

On July 25, 2023, the U.S. District Court for Northern California [ruled](#) that the Biden administration's asylum ban has no basis in U.S. law. NIJC co-led the charge on this lawsuit with the American Civil Liberties Union (ACLU) and the Center for Gender and Refugee Studies (CGRS). In response, the Biden administration quickly appealed to the Ninth Circuit and sought a stay both at the District Court and Federal Court of Appeals level to keep their ban in place. The Ninth Circuit Court of Appeals [granted](#) the government's request to stay the District Court's decision while the case is being argued on appeal, meaning that for now the Biden Asylum Ban remains in place. Below is a short FAQ breaking down these developments.

1. How did the U.S. District Court for Northern California 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. The decision was stayed for 14 days (through August 8, 2023), keeping the rule in place temporarily. The Biden administration sought the 14-day buffer to prepare for processing consistent with the court's decision. A copy of the judge's decision is [here](#).

2. What was U.S. District Court 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."
 - *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."
 - *A phone app (CBP One) cannot replace asylum access*: The judge noted that CBP One forces asylum seekers to "remain in Mexico, where the record suggests many will not be safe." Shortly after Judge Tigar's ruling, a [separate lawsuit](#) was filed by asylum seekers,

detailing the myriad barriers erected by CBP One and denouncing the app for resurrecting “metering,” another unlawful policy that was previously struck down by a federal court.

2. *The asylum ban is “arbitrary and capricious,” in violation of Administrative Procedures Act.* Federal agencies are required to make reasonable and factually supported. The Court found that it was neither.
 - *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.”
 - *Seeking protection en route to the United States is “infeasible” for many asylum seekers.* The Court also found that parole is “not meaningfully available” to many, due to its restrictions on nationality, travel authorization, and financial means.
3. *The agencies violated procedural requirements.* The Biden administration gave the public only 30 days to comment, an “unreasonable” timeframe given the “complexity of the rule” and the fact that Biden administration had been preparing to end Title 42 many months prior, “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.”

3. How did the Biden administration respond?

The Biden administration promptly sought to block the district judge’s vacatur to keep the asylum ban in place in two ways. First, they sought an extended “stay” to suspend the court’s ruling at the district court level beyond the 14 days the judge had already granted the government. The Biden administration also promptly filed for appeal before the Ninth Circuit Court of Appeals and sought to keep the rule in place while they appeal this decision.

In pursuing these stays and appeal, the Biden administration ignored 203 civil, human rights, and immigrant rights organizations who sent a [letter](#) calling on the administration to comply with the July 25 decision, as “[e]very day the asylum ban remains intact, it inflicts immeasurable harm on people in urgent need of protection.” And yet, the administration continues to argue that the asylum ban has successfully deterred people from crossing the U.S.-Mexico border—a claim that is [unsupported](#) by their own data and interviews of [hundreds of asylum seekers](#) waiting in Mexico, who overwhelmingly did not know about the Biden asylum ban. The District Court also rejected that argument, noting that ending the asylum ban would in fact “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.

4. What will happen now?

The ban will remain in effect for now. Though the district court denied the Biden administration’s first stay request, the [Ninth Circuit kept the ban in place](#) until they evaluate the merits of the appeal. The Ninth Circuit did set an expedited briefing schedule, with filings due in August and September 2023. The court of appeals’ leniency on this stay conflicts with multiple [precedential decisions](#), where the same court ruled prior iterations of this ban unlawful.

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

No — this is one of two lawsuits challenging the Biden ban for violating asylum rights. 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.

Two days after Judge Tigar’s ruling, [another lawsuit](#) was filed on behalf of asylum seekers and immigrant rights organizations specifically targeting the use of the CBP One app. Like the asylum ban litigation, this lawsuit alleges that the Biden administration has revived another unlawful policy—that of turning back asylum seekers and forcing them to wait in Mexico for extended periods of time in order to claim asylum. The complaint also points to extensive language, literacy, and disability access issues.

Read more on this lawsuit here: [East Bay Sanctuary Covenant v. Biden](#)



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