Joint Rule and Presidential Proclamation
On Entry and Asylum: What You Need To Know
Updated November 9, 2018

What are these new policies?

On November 9, 2018, the Department of Homeland Security (DHS) and Department of Justice (DOJ) issued an interim final rule and a presidential proclamation affecting individuals seeking entry at the southern border of the United States. These executive actions place restrictions on asylum for certain noncitizens arriving in the United States.

What are these policies intended to do?

The interim final rule governs eligibility for asylum and screening procedures for those subject to a new presidential proclamation. Together, these executive actions suspend entry for noncitizens crossing the southern border and bar such noncitizens from asylum.

What is the scope of the joint interim rule and presidential proclamation?

The rule applies prospectively, so individuals who arrived in the United States before the effective date of November 9, 2018 are not covered. The rule also does not impact two related forms of relief known as withholding of removal and protection under the Convention Against Torture. These forms of relief are narrower and without the same benefits of asylum protection. No later than 90 days from the date of the presidential proclamation, November 9, 2018, the Secretary of State, Attorney General and Secretary of Homeland Security should submit to the President a recommendation on whether the suspension should be extended or renewed.

What legal authority is the administration relying upon to issue the interim final and presidential proclamation?

The joint interim rule points to several sections in the immigration statute known as the Immigration and Nationality Act (INA). Some of these sections are summarized below.

- **INA § 212(f)** states: “Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”

The goal of this document is to provide general information and is not meant to act as a substitute to legal advice from an attorney.
The goal of this document is to provide general information and is not meant to act as a substitute to legal advice from an attorney.
Why is the administration issuing these policies?

It is the administration’s position that the United States has seen an increase in the number of noncitizens arriving at the United States between ports of entry along the southern border and that many of the asylum claims brought forth by this population are without merit.

What are some of the countervailing views to the administration’s position taken by some refugee advocates and scholars?

Many asylum seekers arriving at the southern border are from the Northern Triangle which is comprised of Guatemala, El Salvador and Honduras. The violence and danger in these countries is well documented. Individuals who have suffered or will suffer individual harm for a specific reason are eligible to apply for asylum under the immigration statute and other laws. Many of the asylum claims by individuals from the Northern Triangle are with merit.

What is an “Interim Final Rule”?

An Interim Final Rule becomes effective immediately upon publication and is an exception to the general rule that public notice and comment must take place before the effective date of a regulation. DOJ and DHS have concluded that a “good cause” exception exists to publish this asylum regulation as an interim final rule. Written comments can be submitted by the public for a period of sixty days from the date of publication.

What is a presidential proclamation?

A presidential proclamation is one form of presidential power and similar to an executive order. It is an order issued by the President of the United States and may possess the authority of law. See e.g., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

What comes next?

Given the legal concerns of restricting asylum, litigation is expected. Further, under section 4 of the presidential proclamation, if any section of the proclamation is found to be invalid, the remainder of the proclamation shall remain effective.

Where can I find more resources?

See the Penn State Law Center for Immigrants’ Rights Clinic website for updates on this and other immigration policies. Also visit:

- Department of Homeland Security
- American Immigration Lawyers Association
- American Immigration Council
- Human Rights First

The goal of this document is to provide general information and is not meant to act as a substitute to legal advice from an attorney.