



Summary: Rule Implementing President Trump’s Asylum Proclamation

On November 9, 2018, President Donald Trump [signed](#) a [proclamation](#) limiting certain individuals’ access to asylum. In conjunction with the proclamation, the U.S. Department of Justice (DOJ) and the Department of Homeland Security (DHS) [issued](#) a joint interim final rule affecting those asylum seekers. This factsheet summarizes the joint rule and its impact on asylum seekers at the U.S. Southern border.

What does the DOJ and DHS rule do?

Governs individuals’ eligibility for asylum and screening procedures. The rule implements the presidential proclamation, making anyone who crosses the U.S. Southern border without proper documents between ports of entry ineligible to apply for asylum [affirmatively](#), in contradiction to what is allowed by current U.S. immigration law. The rule was set to be in effect for 90 days (until February 7, 2019) unless the U.S. received permission to remove the affected immigrants to Mexico.

The administration issued the proclamation despite current U.S. law that [allows](#) any individuals in the U.S. to request asylum within the first year after arrival, regardless of how and where he or she crossed the border.

Implementation of the rule would likely result in a decrease of asylum applications and denials of asylum to individuals with legitimate claims.

Who would be impacted by the DOJ and DHS rule?

Asylum seekers who crossed the U.S. Southern border without proper immigration documents between ports of entry after November 9, 2018. The [rule](#) would affect only asylum seekers who entered the Southern border without proper inspection at one of the ports of entry after November 9, 2018.

Would there be another way for the affected individuals to apply for asylum?

Yes, in a defensive asylum process. Although the regulation prevents the affected individuals from applying for asylum [affirmatively](#), individuals would still be allowed to seek asylum as a defense in deportation proceedings. However, the applicants would be requested to prove [reasonable fear](#), which requires a higher standard of evidence showing they are “more likely than not” to face persecution in their home countries. Current law requires applicants to prove just [credible fear](#), or “significant possibility,” of being persecuted or tortured if returned home.

Why did the agencies issue the rule?

To target asylum seekers traveling with a Central American caravan. The rule was aimed specifically at targeting asylum seekers who travelled with a Central American [caravan](#) that reached the U.S. Southern border at the end of November 2018. While the administration claims

the policy would [streamline](#) the asylum process, immigration advocates claim it is another attempt to restrict immigration to the U.S.

Is the rule currently in effect?

No, implementation of the rule was blocked by a federal U.S. District Court. The DOJ and DHS rule was issued as an “interim final rule,” a regulation that takes effect immediately and is generally used only in cases of emergencies or other urgent circumstances. However a federal District Court judge in San Francisco [temporarily blocked](#) the presidential proclamation that the regulation addresses, following a [legal challenge](#) by a number of civil rights groups. Therefore, the rule is currently not in effect and asylum seekers have been processed in accordance with the current immigration law.

What is the current status of the challenge to the rule?

The [U.S. District Court’s order](#) prevents implementation of the presidential proclamation and the related final interim rule while the litigation continues. On November 27, 2018, the administration [filed an](#) appeal of the judge’s order before the 9th U.S. Circuit Court of Appeals. A hearing date for the appeal has not yet been set. The district court proceedings will continue with a status conference set for mid-March.