



Homeland  
Security

MEMORANDUM FOR: Dominic Mancini  
Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

From: Eric Hysen  
Chief Information Officer  
Department of Homeland Security

**Subject: Emergency Approval Request for DHS HQ Migrant Protection  
Protocols Case Request website**

This memorandum requests an emergency approval for the collection of information under the Paperwork Reduction Act (PRA) for the Department of Homeland Security (DHS) Migrant Protection Protocols (MPP) Case Request website, which will provide an avenue for individuals to initiate a request for disenrollment from MPP should they believe they should not be included in the MPP program. Decisions whether to enroll or disenroll an individual from MPP are at DHS's discretion, and this process does not create any obligation or private right of action enforceable in administrative or judicial proceedings.

The Department of Homeland Security (DHS) Headquarters (HQ) Migrant Protection Protocols (MPP) program is a U.S. Government program, initiated in January 2019 pursuant to Section 235(b)(2)(C) of the Immigration and Nationality Act (INA). Under MPP, the United States returns to Mexico certain citizens and nationals of countries in the Western Hemisphere other than Mexico while their U.S. removal proceedings are pending.

On June 1, 2021, the Secretary of Homeland Security determined that MPP should be terminated and issued a memorandum to that effect. On August 13, 2021, however, the U.S. District Court for the Northern District of Texas determined in *Texas v. Biden* that the June 1, 2021 memo was not issued in compliance with the Administrative Procedure Act and INA and ordered DHS to "enforce and implement MPP in good faith." See *Texas v. Biden*, No. 2:21-cv-067, 2021 WL 3603341 (N.D. Tex. Aug. 13, 2021).

On October 29, 2021, after an extensive and comprehensive review, the Secretary of Homeland Security issued a new memorandum terminating MPP, which DHS will implement as soon as practicable after issuance of a final judicial decision to vacate the Texas injunction. Until that time, the Department continues to comply with the Texas injunction requiring good-faith implementation and enforcement of MPP.

To carry out the court order requiring good-faith implementation and enforcement of MPP, the Department is proposing a new data collection. To achieve efficiencies and ensure consistency

with MPP guidance, DHS seeks to create a public-facing MPP Case Request website. The purpose of the public facing MPP Case Request website is to provide an avenue for individuals to initiate a request for disenrollment from MPP should they believe they should not be included in the MPP program. The website will also provide additional information to the users as well. Once an individual has provided information, the government will have the ability to determine whether an individual is incorrectly placed in MPP processing. The information to be collected for self-disclosure is located in Attachment A.

Because DHS is currently required to comply with the *Texas v. Biden* court order, it is vital that DHS implement the information collection as soon as possible. In accordance with the Paperwork Reduction Act (PRA) and the Office of Management and Budget's (OMB) implementing regulations at 5 C.F.R. § 1320.13: (1) this information is necessary to the mission of the agency, (2) this information is necessary prior to the time periods established under PRA, (3) public harm is reasonably likely to result if normal clearance procedures are followed, and (4) an unanticipated event has occurred.

### **1. Information is Essential to the Mission of the Agency**

Due to the court-ordered reimplementations of MPP, DHS requests emergency approval to create this new information collection to allow for enrollees to initiate a request for disenrollment from MPP should they believe they should not be included in the MPP program.

All information entered by applicants into the MPP Case Request System will be used by DHS employees and staff to determine whether, consistent with DHS MPP guidance, an individual should be disenrolled from MPP. Decisions whether to enroll or disenroll individuals from MPP are at DHS's discretion, and the case request process does not create any obligation or private right of action enforceable in administrative or judicial proceedings. Information submitted will be used to ensure that enrollments are consistent with DHS MPP guidance.

The purpose of this effort is to provide individuals a process to initiate a request to be disenrolled from MPP should they believe that they should not be included in the program – either because they meet one of the vulnerability criteria that may counsel in favor of their exclusion from the program or because they have a reasonable fear of persecution or torture in Mexico. The MPP Case Request application will centralize case review requests from individuals enrolled in MPP who believe that they were enrolled in error either because they meet one of the criteria in the DHS Guidance that should counsel in favor of their exemption from processing under MPP or because of potential non-refoulement considerations – or because of changed circumstances that render them no longer suitable for MPP. Without the information provided through this effort, DHS will be unable to assess these requests in a timely manner and ensure that enrollments are consistent with DHS MPP guidance.

### **2. Paperwork Reduction Act Timeframes**

Because DHS is subject to a court order requiring reimplementations of MPP, it would be

impracticable to delay implementing this information collection until after DHS has completed the PRA process.

### **3. Public Harm is Reasonably Likely to Result if Normal Clearance Procedures are Followed**

Public harm is reasonably likely to result if this information is not collected. The lack of a public-facing platform to initiate requests for disenrollment from MPP could adversely impact DHS's ability to ensure that enrollments in MPP are consistent with DHS guidance and to timely respond to individual requests for disenrollment from MPP. While DHS has put in place as an interim measure an email inbox to receive requests for disenrollment, the functionality of this tool is significantly more limited than the portal, hindering DHS's ability to consistently respond to and track the outcome of requests.

### **4. An Unanticipated Event Has Occurred**

The *Texas v. Biden* court order requires DHS to "enforce and implement MPP in good faith." DHS is requesting emergency approval of this information to ensure the Department can, as part of its court-ordered reimplementation of MPP, consistently address requests for disenrollment from MPP. Delay in the approval of these information collections may delay DHS's ability to timely review and respond to requests for disenrollment and ensure that enrollments are consistent with DHS MPP guidance. While DHS has put in place as an interim measure an email inbox to receive such requests, the functionality of this tool is significantly more limited than the portal, hindering DHS's ability to consistently respond to and track the outcome of requests.

### **5. Conclusion**

This request for an emergency approval for the collection of new information to assist DHS in reviewing MPP enrollments follows the court-ordered reimplementation of MPP. Following the normal clearance procedures for OMB approval would delay DHS's ability to timely review and respond to requests for disenrollment and ensure that enrollments are consistent with DHS guidance.

As discussed, DHS certifies that this request meets the requirements of 5 C.F.R. § 1320.13(a) and it is vital that this new collection of information be implemented immediately because: (1) this information is essential to the mission of the Agency, (2) this information is necessary prior to the timeframes established under the PRA, (3) public harm will result if normal clearance procedures are followed, and (4) unanticipated events have occurred.

Thank you for your consideration.

Upon approval and after implementation of the information collection process, DHS will address public comments as necessary under the normal PRA approval process.

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Approve

Date

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Disapprove

Date

### Attachment A

**Submission Information:**

Attorney or Representative E-mail
Attorney or Representative Name
Attorney or Representative Phone Number
Attorney or Representative Country Code
A #Number
Best Phone Number
E-mail Address
First, Middle, and Last Name
Date of Birth
Country of Birth
County of Citizen Citizenship
Where are you (MPP enrolled person) located now? (Country, City, State)
Preferred Language
Reason for MPP review

Is there someone else we contact about your concern?
Alternate Contact Name
Alternate Contact Phone Number
Alternate Contact Email
Relationship to Alternate Contact