



January 2021

SOUTHWEST BORDER

DHS and DOJ Have Implemented Expedited Credible Fear Screening Pilot Programs, but Should Ensure Timely Data Entry

Accessible Version



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GAO@100 Highlights

Highlights of [GAO-21-144](#), a report to congressional requesters

Why GAO Did This Study

Individuals apprehended by DHS and placed into expedited removal proceedings are to be removed from the U.S. without a hearing in immigration court unless they indicate a fear of persecution or torture, a fear of return to their country, or express an intent to apply for asylum. Asylum officers conduct such “fear screenings,” and EOIR immigration judges may review negative USCIS determinations. In October 2019, DHS and DOJ initiated two pilot programs to further expedite fear screenings for certain apprehended noncitizens.

GAO was asked to review DHS’s and DOJ’s management of these pilot programs. This report examines (1) actions DHS and EOIR took to implement and expand the programs along the southwest border, and (2) what the agencies’ data indicate about the outcomes of individuals’ screenings and any gaps in such data. GAO analyzed CBP, USCIS, EOIR, and ICE data on all individuals processed under the programs from October 2019 to March 2020; interviewed relevant headquarters and field officials; and visited El Paso, Texas—the first pilot location.

What GAO Recommends

GAO is making two recommendations, including that DHS ensure components file Notices to Appear with EOIR for all those who received positive determinations under the programs, and that EOIR ensure staff enter all such notices in a timely manner, as required, into EOIR’s case management system. DHS concurred and DOJ did not concur. GAO continues to believe the recommendation is warranted.

For more information on [GAO-21-144](#), contact Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov.

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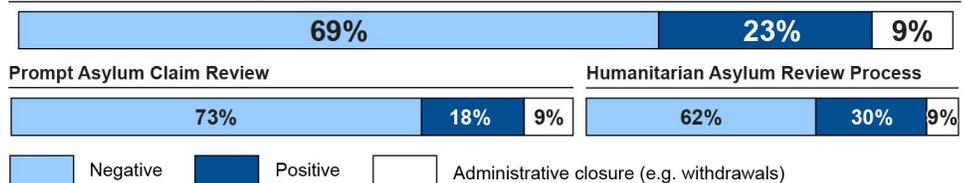
What GAO Found

From October 2019 to March 2020, the Department of Homeland Security (DHS), in coordination with the Department of Justice’s (DOJ) Executive Office for Immigration Review (EOIR), implemented expedited fear screening pilot programs. Under the Prompt Asylum Claim Review (for non-Mexican nationals) and Humanitarian Asylum Review Process (for Mexican nationals), DHS sought to complete the fear screening process for certain individuals within 5 to 7 days of their apprehension. To help expedite the process, these individuals remained in U.S. Customs and Border Protection (CBP) custody during the pendency of their screenings rather than being transferred to U.S. Immigration and Customs Enforcement (ICE). From October through December 2019, DHS implemented the programs in the El Paso, Texas, sector and expanded them to nearly all other southwest border sectors before pausing them in March 2020 due to COVID-19.

DHS data indicate that CBP identified approximately 5,290 individuals who were eligible for screening under the pilot programs. About 20 percent of individuals were in CBP custody for 7 or fewer days; CBP held about 86 percent of individuals for 20 or fewer days. Various factors affect time in CBP custody such as ICE’s ability to coordinate removal flights. U.S. Citizenship and Immigration Services (USCIS) data indicate that the majority of individuals (about 3,620) received negative fear determinations from asylum officers (see figure). About 1,220 individuals received positive credible fear determinations placing them into full removal proceedings where they may apply for various forms of protection such as asylum. However, as of October 2020, DHS and EOIR could not account for the status of such proceedings for about 630 of these individuals because EOIR’s data system does not indicate that a Notice to Appear—a document indicating someone was placed into full removal proceedings before an immigration judge—has been filed and entered into the system, as required. Specifically, DHS and EOIR officials could not determine whether DHS components had filed the notices for these cases with EOIR, nor could they determine if EOIR staff had received but not yet entered some notices into EOIR’s data system, per EOIR policy. Ensuring that DHS components file Notices to Appear with EOIR and that EOIR staff enter them into EOIR’s data system in a timely manner, as required, would help ensure that removal proceedings move forward for these individuals.

Outcomes of Screenings Under Expedited Fear Screening Pilot Programs, October 2019 through March 2020 (as of August 11, 2020)

Expedited Fear Screening Programs combined



Source: GAO analysis of USCIS data. | GAO-21-144

Note: Percentages do not total 100 due to rounding.

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Abbreviations

ACA	Asylum Cooperative Agreements
Border Patrol	U.S. Border Patrol
CBP	U.S. Customs and Border Protection
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
OFO	Office of Field Operations
USCIS	U.S. Citizenship and Immigration Services

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January 25, 2021

Congressional Requesters

The Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) has reported a significant increase in recent years in apprehensions of noncitizen adults and family units at the southwest border.¹ In February 2020, we reported that there has also been an increase in apprehensions of those who indicate a fear of persecution or torture, a fear of return to their country, or express an intent to apply for asylum.²

CBP may place apprehended adults and family units into full or expedited removal proceedings consistent with the Immigration and Nationality Act.³ For those placed into full removal proceedings, an immigration judge

¹This increase generally occurred prior to the onset of the Coronavirus Disease 2019 (COVID-19) pandemic. CBP's U.S. Border Patrol (Border Patrol) apprehends individuals between ports of entry. The Office of Field Operations (OFO) encounters individuals who arrive at ports of entry. For the purposes of this report, we use the term "apprehend" to describe both Border Patrol's and OFO's first interactions with individuals at the border. In this report, we generally use the term "noncitizen" to refer to individuals who would meet the definition of "alien". The Immigration and Nationality Act defines the term "alien" as "any person not a citizen or national of the United States." See 8 U.S.C. § 1101(a)(3). CBP's October 2015 *National Standards on Transport, Escort, Detention, and Search* defines a "family unit" to include one or more non-U.S. citizen juvenile(s) accompanied by their parent(s) or legal guardian(s).

²GAO, *Immigration: Actions Needed to Strengthen USCIS's Oversight and Data Quality of Credible and Reasonable Fear Screenings*, [GAO-20-250](#) (Washington, D.C.: Feb. 19, 2020). We reported on U.S. Citizenship and Immigration Services' (USCIS) policies and procedures for overseeing fear screenings and its procedures for managing the workload associated with such screenings. We recommended, among other things, that USCIS provide additional training to asylum officers and better record, collect, and analyze data on screening outcomes and case delays. As of August 25, 2020, USCIS has actions planned or underway to address our recommendations.

³See 8 U.S.C. §§ 1225(b), 1229a; see also 8 C.F.R. § 235.3(b)(4). With some exceptions, including unaccompanied alien children, generally noncitizens present in the United States without being admitted or paroled who are encountered by an immigration officer within 100 air miles of the border and who have not been physically present in the United States for 14 days may be placed into expedited removal. See 69 Fed. Reg. 48,877-01 (Aug. 11, 2004); *but see* 84 Fed. Reg. 35,409 (July 23, 2019) (expanding expedited removal eligibility) and *Make the Road New York v. Wolf*, No. 19-02369 (D.C. Cir. Oct. 19, 2020) (amended complaint). The litigation challenging the expansion of expedited removal is ongoing as of January 2021.

within the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) adjudicates their removal proceedings. Noncitizens placed into expedited removal proceedings are to be ordered removed from the U.S. without further hearing before an immigration judge unless they indicate either (1) an intention to apply for asylum or (2) a fear of persecution or torture, or a fear of return to their country (referred to throughout this report as making a "fear claim").⁴ In such cases, they are referred to DHS's U.S. Citizenship and Immigration Services (USCIS) for a credible fear screening. Through these screenings, asylum officers make a determination about whether individuals have a credible fear of persecution or torture if returned to their country. If an asylum officer concludes a credible fear screening with a positive determination, the individual is placed into full removal proceedings before an immigration judge. If an asylum officer concludes a credible fear screening with a negative determination, the individual can request a review of that determination by an EOIR immigration judge.

In October 2019, DHS, in coordination with DOJ, initiated two pilot programs to further expedite the credible fear screening process for certain individuals apprehended along the southwest border. Specifically, under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process (collectively referred to as "expedited fear screening programs" throughout this report), DHS and DOJ implemented procedures aimed at shortening the length of time it takes to complete the

⁴See 8 U.S.C. § 1225(b); 8 C.F.R. § 208.30.

fear screening process and remove individuals from the country, as appropriate.⁵

You asked us to review DHS and DOJ's management of these expedited fear screening programs concurrent with their implementation. This report examines (1) the actions DHS and DOJ took to implement and expand the expedited fear screening programs along the southwest border; and (2) what DHS and DOJ data indicate about the outcomes of individuals' expedited fear screenings and any gaps in such data.

To address our first objective, we reviewed relevant laws and regulations governing the credible fear screening process. We analyzed DHS documents, including DHS component agencies' memos and guidance outlining the goals and resources needed to implement the expedited fear screening programs. We analyzed EOIR's guidance to immigration courts on prioritizing immigration judge reviews of negative fear determinations. We also reviewed documentation gathered in support of our February 2020 report on USCIS's oversight of credible fear screenings.⁶ In addition, we conducted a site visit to El Paso, Texas, in January 2020 to observe the implementation of the Prompt Asylum Claim Review and Humanitarian Asylum Review Process. We selected this location because it was the first pilot location to implement these programs beginning in October 2019. During this visit, we observed CBP's Office of Field Operations (OFO) officers and U.S. Border Patrol (Border Patrol) agents conducting intake interviews and initial processing of individuals identified for the expedited fear screening programs. We interviewed CBP, USCIS,

⁵In March 2020, DHS and DOJ temporarily suspended the programs due to the risk of COVID-19, according to officials. Pursuant to the Centers of Disease Control and Prevention's March 2020 order and interim final rule, as amended and extended, the introduction of foreign nationals into the U.S. who are subject to the order is temporarily suspended, with limited exceptions, such as for lawful permanent residents and members of the armed forces and their spouses and children. See 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020). A regulation known as the "third country transit bar" interim final rule, which generally imposed a higher screening standard on individuals who transited through a third country en route to the U.S. and went through the credible fear screening process, was vacated on June 30, 2020. See 84 Fed. Reg. 33,829 (July 16, 2019) (codified as amended at 8 C.F.R. §§ 208.13, 208.30); *Capital Area Immigrants' Rights Coalition v. Trump*, No. 19-02117 (D. D.C. June 30, 2020) (memorandum opinion); *East Bay Sanctuary Covenant v. Barr*, Nos. 19-16487, 19-16773 (9th Cir. July 6, 2020) (opinion). It is unclear whether the programs will resume after the Centers for Disease Control and Prevention order is lifted.

⁶[GAO-20-250](#).

and EOIR headquarters and field officials responsible for overseeing the implementation and expansion of these programs.

To address our second objective, we analyzed record-level data from DHS's and DOJ's automated data systems on individuals apprehended and processed under the expedited fear screening programs. Specifically, we analyzed Border Patrol, OFO, USCIS, EOIR, and U.S. Immigration and Customs Enforcement (ICE) records on all individuals from program initiation in October 2019 to mid-March 2020, when the programs were temporarily suspended, to determine the number and characteristics of individuals processed and the outcomes of their screenings. To assess the reliability of the automated data we analyzed, we completed a number of steps. Those steps include:

- comparing the universe of records for the expedited fear screening programs across CBP, USCIS, EOIR, and ICE, and working with each agency to reconcile any discrepancies we identified in the number of records and related outcomes;
- reviewing the record-level data for any duplicative records, missing entries, or obvious errors; and
- interviewing agency officials responsible for tracking and maintaining data on the status of cases processed under these programs about the steps they took to ensure the quality and reliability of the data maintained in the automated data systems.

Specifically, Border Patrol officials told us that they worked with OFO and USCIS to reconcile discrepancies in records across these agencies' data systems to address any data quality issues they found. When reporting these data, we described relevant data using modifiers such as "at least" or "about" because of possible missing information or discrepancies. We determined these data were sufficiently reliable to describe the approximate number, outcomes, and characteristics of individuals processed for removal under the expedited fear screening programs. We assessed DHS's practices for filing Notices to Appear with immigration courts against relevant regulations⁷ and against *Standards for Internal Control in the Federal Government*, including the standards related to evaluating and documenting internal control issues and determining appropriate corrective actions for internal control deficiencies on a timely

⁷See 8 C.F.R. § 1239.1(a).

basis.⁸ For more information about our scope and methodology, see appendix I.

We conducted this performance audit from November 2019 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Agencies' Roles and Responsibilities under Expedited Fear Screening Programs

The procedures for processing noncitizens for inadmissibility and conducting credible fear screenings under the expedited fear screening programs are generally the same as DHS and DOJ's standard processes.⁹ However, under the expedited fear screening programs, DHS's goal was to complete the procedures more quickly—within 5 to 7 days—and there are some key differences in agencies' roles and responsibilities.

Specifically, within CBP, Border Patrol is responsible for the security of U.S. borders and apprehending individuals without valid travel documents arriving at the border between ports of entry. Also within CBP, OFO is responsible for inspecting travelers and cargo seeking to enter the U.S. through ports of entry and encounters or apprehends individuals determined to be inadmissible to the country. Under the standard process, if agents or officers place individuals into expedited removal

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

⁹In this report, we use the term "standard process" to refer to the credible fear screening process under section 235 of the Immigration and Nationality Act separate from the expedited processes implemented under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process. For more information about agencies' roles and responsibilities in the standard credible fear screening process, see [GAO-20-250](#).

proceedings, CBP will transfer them to ICE for longer-term detention.¹⁰ In those cases, ICE is generally responsible for referring any credible fear claims to USCIS for screening after individuals enter ICE detention.¹¹ By comparison, under the expedited fear screening programs, if Border Patrol agents or OFO officers place individuals into expedited removal proceedings and these individuals make a fear claim, they remain in CBP custody, rather than being transferred to ICE custody. CBP is then responsible for referring any fear claims to USCIS for screening, rather than ICE, and holding the individuals in CBP custody during the pendency of this screening process.

From October 2019 (when the Prompt Asylum Claim Review and Humanitarian Asylum Review Process programs were initiated) to March 1, 2020, according to DHS guidance, the agency was to provide individuals with a 24-hour consultation period to access phones and consult with any person of their choosing, including an attorney. After March 1, 2020, DHS changed the consultation period for all credible fear screenings—under both the standard process and expedited programs—from one full calendar day to a minimum of 48 hours.¹²

Under the expedited fear screening programs, for cases in which an asylum officer concludes a credible fear screening with a positive determination, CBP is to serve a Notice to Appear to the individual, and

¹⁰Individuals placed into expedited removal proceedings are generally required to be detained until removal or, if applicable, until receiving a final determination of credible fear. See 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). ICE manages the U.S. immigration detention system, which detains noncitizens whose immigration cases are pending or who have been ordered removed from the country. As we previously reported, there is a limited amount of space at ICE's family residential centers, which have typically been reserved for those family units placed in expedited removal. Family units placed into full removal proceedings have typically been released into the U.S. to await their court proceedings. GAO, *Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, [GAO-20-245](#) (Washington, D.C.: Feb. 19, 2020).

¹¹In February 2020, we reported that, as of July 2019, a USCIS asylum office was to wait a minimum of 1 full calendar day from an individual's arrival at an ICE detention facility before conducting a credible fear interview and that credible fear interviews generally occurred at least 48 hours after the applicant's arrival at a detention facility. See [GAO-20-250](#).

¹²Following a March 1, 2020, ruling that invalidated a DHS directive governing the 24-hour consultation period, the department changed the consultation period from 1 full calendar day to a minimum of 48 hours. See *L.M.-M. v. Cuccinelli*, No. 19-02676 (D. D.C. Mar. 1, 2020) (memorandum order and opinion). Individuals may request to waive the consultation time if they are prepared to discuss their case immediately with USCIS.

the asylum officer or ICE is to file a Notice to Appear with the immigration court, thereby placing the individual into full removal proceedings before an immigration judge where they may apply for various forms of protection such as asylum.¹³ For cases in which the asylum officer concludes a credible fear screening with a negative determination, the individual may be removed pursuant to the expedited removal order, unless the individual requests a review of the negative determination by an immigration judge. We previously reported that under the standard process, from fiscal year 2014 through March 2019, USCIS completed 89 percent of all credible fear cases in 20 or fewer calendar days.¹⁴ Under the expedited fear screening programs, USCIS aimed to complete these cases in 4 or fewer days.

If an immigration judge review is requested, under the standard procedures, it is to be conducted no later than 7 days after referral to EOIR from USCIS, to the maximum extent practicable.¹⁵ In contrast, under the expedited fear screening programs, EOIR officials stated that immigration judges were to aim to complete any such reviews within 48 hours of receiving the referral. If the negative determination is either not reviewed by an immigration judge, because the noncitizen has declined immigration judge review, or, if reviewed, is upheld (or affirmed) by a reviewing immigration judge, ICE is then generally responsible for

¹³See generally 8 U.S.C. § 1225(b); 8 C.F.R. §§ 208.30; 1239.1(a). In June 2019, Border Patrol agents on assignment to USCIS began conducting credible fear interviews and, in September 2019, began conducting credible fear interviews at the family residential center in Dilley, Texas. Border Patrol agents are to receive credible fear training from USCIS before conducting interviews and are to be supervised by a supervisory asylum officer with substantial experience adjudicating asylum applications in order to satisfy the statutory definition of an asylum officer. See 8 U.S.C. § 1225(b)(1)(E). According to USCIS officials, Border Patrol agents on assignment to USCIS conducted some of the credible fear screenings under the expedited programs. Under the standard process, USCIS or ICE generally serves the Notice to Appear to the individual. Under the expedited fear screening processes, CBP generally serves the Notices to Appear to individuals in their custody.

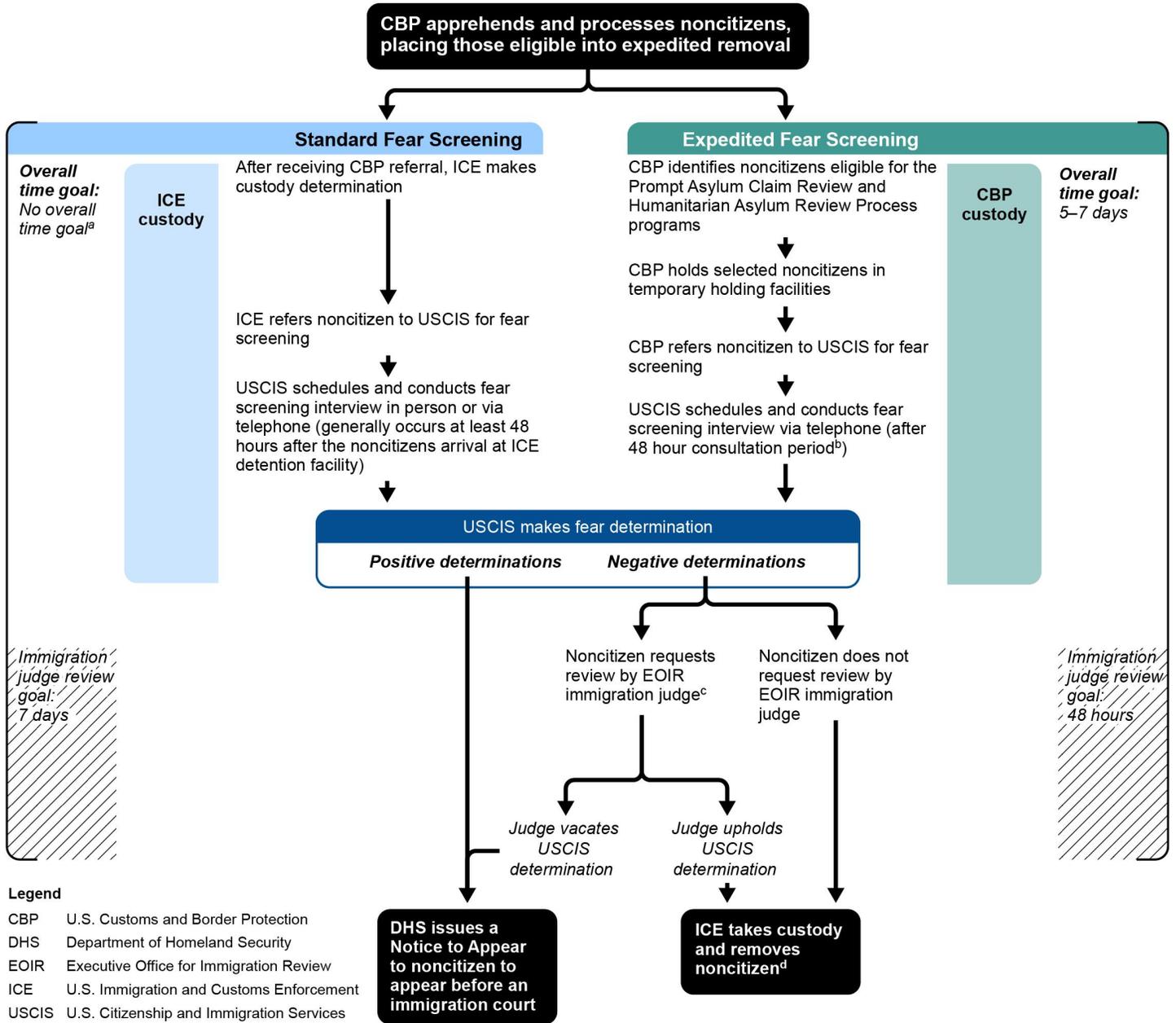
¹⁴GAO-20-250. USCIS regulation does not require that credible fear cases be completed in a specific time frame; however, Asylum Division headquarters officials said they have used timeliness goals to help monitor their credible fear workload. We reported that USCIS completed most credible fear cases in 14 or fewer days for each fiscal year from 2014 to 2017. In February 2018, USCIS lowered its credible fear processing time goal to 10 days. We reported that USCIS completed 68 percent of credible fear cases in 10 or fewer days between February and September 2018.

¹⁵See 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

removing the person from the country.¹⁶ Figure 1 shows the key differences between the standard and expedited fear screening procedures under Prompt Asylum Claim Review and Humanitarian Asylum Review Process

¹⁶See generally 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 208.30. ICE will make custody determinations or parole determinations, as appropriate, for individuals found to have a credible fear (“positive determinations”) and placed into full removal proceedings under section 240 of the Immigration and Nationality Act.

Figure 1: Comparison of Standard and Expedited Fear Screening Procedures under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process



Source: GAO analysis of Department of Homeland Security and Department of Justice information. | GAO-21-144

^aWhile there is not a specific time goal under the standard process, pursuant to the 1997 Flores v. Reno Settlement Agreement, children may generally only be held in federal immigration detention for

20 days. See Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997); see also *Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015).

^bFrom October 2019 (when the Prompt Asylum Claim Review and Humanitarian Asylum Review Process programs were initiated) to March 1, 2020, DHS provided a 24-hour consultation period to access phones and consult with any person of their choosing, including an attorney. Following a March 1, 2020 ruling that invalidated a DHS directive governing the 24-hour consultation period, the department changed the consultation period from one full calendar day to a minimum of 48 hours. See *L.M.-M. v. Cuccinelli*, No. 19-02676 (D. D.C. Mar. 1, 2020) (memorandum order and opinion).

^cAfter receiving a referral for such a review, EOIR immigration judges must generally complete reviews of negative determinations of credible fear by USCIS within 7 days. See 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

^dICE is generally responsible for removing individuals from the country. However, in certain cases, CBP, in coordination with ICE, may return individuals to Mexico. See, e.g., 8 U.S.C. § 1229c(a)(4).

Credible Fear Screening Standards and Third Country Transit Bar

Prior to September 2019, asylum officers were to assess whether there was a “significant possibility” that an individual can establish in a hearing before an immigration judge that he or she had been persecuted or had a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion if returned to his or her country.¹⁷ Asylum officers were also to assess whether there was a “significant possibility” that an applicant can establish in a full hearing it is more than likely that the applicant would be tortured in the applicant’s country of removal, or, if the applicant was stateless, the applicant’s country of last habitual residence.¹⁸

Following a July 2019 interim final rule, for individuals who transited through a third country en route to the U.S., asylum officers were to preliminarily assess whether those individuals applied for asylum or other protection from persecution or torture in the third country and received a final judgment denying such protection or met another exception to what was known as the “third country transit bar.”¹⁹ Specifically, if the asylum officer determined that the noncitizen was subject to the third country transit bar, the asylum officer was then to determine if there was a

¹⁷See 8 C.F.R. § 208.30.

¹⁸*Id.*

¹⁹See 84 Fed. Reg. 33,829 (July 16, 2019) (codified as amended at 8 C.F.R. §§ 208.13, 208.30). This interim final rule was in effect nationwide from September 11, 2019 through June 30, 2020, pending further litigation. See *Capital Area Immigrants’ Rights Coalition v. Trump*, No. 19-02117 (D. D.C. June 30, 2020) (memorandum opinion); *East Bay Sanctuary Covenant v. Barr*, Nos. 19-16487, 19-16773 (9th Cir. July 6, 2020) (opinion).

“reasonable possibility” the individual would be persecuted, or a “reasonable possibility” that the noncitizen would be tortured in the individual’s country of removal. This was a higher standard than the “significant possibility” standard.²⁰ According to USCIS officials, asylum officers were to apply this higher standard in credible fear determinations for all relevant noncitizens, including those processed under the Prompt Asylum Claim Review who were subject to the third country transit bar, as it was in effect throughout the duration of the expedited fear screening programs. After late June 2020, when the interim final rule was vacated (or overturned) by a federal court, asylum officers resumed screenings using the standards in place prior to the issuance of the interim final rule in July 2019.

Immigration Removal Pathways

DHS has several options, or “pathways,” to effectuate removals of noncitizens apprehended by CBP along the southwest border (see app.II). These removal pathways generally include:

1. Electronic Nationality Verification, which may expedite removals by eliminating the requirement for issuance of paper travel documents for certain Guatemalan, El Salvadoran, and Honduran nationals;
2. Migrant Protection Protocols, through which CBP may return certain non-Mexican foreign nationals to Mexico to await their immigration proceedings before EOIR;

²⁰See 84 Fed. Reg. 33,829, at 33,837. If the asylum officer determined that the noncitizen was not subject to the third country transit bar, the asylum officer was to assess whether there was a “significant possibility” that the individual could establish in a hearing before an immigration judge that he or she had been persecuted or had a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion if returned to his or her country. The asylum officer was also to assess whether there was a “significant possibility” that the individual is eligible for withholding of removal or deferral of removal under the Convention Against Torture. See 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.13(c) (establishing a number of grounds for mandatory denial of asylum, including, among others, conviction of certain crimes, being reasonably regarded as a danger to the security of the United States, and the third country asylum bar), 208.16 (codifying both withholding of removal under the Immigration and Nationality Act and the Convention against Torture). If an individual is found to be entitled to protection under the Convention against Torture, but is subject to a provision for mandatory denial of withholding of removal, such as a prior conviction of a particularly serious crime, the individual may be granted deferral of removal. See 8 C.F.R. § 208.17.

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3. The Asylum Cooperative Agreement (ACA) with Guatemala,²¹ under which, generally, El Salvadoran and Honduran nationals are precluded from applying for asylum in the U.S. and will be removed to Guatemala unless the individual demonstrates that they meet an exception to the agreement or that it is more likely than not that the individual would be persecuted on account of a protected ground or tortured in Guatemala; and
 4. ICE detention, which entails housing individuals in an ICE detention facility for the duration of their expedited processing.

DHS and DOJ Developed Guidance and Procedures for Expedited Fear Screening Programs and Local Officials Coordinated Program Implementation and Expansion

DHS Components and EOIR Developed High-Level Guidance and Procedures on Expedited Fear Screening Programs

DHS components developed high-level guidance and procedures in late September 2019, and EOIR established immigration court procedures to implement the expedited fear screening programs along the southwest border. Specifically, on September 25, 2019, the Chief of the Border Patrol issued a memo announcing that DHS, CBP, ICE, and USCIS had developed joint guidance on how to implement and prioritize the various removal pathways, for removing noncitizens, as appropriate, to address the significant increase in apprehensions along the southwest border. As part of this effort, DHS components also collectively developed a high-level “proof of concept” guidance document for an expedited fear screening pilot program (September 2019 DHS guidance).

²¹Additionally, in December 2020, DHS announced that the U.S. and two countries, El Salvador and Honduras, were beginning implementation of Asylum Cooperative Agreements between the U.S. and those countries. Under those agreements, DHS stated that certain migrants requesting asylum or similar humanitarian protection at the U.S. border will be transferred to those countries to seek protection there.

According to CBP and USCIS officials, Border Patrol, in coordination with USCIS, was directed to promptly begin implementing this pilot program, subsequently named Prompt Asylum Claim Review, in the El Paso sector.²² The program applied to non-Mexican nationals who, among other factors, (1) were either single adults or members of a family unit; (2) had no medical conditions and were able to be cleared medically for travel; and (3) were in expedited removal proceedings and made a fear claim. Shortly after DHS components initiated the pilot program in El Paso, OFO issued separate guidance to the El Paso port of entry to establish the Humanitarian Asylum Review Process for certain Mexican nationals in expedited removal proceedings.

CBP and USCIS officials in headquarters and in El Paso told us that they were able to promptly implement these programs in October 2019 because the expedited credible fear screening process was largely unchanged from the standard process, with two key distinctions, as previously discussed. First, DHS sought to complete the fear screening process on an expedited timeline. Specifically, the September 2019 DHS guidance outlined six steps for implementing streamlined screening procedures, along with the resources needed to complete all credible fear screening procedures, with a goal of completing those procedures within 5 to 7 days. Second, individuals processed and screened under the expedited programs were to remain in CBP custody for the duration of the expedited screening process, rather than being transferred to an ICE single adult detention facility or family residential center to await their fear screening interview. The September 2019 DHS guidance also noted that if any individual's case could not be processed within the 5 to 7 day timeframe, CBP was to coordinate with ICE to take custody of the individual.²³

According to EOIR officials, implementing these expedited fear screening programs did not require any significant changes to EOIR's process for immigration judge reviews of negative credible fear determinations, aside from the goal of completing these reviews more quickly. To achieve this

²²Along the southwest border, Border Patrol divides responsibility for border security operations geographically among nine sectors.

²³According to Border Patrol officials, some individuals were also removed from Prompt Asylum Claim Review and Humanitarian Asylum Review Process to be re-processed. For example, some cases were dissolved because the individual withdrew the fear claim, and some individuals were disqualified from Prompt Asylum Claim Review and Humanitarian Asylum Review Process for medical reasons or because they had a criminal history.

goal, EOIR officials stated that they began coordinating with DHS components in early October 2019 to prepare for scheduling and conducting immigration judge reviews, as appropriate, in an expedited manner. This entailed coordinating with the Otero immigration court to establish procedures for conducting immigration judge reviews via telephone for those processed under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process.²⁴ According to EOIR officials, although immigration judges usually conduct these reviews in person or via video teleconference under the standard process, telephonic reviews may also be conducted under the standard process.²⁵

DHS and DOJ Expanded Expedited Fear Screening Programs to Nearly All Locations along the Southwest Border from December 2019 to March 2020

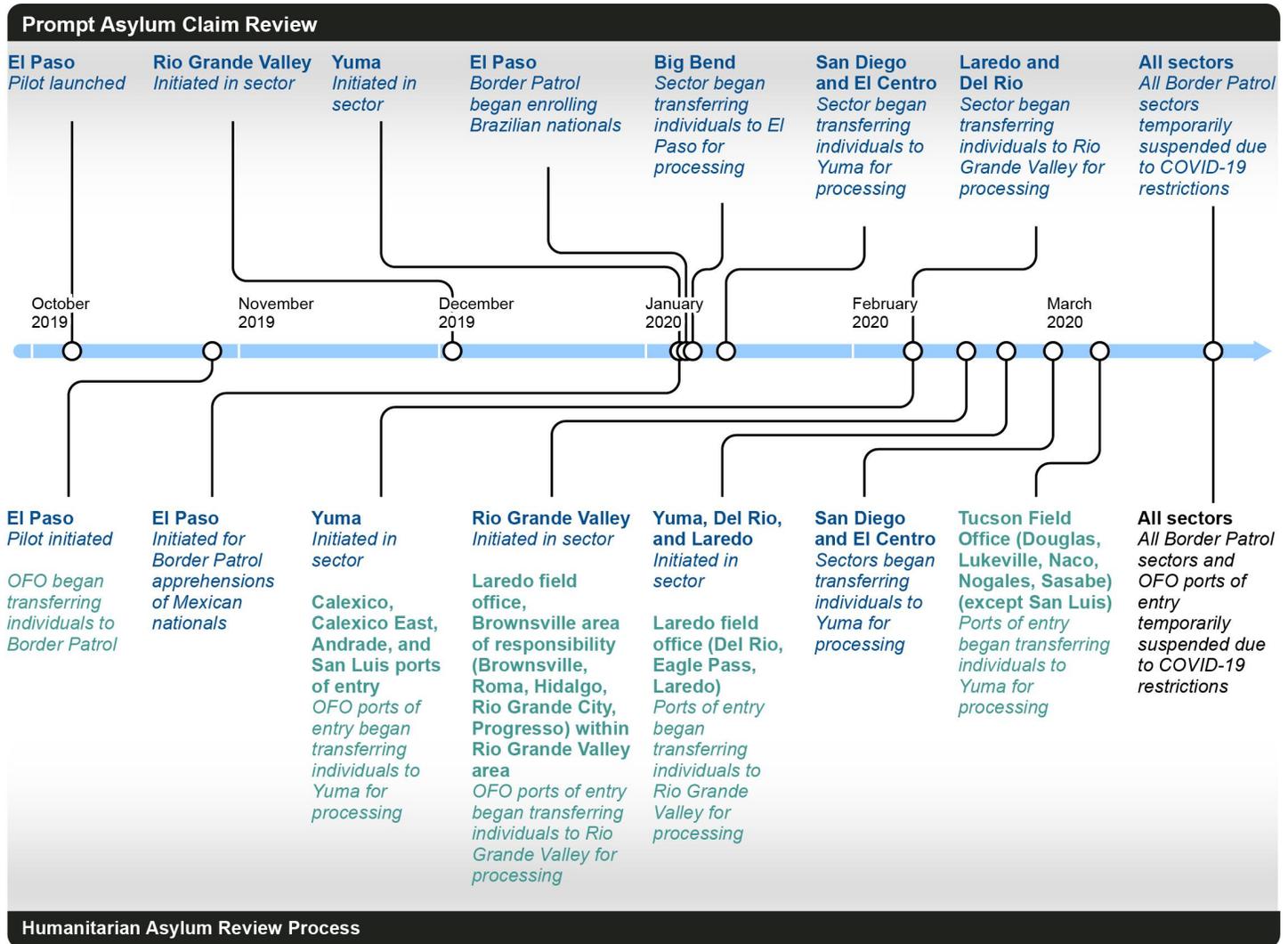
Following the initial implementation of the Prompt Asylum Claim Review and Humanitarian Asylum Review Process in El Paso, DHS and DOJ expanded these programs to the remaining southwest border sectors from December 2019 to early March 2020 (see figure 2 for more details on the implementation and expansion time frames).²⁶ In March 2020, DHS and DOJ temporarily suspended the programs due to the risk of COVID-19, according to officials.

²⁴The Otero immigration court is located in Chaparral, New Mexico.

²⁵See 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

²⁶The Tucson sector has been subject to a preliminary injunction since November 2016 that generally required additional screening and processing for individuals detained in Border Patrol stations in the Tucson sector. See *Doe v. Johnson*, No. 15-00250 (D. Ariz. Nov. 18, 2016). In April 2020, the court in this case issued a permanent injunction. See *Doe v. Wolf*, No. 15-00250 (D. Ariz. Apr. 17, 2020). As such, Border Patrol did not implement the expedited fear screening programs in the Tucson sector. However, OFO officers in the Tucson field office identified Mexican nationals apprehended at ports of entry in the Tucson sector who were eligible for the Humanitarian Asylum Review Process, and transferred these individuals to Border Patrol custody to undergo a credible fear screening.

Figure 2: Implementation and Expansion of the Prompt Asylum Claim Review and Humanitarian Asylum Review Process along the Southwest Border



Legend

- Border Patrol sector
- Office of Field Operations (OFO) port of entry
- Border Patrol actions
- OFO actions

Source: GAO analysis of U.S. Customs and Border Protection documentation. | GAO-21-144

Prompt Asylum Claim Review expansion. Border Patrol headquarters directed sector leadership in Rio Grande Valley, Texas, and Yuma, Arizona, to begin implementing the Prompt Asylum Claim Review in those locations in December 2019 and January 2020, respectively. Collectively, three sectors (El Paso, Rio Grande Valley, and Yuma) were referred to as “hub” sectors for the expedited fear screening programs. According to

CBP officials, these locations were selected as the “hub” locations due to their centralized locations, and because they had existing soft-sided facilities equipped with amenities that enabled CBP to hold individuals in their custody for an extended period of time.²⁷ According to EOIR officials, the Otero immigration court conducted immigration judge reviews, as necessary, for all three “hub” sectors. Subsequently, to process nationals from countries other than Mexico who were apprehended in southwest border locations other than the three “hub” sectors, Border Patrol agents identified eligible individuals and transferred them to one of the three “hub” sectors to undergo a credible fear screening, according to officials.

Humanitarian Asylum Review Process expansion. From October 28, 2019 to January 6, 2020, only OFO processed removals of Mexican nationals amenable for the Humanitarian Asylum Review Process. Beginning on January 6, 2020, Border Patrol also began using this program to expedite the fear screening process for Mexican nationals whom agents apprehended between ports of entry. After completing the initial processing of Mexican nationals who were apprehended at a port of entry, OFO then transferred these individuals to Border Patrol custody. Similar to the Prompt Asylum Claim Review program, Border Patrol, in coordination with OFO, transferred eligible Mexican nationals who were apprehended at or between ports of entry in southwest border locations other than the three “hub” sectors to El Paso, Rio Grande Valley, or Yuma sectors to undergo a credible fear screening, according to officials.

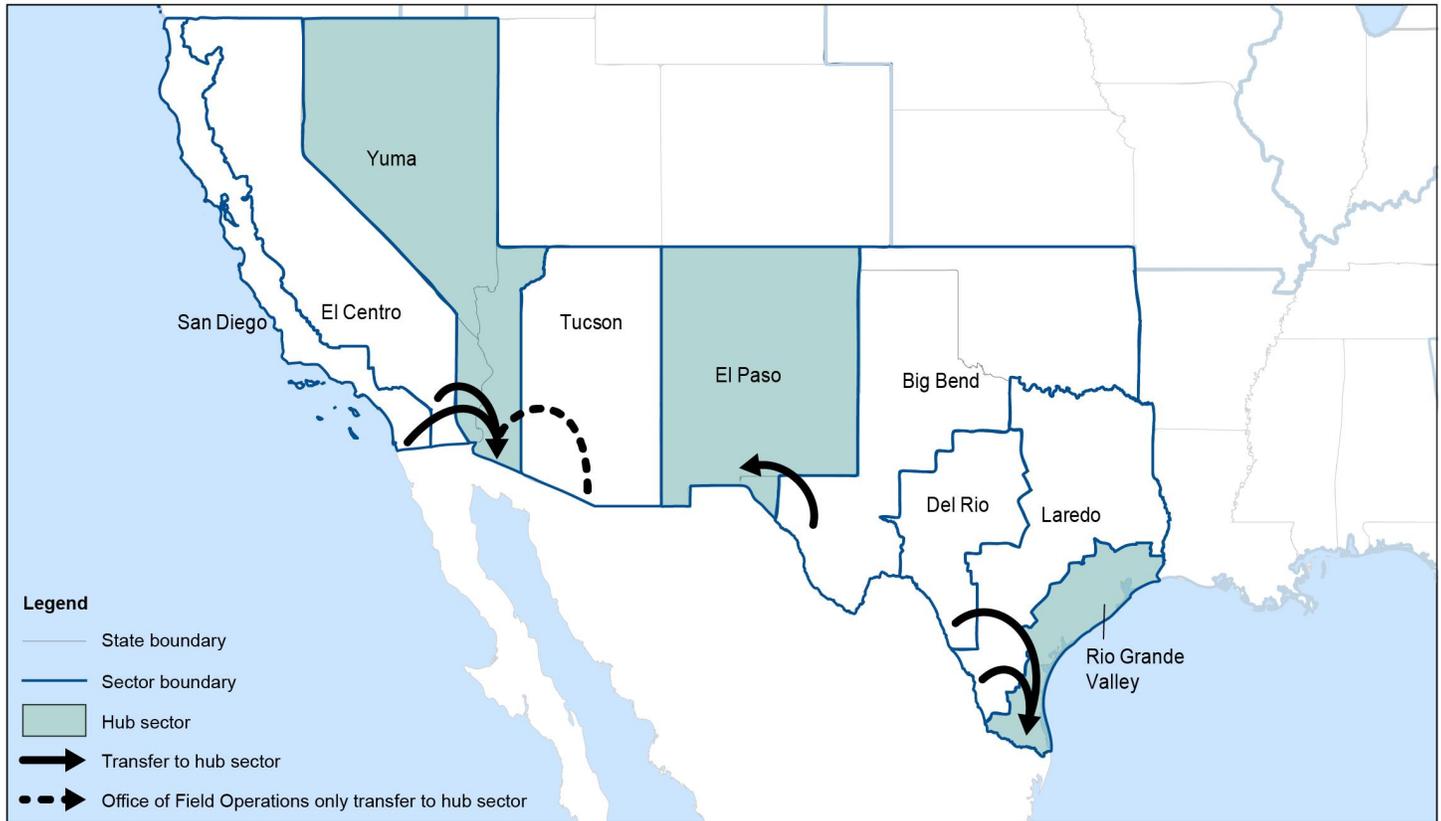
Figure 3 depicts the hub sectors, as well as the sectors that transferred selected individuals to each hub sector along the southwest border. Specifically, Border Patrol agents and OFO officers who apprehended and identified eligible individuals for either of the expedited fear screening programs in San Diego or El Centro sectors completed initial processing for these individuals, and then coordinated their transfer to Yuma sector to undergo a credible fear screening. Similarly, agents and officers who apprehended and identified individuals who were eligible for these programs in Big Bend sector, completed initial processing for these individuals, and then coordinated their transfer to El Paso sector to undergo a credible fear screening. Lastly, agents and officers who apprehended and identified individuals who were eligible for these programs in Laredo or Del Rio sectors completed initial processing for these individuals, and then coordinated their transfer to Rio Grande

²⁷Soft-sided facilities are tent-like structures, which include services and equipment to hold individuals in those facilities, such as heating, ventilation, air conditioning, plumbing, electrical, and lightning protection.

Valley sector to undergo a credible fear screening. In March 2020, all southwest Border Patrol border sectors and OFO field offices temporarily suspended both expedited fear screening programs due to COVID-19 restrictions.²⁸ According to CBP officials, all individuals processed under these programs were transferred out of CBP custody by April 13, 2020.

²⁸See generally 85 Fed. Reg. 16,559 (Mar. 24, 2020); 85 Fed. Reg. 17,060 (Mar. 26, 2020); see also, e.g., 85 Fed. Reg. 65,806 (Oct. 13, 2020).

Figure 3: Map of U.S. Border Patrol Sectors along the Southwest Border and Locations of Hub and Transfer Sectors for the Prompt Asylum Claim Review and Humanitarian Asylum Review Process



Source: GAO analysis of U.S. Customs and Border Protection information. | GAO-21-144

Note: The Tucson sector has been subject to a preliminary injunction since November 2016 that generally required additional screening and processing for individuals detained in U.S. Border Patrol stations in the Tucson sector. See *Doe v. Johnson*, No. 15-00250 (D. Ariz. Nov. 18, 2016). In April 2020, the court in this case issued a permanent injunction. See *Doe v. Wolf*, No. 15-00250 (D. Ariz. Apr. 17, 2020). As such, U.S. Border Patrol did not implement the expedited fear screening programs in Tucson sector. However, Office of Field Operations officers in the Tucson field office identified Mexican nationals apprehended at ports of entry in the Tucson sector who were eligible for the Humanitarian Asylum Review Process, and transferred these individuals to Border Patrol custody to undergo a credible fear screening.

DHS and DOJ Officials at the Local Level Took Various Steps to Coordinate Implementation and Expansion of Expedited Fear Screening Programs

The September 2019 DHS guidance outlined the programs' goals and procedures at a high-level and stated that CBP, ICE, and USCIS were to

commit to providing the appropriate resources and guidance necessary to implement the streamlined procedures. As such, CBP, ICE, and USCIS officials in each sector determined what additional steps, if any, were needed to implement them. According to officials, the most significant changes were made to Border Patrol facilities in the three hub sectors where the credible fear screening interviews occurred. Border Patrol stations were generally not equipped with the necessary facilities to conduct the fear screening interviews because, as previously discussed, individuals did not typically remain in CBP custody during the pendency of the standard screening process. The sectors that transferred individuals did not require any changes to their facilities or processes because they used existing transportation contracts to transport individuals to the hub sectors, according to officials. DHS components and EOIR implemented the following changes in the three hub sectors.

CBP. To allow for credible fear interviews to be conducted semi-privately at the three Border Patrol hub sectors (El Paso, Rio Grande Valley, and Yuma), Border Patrol installed semi-soundproof phone booths at certain facilities where the expedited fear screening occurred (see figure 4).²⁹ Prior to the installation of the phone booths in El Paso, for example, Border Patrol agents brought individuals from a temporary holding facility into the hold rooms in the Border Patrol station for the telephonic credible fear interviews with the asylum officers. Given the limited number of hold rooms in the station, El Paso sector officials stated that the addition of the phone booths allowed agents to process a greater number of individuals under the expedited fear screening programs and allowed for a more private space for the screening. In Yuma, in addition to installing phone booths at the station, sector officials installed two tents of cubicles with phone lines. According to Yuma officials, individuals were provided noise canceling head phones for their interviews since the tent cubicles did not have roofs and were not soundproof.

²⁹Asylum officers are to conduct the interview separate and apart from the general public. USCIS officials told us that although the phone booths are not completely sound proof, they meet the USCIS standard for privacy because distinct conversations cannot be heard outside the phone booths.

Figure 4: Phone Booths at a U.S. Border Patrol Station in El Paso, Texas, January 2020



Source: U.S. Border Patrol. | GAO-21-144

USCIS. The September 2019 DHS guidance stated that USCIS would surge resources for the programs, including identifying additional asylum officers and administrative personnel to work extended evening hours and weekends, as needed, to address the increased workload and expedited time frames. In addition, USCIS assigned personnel on short-term, temporary duty rotations to Border Patrol stations and other locations in the three hub sectors to coordinate directly with Border Patrol agents in those locations to schedule and facilitate the telephonic fear screenings.

EOIR. EOIR immigration judges agreed to conduct all reviews of negative USCIS determinations telephonically via the phone booths installed at Border Patrol facilities to help meet the goals of the expedited fear screening programs.

ICE. The September 2019 DHS guidance stated that CBP and ICE would use their discretion to implement the expedited fear screening programs in different locations taking into account local conditions and available resources and infrastructure. Specifically, as the programs expanded, Border Patrol officials stated that the availability of ICE charter or

commercial flights from each sector to the originating countries was a major factor in determining who would be processed under the Prompt Asylum Claim Review. For example, in the El Paso sector, ICE had regularly-scheduled removal flights to Guatemala and El Salvador, but not to Honduras; in the Rio Grande Valley sector, ICE had readily available removal flights to Honduras. To help meet the program's goals of expeditiously removing individuals with negative determinations in response to fear claims, ICE officials told us that they added a flight to return Brazilian nationals to Brazil from Yuma sector in February 2020 following a surge in apprehensions of Brazilian nationals.

A Majority of Individuals Received Negative Determinations under Expedited Fear Screening Programs; Data Gaps Exist for Certain Positive Determinations

DHS and DOJ Processed Approximately 5,290 Noncitizens under Expedited Fear Screening Programs, and a Majority of USCIS Screening Outcomes Were Negative

DHS data indicate that CBP identified approximately 5,290 apprehended noncitizens who were eligible for expedited fear screening programs from October 2019 to mid-March 2020, the majority of whom (about 3,620, or 69 percent) received negative fear determinations from USCIS.³⁰ About 55 percent of those who received a negative determination requested and received an immigration judge review, and EOIR's immigration judges upheld nearly all asylum officers' decisions.³¹ As of September 2020, ICE data indicate that at least 3,730 individuals processed under the programs were removed from the U.S., and about 50 were detained

³⁰Our review included data on the Prompt Asylum Claim Review and Humanitarian Asylum Review Process from the start of the programs in October 2019 through their temporary suspension due to COVID-19 in March 2020. Border Patrol provided data as of July 16, 2020, OFO as of June 30, 2020, and USCIS as of August 11, 2020.

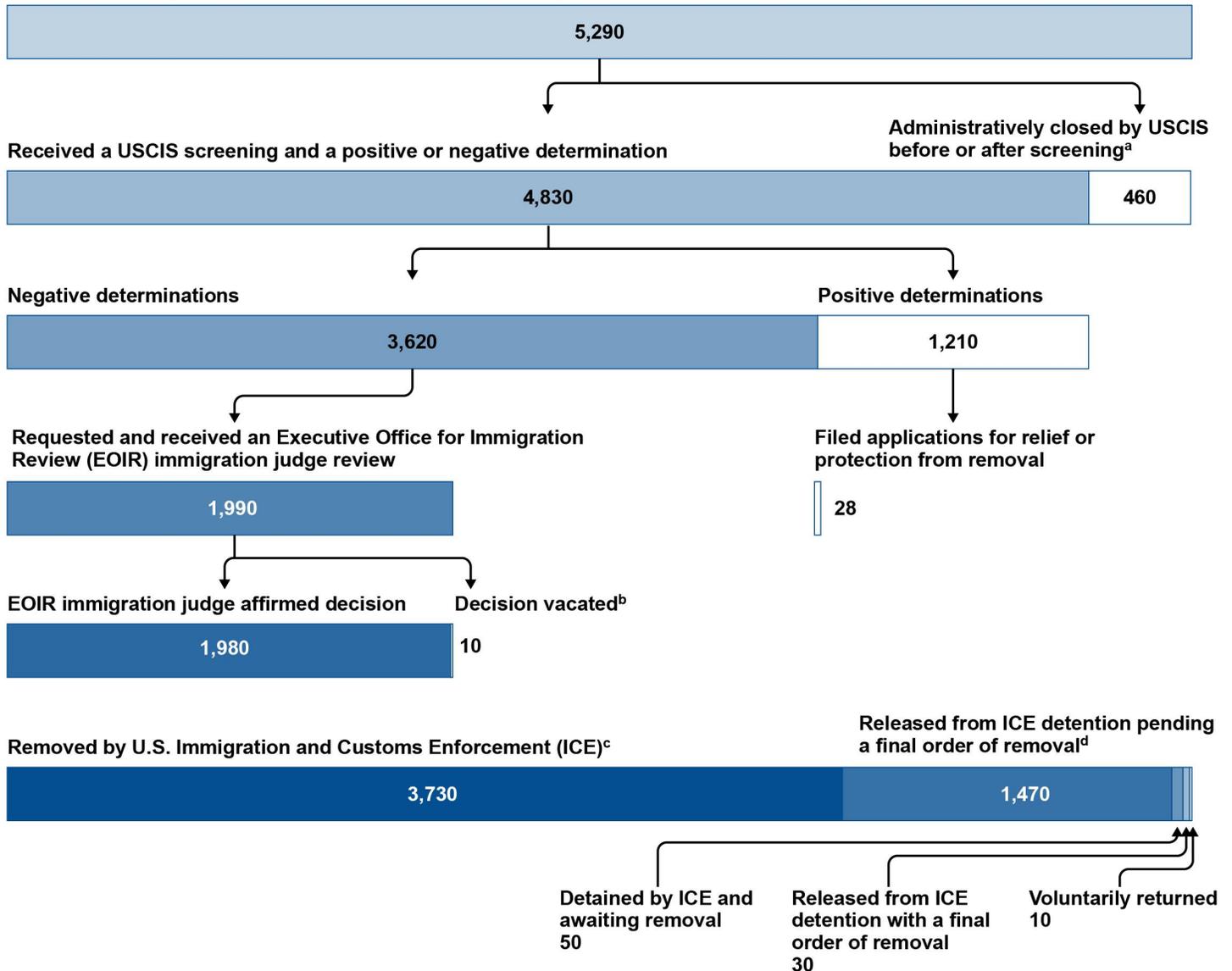
³¹EOIR provided data as of October 16, 2020.

pending removal.³² Figure 5 illustrates these outcomes based on our analysis of CBP, USCIS, ICE, and EOIR data.

³²ICE provided data as of September 25, 2020.

Figure 5: Approximate Numbers and Outcomes of Noncitizens Processed and Screened Under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, October 2019 through September 2020

Processed by U.S. Customs and Border Protection (CBP) and referred to U.S. Citizenship and Immigration Services (USCIS) under Prompt Asylum Claim Review and Humanitarian Asylum Review Process screening



Source: GAO analysis of CBP, EOIR, ICE, and USCIS data. | GAO-21-144

Notes: Our review included CBP and USCIS data on the Prompt Asylum Claim Review and Humanitarian Asylum Review Process from the start of the programs in October 2019 through their temporary suspension due to COVID-19 in March 2020, EOIR data from October 2019 through September 2020, as well as ICE data from October 2019 through August 2020. Border Patrol data are as of July 16, 2020, Office of Field Operations (OFO) data are as of June 30, 2020, EOIR data are as of October 16, 2020, ICE data are as of September 25, 2020, and USCIS data are as of

August 11, 2020. ICE provided the removal status for each noncitizen included in our analysis as of September 21, 2020. Numbers are approximate due to rounding.

For about 630 of the approximately 1,210 individuals who received a positive fear determination and about 10 individuals who had a negative determination vacated by an immigration judge, EOIR data as of October 16, 2020, do not reflect that a Notice to Appear has been filed and entered into EOIRs case management system. Of the positive determinations by USCIS and negative determinations vacated by an EOIR immigration judge, EOIR data indicate that 28 individuals filed applications for relief or protection from removal before an immigration court as of October 16, 2020.

^aAccording to USCIS officials, as in all credible fear screenings, administrative closures under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process occur when the asylum officer who conducted the screening closes the case for reasons such as death, presence of the applicant in state or federal custody, inability of the applicant to communicate, dissolved cases due to withdrawals of fear claims, or other reasons.

^bIn addition, approximately six cases were administratively closed because individuals withdrew their fear claims.

^cAccording to Border Patrol data, Border Patrol, in coordination with OFO, transferred approximately 140 individuals to OFO for removal through ports of entry across the southern border, as appropriate.

^dUnder the expedited fear screening programs, for cases in which an asylum officer concludes a credible fear screening with a positive determination, CBP is to serve a Notice to Appear to the individual, thereby placing the individual into full removal proceedings before an immigration judge. ICE is responsible for supervising and ensuring that individuals who are not held in detention facilities comply with requirements to appear in immigration court for their administrative removal proceedings.

CBP apprehensions and USCIS screenings. CBP and USCIS data indicate that about 5,290 apprehended noncitizens were referred to USCIS under expedited fear screening programs from October 2019 to mid-March 2020. The majority of individuals—about 67 percent—were apprehended between ports of entry by Border Patrol. Of those referred to USCIS for a screening, about 2,110 were Mexican nationals processed under the Humanitarian Asylum Review Process and about 3,180 were nationals from four other countries processed under the Prompt Asylum Claim Review (Brazil, El Salvador, Guatemala, and Honduras). See appendix III for additional information on the characteristics of noncitizens processed under the expedited fear screening programs.

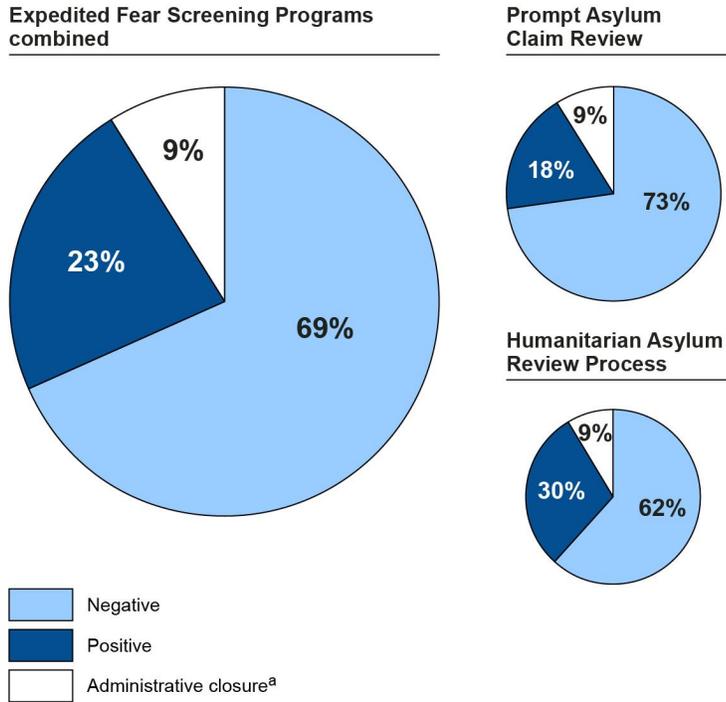
As shown in figure 6, asylum officers made negative determinations in about 69 percent (about 3,620 individuals) of the fear screenings.³³ Specifically, USCIS data indicate the following:

³³We excluded one record from our analysis because of a blank determination field. We included records for 110 noncitizens for whom Border Patrol data indicates were initially referred to USCIS under the Prompt Asylum Claim Review and the Humanitarian Asylum Review Process, but were subsequently reprocessed under other removal pathways (different options for removal), including Migrant Protection Protocols and Asylum Cooperative Agreements. See appendix II for more information on these other removal pathways.

- under the Prompt Asylum Claim Review, approximately 2,320 individuals received negative determinations and about 580 individuals received positive determinations.
- under the Humanitarian Asylum Review Process, about 1,300 individuals received negative determinations and approximately 630 individuals received positive determinations.
- of the remaining referrals to USCIS under both programs, USCIS administratively closed about 460 individuals' cases.³⁴

³⁴USCIS data indicate about 92 percent of all Prompt Asylum Claim Review and Humanitarian Asylum Review Process administrative closures did not receive a fear screening before being administratively closed by USCIS. According to USCIS officials, as in all credible fear screenings, administrative closures under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process occur when the asylum officer who conducted the screening closes the case for reasons such as death, presence of the applicant in state or federal custody, inability of the applicant to communicate, dissolved cases due to withdrawals of fear claims, or other reasons.

Figure 6: Outcomes of U.S. Citizenship and Immigration Services (USCIS) Credible Fear Screenings under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, October 2019 through March 2020



Source: GAO analysis of USCIS data. | GAO-21-144

Notes: USCIS provided data as of August 11, 2020. Total percentages may not equal 100 percent due to rounding. We excluded one record from our analysis because of a blank determination field in USCIS’s data. For both programs combined, there are about 5,290 total cases—about 3,180 for the Prompt Asylum Claim Review and about 2,110 for the Humanitarian Asylum Review Process.

USCIS cases included in our analysis were referred to USCIS for a credible fear screening under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process. U.S. Border Patrol data indicates that about 110 noncitizens who were initially referred to USCIS under the programs were subsequently re-processed under other removal pathways, including Migrant Protection Protocols and Asylum Cooperative Agreements.

^aAccording to USCIS officials, as in all credible fear screenings, administrative closures under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process occur when the asylum officer who conducted the screening closes the case for reasons such as death, presence of the applicant in state or federal custody, inability of the applicant to communicate, dissolved cases due to withdrawals of fear claims, or other reasons.

EOIR immigration judge reviews. EOIR data show that approximately 55 percent of noncitizens (about 1,990 individuals) who received negative USCIS fear screening determinations from October 2019 through March 2020 requested and received a review of their negative determination by an immigration judge. Immigration judges upheld about 99 percent of asylum officers’ negative determinations—meaning, judges found that those individuals did not have a credible fear. As a result, nearly all of the

individuals who received a negative determination under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process were ordered to be removed from the country.

Regarding those individuals who received a positive fear determination from USCIS (about 1,210) or had a negative determination vacated by an immigration judge (about 10), EOIR data indicate that 28 individuals filed 29 applications for relief or protection from removal before an immigration court, as of October 16, 2020.³⁵ This includes applications for asylum and withholding of removal.³⁶ As of that date, EOIR data indicate that five applications were denied by the court or withdrawn by the individual, and 24 applications were awaiting a hearing before an immigration judge; no applications were approved. As discussed further below, for about 630 of the approximately 1,210 individuals who received a positive fear determination and about 10 individuals who had a negative determination vacated by an immigration judge, EOIR data as of October 16, 2020 do not reflect that a Notice to Appear has been filed and entered into EOIRs case management system.

ICE removals. ICE data show that as of September 25, 2020, about 3,730 individuals processed under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process who received negative determinations were removed from the country between October 2019 and September 2020, as appropriate. In addition, as of September 25, 2020, about 10 individuals had voluntarily returned to their country, about 50 individuals were detained and awaiting removal, about 30 were released from ICE detention with a final order of removal, and about

³⁵In calculating applications for relief or protection from removal before an EOIR immigration court for the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, we counted applications for multiple forms of relief or protection from removal filed on the same day as one application. Most individuals applied for more than one form of relief or protection. One individual withdrew the application for relief or protection from removal and subsequently filed for voluntary departure, which an immigration judge denied. The Immigration and Nationality Act provides for immigration judges to grant voluntary departure prior to the completion of removal proceedings (for a period of up to 120 days) and at the conclusion of removal proceedings (for a period of up to 60 days). If an individual granted voluntary departure fails to depart during the period of time provided an alternate Order of Removal takes effect.

³⁶See 8 U.S.C. § 1158 (eligibility for asylum); 8 C.F.R. § 208.16 (codifying both withholding of removal under the Immigration and Nationality Act and the Convention against Torture).

1,470 were released from ICE detention pending a final order of removal.³⁷

Various Factors Affected the Time Individuals Processed under Expedited Fear Screening Programs Spent in CBP Custody

CBP maintains data on the length of time individuals processed under the expedited fear screening programs were in its custody, and officials identified various factors affecting time in CBP custody. DHS's September 2019 guidance for expedited fear screenings called for components to complete those screenings within 5 to 7 days. The guidance also noted that if the screening process could not be completed in 7 or fewer days, CBP was to coordinate with ICE for a custody determination for each individual. According to CBP data, on average, individuals processed under the expedited fear screening programs remained in CBP custody for 13 days from the time of their apprehension until they were transferred out of Border Patrol custody (either to be removed from the country or placed into full removal proceedings).³⁸ About 20 percent of noncitizens who were processed under the expedited fear screening programs were transferred out of CBP custody and into ICE's custody within 7 or fewer days. For cases when the screening process could not be completed in 7 or fewer days, CBP officials told us that they coordinated with ICE via email and daily teleconferences to make arrangements to transfer these individuals to ICE for custody determinations.

Further, according to CBP data, the majority of those processed under the expedited fear screening programs were members of family units,

³⁷Of those individuals detained awaiting removal, most were apprehended in February or March 2020, with the earliest apprehension in December 2019. ICE is responsible for supervising and ensuring that noncitizens who are not held in detention facilities comply with requirements to appear in immigration court for their administrative removal proceedings.

³⁸In calculating CBP custody time for the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, we used Border Patrol time in custody data for Border Patrol apprehensions and added together OFO and Border Patrol time in custody data for OFO apprehensions. This is because after completing the initial processing of noncitizens apprehended at a port of entry, OFO then transferred these individuals to Border Patrol custody to complete a credible fear screening. We excluded 109 records from our analysis because of blank fields, data entry errors, or discrepancies between Border Patrol and OFO data. Border Patrol data are as of July 16, 2020 and OFO data are as of June 30, 2020.

rather than single adults. According to Border Patrol officials in the El Paso sector, if agents were not able to complete the screening process for family units in 7 or fewer days due to various logistical challenges, discussed below, agents aimed to transfer them out of CBP custody within 20 days, citing the requirements under the 1997 *Flores v. Reno* Settlement Agreement (Flores Agreement). Pursuant to this agreement, children may generally only be held in federal immigration detention for 20 days.³⁹ CBP data indicate that most—about 86 percent—of individuals processed under the expedited programs were held in CBP custody for 20 or fewer days.⁴⁰

Various factors affected processing times for individuals in the expedited fear screening programs, according to officials. Border Patrol agents we interviewed in the Rio Grande Valley, El Paso, and Yuma sectors stated that several resource and logistical constraints across DHS components and EOIR posed challenges to meeting the goals of the expedited fear screening program as outlined in DHS's September 2019 guidance. For example, Border Patrol officials we spoke to across the three hub sectors stated that, in some instances, ICE charter or commercial flights used to remove individuals from the country were not immediately available from each sector to the originating countries. Therefore, CBP and ICE officials stated they coordinated to keep individuals in CBP custody until a flight was available and a sufficient number of people would be on the flight given the costs to the government, in particular, for the charter flights. In addition, Border Patrol officials we interviewed from the San Diego sector, which transfers individuals to Yuma, also noted that CBP time in custody begins upon apprehension and would be impacted by the amount of time it takes to transfer an individual to a "hub" sector.

Further, Border Patrol officials in all three hub locations stated that bottlenecks may occur due to the availability of asylum officers or EOIR immigration judges to schedule and conduct credible fear screenings and

³⁹See Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997). This agreement has been overseen by the district court for the Central District of California since 1997, and the judge in that case has issued multiple orders to clarify the agreement as it has been implemented by the federal government, including orders related to the 20-day time frame. For example, in a 2015 district court order, the court acknowledged that the 20-day time frame could fall within the parameters of the existing agreement, which requires that children be released "without unnecessary delay" if, as the defendants asserted at the time, "20 days is as fast as defendants in good faith and in the exercise of due diligence, can possibly go in screening family members for reasonable or credible fear." See *Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015).

⁴⁰About 14 percent of individuals were held in CBP custody beyond 20 days.

judge reviews of negative determinations. For example, Border Patrol officials in El Paso noted that asylum officers may complete a fear screening with a negative determination on a Friday, but because the immigration courts are not open on weekends, the immigration court could not begin processing the referral for an immigration judge review until the following Monday, at the earliest. In addition, Border Patrol officials, as well as USCIS officials in El Paso, noted that the availability of contracted telephonic interpreters for credible fear screening interviews, as well as court interpreters for EOIR immigration judge reviews, especially for rare indigenous languages, may impact the time an individual is held in CBP custody.

USCIS officials stated that once CBP referred a noncitizen to them for a credible fear screening under the expedited fear screening programs, asylum officers aimed to complete the screening within 4 or fewer days.⁴¹ To meet the expedited time frames, USCIS implemented mandatory overtime, and asylum officers began conducting screening interviews 7 days per week, including evenings and weekends, according to USCIS officials. We previously reported that USCIS prioritizes credible fear screenings over other Asylum Division responsibilities and USCIS officials stated that within credible fear cases, they prioritized those in the expedited fear programs.⁴² According to our analysis of USCIS data, USCIS completed about 69 percent of such cases in 4 or fewer days. DOJ officials stated that if a noncitizen requests a review of the determination by an immigration judge, EOIR aims to schedule the review within 48 hours upon receipt of the request. EOIR data indicate that immigration judges completed approximately 85 percent of such reviews in 2 or fewer days of receipt of the referral.⁴³ Since EOIR immigration judges do not conduct such reviews after business hours or over weekends, this may also have affected processing times for individuals in the expedited fear screening programs, according to DHS and EOIR officials.

⁴¹We previously reported that USCIS regulation does not require that credible fear cases be completed in a specific time frame; however, officials have used timeliness goals to help monitor their credible fear workload. See [GAO-20-250](#).

⁴²[GAO-20-250](#).

⁴³In calculating EOIR processing times for immigration judge reviews under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, we used the difference between the date EOIR received a charging document (i.e. Notice to Appear) and the adjudication date, as indicated in EOIR's data.

DHS Components and EOIR Could Not Account for the Status of Removal Proceedings for About 630 Individuals with Positive Determinations under Expedited Fear Screening Programs

As of October 16, 2020, DHS components and EOIR could not account for the status of removal proceedings for approximately 630 of the 1,220 individuals whom the agencies' data indicate received positive fear determinations under the expedited fear screening programs, or had a negative determination vacated by an immigration judge.⁴⁴ During the course of our review, as previously discussed, we received and analyzed CBP, USCIS, ICE, and EOIR data on all individuals who were processed from October 2019 to mid-March 2020 under these expedited fear screening programs. For about 630 of the 1,220 individuals who received a positive fear determination or had a negative determination vacated by an immigration judge, EOIR data as of October 16, 2020, do not reflect that a Notice to Appear has been filed and entered into EOIRs case management system.⁴⁵

Pursuant to regulation, upon completion of a positive credible fear screening, DHS is to file a Notice to Appear with an immigration court, thereby placing the individual into full removal proceedings before an EOIR immigration judge.⁴⁶ Asylum officers are required to inform the individual of the screening determination and CBP is to serve them with a Notice to Appear. DHS's September 2019 guidance on the expedited screening programs states that asylum officers or other asylum office employees are to provide the positive determination in-person to the individual and notify the immigration court, as applicable. EOIR's policy requires that court staff enter Notices to Appear received from DHS into its case management system upon receipt. Based on our analysis of DHS and EOIR data, and through discussions with officials, we could not determine whether DHS components had not filed the Notices to Appear

⁴⁴These individuals received positive fear determinations between October 13, 2019 and March 23, 2020, with the earliest apprehension occurring on October 9, 2019.

⁴⁵The majority of the approximately 630 individuals were apprehended and screened in U.S. Border Patrol's El Paso sector, but this number includes screenings conducted in all three hub sectors.

⁴⁶See 8 C.F.R. §§ 208.30(f), 1239.1(a).

for these individuals with EOIR or whether EOIR court staff had not yet entered the Notices to Appear into its case management system.

Specifically, EOIR officials told us that DHS may not have yet filed Notices to Appear for these individuals, and DHS components could not provide a definitive explanation for why these Notices to Appear may not have been filed with EOIR. According to ICE officials, under the expedited programs, ICE's Office of the Principal Legal Advisor was responsible for filing the Notices to Appear in such cases with EOIR immigration courts. According to USCIS officials, responsibility for filing the Notices to Appear with the immigration courts for those who received positive determinations varied among DHS components depending on the screening location. For example, USCIS officials told us that, in El Paso, asylum officers were to e-mail the Notices to Appear to the Otero immigration court, and CBP or ICE was responsible for filing it with EOIR in the other hub locations. CBP officials stated that once they transfer an individual to ICE custody, they are no longer involved with further immigration proceedings and that ICE and USCIS were responsible for filing the Notices to Appear with EOIR immigration courts under the expedited screening programs. Our analysis of EOIR data indicates that for at least 50 of the Notices to Appear that had been filed, there was a 5 to 9-month delay between the date the Notice to Appear was served to the individual and the date that DHS filed the Notice to Appear with EOIR.

EOIR officials also noted that the data provided to us would not include any Notices to Appear that DHS had filed with the immigration courts but which court staff had not yet entered into EOIR's case management system. In 2017, we reported that EOIR officials and DHS attorneys identified the timely recording of Notices to Appear in EOIR's case management system as a challenge for immigration courts.⁴⁷ In particular, we reported that EOIR's guidance on the timely and accurate entry of Notices to Appear into their case management system was outdated and that EOIR had not issued new guidance. As a result, we recommended that EOIR update policies and procedures to ensure the timely and accurate recording of Notices to Appear, and EOIR concurred.

EOIR officials told us that the agency was taking steps to implement electronic filing of Notices to Appear, which they anticipated would ensure the timely and accurate recording of Notices to Appear. In January 2020,

⁴⁷GAO, *Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, [GAO-17-438](#) (Washington, D.C.: June 1, 2017).

EOIR issued a policy memorandum stating that removal cases for detained individuals should be entered into the case management system within 3 days of the filing of the Notice to Appear, and that removal cases for non-detained individuals should be entered into the case management system within 5 days of the filing of the Notice to Appear.⁴⁸ As of October 2020, EOIR officials told us that there was not a backlog of Notices to Appear waiting to be recorded at the Otero immigration court, which was responsible for the majority of cases processed under the expedited fear screening programs. However, our review of EOIR data as of October 2020 indicates that for at least 30 records there were delays of at least 21 days and up to 6 months between the dates DHS filed the Notices to Appear and the dates on which court staff entered them into EOIR's case management system.⁴⁹ Although EOIR officials indicated that court staff have been taking steps to address this backlog, at the time of our review, EOIR could not provide documentation to show that court staff entered all Notices to Appear in EOIR's case management system, in accordance with its January 2020 policy memorandum.

Federal regulations state that every full removal proceeding begins with the filing of a Notice to Appear with the immigration court.⁵⁰ According to EOIR guidance, although DHS may serve a Notice to Appear to an individual with a time and date for a hearing, the hearing cannot occur if DHS has not also filed the Notice to Appear with an immigration court. Further, according to *Standards for Internal Control in the Federal*

⁴⁸Department of Justice, Executive Office for Immigration Review, Case Management and Docketing Practices, PM 20-07 (Jan. 31, 2020).

⁴⁹Toward the end of our review, in October 2020, EOIR provided updated data on 114 records of individuals who had received positive determinations and for which a Notice to Appear had been filed and entered into EOIR's case management system. Of these 114 records, we identified the 30 examples of delays, and we subsequently provided these examples back to EOIR officials at their request. We did not analyze all positive determination records included in our report for time elapsed between the dates DHS filed the Notices to Appear and the dates on which court staff entered them into EOIR's case management system. In commenting on a draft of this report, EOIR noted that officials conducted additional research into these 30 records while reviewing our draft report, and determined that most represented members of families. In its comments, EOIR stated that 12 of the 30 records relate to the lead applicants and the remaining records relate to their dependents. For a number of immigration applications, including asylum and the related screening for credible fear, a spouse or child (defined as an unmarried natural or legally adopted child under 21 years of age) may be included as dependents on a principal's application and derive lawful immigration status from the principal applicant if the application is granted. See 8 U.S.C. § 1101(b)(1). See [GAO-20-250](#) for more information.

⁵⁰See 8 C.F.R. § 1239.1(a).

Government, management should evaluate and document internal control issues and determine appropriate corrective actions for internal control deficiencies on a timely basis.⁵¹ Filing Notices to Appear with EOIR for all individuals who received positive determinations under the expedited fear screening programs, and ensuring they are entered into EOIR's case management system in a timely manner, as required, would help ensure that removal proceedings move forward for these individuals.

Conclusions

In recent years, there has been an increase in apprehensions of those who indicate a fear of persecution or torture, a fear of return to their country, or who express an intent to apply for asylum. DHS, in coordination with DOJ, initiated two pilot programs to expedite the credible fear screening process and remove eligible individuals more quickly from the country. From October 2019 to mid-March 2020, DHS and DOJ processed about 5,290 individuals through these pilot programs, most of whom received negative fear determinations from asylum officers. However, EOIR data do not account for the status of removal proceedings for approximately 630 individuals who received positive determinations because there is no record in EOIR's case management system that DHS filed a Notice to Appear, as required. Immigration hearings cannot be scheduled until DHS has filed Notices to Appear with an immigration court and court staff has entered the Notices to Appear into EOIR's case management system. Filing Notices to Appear with EOIR for all individuals who received positive determinations under the expedited fear screening programs and ensuring court staff have entered them into EOIR's case management system in a timely manner, as required, would help ensure that removal proceedings move forward for these individuals.

Recommendations for Executive Action

We are making a total of two recommendations, including one each to DHS and EOIR.

The Secretary of Homeland Security, in consultation with the Director of EOIR, should ensure that DHS components have filed Notices to Appear

⁵¹[GAO-14-704G](#).

with EOIR for all individuals who received positive determinations under the expedited fear screening programs, as required. (Recommendation 1)

The Director of EOIR should ensure immigration court staff have entered into EOIR's case management system all Notices to Appear received from DHS, in a timely manner, as required, for individuals who received positive determinations under the expedited fear screening programs. (Recommendation 2)

Agency Comments and Our Evaluation

We provided a draft of this report to DHS and DOJ for review and comment. DHS and EOIR provided formal, written comments, which are reproduced in full in appendices IV and V, respectively. DHS and EOIR also provided technical comments, which we incorporated as appropriate. DHS agreed with our recommendation and stated that ICE and USCIS will review their case files and ensure the Notices to Appear are filed with EOIR as soon as possible, pending resource constraints. DHS noted that ICE and USCIS will notify EOIR once this process is complete so that EOIR may update its case management system.

EOIR disagreed with our recommendation. Specifically, EOIR stated that it agreed with our recommendation in principle, but believes its present operational processes already incorporate its intent. Further, EOIR stated that, to the extent our recommendation is based on examples that are inaccurate, isolated, or beyond EOIR's control, EOIR did not concur with those underlying bases. We worked with EOIR officials during the course of our review to obtain from the agency's case management system the most current data available at the time of our review. As we stated in our report, at the time of our review, EOIR could not provide documentation to show that court staff entered all Notices to Appear in EOIR's system, in accordance with its January 2020 policy memorandum. In its comments, EOIR stated that it confirmed with the relevant immigration courts in July and October 2020 that all Notices to Appear received from DHS for those in the expedited asylum screening pilot programs had been entered into the system. In early October 2020, EOIR officials told us that the Otero immigration court did not have a backlog of Notices to Appear waiting to be entered into the system. However, EOIR provided no documentation of its communication with the relevant immigration courts in July or October 2020, or documentation from the Otero court in October 2020 confirming that no such backlog existed.

In addition, EOIR stated that the example in our draft report of 30 records with delays of at least 21 days and up to 6 months somewhat overstates the actual number of discrete cases at issue and the scope and nature of the delays. After receiving our draft report for its review and comment, EOIR stated that it conducted additional research into these 30 records. In its comments, EOIR provided additional detail about these 30 records. However, our analysis of 114 records of individuals who had received positive determinations and for which a Notice to Appear had been filed and entered into EOIR's case management system which identified these 30 records does not represent an exhaustive analysis of all of EOIR's records. Further analysis could include additional instances of delays in entering records into EOIR's case management system. We have included the additional information from EOIR on these 30 cases and clarified the scope of our analysis in the report.

In its comments, EOIR described the steps headquarters' officials took to confirm that all relevant Notices to Appear had been entered into EOIR's system, as required. EOIR stated that, as a result of these steps, officials believe that the approximately 630 records we identified are ones that have not been filed by DHS with an immigration court, rather than ones that have not been entered into EOIR's system. These steps, if implemented as described, should address the intent of our recommendation. However, EOIR has not yet provided documentation of such actions. Therefore, we continue to believe our recommendation is warranted. Should EOIR provide documentation corroborating the steps EOIR headquarters and the relevant immigration courts have taken, we will review this additional information to assess the extent to which these actions fully address our recommendation.

We are sending copies of this report to the appropriate congressional committees, the Acting Secretary of Homeland Security, the Acting Attorney General, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gablerr@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.

Letter

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca S. Gambler
Director, Homeland Security and Justice

List of Requesters

The Honorable John Barrasso
United States Senate

The Honorable John Cornyn
United States Senate

The Honorable Ron Johnson
United States Senate

The Honorable James Lankford
United States Senate

The Honorable Joe Manchin III
United States Senate

The Honorable Rob Portman
United States Senate

The Honorable Kyrsten Sinema
United States Senate

Appendix I: Objectives, Scope, and Methodology

This appendix provides additional information on our objectives, scope, and methodology. Specifically, we were asked to review, concurrent with their implementation, two expedited fear screening programs that the Department of Homeland Security (DHS), in coordination with the Department of Justice (DOJ), initiated in October 2019. These programs—the Prompt Asylum Claim Review and Humanitarian Asylum Review Process—aim to further expedite the credible fear screening process for certain individuals apprehended along the southwest border. This report examines (1) the actions taken by DHS and DOJ to implement and expand the expedited fear screening programs along the southwest border, and (2) what DHS and DOJ data indicate about the outcomes of individuals' expedited fear screenings and any gaps in such data.

To address our first objective, we reviewed relevant laws and regulations governing the credible fear screening process. We determined that the control activities component of internal control was significant to this objective, along with the underlying principles that management should design control activities to achieve objectives and respond to risks, and that management should implement control activities through policies. We analyzed documentary evidence, including DHS component memos and guidance documents describing streamlined processing goals and resources needed to implement the expedited fear screening programs. We also analyzed DOJ's Executive Office for Immigration Review (EOIR) guidance to immigration courts on prioritizing immigration judge reviews of negative fear determinations. We reviewed documentation gathered in support of our February 2020 report on DHS's U.S. Citizenship and Immigration Services' (USCIS) oversight of credible and reasonable fear screenings to describe the standard credible fear screening process.¹

In addition, we conducted a site visit to El Paso, Texas, in January 2020 to observe the implementation of the Prompt Asylum Claim Review and Humanitarian Asylum Review Process. We selected this location because it was the first pilot location to implement these programs beginning in

¹GAO, *Immigration: Actions Needed to Strengthen USCIS's Oversight and Data Quality of Credible and Reasonable Fear Screenings*, [GAO-20-250](#) (Washington, D.C.: Feb. 19, 2020).

October 2019. During this visit, we observed the U.S. Customs and Border Protection's (CBP) Office of Field Operations (OFO) officers and U.S. Border Patrol (Border Patrol) agents conducting intake interviews and initial processing of individuals identified for a credible fear screening under the Prompt Asylum Claim Review or Humanitarian Asylum Review Process. We also observed the temporary hold facility where Border Patrol held individuals during the pendency of their expedited fear screening. We conducted interviews with Border Patrol, OFO, USCIS, and U.S. Immigration and Customs Enforcement (ICE) officials responsible for overseeing the implementation and expansion of these expedited fear screening programs. We also observed two USCIS credible fear screening interviews of family unit members conducted via telephone. Our observations are not generalizable to all pilot program locations or asylum officers conducting credible fear screenings, but provided us the opportunity to learn more about how USCIS personnel conduct interviews and make fear determinations under the expedited fear screening programs.

We interviewed CBP, USCIS, and EOIR headquarters officials responsible for overseeing the implementation of the expedited fear screening programs and for tracking the status of cases processed under these programs. We also interviewed Border Patrol agents by telephone in the other sectors on the southwest border who were responsible for implementing the expedited fear screening programs. Specifically, we interviewed officials in Rio Grande Valley, Texas and Yuma, Arizona sectors. Along with El Paso, these three locations constituted the "hub" sectors where the expedited fear screenings occurred. In addition, we interviewed Border Patrol officials in the San Diego and El Centro, California, and Del Rio, Big Bend, and Laredo, Texas, sectors about their processes for transferring individuals who were eligible for either of the expedited fear screening programs to one of the aforementioned "hub" sectors to undergo a credible fear screening.

To address our second objective, we analyzed record-level data from DHS's and DOJ's automated data systems on individuals apprehended and processed under the expedited fear screening programs. Specifically, we analyzed records for all individuals from program initiation in October 2019 to mid-March 2020, when the programs were temporarily suspended, to determine the number and characteristics of individuals processed and the outcomes of their screenings.

CBP data. We analyzed record-level data from Border Patrol and OFO on apprehensions of individuals determined to be inadmissible and

amenable to removal processing under the expedited fear screening programs.² We received original data from Border Patrol on May 7, 2020 and subsequently received corrected and updated subsets of data through July 16, 2020. We received original data from OFO on May 22, 2020 and subsequently received updated data on June 30, 2020. Throughout this report, we refer to the date of the most recent data submission. We used unique “apprehensions” rather than the number of individuals or family unit members apprehended as the unit of analysis because an individual may have been apprehended and processed for removal multiple times during the 6-month period the expedited fear screening programs were in effect.

To determine the total number of apprehensions of individuals referred to USCIS for a fear screening under the expedited fear screening programs, we used a combination of record-level CBP data and USCIS data. We included 68 records we received from USCIS that Border Patrol did not consider to be processed under these programs because the individuals were transferred out of Border Patrol custody before the screening interview occurred.³ Since these individuals were initially identified as eligible for an expedited fear screening and were referred to USCIS for a screening interview while in Border Patrol custody, we included these records in our analysis. We excluded one Border Patrol record from our analysis that we did not find in USCIS’s data. For OFO, we excluded three apprehension records from our analysis because we determined that these individuals were not referred to USCIS for a screening under the expedited fear screening programs.

For our analysis of time individuals who underwent expedited fear screenings spent in CBP custody, we used a combination of Border Patrol and OFO data. Specifically, we used Border Patrol time-in-custody data for Border Patrol apprehensions. We used a combination of OFO and Border Patrol data for OFO apprehensions of noncitizens at ports of entry, since OFO transferred these individuals to Border Patrol custody to complete a credible fear screening. We used unique apprehensions

²Border Patrol apprehends individuals between ports of entry, and OFO encounters individuals who arrive at ports of entry. For the purposes of this report, we use the term “apprehend” to describe both Border Patrol’s and OFO’s first interactions with individuals at the border.

³We included records for 110 noncitizens that Border Patrol data indicates were initially referred to USCIS under the programs, but were subsequently re-processed under other removal pathways, including Migrant Protection Protocols and Asylum Cooperative Agreements.

according to Border Patrol data, which included a universe of 5,174 apprehensions. We excluded from our time-in-custody analysis 109 records that had blank fields, data entry errors, or discrepancies between Border Patrol and OFO data. In addition, we used CBP data to determine the number of apprehensions by sector, as well as the characteristics, including the country of citizenship, age, and gender of individuals processed under the expedited fear screening programs (see app. III).

USCIS data. We analyzed record-level data from USCIS to determine the outcomes of credible fear screenings conducted under the expedited fear screening programs. We received original data from USCIS on May 8, 2020 and subsequently received corrected and updated subsets of data through August 11, 2020. Throughout this report, we refer to the date of the most recent data submission. We used “cases” rather than “individuals” as the unit of analysis for the USCIS data we reported because an individual may have been screened multiple times during the 6 month period these programs were in effect. We excluded four records provided by USCIS that we determined to be data-entry errors, and one record from our screening outcomes analysis because of a blank determination field.

EOIR data. To determine the outcomes of fear screenings conducted under the expedited fear screening programs, we analyzed two sets of record-level data from EOIR:

- First, we analyzed the outcomes of immigration judge reviews of negative USCIS credible fear determinations. To calculate EOIR processing times for immigration judge reviews under the expedited fear screening programs, we used the difference between the date EOIR received a Notice to Appear from DHS and the adjudication date recorded in EOIR’s data system. We excluded three records provided by EOIR because we were unable to reconcile these as expedited fear screening program records against the data sets provided by CBP and USCIS. We also found two records that had incorrect alien numbers, which we were able to resolve using CBP and USCIS records.⁴
- Second, we analyzed EOIR data on the status of any applications for relief or protection from removal filed before immigration courts (e.g., asylum, deferral or withholding of removal, or other, as

⁴An alien number is a unique number assigned to a noncitizen’s administrative file for tracking purposes.

appropriate). To calculate the number of applications for relief or protection from removal filed with EOIR immigration courts, we counted applications for multiple forms of relief or protection from removal filed by the same individual on the same day as one application, since most individuals applied for more than one form of relief or protection.

We received original data from EOIR on May 5, 2020 and subsequently received corrected and updated subsets of data through October 16, 2020. Throughout this report, we refer to the date of the most recent data submission.

ICE data. To determine the outcomes of individuals screened under the expedited fear screening programs, we reviewed record-level data from ICE on removals, detentions, and individuals who have been released from custody to await full removal proceedings before an immigration court. Specifically, using individual unique identifiers, ICE provided the status for each noncitizen included in our analysis of the expedited fear screening programs. ICE did not provide the status for three noncitizens included in our analysis because the individuals did not have cases in ICE's database. We received original data from ICE on July 15, 2020 and subsequently received corrected and updated subsets of data through September 25, 2020. Throughout this report, we refer to the date of the most recent data submission. For those who had positive fear determinations from USCIS, we analyzed ICE records to determine the custody status for individuals awaiting full removal proceedings. For those who had negative fear determinations from USCIS, we analyzed ICE records to determine the status of detention or removal from the U.S.

CBP initially maintained data on individuals processed under the expedited fear screening programs manually in spreadsheets before the agency updated its automated data systems of record to capture real-time data for these programs. Border Patrol officials said that the agency updated its automated data system in January 2020 to begin collecting more information on individuals processed under these pilot programs. Similarly, OFO officials said that the agency updated its automated data system to collect more information on individuals processed under the Humanitarian Asylum Review Process. Officials stated that some manual tracking remained in place in each sector as of February 2020 while Border Patrol officials worked to update its automated system with all cases dating back to the pilots' initiation and while agents were trained on the updates to the automated data system. To assess the reliability of the automated data we analyzed, we completed a number of steps, including

(1) comparing the universe of records for the expedited fear screening programs across CBP, USCIS, EOIR, and ICE, and working with each agency to reconcile any discrepancies we identified in the number of records and related outcomes; (2) reviewing the record-level data for any duplicative records, missing entries, or obvious errors; and (3) interviewing agency officials responsible for tracking and maintaining data on the status of cases processed under these programs about the steps they took to ensure the quality and reliability of the data maintained in the automated data systems. Specifically, Border Patrol officials told us that they worked with OFO and USCIS to reconcile discrepancies in records across these agencies' data systems to address any data quality issues they found. When reporting these data, we described relevant data using modifiers such as "at least" or "about" because of possible missing information or discrepancies. We determined these data were sufficiently reliable to describe the approximate number, outcomes, and characteristics of individuals processed for removal under the expedited fear screening programs.

We determined that the information and communication component of internal control was significant to this objective, along with the underlying principles that management should use quality information to achieve the entity's objectives, management should internally communicate the necessary quality information to achieve the entity's objectives, and management should externally communicate the necessary quality information to achieve the entity's objectives. We analyzed Border Patrol, OFO, USCIS, EOIR, and ICE data to determine the extent to which management uses quality information to achieve the entity's objectives. We also determined that the monitoring component of internal controls was significant to this objective, along with the underlying principle that management should evaluate and document internal control issues and determine appropriate corrective actions for internal control deficiencies on a timely basis.⁵ We assessed DHS and EOIR practices regarding Notices to Appear against these standards by reviewing the agency policies and procedures and obtaining information on such practices from DHS component and EOIR officials. We also assessed DHS's practices for filing Notices to Appear with immigration courts against relevant regulations.⁶

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

⁶See 8 C.F.R. § 1239.1(a).

**Appendix I: Objectives, Scope, and
Methodology**

We conducted this performance audit from November 2019 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

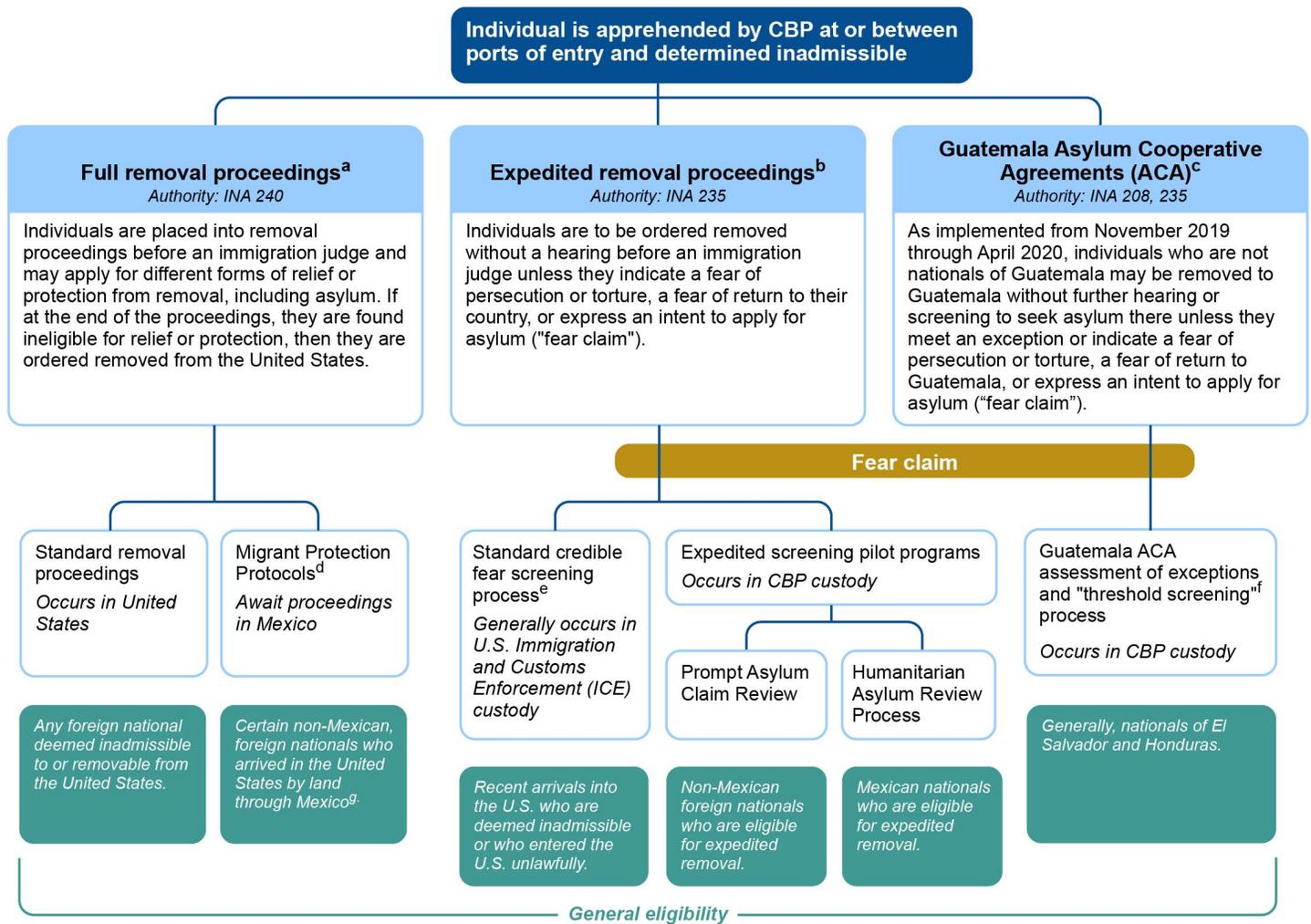
Appendix II: Information on Selected Department of Homeland Security Removal Pathways at the Southwest Border

This appendix presents information on selected removal pathways (different options for removal from the U.S.) for individuals apprehended by U.S. Customs and Border Protection (CBP) at or between ports of entry and determined to be inadmissible. The Prompt Asylum Claim Review and Humanitarian Asylum Review Process expedited screening programs are two of several potential removal pathways into which individuals may be placed, depending on various factors, including their nationality. These removal pathways depend, in part, on whether CBP places apprehended adults and family units into full or expedited removal proceedings.¹

¹For those placed into full removal proceedings, an immigration judge within the Department of Justice's Executive Office for Immigration Review adjudicates their removal proceedings. See 8 U.S.C. § 1229a. Noncitizens placed into expedited removal proceedings are to be ordered removed from the U.S. without further hearing before an immigration judge unless they indicate either (1) an intention to apply for asylum or (2) a fear of persecution or torture, or a fear of return to their country (referred to as a "fear claim" in Figure 7). See 8 U.S.C. § 1225(b); 8 C.F.R. § 208.30.

Appendix II: Information on Selected Department of Homeland Security Removal Pathways at the Southwest Border

Figure 7: Removal Pathways for Individuals Apprehended by U.S. Customs and Border Protection (CBP)



Source: GAO analysis of 8 U.S.C. §§ 1158, 1225(b) 1229a and 8 C.F.R. § 208.30, as amended, 84 Fed. Reg. 63,994 (Nov. 19, 2019), and DHS and DOJ documentation. | GAO-21-144

Note: In general, children that meet the definition of "unaccompanied alien child" are not eligible to be placed into the majority of the removal pathways included in Figure 7, including expedited removal, the Migrant Protection Protocols, and the Guatemala ACA. See 6 U.S.C. § 279(g)(2) (defining "unaccompanied alien child"); 69 Fed. Reg. 48,877-01 (Aug. 11, 2004). All references in this figure to the INA refer to the Immigration and Nationality Act (INA), as amended, which is generally codified in Title 8 of the U.S. Code.

^aSee 8 U.S.C. § 1229a (codifying section 240 of the INA as amended).

^bSee 8 U.S.C. § 1225(b) (codifying section 235 of the INA, as amended); See 69 Fed. Reg. 48,877-01 (Aug. 11, 2004); but see 84 Fed. Reg. 35,409 (July 23, 2019) (expanding expedited removal eligibility) and *Make the Road New York v. Wolf*, No. 19-02369 (D.C. Cir. Oct. 19, 2020) (amended complaint). The litigation challenging the expansion of expedited removal is ongoing as of October 2020.

^cSee 8 U.S.C. § 1158 (codifying section 208 of the INA, as amended); 8 U.S.C. § 1225(b) (codifying section 235 of the INA, as amended). Additionally, in December 2020, the Department of Homeland

**Appendix II: Information on Selected
Department of Homeland Security Removal
Pathways at the Southwest Border**

Security (DHS) announced that the U.S. and two countries, El Salvador and Honduras, were beginning implementation of Asylum Cooperative Agreements (ACA) between the U.S. and those two countries. Under those agreements, DHS stated that certain migrants requesting asylum or similar humanitarian protection at the U.S. border will be transferred to those countries to seek protection there.

^dDHS established the Migrant Protection Protocols in January 2019, citing the Secretary's authority under section INA section 235(b)(2)(C) (codified as amended at 8 U.S.C. § 1225(b)(2)(C)). Individuals placed into this program who express a fear of return to Mexico are referred to U.S. Citizenship and Immigration Services (USCIS) for an interview (referred to as a "non-refoulement" interview) and assessment. If USCIS determines it is more likely than not that the individual will be persecuted or tortured in Mexico, the individual is removed from the program and instead awaits proceedings in the U.S. As of October 2020, these protocols were in effect, but were under review by the U.S. Supreme Court, after being temporarily enjoined by a federal district court and the Court of Appeals for the Ninth Circuit in early 2019. See *Innovation Law Lab v. Wolf*, No. 19-00807 (N.D. Cal. Apr. 8, 2019) (order granting motion for preliminary injunction); *Innovation Law Lab v. Wolf*, No. 19-15716 (9th Cir. May 7, 2019 and Feb. 28, 2020) (order granting stay of district court ruling and opinion granting injunction) *Innovation Law Lab v. Wolf*, No. 19-1212 (S. Ct. May 7, 2020 and Oct. 19, 2020) (order granting stay of 9th Circuit ruling and granting petition for writ of certiorari).

^eSee 8 U.S.C. § 1225(b); 8 C.F.R. § 208.30.

^fUSCIS conducts a threshold screening to (1) verify certain aspects of CBP's determination that the individual is subject to the Guatemala ACA, (2) validate CBP's determination of exceptions, and (3) determine if a public interest exception applies. If an individual subject to the Guatemala ACA affirmatively expresses a fear of removal to Guatemala, the asylum officer will screen the individual to determine if he or she is more likely than not to be persecuted on account of a protected ground or tortured in Guatemala. Individuals who do not establish an exception or fear are to be removed to Guatemala. See 8 C.F.R. § 208.30(e)(7).

^gWhen initially implemented, the program was limited to non-Mexican nationals of Spanish-speaking countries. However, it has since been expanded to include nationals of Brazil, where the official language is Portuguese.

Appendix III: Data on Apprehensions and Characteristics of Noncitizens Processed Under Expedited Fear Screening Pilot Programs, October 2019 to March 2020

Table 1 indicates the apprehension location, by U.S. Border Patrol sector, of individuals processed under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process from October 2019 to mid-March 2020. U.S. Customs and Border Protection (CBP) apprehended most individuals processed under the programs in El Paso sector.

Table 1: Noncitizens Processed under Prompt Asylum Claim Review and Humanitarian Asylum Review Process, by Apprehension Location, October 2019 to mid-March 2020

U.S. Border Patrol Sector	Prompt Asylum Claim Review	Humanitarian Asylum Review Process	Expedited Fear Screening Programs Combined
Big Bend	5	0	5
Del Rio	17	0	17
El Centro	71	6	77
El Paso	1,609	1,340	2,949
Laredo	15	383	398
Rio Grande Valley	930	24	954
San Diego	81	59	140
Tucson	0	174	174
Yuma	393	114	507

Source: GAO analysis of U.S. Border Patrol and U.S. Citizenship and Immigration Services (USCIS) data. | GAO-21-144

Notes: We used U.S. Border Patrol data for both U.S. Border Patrol and Office of Field Operations apprehension locations, sorted by U.S. Border Patrol sector. Totals do not include records for 68 apprehended noncitizens that U.S. Border Patrol initially referred to USCIS under the programs and subsequently were adjusted to other removal pathways (different options for removal), including Migrant Protection Protocols and Asylum Cooperative Agreements. U.S. Border Patrol provided data as of July 16, 2020, the Office of Field Operations (OFO) as of June 30, 2020, and USCIS as of August 11, 2020. The Tucson sector has been subject to a preliminary injunction since November 2016 that generally required additional screening and processing for individuals detained in Border Patrol stations in the Tucson sector. See *Doe v. Johnson*, No. 15-00250 (D. Ariz. Nov. 18, 2016). In April 2020, the court in this case issued a permanent injunction. See *Doe v. Wolf*, No. 15-00250 (D.

**Appendix III: Data on Apprehensions and
Characteristics of Noncitizens Processed
Under Expedited Fear Screening Pilot
Programs, October 2019 to March 2020**

Ariz. Apr. 17, 2020). As such, U.S. Border Patrol did not implement the expedited fear screening programs in the Tucson sector. However, OFO officers in the Tucson field office identified Mexican nationals apprehended at ports of entry in the Tucson sector who were eligible for the Humanitarian Asylum Review Process, and transferred these individuals to U.S. Border Patrol custody to undergo a credible fear screening.

Table 2 shows the numbers of individuals processed by CBP and referred to U.S. Citizenship and Immigration Services (USCIS) for credible fear screenings under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, by country of citizenship. These data indicate the number of referrals each month from the programs' inception in October 2019 through their suspension due to the Coronavirus Disease 2019 in March 2020. During this period, most apprehended individuals processed under the programs were nationals of Mexico, followed by Guatemala.

Appendix III: Data on Apprehensions and Characteristics of Noncitizens Processed Under Expedited Fear Screening Pilot Programs, October 2019 to March 2020

Table 2: Noncitizens Processed and Referred for Credible Fear Screening under Prompt Asylum Claim Review and Humanitarian Asylum Review Process, by Country of Citizenship, October 2019 to mid-March 2020

Month Year	Prompt Asylum Claim Review				Humanitarian Asylum Review Process	Expedited Fear Screening Programs Combined
	Brazil	El Salvador	Guatemala	Honduras	Mexico	na
October 2019	0	44	90	0	21	155
November 2019	0	76	248	0	144	468
December 2019	0	131	398	126	232	887
January 2020	268	4	419	8	445	1,144
February 2020	285	15	506	7	639	1,452
March 2020	75	64	286	71	619	1,115

Source: GAO analysis of U.S. Border Patrol and U.S. Citizenship and Immigration Services (USCIS) data. | GAO-21-144

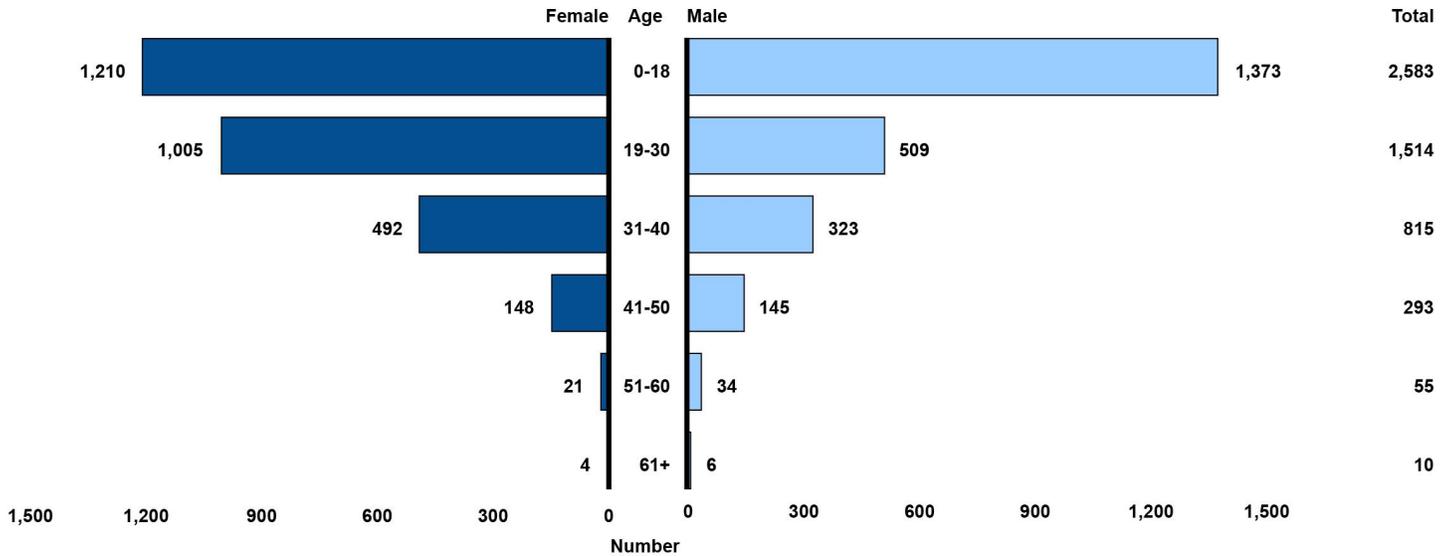
Notes: For month and year, we used the date U.S. Border Patrol referred an individual to USCIS under the programs, according to U.S. Border Patrol data. Totals do not include records for 68 apprehended noncitizens that U.S. Border Patrol initially referred to USCIS under the programs and subsequently were adjusted to other removal pathways (different options for removal), including Migrant Protection Protocols and Asylum Cooperative Agreements. U.S. Border Patrol provided data as of July 16, 2020 and USCIS as of August 11, 2020.

CBP data on the characteristics of individuals processed under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process indicate that the majority—about 92 percent—of individuals were family unit members (noncitizen children under 18 and their parents or legal guardians).¹ Figure 8 shows the ages and genders of individuals referred to USCIS for a credible fear screening under Prompt Asylum Claim Review and Humanitarian Asylum Review Process from October 2019 to mid-March 2020. Slightly more females were processed by CBP and referred to USCIS for credible fear screening under the programs (55 percent female and 45 percent male). About 49 percent of individuals processed and screened were 18 years of age or younger.

¹We previously reported that U.S. Border Patrol documents and data indicated that its agents had not accurately and consistently recorded family units. See [GAO-20-245](#).

Appendix III: Data on Apprehensions and Characteristics of Noncitizens Processed Under Expedited Fear Screening Pilot Programs, October 2019 to March 2020

Figure 8: Age and Gender of Noncitizens Processed and Referred for Credible Fear Screening under Prompt Asylum Claim Review and Humanitarian Asylum Review Process, October 2019 to mid-March 2020



Source: GAO analysis of U.S. Border Patrol and U.S. Citizenship and Immigration Services (USCIS) data. | GAO-21-144

Notes: Data shown do not include 19 individuals processed under Prompt Asylum Claim Review and Humanitarian Asylum Review Process for which U.S. Border Patrol and USCIS did not have a record of their gender. Of these individuals, fifteen were age 0-18, one was age 19-30, two were age 31-40, and one was age 41-50. U.S. Border Patrol provided data as of July 16, 2020 and USCIS as of August 11, 2020.

Appendix IV: Comments from the Department of Homeland Security

**Appendix IV: Comments from the Department
of Homeland Security**

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



December 29, 2020

Rebecca S. Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-21-144, "SOUTHWEST BORDER:
DHS and DOJ Have Implemented Expedited Credible Fear Screening Pilot
Programs, but Should Ensure Timely Data Entry"

Dear Ms. Gambler:

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

The Department is pleased to note GAO's recognition of the coordination among U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) to implement two pilot programs, the Prompt Asylum Claim Review (PACR) and the Humanitarian Asylum Review Process (HARP). The goal of these two programs, which operated between October 2019 and March 2020, was to expeditiously process certain credible fear claims along the Southwest Border, while also providing procedural protections required by the Immigration and Nationality Act of 1952 and its implementing regulations. In addition, DHS' expedited credible fear reviews were held in conjunction with efforts by the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) to expedite EOIR's role in this process. DHS remains committed to conducting credible fear interviews in a thorough and timely manner to fulfill international obligations and U.S. laws, while also ensuring that the U.S. border is secure.

Both PACR and HARP began as pilot programs in El Paso, Texas, and then expanded to various locations in Texas, Arizona, and California. Working with high-level guidance from DHS, USCIS, ICE, and CBP were able to develop processes that adapted to the

**Appendix IV: Comments from the Department
of Homeland Security**

operational needs at the local level. It is important to note that both programs, however, have been inactive since March 2020, as a result of the Department of Health and Human Services' Centers for Disease Control and Prevention's March 20, 2020, "Order Suspending Introduction Of Persons From A Country Where A Communicable Disease Exists," as amended and extended, and there are currently no plans for DHS to reinstitute either program.

The draft report contained two recommendations, including one for DHS with which the Department concurs. Attached find our detailed response to the recommendation. DHS previously submitted technical comments addressing accuracy, contextual, and editorial issues under a separate cover for GAO'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.

Sincerely,

JIM H

CRUMPACKER

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Digitally signed by JIM H
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Date: 2020.12.29 08:53:26
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Attachment

**Attachment: Management Response to Recommendation
Contained in GAO-21-144**

GAO recommended that the Secretary of Homeland Security, in consultation with the Director of EOIR:

Recommendation 1: Ensure that DHS components have filed Notices to Appear [NTA] with EOIR for all individuals who received positive determinations under the expedited fear screening program, as required.

Response: Concur. As noted in GAO's draft report, both USCIS and ICE had responsibility to file NTAs with the DOJ's EOIR for all individuals who received positive determinations under the expedited credible fear screening program. GAO's audit work, however, identified some individuals who received positive determinations but for whom EOIR's case management system indicated that an NTA had not been filed and entered into EOIR's case management system.

Within ICE, both the Enforcement and Removal Operations (ERO) and Office of the Principal Legal Advisor (OPLA) will continue to review the case files and ensure that, if appropriate, the NTAs are filed with EOIR as soon as possible, pending resource constraints. Similarly, within USCIS, the Asylum Division of the Refugee, Asylum, and International Operations Directorate (RAIO) will continue to review the case files and ensure that, if appropriate, the NTAs are filed with EOIR, pending resource constraints. Once ERO, OPLA, and RAIO have completed their reviews and filed NTAs for the appropriate cases, the updated information will be provided to EOIR to alert EOIR that this information should be in its data systems. Estimated Completion Date: March 31, 2021.

Appendix V: Comments from the Department of Justice



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Rebecca Gambler, Director
Homeland Security and Justice Team
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report, "SOUTHWEST BORDER: DHS and DOJ Have Implemented Expedited Credible Fear Screening Pilot Programs, but Should Ensure Timely Data Entry" (GAO-21-144SU).

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) appreciates the U.S. Government Accountability Office's (GAO) diligent work in conducting a review of Expedited Credible Fear Screening Pilot Programs implemented by the Department of Homeland Security (DHS) and subject to review by EOIR's immigration judges.

GAO's recommendation to EOIR states:

The Director of EOIR should ensure immigration court staff have entered into EOIR's case management system all Notices to Appear received from DHS, in a timely manner, as required, for individuals who received positive determinations under the expedited fear screening programs.

EOIR agrees that all Notices to Appear (NTAs) received from DHS should be entered into EOIR's case management system in a timely manner, and EOIR is currently doing so. Accordingly, although EOIR agrees with the principle expressed by the recommendation, EOIR believes its

present operational processes already incorporate that recommendation and have done so for some time. Further, to the extent that the recommendation is based on examples that are inaccurate, isolated, or beyond EOIR's control, EOIR does not concur with those underlying bases.

GAO bases this recommendation largely on two examples where NTAs were not found in EOIR's case management system. GAO's first example is as follows:

For about 630 of the approximately 1,210 individuals who received a positive fear determination and about 10 individuals who had a negative determination vacated by an immigration judge, EOIR data as of October 16, 2020, do not reflect that a Notice to Appear has been filed and entered into EOIR's case management system.

...

Based on our analysis of DHS and EOIR data, and through discussions with officials, we could not determine whether DHS components had not filed the Notices to Appear (NTA) for these individuals with EOIR or whether EOIR court staff had not yet entered the Notices to Appear into its case management system.

Draft Report at 28, 29.

EOIR can account only for NTAs that have been physically filed with it; NTAs that have been issued by DHS but not filed are beyond EOIR's control. GAO is correct when it states, "EOIR's policy requires that court staff enter Notices to Appear received from DHS into its case management system upon receipt." Draft Report at 29. Per regulation, every removal proceeding before EOIR is commenced by the filing of an NTA (or other charging document) with the immigration court. 8 CFR § 1003.14(a). EOIR cannot enter the NTAs until they are filed.

EOIR has checked with the immigration courts relevant to this example and confirmed that the associated NTAs have not been filed with EOIR. EOIR took several steps to make this confirmation. First, EOIR analyzed the data provided by GAO. Based on reports run by EOIR's Policy, Analysis, and Statistics Division, it was determined that out of the 1,209 cases on the list provided by GAO, 616 cases (NTAs) were not in the EOIR system. Next, to determine if the 616 NTAs were filed by DHS, in October 2020, EOIR's Deputy Chief Immigration Judges (DCIJ) contacted the immigration courts in relevant locations that would have received such NTAs to ascertain if there were any backlogs of NTAs that had been filed but not yet entered into EOIR's case management system. The immigration courts reported there were no backlogs at that time. At the direction of the new Chief Immigration Judge, the DCIJs had previously contacted the immigration courts in July 2020 to assess whether there were any backlog of NTAs that had been filed but not entered into the case management system. The Assistant Chief Immigration Judges (ACIJs) supervising these immigration courts confirmed that there were no backlogs in July. In short, EOIR has confirmed in both July and October 2020 that there are no backlogged NTAs in its immigration courts that have been filed but not entered into its case management system. Accordingly, EOIR believes that the NTAs identified by GAO are ones that have not been filed by DHS with an immigration court, rather than ones that have not been entered into EOIR's case management system.

EOIR also does not believe that GAO's second example supports a need for change beyond EOIR's current operational processes. GAO provides that its

review of EOIR data as of October 2020 indicates that for at least 30 records there were delays of up to 6 months between the dates DHS filed the Notices to Appear and the dates on which court staff entered them into EOIR's case management system.

Report at 30.

There is currently no backlog at EOIR of NTAs that have been filed relating to positive determinations under the expedited credible fear screening programs. GAO provided EOIR with the alien registration numbers for the 30 records it referenced. EOIR examined these 30 records and notes that most of them involve families. Consequently, the 30 records pertain only to 12 actual lead respondents; the remaining records are riders on the lead cases. Moreover, only three families out of all of the cases reviewed by GAO experienced a data entry delay of approximately six months, and all three occurred at one court. Out of all of the cases GAO reviewed, only nine isolated cases experienced a data entry delay greater than 25 days, and in most of those cases, the delays were due to operational disruptions caused by the COVID-19 pandemic. In short, the reference in the draft report to 30 records with delays of "up to" 6 months somewhat overstates the actual number of discrete cases at issue and the scope and nature of the delays. EOIR nevertheless appreciates GAO identifying these cases with delayed data entry, but it notes that a closer inspection of those cases shows that they are outliers and that there is no evidence of a systematic failure to timely enter NTAs.

EOIR fully agrees with GAO's concluding statement:

Filing Notices to Appear with EOIR for all individuals who received positive determinations under the expedited fear screening programs and ensuring court staff have entered them into EOIR's case management system in a timely manner, as required, would help ensure that removal proceedings move forward for these individuals.

Draft Report at 31. EOIR previously directed court personnel to ensure that all NTAs were timely entered into its case management system, and it expressly memorialized that policy in January 2020 in Policy Memorandum (PM) 20-07, *Implementation of Efficient Docketing Practices*. That PM requires the ACIJ and Court Administrator to "ensure that cases are docketed as expeditiously as possible upon the filing of the NTA," and assigns a three (for detained) and five (for non-detained) day deadline for EOIR to enter a NTA after it is filed by DHS. EOIR PM 20-07. EOIR court staff have been and are currently alert to PM 20-07 and strive for full compliance despite the staffing and operational challenges currently posed by the pandemic.

Appendix V: Comments from the Department of Justice

Thank you again for your review and for bringing these important issues to our attention. We appreciate the recommendation you have offered and are happy to reiterate that EOIR already follows it as part of the agency's standard procedures. We look forward to working with you again in the future.

Sincerely,

**JAMES
MCHENRY**

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MCHENRY
Date: 2020.12.28
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James R. McHenry III
Director

Attachment: EOIR Policy Memorandum 20-07

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca S. Gambler at (202) 512-8777, gablerr@gao.gov

Staff Acknowledgments

In addition to the contact name above, Kathryn Bernet (Assistant Director), Carissa Bryant (Analyst-In-Charge), Michele Fejfar, Heidi Nielson, Cristina Norland, and John Yee made key contributions to this report.

Appendix VII: Accessible Data

Data Tables

Accessible Data for Outcomes of Screenings Under Expedited Fear Screening Pilot Programs, October 2019 through March 2020 (as of August 11, 2020)

Category	Negative	Positive	Administrative closure (e.g., withdrawals)
Expedited Fear Screening Programs combines	69%	232%	9%
Prompt Asylum Claim Review	73%	18%	9%
Humanitarian Asylum Review Process	62%	30%	9%

Appendix VII: Accessible Data

Accessible Data for Figure 6: Outcomes of U.S. Citizenship and Immigration Services (USCIS) Credible Fear Screenings under the Prompt Asylum Claim Review and Humanitarian Asylum Review Process, October 2019 through March 2020

Category	Negative	Negative	Positive	Positive	Administrative closure^a	Administrative closure^a
Expedited Fear Screening Programs combined	3623	69%	2323	23%	1300	9%
Prompt Asylum Claim Review	1208	73%	581	18%	627	9%
Humanitarian Asylum Review Process	457	62%	277	30%	180	9%

Accessible Data for Figure 8: Age and Gender of Noncitizens Processed and Referred for Credible Fear Screening under Prompt Asylum Claim Review and Humanitarian Asylum Review Process, October 2019 to mid-March 2020

Age	Female	Male	Total
0-18	1210	1373	2583
19-30	1005	509	1514
31-40	492	323	815
41-50	148	154	293
51-60	21	34	55
61+	4	6	10

Agency Comment Letters

Accessible Text for Appendix IV: Comments from the Department of Homeland Security

Page 1

December 29, 2020

Rebecca S. Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW

Washington, DC 20548

Re: Management Response to Draft Report GAO-21-144, "SOUTHWEST BORDER: DHS and DOJ Have Implemented Expedited Credible Fear Screening Pilot Programs, but Should Ensure Timely Data Entry"

Dear Ms. Gambler:

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Page 2

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JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

Page 3

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Accessible Text for Appendix V: Comments from the Department of Justice

Page 1

Rebecca Gambler, Director
Homeland Security and Justice Team
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report, "SOUTHWEST BORDER: DHS and DOJ Have Implemented Expedited Credible Fear Screening Pilot Programs, but Should Ensure Timely Data Entry" (GAO- 21-144SU).

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recommendation is based on examples that are inaccurate, isolated, or beyond EOIR's control, EOIR does not concur with those underlying bases.

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Page 3

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Page 4

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Sincerely,

James R. McHenry III
Director

Attachment: EOIR Policy Memorandum 20-07

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