

March 12, 2020

## The United States Imposes a Ban on Travel from Schengen Area Countries

On March 11, President Trump signed a proclamation (available [here](#)) that restricts and suspends the entry into the United States of foreign nationals<sup>1</sup> (subject to certain exceptions) that have been physically present within the Schengen Area<sup>2</sup> during the 14-day period preceding their entry or attempted entry into the United States. The Schengen Area covers much of Europe, but excludes Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom, among others. While the United States cannot bar U.S. citizens from returning to the United States, it can subject U.S. citizens and any others who are not covered by the ban to screening or quarantine procedures. American citizens and others exempt from the ban will be directed to a limited number of airports where screening can take place.

Similar proclamations issued earlier in the year restricted and suspended the entry into the United States of persons who were physically present in China<sup>3</sup> and Iran<sup>4</sup> during the 14-day period preceding their entry or attempted entry into the United States, subject to certain exceptions.

The ban announced last night will not apply to the following persons:

- any lawful permanent resident of the United States;
- any foreign national who is the spouse of a U.S. citizen or lawful permanent resident;
- any foreign national who is the parent or legal guardian of a U.S. citizen or lawful permanent resident, provided that the U.S. citizen or lawful permanent resident is unmarried and under the age of 21;
- any foreign national who is the sibling of a U.S. citizen or lawful permanent resident, provided that both are unmarried and under the age of 21;

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<sup>1</sup> The proclamations use the term “alien,” which is defined in the U.S. Code (8 U.S. Code §1101) as any person not a citizen or national of the United States.

<sup>2</sup> The Schengen Area countries include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

<sup>3</sup> Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus, January 31, 2020 (available [here](#)).

<sup>4</sup> Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus, February 29, 2020 (available [here](#)).

- any foreign national who is the child, foster child or ward of a U.S. citizen or lawful permanent resident, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
- any foreign national traveling at the invitation of the U.S. Government for a purpose related to containment or mitigation of the virus;
- any foreign national traveling as a nonimmigrant pursuant to a C-1, D, or C-1/D nonimmigrant visa as a crewmember or any foreign national otherwise traveling to the United States as air or sea crew;
- any foreign national (A) seeking entry into or transiting the United States pursuant to one of the following visas: A-1, A-2, C-2, C-3 (as a foreign government official or immediate family member of an official), E-1 (as an employee of TECRO or TECO or the employee's immediate family members), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 (or seeking to enter as a nonimmigrant in one of those NATO categories); or (B) whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement;
- any foreign national whose entry would not pose a significant risk of introducing, transmitting or spreading the virus, as determined by the Secretary of Health and Human Services, through the CDC Director or his designee;
- any foreign national whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee;
- any foreign national whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees; or
- members of the U.S. Armed Forces and spouses and children of members of the U.S. Armed Forces.

The ban will take effect at 11:59 pm EDT on March 13 and will not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 11:59pm on March 13. The ban will remain in effect until terminated by the President. In a televised address delivered by the President on March 11 announcing the ban, the President indicated that the travel ban will be in effect for a period of 30 days. The President in his address also included cargo and other trade, but that was reversed in a subsequent tweet and, in fact, the authority relied upon for the restriction (principally, Sections 212(f) and 215(a) of the Immigration and Nationality Act) only applies to human beings.

In a statement issued on March 11 (the "Wolf Statement"), U.S. Department of Homeland Security Acting Secretary Chad F. Wolf noted that the Department will publish in the next 48 hours "a supplemental Notice of Arrivals Restriction requiring U.S. passengers that have been in the Schengen Area to travel through select airports where the U.S. Government has implemented enhanced screening procedures."

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The ban does not cover travel from the United States, although with many wishing to avoid international travel and with the likely drastic reduction in transatlantic flights, those seeking to return to Schengen Area countries may face significant challenges.

Even for those able to travel back to (or to) the United States once the ban takes effect, it is unclear how easily the screening process can be implemented and, in fact, what it will entail. Since the ban applies to persons who were in Schengen Area countries during a specified period, in theory any person (regardless of nationality) arriving from outside the United States could technically be covered, either for screening (if exempt) or denial of entry. It is also unclear which airports will be designated for screening. Moreover, it is unclear how travel from airports in other parts of the world will be monitored, and whether, among other effects, Global Entry/Nexus will be suspended and what the ultimate impact will be on waiting times at ports of entry.

There is limited information available at this time – the text of the Proclamation, a White House fact sheet and the Wolf Statement. We are monitoring the situation and will update this alert as more details become available.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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