Belle Woods: Alright welcome everyone to today's briefing. This briefing is being recorded.

Belle Woods: today. You'll be hearing from experts with the American Immigration Lawyers Association as they dig deeper into the interim. Final rule announced this week by President Biden.

Belle Woods: some quick housekeeping details. This is an informal briefing. We'll start off with some initial remarks from our speakers, and then the hope is that we'll have plenty of time for questions. You will be able to either raise your hand or put a question in the QA. Or chat box, and if you do raise your hand it will unmute you on your end, so you can ask your question.

Belle Woods: We do ask that you state your name and your outlet before continuing with your question.

Belle Woods: So with that I'll turn it over to our moderator, Ayla's executive director, Ben. Johnson, to start us off. Ben.
Ben Johnson - AILA: Thank you, Bill. Thank you all for being here. We're gonna spend the majority of our time talking about our deep concerns and opposition to the recent announcement from the President regarding the border. But I wanna if I can just step back for a second and set the stage. One of the things that's most frustrating about what's happening

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Ben Johnson - AILA: in and around the border issue is that there are other options available. And and that's resorting to these kinds of tactics is just simply not necessary. So

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Ben Johnson - AILA: it is true we are facing serious challenges at the border, and some aspects of what's happening at the border

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Ben Johnson - AILA: are are unprecedented.

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Ben Johnson - AILA: At least in my lifetime. You know. Incredible. Very large numbers. Very different populations that are coming, and people are for the 1st time. And all of the time that I've been working on this issue are not evading. They're turning themselves in and applying for asylum at the border. So these challenges are serious and they're different. But they are not insurmountable or unsolvable.

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Ben Johnson - AILA: This fatalistic response that we have no other choice but to shut down the border close the gates and close the system. That is a false narrative
Ben Johnson - AILA: driven by politics, not policy.

Ben Johnson - AILA: Right now. The biggest challenge we face on immigration is not what's happening at the border. It's what's not happening in Washington, DC,

Ben Johnson - AILA: if our government.

Ben Johnson - AILA: We're functioning. We could absolutely meet this moment. It would require a change in border strategy. It would require an investment of resources.

Ben Johnson - AILA: But solutions to address. What is happening are available to us

Ben Johnson - AILA: rather than weaponizing immigration for political partisanship. Congress could pass legislation tomorrow

Ben Johnson - AILA: that could have an immediate impact on what's happening at the border
Ben Johnson - AILA: first, st and obviously it could provide resources. It could stop starting your the agency, and it could provide resources to increase screening and allow for faster adjudications. But most importantly.

Ben Johnson - AILA: Congress could create legal channels of immigration that would give people from the largest sending countries, many of whom are legitimately fleeing persecution. But many others are fleeing dire economic situations giving them an opportunity to come and work legally in the United States, in places that desperately need workers would have an immediate and dramatic impact on what's happening at the border. And

Ben Johnson - AILA: and the demand for that. The hunger for that is broad and bipartisan. Even in ruby red States you have governors and mayors that are begging for

Ben Johnson - AILA: an opportunity to put people to work in their communities, Governor of Utah and Indiana are campaigning together to try to get work authorization for the folks that are currently coming and ending up in in their communities. So is the mayor of of Mesa, Arizona.
Ben Johnson - AILA: Topeka, Kansas, has a choose Topeka campaign that is literally paying people to move to Topeka and work. So there is broad bipartisan need and support for the idea idea of creating legal channels of immigration that would allow people to line up at consulates back home instead of line up at the border for the work they are seeking and the work that we need.

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Ben Johnson - AILA: Unfortunately, in the absence of Congress doing its job, the President is being forced to act unilaterally, to try and implement and replicate the tools and strategies that we need to meet the moment

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Ben Johnson - AILA: and the White house. I have to be given credit for the fact that over these last 4 years they really have implemented some important tools that do seek to try to replicate the essential elements of success which is

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Ben Johnson - AILA: at a faster more efficient processing and some legal channels of immigration. It has expanded the use of parole authority to provide incentives to use legal pathways. Most notably for the some of the folks fleeing from the failed States, Cuba, Nicaragua, Venezuela.

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Ben Johnson - AILA: and that has had a a significant impact in relieving the pressures on on the border. It's created the Cb. One cbp. One app. Now, if we, despite all of its flaws. The idea of leveraging technology to to try to find new avenues for processing people and improve the efficiency of the operations at the agency and give people a legal workable channel. That is something that can and should continue to be explored.

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Ben Johnson - AILA: We've engaged with governments in the Western Hemisphere to carry regional commitments and regional strategies. To address this issue.

Ben Johnson - AILA: We've launched safe the Administration has launched safe mobility offices to try to screen people outside of the United States. So many other examples of efforts of the Administration to try to replicate the tools and strategies that would be significantly enhanced by Congressional action.

Ben Johnson - AILA: because ultimately executive authority, although there is significant authority within the executive branch, that authority alone is not going to be enough to meet this moment.

Ben Johnson - AILA: and unfortunately, under mounting political pressure, the bid Administration, in the form of this protocol, in our estimation, is giving into that fatalist

Ben Johnson - AILA: fatalistic sense that the only solution is to begin to shut down the the border and close the border.

Ben Johnson - AILA: And and we believe, that while it may
Ben Johnson - AILA: offer some, it might may temporarily change what's happening at the border ultimately. It's it more likely to make things worse than better. And just as importantly, if not more importantly, along the way, we are violating fundamental principles of fairness and due process and statutory obligations under current law.

Ben Johnson - AILA: To provide protection for those people that are legitimately fleeing persecution. So it is an incredibly unfortunate development.

Ben Johnson - AILA: The Administration bears responsibility for for for taking this action. But so, too, does Congress. If we want the dynamics to change.

Ben Johnson - AILA: Congress must do its job, and the Administration must resist the temptation to violate basic principles of fairness and statutory obligations. So W. That I, I think, is the the right setup, at at least to turn it over to people who know the details of this, who have looked at it, and can talk a little bit about what this pro this proclamation does.

Ben Johnson - AILA: We have with us from Greg Chan, who is Aila, senior director for government relations. We have Jennifer Ivan. Yes, Whitlock, who is a list policy and practice counsel, and Angela Kelly, who is senior advisor to Aila on these issues, so I will stop there. Greg and I will turn over to you.
Greg Chen/AILA: Thank you, Ben, and thank you to all the press members who have here joining us today.

Greg Chen/AILA: Jen Whitlock and I will be going over the meat of the details for this new policy that's been announced. I hope you've received the Updated Policy brief that we issued yesterday which goes into more detail about the impacts of this new policy. The real

Greg Chen/AILA: detail is in the interim final rule that came later on Tuesday, after the President of the White House had issued various policy documents based on our review of the language. In the interim final rule, it's almost 200 pages it is our judgment that the new policy will effectively bar

Greg Chen/AILA: access to asylum for nearly all people seeking protection at our border.

Greg Chen/AILA: I say that slowly, because that's a significant. That's a huge statement to make about what the Administration is doing here. And we did not make that assessment lightly. We took that very carefully, and looking at the various components and procedures the Administration says it's going to be putting in place. Their argument is going to be. Well. W. There are going to be some mechanisms.
Greg Chen/AILA: some tools and exceptions to enable people to still gain access. Yes, there will be some who will get it, but it’s going to be the extremely few and limited who will still be able to get protection once this rule is in place and in effect, and it has taken effect as of midnight on June the early the morning of June 5.th

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Greg Chen/AILA: So why are the exceptions and procedures functionally inadequate to continue to provide adequate access for asylum, so that the United States could still comply with us. Asylum law, which is our assessment that it does not. These rules do not comply with us asylum law to guarantee somebody access to asylum

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Greg Chen/AILA: first.st When is this? In effect? So you probably already familiar that, what this new policy does is it will set into motion as is currently in effect, a a new set of restrictions, and those come into effect when the number of people that are being apprehended between ports of entry is at a certain level, and that was set at 2,500. I won’t go into all the details of how that functions. But

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Greg Chen/AILA: by statistical analysis, if you look historically, since February of 2021.

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Greg Chen/AILA: The number of days that the apprehensions have exceeded the level that the administration just said has been every day every day since February 2021 has exceeded that number, so if it had been put in place in February 2021, this rule would be in place every day, and so moving forward. Unless those migration figures change with us Southern border. We will see this in effect every day.
Greg Chen/AILA: Who does it apply to?

Well, it will effectively apply to almost everybody. There are some various limited categories of exceptions which are listed in our brief. It does not apply, for example to unaccompanied children people who have certain vulnerabilities.

Greg Chen/AILA: could be screened in to get protection. We'll talk. Jen will talk later about how that screen works. And, for instance, people who are law from per residence, they won't be have this applied to them. The other major exceptional flag is, people can still come in through Cbp, one which is not negligible. It's 1,450 entrants can come in per day but that will still by and large be is much smaller than the number that are going to be coming in between ports of entry.

Greg Chen/AILA: Why is this a categorical exclusion to asylum.

Greg Chen/AILA: What it does is, it means that if

Greg Chen/AILA: this restriction is in place as it is in right now, the people who are coming in between ports of entry will not be eligible for asylum.
unless they meet certain specific exceptions. Those are primarily the vulnerabilities

Greg Chen/AILA: that Jen will be talking about a moment like medical conditions, risk of severe, imminent threat of harm, like rape or torture. But it has to be imminent that risk. But unless you fit into those categories, you will not

be able to apply for asylum.

Greg Chen/AILA: and the only opportunity that you could get any protection is, if you proactively, as the individual manifest, and these are the words that are used in the rule. If you manifest that you have a fear of some kind that's a fear of persecution or torture, or of trafficking.

But you have to physically manifest that. And the problem with that standard is that most people who are arriving at the border are not gonna get referred through a screening because they won’t know that they need to proactively say they have a fear. Most people haven't even thought about what categories the law functions and let alone to know. Hey, I'm gonna tell
everybody that I'm afraid them be tortured. Who's gonna step into a room of strangers and start talking about that. So that's very unlikely.

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Greg Chen/AILA: The way that the government plans to notify people. This is to put up signs, notices. Let's say in facilities that explain that you, if you fall into any of these categories, that you should then proactively tell somebody that you are you have that fear?

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Greg Chen/AILA: This has also been shown. This manifest test has been shown to be highly ineffective. Organizations have done studies of ha! What happens, these situations and people just do not get referred for that screening the center for gender refugee studies. Did a interview almost a hundred families that actually already been sent across the border to Mexico.

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Greg Chen/AILA: More than about almost 3 quarters of those families they interviewed said they had manifested that fear. They had actually said that they knew to do that, but they were never referred by Cup for an interview.

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Greg Chen/AILA: So this manifest is, gonna be very unlikely to help people. And finally, I'll just say that the protection that you be eligible for unless you fit into those very narrow exceptions that Jen will go into. You're not gonna be able to qualify for assign at all

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Greg Chen/AILA: the remaining kind of protection you get is something called convention against torture or withholding a removal.
Both of those in a quick nutshell are, have a higher standard that you need to qualify, and they're much more limited in the protection that they give if you receive it, meaning you can’t help. Family members come in the future, and it's not permanent. It can be revoked.

Greg Chen/AILA: and for withholding removal. If you leave the country United States, it can. You will lose the status automatically. So those are much less forms of protections that have higher standards. So that is the quick nutshell of how this structural work, and why it is so limited, and why we

made the assessment that most nearly all people will not qualify for asylum or other protection.

The last point I make before I'll pass this over is an access to attorneys

one change that this new policy is putting into place is to say that

you will only have 4 h
Greg Chen/AILA: to consult with an attorney before they proceed into the process of determining whether or not you would even be a little eligible. Now that's assuming even you to say you, you know, raise your hand and pat. It went through the manifest part.

Greg Chen/AILA: You only get 4 h to find that attorney. That is ludicrous. There is already very few people. I think it's 1% of people going through the Cfi. The credible fear process have attorneys. This will render it next to nil, because, finding an attorney in that limited period of time. Attorneys just are not sitting around waiting for you. People need to have time to consult with an attorney to build it. Go through that process.

Greg Chen/AILA: and that. So I will just put that as a point that that's going to severely erode due process, because attorneys are so critical in this process.

Jen Ibanez Whitlock, AILA: and a passage to Jen Woodlac.

Jen Ibanez Whitlock, AILA: Thanks, Greg. So what I wanna do with the time that I've got allotted is actually describe the secretable for your interview for you. I'm hoping that that will help you put these new changes into context and also describe how the rule does change. What's gonna happen inside those credible for your interviews. So the best description I can use is essentially of these interviews is 3 words fast
Jen Ibanez Whitlock, AILA: detained and without the benefit of counsel. I guess that's more than 3 words there. But these are interviews that are meant to go through a fast process. After all, they are occurring. What is called is called expedited inter removal. Imagine any other high stakes interview you've ever had, whether it's a job, app application or government clearance and essentially strip away any of the conveniences or norms that you would associate with such a high stakes interview.

Jen Ibanez Whitlock, AILA: And what this rule does. And I think, what's gonna have the most dramatic impact is that it really takes what is supposed to be a safeguard in this fast process? And makes it even that much harder to find the individuals or for individuals to be able to get protection.

Jen Ibanez Whitlock, AILA: The interview is meant to be a safeguard against erroneous removal. It's meant to be a safeguard to make sure that we don't violate it. Us asylum law and return someone to danger. But what has is happening under the in interim. Final rule that was announced is that it's making the standards that are going to be applied by the asylum officers to be so high

Jen Ibanez Whitlock, AILA: that it's our assessment that most people are not going to be able to meet them in part because of the conditions in which they are process. So typically an interview is going to happen. Within days of having been apprehended. Or is this often the case has been mentioned. Somebody has lined up and waited to be processed by Cbp. You've all seen the pictures of people lining up once they've crossed into the Us. Territory to ask for asylum
Jen Ibanez Whitlock, AILA: detainees typically say that they're disoriented. They may not even know where they are, as in the case of ICE custody, because, they're being transferred from the border and being sent to facilities all across the United States.

Oftentimes not knowing exactly where they physically are. And some individuals are also disoriented because they've been separated from their family, and anyone who has travel with a family unit can know how incredibly destabilizing it could be to not know where your adult daughter, maybe an 18 year old is has been placed, has been sent to. If you, if you've been separated

A guard typically calls the individual's name, and they're brought into a location in which they're going to have their interview. These interviews are typically remote. It used to be the case, that asylum officers would travel on details to different facilities, but by and large, as it currently is processed, most of the asylum officers are calling in, so an individual is placed before a telephone. They may not have even been aware or given much notice, that this was the day, or this was the moment that they're gonna have their credible fear interview.

And as Greg mentioned, they may have only had the benefit of a poster or a video. Both things that we've never seen in terms of what is what information is being provided to this individual about the very complicated processes of US asylum law, and they'll be asked to essentially do their interview over the phone with an asylum officer.

The asylum officer is going to ask some things like, Are you in a private setting? Would you like to have an attorney with your consultant? Are you physically well enough to do this interview, but recall, these are remote. These are all by telephone. So the asylum officer can't really do a visual inspection of what's happening. And there are many reports. That demonstrate that oftentimes these are not done in a private setting.
Jen Ibanez Whitlock, AILA: Sometimes people are actually still recovering from the injuries they sustained, either at the hands of cartels, or through their irregular crossing at the conclusion of an interview. Sometimes the individual will know whether or not they've been passed, but oftentimes they do not, and it's not until they are being perhaps placed on a plane that they realize that they have failed their interview. If they didn't know, or if they didn't ask for a review of that case.

So it's in these settings that the new asylum the new interim final rule is going to require asylum officers to make determinations largely based on the testimony of the individual. You know there's this isn't a situation where you're presenting evidence. Even if the individual brought evidence of their claim that's likely been confiscated by Cbp. Or ice prior to being booked in. And it's our assessment that these changes can have dramatic changes. In the outcomes. About a year ago the Biden Administration issued the circumvention of waffle pathways rule with the goal, pushing people to use these lawful pathways that then described at the top of the call, instead of coming to the border and crossing irregularly.
Jen Ibanez Whitlock, AILA: However, if you fail to do that. What that rule did was that you were basically ineligible for asylum, and only eligible for less forms of protection known as withholding a removal and cat.

Jen Ibanez Whitlock, AILA: however, even within the clp, as we call it. You could rebut that in ineligibility. But if you didn’t, you still were eligible for these lesser forms of relief, withholding of removal or cat.

Jen Ibanez Whitlock, AILA: What this new rule does is that it adds a layer, an additional layer to disqualify people from eligibility for asylum. Now with the trigger of whether it it doesn’t really even matter if you tried to avail yourself of the lawful pathways. The main focus is, was the border closed or not when you crossed to regularly? If it was, and, as Greg has pointed out.

Jen Ibanez Whitlock, AILA: it would have been every day since the start of this administration you’re rendered ineligible for asylum, and

Jen Ibanez Whitlock, AILA: the additional consequence now is that there’s a new standard. So for those less reforms of protection that I just mentioned. The rule creates a a new standard. That there is. The the Rf. Calls the reasonable properties standard. So this one means essentially

Jen Ibanez Whitlock, AILA: 50%. Chance is the one way to describe it. Whether or not you're even eligible for this lesser form of protection.
So one thing that I will be tracking closely about. How this standard is applied in practice is whether or not we see, for example, public guidance about how asylum officers are supposed to apply it.

Passage rates of the assign of the credible fear interviews how long people are sitting in custody, and also whether or not these exceptions that Greg mentioned at the top that are baked into the rule are actually genuinely, meaningfully applied. So, for example, in addition to the unaccompanied children and Lprs. Whether people who have a compelling circumstances, such as acute medical emergencies.

extreme threat to life or safety, or have been a victim of some fear for our trafficking. If those people are really actually getting screened out and not having this role applied to them.

there could be wide variation in what an individual considers an acute medical emergency. And the last thing that we'd want is to tell people you're only gonna get an opportunity to enter if you're basically on death store.

So with that, I'm gonna pass it over to Angela Kelly to talk a little bit more about some of the things that we would prefer to see, but I hope that's been helpful.
Angie Kelley: Thanks so much. Jen, yeah. And I know that we wanna get to questions. And people probably wanna get to lunch if you're on the East coast. So I'm gonna talk fast and wrap us up. I wanna take a step back and really talk about like this is, this is an election year. And what we really need to think about is like, what does the American public want? And that's that those are the the policies that we search, we should pursue. So one, the American public wants solutions not sound or flimsy, policies that are legally questionable and that are gonna end up being litigated

Angie Kelley: Gallup poll shows that public support is still very high, that legal immigration is a good thing for this country, and when they're asked about border solutions they express a lot of common sense. So Pew found that people support 60 or higher, that we should have more judges that make decisions quickly, and 56% say that we should create more opportunities for people to legally immigrate to this country. So what the public supports is something that is fast, fair, and final.

Angie Kelley: These are not the policies that we're being that we're seeing being advanced either because Congress isn't acting or because the Administration is grasping at some straws.

Angie Kelley: Secondly, the American public wants lawmakers to find common ground for solutions not just to stand their ground.

Angie Kelley: Exhibit A is what you see that Ben pointed at the top of the call.
Angie Kelley: What is happening locally. So whether it's the Denver mayor being very creative and innovative in getting recently arrived migrants ready to work and pushing the Government to give work authorizations more quickly, or, as Ben pointed out, Topeka, Kansas.

Angie Kelley: not a place I would necessarily want to move to, but hey, for $15,000 if I have work. Authorization

Angie Kelley: could be very attractive to a recently arrived migrant.

Angie Kelley: Thirdly.

Angie Kelley: the American public

Angie Kelley: hasn't forgotten that we have a longstanding population that is deeply rooted in this country.

Angie Kelley: That is settled. These are folks that are married to us citizens. And so when I heard the President say in his speech about the border policy, that in the coming days or weeks that we would
see something that is more fair and just I hope it is that population that he's talking about. Because and I see Michelle Hackman is on on the call, and it's a Wall Street journal poll that found

Angie Kelley: that when you test, what is the public support? 74% wanna path to citizenship for people who've been here for a long time because there are neighbors, because there is American as as I am, and others on this call. But for a piece of paper.

Angie Kelley: in contrast, as we think about what what might happen in November.

Angie Kelley: and what other policies are being talked about of deporting those 11 million people, of slamming the door at the border, of ensuring that people don't get to come and make this country the greatest country. So it's been I think that's what we should be worried about. I'll kick it back to you, Ben.

Ben Johnson - AILA: Thank you, Angie. I think, Bell, you're gonna give some instructions on people asking questions, although I bet they already know how to do that.

Belle Woods: Yeah, absolutely. If folks wanna ask a question, feel free to raise your hand or enter the question in the chat box. If that's more comfortable for you again. We'd really appreciate it. If you do. Verbally express your question that you put your name and your outlet out there, so we can make sure to note those. I think I see Rebecca Santana from Ap as first.st Here Ben Rebecca.
Rebecca Santana: Thank you so much. And thank you for having this. I had one question for Greg, and then just a broader question for all of you, Greg, you had mentioned the signage that people are supposed to be able to see. Can you describe that a little bit more like where it’s supposed to be and what it’s telling people a. And then I think just broadly for all of you like.

Rebecca Santana: I guess I’m still struggling with the the Clp role from last year was a very high bar, presumed people to be ineligible for asylum. So if you can drill down into really where the specifics where this this interim final rule is different from that cause. It sounds like, obviously, you think it’s very significant. I’m just kind of trying to make sure. I understand exactly where it’s different and where it’s much harsher.

Greg Chen/AILA: I can take a stab at those, especially your signage question. So the interim final rule says there’ll be general notice given that people need to manifest.

Greg Chen/AILA: not totally clear what that means. We assume that’s gonna be done by the agencies promulgating memos to their field. We’ve been told that we’re not gonna get those publicly issued we did see, however, posted. And we’ve now put it on our website an ice memo that went out to the field. I think it was also dated June 4, th which basically said, You know.
Greg Chen/AILA: which is not the same Acp, but ice tension facilities. They’re gonna be putting notices up in the facilities. And they went through a kind of a list of the different types of information, including language that should be translated into but essentially, if you qual, if you have any of these kinds of vulnerabilities you should. There? Then raise your hand, or go talk to somebody and tell them that’s the way to manifest.

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Greg Chen/AILA: That you have this kind of a fear. So that’s basically we’ve heard about the signage. It’s on our website. If you want to see the details of what? How ice kind of describes it the on the

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Greg Chen/AILA: other part that you asked about. You know that. See the Clp circumvention of legal pathways rule the way you described it. Sorry, lawful pathways rule as you described it already presume that most people would not be eligible for asylum that is accurate, and, for example.

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Greg Chen/AILA: in the 1st 5 months that the circumvention of waffle pathways rule went into effect, basically may, 5 months after May of last year, the number of people that actually ended up getting 1st of all screened, and then found that they could even be eligible for a son was only 13.

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Greg Chen/AILA: So this is the preliminary screening that was set up under the clp rule. And the people that got screened. And then we’re found. Okay, now, you can actually apply for asylum. That was only 13. And the people that basically qualified for that 13% were the people that fell into the specific vulnerability type exceptions that we’re talking about. In in those categories.
Greg Chen/AILA: There's data out there that's filed by Dhs into the courts. We reference it in our in our policy. Brief

Greg Chen/AILA: the

Greg Chen/AILA: contrast point to make of that is that this is supposed to be a preliminary screening. It's not supposed to be the final asylum determination by an immigration judge. And, in fact.

Greg Chen/AILA: statistics show that 55% of people who get past a credible fear screening this is before the Clp rule went into effect. 55% who went through credible fear screening, and then went before the immigration judge received a grant of asylum.

Greg Chen/AILA: So they've actually turned the standard on his head by making it harder at the preliminary screening level than when you're in front of the immigration judge. Now your question was, Well, how is this changing it? Well, what it's doing? You know. The main point is that this will be in effect for everybody

Greg Chen/AILA: during the time that it's in effect. So it's it's currently in effect. So it's everybody who crosses between a port of entry is, gonna have it applied to them. And also people who go to the port of entry and don't have a Cv. One app. They're not gonna have an exception, either. They're gonna also have this applied to them. So the
Greg Chen/AILA: rules gonna apply much more extensively. And as Jen mentioned, it's gonna have a higher legal standard of reasonable possibility which is going to raise the bar for more people. But the I think most significant thing, PE Rebecca to mention is that you have to proactively manifest. There will not be individual screenings done for people as is currently a process that is, that

Greg Chen/AILA: the agencies tried to do, even though they don't have as much capability. But there will be no pretense of doing the screenings. Now you have to manifest, and very few people get it under that standard.

Ben Johnson - AILA: I do think it is safe to say, though, that there is a lot of uncertainty about how these things, how these these programs clp, and this new population will overlap in implementation. And you know, if they ever get to the moment where the this proclamation is managed to be released and the border reopened. You know how people will be processed. How, you know. Cases

Ben Johnson - AILA: will, you know are are impacted that arrived at the border during the closure versus when it might reopen. So a lot of questions and concern, and we will be doing a ton of monitoring of, you know, for however long this policy is operational, we're going to be continuing to monitor how that happens.

Belle Woods: Any other questions. If you wanna raise your hand or put your question in the chat?
Belle Woods: Looks like Ellen Gilmer from Bloomberg has raised her hand. Ellen.

Belle Woods: let me

Belle Woods: see if I can get Alan unmuted.

Belle Woods: Can you try to unmute yourself, Ellen.

Belle Woods: or perhaps put your question in the chat? If we aren't able to get you unmuted.

Belle Woods: Okay.

Belle Woods: can you speak to what you expect to see in the courts? Is her question.
Ben Johnson - AILA: Well, I will offer that. I mean, I think, based on previous decisions making clear that the exercise of 212 f authority doesn't pro allow for the executive office to completely eradicate other statutory rights and opportunities that are provided in other areas of the law, namely, the asylum process. So this is during the Trump administration courts make clear that this can't completely eradicate the statutory right to asylum. You know what will happen in the current political environment with regard to a particular judge's decision.

Ben Johnson - AILA: You know whether that current legal theory or that that precedent will be overturned. You know, anything is possible in when it comes to immigration. But our assessment is that based on previous decisions and the fact that as Greg and and Jen have pointed out that that few, if any, legal channels of immigration or legal channels of asylum remain open.

Ben Johnson - AILA: then courts should find this to be an unauthorized exercise of 212 F. Authority.

Belle Woods: Thank you, Ben. Looks like Quinn Owen from ABC. News has raised his hand. Quinn.
Belle Woods: want to go ahead and unmute yourself.

00:34:04.080 --> 00:34:13.860
Quinn Owen: Yeah, thank you. I had a similar question about how the legal challenges might play out. I'm I'm could you kind of explain, like

00:34:14.260 --> 00:34:16.989
Quinn Owen: what that might look like, how a case

00:34:17.080 --> 00:34:22.270
Quinn Owen: could come together.

00:34:19.870 --> 00:34:22.270
Quinn Owen: Are you aware of any

00:34:23.284 --> 00:34:31.350
Quinn Owen: lawsuits that are coming together? And any any insight you could have into into how quickly this could be stopped.

00:34:31.929 --> 00:34:36.599
Ben Johnson - AILA: Well, I think legal learned has made it clear that the Aclu is intending to.
Ben Johnson - AILA: you know, to to to fight this right out of the gate and you know, pursue same or similar litigation as it sought under the trump administration. And you know I don't. I don't want to exceed

Ben Johnson - AILA: the limits of my Federal court

Ben Johnson - AILA: expertise here. But I I mean, I think initially, there'll be a challenge that on its face. This law is, you know, improper and impermissible, you know, E, even if that doesn't work. I think that at the end of the day that and as applied challenge that

Ben Johnson - AILA: either the failure to provide adequate notice. The the fact that there aren't resources to adequately provide Cbp one access or those kinds of things that a a as it is implemented the the policy would, you know, fail the standard of of providing for you know.

Ben Johnson - AILA: for not foreclosing all avenues of asylum.

Ben Johnson - AILA: So that's what I would expect. You know, dual track litigation litigation on the front end, on on its face. But then, depending on the outcome of that you know other opportunities to say that as it is being applied it constitutes an it's an unconstitutional or impermissible violation of due process rights. I I will say that
Ben Johnson - AILA: the 4 h to find an attorney I mean not only just, is personally and pervasially offensive to the realities on the ground, but that seems to me to be the kind of situation where you've put a fig leaf up as some sort of a due process protection and but is completely out of touch with the realities. What happens, you know, to folks that have, you know, recently

Ben Johnson - AILA: found there, you know.

Ben Johnson - AILA: struggled through the dairy and gap, and they got 4 h to find an attorney consult with attorney and get an advice for an attorney about their case. That that's a that's a that's ridiculous.

Belle Woods: There's a similar question from Maria Sachetti of the Washington Post. Along same similar lines. Do you have any idea how many people might have been turned back under this new policy. And are you planning to sue to block the policy? And if not, please say why.

Ben Johnson - AILA: Leave others to answer that 1st part of that question in terms of the suit.

Ben Johnson - AILA: You know we'll certainly we'll be talking to, you know, our our colleagues at the American Immigration Council. They have been, you know, then, an incredible litigation team have
worked on issues with the ACLU and sub issues you know. On these kinds of issues. So yeah, I think we will be

176
00:37:17.990 --> 00:37:26.369
Ben Johnson - AILA: active thought partners and supporters of litigation on this in terms of how many people might have already been

177
00:37:26.825 --> 00:37:31.094
Ben Johnson - AILA: excluded. I don’t have that number, Jen, and Angie Greg. Any sense of that.

178
00:37:31.400 --> 00:37:33.100
Greg Chen/AILA: Zoom, Maria! Oh, go ahead, Jim!

179
00:37:33.460 --> 00:37:48.729
Jen Ibanez Whitlock, AILA: I know. Tuesday they had 4,300 and encounters, so that’s not to say that all those people would have been excluded. But just to give you a sense, I think that’s how I am trying to figure out. You know, the in the sort of the numbers impact is how many people every day we’re going to be saying

180
00:37:48.860 --> 00:38:00.399
Jen Ibanez Whitlock, AILA: you can’t even access asylum. Obviously, that’s over capturing the actual number of people who maybe would have been eligible for asylum, but but for this interim final rule, and I could be allowed to apply.

181
00:38:05.500 --> 00:38:10.870
Belle Woods: Alright. Thank you so much. It looks like Julia Preston has raised her hand. Julia, you wanna go ahead and unmute.

182
00:38:18.930 --> 00:38:19.859
Julia Preston: That do it.

183
00:38:20.280 --> 00:38:20.990
Belle Woods: Yes.

184
00:38:20.990 --> 00:38:21.900
Julia Preston: So.

185
00:38:23.450 --> 00:38:33.469
Julia Preston: The. This is a transparent effort by the Administration to bring down the numbers of people who are crossing in between the ports of entry.

186
00:38:33.660 --> 00:38:39.220
Julia Preston: It fits into their overall strategy of trying to drive people

187
00:38:39.380 --> 00:38:42.030
Julia Preston: to get into the legal.
Julia Preston: although fragile, lawful pathways at the ports of entry, particularly by Cbp one. So the level that would accelerate or that would allow the this rule to be lifted is when you get down to 1,500, an average daily of 1,500 people, which would be more than 10,000 people in a week. And 40,000 encounters at the in between the ports of entry.
Julia Preston: in a month.

Julia Preston: So you’re looking at if you wanted to take that out to an annual figure over 300,000 people. So my question is

Julia Preston: given the fact that we have 3 million cases backed up in the immigration courts that Aila cannot possibly provide attorneys to all the people who need them.

Julia Preston: that the Mayor of Denver, the Mayor of Boston, the Mayor of New York, the Governor of Massachusetts, came out yesterday and said, this is great. We’re so glad

Julia Preston: that the Administration did this.

Julia Preston: is there a number?

Julia Preston: Is there? Can you foresee a circumstance in which you might
Julia Preston: agree with a policy that seeks to discourage people from making the incredibly dangerous trip to the border.

Julia Preston: putting themselves in the hands of smugglers.

Julia Preston: and

by this kind of deterrence policy. Is there any policy at the border that you would accept

or agree with to meet the goals that are transparently. The Biden Administration is trying to meet, which is just to get these numbers down.

Ben Johnson - AILA: Yeah, listen. We have been
Ben Johnson - AILA: working very hard with in a lot of different areas to provide solutions. Or we have many, you know, documents and and forms in in different forms of

Ben Johnson - AILA: proposals, sensible, workable solutions that would address this the these challenges simple things like coordinated release to these cities rather than the the randed, haphazard way they're arriving unexpectedly in these cities could help to alleviate some of the chaos that's happening there overall, though in turn, and we and we are equally you're deeply committed to the idea of

Ben Johnson - AILA: disincentivizing folks from coming through, you know, in journeying through very very dangerous places in the hands of very, very dangerous people. What we know from experience, though, is the idea that we are going to be able to stand up

Ben Johnson - AILA: harsh punishments.

Ben Johnson - AILA: A. A. And and deter people who are fleeing horrible violence and horrible economic conditions. Deterrence as a strategy has been dramatically overrated.

Ben Johnson - AILA: we believe, and the evidence of the experience of the bite administration shows that
Ben Johnson - AILA: other alternatives is the answer.

Ben Johnson - AILA: that providing legal pathways to immigration opportunities for for for families, close family members to unite what we did with. The Central American. My minors program. Those kinds of things that understand the nature of the pressure that's driving people to the country and providing alternatives to

Ben Johnson - AILA: dangerous journeys in the hands of incredibly dangerous people. We are all for that we definitely have bright lines setting up systems that deny people a full opportunity to be heard when the consequences are as high as they are in asylum is unacceptable.

Ben Johnson - AILA: but we have the resources to provide people meaningful, fair, and efficient ways to to screen these cases and determine who's eligible and who's not? The barrier is the refusal of Congress to provide funding, and that is not a reason for us to abandon fundamental principles of due process. So we're gonna continue to push Congress to do its job. We're gonna continue to push the Administration and Congress

Ben Johnson - AILA: to look beyond the border. Look at regional solutions, look at investments in countries abroad that might change the conditions that they're fleeing from, that might provide them opportunities to apply from home for the work that they are seeking, and that we need. So
Ben Johnson - AILA: I I. We are open to all kinds of suggestions, but we have very clear bright lines in what is acceptable and permissible under law and in accordance with our values.

Julia Preston: Thank you. Man, yeah.

Greg Chen/AILA: If I could just build upon Ben's really kind of thoughtful response. There you have to add to this concern about Congress not acting

Greg Chen/AILA: the there are solutions, and Aila has put forth a number of proposals for how this could be done. The fact that Congress is not willing to come together and pass either legislation or to fund the agencies adequately, is making it

Greg Chen/AILA: impossible to have smart solutions get out there, and so the administration is left with breadcrumbs of how to implement things, including not having enough, you know, personnel and resources to implement various smarter policies. And I'll just point out, as Ben was mentioning. You know the need for more legal pathways. There is a striking
Greg Chen/AILA: contrast now to what many governors are saying across the country. Take even Republican governors, like the Utah governor and the Indiana governor that pro have partnered to say, we need more foreign workers to come to the United States. They want those kinds of expansions of visa, but the Congress won't pass it, and at the same time you have con so many members of Congress, simply saying, we have to crack down on the border well, the fact that our immigration policy is not matching the needs of the country is a huge problem. And we really need Congress to get around that that those solutions will help with the border. And so it has to be a combination of those.


Belle Woods: If you have any further questions, please feel free to raise your hand or drop them in the chat.

Belle Woods: Ben, do you want to go ahead and wrap up. If there are no few further questions.

Ben Johnson - AILA: Well, I've done my soliloquy apparently so. thank everybody participating. And for the ail staff, Angie there and for for putting this together. We're available for questions. Afterwards. So please reach out. Is that what I needed to say, Bill?
Belle Woods: Sounded great. Thank you so much. Everyone.

Ben Johnson - AILA: Alright!