

**CBP Generally Provided
Accurate Notices to Appear
to Migrant Protection
Protocols Enrollees, but
Could Improve Procedures
to Reduce Future Errors**






OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 14, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the
Commissioner
U.S. Customs and Border Protection

FROM: 
Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *CBP Generally Provided Accurate Notices to Appear to
Migrant Protection Protocols Enrollees, but Could
Improve Procedures to Reduce Future Errors*

For your action is our final report, *CBP Generally Provided Accurate Notices to Appear to Migrant Protection Protocols Enrollees, but Could Improve Procedures to Reduce Future Errors*. We incorporated the formal comments provided by your office.

The report contains one recommendation aimed at improving U.S. Customs and Border Protection (CBP) accuracy when issuing notices to appear. Your office non-concurred with the one recommendation. Based on the information provided in your response to the draft report, we consider recommendation one resolved and closed.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Bruce Miller, Deputy Inspector General for Audits, at (202) 981-6000.

Attachment

cc: Executive Assistant Commissioner, Office of Field Operations, CBP
Chief, United States Border Patrol, CBP



DHS OIG HIGHLIGHTS

CBP Generally Provided Accurate Notices to Appear to Migrant Protection Protocols Enrollees, but Could Improve Procedures to Reduce Future Errors

July 14, 2021

Why We Did This Audit

In January 2019, DHS established the Migrant Protection Protocols, which required some migrants to return to Mexico while they await their removal hearing. We conducted this audit to determine the extent to which DHS provided accurate notices to appear to MPP participants, in accordance with laws and regulations.

What We Recommend

We made one recommendation to CBP to develop procedures for quality control and supervisory review of MPP NTAs to better ensure accuracy and completeness.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The Department of Homeland Security issued notices to appear (NTA) at removal hearings to Migrant Protection Protocols (MPP) enrollees that were mostly accurate and in accordance with laws and regulations. However, some NTAs were completed inaccurately. Specifically, of our sample of 106 NTAs issued between February 2019 and April 2020, U.S. Customs and Border Protection (CBP) served 20 that did not meet statutory, regulatory, or internal DHS legal sufficiency standards or contained inaccurate information. This occurred because CBP did not issue formal standard operating procedures for quality control checks and supervisory review of NTAs. Additionally, according to CBP officials, officers and agents made errors on NTAs that supervisors overlooked due to their increased workload. Although CBP agents and officers documented proactively issuing 105 of 106 NTAs in our sample in person before returning migrants to Mexico, CBP did not issue guidance on delivering NTAs in person until December 2020.

CBP may be able to correct some NTAs with errors. However, if CBP serves a legally insufficient NTA, U.S. Immigration and Customs Enforcement cannot prosecute its removal case if a migrant fails to appear for the initial hearing. Serving NTAs by mail to migrants in Mexico could result in migrants missing their hearings or the Government's cases being dismissed or challenged.

CBP Response

On June 1, 2021, Secretary of Homeland Security Mayorkas terminated the Migrant Protection Protocols. CBP did not concur with the one recommendation due to it being overcome by events. The DHS Office of Inspector General administratively closed the recommendation.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Background

The Department of Homeland Security has primary responsibility for securing U.S. borders and enforcing immigration laws, which is critically important to national security and public safety. On January 25, 2019, then-Secretary of Homeland Security Nielsen issued implementing guidance to begin the Migrant Protection Protocols (MPP), through which certain migrants arriving by land from countries other than Mexico were to be returned to and remain in Mexico while awaiting their removal hearing before an immigration judge.

In general, to initiate a migrant's removal proceeding from the United States, U.S. Customs and Border Protection (CBP) issues a paper "notice to appear" (NTA) for an initial removal hearing. (See Appendix B for a sample DHS Form I-862, Notice to Appear.) The officer or agent fills out the removal charge pursuant to the applicable provision of law, as well as the date, time, and location for the removal hearing. Under MPP, before returning migrants to Mexico, CBP was required to provide MPP enrollees with a copy of the NTA, and guidance instructed officers and agents to provide a tear sheet indicating the time the enrollees should appear at a specific port of entry (POE) to be escorted to their hearing.¹ (See Appendix C for an example of a tear sheet in English.) CBP was to include the NTA in each migrant's Alien Registration File (A-file)² and send the file to U.S. Immigration and Customs Enforcement (ICE) for review and prosecution.

ICE's Office of the Principal Legal Advisor (OPLA) reviews CBP's NTAs for legal sufficiency and to determine whether they contain errors during their review of the case. OPLA attorneys also prosecute removal cases during hearings with immigration judges from the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR). During removal hearings, immigration judges consider whether migrants are subject to removal and if so, whether migrants are eligible for any relief from removal, including asylum, which is protection from returning to their home countries. Immigration judges have authority to issue removal orders for migrants and may issue an order in absentia if a migrant fails to appear for their hearing. An immigration judge's removal order may bar a migrant from reentry for a period of time.

We conducted this audit in response to two congressional requests that we review due process provided to migrants in MPP removal hearings in "tent

¹ *MPP Guiding Principles*, issued by Office of Field Operations Enforcement Programs Division, January 28, 2019, and *Muster MPP Guiding Principles*, attached to a March 28, 2019 memo from then-Chief of U.S. Border Patrol, Carla Provost.

² U.S. Citizenship and Immigration Services creates alien files, known as A-files, to serve as a central file for noncitizens' immigration-related documents.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

courts” and the associated NTAs. DHS and DOJ paused hearing cases on the MPP docket and hearings at temporary court locations due to COVID-19 on March 23, 2020, and had not resumed proceedings as of March 22, 2021. On January 20, 2021, DHS announced the suspension of new enrollments in MPP, and President Biden issued Executive Order 14010³ on February 2, 2021, requiring the Secretary of Homeland Security to promptly review and determine whether to terminate or modify MPP.⁴ On June 1, 2021, after we issued our draft to CBP and the Department, Secretary of Homeland Security Mayorkas issued a memorandum terminating MPP and rescinding all implementing guidance and other directives or policy guidance issued to implement the program.⁵

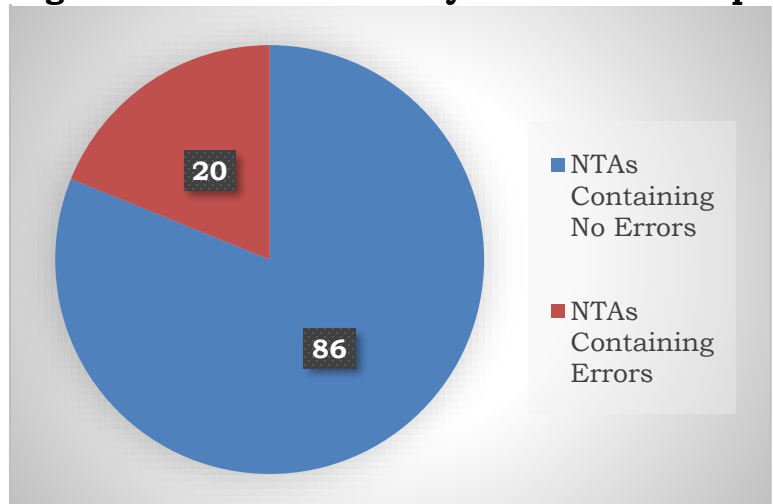
We conducted this audit to determine the extent to which DHS provided accurate notices to appear to MPP participants, in accordance with laws and regulations.

Results of Audit

CBP Generally Provided Accurate NTAs to MPP Enrollees, but Improved Procedures Could Reduce Future Errors

CBP generally issued accurate NTAs to MPP enrollees. However, we identified issued NTAs that did not meet statutory, regulatory, or internal DHS legal sufficiency requirements and NTAs that contained inaccurate or incomplete information. Of our sample of 106 NTAs issued from February 2019 through April 2020, CBP issued 86 that did not contain any errors. Twenty NTAs contained one or more errors, including 10 errors that did not meet legal sufficiency

Figure 1. Overall Accuracy of NTAs in Sample



Source: DHS Office of Inspector General (OIG) analysis of NTAs

³ Executive Order 14010, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, 86 Federal Register 8267, Section 4(ii)(B) (February 2, 2021).

⁴ On February 19, 2021, CBP began paroling MPP enrollees who were in ongoing proceedings into the United States to continue their removal proceedings.

⁵ *Termination of the Migrant Protection Protocols Program*, issued on June 1, 2021.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

requirements and 12 errors of inaccurate or incomplete information.

CBP Office of Field Operations (OFO) and Border Patrol staff developed informal guidance (training slides and checklists) to assist officers and agents in meeting statutory and regulatory requirements, as well as MPP-specific instructions for completing NTAs. However, OFO and Border Patrol did not formalize consistent MPP procedures for quality control checks or to instruct supervisory agents and officers on reviewing NTAs for MPP to ensure accuracy and completeness. According to OFO and Border Patrol officials, officers and agents issued legally insufficient and inaccurate NTAs because of significant workload increases.

Some Issued NTAs Did Not Meet Legal Sufficiency Requirements

Of the 106 NTAs we reviewed, CBP issued NTAs to MPP enrollees that contained 10 errors that did not meet statutory, regulatory, or internal DHS legal sufficiency requirements. Table 1 shows why the NTAs were not legally sufficient.

Table 1. NTA Errors That Did Not Meet Legal Sufficiency Requirements⁶

Legal Sufficiency Issue	No. of Errors	Authority/Requirement
Did not include date and time of removal hearing	3	Immigration and Nationality Act (INA) § 239(a) ⁷
Missing title or signature of issuing or serving officer or agent	5	8 C.F.R. § 239.1 ⁸
Agent signed on behalf of another agent	1	INA § 239(a); 8 C.F.R. § 239.1(a); 8 C.F.R. § 1239.1 ⁹
Date NTA served preceded NTA preparation date	1	INA § 239(a); 8 C.F.R. § 239.1(a); 8 C.F.R. § 1239.1

Source: OIG analysis of A-files and ICE OPLA checklists, interviews, and statements

In some cases, such as the NTAs in which the date and time of the removal hearing is omitted, insufficient NTAs can be mitigated. For example, in the three cases in which the hearing date and time were missing, CBP issued a

⁶ During fieldwork, we assessed that OPLA was reviewing and correcting NTAs for each of these legal sufficiency requirements, based on OPLA's internal checklists and interviews. When reviewing our draft, OPLA stated that it relies on the listed authorities in the table for each legal sufficiency issue to ensure NTAs are drafted accurately and in accordance with statutory and regulatory requirements.

⁷ Codified at 8 United States Code (U.S.C.) § 1229, this section requires migrants subject to removal hearings be provided a written notice to appear including "the time and place at which the proceedings will be held."

⁸ Title 8 of the Code of Federal Regulations (C.F.R.) § 239.1 specifies a list of immigration officers and supervisors who have authority to issue NTAs.

⁹ Title 8 of the C.F.R. § 1239.1 lists general requirements for issuing a Notice to Appear.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

tear sheet with the date, time, and POE to which the migrants were to report for their hearings. In such cases, during removal hearings, OPLA demonstrates that the tear sheets provided migrants sufficient information about their hearings.¹⁰ In the remaining seven errors, OPLA officials indicated that CBP should have issued corrected NTAs to migrants upon their return to the border for their hearings. However, if migrants did not return, OPLA officials said they would not be able to correct such deficiencies and would terminate removal proceedings.

CBP Issued NTAs Containing Inaccurate Information

Of the 106 NTAs we reviewed, CBP issued NTAs that contained 12 errors in which information was inaccurate or incomplete, as detailed in Table 2.

Table 2. NTA Inaccuracies and Incomplete Information Errors¹¹

Inaccurate or Incomplete Fields	No. of Errors	Authority/Requirement
Method of service not marked	1	INA § 239(a); 8 C.F.R. § 239.1(a); 8 C.F.R. § 1239.1, 8 C.F.R. § 1003.13 ¹²
Erroneous status checkbox selection	10	INA § 239(a); 8 C.F.R. § 239.1(a); 8 C.F.R. § 1239.1
Incorrect charge for removal authority	1	8 C.F.R. § 1003.15 ¹³

Source: OIG analysis of A-files and ICE OPLA checklists, interviews, and statements

First, an officer issued one NTA in which the box indicating whether the NTA was served in person was not marked, but the migrant signed the NTA indicating that the officer served it in person.

Second, for 10 NTAs, the issuing Border Patrol agent checked either a “status” box indicating the migrant was an arriving alien or present in the United States without being admitted or paroled. These status designations were incorrect because, according to CBP’s informal training and checklists, agents were not

¹⁰ We note that the Supreme Court recently held that an NTA is a single document that should contain all the information about an individual’s removal hearing specified in 8 U.S.C. § 1229(a)(1), including the time and place of his removal proceedings. *Niz-Chavez v. Garland*, No. 19-863, slip op. (April 29, 2021). The *Niz-Chavez* case, which was issued after the period of our review, did not involve MPP and did not present the question of whether a tear sheet issued contemporaneously with an NTA satisfies the requirements of 8 U.S.C. § 1229(a)(1).

¹¹ During fieldwork, we assessed that OPLA was reviewing and correcting NTAs for each of these inaccurate or incomplete fields, based on OPLA’s internal checklists and interviews. When reviewing our draft, OPLA stated that it relies on the listed authorities in the table for each inaccurate or incomplete field to ensure NTAs are drafted accurately and in accordance with statutory and regulatory requirements.

¹² Title 8 of C.F.R. § 1003.13 describes service requirements in a Notice to Appear.

¹³ Title 8 of C.F.R. § 1003.15 describes the contents required in a Notice to Appear.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

supposed to check any of the three status boxes for migrants enrolled in MPP.¹⁴ Figure 2 shows the status boxes as they appear on DHS Form I-862, Notice to Appear.

Figure 2. Boxes for Status on the Form I-862

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:	
In the Matter of: Respondent <u>John Doe</u> <u>123 ABC Street, Anytown</u> <small>(Number, street, city, state and ZIP code)</small>	File No: _____ currently residing at: <u>999-999-9999</u> <small>(Area code and phone number)</small>
<input type="checkbox"/> You are an arriving alien. <input type="checkbox"/> You are an alien present in the United States who has not been admitted or paroled. <input type="checkbox"/> You have been admitted to the United States, but are removable for the reasons stated below.	
The Department of Homeland Security alleges that you:	

Source: OIG example NTA created from a blank CBP form

Typically, for non-MPP removal proceedings, agents and officers check one of the status boxes. However, in May 2020, after the period of our review, DOJ's EOIR Board of Immigration Appeals issued a decision finding no statutory requirement to provide a status designation when issuing an NTA.¹⁵

In addition, OPLA officials differed in their opinions about the impact of the agents' actions under MPP. An OPLA headquarters official explained that even though status checkboxes may not matter in a removal hearing, they should not have been marked. Another OPLA official said checking the second box specifically was a deficiency that would cause a termination in court proceedings if CBP could not reissue a corrected NTA. Some OPLA officials did not consider status box information an error. OPLA officials stated that these opinions may appear to conflict as a result of immigration judges reaching different conclusions about the impact of the checked box.

Finally, a Border Patrol agent issued one NTA containing a removal charge under an authority not used for MPP. In this instance, the issuing agent charged the migrant with possessing a visa that was not issued in compliance

¹⁴ When migrants presented themselves at a POE and OFO enrolled them in MPP, OFO officers could appropriately check box 1, "You are an arriving alien." We did not count any of these instances as errors.

¹⁵ See *Matter of Jonathan Said Herrera-Vasquez*, 27 I&N Dec. 825 (BIA 2020).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

at the time of application for admission.¹⁶ However, under MPP, the agent should have listed the removal charge of not possessing a valid, unexpired immigration visa at the time of application for admission.¹⁷ OPLA officials agreed that most of these types of errors could be corrected when migrants appear for hearings, without negatively affecting the proceedings.¹⁸ In this instance, the migrant did not appear for the hearing and was ordered removed in absentia under the incorrect removal charge. The migrant's A-file also contained a note that a corrected or superseding NTA should be reissued due to identification of an incorrect removal charge, but the A-file did not contain any drafts or served copies of a corrected or superseding NTA, and an OPLA official indicated no superseding NTA was issued. After reviewing our draft report, OPLA agreed this removal was in error. To rectify the error, OPLA reopened and terminated the case against this migrant.

Inconsistent Review Procedures and Workload Increases Affected Accuracy

OFO and Border Patrol did not formalize consistent standard operating procedures for quality control checks or supervisory review checklists for completing NTAs for MPP. Although both OFO and Border Patrol officials from headquarters described a process that included supervisory reviews, neither OFO nor Border Patrol developed and issued formal procedures for such reviews to ensure consistency. Some staff at POEs and Border Patrol sectors developed checklists and other informal resources, such as PowerPoint training slides. However, none of the checklists and other resources we reviewed addressed all the identified areas of insufficiency and inaccuracy. Table 3 includes examples of informal resources that staff at sectors and POEs developed for MPP.

¹⁶ *Immigration and Nationality Act*, Section 212(a)(7)(A)(i)(II) (codified at 8 U.S.C. § 1182(a)(7)(A)(i)(II)).

¹⁷ *Immigration and Nationality Act*, Section 212(a)(7)(A)(i)(I) (codified at 8 U.S.C. § 1182(a)(7)(A)(i)(I)).

¹⁸ OPLA officials described using the DHS Form I-261, Additional Charges of Inadmissibility/Deportability, to modify or correct an incorrect charge or other errors when migrants return for their hearings. OPLA also issued this form to some MPP enrollees entering for their hearings to clarify their status as "arriving aliens" temporarily paroled into the United States for the purpose of attending their removal hearings.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Table 3. Examples of MPP Resources from Sectors and Ports of Entry¹⁹

Sector or POE	Supervisory Review	Status Box Instruction	Correct Charge	Date & Time of Hearing	Title of Officer	Officer Signature	Service Date At or After Issuance Date
San Ysidro POE PowerPoint Slides		✓		✓		✓	
Brownsville POE Checklist	✓			✓			
El Paso Sector Checklist	✓	✓		✓		✓	✓

Source: DHS OIG analysis of CBP documents

In addition to the absence of formal, consistent procedures, OFO and Border Patrol officials attributed insufficiencies and inaccuracies to human error caused by the increase in CBP's workload. Between February 2019 and February 2020, OFO's and Border Patrol's combined rate of NTA issuances increased by 80 percent when compared to the same time the previous year. One Border Patrol official said supervisors could not thoroughly check migrants' A-files containing NTAs due to the volume of arrests at that time. Errors in date and time of hearings and missing signatures of issuing officers and agents can jeopardize the Government's ability to proceed with removal hearings and may not give migrants due process. Even if not harmful to the Federal Government or migrant, CBP and OPLA expend time and resources to make corrections for cases where there was an inaccuracy on the original NTA.

CBP Proactively Issued NTAs in Person, but Did Not Provide Guidance until December 2020

Migrants in MPP were returned to Mexico, which was not their home country, and they may not have a physical address to receive mailed NTAs. Therefore, if CBP had not hand delivered NTAs to MPP enrollees, the enrollees may not have received their hearing information and instructions, which could have resulted in missed hearings and court delays. According to an ICE OPLA official, mailing an NTA to a migrant in Mexico could result in an immigration judge dismissing the case or a case being reopened after an immigration judge issues an in absentia order.

For 105 of the 106 NTAs we reviewed, officers and agents certified they delivered NTAs to migrants in person and requested their signatures.²⁰

¹⁹ We requested guidance from all the POEs and sectors listed in our Objective, Scope, and Methodology section. Others listed in that section did not provide checklists.

²⁰ One officer did not mark the service type, but the migrant signed the NTA, indicating it was served in person.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Although CBP delivered NTAs in person to avoid problems with unserviceable addresses, CBP still requested migrants provide a physical address, to comply with legal requirements for completing the form. All 106 NTAs that we reviewed listed a physical address or location.²¹ Form I-862 also contains instructions for migrants to provide updates or notify the court immediately if they change address using a specified form, which they can print and mail to the court. In addition to reviewing NTAs for whether CBP listed a physical address or location, we identified two NTAs that included a “digital address” (such as email or Facebook) for a migrant, as well as a physical address or location.

In addition, agents and officers provided “tear sheets,” which contained instructions for MPP migrants on when to return to the border and the time and place of their removal hearings. Each MPP NTA issued should be accompanied by a tear sheet. In 105 of 106 A-files (containing NTAs in our sample), CBP documented providing tear sheets with arrival instructions. CBP issued tear sheets to provide migrants with information about being returned to Mexico, as well as information about when and how they should return to the United States, to facilitate removal hearings.

Although agents and officers documented issuing in person all but one NTA we reviewed, CBP did not issue formal guidance on this practice until December 2020, at the end of our audit fieldwork.²²

Without quality control and supervisory review procedures, CBP’s practices could jeopardize the Federal Government’s ability to prosecute removals and fail to provide migrants with accurate hearing information.

Recommendation

Recommendation 1: We recommend CBP’s Executive Director of the Office of Field Operations’ Admissibility and Passenger Programs and the Deputy Chief of Border Patrol’s Law Enforcement Operations Directorate develop and implement procedures for quality control and supervisory review of Notices to Appear for MPP enrollees to ensure they are filled out accurately and completely.

²¹ We did not validate that the physical address or location the migrants provided was their actual location.

²² See *Supplemental Migrant Protection Protocols Guidance, Initial Document Service*, December 7, 2020.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Management Comments and OIG Analysis

We obtained written comments on a draft of this report from the CBP Senior Component Accountable Official. In its response to our report, CBP indicated it was committed to ensuring notices to appear issued under MPP were legally sufficient and adhered to applicable laws and regulations. CBP noted that on June 1, 2021, the Secretary of Homeland Security issued a memorandum terminating MPP and rescinded all directives or policy guidance used to implement the program. CBP did not concur with the recommendation, which we administratively closed. We included a copy of the comments in their entirety in Appendix A. We also received technical comments from CBP and ICE and revised the report as appropriate.

CBP Comments to Recommendation 1: Non-concur. CBP indicated the recommendation was overcome by events. CBP requested that we consider the recommendation resolved and closed.

OIG Analysis of CBP Comments: The Secretary of Homeland Security issued a memorandum terminating MPP on June 1, 2021, which occurred after we issued our draft to DHS. Based on the termination of MPP, we administratively closed the recommendation.

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit in response to two congressional requests that we review temporary court facilities and NTAs. Due to DHS and DOJ pausing MPP hearings and closing temporary court locations as a result of COVID-19, we limited our objective to reviewing NTAs. Our objective was to determine the extent to which DHS provided accurate notices to appear to MPP enrollees, in accordance with laws and regulations. To answer our objective, we reviewed Federal laws and regulations as well as DHS, CBP, and ICE policies and guidance associated with MPP and NTAs.

Specifically, we reviewed criteria pertaining to issuance and legal sufficiency of NTAs including 8 U.S.C. §1229 *Initiation of removal proceedings*. We reviewed DHS' *Policy Guidance for Implementation of the Migrant Protection Protocols* and *Supplemental Migrant Protection Protocols Guidance, Initial Document Service*, as well as CBP's *Implementation of MPP* memo and OFO and Border Patrol *Guidance on MPP* memos with guiding principles attachments. We also



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

reviewed OPLA *Migrant Protection Protocols Standard Operating Procedures* and OPLA San Antonio's *OPLA Legal Sufficiency Review Checklist*.

We interviewed officials from CBP, including the Office of Chief Counsel, program managers from OFO Office of Enforcement Programs, and Border Patrol Law Enforcement Operations Directorate located at headquarters. We also interviewed officials with CBP's Office of Training and Development, instructors at the Border Patrol Academy and OFO Academy, and Office of Chief Counsel instructors responsible for NTA training at both academies. In the field, we interviewed Border Patrol officials at the El Paso, Rio Grande Valley, and San Diego sectors and OFO POE officials in Brownsville, El Paso, and San Diego. We interviewed ICE OPLA officials at headquarters, as well as chief counsels in El Paso and San Antonio, Texas, and San Diego, California, about their legal sufficiency reviews of NTAs issued by CBP for MPP within their areas of responsibility.

We also interviewed officials from DHS Office of Policy and DOJ officials from EOIR. To obtain accurate and relevant data and files, we interviewed officials with CBP Planning, Analysis, and Requirements Evaluation Directorate; EOIR Planning, Analysis, and Statistics Division; and U.S. Citizenship and Immigration Services Identity and Information Management Division.

We obtained a list of the total enrolled MPP population from CBP from the inception of the program in January 2019 to April 2020. We used a list of 62,101 enrollees to select a statistically random selection of 382 files, from which we developed a smaller judgmental sample of 54 A-files to determine the accuracy of NTAs issued for MPP. Factors we used for our judgmental sampling included anomalies in CBP's enrolled population data, NTAs from all geographical areas on the southwest border, and NTAs from all calendar quarters in our random sample. We continued sampling an additional 53 files from our original random selection in the order provided by U.S. Customs and Immigration Service's National Records Center. Of the 107 files we obtained, 1 file was for a person who had never been enrolled in MPP. Therefore, we did not include it in our results. The selected case files spanned February 2019 through April 2020. We used CBP's database to gather information about the MPP universe but relied on scanned paper A-files to assess the accuracy of NTAs and determine whether the files contained documentation that tear sheets were provided to migrants according to CBP policy. Based on the criteria listed above, we reviewed A-files to determine whether they contained tear sheets, whether the listed address was a physical location or a digital address, and if the NTAs contained:

- Proper marking of the checkboxes to indicate status at the time of crossing



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

- Charge for removal pursuant to provision(s) of law
- Court location
- Name and title of the issuing officer/agent
- Signature of the issuing officer/agent
- Proper issuance and service dates
- Name and title of the serving officer/agent
- Service method listed was “in person”
- Serving officer signature on the certificate of service portion
- Respondent’s signature or “refused to sign” on certificate of service
- Time of court appearance
- Date of court appearance

Based on this analysis, we determined that the data contained in the 106 paper A-files for MPP enrollees provided reasonable assurance for the purposes of this report.

We conducted this performance audit between March 2020 and April 2021 pursuant to the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

The Office of Audits major contributors to this report are Christine Haynes, Director; Heidi Einsweiler, Audit Manager; Darvy Khun, Auditor-in-Charge; Corneliu Buzesan, Program Analyst; Christopher Byerly, Program Analyst; Calleece Gresham, Program Analyst; Matthew Taylor, Auditor; Tom Hamlin, Communications Analyst; and Evette Fontana, Independent Referencer.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix A
CBP Comments to the Draft Report

1300 Pennsylvania Avenue, NW
Washington, DC 20229



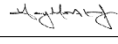
**U.S. Customs and
Border Protection**

June 14, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Henry A. Moak, Jr.
Senior Component Accountable Official
U.S. Customs and Border Protection

6/14/2021

X 
Signed by: HENRY A. MOAK JR

SUBJECT: Management Response to Draft Report: "CBP Generally
Provided Accurate Hearing Notices to Migrant Protection
Protocols Enrollees, but Could Improve Procedures to Reduce
Future Errors" (Project No. 20-023-AUD-DHS)

Thank you for the opportunity to comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

As the United States' first unified border entity, CBP takes a comprehensive approach to border management and control; combining customs, immigration, border security, and agricultural protection into one coordinated and supportive activity. CBP is committed to protecting the American people, safeguarding our borders, and enhancing the nation's economic prosperity. As part of its mission set, CBP led the Department of Homeland Security (DHS) Migrant Protection Protocols (MPP) program.

On January 25, 2019, then Secretary of Homeland Security Kristjen Nielsen issued a memorandum entitled, "Policy Guidance for Implementation of the Migrant Protection Protocols," to address the urgent humanitarian and security crisis at the Southern border. Under MPP, certain non-citizens were given a Notice to Appear (NTA) for their immigration court hearing, and subsequently returned to Mexico until their hearing date. CBP is committed to ensuring NTAs issued are legally sufficient and adhere to applicable laws and regulations.

On January 20, 2021, then Acting Secretary of Homeland Security David Pekoske issued a memorandum entitled, "Suspension of Enrollment in the Migrant Protection Protocols Program," directing CBP to suspend new enrollments in MPP, pending further review of the program. CBP subsequently initiated the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

individuals who were participants in MPP and had pending cases before the Executive Office for Immigration Review.

The suspension of new enrollments in MPP and the return of MPP enrollees was also addressed as part of President Biden's February 2, 2021, Executive Order No. 14010 entitled, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border." CBP's Office of Field Operations (OFO) began processing returning MPP enrollees on February 19, 2021, pursuant to an OFO memorandum dated February 18, 2021, issued by Executive Director of Admissibility and Passenger Programs Matthew S. Davies and Executive Director of Operations Casey Durst, entitled, "Efficiently and Safely Processing Migrant Protection Protocols (MPP) Enrollees from Mexico."

On June 1, 2021, Secretary of Homeland Security Alejandro N. Mayorkas issued a memorandum entitled, "Termination of the Migrant Protection Protocols Program," terminating MPP. Pursuant to this memorandum, effective immediately, all directives or policy guidance issued to implement the program was rescinded.

The draft report contained one recommendation with which CBP non-concurs as it has been overcome by events with the termination of MPP. Attached find our detailed response to the recommendation. CBP previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Attachment: Management Response to Recommendation Contained in Project No. 20-023-AUD-DHS

OIG recommended that CBP's Executive Director of the Office of Field Operations' Admissibility and Passenger Programs and the Deputy Chief of Border Patrol's Law Enforcement Operations Directorate:

Recommendation 1: Develop and implement procedures for quality control and supervisory review of Notices to Appear for MPP to ensure they are filled out accurately and completely.

Response: Non-concur. This recommendation is overcome by events given the Secretary of Homeland Security's June 1, 2021, memorandum entitled, "Termination of the Migrant Protection Protocols Program." CBP requests that the OIG consider this recommendation resolved and closed.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix B

Blank Notice to Appear Form

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: _____

In the Matter of: _____

Respondent _____ currently residing at: _____

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be to show why you should not be removed from the United States based on the

(Date) (Time)

charge(s) set forth above.

(Signature and Title of Issuing Officer) (Sign in ink)

Date: _____

(City and State)



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent) (Sign in ink)

Date: _____

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1) of the Act.

- ☐ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail
☐ Attached is a credible fear worksheet.
☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served) (Sign in ink)

(Signature and Title of officer) (Sign in ink)



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Appendix C

Tear Sheet in English for MPP

Migrant Protection Protocols

Initial Processing Information

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the
PASO DEL NORTE port of entry, located at EL PASO, TEXAS 79901, at the
date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
 - You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours a day, 7 days a week. If you are calling from outside of the United States, you should dial 001 and 880 before entering the telephone number.
- You should arrive at the port of entry listed above at 9:00 a.m./p.m. on March 17, 2020 to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
 - When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
 - When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
 - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing near the immigration court where your hearing(s) will take place.
 - A list of legal service providers is also available on the Executive Office for Immigration Review website at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>.
- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:
 - You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.
 - You may arrange to consult with your counsel in person at a location in Mexico of your choosing.
 - On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Appendix D

Report Distribution

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chiefs of Staff
General Counsel
Executive Secretary
Director, GAO/OIG Liaison Office
Under Secretary, Office of Strategy, Policy, and Plans
Assistant Secretary for Office of Public Affairs
Assistant Secretary for Office of Legislative Affairs
CBP Commissioner
CBP Audit Liaison
ICE Audit Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees

Additional Information and Copies

To view this and any of our other reports, please visit our website at:
www.oig.dhs.gov.

For further information or questions, please contact Office of Inspector General
Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov.
Follow us on Twitter at: @dhsoig.



OIG Hotline

To report fraud, waste, or abuse, visit our website at www.oig.dhs.gov and click on the red "Hotline" tab. If you cannot access our website, call our hotline at (800) 323-8603, fax our hotline at (202) 254-4297, or write to us at:

Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Hotline
245 Murray Drive, SW
Washington, DC 20528-0305