

# Federal Judge Strikes Down Biden's Asylum Policy, yet Policy to Remain in Effect Pending Appeal

*Judge rules administration failed to follow required procedures in rule affecting migrants crossing border from Mexico for asylum. by Christopher Hazlehurst*

NEW YORK, NEW YORK, UNITED STATES, August 11, 2023 /EINPresswire.com/ -- A federal court struck down the Biden administration's controversial policy limiting who may be considered for asylum in the United States. The court in *East Bay Sanctuary Covenant v. Joseph R. Biden* (case No. 18-cv-06810-JST) found that the administration had violated the Administrative Procedure Act by issuing the new rule without proper time for public notice and comment. The so-called asylum ban will remain in effect while the case is heard on appeal.

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*Scott Messinger, Queens, NY  
Immigration Attorney*

The ruling cripples an enforcement tool implemented by the administration to curb a feared influx of migrants at

the border following the cessation of COVID-era immigration restrictions. Pursuant to the policy, most people who arrive at the U.S.-Mexico border are disqualified from applying for asylum unless they first sought protection in another country they passed through on their way or secured an immigration appointment online ahead of time. The rule does not apply to children traveling alone.

In practice, the policy prevents any migrant from a country other than Mexico to apply for asylum unless they were already denied asylum by another country, they obtain an appointment through a flawed government mobile application, or they qualify for one of a few narrow exceptions. The policy upends decades-old protocols that allowed migrants fleeing persecution to enter the country seeking safe haven and then apply for asylum.

Asylum and civil rights advocates criticized President Biden as essentially re-issuing the draconian immigration rules enacted under then-President Trump. Judge Jon S. Tigar, writing for the Northern District of California, echoed this view in his opinion. He referred to his own decision in 2019 striking down a similar policy under the Trump administration. Although Biden

administration officials have rejected comparisons to the former president's policies, the court found little to distinguish the two.

New York immigration attorney Scott Messenger of [Queens Immigration Law](#) sees similarities but also differences between the policies set out in the two presidential administrations. "Trump's policy was justified on the bases of health concerns arising out of COVID," says Messenger. "Biden, meanwhile, is trying to find some working policy post-COVID, but it is almost impossible to process the sheer numbers of people seeking entry at border check points." Messenger also points out that the Trump administration was holding many more border crossers in custody. In contrast, "Biden, for the most part, is releasing aliens and allowing them to file for asylum on their own," Messenger says.



Queens immigration attorney Scott Messenger

Implementation of the policy has also been plagued with technical issues. The Customs and Border Patrol app has been overloaded since its inception. Tens of thousands of asylum-seekers are stuck in Mexican border towns trying unsuccessfully to book an appointment through the CBP app while actively fleeing violence and persecution in their home countries. Attorney Messenger also notes that the scheduling app has proven to be largely ineffective.

As explained by the court, migrants stuck in Mexico waiting for an adjudication "are at serious risk of violence," including kidnapping, human trafficking, and torture. American Civil Liberties Union attorney Katrina Eiland called the asylum ban "cruel and ineffective," betraying the "promise of America" as a "beacon of freedom and hope." Eiland argued the case challenging the policy.

The President's opponents from the other side of the aisle have also criticized the policy. They contend that the new rules are too lenient, arguing the CBP app actually encourages illegal immigration by issuing appointments without first determining whether the applicant has legal grounds to remain in the country.

In practice, the number of border crossings dropped precipitously following the implementation of the Biden administration's new immigration policies.

Immigration attorney Messinger acknowledges the difficulty in coming up with an adequate solution for the border that balances security interests while also treating asylum seekers humanely. As Messinger points out, "Illegal entry into the US is not a bar against applying for asylum. Aliens are required to file an application for asylum within one year of their entry into the US." For many, if not most migrants, this choice might be their only path if their goal is to reach the United States. "Most asylum seekers are unable to obtain visas to enter the country legally," Messinger explains. "Some are truly forced to flee their home countries and have no other choice."

Judge Tigar put his decision striking down the rule on hold in order to give the administration time to file an appeal. The Ninth Circuit Court of Appeals determined that the district court's order should be stayed and the asylum ban should remain in effect pending appeal, although they put the parties on an expedited briefing schedule.

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