

The Ebola Outbreak: Quarantine and Isolation Authority

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Recent quarantine policies announced by several states, including [New York](#) and [New Jersey](#), for travelers arriving from areas affected by the outbreak of Ebola Virus Disease have raised legal and constitutional questions about federal and state authority to order quarantine and isolation measures.

Both the 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 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](#). Generally, state and local quarantines are authorized through public health orders, though some states may require a court order before an individual is detained. The Supreme Court has [indicated](#) that at least where Congress has not taken action, it is "well settled" that states may impose quarantines to prevent the spread of disease.

Nevertheless, the federal government has jurisdiction over interstate and foreign quarantines. The Centers for Disease Control and Prevention (CDC) is [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." The diseases must be identified by an Executive Order of the President, a [list](#) which currently includes Ebola. The federal government's quarantine and isolation authority primarily extends to individuals entering the U.S. from a foreign country, but also includes authority to apprehend, detain, and examine "any individual reasonably believed to be infected with a communicable disease in a qualifying stage" and traveling between states or likely to infect individuals who will. In order to do so, the [implementing regulations](#) "authorize the detention, isolation, quarantine, or conditional release of individuals."

In addition, the CDC can take [measures](#) necessary to prevent the spread of a communicable disease from one state or possession to any other state or possession if it determines that measures taken by local health authorities are inadequate to prevent the spread of the disease. There also exists statutory [authority](#) for federal-state cooperative activities to enforce quarantines.

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. Modern legal challenges to quarantine and isolation orders are not extensive, although a few cases can provide some basic insights about potential issues. In 1963, a federal district court in [United States v. Shinnick](#) upheld the Public Health Service's medical isolation of an arriving passenger because she had been in Stockholm, Sweden, while the city had been declared by the World Health Organization to be a smallpox-infected area, and she could not show proof of vaccination. The court declined to substitute its own judgment as to whether the plaintiff had been exposed to infection and capable of spreading the disease. However, at least one state court has [ruled](#) that when a state confines an individual in order to prevent the spread of disease, the state must provide the individual with procedural due process protections such as, *inter alia*, notice explaining the grounds for confinement, the right to counsel, and the right to engage in cross-examination. This requirement would presumably apply to a federal government quarantine order as well.

Quarantines may also be subject to equal protection challenges. In [*Jew Ho v. Williamson*](#), for example, a court invalidated a quarantine whose requirements applied only to Chinese residents because it was “unreasonable, unjust and oppressive” and constituted discrimination in violation of the Fourteenth Amendment. For further information on federal and state quarantine and isolation authority please see this [report](#).