September 2, 2022

Hon. Joseph R. Biden, Jr.
The White House

CC: Hon. Antony J. Blinken, Secretary of State
Hon. Merrick B. Garland, Attorney General
Hon. Alejandro N. Mayorkas, Secretary of Homeland Security
Hon. David L. Neal, Director, Executive Office for Immigration Review

Dear President Biden:

As faith-based, humanitarian, legal services, immigration, and human rights organizations that work at the border and nationally to welcome migrants to the United States, we appreciate the Biden administration's steadfast commitment to terminating the disastrous Migrant Protection Protocols (MPP), also referred to as Remain in Mexico. While further litigation looms, it should not derail redressing the harm suffered by *all* people affected by MPP. Each of them has been subjected to legal and human rights violations detailed by Secretary Mayorkas in his October 2021 termination memo. Most immediately, these next crucial weeks leading up to a district court decision (on the *Texas v. Biden* plaintiff states' request to stay agency action) must be optimally used to urgently and efficiently process into the United States as many people impacted by MPP as possible.

Tens of thousands of adults and children have suffered in Mexico due to a policy rightly condemned by this administration even before it took office. In that context, we are extremely concerned by partners' reports that the first days of MPP 2.0 disenrollments were characterized by confusion; large numbers of hearing absences, some resulting in *in absentia* removal orders; as well as merits hearings that are unfair to the migrants involved. We expect swift action to address migrants' humanitarian plight and informational needs, and outline below a series of recommendations to achieve those objectives. These points address disenrollment from the current MPP 2.0 as well as redress for the harms of MPP 1.0.

Border groups across the southwest have a sterling track record of welcoming, including during the MPP wind-down of 2021. Many of our organizations are eager to resume assisting MPP migrants and U.S. government agencies in getting people into the United States safely and reuniting families. Yet, we have serious concerns that DHS's commendable commitment to disenrollments has not adequately taken into account stakeholder input.

Our positions are reflected in the major issues flagged here, which require immediate close collaboration and dialogue. We therefore respectfully request regular meetings with a joint,

inter-agency working group (White House, DOS, DOJ, and DHS) to discuss logistics, monitoring, operations, and troubleshooting. In such a forum, we could jointly discuss crucial day-to-day matters such as transportation on both sides of the border, without which safe passage for MPP migrants is impossible, and also larger issues of redress. In addition, reachable agency points of contact are vital to publicize for legal representatives, advocates, and migrants themselves to raise problems and questions.

As Secretary Mayorkas has repeatedly recognized, safety is an imminent and constant concern for everyone still outside the United States who has endured MPP's flawed procedures. The dangers are real, and every day makes a difference. The government must establish speedy, effective avenues to process all people subjected to MPP 1.0 ***and*** 2.0 into the United States, along with their family members who are now with them in Mexico or their country of origin. In exigent circumstances, such as when the Matamoros encampment closed or Ukrainian refugees arrived, CBP stepped up to process thousands of people far more quickly than the current pace of MPP disenrollments.

Apart from that slow timeline, we have not yet seen a plan designed to assure affected migrants meaningful access to the U.S. asylum system with the due process protections MPP previously denied them. To accomplish a successful end to MPP—one that brings effective and enduring redress to those harmed by it—we recommend the following actions:

(1) Immediately halt all MPP immigration court hearings and dismantle the Trump-era tent courts in Laredo and Brownsville, Texas.

At present, immigration-court hearings are fostering widespread confusion, sparse attendance as people face challenges to safely present for hearings, and wasted resources in both immigration-judge time and superfluous tent-court operations (which could be used instead to speed disenrollments and then should be dismantled). While linking hearing dates to disenrollments may be an easy way for agencies to space out the processing of pending cases, such a process is ultimately inefficient and not in the migrants' best interests from either a humanitarian or a due-process perspective.

First-hand accounts and media reports from immigration courtrooms about the early days of MPP disenrollments make clear that tying them to scheduled hearings is fraught with problems. As a threshold matter, the disenrollment process should move much faster than limiting it to the number of people scheduled for court hearings each day. This restriction long delays action for many who have hearings scheduled months away (hearings are scheduled at least into early 2023) and those without pending hearing dates. In the meantime, migrants in MPP continue to face significant danger while waiting in Mexico. For example, apart from well-documented violence in Tijuana and Ciudad Juarez, we have reliable information that as the MPP population

in Monterrey shelters has decreased, the danger for migrants has increased. And as recently as August 18, 2022, a woman in Matamoros waiting for disenrollment was sexually assaulted.

Whether or not MPP immigration court hearings are quickly halted, there is an urgent need for (i) DOJ, DHS, and the White House to work in tandem to address these issues immediately; and (ii) policy-implementation guidance to all MPP immigration judges, including those not based directly in MPP courts, such as the Dallas/Ft. Worth Adjudication Center.

Our position is that hearing attendance should not be required for disenrollment and, relatedly, processing should not be limited only to MPP ports of entry, which are not safely accessible for many migrants. Some MPP participants were forced to flee the border areas closest to their assigned port of entry due to imminent risks to their safety and security; they should not be required to travel hundreds of miles—primarily through territory that is exploited by organized crime—back to their assigned port of entry because that is the only mechanism by which they can access the disenrollment process. We have detailed and specific recommendations about a better system on the ground, including increased IOM transport, that would achieve disenrollment goals faster while reducing risk to migrants' safety. But so far the administration has not offered a forum in which to share and discuss these urgent matters.

Getting people out of MPP would work far better if done administratively without an immigration judge's involvement. People would be disenrolled from MPP in tandem with a process to file motions for change of venue and change of address forms with EOIR. In such a system, disenrollment processing should occur at any and all ports of entry (including but not limited to those previously used for MPP), to facilitate access by affected individuals. People could then resume their immigration-court hearings after reaching a final U.S. destination. This method also ensures them time to find counsel, access family, community, and medical support, and properly prepare their cases.

(2) Prioritize the immediate processing of *all* individuals subjected to MPP, including migrants from MPP 1.0, without excluding those who have final removal orders on the merits.

The *Texas v. Biden* injunction did not require a cessation of parole or other processing of MPP 1.0 persons. Nevertheless, for a full year no one benefited from the winddown. And DHS is currently acting in a manner that clearly signals disenrollment of MPP 2.0 participants takes precedence over addressing those who were affected by MPP 1.0. We strongly reject treating these groups of people separately or in sequence: they must all be prioritized for immediate processing into the United States.

Claims to redress by MPP 1.0 participants are longstanding and completely vindicated by Secretary Mayorkas' termination memo. They deserve parallel urgent attention alongside the equally vital MPP 2.0 disenrollment process. Again, we know that CBP is capable of large-scale processing when that is a policy imperative. The last throes of MPP present exactly such a moment: *all* MPP migrants should be priorities for expeditious processing that seeks, both at the border and in their immigration proceedings, to restore them to the position where they should, much earlier, have had a meaningful opportunity to present their claims for asylum.

Moreover, there needs to be collaborative discussion with stakeholders regarding how DHS and DOJ can act to mitigate and forestall deleterious effects of MPP, including already-issued removal orders. While safety for all migrants affected is the top priority, the Administration must formulate and implement longer-term plans for equitable adjudication of their asylum claims. There are many different categories of people affected—one example is migrants with *in absentia* removal orders, who during the MPP 1.0 winddown were aided by joint motions to reopen—but they are all united by the harm that MPP has wreaked on their immigration cases. These effects can be as damaging to migrants' futures as the indignities and abuse they have suffered, and must be addressed holistically with open-mindedness to remedying each and every type of legal situation in which MPP trapped migrants.

(3) End ICE's detention policy for disenrolled persons whose MPP hearings resulted in a removal order.

We are deeply dismayed that DHS, without any external stakeholder discussion, instituted a policy that individuals with removal orders issued after their MPP 2.0 hearings will always be detained. This categorical treatment, seemingly without individualized consideration, is completely at odds with Secretary Mayorkas' conclusions that the policy's flaws were "endemic," meaning they afflicted both MPP versions and undermined migrants' ability to effectively present their cases. Indeed, relief has been granted in only about 63 cases. Secretary Mayorkas was crystal clear that "there are inherent problems with the program that no amount of resources can sufficiently fix, and others that cannot be sufficiently addressed without detracting from key administration priorities and more enduring solutions." (Termination Memo, 38). In this context, absent evidence demonstrating that a migrant poses an individualized national security or public safety risk, no one should be detained after disenrollment.

We recognize that the Biden administration announced steps to attempt to address the "endemic flaws" of MPP 1.0. The most fundamental problems, however, continued to infect the fairness of every single hearing in MPP 2.0. To subsequently punish, through detention, the people who emerged from such a flawed process—with the removal orders that were MPP's unrelenting objective—defies common sense and compounds MPP's injuries. Such detention by ICE is also

especially cruel for those who are finally able to believe, fleetingly, that they are entering a safe and stable environment in the United States.

Relatedly, the administration must clearly delineate roles and authority on disenrollment, parole, and detention decisions. At present these responsibilities are blurred and lines of accountability have not been established, to migrants' significant detriment.

(4) Announce a plan to repaper and restart proceedings for persons who would be eligible for disenrollment but are now in the United States.

We acknowledge that MPP litigation culminating in the Supreme Court's June 2022 decision was beyond this administration's control. Nevertheless, its practical effect was to extend and intensify the suffering of those waiting in Mexico. Understandably, some migrants chose to re-enter the United States for self-preservation and safety. During the winddown last year, comprehensive guidance addressing this category of people was not forthcoming. We believe it is long overdue and should reflect the same principles applicable to other categories of persons affected by MPP: a recognition of the harms imposed on them by the policy and a commitment to remedy those harms to the greatest extent possible.

Procedurally, for persons who have reentered the United States, ICE and EOIR should act cooperatively to ensure that enforcement and adjudication of such cases are aligned with those goals. Migrants should be encouraged to restart their asylum claims, affirmatively wherever possible, including through a mechanism to reissue their NTAs and reopen cases where applicable. As recommended above, detention should be an extremely rare and individually justified exception.

(5) Execute a comprehensive, multilingual plan for migrant-facing communication.

Despite the learnings of 2021 and considerable preparation time provided by the Supreme Court's certification of judgment, DHS continues to struggle with inadequate communication to migrants about disenrollment, including through Indigenous language exclusion. There is now a closing window of opportunity to correct this failing through, first, making the better policy choices suggested herein, and then clearly explaining those avenues of processing into the United States to the people impacted. This includes individuals and families who have left the border region for other parts of Mexico or their home countries, where many are living in hiding.

To give only one example of missing advisals, many rigidities in the disenrollment process do, as we understand, commendably include exceptions for particularly vulnerable populations. Yet, DHS and EOIR have not properly communicated how those people should make themselves

known for appropriate treatment, or how that assessment interacts with the system used to exempt people from MPP 2.0 before disenrollments began.

All persons affected by MPP have the right under both domestic and international law to transparent and clear explanations of what the government is doing to process them into the United States and reactivate their right to a fair asylum process. DHS needs to communicate with them directly, and not only rely on advocates to transmit information and procedures. Advisals must be in multiple languages, including Indigenous language translation and interpretation.

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Thank you for considering our recommendations; we stand ready to engage with the Administration in making the end of MPP a reality for those migrants who have been subjected for so long to its harms. We look forward to prompt, in-depth discussions of these issues.

American Immigration Council
Center for Gender & Refugee Studies
HIAS
Hope Border Institute
Human Rights First
Immigrant Defenders Law Center
Interfaith Welcome Coalition - San Antonio
Jewish Family Service of San Diego
Kino Border Initiative
Las Americas Immigrant Advocacy Center
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Lawyers Guild Los Angeles Chapter
Refugees International
Southern California Immigration Project
Survivors of Torture, International
Taylor Levy Law
Witness at the Border
Women's Refugee Commission