

CONGRESS

DHS expands programs that fast-track asylum process

The two pilot programs, which critics say sprint through asylum screenings, have been broadened along the southern border



A Customs and Border Protection officer questions immigrants in Rio Grande Valley sector of the Texas border. (Jinitzail Hernandez/CQ Roll Call file photo)

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The Department of Homeland Security has expanded two pilot programs that fast-track the asylum process for migrants at the U.S. border. But newly disclosed documents by Customs and Border Protection in a lawsuit reveal how much discretion frontline officers have in deciding who gets placed in these initiatives.

The documents, disclosed as part of a lawsuit against the government, contain guidelines on how to implement the programs. They also explain how CBP directs its officers to hold migrants in custody for days longer than typically permitted,

with a very small window to access legal help.

The two pilot programs — the Humanitarian Asylum Review Process (HARP) for Mexican nationals and Prompt Asylum Claim Review (PACR) for everyone else — were launched in October in El Paso, Texas, but as of early February, “they were operational across the border,” Ken Cuccinelli, who serves as acting deputy secretary of DHS, announced Tuesday at a McAllen, Texas, news event.

Immigrant lawyers and a lawsuit filed by the American Civil Liberties Union said both programs deny asylum seekers due process because they make it nearly impossible for the migrants to access legal help.

CBP declined to respond to multiple CQ Roll Call requests for comment about the documents, or about either pilot program or how many people have been placed in it. A government source familiar with the programs said that 1,200 people were processed through PACR as of the end of January.

Acting Homeland Security Secretary Chad Wolf told reporters Tuesday that both programs were designed to work with Migration Protection Protocol, which forces migrants to wait in Mexico as their cases are processed in U.S. immigration courts.

“None of these work in a silo, so they all work together making sure that we address all of the different various populations coming across the Southwest border,” he said.

Border Patrol agents currently have the authority to place migrants — after they present themselves at a port of entry, are apprehended crossing the border, or turn themselves in — in one of two removal proceedings: a “regular” removal that eventually places them before an immigration judge, or an “expedited” hearing that leads to immediate deportation.

But the newly disclosed court documents show that if migrants express fear of return, Border Patrol agents have wide berth to place them directly into the PACR program, where they are rushed through the initial stages of the asylum process. It’s also where they would remain in CBP custody, with severe time restrictions for calling family or finding an attorney, instead of being placed with Immigration and Customs Enforcement.

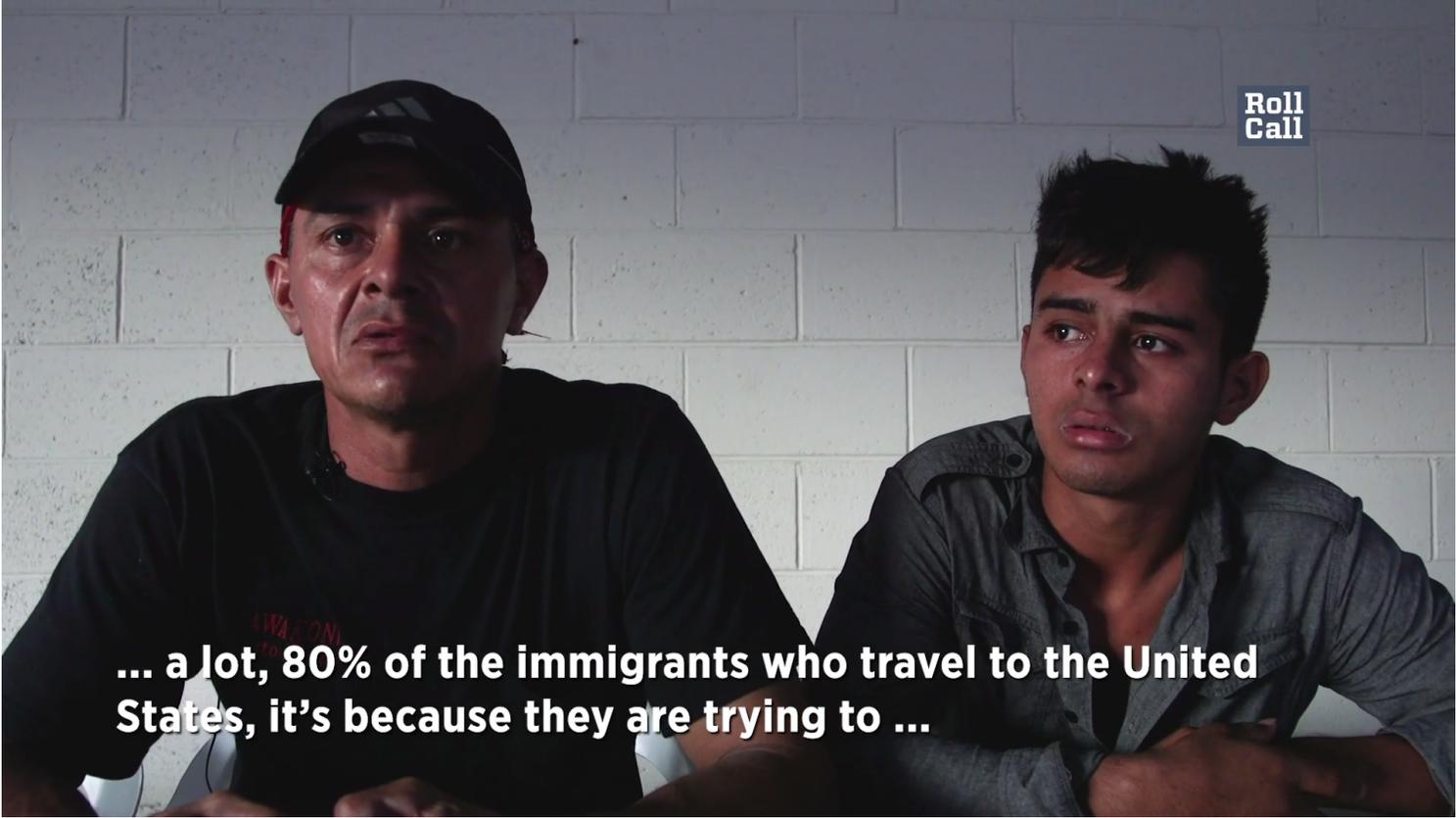
Typically, migrants claiming fear of persecution in their home country are sent to an ICE detention facility, where they undergo in-person screenings by asylum officers who decide whether their claims are credible. They also are granted far more time to make phone calls and find counsel who can help them navigate the complicated process ahead. Once their case goes to immigration court, the asylum process can take years.

According to the court documents, the PACR track requires them to remain in CBP custody for approximately five to seven days, far longer than the 72-hours stays typically permitted at such detention facilities. A court recently ordered border stations in the Tucson sector to restrict stays to 48 hours after deeming conditions there unsuitable for longer stays.

The HARP track is similar to PACR but only applies to Mexican nationals and does not specifically mention a time limit for the stay.

In the time both PACR and HARP have been implemented, the percentage of people determined to have “credible fear” has dropped below 50 percent for the first time in history, according to an analysis by Aaron Reichlin Melnick, a policy analyst at American Immigration Council.

“This is a sped-up process designed to generate deportations, not to streamline asylum processing,” he said.



... a lot, 80% of the immigrants who travel to the United States, it's because they are trying to ...

Pathways to asylum

Both PACR and HARP are part of the Trump administration's ongoing efforts to both deter potential asylum seekers from approaching the U.S. border and speed up deportation for many of the ones who do, advocates say.

CBP's implementation guidelines show that non-Mexican asylum seekers now face four likely pathways to a decision, depending on the space, staffing and resources at the border facility where the migrant is being held — and the discretion of the Border Patrol agent handling the case. The migrants could immediately be sent to pursue an asylum claim in Guatemala through the “asylum cooperative agreement” the U.S. government signed last year with the Central American country, or they could be asked to remain in Mexico while their cases proceed through the U.S. immigration courts. They also could await their asylum screening under ICE custody. Finally, they could be placed in the PACR program.

Migrants who are placed into PACR are given one calendar day to access phones “as often as operationally feasible” and may contact “any person of their choosing, including an attorney,” according to CBP guidelines. An asylum officer from U.S. Citizenship and Services Immigration Services then would conduct the credible fear interview via phone. A negative result may be reviewed by an immigration judge via phone if requested by the migrant.

If an immigration judge does not change the determination, the individual can be deported back to their home countries immediately.

HARP includes almost exactly the same procedure except it is for Mexican nationals. The individuals get the same 24-hour period to consult with someone on their claims, including an hour to contact an attorney by phone and “potential 30 minute follow ups.” The rest of the process is the same, with the migrant deported to Mexico if a credible fear criteria is not met and affirmed by an immigration judge.

At each step of the way, the CBP document emphasizes that the migrants can waive that step of the process and agree to be deported. But immigration advocates argue that asylum seekers are in such a state of trauma that their ability to understand such a complicated process is limited without an attorney's help.

“The most striking thing to me is that we knew that PACR and HARP were depriving individuals of the right to access counsel, but the government ... doesn't seem to even consider or acknowledge that prior to this new policy change individuals would have had in-person access to counsel,” said Tommy Buser-Clancy, a senior staff attorney at the American Civil Liberties Union of Texas.

In December, the ACLU filed a lawsuit against DHS to block the administration from implementing both programs, arguing that they severely limit the ability of asylum seekers to access legal counsel. The lawsuit was filed on behalf of two Salvadoran families and one Mexican family who sought asylum in the U.S. and were put into the programs.

“We think there are very strong arguments for the program's illegality,” Buser-Clancy, who is one of the lawyers on a lawsuit against the two programs, told CQ Roll Call after the civil rights organization gave oral arguments to the court for the case. “Our hope for the future is that they're declared illegal and blocked.”

Guidelines ignored

Lawyers working with migrants in these two pilots called the steps laid out in CBP guidelines a “sham” because they are not properly followed on the ground.

Karla Vargas, a senior attorney at the Texas Civil Rights Project, said her organization has limited access to migrants placed in PACR and HARP but has spoken to six women about their reasons for seeking asylum. One woman suffered post-traumatic stress disorder from abuse she suffered in her home country, and another was pregnant and lost 10 pounds in CBP custody. A third woman, who had a young daughter with a heart condition, told attorneys her child was denied medical help.

“These were egregious instances of persecution,” Vargas said, referring to elements in these women's cases as “some of the most horrific” she has encountered in her career.

Migrants in the program have told lawyers on the ground that they did not know they were in expedited asylum programs. In many cases, they were not given a list of attorneys and access to a telephone, as laid out in guidelines, until after they underwent the credible fear interview or at the very end of the process.

Other legal providers on the ground say they barely get direct calls from migrants in the program, and the ones they've spoken to call the list of lawyers migrants are provided a “ghost list” because they fail to get through to anyone.

“An hour of time to consult with an attorney is still not enough,” said Linda Corchado, a staff attorney at Las Americas in El Paso who has represented several migrants in the program. “An hour means that I need to be available 24/7 to take a call from someone who is placed into either HARP or PACR under CBP custody. It is not possible for them to ensure that an attorney will always be on the other line.”

According to Corchado, CBP “intentionally” uses broad language in their PACR and HARP processing guidelines in order to give CBP officers more leeway.

“This just confirms that these are guidelines, but they are not rules set in stone that are met to provide asylum seekers protection, because in reality this program isn't meant to actually provide those safeguards to due process,” she said. “In reality this program should not even exist.”

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