



Homeland  
Security

## Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols (December 7, 2020)

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**Background:** Since its inception in January 2019, the Migrant Protection Protocols (MPP) remain a critical tool in managing irregular migrant flows at the U.S.-Mexico border. Building on former Acting Secretary McAleenan’s direction to ensure that MPP is the most effective and efficient program possible, Acting Secretary Wolf requested that the Department of Homeland Security (DHS) Components continue to refine processes and implement best practices related to MPP.

**Purpose:** As a continuation of efforts to improve MPP, several principles have been identified that either enshrine developments implemented after MPP’s inception or provide further enhancement and clarity for the MPP process.

Therefore, having secured Acting Secretary Wolf’s approval, and without prejudice to previous policy guidance, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and the Office of Operations Coordination (OPS), with support from other offices as needed, should take necessary action to ensure that MPP operations reflect these principles:

### Access to Information About MPP

#### **Actions to Provide Program Information**

DHS should continue to make every reasonable effort to ensure that aliens in MPP have access to information about the program. This includes, but is not limited to, a plain-language indication by CBP personnel of pertinent information in an alien’s service packet in the alien’s preferred language (using interpretation resources, as needed) and maintaining the MPP landing page on DHS.gov in English and Spanish which consolidates MPP-related information and resources. Additionally, as local infrastructure, resources, and processing allow this could also include “Know Your Rights” presentations and videos, etc.

#### **Information Regarding Access to Counsel**

Components should continue to ensure the ability to have retained counsel participate telephonically in USCIS’s MPP *non-refoulement* assessments -- where it does not delay the

interview, or as required by court order.<sup>1</sup> Aliens subject to MPP continue to have a right to be represented by counsel in removal proceedings before an immigration judge at no cost to the government.

### **Regular Release of Statistics**

Next, DHS should make every reasonable effort to regularly release DHS's MPP-related statistics. To that end, DHS and/or its Components should continue to provide publicly-available information regarding MPP.

### **Appeals**

As is currently the practice, where an immigration judge grants an MPP alien relief or protection from removal, but ICE has reserved appeal to the Board of Immigration Appeals, ICE will take custody of the alien and will determine whether to detain or release the alien into the United States pending the administrative appeal<sup>2</sup>.

### **Family Units**

#### **Definition of Family Unit**

For the purposes of MPP, DHS defines a family unit as a group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s). Every effort should continue to be made to maintain the integrity of family units pending completion of removal proceedings, consistent with applicable law and policy.

#### **Consolidation of Individual Cases of Family Unit Members**

If, for any reason, the individual cases of family unit members processed pursuant to MPP have not already been consolidated, DHS entities should work with DOJ, to the extent possible, to identify and link cases of these individuals. DHS and DOJ may also consider case consolidations in other reasonable instances, such as domestic partnerships, on a case-by-case basis.

#### **Adjudication of Expressions of Fear of Return to Mexico**

If any member of a family unit in MPP expresses a fear of returning to Mexico, then the entire family unit will await the adjudication of that claim before any return to Mexico can proceed, so long as there is not an independent basis to separate members of a family unit. If any member of a family unit establishes that he/she is more likely than not to suffer persecution on account of a protected ground or torture in Mexico, the entire family unit must not be processed for MPP or, if currently in MPP and in the United States together, must be removed from MPP and reprocessed as appropriate.

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<sup>1</sup> This policy both updates and supersedes in part section *A. Interview* of USCIS' January 28, 2019 Policy Memorandum PM-602-0169 which notes, "DHS is currently unable to provide access to counsel during the assessments."

<sup>2</sup> If an immigration judge grants an MPP alien's application for relief or protection from removal or orders the alien removed from the United States, and appeal is not reserved by either party, the alien should be processed in accordance with standard procedures applicable to final order cases.

### **Grants of Relief or Protection from Removal**

If any member(s) of a family unit processed under MPP is/are granted relief or protection from removal, the family member(s) (regardless of nationality) not granted relief or protection should be taken into ICE custody. A determination will be made regarding whether to detain or release the alien(s) into the United States pending completion of removal proceedings (including an administrative appeal) of all members of the family unit.

### **Mixed-Nationality Family Units**

Non-Mexican national or citizen members of mixed-nationality family units may be considered for processing through MPP if doing so maintains family unity. This applies even if one or more member(s) of the family unit might be of a nationality that is otherwise not generally amenable to MPP.

### **Mexican Citizen/National Family Member**

In the case of a family member who is a Mexican citizen or national, in order to maintain family unity, the Mexican citizen/national would be allowed to voluntarily withdraw his/her application for admission through a Form I-275 or be voluntarily returned to Mexico with the rest of the non-Mexican citizen/national family unit.

### **Mexican Citizen/National Family Member Expressing Fear of Return to Mexico**

If the Mexican citizen/national (or a parent or legal guardian on behalf of a Mexican citizen/national child) expresses fear of return to Mexico, that individual must no longer be voluntarily returned to Mexico with the rest of the family unit. Any withdrawal or return of such an individual to Mexico would not be voluntary given that the individual expressed a fear of return to Mexico. In that instance, and because the family unit cannot be separated pursuant to MPP, the entire family unit must not be processed for MPP or, if previously processed for MPP, the family unit must be removed from MPP and reprocessed as appropriate.

### **Unaccompanied Alien Children (UACs)**

#### **CBP Processing of UACs**

Any child who arrives at the border and is determined to be a UAC will be processed as such by CBP in accordance with existing UAC processing procedures, including transfer to the Department of Health and Human Services (HHS) and generally processed for removal proceedings pursuant to Section 240 of the Immigration and National Act (INA). UACs are not amenable to MPP.

#### **CBP Providing of UAC Information to HHS**

When CBP encounters a UAC who it can confirm was, in fact, previously processed as part of a family unit and returned to Mexico under MPP, CBP should provide HHS's Office of Refugee Resettlement (ORR) with all relevant identifying information for the UAC and those previously processed into MPP with him/her (e.g. full name(s), alien number(s), and processing location) when ORR assumes custody of the UAC. Providing this information will ensure that ORR has all options available when considering UAC placement and appearances at hearings.

## **Known Physical and Mental Health Issues**

In an instance where there is any doubt as to whether an alien should be included in MPP owing to a known physical or mental health issue, CBP should err on the side of exclusion.

### **Aliens Determined Not Fit to Travel**

Generally, aliens who are determined not to be fit to travel by medical personnel should be excluded from MPP. Exemptions from MPP for aliens with known physical or mental health issues are decided on a case-by-case basis. DHS officials should carefully evaluate and provide appropriate responses for those in special circumstances, which could include exclusion from MPP.

### **Expressions of Need for Medical Attention**

If at any time an alien expresses a need for medical attention, or if a CBP agent or officer observes that medical attention is warranted, that alien will be referred to on-site medical staff. The on-site medical staff will both screen the alien and make the determination about his/her immediate medical needs and whether emergent care is required. In this situation, CBP is to follow the guidance issued in its “Enhanced Medical Support Directive.”<sup>3</sup>

### **Case-by-Case Determination of Exemption from MPP**

Following CBP’s medical evaluation process -- which should consider potential physical and/or mental health issues related to an alien’s disclosure of personal history -- determinations as to whether an alien is exempt from MPP due to known physical or mental health issues are generally to be made on a case-by-case basis at the local level with supervisory review. The Port Director or Chief Patrol Agent of each location should use his/her discretion to determine amenability on a case-by-case basis considering the totality of the circumstances. Aliens who receive medical clearance and are fit for travel, as determined by medical personnel, are amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determines otherwise.

## **Use of Restraints**

Aliens subject to MPP are not a detained population, including during transportation to and from immigration court hearings.

To the extent CBP is required to use restraints during MPP processing, CBP should continue to follow the National Standards on Transport, Escort, Detention and Search (TEDS). To the extent ICE or contract staff is required to use restraints during MPP processing or transportation, ICE or contract staff should continue to follow the Performance-Based National Detention Standards (PBNDS) 2011 and relevant supplemental guidance, including the ICE Enforcement and Removal Operations (ERO) Memorandum on Use of Restraints (ERO 11155.1).

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<sup>3</sup> <https://www.cbp.gov/document/directives/cbp-enhanced-medical-efforts>

## **Interagency Collaboration**

### **Collaboration with DOS**

Recognizing that DHS does not have the statutory authority to provide foreign assistance and deferring to DOS's internal regulations and procedures, DHS should, to the greatest extent possible, regularly collaborate with DOS to identify programs or other efforts that support MPP aliens' options to access safe shelters and MPP-related information during their time in Mexico.

### **Collaboration with DOJ and HHS**

Further, DHS should also regularly collaborate with DOJ and HHS to exchange appropriate case-related and statistical information tied to the implementation of MPP and related processes.

## **Ongoing Improvement**

Notwithstanding the above-mentioned items, DHS should continue to evaluate MPP operations and effectiveness and make continued adjustments, as needed, to improve the integrity and operation of the MPP program including in areas not specifically articulated in this memorandum.

As further potential improvements are identified by CBP, ICE, USCIS, the Office of Strategy, Policy and Plans (PLCY), the Office of Operations Coordination (OPS), the Office of the General Counsel (OGC), the Office of Civil Rights and Civil Liberties (CRCL), etc., all interested parties, including interagency partners, should collaborate to find the most appropriate outcome to reinforce the integrity of MPP.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.