



HOW THE “LAWFUL PATHWAYS” ASYLUM BAN IMPACTS CHILDREN & YOUTH

Exceptions that may help to preserve asylum
eligibility for young people.

OCTOBER 2023

Asylum is an important form of protection for people who are fleeing certain types of harm in their home countries. Even though seeking asylum is a right under the law, the government has imposed new rules in recent years that prevent people from applying for or being granted asylum. In May, the Biden administration issued the “Circumvention of Lawful Pathways” rule, also known as the Biden asylum ban. The rule took effect when the COVID-related border closure expired on May 11, 2023. The ban makes people who enter the United States without permission after having traveled through another country **ineligible** for asylum unless they can show that they meet one of the exceptions. As a result, it puts children and families seeking safety in the United States at great risk.

The rule applies to anyone who enters the United States between May 11, 2023, and May 11, 2025, including minors traveling with their parents. **Certain groups of people are exempt from the bar, including:**

- ▶ Asylum seekers from Mexico (as they do not travel through another country before entering the United States);
- ▶ Unaccompanied minors;
- ▶ People who enter the United States through parole (a process through which the government can give certain people permission to enter the United States);
- ▶ People who have a pre-scheduled appointment to come to a port of entry

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(through the CBP One app); **and**

- People who have applied for asylum in another country and have received a final denial of asylum.

The bar can also be overcome if a person can show that they faced “exceptionally compelling circumstances.” The rule gives some examples of exceptionally compelling circumstances, including that the person or a member of their family with whom they were traveling faced an “acute medical emergency,” “an imminent and extreme threat to life or safety,” or are a “victim of a severe form of trafficking in persons.”

This Community Alert explores several of the exceptions to the lawful pathways asylum ban that are especially relevant to children and youth who are seeking asylum. Although the exceptions to the bar are supposed to protect children and keep families together, they do not go far enough and will be out of reach for many young people. These exceptions are limited and can be difficult to prove, especially for children and youth.

NOTE

*THE ASYLUM BAN IS ALSO **INCONSISTENT** WITH U.S. AND INTERNATIONAL ASYLUM LAW. RECOGNIZING THE IMPORTANCE OF ASYLUM PROTECTION AND THE FACT THAT ASYLUM SEEKERS OFTEN CANNOT USE ORDINARY IMMIGRATION PROCEDURES TO REACH SAFETY, U.S. ASYLUM LAW ALLOWS SOMEONE TO APPLY FOR ASYLUM REGARDLESS OF THEIR IMMIGRATION STATUS OR HOW THEY ENTERED THE UNITED STATES. A FEDERAL COURT HAS ALREADY FOUND THE ASYLUM BAN UNLAWFUL BECAUSE IT CONFLICTS WITH THIS LAW, BUT THE BAN HAS BEEN ALLOWED TO REMAIN IN PLACE WHILE THE GOVERNMENT APPEALS THE RULING.*

UNACCOMPANIED MINORS

As mentioned above, asylum seekers who are considered unaccompanied minors are exempt from the bar. Federal law defines an unaccompanied minor as someone

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who **(1)** has no lawful immigration status in the United States, **(2)** is under the age of eighteen, and **(3)** with respect to whom there is no parent or legal guardian in the United States available to provide care and physical custody. Unaccompanied minors are given special legal protections under the law. For example, they are not subject to expedited removal, a streamlined process that the government can use to deport certain people without allowing them to go before an immigration judge.

SPOUSE OR CHILD MEETING AN EXCEPTION TO THE BAR

When applying for asylum, if an applicant's spouse or child who is traveling with them meets an exception to the bar, even if the applicant does not, they will not be subject to the bar. For families traveling together, this means that each immediate family member must be screened to see if they meet an exception. If they do, it may exempt their whole family from the bar.

FAMILY REUNIFICATION

There is also a family unity exception for people who win withholding of removal after being barred from asylum. Withholding of removal has similar requirements to asylum, but offers fewer benefits. While someone with asylum can petition for their spouse and children to also receive asylum, known as derivative asylum status, withholding of removal does not provide derivative status.

The family reunification exception allows those who were subject to the bar, and limited to receiving withholding of removal, to obtain asylum and petition for their spouse and children. **People who meet the family unity exception will be able to receive asylum if the following conditions are met:**

- 1.** They were granted withholding of removal;
- 2.** They would have been eligible for asylum if not for the lawful pathways asylum ban; **and**

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3. They have a spouse or child accompanying them who is not independently eligible for asylum or other protection from removal, or have a spouse or child abroad who they could petition to bring to the United States.

PARTIAL EXCEPTION FOR PEOPLE WHO ENTERED BEFORE TURNING EIGHTEEN YEARS OF AGE AND APPLY AFTER MAY 11, 2025

Finally, there is a limited exception to the bar for people who were under the age of eighteen at the time they entered the United States, but will only apply to those who file their application for asylum after May 11, 2025.

To find free or low cost immigration legal services in your area, visit ilrc.me/gethelp.

NOTE

THE LEGAL RULES ON ASYLUM ARE COMPLEX AND HAVE UNDERGONE MANY CHANGES IN RECENT YEARS. THE LAWFUL PATHWAYS ASYLUM BAN IS CURRENTLY BEING CHALLENGED IN COURT AND A COURT DECISION COULD DETERMINE WHETHER THE RULE REMAINS IN PLACE. THE GOVERNMENT COULD ALSO ISSUE NEW REGULATIONS ON ASYLUM IN THE FUTURE. BECAUSE OF THIS, THE RULES GOVERNING ASYLUM MAY CHANGE IN THE FUTURE. IT IS IMPORTANT TO SEEK ADVICE FROM A TRUSTED IMMIGRATION ATTORNEY OR ACCREDITED REPRESENTATIVE IF YOU HAVE QUESTIONS ABOUT ASYLUM ELIGIBILITY.

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