

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ANDRES OSWALDO BOLLAT)	
VASQUEZ, et al.)	
Plaintiffs,)	
v.)	C.A. No. 20-10566-IT
)	
CHAD F. WOLF, Acting Secretary of)	
Homeland Security, et al.)	
)	
Defendants.)	
_____)	

**DECLARATION OF AUSA ERIN E. BRIZIUS IN SUPPORT OF DEFENDANTS’
SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION FOR A
PRELIMINARY INJUNCTION**

I, Erin E. Brizius, state the following under penalty of perjury pursuant to 28 U.S.C. § 1746. I am an Assistant U.S. Attorney in the District of Massachusetts. I am admitted to the bar in the State of New York and am an attorney in good standing. I make the statements herein based on my personal knowledge.

1. Attached hereto as Exhibit 1 is a true and correct copy of the Customs and Border Protection, *Muster MPP Guiding Principles*.

Executed on May 7, 2020

/s/ Erin E. Brizius
Erin E. Brizius
Assistant United States Attorney

Exhibit 1

Muster MPP Guiding Principles

Date: [Same as the Guidance Memorandum to All Chief Patrol Agents and All Directorate Chiefs]

Topic: Muster Guiding Principles for Migrant Protection Protocols (MPP)

HQ POC/Office: Law Enforcement Operations Directorate/Specialty Programs

Effective immediately, in accordance with the Commissioner's guidance dated January 28, 2019, in coordination with his office, the U.S. Border Patrol (USBP), Rio Grande Valley Sector (RGV) will remain consistent with its existing discretion, and authorities in implementing Section 235(b)(2)(C) of the Immigration and Nationality Act (INA).

To implement the MPP in the RGV, aliens arriving on land from Mexico between the POEs who are amenable to the process (see below), and who in an exercise of discretion the agent determines should be subject to the process, will be issued a Notice to Appear (NTA) and placed in INA section 240 removal proceedings. They will then be transported to the appropriate POE to await proceedings in Mexico.

Aliens in the following categories are **not** amenable to the MPP:¹

- Unaccompanied alien children;
- Citizens or nationals of Mexico;
- Aliens processed for expedited removal;
- Aliens in special circumstances such as known physical or mental health issues; criminals/history of violence; or Government of Mexico or U.S. Government interest; or
- Other aliens at the discretion of the Chief Patrol Agent.

Under Section 235(b)(2)(C), aliens may be processed for MPP if they are "arriving on land" between the POEs. In general, and on an individualized basis, USBP agents may consider an alien to be arriving on land for purposes of the MPP if the alien is encountered within 96 hours of the alien's crossing the land border.² Agents should make those determinations based on the facts and circumstances presented by a particular case when determining whether an alien is amenable to the MPP.

¹ Although USBP will not encounter aliens who are returning lawful permanent residents of the United States at a POE or who arrive at a POE with advance parole, USBP should be aware that such aliens are not amenable to MPP.

² Section 235(b)(2)(C) applies to applicants for admission who are "arriving on land." This term thus clearly constitutes a reference to both an alien's location (in the act of "arriving") and manner of entry (on land, rather than by sea or air). "Arriving on land," in this context, refers both to those in the process of crossing the land border, as well as those encountered reasonably proximate to crossing the land border between the ports of entry. Over the past several fiscal years, approximately 90% of aliens apprehended by the U.S. Border Patrol along the southwest border have been apprehended within 96 hours of crossing the land border. USBP agents, however, also should consider unique circumstances in which an alien apprehended in that period has credibly demonstrated that he or she has reached his or her intended destination in the United States.

Nothing in this guidance changes existing policies and procedures for processing an alien under procedures other than the MPP, except as specifically provided. For example, processing aliens for expedited removal is unchanged. Once an alien has been processed for expedited removal with the supervisor approval, the alien may not be processed for the MPP.

Agents, with appropriate supervisory review, retain discretion to process aliens for the MPP or under other procedures (e.g., expedited removal), on a case-by-case basis. Adverse factors precluding placement in the MPP process include, but are not limited to, factors such as prior removal, criminal history, if it is more likely than not that the alien will face persecution or torture in Mexico, and permanent bars to readmission.

- If an alien who is potentially amenable to the MPP affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, whether before or after they are processed for the MPP or other disposition, that alien will be referred to a U.S. Citizenship and Immigration Services (USCIS) asylum officer for screening following such affirmative statement, so that the asylum officer can assess whether it is more likely than not that the alien will face persecution or torture if returned to Mexico.
- If USCIS assesses that an alien who affirmatively states a fear of return to Mexico is more likely than not to face persecution or torture in Mexico, the alien may not be processed for the MPP. Agents retain discretion to process (or re-process) the alien for any other available disposition, including reinstatement, expedited removal or NTA.
- Aliens who are processed by USBP for the MPP will receive a specific immigration court hearing date and time. Every effort will be made to schedule similar MPP alien populations (e.g., single adult males, single adult females, family units) for the same hearing dates.
- OFO and USBP will share court dates using only one existing Immigration Scheduling System queue.
- Any alien who is subject to the MPP will be documented in e3, and the proper code will be added as provided in the attached slide presentation. An IDENT alert for all aliens processed as MPP will be initiated prior to being returned to Mexico. **[Alien's Name & A#] was apprehended on [DATE] and processed as a candidate for MPP. Alien was returned to Mexico through the [Name] Port of Entry. The alien has an immigration court hearing scheduled through the Immigration Scheduling System on [DATE] at [LOCATION].**
- Aliens subject to the MPP will receive a tear sheet containing information about the process, as well as a list of free or low cost legal service providers.
- USBP will transport any alien processed under the MPP to the appropriate POE, so that the alien can be returned to Mexico pending their INA Section 240 removal proceedings.
- If USBP encounters a subject within 96 hours of entering illegally, and that alien has previously been processed for MPP, agents should take the below steps absent information indicating that the alien has reached his or her destination in the United States prior to encounter. If the subject is encountered more than 96 hours after his or her illegal entry, or there is an indication that the alien has reached his or her final destination in the United States, agents should immediately contact USBP HQ for further instructions.
- Such aliens should not, in general, be ER'ed because if the Notice to Appear (NTA) has already been filed, jurisdiction over their cases has already vested with the immigration court. These apprehensions would need to be processed as Temp A-Files with new I-213 and an ALERT needs to be placed in all records. This Alert is to ensure everyone is aware of their MPP status and the additional illegal entry. Agents should document the details of the

subject's illegal entry, including any available information regarding the claimed reasons for such illegal entry, the claimed reasons why the alien may have entered in that particular location, and as many additional details as possible, in the new I-213. The Sectors should also reach out to local OCC reps so that they can ensure that ICE OPLA is aware of the development, as it may be relevant to removal proceedings, and should ensure that the Temp A-File is expeditiously provided to ICE OPLA. Local OCC will work with ICE OPLA to determine whether the NTA should be amended to reflect the illegal entry. Sectors should ensure that all relevant information is tracked in detail in e3.

- Additionally, **agents should advise the alien of his/her forthcoming immigration court hearing date and location, and the I-213 narrative should specifically note that the alien being returned to Mexico was given such advisal.**
- Subjects may be prosecuted for their illegal entry, subject to all appropriate legal restrictions. Therefore, FMUAs are not generally amenable to prosecution for illegal entry given practical impediments imposed by current legal restrictions. Single adults may be referred for prosecution for the illegal entry, subject to all appropriate local procedures and restrictions. In the event an alien receives a sentence which would place the alien in custody beyond the date the alien is scheduled to appear in immigration court, the Sector should contact local OCC immediately for coordination with local ICE OPLA. Sectors should also be aware that the alien's initial return to Mexico subject to the MPP process is not a removal for purposes of illegal re-entry prosecutions (pursuant to 8 USC 1326).
- Lastly, after all this, USBP HQ is instructing ALL Sectors return all MPP subjects to Mexico via the appropriate POE, as explained below, if they all have their Mexican documents to remain while waiting for their Court Appearance. If they do not have their Mexican documents (Humanitarian Cards), please ask for OFO's assistance (specifically, OFO Watch Commanders knowledgeable of MPP procedures) to assist USBP in returning all individuals. DHS is aware that Government of Mexico is refusing those persons not in possession of physical cards and is working to solution this issue. **If the alien's next hearing date is scheduled for one week or more from the date of apprehension, USBP may return the alien to Mexico through the closest POE. If the alien's next hearing date is less than one week away, please contact USBP HQ for further instructions.**
- All aliens processed for MPP should **already have** (1) IDENT alert to ensure the agent processing is aware the alien has been processed for MPP. Copied here is the language distributed to Sectors implementing MPP within the MPP Guiding Principles Muster discussing the first USBP alert. The illegal entry of an MPP candidate would cause the need for an additional Alert so EOIR judges have maximum awareness.