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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Cristian Doe, *et. al.*,

Plaintiff-Petitioners,

v.

Kristi Noem, Secretary, U.S. Department
of Homeland Security, *et. al.*,

Defendant-Respondents.

**Case No.: 3:19-CV-2119-DMS-
SBC**

JOINT STATUS REPORT

1 On November 20, 2024, the Court stayed this case for an additional 90 days
2 and ordered the Parties to file a joint status report indicating how they wish to proceed
3 in this matter by February 18, 2025. ECF 118. The Court previously stayed this case
4 to provide the parties time to discuss whether they could resolve this case without
5 further litigation. ECF 108. Defendants now confirm that the Migrant Protection
6 Protocols policy (“MPP”) has been reimplemented and is currently operational. For
7 the reasons stated below, the Parties respectfully request that this Court lift the stay
8 and hold a status conference within the next 30-60 days, at which time they can
9 update the court on these rapidly evolving matters.

10 This case relates to MPP, a 2019 program under which persons arriving by
11 land to the United States from Mexico are returned to Mexico to await the outcome
12 of their immigration court proceedings. On January 14, 2020, this Court preliminarily
13 enjoined Defendants from denying access to retained counsel prior to and during *non-*
14 *refoulement* interviews, which determine whether individuals subject to MPP should
15 be allowed to enter the United States during the pendency of their immigration court
16 proceedings because of the likelihood they will suffer persecution in Mexico should
17 they be required to wait there. ECF 40. In 2021, the Biden administration attempted
18 to terminate MPP. Based on that attempted termination, the Ninth Circuit instructed
19 this Court to vacate the classwide preliminary injunction in this matter as moot, which
20 this Court did on July 30, 2021. ECF 74.

21 On April 13, 2021, a number of States sued in the United States District Court
22 for the Northern District of Texas to enjoin the Government against terminating MPP.
23 On August 13, 2021, the court in that case preliminarily enjoined the Government
24 from rescinding MPP. *See* Memorandum Opinion and Order, ECF 94, *Texas v. Biden*,
25 No. 2:21-CV-067-Z (N.D. Tex. Aug. 13, 2021). The Supreme Court later reversed
26 the district court’s judgment and remanded the case for further proceedings. *See*
27 *Biden v. Texas*, 597 U.S. 785 (2022). That case remains on remand in the district
28 court. *See Texas v. Biden*, No. 2:21-CV-067-Z (N.D. Tex).

1 On January 20, 2025, President Trump issued an executive order calling for
2 the reimplementaion of MPP “[a]s soon as practicable.” Executive Order “Securing
3 our Borders,” available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/)
4 [actions/2025/01/securing-our-borders/](https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/). On January 21, 2025, the Department of
5 Homeland Security (“DHS”) announced the agency would be “resuming
6 implementation of the 2019 MPP Policy” immediately. DHS Press Release, available
7 at [https://www.dhs.gov/news/2025/01/21/dhs-reinstates-migrant-protection-](https://www.dhs.gov/news/2025/01/21/dhs-reinstates-migrant-protection-protocols)
8 [protocols](https://www.dhs.gov/news/2025/01/21/dhs-reinstates-migrant-protection-protocols) (last visited Feb. 12, 2025).

9 On January 31, 2025, following DHS’s announcement, the parties in the *Texas*
10 *v. Biden* litigation, including Defendants here, jointly requested the district court in
11 that case to hold the case in abeyance for 180 days, noting that the case was “not yet
12 moot” and that the 180-day pause should “allow incoming leadership at DHS to
13 assess this case and how to proceed.” *See* Joint Status Report, *Texas v. Biden*, No.
14 2:21-CV-067-Z, ECF 211 (N.D. Tex Jan. 31, 2025) (attached as Exhibit A hereto).
15 They further notified the court that “MPP has been reimplemented and will be
16 operational during this [180-day] period.” *Id.*

17 In another relevant development, on February 11, 2025, the plaintiffs in
18 *Immigrant Defenders Law Center v. Noem*, a challenge to the original
19 implementation of MPP before the District Court for the Central District of
20 California, filed an ex parte application requesting the court stay the re-
21 implementation of MPP pending resolution of that case. *See* Ex Parte Application for
22 Stay of Agency Action, *Immigrant Defenders Law Center v. Noem*, Case No. 2:20-
23 cv-09893-JGB-SHK, ECF 371 (C.D. Cal. Feb. 11, 2025), available at
24 <https://cgrs.uclawsf.edu/legal-document/stay-motion-and-memorandum> (last visited
25 Feb. 12, 2025). That request remains pending.

26 Defendants now confirm that MPP is currently operational.

27 **Plaintiffs’ Position**

28 Plaintiffs respectfully request this Court hold a status conference in the next

1 30-60 days. The government's confirmation that MPP is again operational signifies
2 that this case is not moot. However, in light of the rapidly evolving nature of the
3 program's reimplementation and related litigation matters, it is difficult to propose
4 next steps at this time. Accordingly, Plaintiffs propose that the Court hold a status
5 conference within the next 30-60 days (with the exception of March 24-28, 2025,
6 when lead counsel for Plaintiffs will be unavailable), at which time the Parties can
7 update the Court on the status of MPP reimplementation.

8 Plaintiffs additionally request that this Court order Defendants to inform the
9 Court at that status conference whether (1) people placed in MPP who assert fear of
10 return to Mexico will receive *non-refoulement* interviews while in CBP custody, and,
11 if so, (2) whether CBP will provide access to counsel prior to and during such
12 interviews in a manner consistent with the requirements of this Court's original
13 preliminary injunction. *See* ECF 18.

14 **Government's Position**

15 Defendants do not oppose the request to hold a status conference in the next
16 30-60 days to discuss how this case should proceed.

17
18 Dated: February 18, 2025

Respectfully submitted,

20 /s/ Bardis Vakili

21 Bardis Vakili

22 Sarah Kahn

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23 Monika Y. Langarica

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EXHIBIT A

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

THE STATE OF TEXAS AND

THE STATE OF MISSOURI,

PLAINTIFFS,

v.

JOSEPH R. BIDEN, JR. IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES OF AMERICA, *ET*
AL.,

DEFENDANTS.

CASE No. 2:21-cv-00067-Z

JOINT BRIEF ON REINSTATEMENT OF
MIGRANT PROTECTION PROTOCOLS

The parties submit this joint brief in response to the Court's order of January 22, 2025, requesting the parties to address the impact of Defendants' announcement of the reinstatement of the Migrant Protection Protocols (MPP) on this case. ECF No. 207. While Defendants' announcement does not yet moot this case, the parties respectfully request that the court hold this case in abeyance for 180 days while incoming leadership at the Department of Homeland Security (DHS) assesses this case and how to proceed.

This case currently concerns Plaintiffs' challenge under the Administrative Procedure Act (APA) to the October 29, 2021 memorandum terminating MPP by former DHS Secretary Alejandro Mayorkas (the Mayorkas memorandum) following remand from the U.S. Supreme Court, *Biden v. Texas*, 597 U.S. 785 (2022). The Mayorkas memorandum represented DHS's decision and action to terminate in 2021 MPP, which was implemented in 2018 through a memorandum by then DHS Secretary Kirsten Nielsen. *Id.* at 791. The implementation of the

Mayorkas memorandum is currently stayed by the Court pursuant to 5 U.S.C. § 705 pending its adjudication of this case. ECF No. 178. MPP could not be functionally operative for a period of time due to Mexico's lack of cooperation.

The parties have fully briefed summary judgment motions addressing Plaintiffs' APA claims against the Mayorkas memorandum, which are currently pending adjudication. ECF Nos. 203, 204, 205, 206.

As the Court notes, on January 21, 2025, DHS announced that it had reinstated MPP. U.S. DHS, "DHS Reinstates Migrant Protection Protocols, Allowing Officials to Return Applicants to Neighboring Countries," (Jan. 21, 2025), <https://www.dhs.gov/news/2025/01/21/dhs-reinstates-migrant-protection-protocols>. As DHS explained, "The situation at the border has changed and the facts on the ground are favorable to resuming implementation of the 2019 MPP Policy." *Id.*

Under these circumstances, the parties request that the Court take no further action at this time, including resolving the summary judgment motions, and place this matter in abeyance for 180 days to allow incoming leadership at DHS to assess this case and how to proceed. The parties will submit a status report updating the court 180 days from today. No party will be prejudiced by this abeyance because MPP has been reimplemented and will be operational during this period.

Accordingly, the parties request that this matter be held in abeyance for 180 days.

Date: January 31, 2025

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2025, I electronically filed this brief 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.

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