



COVID-19: Federal Travel Restrictions and Quarantine Measures

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In response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, the federal government has taken several actions to deter persons with potential COVID-19 infection from entering the country. This Legal Sidebar examines the legal authorities underlying two categories of these actions: First, restrictions on the entry of many non-U.S. nationals (aliens) who recently have been physically present in mainland China, Iran, much of Europe, and Brazil; and second, quarantine requirements imposed on all persons entering the United States, regardless of citizenship status. A [separate Sidebar](#) discusses additional actions the federal government has taken to restrict the movement of foreign nationals through ports of entry on the land borders with Canada and Mexico.

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 has issued several proclamations to restrict the entry of aliens who were recently present in countries affected by COVID-19.

A [Proclamation](#) on January 31, 2020, generally suspended 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 certain other groups, such as some airplane and ship crew members, are exempt 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. In March 2020, President Trump issued [two Proclamations](#) imposing the same restrictions on foreign nationals who have been in the [Schengen Area](#) of the European Union, Ireland, or the United Kingdom within the prior 14 days. On May 24, 2020, the President issued [another proclamation](#) invoking Section 212(f) to restrict the entry of the same categories of noncitizens from Brazil. To be clear, none of the restrictions in these proclamations applies to U.S. citizens, LPRs,

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most immediate relatives of U.S. citizens, and certain other groups specifically exempted in the proclamations.

Separately, a [proclamation](#) that took effect on April 23, 2020, suspends the entry of aliens on immigrant visas for 60 days for the stated purposes of protecting Americans from job competition during the economic recovery and reducing strain on the domestic health care system. This last proclamation would appear to have limited impacts in the near term because the U.S. Department of State had already [suspended](#) most immigrant visa processing around the world. Further, among other limitations and exceptions, the proclamation does not apply to the spouses or children of U.S. citizens, to health care professionals or EB-5 investors, or to aliens who already held immigrant visas as of the proclamation's effective date.

While these proclamations appear to be the first times Section 212(f) has been used to control the spread of a communicable disease, the provision was previously invoked to restrict foreign travelers from coming into the United States. Section 212(f) earlier provided the legal basis for the Trump Administration's imposition of the so-called "[travel ban](#)" on certain foreign nationals from designated countries. In the context of a challenge to that invocation of Section 212(f), the Supreme Court [held](#) that the provision "excludes 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 current Proclamations 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 traveling by air must arrive at [designated airports](#) where they are to be screened. As the entry restrictions described above were expanded beyond China, DHS [imposed](#) similar requirements for air travelers who were recently present in [Iran](#), the majority of [European countries](#), and [Brazil](#), and has also [increased](#) the number of designated airports to 15. Screened persons are to 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. As discussed in [this Sidebar](#), some states have also imposed “stay-at-home” orders under this same authority.

Possible Constitutional Challenges to Quarantine and Isolation Orders

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 *postdeprivation* 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 preemptory](#).” However, the court noted that the relatively short duration of the quarantine (80 hours) also factored into its conclusion. Moreover, to the extent that postdeprivation 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.”

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