



The Biden Administration's Revised Proclamation and Final Rule, "Securing the Border"

November 6, 2024

On September 27, 2024, President Biden issued an [updated proclamation](#) to amend the [June Proclamation](#) that temporarily suspends and limits the entry of certain migrants at the [Southwest land border \(SWB\)](#) with no legal basis for admission during "emergency border circumstances." The U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ) issued a joint [final rule](#), amending the previous interim final rule (IFR), that restricts asylum eligibility for migrants subject to the proclamation's suspension of entry. Both the amended proclamation and the final rule are effective October 1, 2024.

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 ports of entry (POEs) by U.S. Customs and Border Protection's (CBP's) U.S. Border Patrol (USBP). In FY2023, CBP recorded [2,475,669 migrant encounters at the SWB](#), the highest number on record, successively topping previous highs set in FY2021 (1,734,686) and FY2022 (2,378,944). There were 2,135,005 total encounters in FY2024. These numbers include encounters of individuals crossing into the United States unlawfully between POEs by 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. The number of encounters at POEs by OFO has increased due to the [CBP One mobile application](#), which allows prospective asylum seekers who are otherwise inadmissible to schedule an appointment at a POE.

The June Proclamation and IFR cited the record high levels of enforcement [encounters](#) at the SWB, indicating that DHS's [current resources](#) were insufficient for the number of (USBP) enforcement encounters, and that DHS and DOJ were unable to "[predictably and swiftly deliver consequences to most noncitizens who cross the border without a lawful basis to remain](#)."

The original proclamation's suspension of entry has remained in effect since June 5, 2024. The [amended proclamation](#) maintains that the suspension will not be lifted until the 7-consecutive-calendar-day average

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of enforcement encounters between POEs falls below 1,500 for 28 consecutive calendar days instead of 7 days as in the IFR. If the number of encounters remains below 1,500 for 28 consecutive calendar days, a 14-calendar-day waiting period is triggered before the suspension is lifted. During that period, or during a 7-consecutive-day period that follows, the suspension of entry would be reimplemented if there are above 2,500 encounters.

The increased number of days required before lifting the suspension is to ensure “that the drop in encounters is a sustained decrease and not the result of short-term change.” The final rule notes that based on the IFR implementation experience, starting and stopping the rule would create “harmful operational burdens” because of the resources and coordination it takes to shift from one status to another.

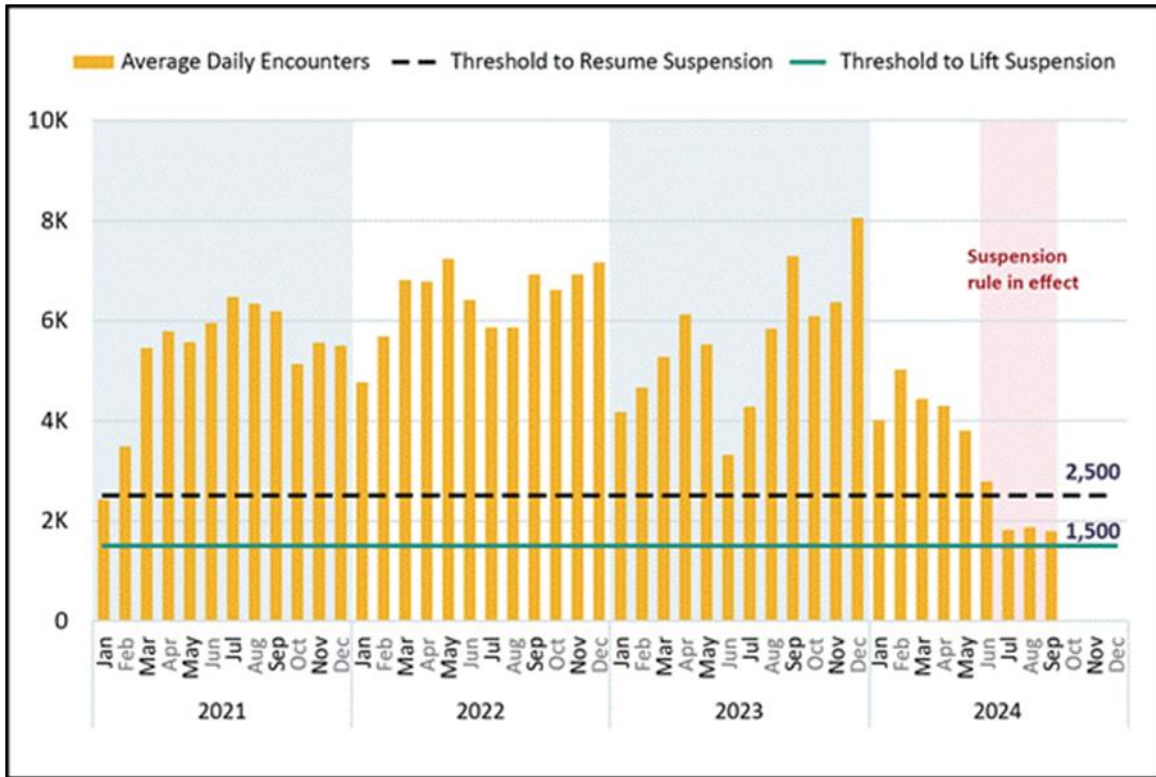
An additional change in the final rule concerns the calculation of the count of daily encounters of unaccompanied children (UC). Whereas the IFR counted UC from a contiguous country (Mexican nationals) for the purpose of determining daily average encounters, the final rule includes UC of all nationalities. This change acknowledges the time and resources required to hold and process UC, regardless of nationality. In FY2024, 70% of the 99,704 UC encountered were from countries other than Mexico.

Although they are included in the encounters calculations, UC remain exempt from the proclamation’s and final rule’s entry suspension, as do noncitizen U.S. nationals, lawful permanent residents, 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 (CBP One). Additionally exempt are any noncitizens permitted by a DHS 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.

The IFR established that while the proclamation is in effect, three changes to asylum processing will hold: migrants subject to the IFR 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 is normally applied to those seeking humanitarian protection.

Using publicly available monthly CBP data for January 2021 through September 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 the period, average daily encounters were greater than the threshold to impose suspension of entry (2,500 encounters), with the exception of January 2021, and July, August, and September 2024. Within that 45-month span, average daily encounters dropped after the IFR was in place, to an average of just over 1,800, in July through September 2024.

Figure I. Average Daily Encounters by USBP, Southwest Land Border, CY2021-CY2024YTD
 (figure is interactive in the HTML version of this Insight)



Source: CRS calculation of average daily encounters based on CBP monthly encounters data: CBP, “Nationwide Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

In addition to the reduction in encounters, CBP has increased the [proportion of migrants processed for expedited removal](#), a streamlined removal process, as well as decreased the processing time for expedited removal, from 75 days in the pre-pandemic period and 44 days in the immediate post-pandemic period to 32 days after the IFR was implemented. DHS attributes the greater efficiency, in part, [to changes by the rule in asylum processing](#). As a result, CBP has [reduced the time](#) it takes to repatriate individuals and [increased the number](#) of repatriations.

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