

# Restrictions on Asylum

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## Agenda

1. Asylum Restrictions Overview (CLP & FR)
2. Trends in Expedited Removal
3. Survey: What are you seeing in your areas?
4. J.O.P. Settlement – UACs
5. Case law updates



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# Circumventing Lawful Pathways

Effective May 11, 2023 – May 11, 2025 (post-Title 42)

- Creates bifurcated system for seeking asylum
  - Enter through “lawful pathway” (i.e. parole- CHNV countries, visa holders, CBP One) or
  - Enter without inspection (river/desert) or go to POE without an appointment
- If you do not use lawful pathway → presumption not eligible for asylum (may be eligible for lesser form of protection)
- Applies to all parts of the asylum process (credible fear interviews, affirmative asylum interviews, removal proceedings with IJ)

# Final Rule on "Securing the Border"

Effective October 1, 2024, modifying the June 5, 2024, Interim Final Rule

- Triggered when there's a "seven-consecutive calendar day average of 2,500 encounters or more between ports of entry and will continue until **28 days** after there is a seven-consecutive day average under 1,500"
- Unaccompanied children, not counted under the IFR, are now included
- Sets new, higher legal standard of "reasonable probability" for people to qualify for WOR or CAT
- DHS no longer asks about fear – must "manifest" fear, i.e., the "shout test"
- Individuals given **4 hours** to consult with counsel before the initial fear screening

# "Securing the Border" Exceptions

Rule categorically excludes those who cross between POEs from asylum with limited exceptions:

- LPRs or non-citizens with valid visas
- Unaccompanied children
- People who use the CBP One App at the POE
- People demonstrating "exceptionally compelling circumstances"
  - acute medical emergency
  - imminent and extreme threat to life or safety (rape, kidnapping, torture or murder);
  - victim of severe form of trafficking

## Comparing CLP and New Asylum Regulations

### CLP

- May 11, 2023 – May 11, 2025
- Exception for Mexican nationals, UCs and those who can show inability to use CBP One, and individuals who applied for and were denied asylum in a transit country
- CFI standard = "reasonable possibility"
- Rule is applied by asylum officers and/or IJs during expedited removal, and affirmative and defensive asylum applications

### Securing the Border

- Triggered by number of daily encounters
- Exceptions for UCs, those who can show "exceptionally compelling circumstances for entry"
- CFI standard = "reasonable probability"
- Once triggered, CBP will apply the rule at the border to determine whether someone is exempt from the suspension of entry. Asylum officers will have to determine if an EWI entrant is subject to the rule based on date of entry.

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First appeared as part of the conference materials for the  
48<sup>th</sup> Annual Conference on Immigration and Nationality Law session  
"Asylum Access"