



U.S. Department of Homeland Security

FACT SHEET: Joint DHS-DOJ Final Rule Issued to Restrict Asylum Eligibility for Those Who Enter During High Encounters at the Southern Border

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President Biden's Presidential Proclamation and Joint DHS-DOJ Interim Final Rule Cut Encounters at Southwest Border by over 55%

Today, the Biden-Harris Administration took additional steps to implement the action [announced in June \(/news/2024/06/04/fact-sheet-presidential-proclamation-suspend-and-limit-entry-and-joint-dhs-doj\)](/news/2024/06/04/fact-sheet-presidential-proclamation-suspend-and-limit-entry-and-joint-dhs-doj), to strengthen border security. President Biden has issued an updated Proclamation to amend the June Proclamation that temporarily suspended and limited the entry of noncitizens across the southern border that will ensure these measures stay in place until we see a sustained decrease in unlawful entries at the border. The Secretary of Homeland Security and the Attorney General also announced a joint final rule today, following the June joint Interim Final Rule (IFR) that restricted asylum eligibility and significantly increased the government's ability to deliver timely consequences for those who cross unlawfully or arrive without authorization at the Southern border. As with the IFR, the Final Rule 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 without authorization 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.

Overview

Following the publication of the IFR, the regulatory process continued with a public comment period. The publication of the Final Rule comes after the Department of Homeland Security (DHS) and Department of Justice (DOJ) reviewed and responded to 1,067 comments received. Consistent with the amended Proclamation, the Final Rule differs from the IFR in two key ways.

- First, consistent with the amended Proclamation, the measures under the Final Rule will be discontinued only after the 7-consecutive-calendar-day average of encounters between the ports of entry falls below 1,500 encounters per day for 28 consecutive calendar days. This increase in the number of days ensures that the drop in encounters is a sustained decrease and not the result of a short-term change.
- Second, unaccompanied children from non-contiguous countries will be included in the calculation of encounters for purposes of determining consecutive calendar day averages. Under the IFR, only unaccompanied children from contiguous countries were counted; however, the Departments determined that so doing underestimates the impact that processing unaccompanied children has on system capacity. Unaccompanied children from all countries remain exempted from the Proclamation and its implementing measures under the Final Rule.

The exceptions in the June 4 IFR have not changed. 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 noncitizens with a valid visa or other lawful permission to enter the United States are excepted from the Proclamation and Final Rule.

DHS has taken these actions to address irregular migration while repeatedly calling on Congress to act on bipartisan legislative solutions that would provide DHS with additional resources to secure our borders, enforce our federal laws, and build safe, orderly, and humane processes. 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. In the year following the end of the Title 42 Order, we were able to return to full implementation of U.S. immigration laws under Title 8, removing or returning more than three quarters of a million people in that period, more than in any full fiscal year since 2010. Despite these efforts, our outdated and broken immigration and asylum system, coupled with a lack of sufficient funding, personnel, and resources make it difficult to quickly impose consequences on all noncitizens who cross unlawfully or without authorization and do not have a legal basis to remain in the United States.

Impacts

The actions announced by the President on June 4 have had a significant impact on reducing crossings between ports of entry at our Southern border. In the period between June 5, 2024, and August 31, 2024, average daily total encounters between ports of entry at the southern border under the Proclamation and IFR have fallen over 55%. The Border Patrol's 7-day average has decreased to below 1,800 encounters per day. These executive

actions have also led to a significant increase in the percentage of migrants removed from the United States, as explained in recent DHS Fact Sheets from [June \(/news/2024/06/25/fact-sheet-president-bidens-presidential-proclamation-and-joint-dhs-doj-interim\)](#) and [July \(/news/2024/07/24/fact-sheet-president-bidens-presidential-proclamation-and-joint-dhs-doj-interim\)](#).

From June 5, when the Proclamation and IFR went into effect, to August 31, DHS has processed significantly more people for expedited removal and substantially decreased the length of time it takes to get someone through the process. As a result, DHS repatriated a much higher percentage of the people it encounters than it was able to before.

- From June 5, 2024, to August 31, DHS has repatriated 70% of single adults and individuals in family units encountered by USBP, compared with 28% between May 2023 and May 2024.
- During this period, DHS removed or returned more than 121,000 individuals, including 119,000 specifically processed under the rule, with repatriations to more than 140 countries, while U.S. Immigration and Customs Enforcement (ICE) operated 398 international repatriation flights.
- In fact, total removals and returns over the past year exceed removals and returns in any fiscal year since 2010 and a majority of all southwest border encounters from fiscal year 2021 to fiscal year 2023 resulted in a removal, return, or expulsion. DHS removed or returned over three quarters of a million individuals in the 12 months after the end of the Title 42 public health Order, more than any full fiscal year since 2010. That included more removals to countries other than Mexico than in any prior year ever.
- DHS has more than tripled the percentage of noncitizens encountered between POEs who are processed for Expedited Removal while in U.S. Customs and Border Protection (CBP) or ICE custody. Expedited Removal processing was already at record levels prior to the Proclamation.
- DHS has also reduced the time it takes to remove individuals who do not establish a legal basis to remain in the United States by more than half from its historical average.
- DHS has decreased releases by over 80% of individuals encountered at the Southern border by U.S. Border Patrol (USBP) into removal proceedings.
- We continue to implement [measures \(https://www.ice.gov/news/releases/ice-announces-ongoing-work-optimize-enforcement-resources\)](https://www.ice.gov/news/releases/ice-announces-ongoing-work-optimize-enforcement-resources) to increase the overall capacity of enforcement resources — including repatriation flights and detention capacity. ICE is optimizing air charter contracts to maximize the number of repatriation flights operated each week.
- Over the last year, the agency has removed individuals to a range of South American and Eastern Hemisphere countries, including Colombia, Ecuador, Peru, Egypt, Mauritania, Senegal, Uzbekistan, India, and the People's Republic of China (PRC). Efforts to expand the number of removal flights continue with the expectation of additional flights added to the schedule in the coming weeks.

The Proclamation and Final Rule continue to 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.

Noncitizens in expedited removal who are subject to the rule's limitation on asylum eligibility and 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 for a subsequent unlawful reentry.

Individuals who take advantage of a safe, lawful, and orderly process, including individuals who use a Secretary-approved process like the CBP One™ mobile application's appointment scheduling function, remain eligible for asylum. CBP makes 1,450 appointments available per day at eight land ports of entry via this functionality. Those seeking an appointment submit certain information in advance of their arrival, streamlining their processing upon arrival at the port of entry. The appointment scheduling in CBP One™ is just one example of how this Administration has leveraged innovation and technology to carry out the largest expansion of lawful pathways and orderly processes in decades.

The Final Rule also seeks public comment on extending the applicability of the Circumvention of Lawful Pathways rule, which currently only applies to entries between May 11, 2023 and May 11, 2025, and expanding the geographic reach, from applying to noncitizens who enter the United States from Mexico at the southwest land border or adjacent coastal borders to include those who enter at a southern coastal land border irrespective of whether they traveled through a third country. No changes to the Circumvention of Lawful Pathways rule are being implemented at this time.

Despite 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 our personnel 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

[BORDER SECURITY \(/TOPICS/BORDER-SECURITY\)](#) [CITIZENSHIP AND IMMIGRATION SERVICES \(/TOPICS/CITIZENSHIP-AND-IMMIGRATION-SERVICES\)](#)

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