

# New Biden rules would limit arrest, deportation of migrants



Secretary of Homeland Security Alejandro Mayorkas speaks during a press briefing at the White House, Friday, Sept. 24, 2021, in Washington. (AP Photo/Patrick Semansky)

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FILE - In this Sept. 18, 2021, file photo Haitian migrants use a dam to cross into the United States from Mexico in Del Rio, Texas. President Joe Biden embraced major progressive policy goals on immigration after he won the Democratic nomination, and he has begun enacting some. But his administration has been forced to confront unusually high numbers of migrants trying to enter the country along the U.S.-Mexico border and the federal response has inflamed both critics and allies. (AP Photo/Eric Gay, File)

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WASHINGTON (AP) — Facing bipartisan criticism over its approach to immigration, the Biden administration on Thursday announced new rules that require authorities to only pursue migrants who recently crossed into the country without permission or are deemed to pose a threat to public safety.

The new guidelines replace interim rules issued in February that were initially blocked by a federal judge in August as part of a lawsuit brought by Texas and Louisiana. They break from a more aggressive approach to immigration enforcement under former President Donald Trump, who early in his presidency directed authorities to apprehend anyone who was illegally in the country.

The release comes as President Joe Biden has come under fire from allies for his reliance on a Trump-era public health authority to rapidly expel migrants encountered on the U.S.-Mexico border while also facing Republican criticism that he hasn't done enough to counter a sharp increase in migrants seeking to enter the country.

The Biden administration has expelled about 5,000 Haitians who crossed the U.S.-Mexico border at Del Rio, Texas, in recent weeks. A federal appeals court in Washington on Thursday cleared the administration to continue expelling families under the public-health authority known as Title 42. The appeals court put on hold a lower court order barring the expulsions of families hours before the ban was to take effect.

Department of Homeland Security Secretary Alejandro Mayorkas told reporters that the new policy was based on the reality that the U.S. can't go after all people in the country without legal status and shouldn't try because many "have been contributing members of our communities for years."

Authorities will be directed to focus on noncitizens who have crossed recently, defined as after Nov. 1, 2020, or who determined to be a threat because of national security or "serious criminal activity." Homeland Security includes U.S. Immigration and Customs Enforcement and the Border Patrol.

Unlike the interim rules, the criminal activity is not limited to the category known in legal terms as an aggravated felony but will depend on the "totality of the facts and circumstances," Mayorkas said. Anyone would be considered a priority if they are engaged or even suspected of terrorism or espionage, according to the memo. The new rules take effect Nov. 29.

Immigration authorities would be prohibited from arresting and seeking to deport someone in retaliation for exercising First Amendment rights, such as joining a protest or taking part in union activities.

"We are requiring and frankly empowering our workforce, critically empowering our workforce, to exercise their judgment, their law enforcement judgment," the secretary said.

Advocates for strict immigration enforcement have criticized the interim guidelines, which were similar in intent as the newly released rules, because they

were seen as a top-down approach and one that precluded low-level arrests that might yield investigative leads into bigger cases or help serve as a deterrent to illegal immigration.

Sen. Tom Cotton, R-Ark., said on Twitter that Biden has “welcomed” the migrants who have crossed and would now promise those already in the country that “they may stay in the U.S. without repercussions” with the new rules.

Immigrant advocates, including some who have in the past called for eliminating ICE and immigrant detention altogether, welcomed limits on enforcement but are wary given the rapid detention and expulsion of thousands of Haitians at Del Rio.

“This policy is only going to be as good as the results,” said Jacinta Gonzalez, senior campaign organizer of Mijente. “If detention numbers continue to rise, as deportations continue to happen, if we still see human rights abuses at the border, this policy won’t mean anything.”

A federal judge in Texas blocked the interim rules in August, ruling that the administration did not have discretion to choose which migrants to detain, but a federal appeals court allowed the guidelines to take effect while the lawsuit proceeds.

Mayorkas said it makes little sense to pursue all of the estimated 11 million people in the country without legal status, even if the U.S. had the law enforcement capacity to do so.

“They contribute to the well-being of our country and justice requires that we exercise our discretion accordingly,” he said. “The fact that an individual is a removable non-citizen should not alone be the basis of an enforcement action against them.”

Trump’s administration took hundreds of measures to restrict both legal and illegal immigration, including a zero-tolerance policy on border crossings that resulted in the forcible separation of thousands of families and requiring asylum seekers to await the processing of their cases in Mexico.

In the end, total deportations were higher under the first term of President Barack Obama, who enacted enforcement priorities similar to Biden’s, than under Trump. That was due in part to a lack of cooperation from many cities and states

whose leaders opposed Trump's immigration policies.

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Associated Press writer Elliot Spagat in San Diego contributed to this report.

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