

The Asylum Ban: One Year On

May 14, 2024

On May 11, 2023, the Biden administration ended its Title 42 expulsion policy and implemented a new rule designed to curtail asylum access at the southern border. The Circumvention of Lawful Pathways Rule, more accurately dubbed the “asylum ban” by advocates, created a “rebuttable presumption” of asylum ineligibility with very limited exceptions. The ban bars asylum for anyone who passes through additional countries en route to the border and does not apply for and receive a denial of asylum in at least one of them.

Securing an advance appointment via the government’s CBP One smartphone app is the primary mechanism by which applicants can evade the ban and exercise their right to seek asylum. But one year on, the Center for Gender & Refugee Studies (CGRS) and its partners have found that the app remains [inaccessible](#) to the most vulnerable and marginalized asylum seekers. This means that many people with meritorious asylum claims have been unjustly barred from protection. Others have spent months languishing in [perilous conditions](#) in northern Mexico, hoping to eventually secure an elusive appointment.

How has the rule been applied in asylum cases?

Applicants who do not secure a CBP One appointment and do not qualify for a handful of narrow exceptions are required to rebut the rule’s presumption of asylum ineligibility at multiple points in the immigration process – from initial credible fear screenings at the border, to full immigration court hearings. Adjudicators have received little guidance on how the rule should be applied in asylum cases. Unsurprisingly, advocates have reported significant inconsistencies in how adjudicators understand the rule and handle cases where it is implicated. For those navigating the process without an attorney – which is the case for virtually all asylum seekers upon their arrival at the U.S. border – avoiding the ban is near impossible, and avenues for seeking reconsideration of a negative decision at the initial screening stage are murky.

For those who make it to full immigration court proceedings, it is possible to rebut the presumption of ineligibility and be granted asylum by showing that barring relief would result in family separation. As articulated in the rule, however, this “family unity” safeguard is convoluted and confusing. Making the case that it should be used to protect your family is difficult, particularly for those without legal representation, as it requires an evaluation of whether family members in the United States could independently qualify for protection.

CGRS’s full practice advisory, *Arguing Against the Circumvention of Lawful Pathways Rule*, provides examples from the field and suggestions on how advocates may be able to argue against the rule. Individuals interested in reading the advisory and obtaining additional resources can fill out a case intake form at cgrs.uclawsf.edu/assistance. Readers seeking a copy that is not for use in a specific case may email their request to cgrs-ta@uclawsf.edu.

Legal challenges to the asylum ban

CGRS and its partners are challenging the asylum ban and related policies in federal court.

[East Bay Sanctuary Covenant v. Biden](#): CGRS, the ACLU Immigrants' Rights Project, the ACLU of Northern California, and the National Immigrant Justice Center brought a lawsuit on behalf of eight organizational plaintiffs that serve people seeking asylum: East Bay Sanctuary Covenant, American Gateways, Central American Resource Center, Immigrant Defenders Law Center, National Center for Lesbian Rights, and the Tahirih Justice Center. The groups are arguing the ban violates U.S. asylum laws and results in the unlawful return of bona fide refugees to countries where their lives are in danger. In July 2023 a federal judge vacated the rule as unlawful. At the government's request, that order was stayed, meaning the ban remains in effect. *East Bay* is now pending before the Ninth Circuit.

[M.A. v. Mayorkas](#): CGRS, the ACLU Immigrants' Rights Project, the ACLU of the District of Columbia, and the National Immigrant Justice Center brought a lawsuit on behalf of 18 individual asylum seekers who failed their credible fear interviews after the asylum ban was applied to them, as well as two organizational plaintiffs that serve asylum seekers: Las Americas Immigrant Advocacy Center and RAICES. The lawsuit challenges the ban's changes to the expedited removal process, requiring individuals to prove the rule does not apply to them at the initial credible fear screening stage. *M.A.* is now pending before the U.S. District Court for the District of Columbia.

[Al Otro Lado and Haitian Bridge Alliance v. Mayorkas](#): CGRS, the American Immigration Council, the Center for Constitutional Rights, Mayer Brown LLP, and Vinson & Elkins LLP brought a lawsuit on behalf of 10 individual asylum seekers and legal service organizations Al Otro Lado and Haitian Bridge Alliance, which assist migrants on both sides of the U.S.-Mexico border. The lawsuit challenges the government's policy of turning away people unable to secure a CBP One appointment and denying them access to the asylum process. In October 2023 a district court declined to enjoin the policy, concluding it lacked authority to do so. The groups appealed, and the case is now pending before the Ninth Circuit.

In May 2024 CGRS and HBA, along with the UC Law SF Haiti Justice Partnership, published a [report](#) documenting the myriad barriers to protection for Haitian asylum seekers in Mexico. Among other inhumane and unlawful measures, the report describes the disparate impact of the asylum ban and CBP One as mechanisms to preemptively deny Haitians protection.

[American Immigration Council and CGRS v. Customs and Border Protection](#): CGRS and the American Immigration Council filed a Freedom of Information Act lawsuit to compel the administration to release information regarding its policy of turning back asylum seekers without CBP One appointments. The government has begun producing records, which the groups are now analyzing. We continue to seek transparency around this cruel and unlawful policy.