

**DHS Has Not  
Effectively  
Implemented the  
Prompt Asylum Pilot  
Programs**





**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

January 25, 2021

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

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

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SUBJECT: *DHS Has Not Effectively Implemented the Prompt  
Asylum Pilot Programs*

Attached for your information is our final report, *DHS Has Not Effectively Implemented the Prompt Asylum Pilot Programs*. We incorporated the formal comments from DHS in the final report.

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 Thomas Kait, Assistant Inspector General for Special Reviews and Evaluations, at (202) 981-6000.

Attachment



# DHS OIG HIGHLIGHTS

## *DHS Has Not Effectively Implemented the Prompt Asylum Pilot Programs*

January 25, 2021

### Why We Did This Review

In recent years, the United States has experienced a surge in migrants crossing the southern border to seek asylum. In October 2019, DHS began pilots of the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs to quickly process migrants with claims of credible fear. We conducted this review to evaluate DHS' effectiveness to date in implementing the programs. This interim report is based on observations from our visit to the El Paso, TX border sector.

### What We Recommend

We made six recommendations to improve PACR and HARP program implementation.

**For Further Information:**  
Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

### What We Found

DHS has not effectively implemented the PACR and HARP programs. Within the Department, U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) share responsibility for managing PACR and HARP. Because of rapid implementation and expansion of the programs, DHS components did not adequately consider several factors necessary to support their operations. Specifically, our initial review and visit to the El Paso sector disclosed:

- few metrics were implemented to measure the programs' effectiveness in meeting goals;
- a program goal of 7 to 10-day maximum detention is inconsistent with CBP detention standards and was routinely exceeded;
- due to facility limitations, multiple families were co-located, with limited assurance of privacy and separation of juveniles from unrelated adults;
- consultation areas and legal amenities were not conducive to allowing aliens to prepare for credible-fear screening interviews;
- staff resources were inadequate to manage the programs; and
- data systems were not interoperable, necessitating labor-intensive and error-prone manual efforts to track and share information across components.

As of April 15, 2020, DHS had deployed the pilot programs to most sectors on the southern border. Going forward, DHS should consider and take actions to address the issues we identified, to better ensure effectiveness in fulfilling mission goals.

### DHS Response

DHS officials did not concur with five recommendations and concurred with one. We consider these five recommendations unresolved and open and one recommendation resolved and open.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Table of Contents**

Background ..... 3

Results of Review ..... 8

    Few Metrics Were Implemented to Measure Pilot Programs’  
    Effectiveness..... 8

    Program Goal of 7 to 10-Day Maximum Detention Is Inconsistent with  
    CBP Detention Standards and Was Routinely Exceeded..... 11

    Assurance of Privacy and Separation of Juveniles from Unrelated Adults  
    Is Limited at El Paso Facility..... 13

    Consultation Areas and Legal Amenities Are Not Conducive to Allowing  
    Aliens to Prepare for Credible-Fear Screening Interviews..... 16

    Staff Resources Were Inadequate to Effectively Manage the Programs .. 20

    Data System Limitations Entailed Labor-Intensive and Error-Prone  
    Manual Efforts to Track and Share Information ..... 23

Conclusion..... 24

Recommendations..... 25

**Appendixes**

Appendix A: Objective, Scope, and Methodology ..... 32

Appendix B: DHS Comments to the Draft Report ..... 34

Appendix C: PACR and HARP Processes Compared to Standard  
    Expedited Removal/Credible Fear Process..... 41

Appendix D: PACR and HARP Process Flowchart..... 42

Appendix E: Special Reviews and Evaluations Major Contributors to  
    This Report ..... 43

Appendix F: Report Distribution ..... 44

**Abbreviations**

CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
CPC	Centralized Processing Center



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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CRCL	Office for Civil Rights and Civil Liberties
EOIR	Executive Office for Immigration Review
FRC	Family Residential Center
GAO	Government Accountability Office
HARP	Humanitarian Asylum Review Process
ICE	U.S. Immigration and Customs Enforcement
INA	<i>Immigration and Nationality Act</i>
OFO	Office of Field Operations
PACR	Prompt Asylum Claim Review
POE	Port of Entry
TEDS	<i>National Standards on Transport, Escort, Detention, and Search</i>
UAC	Unaccompanied Alien Children
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services



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Department of Homeland Security

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### Background

The U.S. Customs and Border Protection (CBP) Office of Field Operations (OFO) manages U.S. ports of entry where officers perform immigration and customs functions, admitting admissible individuals who have valid documents for legal entry, such as visas or legal permanent resident cards. Between ports of entry, CBP's Border Patrol detects and interdicts individuals suspected of illegally entering into the United States. Together, OFO and Border Patrol are responsible for providing short-term detention for inadmissible aliens<sup>1</sup> arriving in the United States without valid travel documents, in compliance with the *National Standards on Transport, Escort, Detention, and Search* (TEDS),<sup>2</sup> which governs CBP's interaction with detained individuals. The Department of Homeland Security Office for Civil Rights and Civil Liberties, which works with CBP to design and implement policies, procedures, and guidance to protect the civil and human rights of detainees in DHS custody, actively participated in the development of the TEDS standards.<sup>3</sup>

Upon encountering inadmissible aliens at or between ports of entry, CBP's OFO officers and Border Patrol agents generally determine whether to (1) place inadmissible adults and family units<sup>4</sup> into expedited removal proceedings,<sup>5</sup> or (2) refer them for full removal proceedings before the Executive Office for Immigration Review (EOIR).<sup>6</sup> CBP transfers aliens placed into expedited removal proceedings to U.S. Immigration and Customs Enforcement (ICE) for detention. ICE refers aliens who express a fear of persecution, torture, or a fear of return, or otherwise indicate an intention to apply for asylum to U.S. Citizenship and Immigration Services (USCIS), whose asylum officers conduct a credible-fear screening interview.<sup>7</sup> Aliens receiving a positive credible fear

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<sup>1</sup> Inadmissible aliens are aliens who are ineligible for visas or admission to the United States, including aliens present in the United States without being admitted or paroled, and aliens not in possession of a valid visa, reentry permit, border crossing identification card, or other valid entry document. 8 United States Code (U.S.C.) §§ 1182(a)(6)(A), (7)(A)(i)(I).

<sup>2</sup> U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, October 2015.

<sup>3</sup> Department of Homeland Security Office for Civil Rights and Civil Liberties, *Fiscal Year 2015 Annual Report to Congress*, June 10, 2016.

<sup>4</sup> Unaccompanied alien children are transferred to the custody of the Department of Health and Human Services and are not subject to expedited removal proceedings.

<sup>5</sup> Expedited removal generally enables immigration officers to order removal of aliens determined inadmissible under the *Immigration and Nationality Act* without further review or hearing before an immigration judge. 8 U.S.C. § 1225(b)(1)(A)(i).

<sup>6</sup> 8 U.S.C. §§ 1225(b)(1)(A)(ii), (B)(ii). A full removal proceeding, often referred to as a 240 proceeding, is conducted under 8 U.S.C. § 1229a.

<sup>7</sup> USCIS conducts credible-fear screening interviews to determine whether aliens have a credible fear of torture, or of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, if returned to their country.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

determination from USCIS are referred to EOIR for a hearing on their asylum claim;<sup>8</sup> those receiving a negative determination may request a review of that determination before an immigration judge.

In late spring and early summer of 2019, CBP experienced unprecedented numbers of inadmissible aliens trying to enter the United States. Many of these aliens claimed they feared returning to their country of origin and intended to claim asylum. In May 2019, CBP officials testified before Congress that they were experiencing an unprecedented border security and humanitarian crisis along the Southwest Border.<sup>9</sup> According to CBP data, the number of aliens apprehended between ports of entry, or found inadmissible at ports of entry, along the Southwest Border increased 135 percent from fiscal year 2017 to FY 2019, as shown in Table 1. This surge in migrants led to overcrowding and prolonged detention of individuals in some Border Patrol facilities, and prolonged detention in some ports of entry.<sup>10</sup>

**Table 1. Southwest Border Apprehensions and Inadmissible Aliens**

	FY 2017	FY 2018	FY 2019
<b>Unaccompanied Alien Children (UAC)</b>	48,681	58,660	80,634
<b>Family Units</b>	104,997	161,113	527,112
<b>Single Adults</b>	261,513	301,317	368,812
<b>Total</b>	<b>415,191</b>	<b>521,090</b>	<b>976,558</b>

Source: CBP Southwest Border migration data

On July 17, 2019, a bipartisan group of nine Senators requested that President Trump implement a pilot program, provisionally titled “Operation Safe Return”:

*... to rapidly, accurately, and fairly determine those families who have crossed the southern border that clearly do not have a valid legal claim and safely return them to their home countries.[...] The process would use*

<sup>8</sup> 8 U.S.C. § 1225(b)(1)(B)(ii). Aliens are issued a notice to appear which provides the EOIR hearing date, time, and venue.

<sup>9</sup> *At the Breaking Point: the Humanitarian and Security Crisis at our Southern Border*, Hearing before the U.S. Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, May 8, 2019 (joint statement of Todd Owen, Exec. Assist. Comm., CBP, Carla L. Provost, Chief, USBP, Manuel Padilla, Director, Joint Task Force-West, DHS).

<sup>10</sup> *Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center*, OIG-19-46, May 2019; *Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley*, OIG-19-51, July 2019; *Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge*, OIG-20-38, June 2020.



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Department of Homeland Security

*existing authorities, but surge necessary resources to a limited, particular location on the southern border.*<sup>11</sup>

In early October 2019, DHS began implementing the Prompt Asylum Claim Review (PACR) pilot program in the El Paso sector, with the intention to more quickly process<sup>12</sup> and remove non-Mexican single adults and family units<sup>13</sup> apprehended by Border Patrol without a valid asylum claim. Border Patrol agents complete initial assessments of those aliens subject to the pilot,<sup>14</sup> and then transfer them to a temporary, modular Central Processing Center (CPC)<sup>15</sup> for USCIS to conduct credible fear screenings. In late October 2019, DHS also implemented the Humanitarian Asylum Review Process (HARP) pilot program to take a similar approach to Mexican single adults and family units, primarily at ports of entry, beginning with the Paso del Norte port of entry in El Paso, Texas.<sup>16</sup> Under HARP, OFO handles the initial processing of those subject to the pilot program<sup>17</sup> at the port of entry, and then transfers them to Border Patrol's CPC facility to continue the asylum claim process. The goal of both pilot programs is to complete the credible fear screening process in 7 to 10 days, while applicants remain in CBP custody.

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<sup>11</sup> Letter from Senators Ron Johnson, Kyrsten Sinema, et al. to President Donald J. Trump, July 17, 2019.

<sup>12</sup> CBP's admissibility processing includes verifying the alien's identity, checking databases for outstanding warrants or criminal history, searching the alien for drugs or contraband, and taking statements from the alien. CBP may refer aliens to USCIS to conduct credible fear screenings and to ICE for detention or release.

<sup>13</sup> UAC are not subject to PACR and HARP pilot programs and are normally transferred to the Department of Health and Human Services.

<sup>14</sup> The PACR program was launched as a pilot to effectively process aliens subject to the Third Country Transit rule. CBP may only enroll in the PACR program non-Mexican single adults or family units who have been placed in expedited removal proceedings and who have expressed a fear of persecution or torture, or a fear of return, or indicated an intention to apply for asylum. The Third-Country Transit rule bars eligibility for asylum for an alien who enters or attempts to enter the United States across the southern border, but who did not apply for protection from persecution or torture where it was available in at least one third country outside the alien's country of citizenship, nationality, or last lawful habitual residence, through which he or she transited en route to the United States. 84 FR 33829, July 16, 2019.

<sup>15</sup> Prior to the opening of the CPC in March 2020, Border Patrol held aliens in the PACR program in soft-sided tents at El Paso Border Patrol Station One.

<sup>16</sup> OFO does not process aliens for the PACR program. PACR is a Border Patrol program, and OFO officers have discretion to place non-Mexican nationals arriving at ports of entry (POE) into other programs, such as the Migrant Protection Protocols (also referred to as "Remain in Mexico"). After introducing HARP at the Paso del Norte POE, HARP also became available to Border Patrol. During the period of our review, Border Patrol placed approximately 350 Mexicans in HARP.

<sup>17</sup> CBP may only enroll in the HARP program Mexican single adults or family units who have been placed in expedited removal proceedings and who have expressed a fear of persecution or torture, or a fear of return, or indicated an intention to apply for asylum.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP facilitates USCIS credible fear processing and EOIR hearings while aliens in PACR and HARP programs remain in CBP custody. USCIS' credible fear processing of aliens in the pilot programs is generally the same as its processing of those not in the programs. However, USCIS conducts interviews with aliens in the pilot programs while they are detained in Border Patrol facilities, while those not in the pilot programs are interviewed while in ICE custody. Differences and similarities between the pilot programs and the standard expedited removal/credible fear process are shown in Appendix C. Similar to other individuals placed in expedited removal proceedings, during the time of our site visit to El Paso, USCIS afforded aliens in PACR and HARP a 48-hour consultation period<sup>18</sup> prior to the credible-fear screening interview. This provides aliens an opportunity to contact a relative, representative, attorney, or any other person whom the alien may want to act as their consultant during the interview. USCIS' goal is then to process PACR and HARP credible fear interviews within 4 days of receiving the referral from CBP, whereas for other individuals in expedited removal proceedings, the goal to process credible-fear screening interviews is 10 days. In addition, requests for review of a negative credible fear determination by an EOIR immigration judge occurs while the single adult or family unit is still in CBP custody rather than in ICE detention. Appendix D provides a general flowchart of the PACR and HARP processes.

Although deemed pilots, DHS has implemented PACR and HARP in all but one of the nine Border Patrol sectors along the Southwest Border.<sup>19</sup> The rollout of the programs occurred as follows:

- October 2019 - El Paso, TX (PACR)
- December 2019 - Rio Grande Valley, TX (PACR)
- January 2020 - Yuma, AZ (PACR); El Centro, CA (PACR); Big Bend, TX (PACR); San Diego, CA (PACR); El Paso, TX (HARP)
- February 2020 - Laredo, TX (PACR); Del Rio, TX (PACR); Yuma, AZ (HARP); Rio Grande Valley, TX (HARP); Laredo, TX (HARP); Del Rio, TX (HARP)

OFO at ports of entry and Border Patrol between the ports in these areas

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<sup>18</sup> In July 2019, the then acting USCIS Director Ken Cuccinelli reduced the time for consultation from 48–72 hours to 24 hours for all aliens in the credible fear process. However, the consultation time reverted to 48–72 hours in March 2020, after a Federal district court judge ruled that Mr. Cuccinelli had not been lawfully appointed as acting USCIS Director in 2019, and therefore, the “reduced-time-to-consult” policy had to be set aside. *L.M.-M. v. Cuccinelli*, 442 F.Supp.3d 1 (D. D.C. March 1, 2020), *appeal dismissed*, No. 20-5141, 2020 WL 5358686 (D.C. Cir., Aug. 25, 2020).

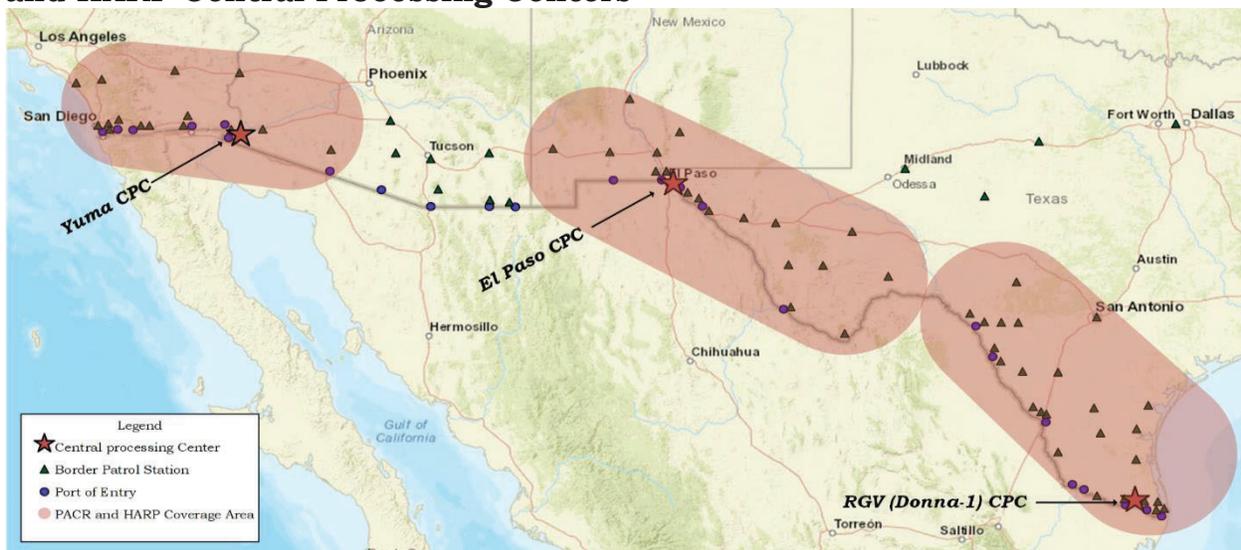
<sup>19</sup> Tucson, AZ, is the only Southwest Border sector that has not yet implemented the programs.



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identify aliens who meet the criteria for inclusion in the programs and then transport those aliens to one of three designated Border Patrol facilities along the Southwest Border for credible fear processing. Aliens encountered in El Paso and Big Bend are transferred to the CPC in El Paso; those encountered in the Rio Grande Valley, Laredo, and Del Rio are transferred to the Donna 1 soft-sided tent facility in the Rio Grande Valley; and those encountered in Yuma, El Centro, and San Diego are transferred to the Temporary Processing Center soft-sided tent facility in Yuma, as shown in Figure 1.

**Figure 1. Southwest Border Map Showing Approximate Coverage of PACR and HARP Central Processing Centers**



Source: OIG depiction of CBP data

We are conducting this review in response to a July 18, 2019 Senate Homeland Security and Governmental Affairs Committee request to conduct a review of “Operation Safe Return” concurrent with its implementation. The committee also requested Department of Justice Office of Inspector General (OIG) and the Government Accountability Office (GAO) conduct a review of the same program. In November 2019, we confirmed that CBP’s PACR and HARP programs were similar to Operation Safe Return, and in February 2020, we initiated our review. From March 10 to 13, 2020, we conducted our first site visit to the El Paso, Texas area. At the time of our site visit, the El Paso sector had 164 aliens in the PACR and HARP programs. We had to suspend our additional site visits upon returning from El Paso due to the outbreak of the COVID-19 pandemic. CBP is generally no longer detaining inadmissible aliens in its holding facilities and is immediately returning inadmissible aliens to the



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Department of Homeland Security

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country they entered from or to their country of origin.<sup>20</sup> As such, CBP has temporarily halted PACR and HARP. We conducted additional fieldwork, including telephonic interviews and analysis of documents and data, through June 2020. We are issuing this interim report to provide our initial observations of PACR and HARP, primarily limited to the El Paso, Texas area. Once the COVID-19 pandemic has eased and if the programs resume operations, we plan to continue our fieldwork and issue another report.

### Results of Review

DHS has not effectively implemented the PACR and HARP programs. Within the Department, CBP and USCIS share responsibility for managing PACR and HARP. Because of rapid implementation and expansion of the programs, DHS components did not adequately consider several factors necessary to support their operations. Specifically, our initial review work and visit to the El Paso sector disclosed:

- few metrics were implemented to measure the programs' effectiveness in meeting goals;
- a program goal of 7 to 10-day maximum detention is inconsistent with CBP detention standards and was routinely exceeded;
- due to facility limitations, multiple families were co-located, with limited assurance of privacy and separation of juveniles from unrelated adults;
- consultation areas and legal amenities in El Paso were not conducive to allowing aliens to prepare for credible-fear screening interviews;
- staff resources were inadequate to manage the programs; and,
- data systems were not interoperable, necessitating labor-intensive and error-prone manual efforts to track and share information across components.

### Few Metrics Were Implemented to Measure Pilot Programs' Effectiveness

GAO has issued best practices for an effective pilot phase of a program. According to GAO, "The pilot phase allows for a check on whether program operations ... occur as expected."<sup>21</sup> In another report, GAO recommended that

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<sup>20</sup> As a result of the Centers for Disease Control and Prevention's Order Suspending Introduction of Persons from a country where a communicable disease exists (March 20, 2020), CBP stopped or significantly limited the processing of inadmissible aliens seeking asylum, which has raised legal concerns. We did not assess this action or its legal implications as it is outside the scope of this report.

<sup>21</sup> *Designing Evaluations: 2012 Revision*, GAO-12-208G, January 2012.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

pilot programs should have well-defined, clear, and measurable objectives; criteria or standards for determining pilot performance; and a plan to track the pilot's performance and evaluate the final results.<sup>22</sup> Following these best practices can increase the rigor of the pilots to ensure scalability and long-term success.

Although deemed pilots by CBP, both PACR and HARP have been implemented along most of the Southwest Border without a full evaluation of their effectiveness or the resources required to implement and sustain them for the long term. At the time of our review, CBP provided only two evaluation metrics for PACR, and none for HARP. Of the two metrics for PACR, CBP did not establish a goal against which to measure one of the metrics (i.e., the number of aliens successfully processed in the program), and did not meet the other metric (i.e., the prescribed timeline to complete processing). Further, we could not identify any formal plans for the rollout of the programs beyond a list of dates and expansion locations. Nor did we find any decision points for the rollout based on an evaluation of the pilots' effectiveness.

Upon initiating the pilot programs, CBP did not direct the El Paso Sector to collect or track any metrics and did not provide any clearly defined goals to evaluate performance. Nor has CBP conveyed to any sector formal or detailed policy guidance including the use of metrics and goals. Instead, CBP provided a generic concept of operations outline and left implementation and evaluation details to sector officials to determine. During our site visit to El Paso, we observed a method that sector officials implemented to track all aliens enrolled in the programs in a Microsoft Excel spreadsheet. A Border Patrol official stated the spreadsheet was the official system of record from the programs' implementation in October 2019 until the e3 Portal<sup>23</sup> (e3) was modified in January 2020. The spreadsheet evolved during this period to capture the aliens' demographic data, and program milestones such as referral to USCIS, dates of credible-fear screening interviews, and outcomes to meet headquarters reporting requirements. However, headquarters program officials could not demonstrate how they used this data or any other metrics to evaluate the effectiveness of the pilot programs prior to expanding them to other sectors.

CBP's metrics to determine the success of the pilot programs were nonexistent or limited at most, yet CBP expanded the programs to additional locations. According to Border Patrol, two metrics used to evaluate the success of the

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<sup>22</sup> *Tax Administration: IRS Needs to Strengthen its Approach for Evaluating the SRFMI Data-Sharing Pilot Program*, GAO-09-45, November 2008.

<sup>23</sup> The e3 Portal collects and transmits biographic, encounter, and biometric data for identification and verification of individuals encountered at the border and checkpoints for CBP's law enforcement and immigration mission.



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Department of Homeland Security

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PACR program are the number of aliens successfully processed and keeping the entire process within the prescribed timeline. However, CBP never stated the goal for the number of aliens successfully processed in the program, and therefore, there is no benchmark to measure against. Further, the number of aliens successfully processed for the program is relative to the number of eligible aliens encountered by CBP. That latter number fluctuates depending on many outside factors influencing migration patterns and the proportion of asylum seekers among inadmissible aliens, and does not provide a means to measure whether the program is successful or effective. In addition, the original pilot proposal<sup>24</sup> prescribed a 5 to 7-day timeline. However, a PACR expansion document listed “a six-step concept of operations for approximately seven to ten day streamline process.” For purposes of this report, we refer to the 7 to 10-day timeline as CBP’s goal for both PACR and HARP programs, given that it is the most generous and also the most recent timeline documented. For the HARP program, an OFO official stated, 3 months after the pilot was implemented, that insufficient time had passed and OFO had insufficient data to make any determination regarding the effectiveness of the program. Yet, CBP had already expanded HARP to other locations. Further, information provided to OIG regarding the expansion of the programs did not include any formal plans or decision points based on an evaluation of the program’s effectiveness, but rather included only an expansion timeline and future locations for PACR and HARP.

Although we have yet to receive full and reliable data regarding the numbers of aliens in the programs, CBP does not have benchmarks or goals against which we would be able to evaluate such numbers. In addition, initial reporting shows many instances when the entire process goes beyond the 7 to 10-day timeline prescribed in the PACR expansion document, and in some cases significantly beyond it. Table 2 shows the number and percent of aliens in the HARP and PACR programs who were detained in CBP custody for 10 days or less, and more than 10 days, respectively. Figure 2 shows total days in CBP custody for aliens in HARP and PACR, from apprehension to removal, release, or transfer to ICE detention.

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<sup>24</sup> Joint memorandum from CBP Acting Commissioner, ICE Deputy Director, and USCIS Acting Director to Kevin K. McAleenan, DHS Acting Secretary, *Prioritization of Removal Pathways*, undated: Attachment D, *Streamlined Processing Procedures and Third Country Pilot Guidelines*. Attachment D describes the general characteristics of the PACR pilot program, to include the 5 to 7-day timeline, and served as the main guidance for implementing the pilot. The PACR pilot was not listed as a removal pathway in the original memo, and the undated Attachment D appears to have been added later.



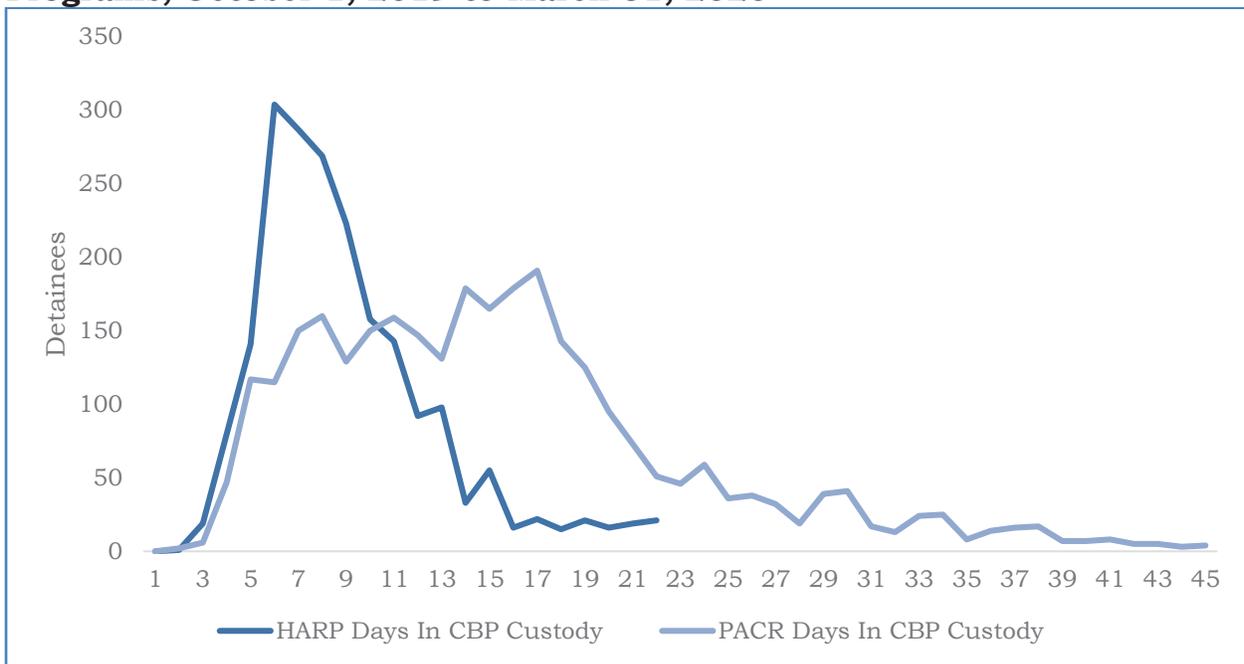
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**Table 2. Days in Custody for Detained Aliens in HARP and PACR Programs, October 1, 2019 to March 31, 2020<sup>25</sup>**

Program	10 Days or Less	Percent	More than 10 Days	Percent	Grand Total
HARP	1,482	73%	552	27%	2,034
PACR	876	29%	2,121	71%	2,997
<b>Grand Total</b>	<b>2,358</b>	<b>47%</b>	<b>2,673</b>	<b>53%</b>	<b>5,031</b>

Source: OIG analysis of CBP Data

**Figure 2. Total Days in Custody for Detained Aliens in HARP and PACR Programs, October 1, 2019 to March 31, 2020<sup>26</sup>**



Source: OIG analysis of CBP Data

**Program Goal of 7 to 10-Day Maximum Detention Is Inconsistent with CBP Detention Standards and Was Routinely Exceeded**

CBP must comply with TEDS, which governs CBP’s interactions with individuals detained in CBP facilities. TEDS generally limits detention in CBP

<sup>25</sup> The table is derived from manual spreadsheets CBP used to track HARP and PACR cases. The table excludes outliers and cases with incomplete data.

<sup>26</sup> The figure is derived from manual spreadsheets CBP used to track HARP and PACR cases. The figure excludes outliers and cases with incomplete data.



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facilities to 72 hours<sup>27</sup> with the expectation that CBP will transfer UAC to the Health and Human Services, Office of Refugee Resettlement,<sup>28</sup> and families and single adults to ICE's long-term detention facilities.<sup>29</sup> While TEDS policy governs all CBP detention facilities, it is primarily intended for CBP temporary hold rooms normally found in Border Patrol stations and OFO ports of entry. TEDS was published before the implementation of the PACR and HARP programs and construction of CBP facilities intended to hold aliens longer than 72 hours, like the El Paso CPC.

On its face, the 7 to 10-day timeline developed for the PACR and HARP pilots is inconsistent with TEDS on detention duration. At the time of our visit, 65 of the 164 (nearly 40 percent) aliens in the PACR and HARP programs detained by Border Patrol in the El Paso sector — including 27 children in family units — had been in CBP custody longer than 72 hours, but less than 1 week;<sup>30</sup> 46 of the 164 (28 percent) aliens in the programs — including 19 children in family units — had been in custody longer than 1 week.<sup>31</sup> Only about 32 percent of aliens in the programs were held within TEDS' 72-hour limit. Table 3 provides the time in custody of all aliens held in Border Patrol's custody in the El Paso sector on March 10, 2020.

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<sup>27</sup> TEDS 4.1 *Duration of Detention*. Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.

<sup>28</sup> Office of Refugee Resettlement is responsible for custody of UAC. 6 U.S.C. § 279(a).

<sup>29</sup> See 6 U.S.C. § 211(c)(8)(B) and DHS Delegation No. 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement*, Nov. 13, 2004.

<sup>30</sup> The 164 aliens are listed in the Grand Total column of Table 3, including 73 children in family units, 64 adults in family units, and 27 single adults. The 65 aliens held longer than 72 hours but less than 1 week are listed in the 72 Hours to 1 Week column, including 27 children in family units, 25 adults in family units, and 13 single adults.

<sup>31</sup> The 46 aliens held longer than 1 week are listed in the More than 1 Week column of Table 3, including 19 children in family units, 18 adults in family units, and 9 single adults.



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**Table 3. Time in Custody for Aliens Detained in El Paso Sector on March 10, 2020**

<b>Demographics</b>	<b>Under 72 Hours</b>	<b>72 Hours to 1 Week</b>	<b>More than 1 Week</b>	<b>Grand Total</b>
<b>UAC</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>14</b>
PACR/HARP*	0	0	0	0
Other Programs	14	0	0	14
<b>Family Unit – Children</b>	<b>40</b>	<b>39</b>	<b>26</b>	<b>105</b>
PACR/HARP	27	27	19	73
Other Programs	13	12	7	32
<b>Family Unit – Adults</b>	<b>36</b>	<b>36</b>	<b>25</b>	<b>97</b>
PACR/HARP	21	25	18	64
Other Programs	15	11	7	33
<b>Single Adults</b>	<b>104</b>	<b>45</b>	<b>9</b>	<b>158</b>
PACR/HARP	5	13	9	27
Other Programs	99	32	0	131
<b>Grand Total</b>	<b>194</b>	<b>120</b>	<b>60</b>	<b>374</b>

\*UAC do not meet the inclusion criteria for PACR or HARP; as such, there were no UAC held in Border Patrol’s custody under these programs at the time of our visit.

Source: OIG analysis of CBP Data

TEDS does not contain provisions regarding items such as health, hygiene, clothing and bedding for detainees held longer than 72 hours. For example, TEDS does not require CBP to provide clean clothing or undergarments at regular intervals and only requires the issuance of clean bedding upon detainee request and when available. These standards are in stark contrast to the ICE *Family Residential Standards*, which require a daily change of socks and undergarments, a twice-weekly exchange of outer garments, and a weekly exchange of bedding items. We observed an ample supply of clothing and undergarments at the El Paso CPC. However, there are no written policies stating when or how often agents will issue or exchange clothing for aliens held by CBP for longer than 72 hours.

**Assurance of Privacy and Separation of Juveniles from Unrelated Adults Is Limited at El Paso Facility**

TEDS requires that detainees younger than 18 years of age in CBP custody are not held with adult detainees, unless the adult is an immediate relative or legal guardian and no other adult detainees are present in the area.<sup>32</sup> TEDS also requires CBP to afford detainees a reasonable amount of privacy from detainees

<sup>32</sup> TEDS 4.3 *General Detention Procedures: Juvenile/Adult Segregation.*



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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of the opposite gender.<sup>33</sup> Despite these requirements, we found that CBP held many families together in large open pods in the El Paso CPC with no assurance of privacy or separation of juveniles from unrelated adults.

Given the capacity limitations of most of CBP's short-term holding facilities, most aliens in the PACR and HARP pilots within the El Paso sector were generally held at a newly-built CPC on the grounds of El Paso Station.<sup>34</sup> The large pods at the CPC made it difficult for CBP to balance both TEDS standards for family unity with those affording women and children separation from unrelated men and those for privacy in restroom facilities, as shown in Figure 3. For example, at the CPC, there were two "dual head of household" pods in which children were held with both their parents and unrelated families. Specifically, one pod held 10 unrelated families, and the other held 11. As a result, women and girls in these pods were being held with unrelated men and boys. In one pod, a 15-year-old girl was being held with a 17-year-old boy and 10 unrelated men. In another, two 14-year-old girls were held with 9 unrelated men, and one of those girls was also held with a 15-year-old boy, a sibling of the other 14-year-old girl. Toilet stalls in the living area with waist-high partitions offered little privacy.<sup>35</sup> In addition, although the detained population at the CPC included mothers with infants and toddlers, there was no private space for nursing.<sup>36</sup>

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<sup>33</sup> TEDS 4.3 *General Detention Procedures: Gender Segregation*. TEDS 4.15 *Restroom Facilities: Privacy*.

<sup>34</sup> Detainees held in quarantine for communicable illnesses such as the flu were held inside El Paso Station, which had smaller cells that enabled separating detainees with different medical conditions from each other.

<sup>35</sup> TEDS 4.15 *Restroom Facilities: Restroom Facilities*. Restroom accommodations will be available to all detainees and a reasonable amount of privacy will be ensured.

<sup>36</sup> TEDS 4.15 *Restroom Facilities: Privacy*. Officers/Agents must make a reasonable effort to afford privacy to all detainees of the opposite gender consistent with the prohibition on voyeurism.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security



Figure 3. Example of a detention pod observed by DHS OIG at Border Patrol's CPC on March 10, 2020.

Source: OIG

CBP had taken some measures to prevent safety and security incidents related to holding unrelated families together. For example, each pod had an unarmed security guard in attendance to supervise the detainees, and video coverage. Detainees wore the same clothing during the day and at night; changes of clothing were given in the shower rooms, which were separated by gender, so detainees did not change clothes in front of unrelated adults of the opposite gender. A CBP official said there had been no reported incidents at the CPC, and, as of the close of our fieldwork, DHS OIG had not received any complaints from detained families at the CPC. Nevertheless, based on officer discretion, the decision was made to require 17-year-old boys to sleep in a separate area in the holding pod. Despite these precautions, conditions at the CPC were not comparable to those in the ICE Family Residential Centers (FRC) DHS OIG visited in July 2016,<sup>37</sup> where detained families slept in designated sleeping quarters. Because sleeping quarters in the FRCs were divided into smaller rooms, family unity could be maintained with greater separation into gender- and age-appropriate groupings.

During our site visit, we observed that CBP made an effort to accommodate the needs of families with children at the CPC, but the facility was not designed to offer conditions of detention comparable to the ICE FRCs. For example, families at the FRCs received physical exams, immunizations, and preventive care. They had access to a variety of food options, including fresh fruit and vegetables, at each meal. At the FRCs, families shared sleeping quarters with only a few other families. Families at the FRCs had beds and cloth bedding,

<sup>37</sup> *Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities*, OIG-17-65, June 2, 2017.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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and could keep personal possessions, including up to 10 changes of clothing, in their sleeping quarters. Toilets were separate from bedrooms and afforded some privacy. In contrast, the detention cells or “pods” at the CPC were large and did not offer much privacy; most were designed to hold 90 detainees with sufficient room for sleeping mats. The toilets in the pods consisted of stalls with waist-high partitions fixed to one wall of the open living space. Seating for adults and older children consisted of rows of metal benches. Detainees were issued their own mats and Mylar blankets, but did not have other personal possessions with them.<sup>38</sup>

In addition, while CBP personnel at CPC made an effort to offer a less restrictive setting for children, as required by TEDS,<sup>39</sup> options were limited. CBP had created a play area in each cell, with colorful mats and toys. CBP officials said they had padded concrete posts within the detention cells to protect children who were running around, and allowed families some outdoor time. In contrast, at the FRCs, families had access to a gym with exercise equipment and outdoor recreation throughout the day. Children at the FRCs were offered structured exercise such as sports and dance. More broadly, children at the FRCs had access to services comparable to those available to non-detained children, such as education, religious services, and in-person counseling from chaplains and social workers.<sup>40</sup>

### **Consultation Areas and Legal Amenities Are Not Conducive to Allowing Aliens to Prepare for Credible-Fear Screening Interviews**

According to the pilot program guidelines, USCIS telephonic credible fear interviews must be conducted in a location where the interviewee is separate, apart from other individuals in CBP custody, and that allows the alien privacy and the ability to be free from being overheard. USCIS’ credible fear

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<sup>38</sup> Comparisons between conditions OIG observed at ICE FRCs in 2016 and those OIG observed at CBP facilities in 2020 have limitations; conditions of detention at the ICE FRCs may have changed in the intervening years. However, standards described in this report reflect the current ICE FRC standards, which are comparable to those in force in 2016.

<sup>39</sup> TEDS 5.6 *Detention: Least Restrictive Setting*. Officers/Agents will place each at-risk detainee (i.e., juveniles, UAC, pregnant individuals, etc.) in the least restrictive setting appropriate to their age and special needs, provided that such setting is consistent with the need to ensure the safety and security of the detainee and that of others.

<sup>40</sup> ICE applies the *Family Residential Standards* for condition of detention for families without regard to anticipated length of detention; children have immediate access to education, medical care, religious services, and other amenities. However, the standards allow several days to complete educational and medical testing. For example, students must complete an initial educational assessment within 3 business days of arrival. The facilities must provide full physical exams within 48 hours of arrival for children, but within 14 days of arrival for adults.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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procedures dictate a consultation period prior to the interview, to allow the alien an opportunity to contact a relative, representative, attorney, or any other person of the alien's choosing whom the alien may want to act as their consultant during the credible-fear screening interview. Additionally, EOIR provides a legal orientation program and self-help legal centers at ICE detention facilities, to help aliens prepare for immigration interviews and proceedings. During our site visit to El Paso, we observed that aliens in the El Paso CPC face greater challenges preparing for credible-fear screening interviews than detainees in ICE detention facilities. These aliens may not receive the same opportunity for consultation as those outside of the programs and detained in ICE facilities.<sup>41</sup> The El Paso CPC does not have many of the legal amenities found in ICE facilities, such as a law library or private area to consult with a representative or conduct interviews.

Since implementing the PACR and HARP pilot programs, Border Patrol has struggled to provide access to phones and private space for aliens to consult with representatives or participate in telephonic screening interviews and immigration court proceedings. The pilot program guidelines require that all interviews be conducted in a location that is separate from other detainees and allows the alien privacy and the ability to be free from being overheard. However, Border Patrol facilities typically do not have areas for private consultations and interviews. Border Patrol officials told us that when PACR and HARP began in October 2019, agents had only four cordless phones for aliens to use and sometimes had to escort aliens to the welding shed or guard shack at El Paso Border Patrol Station One, so the aliens could have a private conversation. In January 2020, Border Patrol converted the sally port in Station One to facilitate 20 phone booths as shown in Figure 4, and is in the process of adding more phone booths in the newly opened CPC. The sally port is in a separate secure area, approximately 300 yards from the CPC. We observed agents escorting groups of aliens back and forth between the two facilities to use phones for scheduled interviews and consultations. Border Patrol officials told us that attorneys can submit requests to set up calls with aliens.

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<sup>41</sup> On December 5, 2019, the American Civil Liberties Union filed a Federal lawsuit on behalf of Las Americas Immigrant Advocacy Center and several asylum seekers, challenging the PACR and HARP programs for, among other things, allegedly denying asylum seekers a meaningful opportunity to access and confer with counsel and third parties while preparing for USCIS credible fear interviews and immigration judges' reviews. *Las Americas Immigrant Advocacy Center v. Wolf*, No. 19-3640 (D. D.C. Dec. 5, 2019). DHS OIG did not evaluate the claims in the lawsuit; we are reporting our findings based on our own observations and analysis.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security



Figure 4. Phone booths observed by DHS OIG at El Paso Station on March 10, 2020.  
Source: OIG

The addition of the sally port phone booths is an improvement, though aliens still experience challenges conducting private consultations and interviews. Border Patrol officials told us they recently modified the booths, adding padding to the walls and Plexiglas to close in the ceiling, to provide additional soundproofing. However, issues still remain. For instance, the phones inside the booths do not have handsets or headphones for security reasons, so aliens must use the speakerphone function. During our site visit, we observed that conversations were partially discernable from outside the booths. Additionally, while listening to a telephonic credible-fear screening interview from a separate office, OIG team members could hear a constant muffled background noise emanating from the other phone booths. This created a distraction during the interview and, at times, either the asylum officer or interpreter had to repeat questions or answers.

CBP officials told us that the consultation period begins once agents serve the alien USCIS Form M-444, which describes the credible-fear interview process and informs the alien of his or her rights.<sup>42</sup> CBP agents also provide each alien in the programs an EOIR list of free or pro bono legal contacts and play a credible fear orientation video<sup>43</sup> before the alien signs Form M-444 acknowledging the notice concerning the credible-fear screening interview. The alien is then scheduled for a credible fear interview at least 48-hours after signing Form M-444 or arrival at the facility (whichever is later). During this 48-hour consultation period<sup>44</sup>, the alien is afforded the opportunity to contact a relative, representative, attorney, or any other person of the alien's choosing

<sup>42</sup> The USCIS Form M-444 has been translated into many languages.

<sup>43</sup> The video is played in either Spanish or Portuguese.

<sup>44</sup> During the time of our site visit to El Paso, TX, the consultation period was 48 hours. USCIS provided a 24-hour consultation period from July 2019 to March 1, 2020.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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whom the alien may want to act as their consultant during the credible fear interview.

A USCIS official told us many of the detainees do not understand what legal representation means and that it would help to have a legal orientation program in the CPC for aliens in HARP and PACR programs. ICE detention standards for single adults and families include procedures for aliens to have access to a legal orientation program in which representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals. ICE detention standards also provide access to a law library, with up-to-date legal material and the ability to print or photocopy documents and keep them in their living quarters. During our site visit we observed that CBP did not offer any legal orientation programs in the CPC other than the credible fear orientation video. We also observed that aliens in the CPC did not have access to pens or paper, the ability to conduct legal research, or the opportunity to keep any documents with them. Providing access to legal orientation programs and other legal amenities generally found in ICE detention facilities could help to increase the aliens understanding of the credible fear process.

At the time of this report, we could not make any conclusions regarding what impact the lack of legal orientation programs and amenities in the CPC had on the credible fear determinations or outcomes of those aliens in PACR and HARP, as compared to USCIS' general credible fear caseload.<sup>45</sup> Table 4 provides the number of aliens in the PACR and HARP programs interviewed by USCIS and the outcomes of those credible-fear screening interviews for all participating sectors, as of March 31, 2020.<sup>46</sup>

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<sup>45</sup> The credible fear determination standards for aliens vary based on their countries of origin and transiting paths to the United States. Thus, in order to make a proper comparison between the credible fear determinations for aliens in standard expedited removal proceedings and aliens in PACR and HARP programs, one must first evaluate which standard applies to each alien, based on an in-depth analysis of that alien's case.

<sup>46</sup> The number of USCIS' credible fear interviews of applicants is generally used to calculate the number of USCIS' credible fear determinations for aliens in the PACR and HARP programs. However, the former is generally less than the latter, since USCIS may not interview every single member of the same family as a separate applicant, and thus the number of applicants interviewed tends to be smaller than the total number of aliens in the programs, which include all family members.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Table 4. PACR and HARP Program Outcomes as of March 31, 2020<sup>47</sup>**

<b>PACR Outcome</b>	<b>PACR Total</b>	<b>Percent</b>
Positive Determination <sup>48</sup>	542	19.91%
Negative Determination <sup>49</sup>	1,964	72.15%
Dissolved <sup>50</sup>	123	4.52%
Ineligible/Other <sup>51</sup>	93	3.42%
<b>Grand Total</b>	<b>2,722</b>	<b>100.00%</b>
<b>HARP Outcome</b>	<b>HARP Total</b>	<b>Percent</b>
Positive Determination	586	29.23%
Negative Determination	1,246	62.14%
Dissolved	134	6.68%
Ineligible/Other	39	1.95%
<b>Grand Total</b>	<b>2,005</b>	<b>100.00%</b>

Source: OIG analysis of USCIS Data

### **Staff Resources Were Inadequate to Effectively Manage the Programs**

The *DHS Workforce Planning Guide* specifies that it is the responsibility of every DHS component to ensure that effective workforce plans are prepared, implemented with action plans, monitored, and evaluated to help the Department meet its mission and organizational goals. CBP and USCIS did not conduct adequate workforce planning for the pilot programs, which resulted in staffing problems for both components. Implementation of the pilot programs reduced the time USCIS is permitted to evaluate asylum claims, while it increased the amount of time CBP keeps aliens in custody. These changes resulted in an increased strain on both USCIS and CBP staffing resources and

<sup>47</sup> The total numbers in Table 4 only reflect USCIS outcomes, and do not include those cases overturned by EOIR.

<sup>48</sup> In a positive determination, an asylum officer has determined the alien has a credible fear of persecution or torture. 8 U.S.C. § 1225(b)(1)(B), 8 Code of Federal Regulations (C.F.R.) § 208.30(e).

<sup>49</sup> In a negative determination, an asylum officer has determined that the alien does not have a credible fear of persecution or torture. 8 U.S.C. § 1225(b)(1)(B), 8 C.F.R. § 208.30(e).

<sup>50</sup> In a dissolved case, the alien has expressed a desire to be removed from the United States and no longer pursue a credible fear claim.

<sup>51</sup> Ineligible and other cases include detainees placed in other programs as well as those whose cases were administratively closed or for whom an interpreter could not be located due to rare language issues.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

required reassignment of staff from regular responsibilities, to meet the demands of the pilot programs.

The USCIS Arlington (Virginia) Asylum Office performs telephonic credible fear screening of aliens in the PACR and HARP pilot programs in El Paso.<sup>52</sup> USCIS officials told us that, prior to implementation of the pilot programs, they completed credible fear screenings in an average of about 10 days. They reduced this timeframe to an average of about 4 days, to help meet the pilot programs' goal of 7 to 10-day case completion. To achieve this reduction goal, the USCIS Arlington Asylum Office prioritized pilot program cases and increased the amount of overtime and weekends worked by asylum officers.

Officials told us that prioritizing pilot program cases has led to increased processing times for cases outside of the pilot programs. The Arlington Asylum Office received funding authorization to increase overtime to keep up with the demands of the pilot programs. This included conducting credible-fear screening interviews 7 days per week during the period of our fieldwork. USCIS also reassigned asylum officers from other operational or administrative functions to perform pre-screening work and credible-fear screening interviews for the pilot programs. USCIS conducted a hiring surge in FY 2020 to fill existing vacant positions. In addition, USCIS and CBP have continued a joint program which started before the pilot programs were established, wherein CBP officers are trained and assigned to USCIS field offices to perform credible-fear screening interviews.<sup>53</sup>

The additional overtime and weekend staffing appears to have negatively impacted the morale of asylum officers. One USCIS official told us that the pilot programs, in combination with other new DHS initiatives like Migrant Protection Protocols<sup>54</sup> and Asylum Cooperative Agreements,<sup>55</sup> have put

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<sup>52</sup> At the time of our fieldwork, the Arlington Asylum Office had jurisdiction over credible fear/reasonable fear cases from Southern California, Arizona, West Texas, and the mid-Atlantic to Southeast region and was responsible for all affirmative asylum applications filed by individuals in the mid-Atlantic and Southeast regions of the United States, with the exception of Florida.

<sup>53</sup> On August 29, 2020, the U.S. District Court for the District of Columbia granted seven asylum applicants' motion for a preliminary injunction, among other things, preliminarily enjoining CBP agents from conducting asylum interviews or making credible fear determinations, pending a ruling on the merits of the case. *A.B.-B. v. Morgan*, No. 20-cv-846 RJJ, 2020 WL 5107548 (D. D.C. Aug. 29 2020).

<sup>54</sup> The Migrant Protection Protocols are a U.S. Government action whereby citizens and nationals of countries other than Mexico arriving in the United States by land from Mexico may be returned to Mexico pursuant to Section 235(b)(2)(C) of the *Immigration and Nationality Act* (INA) while their U.S. removal proceedings are pending under Section 240 of the INA.

<sup>55</sup> Asylum Cooperative Agreements are authorized by section 208(a)(2)(A) of the INA. Under the Asylum Cooperative Agreements, aliens with an expressed fear of returning to their home



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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additional demands on asylum officers and “increased expectations that they work extended hours or work weekends.” The same official explained that asylum officers “are burned out” and “USCIS staff has been tired for years.” USCIS officials admitted they are hearing complaints from asylum officers and union officials about the overtime and weekend hours the new programs require and have experienced employee retention issues that may be related to the increased workloads. In an effort to improve employee morale, USCIS has recently increased workplace flexibilities, such as allowing telework, and is evaluating whether shift work would be attractive to staff.

Like USCIS, CBP has experienced staffing strains in connection with supporting the PACR and HARP programs. Border Patrol officials told us the temporary, modular CPC in El Paso was set up to accommodate the pilot programs, but the El Paso Border Patrol Sector did not receive any additional employees to operate the CPC. As a result, Border Patrol agents from other stations within the sector had to be reassigned or detailed to the CPC to operate the facility and process aliens enrolled in the pilot programs. Furthermore, additional agents are needed at the CPC to escort aliens to and from the phone booths for their telephonic credible-fear screening interviews with asylum officers. Providing staffing support to facilitate the credible-fear screening interviews is a new responsibility for Border Patrol under the pilot programs, as these interviews used to take place while the alien was in ICE custody. The El Paso Sector management suggested that 40 to 50 additional employees were needed to properly staff the CPC, but they had no expectation of receiving additional staffing at the time of our site visit. An El Paso Border Patrol supervisor told us that each shift is “scrounging for staff.”

The pilot programs also resulted in additional transport demands in the El Paso Sector, as the apprehending station now has to transport aliens subject to the pilot programs to the CPC for further processing. Because the El Paso Sector has not contracted for transportation services for alien transports, staff are pulled off their regularly assigned duties to perform these transports. CBP officials explained that the reassignment of staff to operate the CPC, transport aliens, and perform other duties related to the pilot programs reduces the number of staff available to perform CBP’s core mission, which is to safeguard the border. The lack of staff available in the field can also place patrolling agents at risk. For example, Border Patrol officials told us they had recently seen a significant increase in failures to yield<sup>56</sup> when encountering aliens near

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country are removed to a third country that is a party to the Agreement where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

<sup>56</sup> CBP uses the phrase *failure to yield* to describe an event when a driver disregards a law enforcement officer’s order to stop the vehicle, often at a Border Patrol checkpoint, and flees.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

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the border, but they said they do not have enough agents to adequately address the issue.

**Data System Limitations Entailed Labor-Intensive and Error-Prone Manual Efforts to Track and Share Information**

DHS Departmental guidance requires effective planning to ensure the success of information technology development efforts. Despite previous OIG reports highlighting the lack of interface among the DHS components' major data systems,<sup>57</sup> the Department has yet to upgrade these systems, but instead relies on time-consuming and error-prone processes to relay information between the systems. In addition, CBP did not have its data management systems built out to track HARP and PACR data at the time the pilot programs were implemented in El Paso. Also, the four distinct data management systems used by OFO, Border Patrol, USCIS, and EOIR — the four entities with respective roles in executing different aspects of the programs — do not interface with each other to permit data sharing.

When the PACR pilot was initially implemented in the El Paso Sector in October 2019, Border Patrol had yet to build out its data management system (e3) to track pilot program data. Similarly, El Paso OFO had not completed the build out of its data management system (Unified Secondary) to track pilot program data at the time of HARP implementation.<sup>58</sup> Instead, Border Patrol used a spreadsheet to manually track PACR and HARP data necessary to process aliens in the pilot programs. Manually tracking the data was a labor-intensive process that required reassignment of staff from their regular responsibilities. El Paso Border Patrol maintained one master spreadsheet, and trained and assigned specific agents to perform data entry in order to tightly control and protect the spreadsheet data. In addition, OFO assigned two officers per shift to the Border Patrol station, in order to facilitate data exchange between Unified Secondary and Border Patrol's tracking spreadsheets and e3.

When Border Patrol officials completed the build-out and went live with e3 to track pilot program data in January 2020, they concurrently tracked data using the spreadsheets in order to validate proper data tracking in e3. CBP

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<sup>57</sup> *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*, OIG-20-06, November 25, 2019; *Improvements Needed to Promote DHS Progress toward Accomplishing Enterprise-wide Data Goals*, OIG-17-101, August 14, 2017.

<sup>58</sup> At the time of our site visit to El Paso, TX, OFO had recently completed the build-out of Unified Secondary to document initial processing of aliens encountered at ports of entry, including documenting whether the aliens are subject to enrollment in HARP. However, Border Patrol's e3 Portal is the official system of record for HARP data, because Border Patrol tracks alien data from custody of the alien from OFO through completion of the HARP process.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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headquarters tasked El Paso Border Patrol Sector with entering all of the historical PACR and HARP program data from the spreadsheets into e3. This, too, was a labor-intensive process that pulled staff away from their regular duties. CBP headquarters is independently validating the historical data being entered into e3 and working with El Paso Border Patrol Sector to achieve 100-percent data validation prior to discontinuing the use of the tracking spreadsheet.

CBP officials told us that email is the primary way pilot program data is shared between CBP, USCIS, and EOIR because the e3 and Unified Secondary systems do not interface with each other or with the USCIS and EOIR systems, used to capture data in other steps in the programs' process. Sharing data among agencies by email is inefficient and can result in errors.<sup>59</sup> For example, both CBP and USCIS officials told us they experienced challenges with reconciling the number of aliens requesting credible-fear screening interviews. According to these officials, Border Patrol agents frequently inquired about the status of an interview request they had emailed to USCIS, but USCIS staff would reply that they had not received the request. To remedy this issue, USCIS detailed an employee to the El Paso Border Patrol Sector to reconcile these interview requests on an ongoing basis.

### Conclusion

This report offers DHS OIG's initial observations on the PACR and HARP programs based on our March 2020 visit to the El Paso Sector. El Paso was the first location to implement the pilot programs; accordingly, the programs have operated the longest in that sector. These observations are intended to inform DHS and Congress of challenges with the programs and recommend corrective actions before the suspension on the programs is lifted and the programs are potentially expanded further along the Southwest Border. CBP did not have specific program policy guidance or measurable objectives, yet rapidly implemented the pilot programs and expanded them without a full evaluation of the pilots' effectiveness. Although the pilot programs' credible fear process is generally the same as that process under the standard expedited removal proceedings, CBP temporary holding conditions and detainees' access to counsel and representation vary greatly from those

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<sup>59</sup> In *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*, OIG-20-06, November 25, 2019, DHS OIG found that CBP adopted various ad hoc methods (including spreadsheets and email communications) to record and track family separations, but these methods led to widespread errors. We recommended the DHS Chief Information Officer work with ICE and CBP to ensure system interoperability to improve cross-component information sharing and coordination on border security operations.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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afforded to detainees in ICE detention. In addition, CBP and USCIS have had to adjust staffing and reprioritize work in order to perform additional responsibilities and meet the shorter timelines for processing aliens in PACR and HARP. Without interface among Border Patrol, OFO, USCIS, and EOIR systems, the tracking and maintenance of program information is manual, making it labor-intensive and vulnerable to errors.

### Recommendations

This report describes our initial observations of the PACR and HARP programs based on our site visit to the El Paso, Texas area and analysis of data provided by the Department. We may make additional recommendations following the completion of our review once the program suspension is lifted.

**Recommendation 1:** We recommend the CBP Commissioner, in coordination with the USCIS Director, develop and implement a plan to evaluate the performance of the PACR and HARP programs that includes well-defined and measurable objectives and standards.

**Recommendation 2:** We recommend the CBP Commissioner, in coordination with the DHS Office for Civil Rights and Civil Liberties (CRCL), establish appropriate standards for managing prolonged detention, or in coordination with ICE, establish a plan for transferring aliens remaining in detention for longer than 72 hours.

**Recommendation 3:** We recommend the El Paso Chief Patrol Agent develop and implement policies to afford detainees a more reasonable amount of privacy and physical separation from unrelated individuals of the opposite gender in the El Paso CPC.

**Recommendation 4:** We recommend the El Paso Chief Patrol Agent develop and implement policies to ensure aliens in the PACR and HARP programs have access to private consultation areas and legal amenities in the El Paso CPC.

**Recommendation 5:** We recommend the CBP Commissioner and the USCIS Director identify appropriate staffing requirements and implement a workforce plan for processing aliens in the PACR and HARP programs.

**Recommendation 6:** We recommend the DHS Chief Information Officer coordinate with CBP and USCIS to establish a process for reliable interchange of information between data systems used to process and track aliens in the PACR and HARP programs.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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### Management Comments and OIG Analysis

We have included a copy of DHS' Management Response in its entirety in Appendix B. We also received technical comments from DHS and incorporated them into the report where appropriate. DHS did not concur with Recommendations 1, 2, 3, 4, and 5, but concurred with Recommendation 6. We consider Recommendations 1, 2, 3, 4, and 5 unresolved and open. Recommendation 6 is resolved and open. A summary of DHS' responses and our analysis follows.

DHS did not concur with Recommendations 1, 2, 3, 4, and 5, stating that the PACR and HARP programs have been inactive since March 2020 due to the March 20, 2020, Centers for Disease Control and Prevention "Order Suspending Introduction Of Persons From a Country Where A Communicable Disease Exists," as amended and extended. DHS officials said, in addition, due to the D.C. District Court's decision in *Capital Area Immigrants' Rights Coalition et al. (CAIR) v. Trump*, No. 19-2117 (D. D.C. June 30, 2020), PACR may not restart in its current form. DHS officials said the future of PACR and HARP is dependent on both litigation and the resumption of pre-pandemic operations. Therefore, DHS requested that OIG consider these five recommendations resolved and closed.

We consider Recommendations 1, 2, 3, 4 and 5 unresolved and open. Although both programs have been inactive since March 2020, DHS has not officially terminated the programs and could restart them upon return to post-pandemic operations. It is also not clear to us that PACR became an inactive program as a result of the District Court decision, since the government has appealed that decision. Moreover, HARP is not affected by the District Court decision. Should DHS issue a formal policy memorandum terminating both programs, we would consider Recommendations 1, 2, 4, and 5 resolved and closed. Recommendation 3 involves conditions of detention that are not solely related to the PACR and HARP programs, and remains unresolved and open.

In its response to our report, DHS expressed concern that the report inaccurately describes the credible fear process after a negative determination. Specifically, DHS stated, for PACR and HARP, review by an immigration judge occurs while the detainee is in CBP custody, rather than in ICE custody. In addition, DHS stated that immigration judge review occurs at the request of the detainee, and is not considered an appeal under the regulations. In the background section of our report, we first describe the standard process that existed prior to PACR and HARP, and then how these programs compare to the process. The report accurately reflects that in PACR and HARP, immigration judge review occurs while the detainee is in CBP custody. Appendix C details



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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our comparison of the standard process and the process for PACR and HARP. In response to DHS technical comments, we more uniformly use the term “review” in our report, to avoid any confusion.

DHS stated that PACR and HARP were implemented to expeditiously process credible fear claims consistent with existing legal protections, and that detainees who receive a positive determination are transferred to ICE custody to be placed in removal proceedings under Section 240 of the *Immigration and Nationality Act*. DHS stated that PACR and HARP “were effective in reducing participants’ overall time” in the credible fear process, whether detainees received a positive or negative credible fear determination. Appendix C of our report details differences in case processing timeliness goals for detainees in the credible fear process in CBP and ICE custody. As we noted in the report, we did not compare credible fear determination outcomes or timelines for aliens in PACR and HARP programs with those in the standard expedited removal processing. We did compare PACR and HARP timeline results with program goals and found PACR and HARP did not consistently meet those goals.

Additionally, DHS expressed concern that the sentence in the report noting that “USCIS and CBP have continued a joint program ... wherein CBP officers are trained and assigned to USCIS field offices to perform credible-fear screening interviews,” is no longer accurate, as the agreement between USCIS and CBP expired on July 28, 2020. DHS further noted that by July 31, 2020, Border Patrol had implemented modifications to its short-term holding facility in El Paso, Texas, to increase physical separation among detainees and ensure added privacy for telephonic consultations. As explained in Appendix A, we completed our fieldwork for this review in June 2020, before these changes occurred. We thank DHS for providing these updates, and have noted the changes in our report.

**Recommendation 1:** We recommend the CBP Commissioner, in coordination with the USCIS Director, develop and implement a plan to evaluate the performance of the PACR and HARP programs that includes well-defined and measurable objectives and standards.

**DHS Response:** DHS did not concur with the recommendation. DHS stated PACR and HARP are currently inactive and their future is dependent on litigation and resumption of pre-pandemic operations. DHS requested that OIG consider this recommendation resolved and closed.

**OIG Analysis:** We consider this recommendation unresolved and open. The pause in these programs due to the pandemic represents a unique opportunity



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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for DHS to develop well-defined and measurable objectives and standards for PACR and HARP. It is not clear to us that PACR became an inactive program as a result of the District Court decision in *CAIR v. Trump*, since the government has appealed the District Court decision. Moreover, HARP is not affected by the District Court decision. The recommendation will remain unresolved and open until DHS develops well-defined and measurable objectives and standards for PACR and HARP, or issues a formal policy memorandum terminating both programs.

**Recommendation 2:** We recommend the CBP Commissioner, in coordination with DHS CRCL, establish appropriate standards for managing prolonged detention, or in coordination with ICE, establish a plan for transferring aliens remaining in detention for longer than 72 hours.

**DHS Response:** DHS did not concur with the recommendation. DHS stated PACR and HARP are currently inactive and their future is dependent on litigation and resumption of pre-pandemic operations. CBP would collaborate with partners from the Department of Health and Human Services, ICE Enforcement and Removal Operations, and USCIS when facilitating the transfer of detainees and monitoring detainees' time in custody. While CRCL is not an operational component with the capability to reduce time in custody before transfer, CRCL is involved in oversight and worked closely with CBP to draft TEDS, which is CBP's guiding policy document related to CBP's short-term holding of detainees. DHS requested that OIG consider this recommendation resolved and closed.

**OIG Analysis:** We consider this recommendation unresolved and open. In our review of DHS technical comments, we recognized that the original wording of this recommendation could be misinterpreted, and we informed DHS that we had revised the wording. This recommendation requires CBP to either work with CRCL to establish appropriate standards for managing prolonged detention, or work with ICE to avoid prolonged detention. TEDS only sets standards for short-term holding of detainees. As we note in Appendix C of our report, timeliness goals for PACR and HARP envisage prolonged detention, which is inconsistent with TEDS standards. The recommendation will remain unresolved and open until DHS establishes standards for managing prolonged CBP detention, or establishes plans to avoid prolonged detention when operationally feasible. Alternatively, a formal policy memorandum terminating PACR and HARP would close this recommendation.

**Recommendation 3:** We recommend the El Paso Chief Patrol Agent develop and implement policies to afford detainees a more reasonable amount of



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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privacy and physical separation from unrelated individuals of the opposite gender in the El Paso CPC.

**DHS Response:** DHS did not concur with the recommendation. DHS stated PACR and HARP are currently inactive and their future is dependent on litigation and resumption of pre-pandemic operations. Additionally, DHS indicated the El Paso CPC was not fully operational at the time of the OIG site visit, and constraints and limitations OIG described no longer apply. Specifically, aliens are placed in cells based on gender and age. The only time aliens are placed in the same cells with unrelated opposite gender is when multiple dual heads of household family units are held in the same cells with sufficient space to hold multiple family units. In addition, the cells are supervised by personnel and monitored by cameras. CBP provided copies of relevant supporting documentation to OIG on December 4, 2020. DHS requested that OIG consider this recommendation resolved and closed.

**OIG Analysis:** We consider this recommendation unresolved and open. The documentation we received on December 4, 2020, is relevant to Recommendation 3, but does not resolve this recommendation. We remain concerned about CBP's practice of holding multiple dual heads of household units in the same cells, absent additional measures to afford privacy and physical separation. The recommendation will remain unresolved and open until we receive additional documentation on the measures CBP has taken to afford detainees more privacy and physical separation in the El Paso CPC.

**Recommendation 4:** We recommend the El Paso Chief Patrol Agent develop and implement policies to ensure aliens in the PACR and HARP programs have access to private consultation areas and legal amenities in the El Paso CPC.

**DHS Response:** DHS did not concur with the recommendation. DHS stated PACR and HARP are currently inactive and their future is dependent on litigation and resumption of pre-pandemic operations. Additionally, DHS provided copies of relevant supporting documentation to OIG on December 4, 2020 showing that as of July 10, 2020, CBP constructed and installed sound insulating phone booths, including walls and ceilings for privacy, at the El Paso CPC. DHS requested that OIG consider this recommendation resolved and closed.

**OIG Analysis:** We consider this recommendation unresolved and open. The photographs we received on December 4, 2020, sufficiently demonstrate CBP has taken appropriate measures to ensure aliens in the El Paso CPC have access to private consultation areas. However, we did not receive documentation on policies ensuring aliens in the PACR and HARP programs



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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have access to legal amenities at the El Paso CPC. Documents confirming such access exists would be sufficient to close this recommendation. Alternatively, a formal policy memorandum terminating PACR and HARP would close this recommendation.

**Recommendation 5:** We recommend the CBP Commissioner and the USCIS Director identify appropriate staffing requirements and implement a workforce plan for processing aliens in the PACR and HARP programs.

**DHS Response:** DHS did not concur with the recommendation. DHS stated PACR and HARP are currently inactive and their future is dependent on litigation and resumption of pre-pandemic operations. Additionally, DHS officials said staffing at the El Paso CPC was sufficient to support existing processing and holding responsibilities. Further, existing USCIS staffing vacancies had been filled before the pandemic and budgetary constraints had frozen hiring and overtime. USCIS received appropriate funding authorization to meet high priority screening programs, including PACR and HARP. As a result, there is no need to identify appropriate staffing requirements and staffing plans, and requested that OIG consider this recommendation resolved and closed.

**OIG Analysis:** We consider this recommendation unresolved and open. The pause in these programs due to the pandemic represents a unique opportunity to identify appropriate staffing requirements and a workforce plan, should processing aliens in the PACR and HARP programs resume. In light of the government's appeal of the District Court decision, the decision's inapplicability to HARP, and the absence of a formal policy memo terminating the programs, the recommendation will remain unresolved and open until DHS develops appropriate staffing requirements and implements a workforce plan for PACR and HARP, or issues a formal policy memorandum terminating both programs.

**Recommendation 6:** We recommend the DHS Chief Information Officer coordinate with CBP and USCIS to establish a process for reliable interchange of information between data systems used to process and track aliens in the PACR and HARP programs.

**DHS Response:** DHS concurred with the recommendation. DHS stated the DHS Office of the Chief Information Officer will coordinate with CBP, USCIS, and the Immigration Data Interchange Initiative Executive Steering Council, to identify consistent data exchange formats and interfaces that would support a set of services to automate the data interchange. DHS estimated that these changes would be completed by July 30, 2022. DHS requested that OIG consider this recommendation resolved and open.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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**OIG Analysis:** We consider these actions responsive to the intent of the recommendation, which is resolved and open. We will close this recommendation when we receive documentation showing that the planned milestones to improve the interchange of information between data systems have been met.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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### **Appendix A**

#### **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*.

The Office of Inspector General conducts data-driven, risk-based audits, inspections, and investigations. We initiated this review in response to a congressional request from the Chairman of the Senate Committee on Homeland Security and Governmental Affairs and eight additional Senators. We determined that this review was appropriate and useful to our mission, as the PACR and HARP programs relate to our work on prolonged detention and children in CBP custody. Our objective was to determine how DHS, particularly CBP and USCIS, implemented the PACR and HARP pilot programs.

This special report describes our observations during our site visits to CBP facilities in the El Paso, Texas area from March 10 to 13, 2020. Due to travel restrictions and the suspension of the programs at U.S. borders during the COVID-19 pandemic, we suspended additional site visits to evaluate the entirety of DHS' implementation of the PACR and HARP pilot programs. We anticipate resuming site visits and issuing a report detailing DHS' full implementation of the PACR and HARP pilot programs after COVID-19 restrictions ease and the pilot programs resume.

We visited the following Border Patrol and OFO facilities in the El Paso, Texas area from March 10 to March 13, 2020:

#### Border Patrol Facilities

El Paso Station One  
Santa Teresa Station  
El Paso CPC

#### OFO Facilities

Paso Del Norte port of entry  
Santa Teresa port of entry

During our site visits, we spoke with CBP and USCIS employees, including line officers, agents, analysts, and senior management officials. We observed the processing and detention of aliens enrolled in the PACR and HARP programs, toured CBP facilities, and listened to a telephonic credible-fear screening interview conducted by USCIS. Additionally, both prior to and following our site visit, we interviewed USCIS, Border Patrol, and OFO headquarters



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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personnel responsible for the PACR and HARP programs within their respective agencies. We also reviewed relevant background information, including directives, guidance, policies, and written communications related to PACR and HARP pilot programs and TEDS standards. We conducted fieldwork for this report between February and June 2020.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix B**  
**DHS Comments to the Draft Report**

U.S. Department of Homeland Security  
Washington, DC 20528



December 15, 2020

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

FROM: Jim H. Crumacker, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

SUBJECT: Management Response to Draft Report: “DHS Has Not Effectively Implemented the Prompt Asylum Pilot Programs” (Project No. 20-017-SRE-DHS)

JIM H  
CRUMPACKER

Digitally signed by  
JIM H CRUMPACKER  
Date: 2020.12.15  
14:57:09 -05'00'

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

DHS’ U.S. Customs and Border Protection (CBP) performs an essential role in securing our Nation’s borders at and between ports of entry and is devoted to the care and processing of individuals in our custody with the utmost dignity and respect. Beginning in late 2018 and continuing into 2019, CBP faced an unprecedented surge of aliens attempting to illegally enter the United States along the Southwest Border. In order to address the extraordinary influx, in October 2019, DHS began the Prompt Asylum Claim Review (PACR) and the Humanitarian Asylum Review Process (HARP) to expeditiously process certain aliens subject to expedited removal and who express a fear of persecution or torture or intent to apply for asylum, while also providing the procedural protections required by the Immigration and Nationality Act (INA) and implementing regulations.

Both PACR and HARP began as pilot programs in El Paso, Texas, and then expanded to various locations in Texas, Arizona, and California. It is important to note that both programs have been inactive since March 2020, as a result of the Department of Health and Human Services (HHS) Centers for Disease Control and Prevention’s (CDC) March 20, 2020 “Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists,” as amended and extended. In addition, PACR may not be restarted at this time in its current form due to the D.C. District Court’s recent decision in *Cap. Area Imm. Rights. v. Trump*, No. 19-2117 (D.D.C. June 30, 2020), vacating the Third Country Asylum Transit Interim Final Rule.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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However, DHS is concerned that OIG's draft report inaccurately describes the process after a negative fear-determination by U.S. Citizenship and Immigration Services (USCIS). Specifically, Executive Office for Immigration Review (EOIR) immigration judge (IJ) review of a negative credible-fear (CF) determination occurred while the alien remained in CBP custody, rather than in U.S. Immigration and Customs Enforcement (ICE) detention. Additionally, an EOIR IJ review of a negative CF finding only occurs when requested by an alien and is not considered an "appeal" under the regulations.

Furthermore, as noted above, PACR and HARP were implemented to expeditiously process the CF claims of certain aliens, while continuing to provide the procedural protections required by the INA and implementing regulations. However, the statutory asylum process, with the exception of these specific CF claims, was outside the scope of PACR and HARP. Therefore, it is important to note that aliens in PACR and HARP who received positive CF determinations were placed in removal proceedings under INA section 240, where they could pursue all available forms of relief, including filing for asylum or other protections from removal, and were transferred to ICE custody for these immigration proceedings. As such, CBP believes that PACR and HARP were effective in reducing participants' overall time in the CF process, whether the alien received a positive or negative CF determination.

In addition, DHS is concerned that the OIG's draft report includes the following inaccurate sentence: "In addition, USCIS and CBP have continued a joint program which started before the pilot programs were established, wherein CBP officers are trained and assigned to USCIS field offices to perform credible-fear screening interviews." USCIS and CBP have not continued the joint program. The January 30, 2020 Memorandum of Agreement governing the Credible Fear for CBP program expired on July 28, 2020. Additionally, the United States District Court for the District of Columbia issued a preliminary injunction (*A.B.-B., et al., v. Mark Morgan et al.*, - Civil Case No. 20-cv-846 (R.JL)) enjoining the government from permitting CBP agents/officers to make CF determinations. There are no current plans to resume the Task Force, as this is a matter under litigation.

Furthermore, it should be noted that by July 31, 2020, the U.S. Border Patrol identified and implemented modifications to its short-term holding facility in El Paso, Texas, in order to increase physical separation amongst aliens in CBP custody. CBP also upgraded the facility to ensure added privacy for telephonic consultations - specifically, legal consultations. These updates exceeded the requirements outlined in section 4.9 of the CBP National Standards on Transport, Escort, Detention, and Search (TEDS), which is CBP's guiding policy document related to CBP's short-term holding of aliens. CBP continually collaborates with its partner agencies to better facilitate the transfer of aliens out of CBP custody as rapidly as possible, specifically the most vulnerable populations.



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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The draft report contained six recommendations, including five with which the Department does not concur (Recommendations 1, 2, 3, 4, and 5) and one with which the Department does concur (Recommendation 6). Attached find our detailed response to each recommendation. DHS previously submitted technical comments addressing 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

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### Attachment: Management Response to Recommendations Contained in OIG-20-017-SRE-DHS

OIG recommended that the Commissioner of U.S. Customs and Border Protection, in coordination with the Director of U.S. Citizenship and Immigration Services:

**Recommendation 1:** Develop and implement a plan to evaluate the performance of the PACR and HARP programs that includes well-defined and measurable objectives and standards.

**Response:** Non-concur. PACR and HARP were pilot programs and have been inactive since March 2020. Both programs have been paused since the issuance of the March 20, 2020, CDC “Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists,” as amended and extended. Additionally, due to the D.C. District Court’s recent decision in *Cap. Area Imm. Rights. v. Trump*, No. 19-2117 (D.D.C. June 30, 2020), PACR may not be restarted in its current form at this time. The future of PACR and HARP are dependent on both litigation and the resumption of pre-pandemic operations.

DHS requests that the OIG consider this recommendation resolved and closed.

OIG recommended that the Commissioner of U.S. Customs and Border Protection, in coordination with the DHS Office for Civil Rights and Civil Liberties (CRCL):

**Recommendation 2:** Establish appropriate standards for managing prolonged detention, or in coordination with Immigration and Customs Enforcement, establish a plan for transferring aliens remaining in detention for longer than 72 hours.

**Response:** Non-concur. PACR and HARP were pilot programs and have been inactive since March 2020. Both programs have been paused since the issuance of the March 20, 2020, CDC “Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists,” as amended and extended. Additionally, due to the D.C. District Court’s recent decision in *Cap. Area Imm. Rights. v. Trump*, No. 19-2117 (D.D.C. June 30, 2020), PACR may not be restarted in its current form at this time. The future of PACR and HARP are dependent on both litigation and the resumption of pre-pandemic operations.

CBP will continue to collaborate with its partners from HHS, ICE Enforcement and Removal Operations, and USCIS when facilitating the transfer of and monitoring aliens’ time-in-custody. While CRCL is not an operational component with the capability to reduce time in custody before transfer, however, CRCL is involved in oversight and

4



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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worked closely with CBP to draft TEDS, which is CBP's guiding policy document related to CBP's short term holding of aliens.

DHS requests that the OIG consider this recommendation resolved and closed.

OIG recommended that the El Paso Chief Patrol Agent:

**Recommendation 3:** Develop and implement policies to afford detainees a more reasonable amount of privacy and physical separation from unrelated individuals of the opposite gender in the El Paso CPC [Centralized Processing Center].

**Response:** Non-Concur. PACR and HARP were pilot programs and have been inactive since March 2020. Both programs have been paused since the issuance of the March 20, 2020, CDC "Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists," as amended and extended. Additionally, due to the D.C. District Court's recent decision in *Cap. Area Imm. Rights. v. Trump*, No. 19-2117 (D.D.C. June 30, 2020), PACR may not be restarted in its current form at this time. The future of PACR and HARP are dependent on both litigation and the resumption of pre-pandemic operations.

Additionally, the El Paso CPC was not end-state operational when the site visit was conducted; and, as explained in the Agency's response, the constraints and limitations described in the OIG's findings to support this recommendation no longer apply. Specifically, aliens are placed in PODS/Cells based on gender and age. The only time aliens are placed in the same PODS/Cells with individuals of unrelated opposite genders is when multiple dual head of household family units (Dad, Mom, and children) are held in the same PODS/Cells with sufficient space to hold multiple family units. In addition, each PODS/Cells are constantly supervised by personnel and monitored by cameras.

On December 4, 2020, CBP provided copies of relevant supporting documentation to the OIG. CBP requests that the OIG consider this recommendation resolved and closed, as implemented.

**Recommendation 4:** Develop and implement policies to ensure aliens in the PACR and HARP programs have access to private consultation areas and legal amenities in the El Paso CPC.

**Response:** Non-Concur. PACR and HARP were pilot programs and have been inactive since March 2020. Both programs have been paused since the issuance of the March 20, 2020, CDC "Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists," as amended and extended. Additionally, due to the D.C. District Court's recent decision in *Cap. Area Imm. Rights. v. Trump*, No. 19-2117



## OFFICE OF INSPECTOR GENERAL

### Department of Homeland Security

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(D.D.C. June 30, 2020), PACR may not be restarted in its current form at this time. The future of PACR and HARP are dependent on both litigation and the resumption of pre-pandemic operations.

As referenced above, on July 10, 2020, the El Paso CPC constructed and installed sound isolating phone booths, including walls and ceilings for privacy. Currently, the El Paso CPC has 17 phone booths to accommodate private interviews.

On December 4, 2020, CBP provided copies of relevant supporting documentation to the OIG. CBP requests that the OIG consider this recommendation resolved and closed, as implemented.

OIG recommended that the Commissioner of U.S. Customs and Border Protection, in coordination with the Director of U.S. Citizenship and Immigration Services:

**Recommendation 5:** Identify appropriate staffing requirements and implement a workforce plan for processing aliens in the PACR and HARP programs.

**Response:** Non-concur. PACR and HARP were pilot programs and have been inactive since March 2020. Both programs have been paused since the issuance of the March 20, 2020, CDC Order, “Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists,” as amended and extended. Additionally, due to the D.C. District Court’s recent decision in *Cap. Area Imm. Rights. v. Trump*, No. 19-2117 (D.D.C. June 30, 2020), PACR may not be restarted in its current form at this time. The future of PACR and HARP are dependent on both litigation and the resumption of pre-pandemic operations.

Additionally, the USBP El Paso Sector currently staffs the El Paso CPC with approximately 45 Border Patrol Agents on a daily basis, which is sufficient to support existing processing and holding responsibilities.

Furthermore, throughout fiscal year (FY) 2019 and FY 2020, the USCIS Asylum Division took steps to ensure appropriate staffing to address all CF receipts, including those that were part of the pilot programs. In July 2019, only approximately 75 percent of the Asylum Division’s positions were filled. Therefore, the Asylum Division did not seek authorization for additional positions on top of the vacant positions. Instead, from July 2019 to February 2020, the division focused on filling its staffing vacancies. This hiring surge was a success, and the Asylum Division reached 100 percent of its onboard staffing early in the 2nd quarter of FY 2020. Shortly thereafter, the reduced border receipts due to the impact of COVID-19 and the USCIS budget situation resulted in a hiring freeze and curtailed any further action to identify additional staffing resources.



## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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Notwithstanding the current inactivity of the pilot programs and the OIG's observations in El Paso of the USCIS CF screenings in the pilot programs, we note that asylum offices are no longer conducting CF screening interviews or other high priority border screenings seven days per week. Due to the ongoing budget situation, USCIS also does not have the funding for regular overtime. As a result, USCIS reiterates that the Arlington Asylum Office received appropriate funding authorization to increase overtime to keep up with the demands of the high priority border screenings, including the PACR and HARP pilot programs. This included conducting screening interviews seven days per week. Therefore, there is no need to identify appropriate staffing requirements and staffing plans.

DHS requests that the OIG consider this recommendation resolved and closed.

OIG recommended that the DHS Chief Information Officer coordinate with CBP and USCIS to:

**Recommendation 6:** Establish a process for reliable interchange of information between data systems used to process and track aliens in the PACR and HARP programs.

**Response:** Concur. The DHS Office of Chief Information Officer (OCIO) will coordinate efforts with CBP, USCIS, and the Immigration Data Interchange Initiative Executive Steering Council to identify consistent data exchange formats and interfaces that would support a set of services to automate the data interchange.

Milestones for this recommendation are:

- May 31, 2021: OCIO will work with CBP to validate that the transition to E3 has been completed. This will validate the removal of spreadsheet data entry, duplication of transactions, and alleviate data entry error.
- November 30, 2021: OCIO, will work within the construct of the Immigration Data Integration Initiative Executive Steering Council to identify standardization of data and interfaces to reduce or eliminate email-based interchange of data for reporting between systems and between Components.
- July 30, 2022: OCIO, CBP and USCIS make a combined effort to validate the efficacy of the interchange of data through a set of services useful in facilitating the sharing of information via methods and mechanisms identified by the Immigration Data Integration Initiative and the Component Representatives

Overall Estimated Completion Date: July 30, 2022.



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Appendix C**  
**PACR and HARP Processes Compared to Standard Expedited Removal/Credible Fear Process**

PACR & HARP	Standard Process
Border Patrol or OFO encounters inadmissible alien subject to expedited removal and claiming fear of return, begins expedited removal processing.	
Border Patrol or OFO transfers alien to one of three Border Patrol facilities ( <i>approximately 1 day</i> ).	Border Patrol or OFO temporarily holds alien until placement with ICE ( <i>goal is less than 72 hours, but may be weeks</i> ).
Alien receives Form M-444, arrives at facility, begins 48-hour consultation period. <sup>60</sup>	
USCIS credible-fear screening interview	
USCIS Asylum Officer prepares, and Supervisory Asylum Officer reviews, determination documents ( <i>goal is 4 days</i> ).	USCIS Asylum Officer prepares, and Supervisory Asylum Officer reviews, determination documents ( <i>goal is 10 days</i> ).
Positive Determination – CBP serves Notice to Appear, <sup>61</sup> and requests ICE placement. ICE may either detain or release under Alternatives to Detention <sup>62</sup> .	Positive Determination – ICE or USCIS serves Notice to Appear. ICE may either detain or release under Alternatives to Detention.
Negative Determination – alien afforded Immigration Judge review; then CBP refers alien to ICE for repatriation.	Negative Determination – alien afforded Immigration Judge review; then ICE repatriates alien.
Negative Determination – Alien declines Immigration Judge review; CBP turns alien over to ICE for repatriation.	Negative Determination – Alien declines Immigration Judge Review; ICE repatriates alien.
Negative Determination – Immigration Judge review requested; hearing held ( <i>goal for Immigration Judge review is 48 hours</i> ).	Negative Determination – Immigration Judge review requested; hearing held ( <i>goal for Immigration Judge review is no later than 7 Days</i> ).
Immigration Judge Review – Judge affirms negative determination; asylum officer’s order of removal stands. CBP turns alien over to ICE for repatriation.	Immigration Judge Review – Judge affirms negative determination; asylum officer’s order of removal stands. ICE repatriates alien.
Immigration Judge Review – Judge vacates negative determination. CBP serves Notice to Appear, requests ICE placement. ICE may either detain or release under Alternatives to Detention.	Immigration Judge Review – Judge vacates negative determination. ICE serves Notice to Appear; ICE may either detain or release under Alternatives to Detention.

Source: OIG depiction of CBP and USCIS information

<sup>60</sup> USCIS provided a 24-hour consultation period from July 2019 to March 1, 2020.

<sup>61</sup> A Notice to Appear is a formal document placing an alien in removal proceedings before EOIR.

<sup>62</sup> ICE Enforcement and Removal Operations provides alternatives to detention through the use of technology, typically electronic monitoring via a GPS-enabled ankle bracelet.



# OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

## Appendix D PACR and HARP Process Flowchart



Source: OIG depiction of CBP and USCIS information



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

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**Appendix E**  
**Special Reviews and Evaluations Major Contributors to This Report**

Amy Burns, Chief Inspector  
Lorraine Eide, Lead Inspector  
Carie Mellies, Lead Inspector  
Steve Farrell, Senior Inspector  
Jason Wahl, Senior Inspector  
John Miller, Inspector  
Erika Algeo, Independent Referencer



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**Appendix F**  
**Report Distribution**

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Office of Inspector General, Mail Stop 0305  
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