

Fact Sheet: Presidential Proclamation to Suspend and Limit Entry and Joint DHS-DOJ Interim Final Rule to Restrict Asylum During High Encounters at the Southern Border

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En español

Today, the Biden-Harris Administration took decisive new action to strengthen border security, announcing a series of measures that restrict asylum eligibility, and significantly increase the consequences for those who enter without authorization across the southern border. These extraordinary steps, which will be in effect during times when high levels of encounters exceed our ability to deliver timely consequences, will make noncitizens who enter across the southern border ineligible for asylum with certain exceptions, raise the standard that is used to screen for certain protection claims, and speed up our ability to quickly remove those who do not qualify for protection.

These actions follow a series of steps that the Administration has taken over the past three years as it prepared for the end of the Title 42 public health Order, and since it was lifted last year, including surging personnel, infrastructure, and technology to the border, issuing the Circumvention of Lawful Pathways Rule, and referring record numbers of noncitizens into expedited removal. Over the past year, we have removed or returned more than three quarters of a million people, more than in any fiscal year since 2010. Despite these efforts, our outdated and broken immigration and asylum system, coupled with a lack of sufficient funding, make it impossible to quickly impose consequences on all noncitizens who cross irregularly and without a legal basis to remain in the United States.

The Administration has repeatedly called on Congress to provide the resources and legal authorities needed to secure our border. The measures announced today will better enable the Department to quickly remove individuals without a legal basis to remain in the United States, strengthening enforcement and change the calculus for those considering crossing our border irregularly. However, they are no substitute for Congressional action. We continue to call on Congress to provide the new tools and resources we have asked for to support the men and women on the frontlines.

Overview

President Biden issued a Presidential Proclamation to temporarily suspend the entry of noncitizens across the southern border. The Secretary of Homeland Security and the Attorney General also jointly issued an interim final rule that, consistent with the Proclamation, generally restricts asylum eligibility for those who irregularly enter across the southern border – including the Southwest land and the southern coastal borders. The rule also limits fear screenings to those who manifest a fear or express a desire to file for protection and heightens the screening standard for statutory withholding and claims under the Convention Against Torture. Taken together, these measures will significantly increase the speed and scope of consequences for those who cross our borders irregularly or who attempt to present themselves at Ports of Entry without authorization, allowing the Departments to more quickly remove individuals who do not establish a legal basis to remain in the United States. The restriction on asylum eligibility will be discontinued when encounters fall below certain levels but will come back into effect if encounters rise again.

Process

The rule makes three key changes to current processing under Title 8 immigration authorities during periods of high border encounters:

- First, noncitizens who cross the southern border unlawfully or without authorization will generally be ineligible for asylum, absent exceptionally

compelling circumstances and unless they are excepted by the Proclamation.

- Second, noncitizens who cross the southern border and are processed for expedited removal while the limitation is in effect will only be referred for a credible fear screening with an Asylum Officer if they manifest or express a fear of return to their country or country of removal, a fear of persecution or torture, or an intention to apply for asylum.
- Third, the U.S. will continue to adhere to its international obligations and commitments by screening individuals who manifest a fear as noted above and do not qualify for an exception to the Rule for withholding of removal and Convention Against Torture protections at a reasonable probability of persecution or torture standard – a new, substantially higher standard than is currently applied under the Circumvention of Lawful Pathways rule.

Like the Proclamation, the rule provides for an end to these enhanced measures following a sustained reduction in southern border encounters. Specifically, these measures are in effect until 14 calendar days after there has been a 7-consecutive-calendar-day average of less than 1,500 encounters between the ports of entry. The measures would again go into effect, or continue, as appropriate, when there has been a 7-consecutive-calendar-day average of 2,500 encounters or more.

Exceptions

During periods of high encounters, the Proclamation will apply across the southern border. Lawful permanent residents, unaccompanied children, victims of a severe form of trafficking, and other noncitizens with a valid visa or other lawful permission to enter the United States are excepted from the Proclamation.

In addition, the suspension and limitation on entry and rule will not apply to noncitizens who use a Secretary-approved process—such as the CBP One mobile app—to enter the United States at a port of entry in a safe and orderly manner or pursue another lawful pathway.

Noncitizens who cross the southern border and who are not excepted from the Proclamation will be ineligible for asylum unless exceptionally compelling circumstances exist, including if the noncitizen demonstrates that they or a member of their family with whom they are traveling:

- faced an acute medical emergency;
- faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
- satisfied the definition of “victim of a severe form of trafficking in persons” currently provided in 8 CFR 214.11.

Consequences

Noncitizens who are subject to the rule’s limitation on asylum eligibility and who manifest or express a fear of return to their country or country of removal, express a fear of persecution or torture or an intention to apply for asylum, but do not establish a reasonable probability of persecution or torture in the country of removal will be promptly removed.

Those ordered removed will be subject to at least a five-year bar to reentry and potential criminal prosecution.

The Proclamation and rule will significantly enhance the security of our border by increasing the Departments’ ability to impose swift consequences for individuals who cross the southern border irregularly and do not establish a legal basis to remain in the United States. Together, the Proclamation and rule make critical changes to how the Departments operate during times when encounters are at historically high levels—levels that, in the absence of these changes, undermine the government’s ability to process individuals through the expedited removal process. These changes will enable the Departments to quickly return those without a lawful basis to stay in the United States and thereby free up the asylum system for those with legitimate claims.

These extraordinary measures are a stop gap. Even with these measures in place, the Departments continue to lack the authorities and resources needed to adequately support the men and women on the frontlines. The Administration again calls on Congress to take up and pass the bipartisan reforms proposed in the Senate, which provide the new authorities, personnel, and resources that are needed to address the historic global migration that is impacting countries throughout the world, including our own. Until Congress does its part, we will continue to take any actions needed under current law and within existing resources to secure the border.

Topics

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