By Email

August 30, 2021

Hon. Joseph R. Biden, Jr. President of the United States

Hon. Antony Blinken Secretary, U.S. Department of State

CC: Amb. Susan Rice Domestic Policy Council

> Harold H. Koh U.S. Department of State

Hon. Merrick B. Garland Attorney General, U.S. Department of Justice

Hon. Alejandro N. Mayorkas Secretary, Department of Homeland Security

Advisor Jake Sullivan National Security Council

Lucas Guttentag U.S. Department of Justice

RE: Urgent Actions the Biden Administration Must Take Following Supreme Court Decision on MPP

Dear President Biden, Attorney General Garland, Secretary Blinken, and Secretary Mayorkas,

We, the undersigned 108 organizations, are profoundly disappointed by the Supreme Court's <u>decision</u> on August 24 to refrain from blocking a U.S. District Court <u>decision</u> on the misnamed Migrant Protection Protocols ("MPP"). Although we disagree with these rulings, we urge the Department of Homeland Security ("DHS") to take all necessary legal steps to immediately issue a new policy memo that provides a fuller explanation for the decision to terminate MPP and that resolves any Administrative Procedures Act ("APA") issues identified by the U.S. District Court. Taking this step is the quickest and most secure way to bring an end to MPP consistent with the court's order.

There is no lawful, safe, or humane way to carry out MPP. Unfortunately, the U.S. District Court failed to grasp this. We believe that a new DHS memo can help clarify that the agency did in fact put a great deal of thought into its rescission of MPP, and that the agency's decision was neither arbitrary nor capricious but a sound exercise of judgement after extensive review of both the MPP program's numerous problems and its fundamental lack of necessity.

MPP prevented over <u>70,000</u> people from preparing their asylum cases inside the United States -- where they would have had access to U.S. legal counsel¹ -- and instead returned them to extreme danger in Mexico. There they were subject to extensively documented kidnapping, sexual assault, torture, trafficking, and other violent attacks. During the two years that MPP was in effect, there were over <u>1,500</u> publicly reported cases of violent attacks against people returned to Mexico under MPP, and some of the undersigned human rights organizations have come across many more cases that were never reported.

Since the Biden administration took office, there have been another 6,356 reports of kidnapping, rape, torture, and other attacks against migrants blocked at ports of entry or expelled to Mexico by DHS and

¹ As of December 2020, <u>97%</u> of individuals in MPP whose cases had been decided did not have an attorney. By contrast, in non-MPP proceedings, only <u>9%</u> of non-detained asylum seekers whose cases concluded in Fiscal Year 2018 did not have legal representation at any point during their proceedings.

forced to endure the same dangers as individuals forcibly returned to Mexico under MPP. Under MPP, many asylum seekers were targeted for the same reason they fled their home countries, including women, LGBTQ, and Black asylum seekers, who were forced to endure widespread violence, discrimination, and targeted attacks in Mexico. Restarting this disgraceful policy would lead to countless more brutal attacks.

MPP was one of many Trump administration policies designed to deter asylum seekers from requesting protection at our border by forcing them to live in squalid conditions and face unrelenting danger in Mexico while waiting for their U.S. immigration hearings. By forcing migrants to wait for months or <u>over</u> a year for a court hearing; risk their lives just to attend their court hearings by walking to a Port of Entry in a dangerous Mexican border town, often in the dead hours of the morning when they are easier prey for criminal organizations; cutting off access to legal counsel; and subjecting them to <u>farcical court</u> proceedings riddled with due process violations, MPP <u>caused</u> many asylum seekers to be unable to attend their hearing² or unfairly denied protection in addition to unspeakable trauma.³

Extensive territorial <u>control</u> by cartels and <u>complicity</u> by Mexican government agents in <u>violent attacks</u> and <u>kidnappings</u> against vulnerable asylum seekers and migrants makes clear that the U.S. government cannot re-implement MPP without subjecting vulnerable individuals to pervasive violence.

The Biden administration rightfully suspended new enrollments in MPP on its first day in office to conduct a study of the lawfulness and advisability of this program. After more than four months of evaluation, the administration formally <u>terminated</u> the policy on June 1. We commended the administration for taking these steps to end this failed Trump administration policy and redress its harms by working with human rights organizations on the wind down process, by allowing over 13,000 individuals previously subjected to MPP to continue their asylum cases inside the U.S., and by moving to reopen those cases that had been unlawfully denied. We urge the administration to take all lawful and necessary steps to preserve the MPP wind down and continue processing individuals previously subjected to MPP into the United States.

Any <u>return to MPP or an MPP-like policy</u> or practice that requires people seeking humanitarian protection to return and wait in Mexico while their cases are processed would be a travesty and we urge the administration to do everything in its power to prevent this from happening. We also urge the Biden administration to take immediate steps to end the <u>cruel</u> and unlawful Title 42 expulsions and immediately restore access to asylum at the border, including at ports of entry.

We invite you to sit down with our organizations to engage in a stakeholders' conversation on how the administration can comply with the court's order in good faith while exercising its authority to ensure that asylum seekers and migrants are safely processed into the United States.

Thank you for your time and consideration of this important issue.

Sincerely,

² While at least 44% of all MPP cases resulted in an in absentia order (much more depending on the calculation used), 17% of non-detained removal cases from 2008-2018 resulted in an in absentia order. This stark difference illustrates the barriers individuals face in MPP just to attend their court hearings.

³ Approximately <u>1%</u> of individuals in MPP were granted relief, an egregiously low grant rate that demonstrates the due process barriers inherent in the policy.

ADL (Anti-Defamation League) African Communities Together Al Otro Lado Aldea - The People's Justice Center America's Voice American Friends Service Committee American Gateways American Immigration Council Americans for Immigrant Justice Angry Tias and Abuelas of the RGV Annunciation House, INC. Arizona Justice For Our Neighbors ASISTA ASNS's Resource Center Matamoros Asylum Seeker Advocacy Project (ASAP) Austin Region Justice for Our Neighbors Bay Area Border Relief Bellevue PSOT **Border Angels** Border Kindness Border Organizing Project California Collaborative for Immigrant Justice Capital Area Immigrants' Rights Coalition Catholic Legal Immigration Network, Inc. Center for Civic Policy Center for Gender & Refugee Studies Center for Victims of Torture Central American Resource Center of Northern CA - CARECENSF Church World Service Coalition for Humane Immigrant Rights (CHIRLA) Coalition on Human Needs Columbia Law School Immigrants' Rights Clinic Congregation of Divine Providence **Connecticut Shoreline Indivisible** Daughters of the Holy Spirit Desert Support for Asylum Seekers Diocesan Migrant & Refugee Services, Inc. Espacio Migrante Familia: Trans Queer Liberation Movement Fellowship Southwest First Focus on Children Florence Immigrant & Refugee Rights Project Geopaz. Instituto Geografía para la paz AC (IGP)

Government Accountability Project Haitian Bridge Alliance HIAS **Hispanic Federation** Hope Border Institute Houston Immigration Legal Services Collaborative Human Rights First Human Rights Initiative of North Texas Humanitarian Outreach for Migrant Emotional Health (H.O.M.E.) Humboldt Park United Methodist Church. Chicago Immigrant Allies of Marshalltown **Immigration Equality** Immigration Hub Institute for Justice & Democracy in Haiti (IJDH) Interfaith Welcome Coalition - San Antonio International Rescue Committee Jewish Activists for Immigration Justice of Western MA Jewish Family Service of San Diego Just Neighbors Justice Action Center Justice For Our Neighbors - North Central Texas Justice for Our Neighbors El Paso Latin America Working Group (LAWG) Los Angeles LGBT Center Madres e Hijos Mississippi Center for Justice National Council of Jewish Women National Immigrant Justice Center National Immigration Law Center National Justice for Our Neighbors National Network for Immigrant & Refugee Rights National Partnership for New Americans New York City Anti-Violence Project New York Immigration Coalition Northwest Immigrant Rights Project **Oasis Legal Services** Oxfam America **Project Blueprint** Project Corazon, Lawyers for Good Government Public Counsel RAICES Refugee Council USA Refugees International (RI) Rocky Mountain Immigrant Advocacy Network

San Diego Immigrant Rights Consortium Save the Children Sisters of Mercy of the Americas - Justice Team Sisters of the Sacred Heart of Jesus Southern California Immigration Project Tahirih Justice Center The Advocates for Human Rights The Children's Partnership The Sidewalk School Transgender Law Center U.S. Committee for Refugees and Immigrants UCSF Health and Human Rights Initiative Unitarian Universalist Service Committee UNITED SIKHS United Stateless United We Dream Network Washington Office on Latin America (WOLA) Wind of the Spirit Immigrant Resource Center Witness at the Border Women's Refugee Commission Young Center for Immigrant Children's Rights