

The Biden Administration's Proclamation and Rule, *Securing the Border*, and DHS Operational Constraints

June 20, 2024

Citing record high levels of enforcement encounters at the Southwest land border (SWB), President Biden signed a [Presidential Proclamation](#) on June 3, 2024, that suspends and limits the entry of certain migrants at the [southern border](#) with no legal basis for admission. On the same day, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) issued a joint [interim final rule \(IFR\)](#) restricting asylum eligibility for migrants subject to the proclamation's suspension of entry.

The proclamation's suspension of entry, which took effect at 12:01 a.m. on June 5, 2024, will remain in effect until 14 days after there has been a seven-day average of less than 1,500 enforcement [encounters](#) per day between points of entry (POEs). After this initial suspension, if the number of encounters rises to an average of 2,500 per day over a seven-day period, the suspension will be applied again following the same formula for its lifting and resumption.

The proclamation does not apply to noncitizen U.S. nationals, lawful permanent residents, unaccompanied children, victims of a severe form of trafficking in persons, noncitizens with valid visas or lawful permission to enter, or noncitizens who arrive at a POE for a prescheduled appointment. It also does not apply to any noncitizen permitted by a DHS U.S. Customs and Border Protection (CBP) officer to enter "[based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, urgent humanitarian, and public health interests at the time of the entry or encounter that warranted permitting the noncitizen to enter](#);" and noncitizens likewise permitted to enter "due to operational considerations" at the time of the entry or encounter.

Noting that "[the border security and immigration systems of the United States are unduly strained at this time](#)," the rule responds to the high levels of enforcement encounters at the SWB since 2021, especially between land POEs. In FY2023, CBP recorded [2,475,669 migrant encounters at the SWB](#), the highest number on record, successively topping previous records set in FY2021 and FY2022. These numbers include encounters of individuals crossing into the United States unlawfully between POEs (by CBP's U.S. Border Patrol [USBP]), as well as with those without valid documents at POEs (by CBP's Office of Field Operations [OFO]). The majority of encounters at the SWB historically have been by USBP.

Congressional Research Service

<https://crsreports.congress.gov>

IN12383

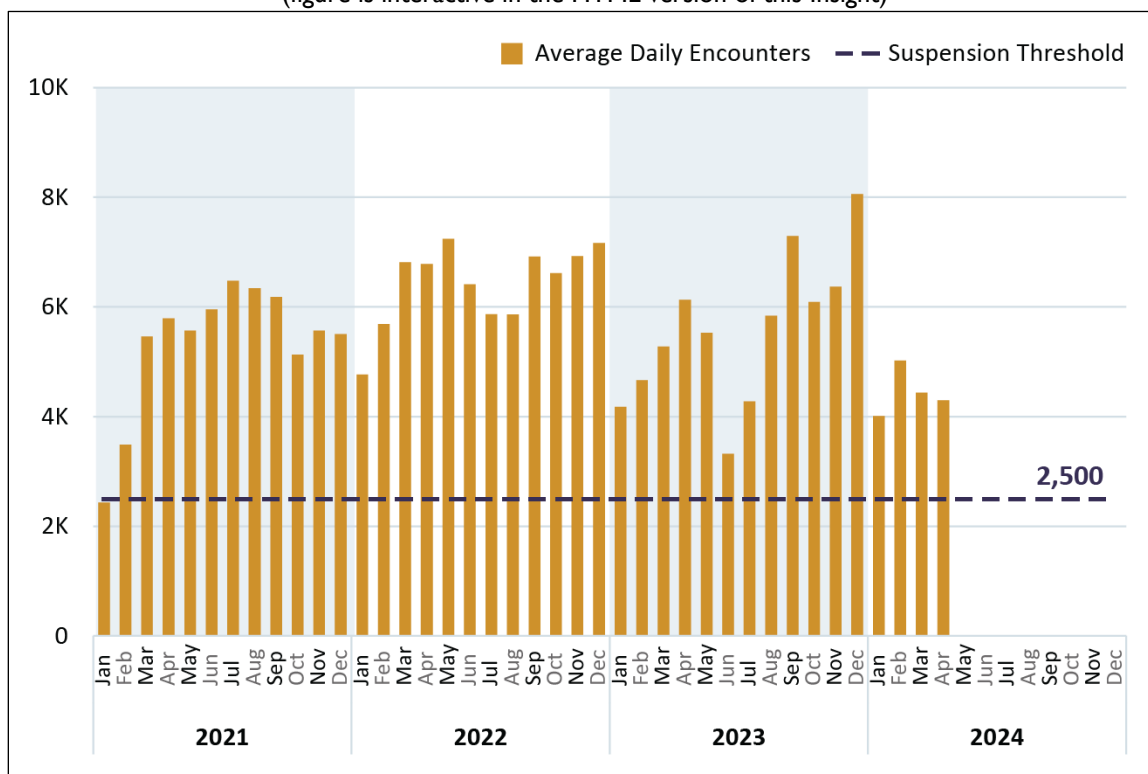
The IFR states that DHS’s [current resources](#) are insufficient for the number of USBP encounters, and that they are unable to “[predictably and swiftly deliver consequences to most noncitizens who cross the border without a lawful basis to remain](#).” The IFR specifies that while the proclamation is in effect, three changes to asylum processing will hold: [migrants will largely be ineligible for asylum \(with exceptions\)](#); they will not be questioned about their intent to apply for humanitarian protection or fear of persecution [as is standard](#), but rather must express or manifest such fear; and, to be considered for alternative forms of protection (i.e., withholding of removal and protection under the Convention Against Torture), they will have to [clear a higher standard than normally applied to those seeking humanitarian protection](#).

Using publicly available monthly [CBP data](#) for January 2021 through April 2024, CRS calculated the average daily encounters by dividing the total number of encounters each month by the number of days in the month (See **Figure 1**). In every month during that period, average daily encounters were greater than the suspension threshold (2,500 encounters), with the exception of January 2021 (2,430 average daily encounters). December 2023 marked the highest daily average number of encounters (8,335) during this period, 3.4 times the amount in January 2021.

Within that 40-month span, average daily encounters per month nearly always registered at least double the suspension threshold. Average daily encounters fell below 5,000 in only eight months, including three of the four months in calendar year 2024.

Figure 1. Average Daily Encounters by USBP, Southwest Land Border
CY2021-CY2024(YTD)

(figure is interactive in the HTML version of this Insight)



Source: CRS calculation of average daily encounters based on CBP monthly encounters data using Office of Homeland Security Statistics (OHSS), Immigration Enforcement and Legal Processes Monthly Tables; see “CBP SW Border Encounters by Agency and Sector of Field Office,”

https://www.dhs.gov/sites/default/files/2024-06/24-0607_ohss_immigration-enforcement-and-legal-processes-tables-february-2024.xlsx; and CBP, Nationwide Encounters <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (for March-April 2024).

Despite the new procedures, logistical and operational factors likely will continue to make it challenging for DHS to process, detain, and remove migrants. Prior to the proclamation, USBP holding capacity [was already strained](#)—current capacity in facilities along the SWB is [approximately 20,000](#). It is unclear that this capacity will be sufficient to hold migrants for [expedited removal](#), including the time needed for credible fear screenings, where applicable. Generally, DHS has relied on its discretion to process, on a case-by-case basis, migrants for [formal removal](#) proceedings, where applications for protection are adjudicated by an immigration judge and there is no credible fear screening. Migrants processed for formal removal are typically [released from custody](#) with a Notice to Appear to await their proceedings. In some cases, it may be faster for CBP to process migrants for formal removal than to hold them while they undergo a credible fear process.

Another operational constraint for DHS is the removal process itself. Due to the [changing composition of nationalities of those encountered](#), there are substantial numbers of individuals who are [likely not going to be returned to their home countries](#) in the near future. This is due to the [inability of the United States to effectuate removal](#) because of a lack of cooperation with source country governments as well as the increase in migrants from places outside the Western Hemisphere. This increase has been an ongoing obstacle to removal, and [some have argued](#) that it is an added incentive to attempt entry between POEs. The short- and long-term impacts of the new proclamation and rule on the levels of enforcement encounters remain to be seen.

Author Information

Audrey Singer
Specialist in Immigration Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.