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## Fast-Track Asylum Found To Have Left Hundreds In Limbo

By **Asher Stockler**

Law360 (January 25, 2021, 8:22 PM EST) -- Two Trump-era pilot programs designed to speed up the asylum-seeking process left hundreds of cases unresolved and unopened in the immigration courts, according to a government watchdog report released Monday.

The U.S. Government Accountability Office said that as of October, more than half of the asylum-seekers who passed an initial screening in the programs did not have their full immigration cases initiated by the U.S. Department of Justice, which oversees the immigration courts. The two pilot tracks, one for Mexicans and the other for non-Mexican nationals, set expedited timetables for these screenings and allowed border officials to retain custody of asylum-seekers between October 2019 and March 2020.

The report said that government data "do not account for the status of removal proceedings for approximately 630 individuals who received positive determinations because there is no record" in the case management system that immigration officials filed the required paperwork.

Credible fear screenings are given to individuals in expedited removal proceedings who express an intention to seek asylum or a fear of returning to their home country because of likely persecution.

Full immigration proceedings are available to those who pass the credible fear interviews and are initiated through a Notice to Appear, which the U.S. Department of Homeland Security files with the immigration courts.

However, these notices were never entered into the immigration courts' case management system for more than half of the 1,220 asylum-seekers eligible for full proceedings, the GAO said.

The Executive Office for Immigration Review "could not account for the status of removal proceedings" for these individuals, the report found.

"We could not determine whether DHS components had not filed the Notices to Appear for these individuals with EOIR or whether EOIR court staff had not yet entered the Notices to Appear into its case management system," the GAO said.

Moreover, individuals processed through the pilot programs had significantly worse outcomes than other asylum-seekers. Nearly 70% of the program participants were found not to have credible fear of persecution following a screening with an asylum officer, the GAO said, noting that the programs were not necessarily representative of the asylum-seeking population at large.

In 2018, before various Trump administration policies reduced access to the asylum process, credible fear screenings yielded a positive result in 77% of cases, according to DHS statistics. By January 2020, that number had dropped to 33% for asylum-seekers overall.

In the pilot program for non-Mexican nationals, the grant rate was as low as 18%, the GAO said.

According to the report, clerical laxity by DHS substantially delayed immigration proceedings. The GAO identified at least 50 cases where DHS served the asylum-seeker with their Notice to Appear,

but did not lodge the notice with the immigration courts until five to nine months later.

And while EOIR said that "there was not a backlog" of notices waiting to be entered at the Otero immigration court in New Mexico — where most of the pilot program cases were processed — the GAO said it identified at least 30 cases where EOIR waited between 21 days and six months to input a notice that had been delivered by DHS.

The report recommended that DHS take care to file Notices to Appear and that EOIR staff lodge them promptly in the case management system.

Spokespersons for DHS and EOIR did not return requests for comment. DHS told GAO in December that there were "no plans for DHS to reinstitute either program."

"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," the department added.

EOIR told GAO that notices "issued by DHS but not filed [with EOIR] are beyond" its control.

"EOIR believes that the [notices] 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," the agency added.

--Editing by Jill Coffey.