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Congress of the United States
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Committee on Appropriations
Washington, DC 20515-6015

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November 5, 2021

The Honorable Antony Blinken
Secretary
Department of State
Washington, D.C. 20520

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

Dear Secretary Blinken and Secretary Mayorkas:

We write to express our concern that the Department of Homeland Security (DHS) is continuing its efforts to restart the so-called “Migrant Protection Protocols” (MPP) program to comply with the order from the U.S. District Court for the Northern District of Texas to “enforce and implement MPP *in good faith*”. We are encouraged by Secretary Mayorkas’s October 29, 2021, memo to rescind the program because we believe MPP is contrary to DHS authorities under the Immigration and Nationality Act, our international treaty obligations, and the principles of due process.

MPP inappropriately shifts United States asylum and human rights responsibilities under international treaty obligations to Mexico in the absence of a legally binding agreement. It therefore lacks legal authority and should not be revived. Further, by not proactively inquiring as to whether each migrant had a fear of being returned to Mexico, DHS almost certainly violated legal prohibitions and international commitments against refoulement during its prior implementation of the program.

Even setting aside the program’s basic legal flaws, those returned under MPP were provided almost no access to legal counsel in the United States; faced limited availability of shelter and security in Mexico, including safe transportation to and from immigration proceedings in the United States; and were not adequately advised of their rights and responsibilities in the context of those proceedings. In addition, the program lacked a clear definition of who should be considered a member of a “vulnerable population” not amenable to placement in MPP and was not sufficiently structured to ensure that the cases of migrants placed in MPP would be adjudicated in a timely manner.

Although we believe MPP to be fundamentally and fatally flawed, and do not support restarting the program, any restart of the program required by court order would, at a minimum,

require significant changes that would necessitate close cooperation between the Department of State and DHS, the commitment of substantial resources by both departments, and rigorous administrative safeguards, including but not limited to the following:

- Routinely and proactively asking individuals whether they have a fear of returning to Mexico prior to placement in MPP;
- The establishment of a clear definition of vulnerable populations who are not amenable to MPP, including but not limited to the elderly, disabled, mentally impaired, pregnant, LBGTQ+, and special needs children;
- Requirements that hearing dates occur quickly and for any individual whose adjudication process is still incomplete after a certain period of time—not to exceed six months—their admission into the United States for the remainder of their adjudication process, without detention unless the individual is assessed to be flight risk or a threat to public safety or national security;
- The provision of appropriate housing, food, healthcare, access to counsel, and security for all individuals participating in the program in locations near the port of entry (POE) through which they will access their immigration hearings, along with secure transportation to and from the POE;
- Routine and frequent access to legal counsel, including prospective pro bono legal counsel, at or near the POE, including access other than immediately prior or subsequent to immigration court proceedings; and
- Demonstrated collaboration with the Government of Mexico to ensure the safety of returned individuals.

As noted in Secretary Mayorkas’s October 29 memo, there are “inherent problems with MPP that no amount of resources can sufficiently fix” and “others cannot be addressed without detracting from” other critical priorities, including “more enduring solutions.” Congress has never provided funding to support MPP, despite specific requests from the prior Administration. Any funding needed for Immigration Hearing Facilities, infrastructure to support adequate and safe access to counsel, or to address any of the other above necessary safeguards would require a redirection of appropriations intended by Congress for other programs, introducing significant risk to those programs.

We look forward to continuing to work with you and your departments on ways to uphold the legal and moral obligations of the United States to provide security and due process to asylum seekers and to improve the conditions in the source countries of irregular migration.

Sincerely,



Lucille Roybal-Allard
Chairwoman
Subcommittee on Homeland Security



Barbara Lee
Chairwoman
Subcommittee on State, Foreign
Operations and Related Programs

cc: The Honorable Harold Rogers
Ranking Member
Subcommittee on State, Foreign
Operations and Related Programs

The Honorable Charles Fleischmann
Ranking Member
Subcommittee on Homeland Security

The Honorable Ken Salazar
Ambassador of the United States to Mexico

The Honorable Esteban Moctezuma Barragán
Ambassador of Mexico to the United States