



## Office of the County Attorney

Ben Pearlman, County Attorney • Tel: 303.441.3190 • Fax: 303.441.4794 • [ca@bouldercounty.org](mailto:ca@bouldercounty.org)  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306-0471 • [www.bouldercounty.gov](http://www.bouldercounty.gov)

### MEMO FOR BUSINESS MEETING

**Date:** May 2, 2023

**From:** David Hughes, Deputy County Attorney

**To:** Board of County Commissioners

**Subject:** Requesting Approval of Boulder County's Participation in the Amicus Brief in *Texas v. Biden*, No. 23-10143 (5th Cir.)

---

#### Background:

Boulder County will participate with Los Angeles County and other cities and counties in an amicus brief in support of federal government in *Texas v. Biden*, No. 23-10143 (5th Cir.), a case challenging President Biden's decision to terminate the Migrant Protection Protocols ("MPP"). President Trump instituted MPP, which is a program that requires asylum seekers to remain in Mexico during the pendency of their immigration proceedings. When President Biden took office, he terminated MPP. That termination decision was met with litigation in the Northern District of Texas. The court vacated President Biden's termination decision, and that order was appealed to the Supreme Court. During the appeal process, President Biden issued a second, current decision to terminate MPP. Ultimately, the Supreme Court reversed the lower court and remanded the case for the lower court to consider in the first instance whether the second termination decision violates the Administrative Procedure Act ("APA"). The lower court considered that issue and found that the second termination decision also violates the APA. The federal government has appealed. The amicus brief shows how immigrants are productive and important members of amici's communities, but MPP brings harm to immigrants and their communities. MPP causes family separation and significant associated trauma, and undermines amici's investments in legal services programs. The amicus brief will also show that the second decision to terminate MPP was not arbitrary and capricious.

#### Recommendation:

Approve Boulder County's participation in amicus brief in *Texas v. Biden*, No. 23-10143 (5th Cir.).