IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STATE OF TEXAS, STATE OF MISSOURI, *Plaintiffs,* v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, *Defendants.*	)	Civil Action No. 2:21-cv-00067-Z

EMERGENCY MOTION TO STAY COURT'S ORDER PENDING APPEAL

Defendants hereby move for a stay, pending completion of appellate proceedings, of this Court's permanent injunction entered on August 13, 2021. *See* ECF No. 94. The Acting Solicitor General has authorized an appeal of the Court's injunction, see 28 C.F.R. § 0.20(b), and the government filed the Notice of Appeal this morning. Because of the limited period available to obtain relief before this Court's injunction takes effect at 12:01 am Saturday, August 21, *see* Fed. R. Civ. P. 6(a)(1), Defendants advise the Court that they intend to seek emergency relief from the Fifth Circuit by Tuesday, August 17, 2021, at 5:00 pm if the Court does not grant the requested stay by that time. If, upon reviewing this motion, the Court does not find that Defendants have met the requirements for a stay, Defendants request that this Court summarily deny the motion without awaiting a response from Plaintiffs. Otherwise, Defendants respectfully ask the Court to rule on

the motion no later than 5 pm on August 17, 2021. Defendants have notified Plaintiffs, who oppose the relief requested in this motion.

Defendants recognize and appreciate that the Court stayed its order for seven days, until Saturday, August 21, to permit Defendants to seek emergency relief at the appellate level. ECF No. 94 at 53. That order may reflect the Court's judgment that an additional stay beyond seven days is not warranted. Federal Rule of Appellate Procedure 8 requires, however, that "[a] party must ordinarily move first in the district court for the following relief: a stay of the judgment or order of a district court pending appeal." Fed. R. App. P. 8(a)(1). Therefore, out of an abundance of caution, Defendants respectfully submit this motion for a full stay of the Court's order pending resolution of appellate proceedings.

As explained below, the balance of harms and irreparable injury that Defendants face from the Court's injunction strongly weigh in favor of a stay. And Defendants respectfully submit that, notwithstanding this Court's contrary conclusion, they are likely to prevail on the merits of their appeal. The Court's injunction undermines the Executive Branch's constitutional and statutory authority to enforce the immigration laws and set immigration priorities. The injunction also imposes deadlines that Defendants cannot meet on their own, because any plan to re-implement the Migrant Protection Protocols (MPP) would necessarily require close cooperation with the Government of Mexico. By ordering the government hastily to resume a program with major foreign policy implications, the court's order threatens significant disruption to the United States' relationship with Mexico and Central American nations. By contrast, Plaintiffs have not fully substantiated their claimed harms of having to provide public support to additional migrants in their state as a result of the termination of MPP, which would nonetheless not outweigh harms to

the Government. Further, the MPP termination did not violate the Administrative Procedure Act (APA) or 8 U.S.C. § 1225, and no APA review is available for Plaintiffs' claims.

STANDARD OF REVIEW

In deciding a motion to stay an order pending appeal, courts consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009).

ARGUMENT

I. The Balance of Harms Weighs Strongly in Favor of a Stay.

As explained below and in the Defendants' previous submissions, ECF Nos. 63, 70, 92, 93, the serious and irreparable harms to the Government and public from the Court's injunction outweigh any harm that Plaintiffs might suffer if the injunction is stayed pending appeal. The Supreme Court reached a similar conclusion when it stayed in full the injunctions issued by district courts in *Trump v. Hawaii*, No. 17A550, 2017 WL 5987406 (U.S. Dec. 4, 2017), and *Trump v. International Refugee Assistance Project (IRAP)*, No. 17A560, 2017 WL 5987435 (U.S. Dec. 4, 2017). The Supreme Court and Ninth Circuit held similarly when they stayed a preliminary injunction restraining MPP, *Innovation L. Lab v. McAleenan*, 924 F.3d 503, 510 (9th Cir. 2019); *Wolf v. Innovation L. Lab*, 140 S. Ct. 1564 (2020), as did the Supreme Court and Fifth Circuit concerning injunctions pertaining to the border wall—another significant border management issue, *Trump v. Sierra Club*, 140 S. Ct. 1 (2019) (granting stay pending appeal); *El Paso Cty., Texas v. Trump*, 982 F.3d 332, 337 (5th Cir. 2020) (noting a motion panel had stayed the district court's injunction pending appeal), *cert. denied*, No. 20-298 (2021). In those cases, the Supreme

Court and circuit courts necessarily determined that the Government's border-management and foreign-policy interests outweighed the plaintiffs' interests. *See Nken*, 556 U.S. at 434. The Government's foreign-policy and border-management interests here—which relate to efforts with Mexico and other countries to address migration and avoid a humanitarian crisis at our southern border—are similarly weighty.

This Court's injunction undermines the Executive Branch's constitutional and statutory authority to implement its immigration priorities and secure the border. The Executive Branch's protection of these interests warrants the utmost deference, particularly where, as here, it acts based on "[p]redictive judgment[s]" regarding the MPP's effect on the border and negotiations with foreign countries. *Dep't of the Navy v. Egan*, 484 U.S. 518, 529 (1988); *see Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-35 (2010). Thus, a stay pending appeal is appropriate where an injunction "is not merely an erroneous adjudication of a lawsuit between private litigants, but an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS v. Legalization Assistance Project,* 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers); *see Heckler v. Lopez*, 463 U.S. 1328, 1330 (1983) (Rehnquist, J., in chambers); *see also Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978) (per curiam).

The Court's order requiring DHS to reimplement MPP necessarily imposes irreparable harm on the Government and the public, as previously explained. ECF No. 63 at 46-48. Even a single State "suffers a form of irreparable injury . . . [a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted). *A fortiori*, this Court's injunction imposes irreparable injury on the United States, as the Secretary's decision to stop using the contiguous-territory-return authority at 8 U.S.C. § 1225(b)(2)(C) is statutorily committed to his

discretion as a Cabinet official charged with evaluating how to maximize the country's border resources, improve the functioning of immigration proceedings, and comprehensively address migration from Central America.

As explained in the attached Declaration of David Shahoulian (attached as Exhibit A), reimplementing MPP would require the Government immediately to reestablish the physical and administrative architecture upon which MPP was built, at the cost of significant time, resources, and personnel that are currently devoted to other high priority efforts and critically important DHS missions. Shahoulian Decl. ¶¶ 15-17. Further, implementing the Court's order in the imposed time frame could not be done in a safe, orderly, and humane manner. *Id.* ¶¶ 18-20.

Likewise, the re-implementation of MPP as the court ordered—on an immediate, mandatory, nationwide basis—would impose significant burdens on the immigration court system and disrupt the government's efforts to adjudicate removal proceedings. *See* Declaration of Daniel Weiss (attached as Exhibit B). Due to space and resource constraints, the Executive Office for Immigration Review (EOIR) could not dedicate additional Immigration Judges to MPP dockets without great disruption to existing dockets and the expenditure of already reduced resources, thereby significantly delaying proceedings for noncitizens who have already been waiting years for their hearings. *Id.* ¶¶ 11-18. Recreating the adjudicatory edifice to support MPP cannot be accomplished on the court's ordered time frame. *Id.* ¶ 12.

Further, the Supreme Court has warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013). The court's injunction does exactly that. *See* Declaration of Ricardo Zuniga (attached as Exhibit C). DHS cannot simply reinstitute MPP and send non-Mexican nationals to Mexico without working with Mexico to ensure that returnees are allowed to remain in Mexico pending the

outcome of their claims. Reimplementation of MPP would require close cooperation with the Government of Mexico to ensure migrants' safety and basic security while waiting for U.S. immigration proceedings. *Id.* ¶¶ 7-17, 19-20. A court order directing the government immediately to re-implement MPP would require the United States to divert limited resources away from more comprehensive and effective current regional initiatives to manage migration and address root causes of irregular migration. *Id.* And reimplementing MPP in a hasty manner would also significantly harm our diplomatic relationships with Central American countries and partner international organizations. *Id.* ¶¶ 18-20.

Finally, the extraordinary harms the United States faces as a result of the injunction significantly outweigh any harm the States might face from a stay pending appeal. Indeed, the States submitted no evidence that they incurred additional costs after MPP enrollments declined in April 2020, or since new enrollments ended in January 2021. In particular, there is no evidence in the record that either State has issued a single driver's license to an individual who would have otherwise been subject to MPP, but for the pause in enrollments or its termination. Nor is there any evidence of other costs directly traceable to the termination of MPP.

II. Defendants Are Likely to Prevail on the Merits.

Recognizing that this Court has reached a contrary conclusion, Defendants nonetheless respectfully submit that a stay pending appeal is additionally warranted because Defendants are likely to succeed on the merits of their appeal. *See Nken*, 556 U.S. at 434. Specifically, as Defendants explained in their opposition to Plaintiffs' motion for a preliminary injunction and incorporate here by reference, Plaintiffs cannot obtain APA review of their claims. *See* ECF No. 63 at 10-46. If Plaintiffs could obtain such review, Defendants have sufficiently explained that their decision to terminate MPP was based on compelling reasons that satisfy the arbitrary-and-

capricious review standard. *Id.* Further, termination of MPP does not violate section 1225 because the statute does not require Defendants to implement a return program, or to return all amenable nondetained noncitizens to a contiguous country. *Id.*

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court grant a stay pending appeal, and respectfully request a decision by 5 pm on August 17th.

Date: August 16, 2021

Respectfully submitted,

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Acting United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Northern District of Texas by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Joseph A. Darrow
JOSEPH A. DARROW
Trial Attorney
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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STATE OF TEXAS, STATE OF MISSOURI, *Plaintiffs,* v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, *Defendants.*	)	Civil Action No. 2:21-cv-00067-Z

DECLARATION OF DAVID SHAHOULIAN

I, David Shahoulian, pursuant to 28 U.S.C. § 1746 and based upon my personal knowledge, and documents and information made known or available to me from official records and reasonably relied upon in the course of my employment, hereby declare as follows:

Introduction

1. I am the Assistant Secretary for Border Security and Immigration at the Department of Homeland Security (DHS or Department) and have been in this role since January 20, 2021. I previously served at DHS as Deputy General Counsel from June 29, 2014 to January 19, 2017. I am familiar with the Court order in the above-captioned case.
2. Managing migration in a safe, effective, and durable manner that comports with a country's laws and values is a profoundly complicated enterprise, particularly because the forces driving migration are constantly shifting. As with all law enforcement matters, the government must make choices within the boundaries of the law and in

light of the fiscal limits imposed by Congress that require federal agencies to prioritize resources. Migration management also implicates important matters of foreign relations entrusted to the federal government.

3. On January 20, 2021, DHS suspended new enrollments into the Migrant Protection Protocols (MPP) program. Due to the ongoing COVID-19 pandemic, MPP hearings had been suspended since April 2020, and even by January 2021 it was unclear when such hearings could resume. While new enrollments into the program were suspended, DHS began to pursue alternative strategies domestically and throughout the region, working with U.S. and international partners, to manage migration. On June 1, 2021, after a review of the MPP program required by presidential directive,[1] DHS announced the termination of the program as it existed, for the multiple reasons specified in a memorandum issued by Secretary Alejandro N. Mayorkas on that date.[2]

4. The permanent injunction issued by the federal court in this matter would undo that termination decision. It requires the government to restart MPP in seven days, and to administer the program until the government has sufficient detention capacity to "detain all aliens subject to mandatory detention under Section [1225 of Title 8 of the U.S. Code] without releasing any aliens *because of* lack of detention resources."

5. There are three key problems with the injunction. First, the Department simply does not now have—and, to my knowledge, has never had under any prior administration—

[1] Executive Order 14,010, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, 86 Fed. Reg. 8267 (Feb. 2, 2021), *available at* https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration (last visited August 16, 2021).

[2] *See* Secretary Alejandro N. Mayorkas, "Termination of The Migrant Protection Protocols Program," June 1, 2021, available at https://www.dhs.gov/publication/dhs-terminates-mpp-and-continues-process-individuals-mpp-united-states-complete-their (last visited Aug. 14, 2021).

sufficient detention capacity to maintain in custody every single person described in 8 U.S.C. § 1225. Additionally, the Court's conclusion that the discretionary use of the contiguous territory return authority is mandatory so long as the Department does not have adequate resources to detain everyone described in Section 1225 is inconsistent with the practices of every previous administration to administer the statute. Second, it would be near-impossible for the U.S. Government to comply with the Court's injunction in the time period provided. And third, to the extent that the Administration were capable of implementing any portion of the MPP program as directed by the order, it could not possibly operate in a safe, orderly, and humane manner in the time given by the order.

The District Court Order Disregards Longstanding Practices and Creates an Impossible Standard for Terminating MPP

6. To my knowledge, no administration has ever detained all inadmissible applicants for admission or even the subset of those individuals who could be eligible for expedited removal, nor has Congress appropriated the Department (or the former Immigration and Naturalization Service) the amount of resources that would be needed to accomplish this. Moreover, even if the Department had sufficient detention capacity, there are other limitations on the ability to detain, including significant medical and humanitarian concerns, particularly in the midst of a global pandemic.

7. In July 2021, CBP encountered a total of approximately 199,777 individuals seeking to cross along the southwest border. *See* https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics (last visited Aug. 16, 2021). Even with approximately 93,781 expelled pursuant to the Center for Disease Control and Prevention's (CDC) Title 42 authorities, approximately 105,996 were processed under

Title 8 authorities. Pursuant to the Court's order, the Administration would be bound to implement MPP unless *all* of those individuals processed under Title 8 could be detained without the possibility of release based upon the lack of detention capacity.

8. The current and historic appropriations by Congress for detention is multiple times smaller than the size of the population that DHS would be mandated to either hold in custody or return to Mexico under the Court's order. ERO is currently appropriated sufficient funding for approximately 34,000 detention beds nationwide, including approximately 31,000 single adult beds and 3,000 family unit beds, to support its mission to enforce immigration law across the entire country.

9. Importantly, due to the COVID-19 pandemic, bed space is even more limited than usual. Pursuant to guidance from the CDC, ICE now requires detention facilities that house ICE detainees to undertake efforts to reduce maintain population levels to approximately 75% of rated capacity.[3] In addition, the U.S. District Court for the Central District of California has also issued a preliminary injunction with nationwide application recognizing the 75% capacity limit, and ordering ICE to maintain strict standards to reduce the risk of COVID-19 infection. *See Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. Apr. 20, 2020). The currently detained population of approximately 25,671 noncitizens as of August 16, 2021 constitutes approximately 75% of the 34,000 funded capacity.

10. In addition to *Fraihat*, the Department is also bound by the *Flores* Settlement Agreement (FSA) and subsequent court orders interpreting the FSA. *See Flores v. Garland*, No. CV

[3] ICE's Enforcement and Removal Operations COVID-19 Pandemic Response Requirements, Version 6.0 (Mar. 16, 2021), at p. 35, https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf (last visited Aug. 14, 2021).

85-4544 (C.D. Cal). Pursuant to those court orders, the Department generally cannot detain accompanied minors for more than approximately twenty days in ICE family unit facilities.

11. This Court further suggests that, except for those returned to Mexico pursuant to MPP, DHS must detain all inadmissible applicants for admission, including the subset of those individuals eligible for expedited removal proceedings. To my knowledge, no administration, including the former administration that initiated MPP, has ever implemented the law in this way. No administration has ever been funded for or had the detention capacity to detain all individuals who potentially could be placed into expedited removal proceedings under Section 1225(b)(1).

12. Nor has any administration, to my knowledge, had sufficient personnel to process all such individuals through expedited removal proceedings. Individuals processed under expedited removal who indicate an intent to apply for asylum or express a fear of persecution are entitled to a credible fear screening by an asylum officer, and, if requested, review of a denial by an immigration judge. There has never been a sufficient number of asylum officers to do such screenings for all individuals who may be encountered at the border. And there are not now. Between Fiscal Year 1999 and 2021, for example, only 11 percent of the total number of individuals eligible for expedited removal were processed under that authority. And in no fiscal year have the majority of such individuals been processed pursuant to expedited removal.

13. For these and other reasons, since expedited removal was first created in 1996, the Department has never detained all inadmissible applicants for admission, nor the subset of those who are subject to expedited removal, and it has never been funded by Congress

to do so. Nor could the Department reasonably detain the hundreds of thousands, and potentially millions, of individuals encountered at the border and subject to expedited removal in a given year. Indeed, the Department has long understood that it retains discretion to place noncitizens who may be amenable to processing under Section 1225 directly into removal proceedings under Section 1229a, *see Matter of E-R-M- & L-R-M-*, and that limitations on available detention resources require the Department to prioritize those resources consistent with its enforcement priorities and may warrant release in certain circumstances. By mandating that the government implement MPP until DHS has sufficient detention capacity to hold all noncitizens subject to mandatory detention under Section 1225, the order effectively requires the Department to implement MPP—a program that did not exist prior to January 2019 and that relies on statutory authority that entrusts the Secretary with *discretion* to effectuate contiguous territory returns[4]—in perpetuity.

14. In short, the Department has nowhere near the capacity or personnel—nor the billions needed in appropriated funds—to detain all noncitizens described in 8 U.S.C. § 1225. Although the Department has the ability to reprogram a modest amount of funds from other accounts to support increased detention capacity, doing so would both diminish the Department's ability to accomplish other priorities of critical importance to protecting the safety of the nation, and would do little to meet the impossible standard set by the district court.

[4] 8 U.S.C. § 1225(b)(2)(C) ("In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the [Secretary] *may* return the alien to that territory pending a proceeding under section 240.") (emphasis added).

Re-Establishing MPP Within Seven Days Is Nearly Impossible

15. Implementation of MPP cannot be done without significant coordination with, and cooperation from, the Government of Mexico. When the Department first put MPP in place, the Government of Mexico took a number of key steps critical to the functioning of the program.[5] This included arranging for personnel and infrastructure to receive individuals returned to Mexico under MPP; allowing MPP enrollees returned to Mexico to remain in Mexico pending resolution of their immigration proceedings; providing a mechanism for enrollees to request work authorization; and ensuring that enrollees were considered eligible for select social services. Putting these minimal pieces back in place, even without adopting additional measures to address the concerns identified following the Department's recent review of the program—including, but not limited to, the lack of access to stable housing, income, and safety that some MPP enrollees experienced—would require negotiations with the Government of Mexico and, eventually, its support and cooperation. The Department simply cannot implement the MPP program unilaterally.

16. Re-implementing the MPP program would additionally require that the United States reestablish the entire infrastructure upon which the program was built. The program, for example, utilized specialized immigration court hearing facilities that had been erected in key locations along the southwest border. These facilities were scaled down and repurposed to address other inadmissible populations; reconstituting these facilities and staffing them for the purpose of holding immigration hearings cannot possibly be

[5] *Position of Mexico on the Decision of the U.S. Government to Invoke Section 235(b)(2)(C) of its Immigration and Nationality Act,* Dec. 20, 2018 *available at* https://www.gob.mx/sre/en/articulos/position-of-mexico-on-the-decision-of-the-u-s-government-to-invoke-section-235-b-2-c-of-its-immigration-and-nationality-act-185795?idiom=en (last visited August 15, 2021).

accomplished in seven days. Re-implementing the MPP program would also require DHS to find and relocate personnel to operationalize MPP, including to provide necessary protection screenings prior to return to Mexico; create systems and protocols for facilitating each enrollee's entry into and out of the United States for multiple immigration court hearings; and arrange for transportation to and from ports of entry to attend such hearings. All of this work would require significant time, resources, and personnel—particularly given the current COVID-19 environment—including resources and personnel that cannot be reallocated without affecting other departmental missions. None of this is possible to do within seven days.

17. The fact that specialized immigration court hearing facilities for use by MPP enrollees do not now exist and would require time to be reconstituted highlights both logistical and foreign-relations concerns with the Court order. Between the time the last Administration suspended court hearings for MPP enrollees in April 2020 through the time the current Administration began to re-process noncitizens who had previously been returned to Mexico under MPP, tens of thousands of individuals remained in Mexico for long periods with no movement in their immigration cases. In addition to placing a strain on community resources along Mexico's northern border, this contributed to instability and insecurity in some communities, which complicated U.S.-Mexico bilateral relations. Moreover, the lack of court hearings violated the premise under which the Government of Mexico allowed MPP enrollees returned to Mexico to remain in Mexico pending resolution of their immigration proceedings: namely, that the United States would have a functioning, rapid immigration court process in which MPP enrollees could participate. Mexican officials made clear at the time that allowing MPP enrollees to remain in

Mexico temporarily (and relatedly, the ability to access select social services in Mexico) was to be provided only to those "involved in immigration proceedings."[6] Given current COVID-19 protocols and the amount of time it will take to rebuild infrastructure and processes to resume court proceedings in the United States for MPP enrollees, restarting MPP precipitously, without sufficient time for the needed consultation, risks replicating the challenges that existed previously and may complicate foreign relations with Mexico now and in the future.

Re-Establishing MPP within Seven Days Could Not be Done in a Safe, Orderly, or Humane Manner

18. In order for a implementation of the Secretary's return authority to operate in a safe, orderly, and humane manner—and to achieve its statutory goal of facilitating the ability of people returned to a contiguous country to participate in removal proceedings under 8 U.S.C. § 1229a—much more has to take place beyond simply effectuating returns.

19. As the 2021 review of MPP and the October 25, 2019 Red Team Report documented, there were several problems with the program as put in place that need to be addressed. For some MPP enrollees, inadequate access to stable food and housing and a range of safety concerns undercut the effectiveness of the program. To re-establish a program using the Secretary's return authority responsibly, the Department would need to address these concerns.

20. A responsible program implementing section 1225(b)(2)(C) would also require the Department to create electronic or other systems to better track and communicate with

[6] *See* Press Conference with Legal Counsel Alejandro Alday on the Bilateral Relationship with the United States, Dec. 20, 2018, available at https://www.gob.mx/sre/prensa/press-conference-with-legal-counsel-alejandro-alday-on-the-bilateral-relationship-with-the-united-states (last visited Aug. 16, 2021).

individuals enrolled in that program. The Department also would need to dedicate resources, build infrastructure, and establish protocols to better ensure access to counsel and legal orientation. As mentioned above, reestablishing MPP would require a combination of diplomatic engagement and financial investment to ameliorate problems identified previously, including the lack of adequate or available housing, food, and safety for some MPP enrollees in Mexico. A forced restart in just seven days would exacerbate the problems that had been identified.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on this 16th day of August, 2021

David Shahoulian

David Shahoulian
Assistant Secretary for Border and Immigration Policy
Department of Homeland Security

Exhibit B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AMARILLO DIVISION

STATE OF TEXAS, STATE OF MISSOURI, Plaintiffs, v. JOSEPH R. BIDEN, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., Defendants.	Civil Action No. 2:21-cv-00067-Z **DECLARATION OF PRINCIPAL DEPUTY CHIEF IMMIGRATION JUDGE DANIEL H. WEISS**

I, **DANIEL H. WEISS**, do hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am the Principal Deputy Chief Immigration Judge ("PDCIJ") for the Executive Office for Immigration Review ("EOIR") for all immigration courts nationwide. I work for EOIR's Office of the Chief Immigration Judge ("OCIJ") which provides overall program direction and articulates policies and procedures for the immigration courts nationwide. As PDCIJ, my responsibilities include supervising and managing the dockets and daily activity in the immigration courts.

2. I was appointed as PDCIJ in January 2021. Prior to my appointment as PDCIJ, I served as an Assistant Chief Immigration Judge from September 2017-January 2021, Acting Chief of Staff, from April 2019-July 2019, and as an immigration judge at the Dallas Immigration Court from January 2016-September 2017.

3. As PDCIJ, I have knowledge of the policies and practices relating to immigration court

operations, including operations of all detained and non-detained immigration courts and immigration adjudication centers[1] nationwide. I am familiar with the lawsuit that the States of Texas and Missouri have filed in the United States District Court in the Northern District of Texas, and the court's Memorandum Opinion and Order granting the Plaintiffs' request for a preliminary injunction and vacating the Defendant Department of Homeland Security's ("DHS") June 1 Memorandum terminating the Migrant Protection Protocols (MPP) program, *Texas, et al., v. Biden, et al.*, No. 2:21-cv-00067-Z (N.D. Texas Aug. 13, 2021) ("Court's Order").

4. I am aware that when the Court's Order becomes effective, it requires that Defendant's DHS enforce and implement MPP in good faith until such a time as it has been lawfully rescinded in compliance with the Administrative Procedures Act ("APA") and until such a time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention under Section 1225 of the Immigration and Nationality Act ("INA") without releasing any non-citizen because of a lack of detention resources. A consequence of the Court's Order would be to resume enrollment of new individuals in MPP, who are placed in removal proceedings. Those cases would then require processing, in addition to the 26,000 individuals in Mexico with active cases.[2]

5. I have prepared this declaration to explain the burden this Court's Order places on EOIR's immigration courts. From my role as PDCIJ, I have personal knowledge of the facts stated in this declaration.

A. Overview of the Immigration Courts' Dockets

6.There are currently 66 Immigration Courts nationwide, and three Immigration Adjudication Centers. When MPP was in operation, EOIR heard cases for MPP enrollees at four Immigration Courts: El Paso, Harlingen, San Antonio and San Diego. Hearings for MPP enrollees were conducted in-person before an immigration judge within the United States in El Paso and San Diego, with DHS transporting individuals to their hearings by bus, and virtually from Immigration Hearing Facilities (IHFs), temporary

[1] An immigration adjudication center is a facility where immigration judges preside over immigration proceedings via video teleconference.

[2] Dkt. 64, Declaration of David Shahoulian, APP 6 (indicating that restarting MPP would require providing information about updated hearing times and locations to up to 26,000 individuals in Mexico with active cases.").

structures constructed and operated by DHS at the southern border in Brownsville and Laredo, Texas, with immigration judges appearing by video from San Antonio and San Diego. Cases involving MPP enrollees were given priority scheduling – similar to the treatment of cases for persons who are detained – and were scheduled to avoid disrupting existing dockets.

7. In March 2020, EOIR paused hearing cases, including MPP matters, at the non-detained immigration courts due to the COVID-19 pandemic. Beginning in June of 2020, the non-detained courts resumed hearing cases and by July 6, 2021, all non-detained immigration courts have resumed hearing cases, although the operational levels vary at each court due to the ongoing pandemic. As of August 13, 2021, only four immigration courts nationwide are operating at 100 percent staffing capacity.[3] The remaining courts and IACs continue to operate at a reduced capacity, with twenty-six (26) locations operating at less than sixty percent (60%) capacity – that is more than 36% of locations operating with significant staffing shortages.

8. The court closures on account of the COVID-19 pandemic have significantly impacted EOIR's adjudicatory functions. As a result of the long-term closures, hundreds of thousands of cases have been postponed and most have still have not had a hearing since the non-detained dockets have resumed. As of August 6, 2021, only 17 locations have docket availability in 2021 for merits hearings. Twelve have availability in 2022, but 35 locations do not have availability until 2023, two of which do not have availability until 2025. As such, most new cases will not receive a hearing on the merits and subsequent decision for several years. As of August 13, 2021, the Office of the Chief Immigration Judge had 1,348,787 pending matters.

9. In cases where an individual remains in Department of Homeland Security ("DHS") custody during the pendency of immigration proceedings, EOIR seeks to minimize detention (and the costs associated with detention) by prioritizing detained cases over non-detained cases. In 20 of those courts, Immigration Judges preside over detained cases only; in 38 of those courts, Immigration Judges preside over both detained and non-detained cases; and in 10 of those courts, Immigration Judges preside over

[3] The four locations are the detained court at Batavia, NY; the hybrid courts (that maintain both a non-detained and detained dockets) at Tucson, AZ and Saipan; and the newly opened Immigration Adjudication Center in Richmond, VA.

non-detained cases only. The three IAC locations hear both detained and non-detained cases. Therefore, the majority of EOIR's immigration courts and the Immigration Judges assigned to them have dockets that conduct hearings for detained cases only or at least some detained cases. As such, EOIR is limited in the resources it can divert to non-detained cases, including MPP cases.

10. Assuming DHS resumes the use of Immigration Hearing Facilities (IHFs), along the southwest border, there are only a limited number of such facilities where Immigration Judges can conduct hearings. In-person cases are also limited to those locations that are nearest to the border where DHS can transport individuals for their proceedings. DHS is responsible for physically bringing an MPP enrollee to their immigration court hearings, or facilitating their appearance from the IHF by video-teleconference ("VTC"). It is my understanding that DHS also has a finite number of VTC units and secure space for use for immigration court hearings. While the VTC units are able to connect to any immigration courtroom across the country, consideration must be given to allow counsel for the parties, any witnesses, and often an interpreter to be able to also appear before the immigration court for a given hearing when selecting a hearing location.

11. Due to space and resource constraints, EOIR could not immediately dedicate additional Immigration Judges to MPP dockets without great disruption to existing dockets and the expenditure of already reduced resources. Even if the government could construct and bring online additional IHFs and VTC units to facilitate the docketing of additional MPP cases, to do so would likely require the realignment of dockets at courts across the country for the 1,348,787 pending matters (excluding the detained cases), to make room for new MPP cases, further pushing out pending cases to 2025 and beyond.[4] As such, implementing these changes on a nationwide or widespread basis is not immediately possible. EOIR also has a policy in place to ensure that all courtrooms across the country are used at all times and because of this policy, there are generally no courtrooms sitting vacant that could be utilized for these hearings. *See* Executive Office for Immigration Review, Office of the Director, Policy Memorandum 19-11, "No Dark Courtrooms," (May 1, 2019), *available at* https://www.justice.gov/eoir/office-of-policy.

[4] Currently, nineteen courts have dockets out to 2024 and two courts have dockets out to 2025.

Even when a courtroom is not in use because the adjudicator and the parties are able to appear remotely, the immigration court has to flex that space to use it for social distancing on account of the pandemic where a hearing is taking place in-person, resulting in fewer courtrooms available for other hearings.

12. Beyond the space and judicial resource limitations, EOIR lacks sufficient administrative support staff to promptly create, docket, assign and schedule new MPP cases to be heard nationwide within a very short time frame.[5] The immigration courts are experiencing significant staffing shortages in most courts across the county, and as such the agency does not have additional resources at other locations to immediately reassign to these tasks so as to be able to immediately re-implement MPP nationwide. Because the MPP program was discontinued, EOIR decreased the number of contract administrative staff employed to manage MPP cases. As a result, new staff would need to be recruited and trained to resume hearing MPP dockets. Immigration Judges are generally supported by court staff and a court administrator. As indicated above, only four locations are currently at full administrative staffing levels for the number of Immigration Judges presiding over cases, and many are without a permanent Court Administrator. For example, as of August 13, 2021, Harlingen was at 50% of its operational capacity; San Antonio was at 60%; San Diego was at 52%; and El Paso was at 90%, but without the contract administrative staff previously dedicated to MPP.

B. Impact of the Court's Order

13. The COVID-19 pandemic creates unique burdens on the immigration court to implement MPP. Prior to the pandemic, MPP enrollees could be transported in substantial numbers to the San Diego and El Paso courts by van and awaited their hearings in crowded waiting areas or courtrooms. Because of the pandemic, current social distancing protocols prohibit such close contact and enforcing those necessary measures would necessarily require fewer individuals to appear in person at the court, limiting the efficiency of hearing time and ultimately resulting in delays in scheduling MPP cases, and further delays in scheduling preexisting non-MPP matters. Re-implementing MPP cases at this time during the pandemic would require court administrative staff to schedule and generate thousands of hearing notices for

[5] Administrative staff are responsible for creating an alien's electronic and paper record of proceedings, scheduling initial master calendar and bond hearings, and ensuring that there is sufficient docket space for required hearings.

individuals, some of whom DHS would be unable to transport to their hearings because they exhibit COVID symptoms. This would require re-scheduling and reissuance of new hearing notices, which places an additional administrative burden on the immigration courts. As indicated above, the significant judicial and administrative resource shortages would make it severely difficult for the government to immediately re-implement MPP nationwide on an orderly basis. Social distancing protocols would also limit the number of MPP enrollees who can appear at the courts and IHFs. Overall, the reduced numbers of MPP matters that can be heard due to social distancing protocols may result in significantly delayed hearings for MPP enrollees and, as a consequence, cause further delays of displaced non-MPP cases.

14. Given the large number of cases already on the Immigration Court's dockets and the limited space and resources available, it will be difficult and disruptive to resume dedicated dockets for MPP cases. As noted, there is restricted space to hold VTC hearings along the southwest border and more than half of the courts have calendars set into 2023. Requiring additional Immigration Judges to assist is not feasible due to space restrictions and would result in continuances and further delays of cases on the judges' dockets, who would be required to assist with these hearings. More importantly, cases currently docketed during this time would need to be rescheduled to accommodate these cases. As stated above in paragraph 11, EOIR has instituted a policy that requires that all courtrooms be utilized for immigration hearings at all times. Therefore, in order to hold space open for these cases, EOIR would necessarily need to reschedule already-scheduled hearings.

15. Rescheduling cases will have an adverse impact on all cases because other hearings would be deferred to later dates, resulting in the further delay of those individuals who have been waiting for several years for their day in court. Many noncitizens would therefore face longer overall removal proceedings due to delays in order to make room to conduct hearings for MPP enrollees.

16. Further, rescheduling currently docketed cases will create a ripple effect on the dockets. Rescheduling requires re-serving notices of hearings to the parties and their attorneys and the rescheduled dates, in turn, may result in new scheduling conflicts that would require still further rescheduling. The resulting delays would likely contribute to the number of cases pending at the courts. Such delays would

also substantially interfere with EOIR's goal of expediting other priority dockets, including the detained docket, if there are less resources available to assist overall with fluctuating detention numbers and surges in new arrivals who are not eligible for MPP enrollment.

17. Beginning in May 2021, EOIR and DHS implemented "Dedicated Dockets" in 11 cities, including El Paso and San Diego. The dedicated docket process is intended to allow the agency to more expeditiously and fairly make decisions in immigration cases of families who arrive between ports of entry at the Southwest Border. [6] This new process is intended to significantly decrease the amount of time it takes for migrants to have their cases adjudicated while still providing fair hearings for families seeking asylum at the border. Under the Dedicated Docket, IJ's are expected to generally issue a decision within 300 days of the initial master calendar hearing. To facilitate such timeliness while providing due process, these cases are only scheduled before immigration judges who generally have docket time available to manage a case on that timeline, recognizing that unique circumstances of each case may impact the ability to issue a decision within that period.[7] These dockets are anticipated to grow to 80,000 individuals and are priority matters for adjudication. Given the limited judicial resources, the resumption of MPP matters as an additional priority, particularly in cities that are designated for the Dedicated Docket, will likely result in delays of existing cases and any new non-priority cases.

18. It is difficult to estimate how much time the Immigration Courts would need to docket and schedule new hearings for MPP cases because the size is relatively unknown and constantly changing. DHS opines that as of June 2021, there were 26,000 individuals in Mexico with active cases, and the Court's Order provides that for "May and June 2021, for example, CBP recorded over 180,000 and 188,000 encounters, respectively, at the southwest border." Court's Order at footnote 7. In my opinion, if the government were required by court order to re-implement MPP immediately as it existed prior to January 20, 2021, and to utilize MPP for all applicants for admission who are not detained, the requirement to manage an influx of 100,000 new MPP cases or more each month would likely push out all non-priority

[6] *See* DHS and DOJ Annoounce Dedicated Docket Process for More Efficient Immigration Hearings, May 28, 2021 available at https://www.justice.gov/opa/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings

[7] *See* EOIR Policy Memorandum, PM 21-23, Dedicated Docket, available at https://www.justice.gov/eoir/book/file/1399361/download

dockets for at least another calendar year or more, and continue to push the cases out as needed based on the number of new receipts. Alternatively, if MPP cases are not prioritized, individuals could wait years for their merit hearings to take place.

I affirm, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed in Dallas, Texas.

Dated: August 16, 2021

DANIEL WEISS Digitally signed by DANIEL WEISS Date: 2021.08.16 15:29:55 -05'00'

Daniel H. Weiss
Principal Deputy Chief Immigration Judge
Executive Office for Immigration Review

Exhibit C

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AMARILLO DIVISION

STATE OF TEXAS, STATE OF MISSOURI, *Plaintiffs,* v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, *Defendants.*	)	Civil Action No. 2:21-cv-00067-Z

DECLARATION OF RICARDO ZÚNIGA

I, Ricardo Zúniga, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me in the course of my employment, hereby make the following declaration with respect to the above-captioned matter:

1. I am currently the Senior Bureau Official in the Bureau of Western Hemisphere Affairs at the U.S. Department of State and have held this position since August 3, 2021. Prior to this appointment, I was appointed Special Envoy for the Northern Triangle in the Bureau of Western Hemisphere Affairs on March 22, 2021 and retained that role in addition to my new duties. In my capacity as Special Envoy, I serve as the senior Department of State official responsible for our relationship with the northern Central American Countries, particularly regarding irregular migration from those countries to the southern

border of the United States. In that capacity I have also engaged on the effects of irregular migration through and from Mexico. I travelled with senior White House and State Department officials to Mexico on August 10, 2021, to discuss the challenge of irregular migration with senior Mexican officials, and joined Vice President Harris during her June 6-8 visit to Central America for meetings regarding the administration's Root Causes Strategy and Collaborative Migration Management Strategy. I am a Senior Foreign Service officer with the rank of Minister Counselor with 28 years of experience most of that related to the U.S. relationship with Latin America. I have served in multiple assignments in Washington and throughout the Western Hemisphere. As the Senior Bureau Official in the Bureau of Western Hemisphere Affairs, I oversee the Department's work on Western Hemisphere Affairs, including bilateral engagement with the Government of Mexico. I engage regularly with interlocutors throughout the Department and interagency to advance the U.S. government's regional migration policy.

2. I am familiar with the lawsuit that the States of Texas and Missouri filed in the United States District Court in the Northern District of Texas seeking to enjoin the U.S. government from enforcing or implementing the discontinuance of the Migrant Protection Protocols (MPP) either through the Acting Secretary of Homeland Security's January 20, 2021 Memorandum suspending enrollment in the MPP, or the Secretary of Homeland Security's June 1, 2021 Memorandum formally terminating MPP, and the District Court decision granting the injunction. If this injunction remains in place, it could have a significant adverse impact on U.S. foreign policy, including our relationship with the governments of El Salvador, Guatemala and Honduras (the "northern Central American countries") and Mexico.

3. Addressing regional irregular migration and its root causes is a top U.S. foreign policy priority. To sustainably reduce irregular migration in, from, and through North and Central America, the United States must establish long-term strategic partnerships with the governments in the region to catalyze structural change to root out corruption and impunity, improve security and the rule of law, and increase economic opportunity. These efforts must be coordinated in a comprehensive policy framework to address regional migration that includes adequate protection, expanded legal pathways, and regional solutions.

4. President Biden introduced such a framework on February 2, 2021, through Executive Order 14010, 86 Fed. Reg. 8267, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*. Among other things, Executive Order 14010 outlines a new and comprehensive, multi-pronged policy approach toward collaboratively managing migration throughout North and Central America. The two main prongs are the Root Causes Strategy and the Collaborative Migration Management Strategy.

5. The Root Causes Strategy focuses on the three main challenges that drive irregular migration: governance and anticorruption, economic opportunity, and security. Through this strategy, the United States seeks to partner with Mexico and the northern Central American countries to rebuild hope in the region, promote accountability, and advance a safe, democratic and prosperous region where people can advance economically, live in safety, and create futures for themselves and their families instead of embarking on dangerous and often futile journeys to the United States.

6. The Collaborative Migration Management Strategy is devoted to fostering the international cooperation and partnership with Mexico and Central American countries necessary to focus resources and energy on collective action that will mobilize humanitarian assistance, enhance access to international protection and other protection options for those forcibly displaced from their homes, strengthen legal pathways for those who choose to or must migrate, and reduce irregular migration. As Secretary of State Blinken stated on February 2, 2021, "The United States remains committed to working with governments in the region to address irregular migration and ensure safe, orderly, and humane migration. We are working to establish and expand a cooperative, mutually respectful approach to managing migration across the region that aligns with our national values and respects the rights and dignity of every person."
7. Mexico is an essential partner for the United States in the implementation of both the Root Causes Strategy and the Collaborative Migration Management Strategy. On March 1, 2021, Presidents Biden and López Obrador issued the U.S.-Mexico Joint Declaration, in which they committed to immigration policies that recognize the dignity of migrants and the imperative of orderly, safe and regular migration. They further committed to collaborate on a joint effort to address the root causes of regional migration, improve migration management, and develop legal pathways for migration. They also directed the Department of State and the Secretariat of Foreign Relations, respectively, to engage with the governments of the northern Central American countries, as well as with civil society and private sectors, through policies that promote equitable and sustainable economic development, combat corruption, and improve law enforcement cooperation against transnational criminal smuggling networks.

8. As then-Acting Assistant Secretary of State Chung stated in her remarks before the U.S. House Foreign Affairs Subcommittee on Western Hemisphere, Civilian Security, Migration and International Economic Policy on April 28, 2021, Mexico has already begun taking actions to advance these commitments. It has reinforced its efforts to reduce irregular northbound movements through its territory, launching a major enforcement action in southern Mexico in March with over 10,000 personnel. It has further committed to increasing its enforcement personnel strength to 12,000. The Mexican government continues to look for ways to invest in and develop its own communities, contribute to stronger Central American economies, and engage with regional and international partners to share the burden. In addition, Mexico continues to be a leader in the region in offering international protection for those fleeing persecution.
9. On June 8, 2021, Vice President Harris met with President López Obrador during her first foreign trip as Vice President, reflecting the priority the Administration is placing on addressing irregular migration. Together they announced a new partnership to work jointly in Central America to address the root causes of irregular migration to Mexico and the United States, as well as efforts to disable human trafficking and human smuggling organizations. During this visit, the U.S. and Mexican governments signed a memorandum of understanding to establish a strategic partnership to address the lack of economic opportunities in the northern Central American countries, which will include fostering agricultural development and youth empowerment programs and co-creating and managing a partnership program enabling them to better deliver, measure, and communicate about assistance to the region.

10. The United States has likewise worked to secure key commitments from the governments of the northern Central American countries to advance both the Root Causes Strategy and the Collaborative Migration Management Strategy. Both Secretary Blinken and Vice President Harris have been engaged on these issues throughout the region during my tenure as Special Envoy for the Northern Triangle.

11. For example, on June 1, 2021, Secretary Blinken met with foreign ministers from Costa Rica, Guatemala, Honduras, El Salvador, Nicaragua, Panama and Mexico in San José, Costa Rica at a meeting of the Central America Integration System (SICA) – the economic and political organization of the region's states. The leaders discussed the U.S. strategy to address the root causes of migration, including generating economic opportunities for Central Americans, advancing the essential work of reducing violence and addressing the COVID-19 pandemic and climate change. Secretary Blinken emphasized that Central America can be a stronger region if the people and countries cooperate to jointly tackle these challenges.

12. Vice President Harris has had several conversations with President Giammattei of Guatemala about migration issues, and met with him on June 7, 2021, in Guatemala City. Both leaders acknowledged the need to work as partners to address irregular migration from Central America. A high-level delegation led by the National Security Council's (NSC) then-Senior Advisor to the President, Amy Pope, were in Costa Rica from June 9-11, 2021, to attend the Comprehensive Regional Protection and Solutions Framework Solidarity Event (Spanish acronym "MIRPS"), which focused on how the international community can support solutions for forced displacement in Mexico and Central America. The delegation also held a series of bilateral meetings to underscore the United

States' commitment to finding solutions to the challenges of irregular migration and forced displacement in the region, including with officials from northern Central America. Additionally, Uzra Zeya, the State Department's Undersecretary for Civilian Security, Democracy, and Human Rights, participated in the High Level Dialogue on Irregular Migration hosted by the Government of Panama on August 11, 2021, and attended by foreign ministers from the region, including the foreign minister of Mexico. The group agreed on the need for a shared regional approach to address irregular migration in the Western Hemisphere and is moving forward to establish and implement joint solutions and actions.

13. As a result of these and other U.S. diplomatic efforts, the northern Central American countries have engaged in migration management, and the governments make decisions about humane enforcement in ways that are appropriate for each country. We have seen the results in increased access to protection, apprehensions of irregular migrants, and greater numbers of checkpoints.

14. For example, the United States and Guatemala are collaborating to deepen bilateral law enforcement cooperation to combat migrant smugglers, human traffickers, and narcotics traffickers including through the reconstitution of a Mobile Tactical Interdiction Unit focused on dismantling transnational criminal activities in Guatemala, by providing U.S. law enforcement personnel to train and advise Guatemalan border security and law enforcement, and by the Guatemalan government identifying and seizing the illicit assets of those criminal organizations. The Guatemalan government has also committed to collaborate with the United States to establish Migration Resource Centers in Guatemala that will provide protection screening and referrals to services for people in need of

protection and others seeking lawful pathways to migrate, as well as for returning migrants in need of reintegration support in Guatemala. The first Migration Resource Center became operational on June 10, 2021, and has provided protection screenings for hundreds of returning migrants. The U.S. government, in collaboration with international organization partners and the Guatemalan government, is in the process of establishing several other Migration Resource Centers in Guatemala.

15. For its part, in addition to the joint efforts described above, the United States has already taken several other actions to advance the administration's efforts to enact a comprehensive approach to regional migration. One of the first such actions was to commence a process for safe and orderly re-processing of persons who had previously been returned to Mexico under MPP. While MPP was operational, tens of thousands of migrants, primarily individuals from Central America who were returned to Mexico under MPP, lived in very poor conditions along the U.S.-Mexico border, including in an informal camp that had formed in Matamoros, Tamaulipas, for extended periods while many awaited the commencement or completion of their U.S. immigration proceedings. The governments of the northern Central American countries expressed concern for the safety of their nationals residing in the camp as well as elsewhere along the U.S.-Mexico Border. The Government of Mexico shared these concerns.

16. The U.S. government announced the plan for safe and orderly re-processing of noncitizens in MPP on February 11, 2021. Since the announcement of the MPP re-processing, the Mexican and U.S. governments have worked together to implement this process, including determining the prioritization of the intake. Through the MPP re-processing the informal migrant camp in Matamoros was closed in early March 2021.

17. Mandatory and immediate implementation of MPP until the federal government has sufficient detention capacity to detain all noncitizens subject to Section 1225 would undermine current U.S. foreign policy. An immediate imposition on Mexico to care for and protect irregular migrants would be extremely problematic for Mexico. The Mexican government's partnership was essential for implementing MPP when it was operational, and Mexico has been an essential partner in the re-processing since February. An MPP process without the support and material collaboration of Mexico is impossible. Implementation of contiguous-territory-return authority depends on the issuance by Mexico of immigration documents, coordination for individuals being returned and then re-entering the United States for court dates, supplemental shelter provided by Mexico in some locations, and additional law-enforcement measures to meaningfully curb activities and presence of gangs, cartels, and other criminals seeking to prey on returned migrants. Attempting to hastily and unilaterally re-implement MPP without explicit Mexican support along with appropriate humanitarian safeguards would nullify more than six months of diplomatic and programmatic engagement with the Government of Mexico to restore safe and orderly processing at the U.S. southern border. It would also require the U.S. government to divert attention and limited resources away from its current U.S. foreign policy goals mentioned above towards negotiating with the Government of Mexico issues related to the re-implementation of MPP. Further, it would divert humanitarian resources from ongoing strategic efforts elsewhere in Mexico to reinforce capacity in northern Mexico, including in locations where security conditions severely limit humanitarian actors' ability to operate, or otherwise would necessitate drawing from already-limited resources for other humanitarian emergencies globally.

18. In addition, rapidly re-implementing MPP without appropriate humanitarian safeguards at this stage, and without active collaboration with the Government of Mexico, would be harmful to our bilateral relationships with the northern Central American countries, with our international organization partners, and with other refugee host countries and donor countries throughout the Western Hemisphere and beyond. As a result, regional partners and international organizations could be less inclined to cooperate with the United States in implementing its broader, long-term foreign policy goals, including the Root Causes Strategy and the Collaborative Migration Management Strategy, and this, in turn, could adversely impact the U.S. government's efforts to stem the flow of irregular migration in the region. It would also undermine U.S. credibility and global leadership on humanitarian issues.

19. Additionally, the Mexican government and international organizations lack sufficient funding and capacity to respond to an order directing the United States government to immediately re-implement MPP nationwide. In recent days, the U.S. government has been interdicting approximately 7,500 individuals a day at the U.S. southwestern border. If the U.S. government were to attempt to return that number to Mexico absent appropriate procedural arrangements with Mexico and sufficient Mexican absorption capacity, the result would create a humanitarian and diplomatic emergency.

20. Mandatory and immediate re-implementation of MPP on a wide-scale basis would undermine the U.S. government's flexibility and discretion, negatively impact U.S.-Mexico bilateral relations, and subject already-vulnerable individuals to increased risks. When operational, MPP frequently stressed Mexican social services beyond capacity and created challenges to meeting the needs of such large numbers of vulnerable individuals

on the Mexican side of the U.S. border. Moreover, the diplomatic tensions caused by this humanitarian crisis became an ongoing obstacle to achieving our broader security, economic, and trade goals with Mexico.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 16th day of August, 2021

Ricardo Zuniga
Senior Bureau Official
Bureau of Western Hemisphere Affairs
U.S. Department of State

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STATE OF TEXAS, STATE OF MISSOURI, *Plaintiffs,* v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, *Defendants.*	)	Civil Action No. 2:21-cv-00067-Z

ORDER GRANTING DEFENDANTS' EMERGENCY MOTION TO STAY COURT'S ORDER PENDING APPEAL

Before the Court is Defendants' Emergency Motion to Stay Court's Order Pending Appeal. The Court, having considered the motion and all other relevant materials, finds that the motion should be and is hereby granted.

Signed this ___ day of _____, 2021.

Hon. Matthew J. Kacsmaryk
United States District Judge