

Biden Administration Issues New Asylum Restrictions

New rule would restrict ability of aliens to request asylum at the border or enter the country without first asking for asylum.
by Christopher Hazlehurst, J.D.

QUEENS, NEW YORK, UNITED STATES, March 14, 2023 /EINPresswire.com/ -- Under new immigration rules announced by the Biden Administration, tens of thousands of migrants who cross through Mexico to seek safety in the United States will be summarily denied entry. The new policy has been decried by immigration and civil rights advocates as regressive and reminiscent of the strict rules imposed by the Trump Administration.

According to the new policy, set to go into effect this May, non-citizens cannot apply for asylum in the United States unless they have exhausted other options on the way to the nation's border. Per the text, the rule will "encourage migrants to avail themselves of lawful, safe, and orderly pathways into the United States, or otherwise to seek asylum or other protection in countries through which they travel, thereby reducing reliance on human smuggling networks that exploit migrants for financial gain." The rule would expire two years after going into effect.

Generally, the rule requires any person seeking asylum at the border to first apply for asylum in the countries they pass through on the way to the border. In practice, that means that anyone not originating in Mexico must attempt to seek and be denied asylum in at least one country they cross, including Mexico, before applying for asylum in the U.S. Applicants who arrive at the border without having been denied elsewhere will be presumed ineligible for asylum, unless they demonstrate "exceptionally compelling circumstances," such as a medical emergency.

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Queens immigration attorney Scott Messinger

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Historically, non-citizens could enter the country and then apply for asylum, a step that is often necessary to avoid violence and persecution outside the country. When the new rule goes into effect, applicants who originally entered the country unlawfully would be presumed ineligible for asylum. Immigration officials will have grounds to quickly reject and deport asylum-seekers who failed to make an immigration appointment before arrival.

The new rule comes as the Title 42 ban on asylum is set to expire. The Trump Administration relied on Title 42’s emergency authorization power to summarily close the border to all asylum-seekers, using the COVID-19 pandemic as a pretext. Although the former White House asserted the measure was necessary to protect public health, officials in the Centers for Disease Control and Prevention opposed the policy.

While campaigning, then-candidate Biden promised to restore a more humane asylum program. To the disappointment of many, President Biden continued the Title 42 action and even expanded its purview. The authority to invoke Title 42 was based on the existence of a “national emergency” connected to the coronavirus pandemic. Now that the President has declared the national emergency will officially end on May 11, the administration is looking for other ways to stem the tide of immigration.

There is reason to believe actions such as the current move could face opposition if challenged in the courts. New York-based immigration attorney [Scott Messinger](#) points out that the United States is under an obligation as part of the United Nations and international law to accept those seeking protection from persecution and not return refugees to a country where they would face persecution. “Restrictive laws like these are often attacked and stayed under those obligations,” Messinger explains.

The administration defends the policy as necessary to prepare for an anticipated immigration surge following the end of the national health emergency. Per the Department of Homeland Security’s proposal, without such a measure, “the number of migrants expected to travel without authorization to the United States is expected to increase significantly, to a level that risks undermining the Departments’ continued ability to safely, effectively, and humanely enforce and administer U.S. immigration law, including the asylum system, in the face of exceptionally challenging circumstances.”

Immigration advocates are less than pleased with the administration’s direction. Krish O’Mara Vignarajah, President and CEO of Lutheran Immigration and Refugee Service, issued a statement calling the rule a resurrection of “one of the most harmful and illegal anti-asylum policies of the Trump administration.” The statement continued, “Requiring persecuted people to first seek protection in countries with no functioning asylum systems themselves is a ludicrous and life-

threatening proposal.”

Attorney Messinger adds that laws like these discriminate against asylum seekers from Central and South America versus aliens from other countries who would present themselves at other points of entry. “Aliens entering the U.S. legally through a port of entry would still be able to apply for asylum,” he says, “so this type of law unfairly prohibits Central and South Americans and those from other third-world countries from applying.”

The Notice of Proposed Rulemaking [“Circumvention of Lawful Pathways”](#) can be found in the Federal Register, where it was published on February 23. The 30-day period for public comment on the proposed rule closes on March 27.

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