

FAQ: President Biden’s “Proclamation on Securing the Border” and Interim Final Rule

What does the new Biden 212(f) Rule do?

On June 4, the Biden Administration issued a new rule that suspends and limits the right to claim asylum for certain people who attempt to apply in between the Ports of Entry (POEs) in periods when there are seven consecutive days of encounters of 2500 people or more at the U.S./Mexico border.

The rule creates a higher standard of proof for asylum seekers who may enter during these emergency periods: they will receive a negative credible fear determination unless there is a *significant* possibility they could demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist. Additionally, individuals are required to proactively affirm their fear of persecution, as officers will no longer be required to ask them. Lastly, if such individuals ever apply for asylum again, they will be screened for a reasonable probability of persecution, a higher standard than previously applied.



The rule is an Interim Final Rule (IFR). What does that mean?

The rule goes into effect on June 5, 2024. The federal government will solicit comments on the rule but it does not have to take these comments into account.

What is the “trigger” in the rule for implementing the new criteria to those in between the POEs?

Seven consecutive days of 2500 or more average encounters at the U.S./Mexico border daily.

Once the “trigger” number of 2500 encounters is reached, under the new rule, how can the Administration reinstate regular asylum processing?

The government can lift the emergency limitation 14 days after the conclusion of a seven-day period in which an average of 1,500 people or fewer are apprehended per day between ports of entry, accordingly, it must remain in place for a minimum of 21 days. Furthermore, because the emergency asylum limits are automatically retriggered after the seven-day average exceeds 2,500, it could be reinstated during the 14-day waiting period.

Who does the rule apply to?

It applies to people who attempt to cross in between the POEs and claim asylum.

Who is exempt from this rule?

Trafficking victims, individuals with a valid visa, lawful permanent residents, unaccompanied children and individuals who present at a POE are exempt. There are also two other individual exceptions based on parole conditions and operational considerations.

Have other Administrations attempted to do this in the past?

Yes. President Trump relied on INA 212(f) to implement broad entry restrictions to the United States, including various versions of what is commonly known as the “Muslim Ban”. The first two versions of the Muslim Ban were challenged in court and struck down. The Supreme Court allowed a third version to stand in *Trump v. Hawaii* (2018). President Trump also used 212(f) to suspend the entry of noncitizens between ports of entry across the U.S./Mexico border.

How will this rule be implemented?

It will be implemented on June 5, 2024, but will likely face numerous legal challenges like other Presidential uses of 212(f) authority have faced. It also is important to note that no additional funding has been given to DHS to implement this regulation.

What is the consequence to individuals who are impacted by this rule? What hardships will they face?

The rule endangers prospective asylum seekers at the U.S./Mexico border who will likely face severe humanitarian consequences including exposure to great danger. Once the restriction is triggered, migrants will likely continue coming to the U.S./Mexico border but may end up waiting in Mexico or in a CBP processing facility. Current encampments on the Mexico-side of the border have extensive documented crime, extortion, violence, and rampant health issues due to harsh environmental elements and lack of sanitation. People waiting in unsafe conditions will be an easy target for cartel expansion and exacerbate crime and fuel more narcotics smuggling.

Are there solutions to reform our immigration system that are not as harmful to people seeking asylum?

Yes. First, Congress should act in a bipartisan manner to reform our immigration system. Second, instead of focusing solely on administrative actions that curtail asylum, the Biden Administration should look to implement a holistic policy which includes increasing legal pathways, such as guestworker and family reunification programs, increase funding to DHS, encouraging more protection partnership work in the region, such as its Safe Mobility Offices, and cracking down on trafficking operations.