

## Post Title 42 & Asylum Ban FAQ

### What is Title 42?

Title 42 is an [obscure provision](#) of public health law that was implemented in March 2020 at the onset of the COVID-19 pandemic and allowed border officials to rapidly expel asylum seekers and migrants to Mexico or their home country without due process. Even though thousands of public health experts [denounced](#) the use of Title 42 to decrease the spread of COVID-19, the Biden administration [increased](#) the use of this authority to turn individuals away more than 2.3 million [times](#). The Title 42 public health order was lifted on Thursday, May 11, 2023, at 11:59 pm ET.

### What happens now that Title 42 has lifted?

Now that the use of Title 42 has ended, processing of migrants and asylum seekers has returned to [Title 8](#) authority. Additionally, a [new rule](#) from the Department of Homeland Security (DHS) and the Department of Justice (DOJ) is in effect. The rule, also referred to as an [asylum ban](#), was finalized on May 10, and went into effect on May 11, at 11:59 pm ET when the Title 42 public health order lifted.

### What does the asylum ban do?

The [rule](#) places conditions on asylum eligibility for individuals who circumvent “lawful pathways.” The rule presumes those who present themselves at the southern border and adjacent coastal areas are ineligible for asylum unless they:

- 1) Were granted prior permission to travel to the United States to seek parole pursuant to a DHS-approved parole process,
- 2) Were able to make an appointment to present themselves at the border using the smartphone app CBP One, or
- 3) Previously sought asylum in a country or countries through which they traveled and were denied.

The asylum ban will apply to anyone who presents at a Port of Entry (POE) at the U.S.-Mexico border without a visa or a pre-scheduled appointment, who enters without inspection (EWI) between POEs, or who is apprehended in contiguous waters. The presumption of asylum ineligibility will apply in [expedited removal](#) proceedings, as well as to asylum applications affirmatively filed with the Asylum Office or filed in immigration court proceedings as a defense to removal.

### What are the lawful pathways?

“[Lawful pathways](#)” include entering the United States through regular channels, such as tourist visas, humanitarian parole, or existing family reunification pipelines. The Biden administration also points to recently created pathways that were announced in preparation of Title 42 ending. New pathways include:

- The parole process for [Cubans, Haitians, Nicaraguans, and Venezuelans](#) (CHNV),

- Expanded access to the [CBP One app](#),
  - The number of appointments available at each POE for individuals from all countries increased from 750 to 1,000 daily,
  - A “random algorithm,” or lottery, was implemented to address the inequities in its implementation, and
  - Individuals who have waited a long time to schedule an appointment will be given some priority.
- New [family reunification](#) parole processes for El Salvador, Guatemala, Honduras, and Colombia,
- [Plans](#) to increase the number of refugees welcomed from the Western Hemisphere, and
- Opening [Regional Processing Centers](#) (RPCs) in Colombia and Guatemala.

Individuals who enter the United States via an established pathway will not be subject to the asylum ban.

### **Are there any exemptions to the rule?**

An individual will be presumed ineligible for asylum unless they, or a member of their family<sup>1</sup> with whom they are traveling, meet one of the following three criteria:

- 1) Were granted prior permission to travel to the United States to seek parole pursuant to a DHS-approved parole process,
- 2) Were able to make an appointment to present themselves at the border using the smartphone app CBP One, or they established that it was not possible to access or use the CBP One app due to a language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle, or
- 3) Previously sought asylum in a country or countries through which they traveled and were denied.

Unaccompanied children are exempt from this rule.

### **Can someone overcome the presumption of asylum ineligibility?**

Individuals can rebut the presumption of asylum ineligibility if they demonstrate that, at the time of entry, they, or a member of their family with whom they were traveling:

- Faced an acute medical emergency,
- Faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture, or murder, or
- Were a victim of a severe form of trafficking, as defined in [8 CFR § 214.11](#).

If one family unit member establishes an exception or rebuts the presumption, the presumption will not apply to the entire family unit. All family members, including children, will be interviewed prior to determining that the presumption of ineligibility applies. Similarly, all

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<sup>1</sup> A family unit is defined as a parent or legal guardian of a minor child.

family members will be interviewed, including children, prior to issuing a negative determination.

### **Will people be turned back at the border?**

In theory, people should not be turned back at the border. Even under the asylum ban, people have the ability to present at the border without a CBP One appointment or having been denied asylum in a country of origin. However, if they are unable to prove that they can overcome the rebuttable presumption, they will only be eligible for the lesser protections of statutory withholding of removal and protection under the regulations implementing U.S. obligations under [Article 3](#) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **What are the consequences?**

Individuals who do not overcome the presumption of asylum ineligibility, and do not establish a reasonable fear of persecution or torture in the country of removal will be promptly removed under expedited removal proceedings. Fast tracked Credible Fear Interviews (CFIs) are being conducted in proceedings in Customs and Border Protection (CBP) custody. Individuals who have been issued a [Form M-444](#), which notifies someone that they have been placed in expedited removal, will have their CFI conducted within 24 hours.

Those ordered removed will be subject to at least a five-year bar to reentry and potential criminal prosecution if they subsequently re-enter without authorization. Those ordered removed also will be ineligible for the parole processes available to nationals of Cuba, Haiti, Nicaragua, and Venezuela.