

MARCH 2020

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Coronavirus (COVID-19) Leads to Most Rigid Shutdown of U.S. Borders and Immigration-Related Services in Decades

SUMMARY

In response to the proliferation of the global coronavirus (COVID-19) pandemic, President Trump has implemented a plethora of policies that further restrict international inbound immigration to the United States. Additionally, in order to protect the health and safety of federal employees and customers, the Trump Administration has temporarily closed visa services at U.S. embassies, U.S. Citizenship and Immigration Services (USCIS) field offices and certain immigration courts. Finally, COVID-19 has caused Immigration and Customs Enforcement (ICE) to temporarily adopt a more humane enforcement policy. This alert summarizes the dramatic alterations to the U.S.'s immigration and travel landscape.

Implementation of Further Travel Restrictions

President Trump has now issued a number of presidential proclamations severely curtailing foreign nationals travel into the United States. Initially, the first presidential proclamation entitled, "Proclamations on the Suspension of Entry as Immigrant and Nonimmigrants and Additional Persons Who Pose a Risk of Transmitting Coronavirus" dictated travel restrictions limited to those who were physically present in China during the 14-day period preceding their entry, subject to certain exceptions. On February 20, 2020, a second proclamation included those who had been physically present in Iran under similar terms. On March 11, a third proclamation limited and suspended admission to the United States of all those who were physically present within the Schengen area. Next, effective March 16, another proclamation limited and suspended admission to those who had been physically present in the United Kingdom and Ireland.

CBP officials at various ports of entry have indicated that they will cancel visas or invalidate ESTA, without prejudice, for those international travelers who have visited the above countries within 14 days preceding their attempted entry to the United States. The penalties seek to deter those whose purpose it is to circumvent the new travel restrictions.

Moreover, President Trump indicated at a press conference yesterday that he is inclined to severely restrict admissions to "non-essential traffic" at the northern border between the U.S. and Canada and to further restrict admission and terminate asylum processing at the southern border.

While the breadth of COVID-19-related travel restrictions is immense many health experts feel they are justified and prudent. They are far less controversial than the 2017 travel bans enacted by the Trump Administration. The 2017 Trump-related travel bans suspended immigration from nationals of Yemen, Syria, Iran, Libya and Somalia, as well as placed restriction on nationals from North Korea and Venezuela. Nor should they be confused with suspensions of inbound immigration

from nationals of Eritrea, Kyrgyzstan, Myanmar, Nigeria, Sudan and Tanzania, which took effect on February 21. The Trump Administration has sought to justify these specific travel bans based on national security concerns, i.e. “for failing to meet U.S. security and information-sharing standards.”

Irrespective of whether the travel restrictions stem from legitimate health concerns and/or vague and questionable national security concerns, cumulatively they are some of the most limiting travel restrictions America has endured in more than a century.

USCIS Closures and Rescheduling of Appointments and Naturalization Ceremonies

As of March 18, USCIS has suspended routine in-person services until at least April 1 in order to help slow the spread of COVID-19. USCIS domestic field offices have formally cancelled a number of enumerated services to include asylum interviews, adjustment and naturalization interviews/ceremonies. When USCIS resumes normal operations, it will reschedule these interviews/ceremonies. USCIS staff will continue to perform duties that do not involve contact with the public, i.e. issuance of work and travel permits and adjudications of visas.

Immigration Courts Remain Open with Exceptions

Despite widespread criticism from the American Immigration Lawyers Association, federal U.S. ICE prosecutors, immigration judges and the private bar, the nation’s immigration courts remain open with the exception of courts in Atlanta, Charlotte, Houston, Los Angeles, Louisville, Memphis, Newark, New York, Sacramento and Seattle.

U.S. Embassies and Consulates Worldwide Suspended

The U.S. embassies/consulates in London, Paris, Brussels, Rome, Milan, Naples, Florence, Rome, Stockholm, Beirut, Jerusalem and Tel Aviv are amongst the latest posts to suspend non-emergency visa services. It is widely anticipated that more U.S. embassies/consulates will restrict services. The closing and reopening of posts will be fluid and it is best advised to check with the website of each consular post to determine availability.

ICE Shifts Enforcement Philosophy

ICE announced a significant shift in its enforcement philosophy and practice yesterday. During the COVID-19 pandemic, ICE will no longer arrest or detain non-criminal, undocumented immigrants, similar to President Obama’s “Family Not Felons” policy. ICE said its Enforcement and Removal Operations (ERO) will delay enforcement actions and use alternatives to detention amid the outbreak. Significantly, ICE informed Congress that it would not carry out enforcement operations at or near health care facilities, clinics or hospitals. The change of enforcement philosophy apparently comes with the Trump Administration’s realization that all humans in the United States should be able to seek emergent medical assistance and testing without fear of retribution or removal.

Saul Ewing Arnstein & Lehr attorneys are experienced in counseling on immigration matters and can assist with issues and challenges posed by COVID-19. If you have questions regarding an issue raised in this alert, please contact the author or the attorney at the Firm with whom you are regularly in contact.

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