United States Senate

August 27, 2021

President Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington D.C. 20500

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

Dear President Biden and Secretary Mayorkas,

On Tuesday, the Supreme Court declined to stay a nationwide injunction prohibiting the Department of Homeland Security from implementing or enforcing its June 1, 2021 memorandum that would permanently terminate the Migrant Protection Protocols (MPP).[1] The June 1 memorandum was plainly unlawful, not only because Secretary Mayorkas failed to consider the significant benefits of the MPP as the Administrative Procedure Act requires, but also because 8 U.S.C. § 1225 states that aliens seeking asylum "shall be detained" or returned to a contiguous country.[2] DHS has no authority to terminate a program returning asylum applicants to Mexico pending resolution of their claims and instead release these individuals into the interior of the country.

Because your administration's decision to terminate MPP was unlawful, the injunction issued by the district court requires you "to enforce and implement MPP *in good faith* until such a time as it has been lawfully rescinded in compliance with the APA and until such a time as the federal government has sufficient detention capacity to detail all aliens subject to mandatory detention under section 1255 without releasing any aliens *because of* a lack of detention resources."[3]

Secretary Mayorkas has already stated that DHS will "comply with the order in good faith."[4] But this promise merely to comply in good faith stands in stark contrast to your promise to "vigorously

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[1] *Biden v. Texas*, No. 21A21 (U.S. Aug. 24, 2021) (order denying application for a stay).

[2] 8 U.S.C. § 1225(b).

[3] *Texas v. Biden*, No. 2:21-CV-067-Z at 52 (emphasis removed) (N.D. Tex. Aug. 13, 2021) (order granting preliminary injunction).

[4] Press Release, Department of Homeland Security, DHS Statement on Supreme Court Decision on MPP (Aug. 24, 2021), https://www.dhs.gov/news/2021/08/24/dhs-statement-supreme-court-decision-mpp.

challenge" the court's decision.[5] And it is wholly insufficient given that this country is facing a border crisis precisely because of this administration's decision to terminate the MPP and adopt other policies that promote illegal immigration. After a year in which we had the lowest rate of illegal migration in over four decades, by the end of the year this administration will have orchestrated the illegal entry of as many as 2.3 million illegal aliens[6]—the equivalent of the entire population of Houston, Texas, America's fourth largest city.

Because of this administration's desire to impose open-borders policies, it is Congress's duty to oversee that this administration works expeditiously to reinstitute the MPP. Accordingly, I request that you submit the following to me on the same schedule as outlined in the district court's order:

1. The report required by the district court's injunction. In the event that the reporting requirement issued by the district court is altered, please continue to send the information required by the court's August 13, 2021 order as well as any information that the court may require in the future.

2. Any and all steps the United States has taken to implement the MPP.

3. The anticipated date on which the United States will begin returning illegal immigrants to Mexico under the MPP.

4. The anticipated date on which the United States will have fully implemented the MPP.

5. Any and all instructions or guidance memoranda issued regarding DHS's enforcement or implementation of the MPP.

Sincerely,

Ted Cruz
Member, Senate Judiciary Committee

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[5] *Id.*

[6] *See Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROTECTION (Aug. 12, 2021), https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.