



## Biden’s Proposal to Restrict Asylum and Fix His Own Border Crisis

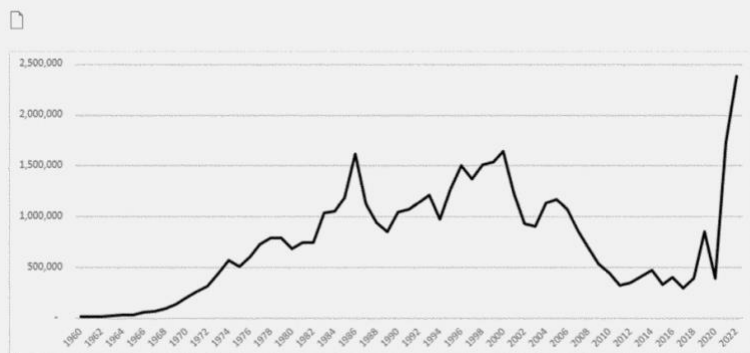
This week, the Department of Homeland Security (DHS) and Department of Justice (DOJ) issued a proposed rule that seeks to amend the asylum process for people who enter the country illegally at the southern border. The proposed rule, entitled “[Circumvention of Legal Pathways](#),” is intended to reduce the anticipated migrant surge that will take place when the President terminates the public health emergency declaration on May 11. At that time, border officials will no longer be able to use President Trump’s successful Title 42 authorization to expel migrants at the border, which was originally invoked to limit the spread of Covid-19.

The Biden administration is issuing the rule in an attempt to cover up the catastrophic impact of his deliberate and consistent implementation of open borders policies, which have created a crisis of historic proportions at the southern border. The introduction of the rule acknowledges this more subtly, stating the rule “is justified in light of the migration patterns witnessed in late November and December of 2022 and the concern that the possibility of a surge in irregular migration upon, or in anticipation of, the eventual lifting of the Title 42 public health Order.” The administration hopes that the issuance of this new 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 Justification

The proposed rule lays out a number of reasons why the Biden administration must take this measure of putting conditions on asylum, almost as if they are trying to appeal to the open border advocates who unabashedly oppose any border security or asylum restrictions. The rule cites recent changes in demographics and drastic surges in migration, highlighting how border encounters have dramatically increased since President Biden took office in January of 2021. These migratory flows, it states, have affected every country throughout the Western Hemisphere.

**Figure 1: SWB U.S. Border Patrol Encounters, FY 1960-FY 2022**



For once, the administration cites the cost of illegal immigration as another justification for the rule, openly recognizing that an insecure border is draining taxpayers. The rule acknowledges that “DHS operations are subject to significant resource and capacity constraints” and that “the impact has been particularly acute in certain border sectors.” It also points out the impact illegal immigration has had on taxpayer-funded agencies, including Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and the Federal Emergency Management Agency (FEMA). It goes on to note that the increased encounters of illegal aliens at the southern border also place additional pressures on states, local communities, and nongovernmental organization (NGO) partners at the border and in the interior of the country. That crisis is about to get a whole lot worse when Title 42 is canceled, it notes, and an estimated 11,000-13,000 illegal migrants are expected to be encountered every day.

In a remarkable admission, the Biden Department of Homeland Security also points to asylum fraud as a justification of the rule. It concedes that the overwhelming majority of migrants pouring across our southern border will never get asylum and that the burden they place on the system impedes the ability of truly deserving applicants to get protection from persecution.

### **The Rule**

In plain terms, the rule places conditions, albeit weak and ineffective, on illegal immigrants who enter the country and immediately seek asylum to remain in the country. It prohibits people from applying for asylum if they have traveled through several countries and did not seek asylum in those safe countries before arriving in the United States.

Specifically, the rule creates a rebuttable presumption that a person is ineligible for asylum in the United States if they enter without proper documentation. Importantly, this rebuttable presumption has several key exceptions. It will not apply to illegal aliens if:

- 1) the alien sought asylum or other protection in a country through which they traveled and received a final decision denying the application;
- 2) the alien applied and was approved to travel to the U.S. through a DHS-approved parole process; or
- 3) the alien used the CBP mobile app and presented at the point of entry at a scheduled time -- or demonstrated that the mechanism for scheduling was not possible to access or use.

While it may appear, on the face, that the rule limits the ability of illegal immigrants to claim asylum, it may not impact many people. That is because, in part, nearly all illegal aliens have access to the CBP One mobile app, a free, publicly available application that can be downloaded on personal phones, and will inevitably submit a request for the so-called parole process that the Biden administration illegally created. If the illegal immigrant also claims that the app is not accessible, they can get around the rule. In fact, the rule states, “The Departments also have proposed to address those who nonetheless continue to have access concerns, by excepting from the rebuttable presumption individuals who arrive at ports of entry without a pre-scheduled time and place if the noncitizen demonstrates by a preponderance of the evidence that it was not possible to access or use the CBP One app due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle.”

Even the exceptions to the presumption have exceptions. The rule also states that the “presumption could be rebutted, and would necessarily be rebutted if, at the time of entry, the noncitizen or a member of the noncitizen's family had 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” provided in [8 CFR 214.11](#). The presumption also would be rebutted in other exceptionally compelling circumstances, as the adjudicators may determine in the sound exercise of the

judgment permitted to them under the proposed rule.” This language, in particular, opens the door to creating an exception for any reason.

## **Conclusion**

[Federal law](#) expressly authorizes the Secretary of Homeland Security to place “limitations and conditions...under which an alien shall be ineligible for asylum.” In a surprising move, the Biden administration is using the same defense used by the Trump administration to place conditions on asylum. But, the similarities stop there – this rule has many exceptions that nullify the intent.

The real objective of this proposed rule is not to enact true border security measures or to end large-scale asylum abuse, but rather to cover up the extent of the crisis so that it can continue implementing open border policies. The only real restriction the rule places on asylum-seekers, the overwhelming majority of whom are unfounded or false claims, is that they must now make an appointment, using an official mobile app, to claim asylum at a port of entry. Even this requirement, however, is swallowed up with open-ended exceptions. Moreover, the rule is merely temporary in nature (it is set to sunset automatically) and only applies to the southern border, not the northern.

The 153-page proposed rule is open for public comment for 30 days; however, the administration said it “may conclude that it is necessary to shorten or forgo the standard 30-day delay in the final rule's effective date.”