



# COVID-19: Current Travel Restrictions and Quarantine Measures

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The United States, along with many countries, is responding to an outbreak of a respiratory disease, now referred to as COVID-19, which is caused by a novel coronavirus [first detected in mainland China's Hubei Province](#) in late 2019. Cases of COVID-19 have now been detected in [several countries](#), including [the United States](#).

To date, the federal government has taken two key actions to deter persons with suspected COVID-19 infection from entering the country or spreading the virus to persons within the United States. First, the federal government has restricted many non-U.S. nationals (aliens) who recently travelled to mainland China or Iran from entering the United States. Second, the federal government has imposed a quarantine requirement on all persons entering the United States, regardless of citizenship status, who have recently been to mainland China. This Legal Sidebar examines the legal authorities underlying these actions, as well as possible legal challenges to their use.

## Entry Restrictions

To deter the entry of aliens into the United States who may have been exposed to COVID-19, President Trump has invoked his authority over alien entry under [Section 212\(f\)](#) of the Immigration and Nationality Act (INA). That provision allows the President to “suspend the entry of all aliens, or any class of aliens” whose entry he “finds . . . would be detrimental to the interests of the United States.” Under this authority, President Trump issued a [Proclamation](#) on January 31, 2020, generally suspending the entry of any foreign national who had been in mainland China at some point within the prior 14 days. But lawful permanent residents (LPRs), most immediate relatives of U.S. citizens and LPRs, and some other groups, such as some airplane and ship crew members, are exempted from this restriction, as are those with prior presence in Hong Kong or Macau. On February 29, 2020, President Trump issued a second [Proclamation](#) that similarly suspends the entry of any foreign national who has been in Iran within the prior 14 days, in addition to making minor amendments to the earlier Proclamation.

While this appears to be the first time Section 212(f) has been used to control the spread of a communicable disease, the provision has been previously invoked to restrict foreign travelers from coming into the United States. Perhaps most notably, Section 212(f) provided the legal basis for the Trump Administration’s imposition of the so-called “[travel ban](#)” [on certain foreign nationals from](#)

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**designated countries.** In the context of a challenge to that invocation of Section 212(f), the Supreme Court **held** that the provision “exudes deference to the President in every clause” and gives him mostly unfettered discretion to decide “when to suspend entry,” “whose entry to suspend,” “for how long,” and “on what conditions.” In light of the deference afforded to the President’s determinations over these matters, coupled with the amount of evidence demonstrating the communicability of COVID-19, it seems unlikely that a court would find that the Proclamations issued with respect to mainland China and Iran exceed the scope of the President’s authority under Section 212(f).

## Quarantine and Isolation

The Administration’s January 31, 2020, Proclamation also **directed** the Secretary of Homeland Security “to regulate the travel of persons and aircraft to the United States to facilitate the orderly medical screening and, where appropriate, quarantine of persons who enter the United States and who may have been exposed to the virus.” To this end, on February 2, 2020, the U.S. Department of Homeland Security (DHS) **imposed** screening and **quarantine rules** for persons – including U.S. nationals, LPRs, and their immediate family members – who arrive in the United States within 14 days after having been in mainland China. Those persons travelling by air must arrive at one of **11 designated airports** where they will be screened. On March 2, 2020, DHS **imposed** similar requirements for air travelers who were recently present in Iran. Screened persons will be taken to a medical facility for isolation and treatment if fever, cough, or difficulty breathing is detected. Asymptomatic persons are generally to be held under federal quarantine for 14 days from the time they left mainland China if they visited Hubei Province. But asymptomatic persons whose recent travel did not include Hubei Province are asked to self-quarantine for 14 days. State and local health authorities are to provide oversight of individuals who self-quarantine.

Authority for these quarantine rules comes from **Section 361 of the Public Health Service Act**, which authorizes the U.S. Department of Health and Human Services (HHS) to promulgate and enforce **regulations** “necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.” Besides authorizing the apprehension and examination of “any individual reasonably believed to be infected with a communicable disease in a qualifying stage” who is “moving or about to move from a State to another State,” Section 361 also **authorizes** the apprehension and quarantine of persons who are not engaged in interstate travel, but are reasonably believed “to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State.” To facilitate these quarantine requirements, HHS promulgated an **interim final rule**, effective February 7, 2020, requiring airlines with flights arriving in the United States to transmit to HHS’s Centers for Disease Control and Prevention (CDC) identifying information about passengers or crew who may be at risk of exposure to communicable disease.

In addition to federal quarantine authority, states may quarantine or isolate persons as public health risks using their **police powers**. State mandatory quarantine laws vary, with some implemented through **public health orders** issued by state health departments, and others effectuated through **court orders** authorizing the detention of an individual upon some evidentiary showing that the person poses a public health risk.

### *Possible Constitutional Challenges*

Because quarantine requirements involve a deprivation of a person’s liberty to move freely, they have occasionally been challenged on **constitutional grounds**. Specifically, the **Supreme Court** “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” Accordingly, quarantine measures may be challenged as violating the Constitution’s *substantive* or *procedural* due process protections.

*Substantive due process* challenges center on whether a governmental action “is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience,” without regard to “the fairness of the procedures used to implement” the action. Recent challenges to quarantine and isolation for public health reasons have borrowed from substantive due process precedents involving involuntary commitment. In that context, substantive due process challenges question whether the government has set forth an adequate justification to support the deprivation of liberty effected by a quarantine policy (a type of challenge that might also be viewed through an equal protection rather than a due process lens). In either case, a substantive due process challenge to quarantine policies affecting those suspected of COVID-19 seems unlikely to succeed given the degree of public health risk posed by the virus. Courts have recognized that expeditious actions by government officials are frequently required to protect public health or safety, and have been reluctant to find substantive due process violations even if those actions are found to be erroneous after the fact.

There might also be concerns as to whether a quarantine policy satisfies the Constitution’s *procedural due process* requirements. These requirements concern whether the *process* attending a particular deprivation by the government – in this case the restraint on liberty during the quarantine period – is fair. The degree of protection required by procedural due process is a “flexible” concept, requiring an examination of the private interests at stake; the risk of an erroneous deprivation of such interest and the probable value of additional safeguards; and the government’s interests. In the context of state action, the Supreme Court has said that the Due Process Clause typically “requires some kind of a hearing before the State deprives a person of liberty,” but has also held that the “necessity of quick action by the State or the impracticality of providing any predeprivation process” may mean that a *post-deprivation* remedy is constitutionally adequate. Here, the government may argue that the contagiousness of the COVID-19 virus may make predeprivation process impractical before requiring the quarantine of a person suspected of COVID-19 infection.

In 2014, a federal district court applying this standard in the context of a Friday-to-Monday quarantine of a nurse who had recently been in contact with Ebola patients found that the lack of a predeprivation hearing was not a clear violation of due process because quarantine is “necessarily prophylactic and peremptory.” However, the court noted that the relatively short duration of the quarantine (80 hours) also factored into its conclusion. Moreover, to the extent that post-deprivation procedural due process claims may be made, government actors may still enjoy qualified immunity to civil liability if the action “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

## Other Legal Issues

Federal officials have warned that as the United States begins to see “community spread” of COVID-19, actions taken to limit entry of persons into the country may be less important than domestic quarantine and isolation of persons already present in the United States. Shifts in the types of actions taken in response to the disease may also present distinct legal issues from those discussed above. For example, questions have arisen regarding the employment protections that workers may have under federal laws, such as the Family and Medical Leave Act (or perhaps under state laws), if those workers fall ill, are placed under mandatory quarantine, or choose to stay home voluntarily to avoid exposure to themselves or others or to take care of an infected family member.

The federal government may also seek to facilitate the distribution of medical countermeasures to COVID-19 as they continue to develop through the issuance of emergency use authorizations (EUA) under Section 564 of the Federal Food, Drug, and Cosmetic Act. One such EUA was issued on February 4, 2020, to enable emergency use of the CDC’s real-time COVID-19 diagnostic test. On February 29, 2020, FDA issued additional guidance stating that it would not object to the use of certain diagnostic tests prior to issuance of an EUA. In addition, the federal government has the authority to waive liability for

manufacturers, distributors, and providers of such countermeasures, under the Public Readiness and Emergency Preparedness Act, which it most recently invoked with respect to [Ebola countermeasures](#).

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