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Immigration

Biden Administration Publishes Final Rule on Asylum Ineligibility

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

On May 16, 2023, the Departments of Homeland Security (DHS) and Justice (DOJ) published a final rule released on May 10, 2023, "Circumvention of Lawful Pathways," which was effective May 11, 2023. The rule introduces a rebuttable presumption of asylum ineligibility for "certain noncitizens who neither avail themselves of a lawful, safe, and orderly pathway to the United States nor seek asylum or other protection in a country through which they travel." The rule applies "only to those who enter during a limited, specified date range at the southwest land border or adjacent coastal borders."

The Departments request comments by June 15, 2023, on whether the rebuttable presumption should extend to noncitizens who enter the United States at a maritime border without documents during the same temporary time period.