



February 8, 2023

COVID-Related Travel Restrictions on Arriving Vaccinated and Unvaccinated Foreign Nationals with Valid Documents

In response to the COVID-19 pandemic, the executive branch invoked statutory powers to impose restrictions on arriving aliens entering into the United States with visas and other valid documents. (The Immigration and Nationality Act [INA] defines *alien* as “any person not a citizen or national of the United States.”) Although entry restrictions during the COVID-19 pandemic have largely differed based on an alien’s arrival method into the United States, the more recent executive branch efforts have generally required vaccination against COVID-19 for all inbound foreign nationals with valid documents regardless of the country of departure, travel method, and location of arrival.

Entry Restrictions on Foreign Nationals Arriving by Air

On October 25, 2021, President Biden issued “A Proclamation on Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic” pursuant to 8 U.S.C. §§ 1182(f) and 1185(a)(1). 86 Fed. Reg. 59,603 (Oct. 25, 2021). Section 1182(f) authorizes the President to suspend the entry of, or place restrictions on the entry of, any alien or class of aliens, regardless of immigration status. Section 1185(a)(1) grants the President authority to adopt “reasonable rules, regulations, and orders” governing entry or removal of aliens, “subject to such limitations and exceptions as [he] may prescribe.” The Supreme Court has interpreted this delegation of authority broadly. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2408 (2018). The Centers for Disease Control and Prevention (CDC) issued an implementing order and has since issued an amended order in April 2022. *See Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic*, 87 Fed. Reg. 20,405 (Apr. 7, 2022).

The presidential proclamation and the amended order implementing it generally suspend the entry of unvaccinated aliens traveling as nonimmigrants to the United States by air, with certain exemptions. (A nonimmigrant is admitted to the United States for a specific temporary period and for authorized purposes stated in the INA.) To be considered “vaccinated” for purposes of the presidential proclamation and amended order, nonimmigrants must be fully vaccinated against COVID-19 with a vaccine approved or authorized by U.S. regulators or listed for emergency use by the World Health Organization.

The amended order does not apply to lawful permanent residents or immigrants. Instead, these groups are subject to any COVID-related entry requirements applicable to U.S. citizens. Of note, other statutory provisions already impose

vaccination requirements against other vaccine-preventable diseases on certain aliens seeking immigrant visas or seeking adjustment of status to become lawful permanent residents in the United States. *See* 8 U.S.C. §1182(a)(1)(A).

Others exempted from the proclamation include aliens arriving via air from countries with low vaccine availability, those participating in certain clinical trials for COVID-19 vaccination, aliens unvaccinated due to medical advice, and those who are unvaccinated for other humanitarian or emergency reasons. In addition to the vaccination requirement, nonimmigrant travelers must agree to abide by generally applicable health precautions established by the CDC, including pre-departure testing.

Unvaccinated nonimmigrant travelers allowed to enter under an exemption must generally agree to become fully vaccinated within 60 days. (This requirement does not apply, for example, to nonimmigrants present in the United States for a brief duration.) The proclamation also includes an exception for nonimmigrant travelers for whom, given their age, requiring vaccination would be inappropriate as determined by the CDC. In the amended order, the CDC determined that children under the age of 18 meet the criteria for an exception under the proclamation.

Entry Restrictions on Arriving Foreign Nationals over Land Borders

Early in the COVID-19 pandemic, U.S., Canadian, and Mexican officials mutually determined that nonessential travel between the United States and its respective contiguous countries posed additional risk of the transmission and spread of COVID-19. U.S. Customs and Border Protection, a component of the Department of Homeland Security (DHS), issued two identical orders restricting nonessential inbound traffic at land points of entry (POEs) from Canada and Mexico into the United States.

In October 2021, DHS announced a change in policy on travel at land POEs and ferry terminals. DHS replaced these earlier COVID-related entry restrictions on nonessential travel over land borders into the United States with a general vaccination requirement for aliens with valid documents who seek to enter by land at a POE or ferry terminal. *See Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico*, 87 Fed. Reg. 24,041 (Apr. 22, 2022); *Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada*, 87 Fed. Reg. 24,048 (Apr. 22, 2022). The change announced by

DHS appears to synchronize entry restrictions at land POEs and ferry terminals with requirements for air travel discussed above. Most alien travelers seeking to enter the United States via land POEs or ferry terminals with valid documents must be fully vaccinated against COVID-19 and provide proof of vaccination. Aliens exempted from this requirement include certain individuals on diplomatic or official foreign government travel, persons under the age of 18, certain participants in clinical trials for COVID-19 vaccination, those unvaccinated due to medical advice, and those permitted entry for humanitarian or emergency reasons. Others exempted include persons with valid nonimmigrant visas who are citizens of a country with limited COVID-19 vaccine availability, certain members of the U.S. Armed Forces, and individuals whose entry would be in the U.S. national interest.

These orders were issued under a provision of the Tariff Act of 1930, codified at 19 U.S.C. § 1318. In order “to respond to a national emergency declared under the National Emergencies Act [NEA] (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests,” this statutory provision authorizes federal officials to “[e]liminate, consolidate, or relocate any office or port of entry,” “[m]odify hours of service, alter services rendered at any location, or reduce the number of employees at any location,” and “[t]ake any other action that may be necessary to respond directly to the national emergency or specific threat.”

There has been interest in whether terminating the NEA declaration issued on March 13, 2020, would impact these temporary travel restrictions at land POEs and ferry terminals. The Tariff Act requires *either* an NEA declaration *or* a determination of “a specific threat to human life or national interests.” In the notification of temporary travel restrictions between the United States and Canada listed above, the DHS Secretary “determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Canada poses an ongoing ‘specific threat to human life or national interests.’” 87 Fed. Reg. at 24,054. The notification of temporary travel restrictions between the United States and Mexico has an identical provision. *See* 87 Fed. Reg. at 24,047 (Apr. 22, 2022). Although these travel restrictions do not appear to be expressly predicated on an ongoing NEA declaration, the notifications provide that they may be amended or rescinded at any time, including to conform with any intervening changes with the October 2021 presidential proclamation and implementing orders.

A Note on “Title 42” Entry Restrictions

These COVID-related restrictions on the entry of aliens *with* visas and other valid documents are distinct from COVID-related entry restrictions on aliens *without* visas or other valid documents. Often referred to as “Title 42” throughout the COVID-19 pandemic, 42 U.S.C. § 265 gives the executive branch the authority to prohibit the entry into the United States of individuals who might pose a danger to public health. The CDC has directed immigration officials to expel certain individuals—that is, aliens who either do not have visas or other “proper travel documents” or who seek to enter the United States unlawfully between POEs—

to Mexico or their countries of origin. For a discussion on entry restrictions under 42 U.S.C. § 265 and accompanying litigation over its invocation during the COVID-19 pandemic, see CRS Legal Sidebar LSB10874, *COVID-Related Restrictions on Entry into the United States Under Title 42: Litigation and Legal Considerations*, by Kelsey Y. Santamaria.

Considerations for Congress

The invocation of 8 U.S.C. § 1182(f) and 19 U.S.C. § 1318 to restrict or condition the entry of aliens based on vaccination requirements in response to COVID-19 raises potential considerations for Congress about the scope and application of these statutory provisions.

Section 1182(f), as interpreted by the Supreme Court, gives the President seemingly broad authority to restrict “the entry of all aliens or any class of aliens” whose entry he or she finds “would be detrimental to the interests of the United States.” *See Trump v. Hawaii*, 138 S. Ct. at 2408. To the extent that lawmakers decide it appropriate to limit this authority, Congress may seek to amend Section 1182(f) to impose certain guidelines or restraints on the President’s authority to exclude specified classes of aliens. For instance, Congress may consider clarifying the standard for determining when the President might invoke this authority. Another possibility would be to impose a time frame on this authority and a special procedure for either continuing or terminating its invocation. Alternatively, Congress may determine that it is desirable for the executive branch to maintain the discretion to exclude categories of aliens from entering the United States. Congress may determine, for instance, that such discretion is necessary in order to respond to rapidly developing situations, such as emergency health situations like the COVID-19 pandemic or threats to national security.

With respect to the relevant Tariff Act provision, courts have not considered the scope of authority granted by the provision. Should Congress determine that it is appropriate to modify the relevant scope of discretion, it may do so through statutory amendments. Congress may also view the broad discretion afforded to federal officials under the Tariff Act to modify services provided at POEs and ferry terminals as necessary in order to respond to certain emergencies or threats, such as the spread of COVID-19. Alternatively, Congress may opt to use its legislative authority to provide further guidelines on when federal officials may invoke this authority, for how long this provision may be invoked, or what qualifies as a “specific threat to human life or national interests.”

On January 9, 2023, H.R. 185 was introduced, which, if enacted, would mandate that “the air travel vaccination requirement for foreign travelers shall have no force or effect,” and that no federal funds may be used to “administer, implement, or enforce the air travel vaccination requirement for foreign travelers.”

Kelsey Y. Santamaria, Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.