office and has sought to terminate the program multiple times.<sup>11</sup> A federal court injunction currently requires the DHS to “enforce and implement MPP *in good faith*...”<sup>12</sup> Yet despite historic levels of illegal crossings in recent months, there have been very few enrollments in MPP. In fact, there were only 489 enrollments in February across the entire southwest border,<sup>13</sup> which saw over 158,000 illegal crossings.<sup>14</sup>

To assist Republicans on the Committee on Oversight and Reform in conducting oversight over the DHS’s reimplementation of the MPP program, please provide the following documents and information, no later than May 11, 2022:

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<sup>6</sup> Press Release: *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration*, Dep’t. of Homeland Security (Dec. 20, 2018), available at <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

<sup>7</sup> Immigration Court Backlog Tool, TRAC Reports, Syracuse University, available at [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/) (last accessed Apr. 16, 2022).

<sup>8</sup> See Southwest Land Border Encounters, U.S. Customs and Border Protection, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed Apr. 16, 2022).

<sup>9</sup> MPP (Remain in Mexico) Deportation Proceedings – All Cases, TRAC Reports, Syracuse University, available at <https://trac.syr.edu/phptools/immigration/mpp4/> (last accessed Apr. 16, 2022).

<sup>10</sup> INA § 235(b)(2)(C).

<sup>11</sup> See Memorandum to Tae D. Johnson et al. from Secretary Alejandro Mayorkas, *Termination of the Migrant Protection Protocols* (Oct. 29, 2021), available at [https://www.dhs.gov/sites/default/files/publications/21\\_1029\\_mpp-termination-memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf).

<sup>12</sup> *Texas v. Biden*, No. 221-cv-067 (N.D. Tex. Aug. 13, 2021).

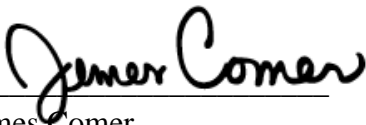
<sup>13</sup> Miroff, Nick & Maria Sacchetti, *Biden faces influx of migrants at southern border amid calls to lift pandemic restrictions that aided expulsions*, WASH. POST (Mar. 24, 2022), available at <https://www.washingtonpost.com/national-security/2022/03/24/border-biden-migrants-influx-pandemic/>.

<sup>14</sup> See Southwest Land Border Encounters, U.S. Customs and Border Protection, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (Sort by Component: U.S. Border Patrol) (last accessed Apr. 16, 2022).

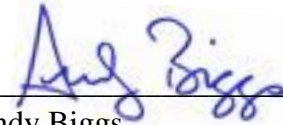
1. All documents and communications between the DHS and CBP officials, from January 20, 2021 to the present, regarding enrollments in the MPP program;
2. All documents and communications, from January 1, 2019 to the present, between or among DHS or CBP officials containing any estimate of the processing time to enroll an individual in the MPP program;
3. All documents and communications, from January 20, 2021 to the present, between or among DHS or CBP officials containing any estimate of the processing time to release an individual from U.S. Border Patrol custody on their own recognizance or to enroll that individual in an Alternatives to Detention (ATD) program;
4. All documents and communications, from January 20, 2021 to the present, between or among DHS or CBP officials regarding the impact of additional requirements on the average processing time to enroll and individual in the MPP program;
5. All statistics on enrollments in the MPP program from January 1, 2019 to the present, disaggregated by sector;
6. All documents and communications, from January 20, 2021 to the present, between or among employees of DHS and the Department of Justice Executive Office for Immigration Review (EOIR) referring or relating to the MPP Program and its reimplementation.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer  
Ranking Member  
Committee on Oversight & Reform



Andy Biggs  
Member of Congress



Yvette Herrell  
Member of Congress



Glenn Grothman  
Ranking Member  
Subcommittee on National Security


Secretary Mayorkas

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Pete Sessions  
Member of Congress



Byron Donalds  
Member of Congress



Paul A. Gosar, D.D.S.  
Member of Congress

cc: The Honorable Carolyn B. Maloney, Chairwoman  
Committee on Oversight & Reform

The Honorable Stephen F. Lynch, Chairman  
Subcommittee on National Security