

## Third Country Rule Notes

### Interim Final Rule

- **Effective July 16, 2019**
- No asylum (“credible fear” screening) at southern border for anyone who has passed through a third country to get there UNLESS
  - They applied for asylum in one of those countries and got rejected
  - They are subject to “extreme trafficking”
  - They passed through a non-signatory country (not relevant)
- Applicants can still try for withholding and CAT (“reasonable fear” screening)

**CAIR Coalition, et al. v. Trump**, lawsuit launched July 24, 2019 @ DC District Court

Charge: on July 19, 2019, gov’t changed INA statutory scheme without using the notice and comment procedures required by the APA.

- “It is a widely accepted principle of international refugee law that ‘asylum should not be refused solely on the ground that it could be sought from another State.’ UNHCR Exec. Comm., Refugees Without an Asylum Country, Conclusion No. 15(h)(iv) (XXX) Oct. 16, 1979.” (10)
- Transfer to another country must be accompanied by safeguards to protect the refugee.
- MX: not only violent conditions, but only 50 employees to process tens of thousands of applications for asylum. None of their offices is along the border. Asylum seekers have only 30 days to apply.
- New rule does not make an exception for UACs, even though this group is exempt from third-country bar & one-year time limit for applying. So even UACs will have to apply for asylum en route.
  - “Asylum officers would be forced to issue negative findings on the asylum claims of unaccompanied children.” (44)
  - Trafficking Victims Reauthorization Act (TVPRA)

Disposition: DC District Court rejected argument for TRO, permitted this to go through.

### **Penn State Center for Immigrants’ Rights Clinic**

#### **Third Country Asylum Rule: What you need to know** (updated Sept. 19, 2019)

- Policy announced July 15, 2019—effective date July 16.
- July 24, 2019
  - DC Dist Court rejected TRO, permitted interim final rule
- July 24, 2019
  - ND CA judge issued nationwide injunction to block rule
- Aug. 16, 2019
  - 9th Circuit: narrowed injunction to CA and AZ, but permitted ND CA judge to consider additional evidence

- Aug. 26, 2019
  - Administration filed emergency application to SCOTUS seeking a stay of ^^^
- Sept. 9, 2019
  - ND CA judge expanded scope to nationwide again
- Sept. 10, 2019
  - 9th Circuit temporarily stayed nationwide injunction
- Sept. 11, 2019
  - SCOTUS reinstated interim final rule nationwide, issuing a stay on both injunctions while litigation is pending.

#### **CLINIC Notes**

- Bars everybody but Mexicans from seeking asylum
- NO credible fear interview unless
  - Tried to get asylum in a 3rd country but got rejected
  - Subject to trafficking
  - Country you passed thru is not a signatory (not applicable at southern border tho)
- You can try for reasonable fear only.
- Failure of claim: probably (?) deported back to country of origin, but not clear.
- No clue about how this will affect affirmative asylum applications.
  - “The rule is written broadly to apply to anyone who entered or attempted to enter at the southern border. Nothing in the language of the rule limits its application to people apprehended at the border.”
  - Of course, we don’t know what will happen next for affirmative applicants, because asylum office does not adjudicate withholding or CAT protection in the affirmative context.
- No guidance on how this will be applied to MPP people: “It is not clear how IJs will interpret the July 16 effective date of the Asylum Ban for asylum seekers who ‘entered’ the US after July 16 because the US gov’t forcibly returned them to MX.”