

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAS AMERICAS IMMIGRANT
ADVOCACY CENTER, *et al.*,

Plaintiffs,

v.

CHAD WOLF,
in his official capacity, Acting Secretary of the
U.S. Department of Homeland Security, *et al.*,

Defendants.

No. 1:19-cv-3640 (RDM)

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65, Plaintiffs Las Americas, A.R.R.D., L.E.R.D., A.S.C.R., K.M.V., F.B.G.C., B.G.R., D.M.F.G., B.C.F.G., J.M.F.G., and S.F.G. hereby move for a preliminary injunction to enjoin Defendants Chad Wolf, sued in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; Kenneth T. Cuccinelli, sued in his official capacity as Acting Director of U.S. Citizenship and Immigration Services; Mark Morgan, sued in his official capacity as Acting Commissioner of U.S. Customs and Border Protection; Todd C. Owen, sued in his official capacity as Executive Assistant Commissioner of the Office of Field Operations for U.S. Customs and Border Protection; Hector A. Mancha Jr., sued in his official capacity as U.S. Customs and Border Protection Director of Field Operations, El Paso; Gloria Chavez, sued in her official capacity as Border Patrol Sector Chief, El Paso; William Barr, sued in his official capacity as Attorney General of the United States; U.S. Department of Homeland Security; U.S. Citizenship and Immigration Services; U.S. Customs and Border

Protection; and U.S. Department of Justice from implementing their policy of keeping individuals in CBP custody during their credible fear proceedings under the Prompt Asylum Claim Review (“PACR”) and Humanitarian Asylum Review Process (“HARP”) programs.

As further explained in the accompanying Memorandum, Defendants’ policy pursuant to the PACR and HARP programs has subjected and continues to subject Las Americas and the Individual Plaintiffs to irreparable harm. Due to Defendants’ new policy under PACR and HARP, the Individual Plaintiffs were unable to meaningfully access counsel during their credible fear proceedings or meaningfully access the credible fear process. Without any meaningful access to this process mandated by statute, they have been removed to the countries they fled. Las Americas is diverting significant resources to its efforts to represent asylum seekers detained in CBP custody on an ongoing basis yet is nevertheless losing opportunities to represent such individuals due to the obstacles posed by PACR and HARP.

For the reasons set forth in the accompanying Memorandum, Defendants’ new policy under PACR and HARP violates the Immigration and Nationality Act and implementing regulations, the Convention Against Torture and its implementing regulations, and the Administrative Procedure Act (“APA”). It violates statutory rights of access to counsel and the right to representation in agency proceedings under the APA. It is arbitrary and capricious and contrary to law in violation of the APA. It also violates the statutory right to apply for asylum and statutory and regulatory entitlements to statutory withholding of removal and relief from removal under the Convention Against Torture. A preliminary injunction is warranted to prevent ongoing severe and irreparable harm to Plaintiffs.

In support of this Motion, Plaintiffs rely upon the accompanying Memorandum, declarations, and exhibits. A proposed order is also provided for the Court.

STATEMENT PURSUANT TO LOCAL RULE 7(m)

Pursuant to Local Rule 7(m), on December 20, 2019, Plaintiffs' counsel conferred with Defendants' counsel by email to determine if Defendants would consent to the grant of a preliminary injunction. Defendants' counsel informed Plaintiffs' counsel that Defendants oppose this motion. In the same correspondence, Plaintiffs' counsel consented to 17 days for Defendants to file a response to this motion, and Defendants' counsel consented to 10 days for Plaintiffs' reply. The Parties will submit a joint motion to the Court as to this proposed schedule.

Dated: December 20, 2019

Respectfully submitted,

/s/ Arthur B. Spitzer

Andre Segura*, TX Bar No. 24107112
Thomas Buser-Clancy*, TX Bar No. 24078344
Kathryn Huddleston*, AZ Bar No. 033622
ACLU Foundation of Texas, Inc.
5225 Katy Freeway, Suite 350
Houston, TX 77007
Tel. (713) 942-8146
Fax: (713) 942-8966
asegura@aclutx.org
tbuser-clancy@aclutx.org
khuddleston@aclutx.org

Arthur B. Spitzer (D.C. Bar No. 235960)
Scott Michelman (D.C. Bar No. 1006945)
American Civil Liberties Union Foundation
of the District of Columbia
915 15th Street, NW - 2nd floor
Washington, DC 20005-2302
Tel. (202) 601-4266
aspitzer@acludc.org
smichelman@acludc.org

Bernardo Rafael Cruz*, TX Bar No. 24109774
Brantley Shaw Drake*, NY Bar No. 5407440
ACLU Foundation of Texas, Inc.
109 N. Oregon St., Suite 600
El Paso, TX 79901
Tel. (915) 533-8091
Fax: (915) 308-7188
brcruz@aclutx.org
sdrake@aclutx.org

Anand Balakrishnan,* CT Bar No. 430329
American Civil Liberties Union
Foundation, Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
Tel. (212) 549-2600
abalakrishnan@aclu.org

**Pro hac vice application pending*