

The U.S. District Court for Northern California affirmed what asylum seekers, advocates, and members of Congress have said for months: the Biden administration's asylum ban has no basis in U.S. law. NIJC co-led the charge on this lawsuit and posted a [press release](#) together with the American Civil Liberties Union (ACLU) and the Center for Gender and Refugee Studies (CGRS). Below is a short FAQ breaking down the judge's [ruling](#).

1. What did the judge rule?

The district court judge vacated the [final rule](#) published in May 2023, which was issued in response to the [end of Title 42](#) expulsions. [NIJC](#), along with [68 Members of Congress](#), a [dozen U.S. Senators](#), and over [30,000](#) human rights and faith-based organizations, called on the Biden administration to withdraw this rule because it violates existing obligations under U.S. and international law not to return people to harm. A copy of the judge's decision is [here](#).

2. What will happen now?

Nothing immediately. The decision is stayed for 14 days (through August 8, 2023), meaning that — for now — the rule remains in place. The Biden administration sought the 14-day buffer to prepare for processing consistent with the court's decision. However, Judge Tigar was clear that the government cannot hide behind operational concerns indefinitely. "[T]he Rule—which has been in effect for two months—cannot remain in place, and vacating the challenged Rule would restore a regulatory regime that was in place for decades before." In other words, lifting this rule would resume long-standing processing that is customary to the U.S. border, not impose a burden on the administration.

This decision is subject to appeal, and the Biden administration has *already* filed for appeal before the Ninth Circuit Court of Appeals *and* sought to keep the rule in place while they appeal this decision. It will be up to the federal courts to decide whether this final rule will remain in effect.

3. What was the judge's reasoning?

District Court Judge Tigar reminds us what the rule does: "The Rule effectively conditions asylum eligibility on whether a noncitizen qualifies for any of three exceptions—presenting at a port of entry, having been denied protection by another country in transit, and having parole-related travel authorization—or can show exceptionally compelling circumstances."

The court found this rule to be illegal for these key reasons (with direct quotes from the decision):

1. [The asylum ban violates U.S. law](#). "Under binding Ninth Circuit precedent, conditioning asylum eligibility on presenting at a port of entry or having been denied protection in transit conflicts with the unambiguous intent of Congress as expressed in Section 1158 [of the U.S. Code].... Section 1158(a) permits noncitizens to apply for asylum regardless of whether or not they arrive at a designated port of entry; a rule that conditions eligibility for asylum on presentment at a port of entry conflicts with Section 1158(a)."

- *Allowing “exceptions” to the sweeping new grounds of ineligibility does not cure the illegality:* “That a noncitizen may attempt to preserve their eligibility for asylum by meeting another of the Rule’s exceptions, or that their failure to present at a port of entry may be excused upon a showing of exceptionally compelling circumstances, does not address the reason why restricting asylum eligibility based on place of entry conflicts with the law. Defendants are correct that the Rule does not impose a categorical bar on all noncitizens subject to the Rule; however, failure to present at a port of entry will exclude those for whom other exceptions are not available and who cannot rebut the presumption.”
 - *Transit countries do not provide safe third country alternatives.* The court found that record evidence does *not* support the government’s argument that “transit countries present a viable option for many asylum seekers.”
 - *CBP One appointment availability is insufficient to protect migrants at risk in Mexico:* “Under the Rule, however, ‘danger in Mexico generally would justify failing to pre-schedule a time and place to appear at a [port of entry] . . . only when it amounts to an extreme and imminent threat to life or safety.’ ... Until the risk of violence rises to this level, individuals seeking to maintain their eligibility for asylum in the United States—and who cannot satisfy either of the other exceptions to the rule—must remain in Mexico, where the record suggests many will not be safe.”
2. *The asylum ban is “arbitrary and capricious,” in violation of Administrative Procedures Act.* “First, [the final rule] relies on the availability of other pathways for migration to the United States, which Congress did not intend the agencies to consider in promulgating additional conditions for asylum eligibility. Second, it explains the scope of each exception by reference to the availability of the other exceptions, although the record shows that each exception will be unavailable to many noncitizens subject to the Rule.”
 - *Additional “lawful pathways” does just justify curbing asylum access.* “The availability of refugee admissions, parole, or work visas is irrelevant to the availability of asylum, which Congress considered to be independent of any particular means of entry.”
 3. *The agencies violated procedural requirements.* Among other things, the agencies gave the public only 30 days to comment, and “[t]he complexity of the Rule suggests that 30 days is unreasonable, particularly because the agencies were preparing for the end of Title 42 well before it was announced, such that they could have issued the Notice with sufficient time to grant a longer comment period and still have had the Rule in place when Title 42 expired.”

4. Is this the only lawsuit challenging the asylum ban?

No — this is one of two lawsuits challenging the asylum ban. This decision picks up on a lawsuit initiated in response to the [Trump administration’s asylum ban](#). Here, the court vacated the final rule because it emulates previously enjoined rules that both a federal court and a court of appeals deemed unlawful and inconsistent with U.S. and international law.

In another case filed in June 2023 in the U.S. District Court for the District of Columbia, a class action of plaintiffs subject to Biden’s asylum ban and two immigrants’ rights organizations have [sued](#) the Biden administration. The [complaint](#) documented the severe harm of this final rule on rape and torture survivors, among many others who fled persecution—some of whom were summarily and unlawfully removed back to danger. That lawsuit remains pending.

Read the [press release](#) from NIJC, the ACLU, and CGRS.



[Immigrantjustice.org/action](https://immigrantjustice.org/action)