



FAQ: Supreme Court Decision on Asylum Rule September 11, 2019

Credit: CNS/Luis Hernandez

What is the recent Supreme Court decision impacting asylum?

On September 11, 2019, the Supreme Court of the United States issued an [order](#) that temporarily allows the Trump Administration to enforce the asylum rule it announced in July.¹

What does the asylum rule announced in July by the Trump Administration do?

The Trump Administration's [asylum rule](#) effectively bans most migrants from seeking asylum at the U.S./Mexico border if they transited through almost any third country on their way to the United States.² In other words, almost all migrants traveling by land, with the exception of Mexican nationals, are expected to apply for and be denied asylum in another country they have traveled through prior to arriving in the U.S. to claim asylum.

What does the Supreme Court decision do?

Though the asylum rule is still under litigation, the Court's [order](#) halts a previous preliminary injunction issued by a federal court in California, which had already been narrowed by the Ninth Circuit Court of Appeals. The preliminary injunction had temporarily barred the enforcement of the asylum rule in some states (namely, California and Arizona).³ With this new order in place, however, the Administration may now implement the asylum rule nationwide.

Who will it affect?

As a result of the Supreme Court's order, the rule will affect almost any migrant who arrives at the southern border after July 16, 2019 (the day the rule was announced) and attempts to seek asylum in the United States. Such migrants will only be deemed eligible to apply for asylum in the U.S. if they have: (1) applied for and been denied asylum in a third country through which they traveled, (2) are victims of a severe form of trafficking, or (3) traveled only through a coun-

try or countries that are not party to the 1951 Convention Relating to the Status of Refugees, the corresponding 1967 Protocol, or the Convention Against Torture (CAT). Any migrant arriving to the southern border who does not meet these exemptions will be ineligible to apply for asylum in the U.S. Under the rule, those who do not meet exceptions are still eligible to apply for withholding of removal and protection under CAT, which are protections against deportation to the country of persecution. However, these [two protections](#) have a much [higher burden of proof](#) than asylum and do not offer similar benefits.⁴

Is the decision final?

No. Though the Supreme Court's September 11th order permits the temporary enforcement of the asylum rule, it is not final. The order only acts to halt a temporary bar on the enforcement of the rule, which was decided by a lower federal court. The [legality](#) of the rule remains subject to litigation in the lower courts.⁵

Are there any other challenges being brought to this rule?

Yes. In addition to the challenge in the U.S. District Court for the Northern District of California, there is also a [challenge](#) to the Trump Administration's asylum rule pending in the U.S. District Court for the District of Columbia.⁶

What is Church teaching on this issue?

The Catholic Church believes in the inherent right of individuals to seek protection from harm; it firmly believes that those fleeing violence and persecution should be protected and that all people should have the right to seek a dignified and safe life for themselves and for their families.

What has the USCCB said on this issue?

USCCB President, Cardinal Daniel DiNardo, has [called](#) the Trump Administration's actions an "unacceptable action to undermine access to protection" in the United States, urging that the Administration afford migrants due process and focus instead on addressing root causes of migration.⁷ In addition, USCCB submitted a comment to the Department of Justice and the Department of Homeland Security, calling on them to rescind the rule. The Bishops believe this rule threatens vulnerable individuals and family unity, as well as violates the United States' tradition of providing humanitarian protection to those in need. You can read the USCCB's full comment [here](#).⁸

Endnotes

1 Order Granting Application for Stay, *Barr et al. v. East Bay Sanctuary Covenant, et al.*, No. 19-16487 (Sept. 11, 2019), available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19a230.html>.

2 Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019).

3 Mark Sherman, *Supreme Court Allows Broad Enforcement of Trump Asylum Rule*, THE ASSOCIATED PRESS (Sept. 12, 2019), <https://www.apnews.com/a817cf3affb04f3d8ad3c4940366a5fe>.

4 See Azam Ahmed & Paulina Villegas, *This Takes Away All Hope": Rule Bars Most Applicants for Asylum in U.S.*, THE NEW YORK TIMES (Sept. 12, 2019), available at <https://www.nytimes.com/2019/09/12/world/americas/asylum-seekers.html>; see also U.S. DEP'T OF JUSTICE, *Fact Sheet Asylum and Withholding of Removal Relief Convention Against Torture Protections* (2009), available at <https://www.justice.gov/sites/default/files/eoir/legacy/2009/01/23/AsylumWithholdingCATProtections.pdf>.

5 Nicole Narea, *The Supreme Court Has Delivered a Devastating Blow to the U.S. Asylum System*, VOX (Sept. 12, 2019), <https://www.vox.com/policy-and-politics/2019/9/12/20861765/supreme-court-ruling-asylum-rule-southern-border>.

6 Adina Applebaum, *CAIR Coalition Joins In Challenge of New Rule Barring Asylum Eligibility for Many Migrants*, CAPITAL AREA IMMIGRANTS' RIGHTS COALITION (July 16, 2019), <https://www.caircoalition.org/news-clip/cair-coalition-joins-challenge-new-rule-barring-asylum-eligibility-many-migrants>.

7 U.S. CONFERENCE OF CATHOLIC BISHOPS, *USCCB President Condemns Threat of Widespread Enforcement Actions and New Rule Drastically Limiting Asylum* (2019), <https://justiceforimmigrants.org/statements/usccb-president-condemns-threat-of-wide-spread-enforcement-actions-and-new-rule-drastically-limiting-asylum/>.

8 U.S. CONFERENCE OF CATHOLIC BISHOPS/OFFICE OF GENERAL COUNSEL, "Asylum Eligibility and Procedural Modifications" *Interim Final Rule; EOIR Docket No. 19-0504, EOIR RIN 1125-AA91 and DHS RIN 1615-AC44* (2019), <http://www.usccb.org/about/general-counsel/rulemaking/upload/USCCB-Asylum-Comments-8-5-19.pdf>.