

Congress of the United States
Washington, DC 20515

November 5, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Biden,

Your administration's failure to restart the Migrant Protection Protocols (MPP) and your continued efforts to terminate the program are unacceptable. You must immediately either restart MPP or detain all illegal aliens subject to mandatory detention by the Immigration and Nationality Act (INA).

Since you were sworn in as President, U.S. Customs and Border Protection (CBP) encountered more than 1.4 million illegal aliens at the border. This number includes more than 126,000 unaccompanied alien children and more than 450,000 aliens as part of alleged family units. The number does not include the estimated 300,000-400,000 got aways that have entered the country during your administration. Your open-border policies are the reason that we are seeing this massive influx of illegal aliens attempting to enter the country. Your decision to release illegal aliens into the United States instead of detaining them as required by law or enrolling them in MPP is one of the key reasons for the surge of illegal aliens at the border. Aliens know that under your administration, they will be released and face no consequences for their actions.

It has been nearly three months since a federal court ordered your administration to restart MPP, and the Department of Homeland Security (DHS) has yet to enroll a single alien in MPP. Last month, we wrote to you asking when DHS would begin enrolling aliens in MPP, as required by the court order. We have yet to receive a response to our letter.

Instead of restarting MPP and expanding detention capacity, DHS released a new memorandum last week purporting to once again terminate MPP. This new memorandum makes clear that your administration does not intend to comply with the court order and is intent on moving forward with your illegal termination policy.

The court order was very clear, your administration was ordered "to enforce and implement MPP *in good faith* until such a time as it has been lawfully rescinded in compliance with the APA **and** until such a time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention . . . without releasing any aliens *because of* a lack of detention

resources.”¹ To comply with the court order your administration must restart MPP and must begin expanding detention capacity to comply with the laws passed by Congress.

Section 235 of the INA requires that aliens who are placed in expedited removal and receive a positive credible fear determination “shall be detained for further consideration of the application for asylum.”² Similarly, that section requires that aliens who are placed directly in removal proceedings instead of being placed in expedited removal “shall be detained for a proceeding under section 240[.]”³ These detention requirements are not optional. If your administration is not going to restart MPP, then you must detain all aliens subject to these mandatory detention requirements. These are the two options that Congress has provided.⁴ You do not get to make up your own option. Until you do so, you are violating the court’s order and violating the laws passed by Congress.

We ask that you provide us with answers to the following questions by Friday, November 12, 2021.

1. Has your administration begun conversations with the Government of Mexico about restarting MPP?
2. Has your administration conveyed to the Government of Mexico that you are under a court order to restart the program?
3. What steps will your administration take to comply with the court order if the Government of Mexico indicates an unwillingness to assist DHS in restarting the program?
4. When will DHS restart MPP?
5. How many detention beds will DHS need to detain all aliens subject to mandatory detention by the INA?
6. What steps is your administration taking to expand detention capacity?
7. When will your administration begin detaining all aliens subject to the INA’s mandatory detention requirements?

Sincerely,



Andy Biggs
Member of Congress



Matthew Rosendale, Sr.
Member of Congress

¹ *Texas et al. v. Biden*, 2:21-CV-067-Z, 2021 (N.D. Tex. Aug. 13, 2021) https://ago.mo.gov/docs/default-source/press-releases/mpp.pdf?sfvrsn=f2722fb5_2.

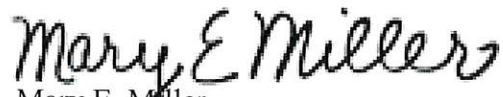
² 8 U.S.C. § 1225(b)(1)(B)(ii) (2021).

³ 8 U.S.C. § 1225(b)(2)(A) (2021).

⁴ 8 U.S.C. § 1225 (2021).



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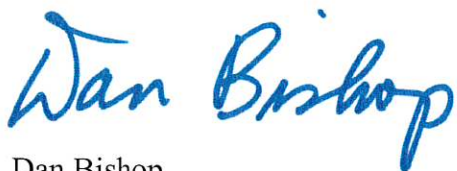
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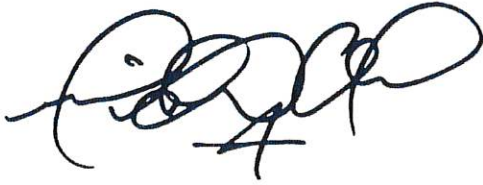
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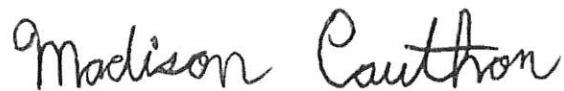
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