



WHAT A SECOND TRUMP TERM COULD MEAN FOR **ASYLUM**

An overview of asylum as it was under the first Trump administration and what we can expect in his second term

JANUARY 2025

When the first Trump administration took office in 2017, it immediately adopted restrictive policies on asylum, making it more difficult for asylum seekers to win their cases. Trump returning to office in January 2025 raises fears that asylum-seekers will once again be a focus of the administration's anti-immigrant policies. Although the new administration will likely enact policies that are harmful to asylum seekers, certain changes would require Congressional action. Moreover, executive actions on asylum could be challenged in court. This alert explores what a second Trump term could mean for asylum seekers and what the administration can, and cannot, change on its own.

HOW DID THE FIRST TRUMP ADMINISTRATION IMPACT ASYLUM SEEKERS?

The Trump administration attempted many different attacks on asylum, including:

- Border policies to prevent recent immigrants from accessing the asylum system and fast-tracking deportations.
- Forcing asylum seekers to remain in Mexico while applying for asylum or apply for asylum in other countries instead of the United States.
- Using legal rulings to make asylum cases more difficult to win for survivors of domestic violence, gang violence, and other harm by nonstate actors.

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- ▶ Imposing new bars to asylum based on criminal history, including for minor convictions and arrests.
- ▶ Restricting work permit eligibility for asylum seekers.

These policies were devastating and led to many asylum claims being wrongly denied, and asylum seekers being deported to countries where they faced harm. Still, many of these policies were unsuccessful. Courts overruled several of them because they violated the rights of immigrants or contradicted the existing asylum law passed by Congress. Although many asylum seekers were harmed by these unfair policies, others were still able to win their asylum cases even under the first Trump administration.

WHAT HAS THE TRUMP CAMPAIGN SAID ABOUT WHAT IT WILL DO TO ASYLUM LAW IN A SECOND TERM?

The Trump campaign has said that it will target asylum again when President Trump takes office, including by bringing back many of the policies of his first administration. It has threatened to impose a fee for asylum applications, increase detention of asylum seekers, and end parole of asylum seekers at the US border. It has also threatened to eliminate or severely restrict asylum claims based on domestic violence and fear of gang violence.

CAN TRUMP SIMPLY ELIMINATE ASYLUM THROUGH EXECUTIVE ACTION?

No. Asylum is part of the Immigration & Nationality Act, a federal statute, or law, that was passed by Congress. A federal statute may not be changed or eliminated through executive action or regulations. Such a change would require Congress to pass legislation. The Trump administration can issue regulations that interpret the asylum statute's provisions in a restrictive way, but it cannot change the law itself without cooperation from a majority in Congress. In addition, providing asylum protections is

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part of the U.S.'s treaty obligations under international law.

HOW DOES EXISTING FEDERAL LAW PROTECT ASYLUM SEEKERS?

The asylum statute has clear provisions concerning who can apply for asylum and what they need to demonstrate to win an asylum claim. Even though the statute allows the immigration agencies to create regulations that impose additional conditions on asylum, the regulations must be consistent with the existing statute and cannot contradict it.

CAN NEW REGULATIONS BE CHALLENGED IN THE COURTS?

Yes. Executive orders and regulations can be challenged in courts, especially if they conflict with the asylum statute, any other federal laws, or a person's constitutional rights. Many of the first Trump administration's asylum policies were struck down by federal courts because they violated the constitution or federal law, and sometimes because they violated both. Some of these court decisions remain in place today, meaning the second Trump administration is blocked from trying to limit asylum in some of the ways it did before. If the second Trump administration continues to issue unlawful policies attacking asylum, it will likely face court challenges that could block these policies.

WHAT WILL HAPPEN TO PEOPLE WHO ALREADY HAVE ASYLUM OR REFUGEE STATUS?

Asylees and refugees have strong legal protections that prevent them from losing status. Their status can only be terminated in certain situations that are outlined in the statute. Asylees and refugees who have become lawful permanent residents, or green card holders, enjoy even stronger protections. Finally, asylees and refugees who have naturalized and become US citizens enjoy the strongest protections of all.

Individuals who have already won asylum or refugee status should speak to a trusted immigration attorney to learn about applying for a green card. If someone is eligible,



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gaining a green card or citizenship is often the best way to protect themselves from the risk of deportation.

WHAT CAN PEOPLE WHO ARE APPLYING FOR ASYLUM, OR CONSIDERING APPLYING, DO NOW BEFORE THE TRUMP ADMINISTRATION TAKES OFFICE?

People who are currently applying for asylum should speak to a trusted immigration attorney or accredited representative to learn how the new administration could impact their case. Asylum decisions are made on a case-by-case basis. This means that a person’s individual circumstances will have a major impact on whether their case will be approved, and on how much the new administration’s policies could impact them. People who have already applied for asylum should also speak to a legal expert about applying for a work permit. In addition to allowing you to work lawfully, a work permit can serve as proof of your pending asylum application and protect against workplace raids and other enforcement actions.

People who are considering applying for asylum should also seek out expert legal advice. Asylum offers robust legal protections, but coming forward with an asylum application can be risky. These risks may be amplified by the policies of the incoming Trump administration, as it will seek to limit access to asylum and make asylum cases more difficult to win. A trusted attorney or accredited representative can help identify the different factors that someone should consider as they decide whether to apply for asylum.

For anyone seeking trusted immigration legal support, head to ilrc.me/findhelp to find free or low-cost legal services in your area.

Are you a California Community College (CCC) or a California State University (CSU) student? If so, you qualify for FREE immigration legal services!		Discover more community explainers, toolkits, & alerts about immigration law.	
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