



# The Migrant Protection Protocols Red Team Report

## Executive Summary

The U.S. implemented the *Migrant Protection Protocols* (MPP) in January 2019 to address the security and humanitarian crisis on the Southern border resulting from an unprecedented number of migrants seeking asylum. MPP was implemented under Section 235(b)(2)(C) of the Immigration and Nationality Act (INA), which gives the Secretary of Homeland Security the authority to return certain applicants for admission to the contiguous country from which they are arriving on land (whether or not at a designated port of entry) pending removal proceedings under Section 240 of the INA. The MPP is designed to support a safe and orderly immigration process, decrease the number of migrants who take advantage of the immigration system, decrease smugglers and traffickers' ability to prey on vulnerable populations, and reduce threats to life, national security, and public safety, while ensuring that migrants (particularly vulnerable population members) receive appropriate protections.

The Department established a multi-Component Red Team, composed of members from the Offices of Privacy, Management, Civil Rights and Civil Liberties, and United States Coast Guard, under the oversight of the DHS Acting Deputy Secretary to review and provide a report on the Department's implementation of the MPP. This team examined the execution of the MPP across the Department to identify recommendations to increase the effectiveness of the program.

The DHS MPP Red Team identified 16 recommendations organized under the following areas:

- Initial Screening and Processing.
- Access to Counsel and Due Process.
- Protection Claims.
- Treatment in Mexico.
- Administration and Logistics.

Each recommendation is designed to correct a shortfall or improve the overall program efficiency. The two attachments provide an overview of the MPP process (Attachment 1) and a consolidated summary of the MPP Recommendations (Attachment 2).

## Table of Contents

1. Introduction
2. DHS MPP Red Team Approach
3. DHS MPP Red Team Recommendations
  - a. Initial Screening and Processing
  - b. Access to Counsel and Due Process
  - c. Protection Claims
  - d. Treatment in Mexico
  - e. Administration and Logistics
4. DHS MPP Red Team Summary
  - a. Summary
  - b. Points of Contact

### ATTACHMENTS

Attachment 1: MPP Flow Chart

Attachment 2: MPP Recommendations Matrix Summary (T)

### 1. Introduction

The U.S. implemented the MPP in January 2019 to address the security and humanitarian crisis on the Southern border. These protocols pertain to certain foreign individuals, entering or seeking admission to the U.S. from Mexico, illegally or without proper documentation, and evaluates them for return to Mexico to wait outside of the U.S for duration of their U.S. immigration proceedings. The Government of Mexico (GOM) provides all appropriate humanitarian protections for the duration of their waiting period. The MPP are designed to support a safe and orderly immigration process, decrease the number of migrants taking advantage of the immigration system, decrease smugglers and traffickers' ability to prey on vulnerable populations, and reduce threats to life, national security, and public safety, while ensuring that vulnerable populations receive the protections they need.

The Deputy Secretary of Homeland Security was directed to establish a Red Team to conduct a top-down review of the MPP policies and implementation strategy. The team examined the way

the Department executes the MPP to produce findings and recommendations to increase program effectiveness. This report contains the results of this analysis with specific recommendations for the Department's senior leadership to consider. DHS should consider these recommendations to enhance the effectiveness and implementation of the MPP program.

## 2. DHS MPP Red Team Approach

Acting Deputy Secretary Pekoske organized the *DHS MPP Red Team* in July 2019. The members began by reviewing key MPP background documents (Secretary Nielsen's *Policy Guidance Memorandum*, CBP's *Implementation of Migrant Protection Protocols*, USCIS Policy Memorandum *Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the migrant Protection Protocols*, etc.) and engaging with DHS Components implementing the MPP along the U.S. Southwest Border. The red Team did not formally engage with migrants, Non-government Organizations (NGOs), academics, attorneys, GOM officials or other experts outside the Department. The Red Team then developed specific recommendations to improve the Department's implementation of MPP in the following areas:

- a. Initial Screening and Processing
- b. Access to Counsel and Due Process
- c. Protection Claims
- d. Treatment in Mexico
- e. Administration and Logistics

DHS Components provided feedback on the initial draft, and the Red Team consolidated the input into a single draft report. The draft report was then redistributed and discussed by all Red Team members, the Office of General Counsel, and the Office of Strategy, Policy, and Plans before additional revisions were incorporated into the final report. The recommendations are presented below.

## 3. DHS MPP Red Team Recommendations

Based on information obtained through dozens of interviews, site visits, and extensive research, the *DHS MPP Red Team* identified the 16 recommendations below:

### a. *Initial Screening and Processing*

- *Enhance initial screening and processing of migrants where MPP is operational.*
  - Standardize the information posted/provided at each facility regarding individual migrant rights (signage should also notify indigenous language speakers of the availability of interpretation services).
  - Provide forms, including informational notices such as the "Notice to Appear" (NTA), in multiple languages (English and Spanish at a minimum) to increase migrants' ability to comprehend their individual rights.

- o Improve identification of each migrant's primary language, particularly those indigenous language speakers for whom English and Spanish are not the primary language, prior to issuance of the NTA, and ensure interpreter availability.
- o Standardize DHS MPP forms and ensure they are consistently used at all MPP locations, Border Patrol stations, and ports of entry.
- o Standardize procedures for vulnerable populations, including pregnant women, LGBTQ, disabled, minors, and the elderly.
- *Clarify the interview process.*
  - o Publish a unified standard operating procedure to ensure consistent application of operational MPP procedures across the Department.<sup>1</sup>
  - o Modify *DHS I-213 Form* to record whether migrants are traveling with relatives or partners and any relevant phone numbers for the migrant and their family.
  - o Address situations where families are placed in MPP and returned to Mexico despite having at least one immediate family member who is Mexican (e.g. the child was born in Mexico to a non-Mexican mother). Some families are placed in the MPP program where the parents are not citizens of Mexico but their child has Mexican citizenship. While one or both parents may have claimed fear, some are returned to Mexico along with their child because they did not pass the asylum officer's screening process. At some locations, DHS sends pregnant women back to Mexico under MPP. It is unclear how DHS will treat families who claim fear of persecution or torture in Mexico when they return to the U.S. with a child who was born in Mexico (and may have Mexican citizenship).
- *Ensure migrants who have asserted "fear" understand the details and scope of the fear screening process.*
  - o Add specific protocols during the "fear screening process" to determine the best-spoken language to communicate with indigenous-language speakers, to ensure the migrant understands the questions asked and make informed decisions.
- *Set standards on non-adversarial interviews.*
  - o Develop and provide guidance to train components on what constitutes "non-adversarial" interviews. These guidelines would include: who can be present at the interview, who may assist with substantiating a claim of fear, the appropriate use of restraints during interviews, guidelines for participation of counsel or a representative, and how to conduct the interview "separate and apart" from persons not related to the claim.
- *Ensure the consistent application of the fear screening process.*

---

<sup>1</sup> This would include but is not limited to: specific authorities, references, best practices, and procedures to ensure a standardized approach to the MPP process across the Department.

- Modify fear screening process protocols to clarify the role of CBP officers and agents versus USCIS officers in making determinations on MPP amenability based on the migrant's claimed fear of persecution or torture in Mexico. At some locations, CBP uses a pre-screening process that preempts or prevents a role for USCIS to make its determination. Interviewees also indicated that some CBP officials pressure USCIS to arrive at negative outcomes when interviewing migrants on their claim of fear of persecution or torture.
- *Collect new information during screenings (e.g. affirmative statement regarding fear of returning to Mexico).*
  - Modify current processes to include fear of "persecution or torture in Mexico" as an additional piece of personal information that will be noted in ICE, CBP, or USCIS data systems.
  - Review current processes for migrants not amenable to MPP to ensure that personal information is not inappropriately shared with Mexico. When an individual asserts a fear of returning to Mexico, and USCIS determines that the individual has met the threshold of "more likely than not that the individual will be persecuted or tortured" if returned to Mexico, a filter in the Office of Biometric Identification Management System's Automated Biometric Identification System should prevent the individual's biometrics from being shared with Mexico. This would ensure DHS is consistently applying confidentiality protections to asylum seekers.

**b. Access to Counsel and Due Process.<sup>2</sup>**

- *Facilitate migrant access to counsel.*
  - Engage with external stakeholders to provide options for multiple communication forums to facilitate early interaction between MPP attorneys and their clients, as much as practical.
  - Engage with external stakeholders to provide migrants who are not in the U.S. access to "Know Your Rights" training, and pre-trial hearing advice, as much as practical. This would include, leveraging the internet, video teleconference, and other communication forums to bridge geographic and security concerns. This support would be formalized through a Memorandum of Agreement or similar document.
- *Facilitate meeting locations/logistics surrounding pre-hearing meeting locations.*

---

<sup>2</sup> Due process not necessarily mean 5<sup>th</sup> Amendment due process but refers to the administration of due process generally, as noted in the Secretary's June 2019 Memorandum directing a review of MPP policy and implementation.

- In collaboration with the Government of Mexico (GOM), ensure a comprehensive standardized documentation package is used and recognized by all authorities to facilitate migrant travel, hearing scheduling, processing, and to protect personal information. Ensure this package can be replaced in Mexico if it is lost or stolen.
- During site visits, the team noted some migrants must give up shelter space in Mexico when they come to the US for a hearing (particularly when in the US for 24-48 hours or more), leaving them without an address to allow for follow up. CBP should create a reliable method of communication (such as an email contact for each migrant) to allow for communication from USG to migrants during their wait in Mexico. The usage of a more reliable communication method, will allow outreach to migrants in Mexico, but will also ensure access to counsel, and communication between migrant families (such as those cases when family members were not all processed at the same time/location, or when juveniles were sent to ORR).

**c. Protection Claims.**

- *Enhance understanding of credible fear.*
  - Continue engaging with external stakeholders to foster a shared understanding of the elevated MPP standard of fear of return to Mexico from “a significant possibility” to “more likely than not,” to help address current confusions about credible fear determinations.
  - Continue to document and analyze migrant “credible fear” claims to address potential *non-refoulement*<sup>3</sup> concerns.

**d. Treatment in Mexico.**

- *Support GOM, NGOs, and community service groups to ensure sufficient, safe, and secure living conditions for returnees in Mexico.*
  - Recommended Department of State (DOS) coordinate with Mexico to obtain the GOM’s written assurance they will comply with *non-refoulement* obligations.
  - Continue to support safe/confidential housing for vulnerable populations remaining in Mexico through MPP.

---

<sup>3</sup>Non-refoulement is a fundamental principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on “race, religion, nationality, membership of a particular social group or political opinion”.

- *Periodically monitor and evaluate whether Mexico is meeting its basic obligations under international law for migrants returning to Mexico under MPP.*<sup>4</sup>

**e. Administration and Logistics.**

- *Establish protocols to ensure regular communication with migrants during their stay in Mexico.*
  - Create an integrated mechanism to share information between migrants and DHS/Department of Justice (DOJ)/Health and Human Services (HHS) throughout removal proceedings.
- *The Chief Privacy Officer will determine if DHS needs to conduct a Privacy Impact Assessment (PIA) on the MPP.*
  - Take appropriate action to mitigate privacy risks identified in any potential DHS MPP PIA.
- *Examine internal and external information sharing considerations.*
  - Standardize intradepartmental information sharing between MPP Component stakeholders (CBP, ICE, USCIS, and OBIM) to memorialize agreed upon processes and procedures.
  - Standardize information sharing between external MPP stakeholders (DOJ/EOIR, GOM, HHS) through a memorandum of agreement or other formal documentation.
  - Engage with the GOM to negotiate a formal information sharing agreement to govern the collection, use, retention, and dissemination of any MPP related information shared between DHS and GOM.
  - In collaboration with EOIR, review/update the *MOU between DHS and EOIR Regarding the Sharing of Information on Immigration Cases*, approved in October 2012.
- *Develop MPP regulations.*
  - Develop regulations for the MPP program.
- *Establish MPP Measures of Effectiveness.*
  - Establish, implement, and assess specific measures of effectiveness (MOE) to evaluate the MPP's effectiveness and scope. These MOE would include: the incoming flow of migrants per day (both for initial screening and for subsequent MPP proceedings); number and percentage of incoming migrants amenable to MPP; flow-rate and backlog associated with removal adjudication proceedings by outcome; number of MPP proceedings scheduled compared to number not held due to no-shows; number of applicants asserting fear per day; number and percentage of

---

<sup>4</sup> The evaluation may include adoption of relevant data sets for trends, surveys, use of a NGO, or engagement with an entity or agency independent of DHS (e.g. State Department or USAID) or some combination thereof.

MPP applicants having to remain overnight in the U.S.; and the number of Entry Without Inspection migrants apprehended who were previously issued an order of removal from an immigration judge.

- Develop joint plans with DOJ to sustain the capability to conduct MPP proceedings near Southwest Border ports of entry, as needed.

#### 4. DHS MPP Red Team Summary

##### **a. Summary**

Implementation of the DHS MPP Red Team recommendations will continue to improve the Department's ability to secure the Southwest Border, improve the USG immigration process, and ensure that the MPP are implemented in accordance with the January 25, 2019 Secretarial memorandum, applicable law, and policy guidance and procedures. This will be an iterative process that the Department will reevaluate and refine over time. Attachment 1 provides an overview of the MPP process and Attachment 2 provides a summary of DHS MPP Red Team Recommendations.

##### **b. Points of Contact**

Questions or subsequent coordination for this report should be directed to

[REDACTED], [REDACTED], [REDACTED];  
[REDACTED].

#### **ATTACHMENTS:**

**Attachment 1: MPP Flow Chart**

**Attachment 2: MPP Recommendations Matrix Summary (Published Separately)**