

Congress of the United States
Washington, DC 20515

November 22, 2019

Acting Commissioner Mark A. Morgan
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, D.C. 20004

Dear Acting Commissioner Morgan,

Recent media reports¹ and statements by agency personnel to member staff have confirmed that U.S. Customs and Border Protection (CBP) have initiated two new pilot programs subjecting vulnerable populations in El Paso, Texas—including families with young children—to truncated asylum review processes known as “Prompt Asylum Claim Review” (PACR)² and Humanitarian Asylum Review Process (HARP).³ We write to express our deep concerns about these programs and their harmful impact on individual asylum seekers and our asylum system more broadly.

Media reports indicate that the PACR and HARP programs are joint initiatives between the Departments of Justice and Homeland Security that condense the complex and sensitive asylum review process from a matter of months to 10 days or less and force asylum seekers to navigate the adjudication of their claims while detained in CBP facilities at the border. It is our understanding that asylum seekers detained in the El Paso area and subjected to PACR or HARP are held throughout these condensed processes in a local 1,500 bed “soft-sided” tent facility—with little to no space for asylum seekers to confer with counsel privately or convey the sensitive details of their respective cases in a confidential manner. Moreover, we understand that individuals are given 24 hours to contact family *or* an attorney by telephone. Within that same time period, asylum seekers must go through initial interviews with asylum officers who are tasked with determining if they have a credible or reasonable fear of persecution if returned to the countries they fled. Immigration judges then conduct a cursory review of these cases remotely by telephone. Forcing families to navigate our complex asylum process while detained in this manner obstructs access to counsel and violates due process.

The PACR and HARP programs raise serious concerns about access to counsel. It is exceptionally difficult for asylum seekers to obtain legal representation while detained in CBP custody. By law, an asylum seeker has a right to “consult with a person or persons of the alien’s choosing prior to the

¹ Robert Moore, *Trump administration testing rapid asylum review, deportation process in Texas*, Wash. Post, Oct. 24, 2019, <https://wapo.st/2CbQIQB>.

² Alternate reports have indicated that the program may be entitled “Prompt Asylum Case Review.” See Cedar Attanasio & Elliot Spagat, *Immigration Officials Experiment in Texas With a Plan to Speed up Asylum Decisions*, TIME, October 29, 2019, <https://bit.ly/2NGvI4I>.

³ Hamed Aleaziz, *The Trump Administration Launched A Secretive Program to More Quickly Deport Mexican Asylum-Seekers*, BuzzFeed News, Nov. 6, 2019, <https://bit.ly/2CpbhDA>.

interview,” and to present evidence in support, so long as it does not “unreasonably delay the process.”⁴ Even if asylum seekers can somehow manage to identify, contact, and ultimately contract with an immigration attorney within the 24-hour period allotted under the PACR and HARP programs, they remain unable to meet and confer with them in person. Moreover, even if an asylum seeker already has a lawyer, initial reporting about the PACR program demonstrates that individuals have still been denied access to their attorneys.⁵ Attorneys are generally barred from entering CBP facilities and therefore would be totally unable to meet with their clients in person. They are also not allowed to meet through video teleconferencing.

The decision to conduct credible fear review hearings by telephone also presents serious due process problems. These programs prevent attorneys from reviewing physical evidence in the possession of an asylum seeker. At least one individual subject to the PACR program was reportedly unable to present documentary evidence in support of her claim to the immigration judge because the hearing was conducted entirely through the phone.⁶ Unless CBP provides a means by which asylum seekers can submit non-testimonial evidence in support of their claims, telephonic credible fear review hearings violate the basic due process right to present evidence.⁷

Forcing asylum seekers to remain in CBP custody during their credible fear interviews is also a major departure from historical procedure and policy. Section 1.8 of CBP’s National Standards on Transport, Escort, Detention, and Search (TEDS) provides in its entirety that “Every effort must be made to promptly transfer, transport, process, release, or repatriate detainees as appropriate according to each operational office’s policies and procedures, and as operationally feasible.”⁸ As written, the TEDS policy does not permit CBP to detain individuals for any reason other than “processing, transfer, release, or repatriation.” This includes detaining individuals for the purpose of conducting a credible or reasonable fear interview, scheduling a post-interview immigration court appeal, or a post-interview hearing. As a result, PACR and HARP are operating in direct violation of TEDS.

While we agree that your agency’s mission is critical to national security, CBP’s primary responsibilities are as a law enforcement agency—not as an asylum adjudication agency. As CBP has repeatedly emphasized throughout the last year, agents should not be diverted from their core border enforcement mission. Yet with the PACR and HARP programs, as well as the agency’s decision to detail Border Patrol agents to carry out the functions of U.S. Citizenship and Immigration Services (USCIS) asylum officers,⁹ CBP is actively choosing to divert its resources.

⁴ 8 C.F.R. § 208.30(d)(4).

⁵ See Robert Moore, *Trump administration testing rapid asylum review, deportation process in Texas* (“Family members said the sisters repeatedly asked Border Patrol agents to call the attorney, but Rodriguez-Alvarez said she never heard from them ... The woman was not represented by an attorney at her deportation proceeding despite requesting her assistance.”)

⁶ Cedar Attanasio & Elliot Spagat, *Immigration Officials Experiment in Texas With a Plan to Speed up Asylum Decisions*, TIME, October 29, 2019, <https://bit.ly/2NGv14I> (“An immigration judge denied their appeals by phone meaning the judge couldn’t see documents including proof of death threats they faced in El Salvador.”).

⁷ Access to evidence is another concern. Given that CBP often confiscates all detainees belongings at the moment of apprehension and does not return those belongings until after release, it remains unclear whether individuals subject to the PACR and HARP programs are able to access relevant evidence that they need for their claims.

⁸ This language is repeated in its entirety in Section 4.1, discussing Secure Detention Standards.

⁹ See, e.g., Camilo Montoya-Galvez, *Border Patrol agents now screening migrants for “credible fear” under controversial pilot program*, CBS News, Sept. 20, 2019, <https://cbsn.ws/2JN9tIP>.

The underlying goal of the PACR and HARP programs appears to be to deter asylum seekers from coming to the United States, and to detain and remove them as quickly as possible once they are here. Asylum-seeking families should be given a fair process and allowed to present their claims in a timely and orderly fashion. They should be released from CBP custody within 72 hours in accordance with long-standing CBP policy.

Please answer the following questions regarding PACR and HARP:

- When were the PACR and HARP programs first launched?
- Has the Mexican government been informed of the HARP program?
- How many people have been subjected to the PACR and HARP programs to date?
- How many people subjected to the PACR and HARP program have been successful in procuring the services of an attorney?
- How many people subjected to the PACR or HARP programs so far have been determined to have a credible or reasonable fear of persecution or torture? How many have been denied?
- How many have received or been scheduled for a credible or reasonable fear review in front of an immigration judge? What have the results been?
- Are asylum-seeking families of all nationalities subject to PACR's truncated process? If no, please specify the population that are selected for the program.
- Are there limits, age or otherwise, to who is subjected to PACR or HARP? For example, can vulnerable populations, such as an unaccompanied minor child, be put in these programs?
- Was formal guidance regarding the implementation of the PACR and HARP programs provided to agency staff in the field? If so, please provide such guidance for our review.
- What criteria does CBP consider in determining whether to place an individual or family into the PACR program in lieu of subjecting them to the so-called Migrant Protection Protocols?
- What criteria does CBP consider in determining whether to place a Mexican national into the HARP program in lieu of the standard expedited removal process?
- Does CBP have plans to expand the PACR or HARP programs to other areas along the border? If so, please specify the location(s).
- What steps, if any, has CBP taken to inform and educate the public about PACR or HARP?
- Initial reports suggest that asylum seekers in the PACR and HARP programs are given 24 hours to call their families or an attorney prior to the interview. Is this an actual 24-hour period or does it only run from one calendar day to the next? Is information about this period recorded in e3DM?
- At what precise point does this 24-hour period begin, and how are asylum seekers informed of this point?
- What access do asylum seekers have to telephones inside CBP facilities? Do asylum seekers have unfettered access to a telephone during the 24-hour period, or must they request access from a CBP officer?
- Are the phones located in a confidential area or a common area?
- Are asylum seekers permitted to make international calls or are they restricted to calls within the United States?
- Are asylum seekers permitted to access evidence in their belongings during the PACR or HARP processes?

- What steps, if any, has CBP taken to inform attorneys about PACR or HARP and what, if any, protocols have been developed to allow them to speak with and counsel their clients in the PACR and HARP programs in a confidential manner?
- Access to counsel is critical for asylum seekers to present their cases in a meaningful manner. Will attorneys continue to be prohibited from visiting with their clients in a private setting even if they are subjected to PACR or HARP?
- If people are successful in procuring the services of an attorney, are those attorneys allowed to participate in the USCIS and IJ interviews?
- Credible fear or reasonable fear review hearings in front of an immigration judge are reportedly occurring through the telephone. Can the agency confirm the manner by which credible or reasonable fear review hearings are being conducted?
- Conducting credible or reasonable fear review hearings by telephone has reportedly prevented asylum seekers from submitting documentary evidence in support of their claims. What protocols, if any, has your agency made to ensure that asylum seekers have the ability to submit non-testimonial evidence as permitted by law?
- How is CBP communicating with the Executive Office for Immigration Review regarding the scheduling of expedited credible or reasonable fear review hearings?
- Is CBP considering allowing non-governmental organizations to provide legal orientation/Know Your Rights presentations for asylum seekers subjected to the PACR or HARP programs?
- What protocols have been implemented to allow family members and attorneys of record to locate their relatives and clients in CBP custody?
- Will attorneys of record be permitted to call in to Border Patrol facilities to communicate with individuals subjected to PACR or HARP?
- Does CBP record phone calls from asylum seekers held in its custody? If yes, does CBP have a means to prevent the recording of phone calls covered by attorney/client privilege?
- What protocols, if any, have been implemented to ensure that asylum seekers are given adequate time to confer with attorneys in a confidential manner?

We urge you to immediately reconsider the implementation of these programs. Any potential added efficiency provided by PACR and HARP's truncated review processes comes at the expense of meaningful due process, and the programs will inevitably lead us to return vulnerable populations to danger or persecution in their countries of origin. We look forward to your timely consideration and response.

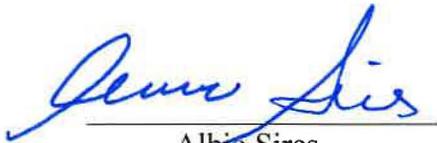
Sincerely,

Veronica Escobar
Member of Congress

Eleanor Holmes Norton
Member of Congress

James P. McGovern
Member of Congress

Filemon Vela
Member of Congress



Albio Sires
Member of Congress



Juan Vargas
Member of Congress



Jesús G. "Chuy" García
Member of Congress



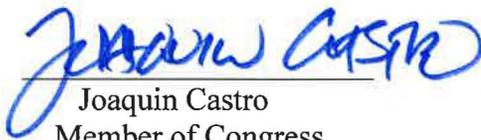
Jan Schakowsky
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Sylvia R. García
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Nydia Velázquez
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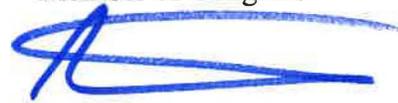
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Deb Haaland
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Mark Pocan
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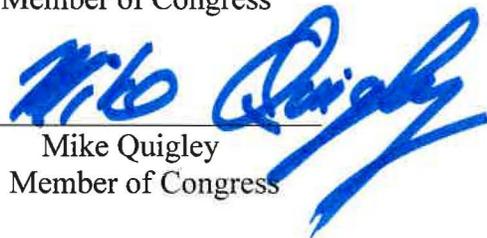
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Rosa L. DeLauro
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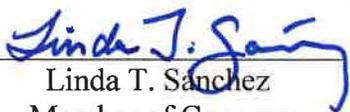
Nanette Diaz Barragán
Member of Congress



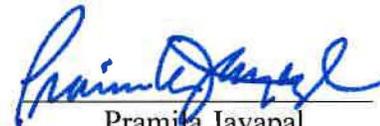
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