

The Ebola Outbreak: Select Legal Issues

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On August 8th, the World Health Organization [declared](#) the [outbreak of the Ebola Virus Disease](#) in West Africa a [Public Health Emergency of International Concern](#). The recent arrival in the United States of several health care workers who contracted the disease, combined with the first diagnosis of a case in the U.S. at a hospital in Dallas, has sparked discussion about the appropriate government response. Aside from the various policy considerations at issue, the outbreak has generated several legal questions about the federal government's authority to restrict specific passengers' travel and/or contain the outbreak of an infectious disease. These questions include, *inter alia*, whether the federal government may: (1) restrict which countries U.S. nationals may travel to in the event of a public health crisis; (2) bar the entry into the United States of people who may have been infected by a disease; and (3) impose isolation or quarantine measures in order to control infectious diseases.

Passport restrictions on which countries U.S. citizens may visit can be imposed by the Secretary of State. Pursuant to the Passport Act, the Secretary of State may "grant and issue passports" according to rules designated by the President, and may impose restrictions on the use of passports to travel to countries "where there is imminent danger to the public health or the physical safety of United States travellers" (sic). The Supreme Court has [recognized](#) that the authority to "grant and issue" passports includes the power to impose "area restrictions" – limits on travel to specific countries (restrictions must comply with the Due Process Clause of the Constitution). Although passport restrictions are not [criminally enforceable](#), they may prevent travelers from boarding a flight to a restricted area.

Restrictions may also be imposed on who may enter the United States, though the range of applicable restrictions may differ depending upon whether a person seeking entry into the country is a U.S. national. The government enjoys [authority](#) under federal immigration law to bar the entry of a foreign national on specific health-related grounds, including when a particular foreign national is determined to have a "[communicable disease of public health significance](#)." More broadly, [section 212\(f\) of the Immigration and Nationality Act](#) authorizes the President, pursuant to proclamation, to direct the denial of entry to any alien or class of aliens whose entry into the country "would be detrimental to the interests of the United States."

These restrictions do not apply to U.S. citizens, who may enjoy a [constitutional right to reenter](#) the country. Nonetheless, certain travel restrictions may impede the ability of any person – regardless of citizenship – from traveling to the United States in a manner that potentially exposes others to a communicable disease. For example, airlines flying to the U.S. are permitted under [Department of Transportation regulations](#) to refuse transportation to passengers with infectious diseases who have been determined to pose a "[direct threat](#)" to the health and safety of others. In making this determination, airlines may [rely](#) on directives from the CDC and other government agencies. Pilots of flights to the United States are also [required](#) to report certain illnesses they encounter during flight before arrival into the U.S.

In addition, the Department of Homeland Security and Centers for Disease Control and Prevention (CDC) maintain a public health "[Do Not Board](#)" (DNB) list, which contains the names of people who are likely to be contagious with a communicable disease, may not adhere to public health recommendations, and are likely to board an aircraft. Airlines are not permitted to issue a boarding pass to people on the DNB list for flights departing from or arriving into the United States. People placed on the DNB list are also "assigned a [public health lookout record](#)," which will alert Customs and Border Protection officers in the event the person attempts to enter the country through a port of entry. The CDC's [Division of Global Migration and Quarantine](#) (DGMQ) can conduct exit screening at foreign airports to identify travelers with communicable diseases and alert the relevant local authorities.

Finally, both federal and state governments have authority to impose isolation and quarantine measures to help prevent the spread of infectious diseases. While the terms are often used interchangeably, quarantine and isolation are actually two distinct concepts. [Quarantine](#) typically refers to separating or restricting the movement of individuals who have been exposed to a contagious disease but are not yet sick. [Isolation](#) refers to separating infected individuals from those who are not sick. Historically, the primary authority for quarantine and isolation exists at the state level as an exercise of the state's police power in accordance with its particular laws and [policies](#).

However, the CDC is also [authorized](#) to take measures "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." In order to do so, the [implementing regulations](#) "authorize the detention, isolation, quarantine, or conditional release of individuals." This authority is limited to diseases identified by an Executive Order of the President, a [list](#) which currently includes Ebola. Whether an isolation or quarantine order originates with the federal or state government, such orders will presumably be subject to *habeas corpus* challenges, and must also comport with the Due Process Clause of the Constitution.