



Homeland
Security

January 14, 2020

MEMORANDUM FOR THE ACTING SECRETARY

FROM:

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

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Matthew T. Albence
Deputy Director *and*
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

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Mark Koumans
Acting Director
U.S. Citizenship and Immigration Services

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SUBJECT:

Response to the Migration Protection Protocols
Red Team Report

We appreciate the DHS Senior Leadership-led effort to conduct a top-down review of the Migrant Protection Protocols (MPP) policies and implementation strategies. As was the case with then-Acting Secretary Kevin McAleenan, we welcome the thoughtful recommendations. In the former Acting Secretary's November 8, 2019 memorandum that accompanied the recommendations, we were directed to deliver a plan outlining how "the Department will enhance the implementation of the MPP in accordance with these recommendations" within thirty days, and then, within ninety days, to complete the actions identified in this plan. This memorandum is intended to meet that direction.

Upon careful review of the Migrant Protection Protocols Red Team Report, we note that many of the identified recommendations have already been or are being addressed by one or more Components. That said, the spirit of the Report is to find ways for increasing the effective and efficient implementation of MPP—that is something to which we are collectively committed.

With the intent to make MPP more effective and efficient, the following are items identified by the Report that we are already taking steps to address. For each item, we have identified ongoing activities:

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Recommendation: Make every effort to ensure that migrants can access information and speak with Department of Homeland Security (DHS) officials in their preferred language.

Ongoing Activities:

- U.S. Customs and Border Protection (CBP) currently utilizes CBP employees, the U.S. Citizenship and Immigration Services (USCIS) Language Line Services, and contract language interpreters and translators to communicate with individuals who have limited English proficiency. Additionally, CBP uses numerous job aids to ensure language access is provided to individuals who have limited or no English proficiency.
- DHS Components have access to a 24/7/365 language contract with Lionbridge Technologies, Inc. to ensure that employees can communicate effectively with all individuals in custody.
- CBP will continue to review what languages other than Spanish, if any, are the primary means of communication for individuals amenable to MPP, and make available translations of the MPP tear sheet in those languages.

Recommendation: Reinforce the avenues by which family members, attorneys, witnesses, non-governmental and international organizations, the press, and relevant stakeholders can view MPP proceedings, meet with migrants (if appropriate), or visit temporary hearing locations.

Ongoing Activities:

- Currently, consistent with Executive Office for Immigration Review (EOIR) policy and practice, individuals interested in observing immigration court proceedings for individuals processed under the MPP can do so at either the physical court location in the case of San Diego and El Paso, or at the location from which the immigration judge video teleconferences into the immigration hearing facilities (IHF) in Laredo and Brownsville.
- On December 20, our Components approved joint guidance to emphasize that it will continue to be the case that anyone has access to the IHFs, consistent with operational constraints and EOIR rules, with preference given to those involved in legal proceedings (lawyers, witnesses, etc.), and lawyers will continue to have time and space to meet with clients prior to hearings.
 - The guidance states that credentialed media, and other members of the public may be admitted, after those that are critical for the individual to receive a full and fair hearing are admitted. Moreover, individuals admitted to the IHFs must abide by EOIR rules pertaining to courtroom decorum, as well as DHS facility rules.
- CBP, ICE, the Federal Protective Service (FPS), and EOIR will continue to coordinate to allow appropriate access to immigration proceedings on a manageable scale that allows for safe and orderly court operations.
- USCIS will generally accommodate a request by an alien to have an attorney or accredited representative present (in-person or via telephone) during MPP non-refoulement assessment interviews that occur at the IHFs in Laredo and Brownsville, if the attorney or representative filed or intends to file a Form G-28.

Recommendation: Standardize and ensure the consistency of the information individuals are provided regarding “migrant rights” building on recent efforts to show “Know Your Rights” videos at temporary hearing locations.

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Ongoing Activities:

- CBP is updating the tear sheet provided to migrants enrolled in MPP with additional information about the operation of MPP during appeals to the Board of Immigration Appeals.
- “Know Your Rights” videos are being played in the waiting areas at the IHFs (in Laredo and Brownsville), and a script of the “Know Your Rights” video is also available.

Recommendation: Advocate with the Government of Mexico (GOM), the Department of State (DOS), and trusted international organizations to improve the safety and security of MPP migrants while they wait in Mexico.

Ongoing Activities:

- DHS regularly advocates with GOM and DOS colleagues for increased security at shelters and MPP return locations. DHS is also regularly engaged both directly and indirectly with the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) on similar topics. DHS will continue the efforts to engage with our partners on this issue.

Recommendation: Reinforce training and standards for those involved in non-adversarial interviewing.

Ongoing Activities:

- All credible and reasonable fear screenings, and non-refoulement interviews as a part of the MPP, are to be conducted in a non-adversarial manner. DHS continues to provide extensive training to its officers on how to conduct non-adversarial interviews. In addition, USCIS also provides specific trainings on interviewing techniques and best practices.
- As noted above, USCIS will generally accommodate a request by an alien to have an attorney or an accredited representative present during MPP non-refoulement assessment interviews that occur at IHFs in Laredo and Brownsville, if the attorney or representative filed or intends to file a Form G-28.

In addition to the ongoing activities identified above, we intend to work together over the next ninety days to further enhance implementation of MPP through the following activities. These are organized under broadly the same categories identified in the November 8, 2019 memorandum:

Assessing and Processing the Amenability of Aliens for MPP

- Reinforcing the MPP “Guiding Principles” to agents and officers regarding the categories of individuals not amenable to MPP, specifically “Aliens in special circumstances” such as those with “known physical/mental health issues.”
- Examining current guidance to determine whether additional documents, including Standard Operating Procedures, would be appropriate for items such as application of amenability guidance, the roles of various actors in the MPP intake/screening process, when restraints are appropriate, and information-sharing standards and expectations.

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- Exploring whether additional, standardized information should accompany the service of MPP-related documentation.
- Developing plans with the Department of Justice (DOJ) to conduct all MPP proceedings at or near POEs to speed up case processing.

Facilitating Access to Counsel and Safeguards through the MPP process

- In addition to a list of free or low cost legal services provided to aliens subject to MPP upon enrollment, coordinating with GOM, DOS, and DOJ to make all reasonable efforts so that MPP migrants have access to information about the U.S. immigration system and are provided the opportunity to seek legal representation.
- Exploring issues related to, and identifying common practices for, family units of mixed nationalities.
- Creating an integrated mechanism to share MPP information among DHS and DOJ.

Non-refoulement Assessment Interviews, Information Sharing, and Measuring the Success of the Programs

- Reviewing and updating relevant arrangements between DHS and EOIR tied to information sharing about immigration cases.
- Developing with DOJ a “dashboard” to track, at the macro level, the outcomes of MPP cases, in connection with efforts tied to the Unified Immigration Portal.
- Working with DOJ to establish and implement MPP effectiveness measures in areas such as no-show rates, the timeline for case adjudication, the number of parents or legal guardians returned to Mexico pursuant to MPP who subsequently send minor children across the border to qualify as unaccompanied alien children (UACs), and tracking relevant trends in the number of unlawful entries of non-Mexicans along the Southern Border.
- Consistent with international agreements and arrangements and the U.S. Government’s existing foreign assistance programs and processes, supporting GOM activities to address crime and insecurity in locations in Mexico where those in MPP are returned.
- Continuing regular contact with Mexican counterparts—daily at the local level and weekly between capitals—discussing whether GOM continues to fulfill the assurances it provided during the initiation of MPP, including GOM’s commitment to fulfilling its international non-refoulement obligations.

Recognizing ongoing litigation with respect to MPP, USCIS, CBP, and ICE will closely consult with our respective legal teams going forward.

cc: James W. McCament
Senior Official Performing the Duties of the Under Secretary
Office of Strategy, Policy, and Plans