

## Supplemental Migrant Protection Protocols Guidance

Date: December 7, 2020

Topic: MPP Amenability

HQ POC/Office: Enforcement Programs Division

- In accordance with the Commissioner’s Memorandum of January 28, 2019 and the *Supplemental Policy Guidance for Additional Improvement of the Migrant Protection Protocols (December 7, 2020)*, and consistent with existing discretion and authorities in implementing Section 235(b)(2)(C) of the Immigration and Nationality Act (INA), this guidance intends to clarify how U.S. Customs and Border Protection (CBP) Office of Field Operations (OFO) Officers and U.S. Border Patrol (USBP) Agents may exercise their discretion in determining whether individuals are amenable to be returned to Mexico under INA Section 235(b)(2)(C) and to standardize CBP’s application of the Migrant Protection Protocols (MPP) to amenable aliens.
- The categories of individuals identified in the Guiding Principles for Migrant Protection Protocols issued on January 28, 2019 by the OFO Enforcement Program Division as not amenable to MPP remain unchanged. CBP should continue to follow the existing practice of referring to U.S. Citizenship and Immigration Services (USCIS) any alien, whether before or after they are processed under MPP, who expresses a fear of persecution, torture, or return to Mexico.
- Though a particular situation may not in and of itself be considered a physical or mental health issue, conditions related to an alien’s disclosed personal history (e.g. pregnancy, prior illness, or any other disclosed medical condition) should be taken into account during the medical assessment process, and may, on a case-by-case basis, constitute grounds for an alien to be excluded from MPP.

### Mental and Physical Health Issues

- For the purposes of MPP, an “emergent medical condition” is defined as a medical issue such as injury, illness, or infection posing an immediate threat to life, limb, or eyesight requiring immediate medical attention. Any aliens with an emergent medical condition will be transported to receive appropriate care, consistent with current practice. Aliens who receive medical clearance and are fit for travel, as determined by medical personnel, remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.
- For the purposes of MPP, a “pre-existing medical condition” is defined as a current medical issue such as injury, illness, or infection not requiring immediate, significant medical attention. Aliens with pre-existing medical conditions determined not to require ongoing, emergent medical care, and who are fit for travel, as determined by medical personnel,

remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.

- For the purposes of MPP, a “significant disability” is defined as a physical or mental impairment that substantially limits the alien from meaningfully participating in removal proceedings. Individual aliens with a significant disability, not traveling as a part of a family unit with a caregiver, are to be excluded from MPP. Aliens with a significant disability who are traveling with a caregiver as a part of a family unit, and who are fit for travel, as determined by medical personnel, remain amenable under MPP guidelines unless the Chief Patrol Agent or Port Director determine otherwise.

#### Other Situations

- Pregnant females are generally amenable under the MPP Guiding Principles. Pregnancy in and of itself does not preclude an alien from remaining amenable under MPP guidelines.
- In cases where an alien self-identifies as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming, CBP documents this self-identification on the Detainee Assessment for National Standards on Transport, Escort, Detention, and Search (TEDS). Sexual orientation in and of itself does not preclude an alien from remaining amenable under MPP guidelines. Officers and agents are reminded that if an alien expresses a fear of return to Mexico for any reason, including based on sexual orientation, they are to refer the individual to USCIS.

#### Additional Case Review

- Officers and agents make determinations based on the facts and circumstances known to the officer or agent at the time. Local offices should use their judgement to determine which cases should be referred to OFO and USBP Headquarters for further consideration.
- In all cases, when considering amenability, the Chief Patrol Agent or Port Director of each individual location maintains their discretion to review each case on an individualized basis.