

Practice Alert: State of Play Following Presidential Executive Order on Comprehensive Regional Framework and Asylum

February 5, 2021

This Practice Alert provides a broad overview of the President’s Executive Order (“EO”) on “Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border.” The [EO](#) was published on February 2, 2021 (*AILA Doc. No. 21020237*) and requires inter-agency review of several U.S. border processing and asylum policies. It also launches the creation of a national strategy to address the root causes of migration from Central America and a strategy to collaboratively manage migration with regional partners.

New Developments

While much of the EO directs agencies to begin a regulatory process and explore policy changes, there is one important area of immediate impact: it specifically ends the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) pilots. As noted in a January 25, 2021 Office of Inspector General [report](#), the Trump administration expanded these fast-tracked asylum review programs along the southern border, despite well-documented problems with their intent, design, and implementation.

The President also directs the Secretary of State and the Secretary of Homeland Security to work together to expand lawful pathways for protection for individuals from Northern Triangle countries. The EO lists three specific immigration pathways for individuals from Northern Triangle Countries. The first is identifying ways to offer protection within and in conjunction with the U.S. Refugee Admissions program. The second is the potential renewal of the Central American Minors (CAM) parole program. The third is the use of discretionary parole to permit beneficiaries of approved family-sponsored immigration visa petitions to join family members in the U.S.

Additionally, under the section header of “Restoring and Enhancing Asylum Processing at the Border,” the EO revokes Executive Order 13767 of January 25, 2017, Proclamation 9880 of May 8, 2019 and three Presidential Memoranda, as well as any agency memoranda issued in furtherance of these policies. Among other things, the policies concerned border wall construction and ending “catch and release.” The impact of these revocations remains to be further analyzed.

Forthcoming Reports and Joint Regulations

The EO also sets the stage for the distribution of two reports and promulgation of joint regulations on protection under U.S. asylum law.

The first report due is from the Secretary of Homeland Security on expedited removal proceedings at the U.S. border. The Secretary is instructed to provide recommendations for

“creating a more efficient and orderly process.” This report is due within 120 days and is to be submitted to the President.

The second report due is from the Attorney General and the Secretary of Homeland Security. They are directed to complete a report within 180 days that examines the rules, regulations, decisions, and guidelines governing asylum adjudication and refugee protection for people fleeing domestic and/or gang violence to ensure they are “consistent with international standards.” The agencies are also directed to issue joint regulations within 270 days on the meaning of a “particular social group.”

What Remains Under Review

The EO specifically calls for the review of several anti-asylum policies and border processing restrictions for possible termination or modification. However, these policies remain in place pending that review. Listed below are interim and final rules along with policies that remain unchanged by the EO (though many are temporarily halted due to litigation):

- Expulsions under Title 42 are to be reviewed but not currently rescinded. Section 4(a)(ii)(A). It is worth noting that Biden administration has said they will not expel unaccompanied minors on U.S. soil under Title 42.
- Migrant Protection Protocols (MPP) is to be promptly reviewed but not terminated. The Secretary of Homeland Security is directed to consider a “phased strategy for the safe and orderly entry into the U.S.” Worryingly, language in the EO appears to leave open the possibility of modifications to MPP as opposed to outright ending the program. Section 4(a)(ii)(B). New enrollments in MPP had already been [suspended](#) on President Biden’s first day in office.
- The “[Asylum Entry](#)” Ban Proclamation (“Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,” 83 Fed. Reg. 55,934 (November 9, 2018)), was rescinded but the interim final rule remains in place. The EO directs its prompt review and a determination as to whether to rescind. Similarly, the “[Third Country Transit](#)” Ban (“Asylum Eligibility and Procedural Modifications,” 85 Fed. Reg. 82,260 (December 17, 2020)) final rule will be reviewed but remains in effect as of January 19, 2021. Section 4(a)(ii)(C).
- The Asylum Cooperative Agreements with Guatemala, El Salvador, and Honduras are not rescinded outright. Section 4(a)(ii)(D). However, these agreements appear to be short-lived based on the language of the memo and a February 3, 2021 [statement](#) from the State Department expressing intent to suspend and terminate these agreements.

- The Secretary of Homeland Security will review expedited removal procedures with an eye towards adhering to “standards of fairness and due process” but no change is made to the current process. Section 4(b)(i).
- Expanded expedited removal procedures are also subject to review by the Secretary of Homeland Security and he is specifically directed to change them through publication in the Federal Register should modification be necessary. This review must consider U.S. “legal and humanitarian obligations, constitutional principles of due process and other applicable law, enforcement resources, the public interest, and any other factors consistent with this order that the Secretary deems appropriate.”

One asylum rule not specifically mentioned is the “monster asylum rule” that took effect but is currently enjoined by litigation in the [Pangea II case](#) (*AILA Doc. No. 21011107*). The criminal bars to asylum are also subject to litigation and enjoined in a separate case, [Pangea I litigation](#) (*AILA Doc. No. 20121035*). It is worth noting, however, that President Biden has ordered a freeze on all regulatory activity for 180 days.

Conclusion

It is an important first step for Biden to rescind many harmful Presidential proclamations. However, these are no substitute for the process of rebuilding the U.S. asylum and border processes. AILA will continue monitoring developments of the review process we expect to see from various administration officials implicated in this EO. For more information on actions taken or planned by the Biden Administration during the first 100 days, please see [AILA’s Featured Issue page](#).