

Legal Sidebar

Can the President Bar Foreign Travelers from Ebola-Stricken Countries from Entering the United States?

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The recent outbreak of the Ebola virus in West Africa has prompted concern over the risk that foreign travelers may carry the virus to the United States -- a concern that has grown since an infected Liberian national who traveled to the United States infected two nurses who cared for him at a Dallas hospital. On Monday, October 21, the [Department of Homeland Security announced new screening procedures](#) at U.S. ports of entry for travelers from Ebola-stricken countries in West Africa. [Several Members of Congress have gone further](#) and suggested a blanket ban on the admission into the United States of foreign nationals who reside in or have recently traveled to Ebola-stricken countries – a suggestion that the Obama Administration [has thus far opposed](#). Although it has never been used for such purposes, section 212(f) of the Immigration and Nationality Act (INA) seems to confer the President with authority to bar foreign travelers from Ebola-stricken countries from entering the United States, if he deems such a restriction necessary to protect U.S. interests, regardless of whether there is a reason to believe that a particular traveler is infected with the Ebola virus.

Foreign nationals [do not have a constitutional right](#) to be admitted into the United States, and rules governing whether and when such persons may be admitted are contained in the INA. The INA establishes several grounds under which an alien may be rendered ineligible to obtain a visa to come to the United States or otherwise be admitted into the country. The most immediately relevant restriction to foreign nationals suspected of having the Ebola virus is found in the health-related grounds of inadmissibility. INA §212(a)(1) provides that aliens may be denied admission into the United States if they are determined to have a [“communicable disease of public health significance”](#) – a term [defined in regulation](#) to cover diseases like Ebola that have been addressed by pertinent Executive Orders or World Health Organization regulations.

However, the health-related grounds for inadmissibility might not be wholly effective in preventing foreign travelers carrying Ebola from being admitted into the United States. Assessing whether a foreign national is inadmissible on health-related grounds is an individualized determination of the person’s condition, rather than a more general bar applicable to persons who might have had contact with a person carrying a communicable disease. It is also not assured that that a foreign national carrying the Ebola virus will be identified as such either when applying for a visa to come to the United States (e.g., if the foreign national only became infected after obtaining a visa) or when processed upon arrival at a U.S. port of entry (e.g., if the infected person was not yet symptomatic at the time of arrival). Moreover, the health-related grounds of inadmissibility do not apply to most lawful permanent resident aliens (sometimes described as immigrants) who briefly travel abroad, as they are generally [not considered applicants for admission under the INA](#).

A considerably broader authority that could potentially be employed to restrict foreign nationals from Ebola-stricken countries from entering the United States is found in INA §212(f). The clause provides that:

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Although the authority conferred by INA §212(f) has been in place since the INA was originally enacted in 1952, it's been employed in [relatively limited circumstances](#). In most cases, executive action pursuant to INA §212(f) has been used to bar the entry of persons (typically associated with specified foreign governments) who have engaged in conduct deemed contrary to U.S. interests, such as [undermining democratic institutions in a particular country](#), or [engaging in human rights abuses](#) or other conduct [deemed objectionable](#).

But presidential proclamations have been issued under INA §212(f) in other circumstances, as well, including to interdict [unauthorized migrants traveling to the United States from the high seas](#) and bar their entry into the country. The U.S. practice of interdicting Haitian nationals on the high seas and returning them to their home country, which was done pursuant to this exercise of INA §212(f) authority, was upheld by the Supreme Court the 1993 case of [Sale v. Haitian Centers Council, Inc.](#) While the Court did not squarely address the scope of authority conferred by INA §212(f), it held that the U.S. interdiction practice did not violate the statutory requirements of the INA (nor a potentially applicable U.S. treaty).

Although INA §212(f) has never been employed to bar foreign travelers from particular regions because of public health concerns, its plain language seems to afford the President significant discretion to restrict the entry of foreign nationals traveling from a country or region facing an Ebola outbreak (without the need for an individualized determination as to whether a particular traveler has actually been infected by the Ebola virus), if the President deems the entry of such persons into the country to be contrary to U.S. interests. Recently, several Members of Congress [have written to the President](#) urging him to use the authority conferred by INA §212(f) to bar the entry of foreign nationals traveling to the United States from Sierra Leone, Guinea and Liberia. Ultimately, however, the decision as to whether to exercise such authority is left to the discretion of the President. For discussion of non-immigration related authorities that may potentially be used to restrict travel to and from Ebola-stricken countries (including some that may be applicable to U.S. citizens), see this [related Sidebar](#).

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