

Circumvention of Lawful Pathways Final Rule

Summary

The Circumventing Lawful Pathways (CLPFR) applies to entries between May 11, 2023 and May 11, 2025 who entered by crossing the US/Mexico border or adjacent coastal borders who traveled through a third country (so all other than Mexicans). Exceptions being:

(1) availed themselves of an existing lawful process,

(2) presented at a port of entry at a pre-scheduled time using the CBP One app, or

(3) been denied asylum in a third country through which they traveled, are presumed ineligible for asylum unless they meet certain limited exceptions.

The rule applies to anyone who enters the United States between May 11, 2023, and May 11, 2025, including minors traveling with their parents.

Exceptions

Noncitizens who cross the southwest land border or adjacent coastal borders of the United States without authorization after traveling through a third country will be presumed ineligible for asylum unless they, or a member of their family with whom they are traveling, meet one of three exceptions:

- They used the CBP One app to obtain the vetting and placed stamps in their DHS passport of entry without using the CBP One app and Unit established that it was not possible to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or *

Unaccompanied children are exempted from the rebuttable presumption.

Rebutting the Presumption

Noncitizens can rebut the presumption of asylum ineligibility in exceptionally compelling circumstances, including if they demonstrate that, at the time of their unauthorized entry, they or a member of their family with whom they were traveling:

- Faced an acute medical emergency, or a claimant who is subject to an imminent threat of rape, kidnapping, torture, or

Process

Pursuant to the Immigration and Nationality Act, noncitizens who attempt to enter the United States without authorization and cannot establish a legal basis to remain in the United States may be subject to expedited removal. The rebuttable presumption established by the final rule would be evaluated by an asylum officer as part of the credible fear interview, subject to review by an immigration judge.

- If an asylum officer determines that the noncitizen is not subject to, is excepted from, or has rebutted the presumption of asylum ineligibility, the asylum officer's credible fear determination would follow existing procedures, including
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The rebuttable presumption will apply in expedited removal proceedings, as well as to asylum applications affirmatively filed with the Asylum Office or filed in immigration court proceedings as a defense to removal.

To avoid separating members of a family traveling together, the final rule establishes that if one family member is exempted from or rebuts the presumption, all family members will be similarly treated.

Consequences

Noncitizens who are subject to the rebuttable presumption, do not rebut the presumption, and do not establish a reasonable fear 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 if they subsequently re-enter without authorization. Those ordered removed also will be ineligible for the parole processes available to nationals of Cuba, Haiti, Nicaragua, and Venezuela.

Rescission of the Transit Ban and Entry Ban

The Departments are also rescinding the Trump-era transit ban and entry ban, which - unlike this new final rule - imposed categorical bars on eligibility for asylum and thus conflict with the approach taken in this final rule.

Time-limited

The final rule is an emergency measure that is intended to respond to the elevated levels of encounters expected after the lifting of the Title 42 Order. As such, it is designed to be temporary in duration, applying to those who enter the United States at the southwest land border and adjacent coastal borders during the 24-month period following the rule's effective date and subsequent to the lifting of the Title 42 order. The rule's presumption will continue to apply to these noncitizens after the end of that 24-month period.

Changes from Notice of Proposed Rulemaking

The final rule incorporates a small number of changes from the proposed rule that are responsive to comments received. These changes do not alter the purpose or structure of the rule. The changes from the proposed rule are:

- The NPRM proposed that the presumption of eligibility to apply for asylum in the United States applies to all individuals who are not citizens or lawful permanent residents of the United States and who are not inadmissible under the Immigration and Nationality Act. The final rule clarifies that the presumption of eligibility to apply for asylum in the United States applies to all individuals who are not citizens or lawful permanent residents of the United States and who are not inadmissible under the Immigration and Nationality Act, regardless of whether they are currently in the United States or have been removed from the United States. The final rule also clarifies that the presumption of eligibility to apply for asylum in the United States applies to all individuals who are not citizens or lawful permanent residents of the United States and who are not inadmissible under the Immigration and Nationality Act, regardless of whether they are currently in the United States or have been removed from the United States. The final rule also clarifies that the presumption of eligibility to apply for asylum in the United States applies to all individuals who are not citizens or lawful permanent residents of the United States and who are not inadmissible under the Immigration and Nationality Act, regardless of whether they are currently in the United States or have been removed from the United States.

The following final

rule also includes a few other clarifications and non-substantive changes.

PRACTICE ADVISORIES

<https://www.ilrc.org/sites/default/files/2023-10/How%20the%20E2%80%9CLawful%20Pathways%20E2%80%9D%20Asylum%20Ban%20Impacts%20Children%20%26%20Youth.pdf>

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