



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

June 6, 2022

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Joseph R. Biden, Jr., President of the United States, et al. v. Texas, et al.,
No. 21-954

Dear Mr. Harris:

Our letter of April 25, 2022 informed the Court that the Department of Homeland Security (DHS) had discovered certain data errors in its *Explanation of the Decision to Terminate the Migrant Protection Protocols* (Oct. 29, 2021), which it intended to correct in due course. DHS has now posted an errata sheet to its website correcting those errors. The errata sheet is attached to this letter and available at https://www.dhs.gov/sites/default/files/2022-06/22_0606_plcy_mpp-errata_508.pdf.

I would appreciate it if you would distribute this letter to the Members of the Court.

Sincerely,

Elizabeth B. Prelogar
Solicitor General

cc: See Attached Service List

Addendum: Errata Page

The Department recently discovered non-material data errors in the *Explanation of the Decision to Terminate the Migrant Protection Protocols*, dated October 29, 2021. This addendum accordingly revises that memorandum in two respects. The first change shows the rates of encounters along the southwest border decreasing following the full implementation of MPP, but to a lesser degree than was previously presumed. The second change, also reflected in the updated appendix, indicates a lower percentage and absolute numbers of releases from detention than previously reported, but the key point remains the same: the Department has never detained all noncitizens described in 8 U.S.C. § 1225.

Errata to the Explanatory Memorandum

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But from June 2019, when DHS announced that MPP would be fully implemented along the entire SWB, through September 2019, border encounters decreased rapidly, falling 64 50 percent in just three months.

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From Fiscal Years 2013 to 2019, ~~nearly three-quarters~~ 43 percent of single adult and family unit members who were encountered at the SWB were either never placed in or released from detention during the pendency of their proceedings— ~~more than 1.1 million~~ almost 750,000 (~~41~~ 21 percent) were never booked into ICE detention, and ~~nearly 900,000~~ more than 770,000 (~~33~~ 22 percent) were booked in for a period of time but released prior to the conclusion of their removal proceedings. Even during the period that MPP was in effect from late January 2019 to January 20, 2021, ~~more than two-thirds~~ 59 percent of single adults and individuals in family units encountered along the SWB and processed through non-MPP Title 8 authorities— ~~more than 650,000~~ 520,000 individuals— ~~encounters~~— were never detained or were released from ICE custody during the duration of their proceedings; a full ~~42~~ 38 percent (more than ~~415,000~~ 330,000 individuals) were never booked into ICE detention at all.

- **Appendix 1: Encounters by Detention, Fiscal Years 2013-2021 (revised)**

Fiscal Year	Total Encounters	Continuous Detention		Booked out prior to final outcome		Never Detained	
2013	448,433	365,717	82%	42,499	9%	40,217	9%
2014	497,292	346,916	70%	83,739	17%	66,637	13%
2015	400,731	266,451	66%	77,868	19%	56,412	14%
2016	492,626	281,108	57%	125,229	25%	86,289	18%
2017	366,581	205,624	56%	86,143	23%	74,814	20%
2018	460,388	247,219	54%	132,317	29%	80,852	18%
2019	851,368	282,514	33%	225,062	26%	343,792	40%
2020	210,623	138,542	66%	27,363	13%	44,718	21%
2021	525,193	52,340	10%	138,208	26%	334,645	64%
2013-2019	3,517,419	1,995,549	57%	772,857	22%	749,013	21%
2013-2021	4,253,235	2,186,431	51%	938,428	22%	1,128,376	27%
Non-MPP Cases	875,331	355,294	41%	183,186	21%	336,851	38%

Notes: Table includes single adults and individuals in family units encountered at the southwest border, excluding noncitizens enrolled in MPP and those expelled under Title 42 authority. Non-MPP cases cover the period between Jan. 25, 2019, and Jan. 20, 2021.

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