



## **Primer: The Biden Administration’s Border Rule is a Farce**

### **Summary**

On June 4, 2024, President Biden announced in a presidential Proclamation<sup>1</sup> a new Interim Final Rule (IFR)<sup>2</sup> to address the crisis at the border. This action comes 154 days before the presidential election after months of extensive reporting that the Biden Administration planned to take action to address the unprecedented chaos. It is imperative to note that the rule also comes after the Biden administration claimed that the president could not address the crisis unless Congress statutorily enacted new authorities.<sup>3</sup>

The IFR issued through the Department of Homeland Security (DHS) is ostensibly designed to restrict asylum eligibility and mitigate the flow of illegal border crossings. A closer analysis reveals the measure to be an institutional surrender of American security and sovereignty.

### **The Interim Final Rule**

The so-called “Proclamation on Securing the Border” does the following:

- Sets a 7-day average for daily illegal entries equal to 2,500 illegal immigrants before a suspension on entries is triggered.
  - This policy will allow up to 76,041 illegal aliens per month to enter the U.S. before it triggers a suspension on entry. Put another way, this “trigger” will greenlight over 912,000 illegal immigrant entries every year, equivalent to the entire population of Columbus, Ohio.
  - This policy effectively sets a *floor* for how many illegal aliens are allowed to illegally enter the U.S. on a daily, monthly, and annual basis. This is an unprecedented effort to sanitize and operationalize illegal immigration.

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<sup>1</sup>Presidential Proclamation (June 4, 2024). “A Proclamation on Securing the Border,” *The White House*.

<https://www.whitehouse.gov/briefing-room/presidential-actions/2024/06/04/a-proclamation-on-securing-the-border/>

<sup>2</sup>U.S. Department of Homeland Security (June 4, 2024). “Interim Final Rule on Securing the Border,” *The Federal Register*.

<https://public-inspection.federalregister.gov/2024-12435.pdf>

<sup>3</sup>Presidential Statement (January 26, 2024). “Statement from President Joe Biden on the Bipartisan Senate Border Security Negotiations,” *The White House*.

<https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/statement-from-president-joe-biden-on-the-bipartisan-senate-border-security-negotiations/>

- Sets a “reverse” trigger that will allow the border to *reopen* to illegal aliens abusing the asylum process once the daily encounters drop to 1,500 over a 7-day average.
  - This will allow up to 45,625 illegal aliens to enter the U.S. monthly.
- Creates a laundry list of exemptions that will not count toward the 2,500/7-day and 1,500/daily encounters threshold. These exemptions include:
  - Unaccompanied children and minors.
  - Illegal aliens who are victims of human trafficking.
  - Illegal aliens who use the CBP One mobile application to schedule an appointment time and place to present at ports of entry.
  - Illegal aliens who DHS decides to allow entry “based on the totality of the circumstances,” or “urgent humanitarian, and public health interests.”
  - Illegal aliens who DHS authorizes to enter “due to operational considerations at the time of the entry or encounter that warranted permitting the noncitizen to enter.”

Importantly, these daily and weekly caps only apply to illegal aliens encountered by Customs and Border Protection. No meaningful or explicit measures have been taken to mitigate ‘gotaways’ and those who seek to evade detection from U.S. authorities.

### **What The IFR Does Not Do:**

Put bluntly, the IFR does not live up to its name and is yet another example of government policies doing the exact opposite of whatever ridiculous moniker Washington bureaucrats devise to sell it to the public.

- The IFR does not stop the flow of unaccompanied children across the border. Given the exemptions, it will likely *increase* the trafficking of children and minors, exposing more people to cartel-facilitated abuse and sex trafficking and saddling U.S. policymakers with future rounds of new DACA populations.
- The IFR does not stop the CBP One app abuse that allows illegal immigrants to flaunt U.S. immigration law and suck up CBP resources explicitly. Given the exemptions, it will continue to provide non-citizens the ability to set *appointments* to illegally cross and enter the U.S. before being released into the interior.
- The IFR does not stop the “catch and release” protocols that are resulting in illegal immigrants saturating communities across the nation—driving up crime, disease, and chaos.
- The IFR does not address the unlawful mass parole that President Biden has granted to millions of illegal aliens already.
- The IFR does nothing meaningful to stop the flow of non-citizens claiming asylum at the border and being granted unlimited entry. Given the exemptions and how

the triggers are set up, it will likely increase fraudulent asylum claims while simultaneously removing pressure for Congress to implement statutory fixes.

- **Bottom Line: The IFR does not shut down the border—it simply makes illegal immigration a permanent government-sanctioned and government-operated industry.**

### **Biden Administration ICE Memo**

On the same day, President Biden also issued a memo to U.S. Immigration and Customs Enforcement (ICE) that instructed ICE officers to adopt new measures that make it much easier for illegal aliens to claim asylum.<sup>4</sup> The memo requires ICE to place signs on facilities in multiple languages instructing illegal aliens on how best to claim asylum. It also requires a video telling illegal aliens that they should raise concerns about their fears that will play on a loop. Incredibly, the memo lists several behaviors and mannerisms that can be interpreted as legitimate causes for asylum. These include: trembling, shaking, staying silent, etc.

This memo invalidates President Biden's public rationale for the border IFR, exposing the claim that it will "tighten the asylum process" as a bald-faced lie. As feared, the policy substance behind the Biden administration's political actions underscores the entire process as little more than a public relations exercise—specifically an exercise that gaslights the American people into thinking the administration is interested in securing the border and protecting them from the chaos it has helped facilitate.

### **Concluding Assessment**

The Biden administration is using similar sections and authorities in the IFR as the first Trump administration utilized, specifically Section 212(f) of the Immigration and Nationality Act. However, the exemptions and triggers belie the publicly professed intent. Further, President Biden reversed many of the Trump administration's border security and asylum protocols on his first day and first week in office.<sup>5</sup> These actions are happening three and a half years *into the unprecedented border chaos* that has resulted in more than 10 million illegal immigrant entries since President Biden took the oath of office.

In the first Trump administration, tightening asylum was merely one of many policies aimed at border security. These policies included third-country asylum agreements, the Migrant Protection Protocols commonly referred to as "Remain in Mexico," construction

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<sup>4</sup>Taer, J. (June 5, 2024). "ICE Officers Given New Instructions Appearing to Make It Easier for Migrants to Claim Asylum: Sources," *The New York Post*. <https://nypost.com/2024/06/05/us-news/ice-officers-given-new-asylum-instructions-for-migrants/>

<sup>5</sup>Bredemeier, K. (February 3, 2021). "Biden Signs Executive Orders Reversing Trump Immigration Policies," *Voice of America*. [https://www.voanews.com/a/usa\\_biden-signs-executive-orders-reversing-trump-immigration-policies/6201520.html](https://www.voanews.com/a/usa_biden-signs-executive-orders-reversing-trump-immigration-policies/6201520.html)

of the border wall, and implementation of Title 42 public health authorities providing for removal—all of which have been undone or reversed by the Biden administration.

At a time of unprecedented illegal immigration, exponentially increasing fentanyl deaths due to cartel-trafficking operations, and rising illegal immigrant crime, the American people deserve actual border security that is designed to protect their families and safeguard their communities. To that end, this rule is an absolute and total farce.