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# Asylum Law Updates

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## Circumventing Lawful Pathways (aka Asylum Ban 3.0)

- Published May 16, 2023 (post-Title 42)
- Creates bifurcated system for seeking asylum
  - Enter through "lawful pathway" (i.e. parole- CHNV countries, visa holders, CBP One)
  - Enter EWI, present at POE without an appointment
- If you do not use lawful pathway → not eligible for asylum
  - Still eligible for withholding of removal, CAT
- Applies to all parts of the asylum process (CFIs, affirmative asylum interviews, removal proceedings with IJ)
- Does *not* apply to Mexican nationals, unaccompanied children

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## Exceptions to the rule

1. Person applied for asylum in a different country and their application was denied (not just that they abandoned the application)
2. Person can show, by a preponderance of the evidence, that it was not possible to access or use the CBP One App due to language barriers, illiteracy, significant technical failure, or other ongoing and serious obstacles



Las Americas's Juarez office helping asylum seekers navigate the CBP One App

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## Rebutting the presumption of asylum ineligibility

- Acute medical emergency
- Imminent and extreme threats
- Victim of a severe form of trafficking (broad!)
  - Sex trafficking
  - Labor trafficking
- Exceptionally compelling circumstances exist
  - ??????

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# Navigating the asylum ban

1. Does the ban apply to my client?
  - a. If client entered through a “lawful pathway” (i.e. visa holder, CBP One appointment, parole)
  - b. If client is an unaccompanied child or Mexican national
2. Does client fall under an exception to the ban?
  - a. Apply for and receive negative adjudication on asylum app in 3rd country?
  - b. Not possible to use CBP One?
3. Can client rebut the presumption?
  - a. Trafficking
  - b. Medical emergency
  - c. Imminent and extreme threats
  - d. Other exceptional circumstances

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## But wait, there's more!

- If one member of a “family group” that travels together is not subject to the asylum ban, then none of the members of the family should be subject to the ban.
- This applies during the credible fear screening process- the whole family needs to be screened through the credible fear, rather than the heightened “reasonable fear” standard. 8 CFR §§ 208.33(a)(2)(ii); 1208.33(a)(2)(ii).



<https://immigrationimpact.com/2023/02/22/steps-to-seek-asylum-biden-transit-ban/>

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47<sup>th</sup> Annual Conference on Immigration and Nationality Law session  
"Asylum Updates"