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Session 405 | Immigration in Times of Crisis: Navigation Tips for HR and Corporate Counsel

The past few years have seen increasing levels of uncertainty for companies employing foreign nationals and for individuals migrating to the United States, generally. Changes in regulatory interpretation, global pandemics, humanitarian crises, and war have all impacted governmental agency operations. The impact has resulted in questionable adjudication outcomes, lack of consular processing options, and need for expedited processing. This panel examine the impact of crises on United States immigration over the past few years. It will set out guidelines that human resources departments, in-house counsel, and attorneys can look to during future crises. Some of the issues to be addressed will include:

1. Impact of public health measures on U.S. immigration, consular operations, Canada and Mexico borders.
2. Options during humanitarian crises and war including Immigration from Afghanistan, Eastern Europe, and other conflict regions.
3. Best practices for entities employing foreign nationals including: a) Strategic planning for critical and high-level staff; b) Standards for expedited processing, Department of State advisory opinions, and Congressional liaison; c) Administrative processing; and d) Third country national processing.
4. Conflicts of interest, joint representation, and other ethical issues when advising foreign nationals on immigration issues for in-house and outside counsel.

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Immigration in Times of Crisis: Navigation Tips for HR and Corporate Counsel

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The past few years have seen increasing levels of uncertainty for companies employing foreign nationals and for individuals migrating to the United States generally. Changes in regulatory interpretation, global pandemics, humanitarian crises, and war have all impacted governmental agency operations. The impact has resulted in questionable adjudication outcomes, lack of consular processing options, and need for expedited processing.

I. Impact of COVID-19 on International Travel

Migration to the United States reached some of the lowest levels in decades as a result COVID-19 pandemic related policies. Travel bans were imposed by the United States and other countries. Visa processing capacity was also impacted by closures of embassies and consulates.1

A. Country Travel Bans

Travel restrictions were one of the immediate responses to the COVID pandemic. On January 31, 2020, a presidential proclamation banned entry or visa issuance to any foreign national who had been in China during the previous 14 days.2 Similar travel restrictions were imposed on Iran, the Schengen area of Europe, the United Kingdom and Ireland, Brazil, South Africa, and India.3

Exceptions to the travel bans included lawful permanent residents (LPR) of the United States; spouses of a U.S. citizens and LPRs; parents and legal guardians of unmarried minor U.S. citizens or LPRs; unmarried minor siblings of unmarried U.S. citizens or LPRs, child, foster child, or ward of U.S. citizens or LPRs, prospective adoptees, and certain other government invitees, diplomats, and crew people.

B. Ban on Immigrant Visas

On April 22, 2020, Presidential Proclamation 10014 suspended the issuance of most categories of immigrant visas, or lawful permanent resident status (LPR), by United States consulates. The ban included most employment-based categories, family-sponsored categories, and the Diversity Visa program.

The proclamation exempted certain healthcare professionals, medical and COVID-19 researchers, and workers essential to combating the COVID-19 outbreak. The proclamation also exempted applicants under the EB-5 Immigrant Investor program.4

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2 Proclamation No. 9984, 85 FR 6709 (Feb. 5, 2020).
3 Proclamation No. 9992, 85 FR 12855 (Mar. 4, 2020); Proclamation No. 10143, 86 FR 7467 (Jan. 28, 2021); Proclamation No. 10199, 85 FR 24297 (May 6, 2021).
C. Ban on Foreign Workers

On June 22, 2020, Presidential Proclamation 10052 suspended the issuance of visas to certain employment-based nonimmigrants. The proclamation effected the issuance of H-1B, H-2B, J, and L visas and related dependent visas. The ban was applicable to aliens who were outside of the United States at the time of the proclamation who did not have a valid visa or other travel document to enter the United States.\(^5\)

The ban on certain foreign worker visa categories included two exceptions. The exceptions covered those foreign nationals who seeking to provide temporary labor or services essential to the United States food supply chain and those whose entry would be in the national interest.

D. Consular Closures

United States consular operations suspended normal services on March 20, 2020. Routine immigrant and nonimmigrant visa processing services ceased. Limited services remained available for emergencies and mission critical tasks, including U.S. citizen services.

With the issuance of presidential proclamations banning issuance of certain immigrant and nonimmigrant visa categories, consular processing operations effectively ceased.

On July 11, 2020, the Department of State announced phased reopening of visa services depending on local conditions. However, many of the posts with highest visa demand remained operating on a limited basis.

Consular closures remain an issue in areas that are subject to lockdowns due to COVID-19 public health restrictions.

E. National Interest Exceptions

The presidential proclamations created the framework for exceptions to the visa bans. While the consulates were receiving requests for exceptions along with requests for emergency interviews and granting such requests, the Department of State did not public official guidance until August 12, 2020. In the guidance, the Department of State set out criteria for requesting a National Interest Exception under the visa categories that were subject to suspension.

F. Sunsetting of the Visa Bans

On February 24, 2021, the Department of State announced phased resumption of visa services following the rescission of Presidential Proclamation 10014, which suspended the entry of certain immigrant visa applicants. Resumption of visa services would occur on a post-by-post basis. Proclamation 10052 suspending the entry of certain nonimmigrants expired on March 31, 2021. However, consular operations remained limited, especially in countries that continued to have high COVID-19 numbers.

The Department of State noted a significant backlog of immigrant and nonimmigrant visa applicants awaiting processing.

II. Impact of COVID on Cross-Border Travel

Travel across both the Northern and Southern borders of the United States was restricted as a result of the COVID-19 pandemic.


Essential travel along the United States-Canada border included: medical treatment, attend educational institutions, work in the United States, public health support, cross-border trade, official government and diplomatic travel, and U.S. Armed Forces and dependents.

On October 21, 2021, U.S. Customs and Border Protection announced an intent to lift travel restrictions along the border for all vaccinated persons.

III. Response to the War in Ukraine

The U.S. response to the war in Ukraine was swift. On February 12, 2022, the United States had issued a travel advisory for Ukraine and began recalling U.S. citizen employees from the embassy in Kyiv. A National Interest Exception was also created for any foreign nationals traveling with U.S. citizens returning from Ukraine. Pre-travel COVID test requirements were waived for Ukraine travelers. On March 3, 2022, the Department of Homeland Security designated Ukraine for Temporary Protected Status (TPS). On March 11, 2022, Ukraine nationals were exempted from Title 42 restrictions barring asylum seekers from entering the United States at the Southern border.

On April 21, 2022, DHS announced the creation of the Uniting for Ukraine program. The program offers two year temporary parole into the United States with the affidavit of a sponsor. The program provides employment authorization.

Despite the programs created by the United States to provide assistance to Ukraine nationals, restrictions on travel from Ukraine impeded the movement of contractors and employees of U.S. companies out of Ukraine. The Ukraine government restricted the migration of all adult men of fighting age and health. The dangerous conditions in eastern Ukraine also made departure to attend consular appointments in Poland or Germany unrealistic.

IV. Conclusion

Global pandemics and war have created difficult conditions for U.S. companies to manage employment issues for foreign nationals. The travel bans and war in Ukraine were aggravated by the attempted issuance of new regulations changing the standards used for obtaining H-1B status. The uncertainty created during the past two years forced immigration lawyers, in-house counsel, and HR to rapidly adapt. Creative solutions and discipline were required to ensure employment continuity for many foreign workers in the United States. Similarly, some business decisions were delayed or made remotely, rather than moving executives and other decision makers across international borders.
COVID-19: Federal Travel Restrictions and Quarantine Measures

Updated May 28, 2020

In response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, the federal government has taken several actions to deter persons with potential COVID-19 infection from entering the country. This Legal Sidebar examines the legal authorities underlying two categories of these actions: First, restrictions on the entry of many non-U.S. nationals (aliens) who recently have been physically present in mainland China, Iran, much of Europe, and Brazil; and second, quarantine requirements imposed on all persons entering the United States, regardless of citizenship status. A separate Sidebar discusses additional actions the federal government has taken to restrict the movement of foreign nationals through ports of entry on the land borders with Canada and Mexico.

Entry Restrictions

To deter the entry of aliens into the United States who may have been exposed to COVID-19, President Trump has invoked his authority over alien entry under Section 212(f) of the Immigration and Nationality Act (INA). That provision allows the President to “suspend the entry of all aliens, or any class of aliens” whose entry he “finds . . . would be detrimental to the interests of the United States.” Under this authority, President Trump has issued several proclamations to restrict the entry of aliens who were recently present in countries affected by COVID-19.

A Proclamation on January 31, 2020, generally suspended the entry of any foreign national who had been in mainland China at some point within the prior 14 days. But lawful permanent residents (LPRs), most immediate relatives of U.S. citizens and LPRs, and certain other groups, such as some airplane and ship crew members, are exempt from this restriction, as are those with prior presence in Hong Kong or Macau. On February 29, 2020, President Trump issued a second Proclamation that similarly suspends the entry of any foreign national who has been in Iran within the prior 14 days, in addition to making minor amendments to the earlier Proclamation. In March 2020, President Trump issued two Proclamations imposing the same restrictions on foreign nationals who have been in the Schengen Area of the European Union, Ireland, or the United Kingdom within the prior 14 days. On May 24, 2020, the President issued another proclamation invoking Section 212(f) to restrict the entry of the same categories of noncitizens from Brazil. To be clear, none of the restrictions in these proclamations applies to U.S. citizens, LPRs,
most immediate relatives of U.S. citizens, and certain other groups specifically exempted in the proclamations.

Separately, a proclamation that took effect on April 23, 2020, suspends the entry of aliens on immigrant visas for 60 days for the stated purposes of protecting Americans from job competition during the economic recovery and reducing strain on the domestic health care system. This last proclamation would appear to have limited impacts in the near term because the U.S. Department of State had already suspended most immigrant visa processing around the world. Further, among other limitations and exceptions, the proclamation does not apply to the spouses or children of U.S. citizens, to health care professionals or EB-5 investors, or to aliens who already held immigrant visas as of the proclamation’s effective date.

While these proclamations appear to be the first times Section 212(f) has been used to control the spread of a communicable disease, the provision was previously invoked to restrict foreign travelers from coming into the United States. Section 212(f) earlier provided the legal basis for the Trump Administration’s imposition of the so-called “travel ban” on certain foreign nationals from designated countries. In the context of a challenge to that invocation of Section 212(f), the Supreme Court held that the provision “exudes deference to the President in every clause” and gives him mostly unfettered discretion to decide “when to suspend entry,” “whose entry to suspend,” “for how long,” and “on what conditions.” In light of the deference afforded to the President’s determinations over these matters, coupled with the amount of evidence demonstrating the communicability of COVID-19, it seems unlikely that a court would find that the current Proclamations exceed the scope of the President’s authority under Section 212(f).

Quarantine and Isolation

The Administration’s January 31, 2020, Proclamation also directed the Secretary of Homeland Security “to regulate the travel of persons and aircraft to the United States to facilitate the orderly medical screening and, where appropriate, quarantine of persons who enter the United States and who may have been exposed to the virus.” To this end, on February 2, 2020, the U.S. Department of Homeland Security (DHS) imposed screening and quarantine rules for persons—including U.S. nationals, LPRs, and their immediate family members—who arrive in the United States within 14 days after having been in mainland China. Those persons traveling by air must arrive at designated airports where they are to be screened. As the entry restrictions described above were expanded beyond China, DHS imposed similar requirements for air travelers who were recently present in Iran, the majority of European countries, and Brazil, and has also increased the number of designated airports to 15. Screened persons are to be taken to a medical facility for isolation and treatment if fever, cough, or difficulty breathing is detected. Asymptomatic persons are generally to be held under federal quarantine for 14 days from the time they left mainland China if they visited Hubei Province. But asymptomatic persons whose recent travel did not include Hubei Province are asked to self-quarantine for 14 days. State and local health authorities are to provide oversight of individuals who self-quarantine.

Authority for these quarantine rules comes from Section 361 of the Public Health Service Act, which authorizes the U.S. Department of Health and Human Services (HHS) to promulgate and enforce regulations “necessary 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.” Besides authorizing the apprehension and examination of “any individual reasonably believed to be infected with a communicable disease in a qualifying stage” who is “moving or about to move from a State to another State,” Section 361 also authorizes the apprehension and quarantine of persons who are not engaged in interstate travel, but are reasonably believed “to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State.” To facilitate these quarantine requirements, HHS promulgated an interim final
rule, effective February 7, 2020, requiring airlines with flights arriving in the United States to transmit to HHS’s Centers for Disease Control and Prevention (CDC) identifying information about passengers or crew who may be at risk of exposure to communicable disease.

In addition to federal quarantine authority, states may quarantine or isolate persons as public health risks using their police powers. State mandatory quarantine laws vary, with some implemented through public health orders issued by state health departments, and others effectuated through court orders authorizing the detention of an individual upon some evidentiary showing that the person poses a public health risk. As discussed in this Sidebar, some states have also imposed “stay-at-home” orders under this same authority.

**Possible Constitutional Challenges to Quarantine and Isolation Orders**

Because quarantine requirements involve a deprivation of a person’s liberty to move freely, they have occasionally been challenged on constitutional grounds. Specifically, the Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” Accordingly, quarantine measures may be challenged as violating the Constitution’s substantive or procedural due process protections.

Substantive due process challenges center on whether a governmental action “is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience,” without regard to “the fairness of the procedures used to implement” the action. Recent challenges to quarantine and isolation for public health reasons have borrowed from substantive due process precedents involving involuntary commitment. In that context, substantive due process challenges question whether the government has set forth an adequate justification to support the deprivation of liberty effected by a quarantine policy (a type of challenge that might also be viewed through an equal protection rather than a due process lens). In either case, a substantive due process challenge to quarantine policies affecting those suspected of COVID-19 seems unlikely to succeed given the degree of public health risk posed by the virus. Courts have recognized that expeditious actions by government officials are frequently required to protect public health or safety, and have been reluctant to find substantive due process violations even if those actions are found to be erroneous after the fact.

There might also be concerns as to whether a quarantine policy satisfies the Constitution’s procedural due process requirements. These requirements concern whether the process attending a particular deprivation by the government—in this case the restraint on liberty during the quarantine period—is fair. The degree of protection required by procedural due process is a “flexible” concept, requiring an examination of the private interests at stake; the risk of an erroneous deprivation of such interest and the probable value of additional safeguards; and the government’s interests. In the context of state action, the Supreme Court has said that the Due Process Clause typically “requires some kind of a hearing before the State deprives a person of liberty,” but has also held that the “necessity of quick action by the State or the impracticality of providing any predeprivation process” may mean that a postdeprivation remedy is constitutionally adequate. Here, the government may argue that the contagiousness of the COVID-19 virus may make predeprivation process impractical before requiring the quarantine of a person suspected of COVID-19 infection.

In 2014, a federal district court applying this standard in the context of a Friday-to-Monday quarantine of a nurse who had recently been in contact with Ebola patients found that the lack of a predeprivation hearing was not a clear violation of due process because quarantine is “necessarily prophylactic and peremptory.” However, the court noted that the relatively short duration of the quarantine (80 hours) also factored into its conclusion. Moreover, to the extent that postdeprivation procedural due process claims may be made, government actors may still enjoy qualified immunity to civil liability if the action “does
not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

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National Interest Exceptions to
Presidential Proclamation 10052
Suspending the Entry of
Nonimmigrants Presenting a Risk
to the United States Labor Market
During the Economic Recovery
Following the 2019 Novel
Coronavirus Outbreak

Last Updated: February 24, 2021

On June 22, 2020, former President Trump signed
Presidential Proclamation (P.P.) 10052, which
suspend the entry to the United States of certain
foreign nationals who present a risk to the U.S. labor
market during the economic recovery following the
2019 novel coronavirus outbreak. Specifically, the
suspension applies to applicants for H-1B, H-2B, and
L-1 visas; J-1 visa applicants participating in the
intern, trainee, teacher, camp counselor, au pair, or
summer work travel programs; and any spouses or
children of covered applicants applying for H-4, L-2, or
J-2 visas.

The Proclamation does not apply to applicants who
were in the United States on the effective date of the
Proclamation (June 24, 2020), or who had a valid visa
in the classifications mentioned above (and plans to
enter the United States on that visa), or who had
another official travel document valid on the effective
date of the Proclamation. If an H-1B, H-2B, L-1, or J-1
non-immigrant is not subject to the Proclamation, then
neither that individual nor the individual's spouse or
children will be prevented from obtaining a visa due to
the Proclamation. The Department of State is
committed to implementing this Proclamation in an
orderly fashion in conjunction with the Department of
Homeland Security and interagency partners and in accordance with all applicable laws and regulations.

P.P. 10052 includes exceptions, including an exception for individuals whose travel would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees. The list below is a non-exclusive list of the types of travel that may be considered to be in the national interest, based on determinations made by the Assistant Secretary of State for Consular Affairs, exercising the authority delegated to him by the Secretary of State under Section 3(b)(iv) of P.P. 10052.

Until complete resumption of routine visa services, applicants who appear to be subject to entry restrictions under P.P. 10052 and/or geographic Presidential Proclamations related to COVID-19 (P.P. 9984, 9992, and/or 10143) might not be processed for a visa interview appointment unless the applicant also appears to be eligible for an exception under the applicable Proclamation(s). Applicants who are subject to any of these Proclamations, but who believe they may qualify for a national interest exception or other exception, should follow the instructions on the nearest U.S. Embassy or Consulate's website regarding procedures necessary to request an emergency appointment and should provide specific details as to why they believe they may qualify for an exception. While a visa applicant subject to one or more Proclamations might meet an exception, the applicant must first be approved for an emergency appointment request and a final determination regarding visa eligibility will be made at the time of visa interview. Please note that U.S. Embassies and Consulates may only be able to offer limited visa services due to the COVID-19 pandemic, in which case they may not be able to accommodate your request unless the proposed travel is deemed emergency or mission critical. Prospective visa applicants should visit the website for Embassy or
Consulate where they intend to apply for a visa to get updates on current operating status. Travelers who are subject to a regional COVID-19 Proclamation but who do not require a visa, such as ESTA travelers (i.e., those traveling on the Visa Waiver Program), should also follow the guidance on the nearest Embassy or Consulate’s website for how to request consideration for a national interest exception.

Exceptions under P.P. 10052 for certain travel in the national interest by nonimmigrants may include the following:

H-1B applicants:

- For travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g., cancer or communicable disease research). This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic (e.g., travel by a public health or healthcare professional, or researcher in an area of public health or healthcare that is not directly related to COVID-19, but which has been adversely impacted by the COVID-19 pandemic).

- Travel supported by a request from a U.S. government agency or entity to meet critical U.S. foreign policy objectives or to satisfy treaty or contractual obligations. This would include individuals, identified by the Department of Defense or another U.S. government agency, performing research, providing IT support/services, or engaging other similar projects essential to a U.S. government agency.

- Travel by applicants seeking to resume ongoing employment in the United States in the same
position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause financial hardship. Consular officers can refer to Part II, Question 2 of the approved Form I-129 to determine if the applicant is continuing in “previously approved employment without change with the same employer.”

- Travel by technical specialists, senior level managers, and other workers whose travel is necessary to facilitate the immediate and continued economic recovery of the United States. Consular officers may determine that an H-1B applicant falls into this category when at least two of the following five indicators are present:

1. The petitioning employer has a continued need for the services or labor to be performed by the H-1B nonimmigrant in the United States. Labor Condition Applications (LCAs) approved by DOL during or after July 2020 are more likely to account for the effects of the COVID-19 pandemic on the U.S. labor market and the petitioner’s business; therefore, this indicator is only present for cases with an LCA approved during or after July 2020 as there is an indication that the petitioner still has a need for the H-1B worker. For LCAs approved by DOL before July 2020, this indicator is only met if the consular officer is able to determine from the visa application the continuing need of petitioned workers with the U.S. employer. Regardless of when the LCA was approved, if an applicant is currently performing or is able to perform the essential functions of the position for the prospective employer remotely from outside the United States, then this indicator is not present.
2. The applicant’s proposed job duties or position within the petitioning company indicate the individual will provide significant and unique contributions to an employer meeting a critical infrastructure need. Critical infrastructure sectors are chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. Employment in a critical infrastructure sector alone is not sufficient; the consular officers must establish that the applicant holds one of the two types of positions noted below:

a.) Senior level placement within the petitioning organization or job duties reflecting performance of functions that are both unique and vital to the management and success of the overall business enterprise; OR

b.) The applicant’s proposed job duties and specialized qualifications indicate the individual will provide significant and unique contributions to the petitioning company.

3. The wage rate paid to the H-1B applicant meaningfully exceeds the prevailing wage rate by at least 15 percent (see Part F, Questions 10 and 11 of the LCA) by at least 15 percent. When an H-1B applicant will receive a wage that meaningfully exceeds the prevailing wage, it suggests that the employee fills an important business need where an American worker is not available.

4. The H-1B applicant’s education, training and/or experience demonstrate unusual expertise in the specialty occupation in which the applicant
will be employed. For example, an H-1B applicant with a doctorate or professional degree, or many years of relevant work experience, may have such advanced expertise in the relevant occupation as to make it more likely that he or she will perform critically important work for the petitioning employer.

5. Denial of the visa pursuant to P.P. 10052 will cause financial hardship to the U.S. employer. The following examples, to be assessed based on information from the visa application, are illustrative of what may constitute a financial hardship for an employer if a visa is denied: the employer’s inability to meet financial or contractual obligations; the employer’s inability to continue its business; or a delay or other impediment to the employer’s ability to return to its pre-COVID-19 level of operations.

H-2B applicants

- Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or to satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction (e.g. associated with the National Defense Authorization Act) or IT infrastructure.

- Travel necessary to facilitate the immediate and continued economic recovery of the United States (e.g. those working in forestry and conservation, nonfarm animal caretakers, etc). Consular officers may determine that an H-2B applicant falls into this category when at least two of the following three indicators are present:

1. The applicant was previously employed and trained by the petitioning U.S. employer. The
applicant must have previously worked for the petitioning U.S. employer under two or more H-2B (named or unnamed) petitions. U.S. employers dedicate substantial time and resources to training seasonal/temporary staff, and denying visas to the most experienced returning workers may cause financial hardship to the U.S. business.

2. The applicant is traveling based on a temporary labor certification (TLC) that reflects continued need for the worker. TLCs approved by DOL during or after July 2020 are more likely to account for the effects of the COVID-19 pandemic on the U.S. labor market and the petitioner’s business, and therefore this indicator is only present for cases with a TLC approved during or after July 2020 as there is an indication that the petitioner still has a need for the H-2B worker. For TLCs approved by DOL before July 2020, this indicator is only met if the consular officer is able to determine from the visa application the continuing need of petitioned workers with the U.S. employer.

3. Denial of the visa pursuant to P.P. 10052 will cause financial hardship to the U.S. employer. The following examples, to be assessed based on information from the visa application, are illustrative of what may constitute a financial hardship for an employer if a visa is denied: the employer’s inability to meet financial or contractual obligations; the employer’s inability to continue its business; or a delay or other impediment to the employer’s ability to return to its pre-COVID-19 level of operations.

J-1 applicants

• Travel to provide care for a minor U.S. citizen,
LPR, or nonimmigrant in lawful status by an au pair possessing special skills required for a child with particular needs (e.g., medical, special education, or sign language). Childcare services provided for a child with medical issues diagnosed by a qualified medical professional by an individual who possesses skills to care for such child will be considered to be in the national interest.

- Travel by an au pair that prevents a U.S. citizen, lawful permanent resident, or other nonimmigrant in lawful status from becoming a public health charge or ward of the state of a medical or other public funded institution.

- Childcare services provided for a child whose parents are involved with the provision of medical care to individuals who have contracted COVID-19 or medical research at United States facilities to help the United States combat COVID-19.

- An exchange program conducted pursuant to an MOU, Statement of Intent, or other valid agreement or arrangement between a foreign government and any federal, state, or local government entity in the United States that is designed to promote U.S. national interests if the agreement or arrangement with the foreign government was in effect prior to the effective date of the Presidential Proclamation.

- Interns and Trainees on U.S. government agency-sponsored programs (those with a program number beginning with "G-3" on Form DS-2019): An exchange visitor participating in an exchange visitor program in which he or she will be hosted by a U.S. government agency and the program supports the immediate and continued economic recovery of the United
States.

- Specialized Teachers in Accredited Educational Institutions with a program number beginning with "G-5" on Form DS-2019: An exchange visitor participating in an exchange program in which he or she will teach full-time, including a substantial portion that is in person, in a publicly or privately operated primary or secondary accredited educational institution where the applicant demonstrates ability to make a specialized contribution to the education of students in the United States. A "specialized teacher" applicant must demonstrate native or near-native foreign language proficiency and the ability to teach his/her assigned subject(s) in that language.

- Critical foreign policy objectives: This only includes programs where an exchange visitor participating in an exchange program that fulfills critical and time sensitive foreign policy objectives.

L-1A applicants

- Travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit. This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.

- Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base
construction or IT infrastructure.

- Travel by applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause undue financial hardship.

- Travel by a senior level executive or manager filling a critical business need of an employer meeting a critical infrastructure need. Critical infrastructure sectors include chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems. An L-1A applicant falls into this category when at least two of the following three indicators are present AND the L-1A applicant is not seeking to establish a new office in the United States:

  1. Will be a senior-level executive or manager;

  2. Has spent multiple years with the company overseas, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship; or

  3. Will fill a critical business need for a company meeting a critical infrastructure need.

L-1A applicants seeking to establish a new office in the United States likely do NOT fall into this category, unless two of the three criteria are met AND the new office will employ, directly or indirectly, five or more U.S. workers.
L-1B applicants

- Travel as a public health or healthcare professional, or researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit. This includes those traveling to alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.

- Travel based on a request from a U.S. government agency or entity to meet critical foreign policy objectives or satisfy treaty or contractual obligations. An example of this would be supporting U.S. military base construction or IT infrastructure.

- Travel by applicants seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification. Forcing employers to replace employees in this situation may cause undue financial hardship.

- Travel as a technical expert or specialist meeting a critical infrastructure need. The consular officer may determine that an L-1B applicant falls into this category if all three of the following indicators are present:

1. The applicant’s proposed job duties and specialized knowledge indicate the individual will provide significant and unique contributions to the petitioning company;

2. The applicant’s specialized knowledge is specifically related to a critical infrastructure need; AND

3. The applicant has spent multiple years with the company overseas, indicating a substantial
company oversee, indicating a substantial knowledge and expertise within the organization that can only be replicated by a new employee within the company following extensive training that would cause the employer financial hardship.

**H-4, L-2, and J-2 applicants**

National interest exceptions are available for those who will accompany or follow to join a principal applicant who is a spouse or parent and who has been granted a national interest exception to P.P. 10052. Note, a national interest exception is not required if the principal applicant is not subject to P.P. 10052 (e.g. if the principal was in the United States on the effective date, June 24, or has a valid visa that the principal will use to seek entry to the United States). In the case of a principal visa applicant who is not subject to P.P. 10052, the derivative will not be subject to the proclamation either.
Entry Restrictions at the Northern and Southern Borders in Response to COVID-19

Updated April 27, 2020

In response to the global spread of COVID-19, the federal government has issued several orders restricting the entry of foreign nationals into the United States. Many of these restrictions were implemented through President Trump’s authority under Section 212(f) of the Immigration and Nationality Act (INA) to suspend the entry of non-U.S. nationals (aliens) whose entry the President “finds ... would be detrimental to the interests of the United States.” One proclamation issued on January 31, 2020, suspends the entry of foreign nationals who have been in mainland China within the prior 14 days. A second proclamation issued on February 29, 2020, suspends the entry of foreign nationals who have been in Iran in the prior 14 days. Two more proclamations issued in March 2020 restrict the travel of foreign nationals from countries in the Schengen Area, Ireland, and the United Kingdom within the prior 14 days. Finally, a proclamation that took effect on April 23, 2020, suspends the entry of aliens on immigrant visas for 60 days, for the stated purposes of protecting Americans from job competition during the economic recovery and reducing strain on the domestic health care system. This last proclamation would appear to have limited impacts in the near term. The Department of State had already suspended most immigrant visa processing around the world. Further, among other limitations and exceptions, the proclamation does not apply to the spouses or children of U.S. citizens, to healthcare professionals or EB-5 investors, or to aliens who already held immigrant visas as of the proclamation’s effective date. The proclamation would impact some categories of immigrant visa applicants—including, among others, parents of U.S. citizens—if its entry restrictions remain in place after the Department of State resumes visa processing.

The Trump Administration has taken other action, relying on authority outside INA Section 212(f), to restrict the movement of foreign nationals over land borders into the United States. Two orders restrict non-essential travel by foreign nationals into the United States through ports of entry on the land borders with both Canada and Mexico. Additionally, the Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), has issued an order (along with implementing regulations) suspending the “introduction” of foreign nationals from countries with COVID-19. These new orders raise a number of legal issues—most notably their effect on migrants seeking asylum in the United States.
Restrictions on Non-Essential Travel from Canada and Mexico into the United States

U.S., Canadian, and Mexican officials have mutually determined that non-essential travel between the United States and its respective contiguous countries poses additional risk of the transmission and spread of COVID-19. Accordingly, U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), issued two identical orders (one applying to U.S.-Mexico travel and the other applying to U.S.-Canada travel). Both temporarily restrict non-essential travel at land ports of entry from Canada and Mexico into the United States.

The two orders, effective March 20, 2020, “suspend normal operations and process” at land ports of entry, except for “essential travel.” “Essential travel” includes (1) travel for medical purposes; (2) travel to attend educational institutions; (3) travel to work (e.g., individuals who work in agriculture who must travel between the United States and Canada); (4) travel for emergency response and public health purposes (e.g., responses to COVID-19); (5) lawful cross-border trade (e.g., commercial truck drivers); (6) official government or diplomatic travel; (7) members of armed forces returning to the United States; and (8) military-related travel or operations. The rules specify that “essential travel” does not include travel for tourism purposes, such as sightseeing, recreation, gambling, or attending cultural events. The rules clarify that these restrictions will not “interrupt legitimate trade” or interfere with “critical supply chains,” such as food, fuel, and medicine. The two orders also contain broad exceptions for U.S. citizens and lawful permanent residents and members of the military. The restrictions are temporary and were originally scheduled to remain in effect until April 20, 2020. The restrictions have since been extended for 30 additional days (May 20, 2020).

These rules do not apply to air, freight rail, or sea travel between the United States and the respective country, though apply to passenger rail and ferry travel. The rule also grants the CBP Commissioner discretion to allow the processing of travelers not engaged in essential travel “on an individualized basis and for humanitarian reasons or for other purposes in the national interest.”

Legal Authority

On March 13, 2020, the President declared the COVID-19 outbreak a “national emergency” under the National Emergencies Act (NEA), which made available several statutory authorities. Upon a national emergency declaration (or other instances in which there is a “specific threat to human life or national interests”), the Tariff Act of 1930, codified in 19 U.S.C. § 1318, authorizes the federal government to eliminate or modify temporarily services and procedures at ports of entry or to take “any other action that may be necessary to respond directly to the national emergency or specific threat.”

The restrictions placed on non-essential travel across the international land borders seem to accord with the broad authority delegated by Congress to the Executive in times of emergency. While the NEA does not define a “national emergency,” Presidents have issued national emergency declarations under the statute for matters less threatening to the public health and safety than the COVID-19 pandemic (and, indeed, it seems likely that the President’s determination that the pandemic constitutes a national emergency would be treated by a court as a non-reviewable political question). The Tariff Act, in turn, gives CBP wide latitude to limit services at ports of entry in response to a declared emergency or a “specific threat to human life or national interests,” as well as “any other action that may be necessary” to respond directly to those threats and emergencies. This broad delegation of authority seems sufficient for CBP to restrict travel temporarily across the U.S. border to deter the spread of COVID-19.
But exercise of this authority to limit services at ports of entry does not resolve legal questions concerning the treatment of persons arriving at the United States border, either at or between ports of entry, who seek asylum or related forms of relief. These subjects are discussed in more detail below.

**Public Health-Based Suspension of the Introduction of People Typically Held in CBP Facilities**

The Trump Administration has also taken steps that appear to terminate most asylum processing for aliens encountered near the southern border until May 20, 2020. Questions remain, however, about how these measures work in practice and whether they comply with INA provisions concerning asylum and related protections from persecution or torture.

On March 20, 2020, the CDC Director issued an order that “suspends the introduction” into the United States of aliens “traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry (POE) or Border Patrol Station at or near the United States borders with Canada and Mexico.” (The original order was set to expire on April 20, 2020, but the CDC Director extended it through May 20, 2020.) The order clarifies that this description is intended to cover aliens who cross the border unlawfully between ports of entry or who present themselves at ports of entry without valid entry documents. Under the INA, such aliens are inadmissible to the United States but may initiate claims for asylum or related protections from persecution or torture. To evaluate such claims, DHS typically must conduct screening interviews or refer the aliens directly to proceedings in immigration court where they may pursue their claims. At the outset of such procedures, CBP typically holds asylum seekers in short-term custody in its facilities near the border. (A CRS Infographic gives an overview of asylum processing at the border under Trump Administration policies that were in effect before the CDC order.)

The CDC order does not expressly direct DHS to suspend asylum processing at the border. But it does provide that aliens without valid entry documents must be returned “to the country from which they entered the United States, their country of origin, or another location as practicable, as rapidly as possible, with as little time spent in congregate settings as practicable under the circumstances.” DHS, which is responsible for implementing the CDC order, has released information suggesting that it interprets the order to require it to forgo standard asylum processing in most cases so that it may rapidly remove aliens and minimize their time in CBP facilities. Specifically, a DHS Fact Sheet states that “CBP will no longer detain illegal immigrants in our holding facilities and will immediately return these aliens to the country they entered from – Canada or Mexico. Where such a return is not possible, CBP will return these aliens to their country of origin.” Further, one news report says it obtained a copy of an internal CBP operation plan instructing officers to conduct all processing “in the field” to the “maximum extent possible.” (While the CDC order mentions the operational plan, CBP has neither responded to the news report nor published an official version of the plan.) The reported plan makes a limited exception for aliens who affirmatively claim a fear of torture in the receiving country—with supervisory approval, officers may transport such aliens to a “designated station.” No exception exists for aliens who claim asylum or a fear of persecution, according to the reported plan. CBP statistics show that the agency expelled 6,306 aliens under the CDC order during the last ten days of March 2020.

The CDC order does not apply to certain groups, including U.S. citizens, lawful permanent residents, and aliens with “valid travel documents” who present themselves at ports of entry. For example, the CDC order would not apply to a Mexican national arriving at a port of entry with a valid visa, although he or she would be subject to the restrictions on non-essential travel imposed by the DHS measures discussed previously. The CDC order also has a catch-all exception for those who DHS determines “should be
excepted based on the totality of the circumstances.” The order does not mention unaccompanied alien children (UACs), but news reporting has suggested that UACs have been expelled under the order.

**Legal Issues**

For statutory authority, the CDC order relies primarily on Section 362 of the Public Health Service Act, codified in 42 U.S.C. § 265, which authorizes the CDC Director to “to prohibit, in whole or in part, the introduction of persons and property” into the United States to avert the spread of a communicable disease. Until the COVID-19 outbreak, the statute does not appear to have been invoked as the basis for a prohibition on the movement of people into the United States. Before CDC amended its regulations last week to lay the groundwork for the March 20, 2020 order, the regulations implementing the statute provided only for “the suspension of the introduction of property into the United States and the procedures to quarantine or isolate persons”; the former regulations did not address the suspension of the introduction of persons into the United States.

If DHS implements the CDC order by removing aliens encountered near the border without screening their eligibility for asylum or related protections, one of the primary legal questions that could arise is whether this implementation comports with the INA. A few INA provisions mandate asylum procedures. INA § 208(a)(1), the asylum statute, provides that “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such alien’s status, may apply for asylum in accordance with this section.” In addition, INA § 235(b)(1)(A)(ii) provides that an alien apprehended at or near the border who is subject to expedited removal—including one who entered without inspection or who presents at a port of entry without valid documents—must be referred to an asylum officer for a screening interview if “the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” Next, INA § 241(b)(3) prohibits the removal of an alien to a country where he or she would face persecution on account of a protected ground. This provision is commonly interpreted as codifying the non-refoulement obligation in the 1967 Refugee Convention, to which the United States is a party. Finally, if DHS seeks to effectuate the removal of UAC, 8 U.S.C. § 1232 provides that the UAC “shall” be placed in removal proceedings and transferred to HHS custody within 72 hours, except in cases where the UAC is a national of a contiguous country and opts to voluntarily return to that country in lieu of being placed in proceedings.

Because the executive branch has not previously sought to suspend asylum processing at the border on the basis of a public health order issued under 42 U.S.C. § 265, courts have not grappled with the legality of such an action. However, a line of recent cases considered a somewhat analogous statutory conflict. A 2018 Trump Administration policy sought to render aliens ineligible for asylum if they entered the country unlawfully. The policy relied on a combination of the President’s authority to suspend the entry of aliens under INA § 212(f) and the authority of DHS and the Attorney General to create some asylum ineligibilities by regulation under the asylum statute. A federal district court blocked the policy upon reasoning that it likely violated the asylum statute’s “clear[] command[] that immigrants be eligible for asylum regardless of where they enter.” The Supreme Court declined to grant the government a stay of that order, and the Ninth Circuit recently affirmed the district court’s decision. Thus, the policy remains blocked while litigation over its legality continues. Whether a reviewing court would reach the same result in a lawsuit challenging DHS’s implementation of the CDC order might depend largely upon whether the court interprets the public health authority with respect to communicable diseases under 42 U.S.C. § 265 to confer broader powers to limit entry than the statutory authorities underlying the 2018 policy for unlawful entrants.
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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada


ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to “essential travel,” as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on May 21, 2020 and will remain in effect until 11:59 p.m. EDT on June 22, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-344-3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the
United States-Canada border to “essential travel,” as further defined in that document.\(^1\) The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID-19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID-19 between the United States and Canada posed a “specific threat to human life or national interests.” The Secretary later published a notice continuing such limitations on travel until 11:59 p.m. EDT on May 20, 2020.\(^2\)

The Secretary has continued to monitor and respond to the COVID-19 pandemic. As of May 18, there are over 4.6 million confirmed cases globally, with over 310,000 confirmed deaths.\(^3\) There are over 1.4 million confirmed and probable cases within the United States,\(^4\) over 76,000 confirmed cases in Canada,\(^5\) and over 47,000 confirmed cases in Mexico.\(^6\)

**Notice of Action**

Given the outbreak and continued transmission and spread of COVID-19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of COVID-19 between the United States and Canada poses an ongoing “specific threat to human life or national interests.”

\(^1\) 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

\(^2\) 85 FR 22352 (Apr. 22, 2020). That same day, DHS also published notice of the Secretary’s decision to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 22353 (Apr. 22, 2020).


\(^6\) *Id.*
The following is the text of the document that the Secretary approved on Tuesday, May 19, 2020. This document will also be published in the Federal Register and available at https://www.federalregister.gov.

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of COVID-19 and places the populace of both nations at increased risk of contracting COVID-19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID-19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2), I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined below.

Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and

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7 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. See 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. See Treas. Dep’t Order No. 100-16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).
ferry terminals along the United States-Canada border shall be limited to “essential travel,” which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (e.g., individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID-19 or other emergencies);
- Individuals engaged in lawful cross-border trade (e.g., truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of “essential travel” for purposes of this Notification—
The following is the text of the document that the Secretary approved on Tuesday, May 19, 2020. This document will also be published in the Federal Register and available at https://www.federalregister.gov.

- Individuals traveling for tourism purposes (e.g., sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on June 22, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the Federal Register.

Chad R. Mizelle
The following is the text of the document that the Secretary approved on Tuesday, May 19, 2020. This document will also be published in the Federal Register and available at https://www.federalregister.gov.

Senior Official Performing the Duties of the General Counsel,

U.S. Department of Homeland Security
Designation of Ukraine for Temporary Protected Status: Impact and Other Considerations

Updated April 21, 2022

On February 24, 2022, Russia launched a full-scale attack on Ukraine, a country of 43.7 million people. The United States and its allies have condemned the invasion, and are imposing trade and financial sanctions on Russia and enhancing their own military deterrence posture, while also providing aid to Ukraine. More than 4 million people have fled as refugees to neighboring countries, and the United States pledged humanitarian assistance in response to the crisis. The United States maintains deep and multifaceted relations with Ukraine, and the country is a leading recipient of U.S. foreign and military aid.

As of 2019, more than 350,000 foreign-born individuals from Ukraine resided in the United States. Some have U.S. citizenship and others have lawful permanent resident (LPR) status. Still others have temporary statuses (such as students, tourists, and temporary workers) and could see their authorized periods of admission end before it is safe to return; and some have no lawful immigration status. Those with temporary or no legal status could benefit from certain temporary immigration relief options.

**Temporary Protected Status Designation for Ukraine**

On March 3, 2022, the Department of Homeland Security (DHS) announced the designation of Ukraine for Temporary Protected Status (TPS) for 18 months. DHS cited the armed conflict and extraordinary conditions in Ukraine resulting from Russia’s attack on that country.

The DHS Secretary, after consultation with other U.S. government agencies, may designate a country for TPS if (1) there is an armed conflict preventing the safe return of nationals from that country; (2) there has been an environmental disaster in the country that substantially disrupts living conditions; or (3) there are “extraordinary and temporary conditions” that prevent foreign nationals from safely returning. The DHS Secretary may designate the country for periods of 6 to 18 months and may extend these periods if the country continues to meet the conditions for designation.

To qualify for TPS, an applicant from a designated country must meet certain criteria, including physical presence in the United States since the effective date of the country’s TPS designation, continuous residence in the United States since a date specified by the DHS Secretary, and admissibility to the United States.
States (though, as discussed below, some admissibility criteria may be waived). A TPS recipient may remain in the United States for the period in which the TPS designation is in effect and apply for work authorization.

DHS’s original announcement of TPS for Ukraine stated that Ukrainian nationals who have continuously resided in the United States since March 1, 2022, and meet the other eligibility requirements may apply for TPS. Subsequently, in a Federal Register notice published on April 19, 2022, DHS rolled the arrival cutoff date to April 11, 2022. Thus, Ukrainians who traveled to the United States between March 1 and April 11 are newly eligible to apply for TPS. DHS estimates that 59,600 Ukrainians are eligible to apply for TPS.

DHS’s TPS designation will allow many Ukrainian nationals, including those without lawful immigration status, to remain and work in the United States for at least 18 months. DHS could potentially extend that period if Ukraine continues to meet the conditions for TPS in the future. TPS recipients may also simultaneously hold or pursue another immigration status. The grant of TPS, however, does not confer a direct path to LPR status. Additionally, a TPS recipient who unlawfully entered the United States and later obtained TPS is not considered to be “inspected and admitted” for purposes of establishing eligibility for adjustment of status (e.g., based on a marriage to a U.S. citizen).

Statutory restrictions could bar some Ukrainian nationals from TPS. Although DHS may waive many grounds of inadmissibility that would otherwise make an applicant ineligible for TPS, there are no waivers for those who are inadmissible because of specified criminal offenses (e.g., drug trafficking) or certain security-related grounds (e.g., terrorist activities). Further, an individual is barred from TPS if that person was convicted of any felony or two or more misdemeanors in the United States or if that person falls within the enumerated categories of applicants barred from asylum.

Other Potential Immigration Relief Options

Regardless of whether they are eligible for TPS, Ukrainians may qualify for existing pathways to enter or remain in the United States. Some forms of temporary relief are discussed below.

Special Student Relief

Most international students enter the United States on F-1 visas, which allow for temporary admission to pursue full-time academic study. According to DHS, there are currently 2,616 F-1 students from Ukraine in the United States. Generally, F-1 students must maintain a full course of study and may only work under limited circumstances. In some situations, however, the DHS Secretary may suspend certain regulatory requirements related to full-time study and employment for students from countries experiencing conflict, natural disaster, or other emergent circumstances. This suspension is called special student relief (SSR). On April 19, 2022, DHS added Ukraine to the list of countries for which SSR is available. In addition to SSR, individual F-1 students may apply for permission to work off-campus if they face severe economic hardship due to unforeseen circumstances.

Extensions and Changes of Status

Some Ukrainians who are in the United States in nonimmigrant (i.e., temporary) statuses may wish to extend their stay past the current period of authorized admission. Eligible individuals can apply to DHS for an extension or change of status. DHS has discretion to excuse delayed applications when the delay is due to extraordinary circumstances beyond the applicant’s control.
Deferred Action

Commonly referred to as deferred action, DHS may opt not to remove an individual pursuant to its broad enforcement discretion. Although there does not appear to be one central, publicly available agency document that governs the criteria and procedures, DHS may exercise this discretion and decline to remove an inadmissible or deportable Ukrainian national.

Alternatively, DHS has discretion to suspend removal flights to particular countries. The agency reportedly suspended removal flights to Ukraine and other countries in that region.

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Uniting for Ukraine

On April 21, 2022, President Biden announced Uniting for Ukraine, a new streamlined process to provide Ukrainian citizens who have fled Russia's unprovoked war of aggression opportunities to come to the United States. This represents a key step toward fulfilling the President's commitment to welcome Ukrainians fleeing Russia's invasion of Ukraine.

Uniting for Ukraine builds on the robust humanitarian assistance the U.S. government is providing as we complement the generosity of countries throughout Europe that are hosting millions of Ukrainian citizens and others who have been displaced.

Note: this webpage will continue to be updated as more information becomes available.

How to Apply

Uniting for Ukraine provides a pathway for displaced Ukrainian citizens and their immediate family members who are outside the United States to come to the United States and stay temporarily for up to two years. Ukrainians participating in Uniting for Ukraine must have a supporter in the United States who agrees to provide them with financial support for the duration of their stay in the United States.

The first step in the Uniting for Ukraine process is for the U.S.-based supporter to file a Form I-134, Declaration of Financial Support (https://www.uscis.gov/i-134), with USCIS. The supporter will then be vetted by the U.S. government to protect against exploitation and abuse, and ensure that they are able to financially support the individual(s) whom they agree to support.

Ukrainians who present at U.S. land ports of entry without a valid visa or without pre-authorization to travel to the United States through Uniting for Ukraine may be denied entry and referred to apply through this program.

For more information on how to apply, eligibility requirements, and what to expect after the Form I-134 is filed, visit USCIS (https://www.uscis.gov/humanitarian/uniting-for-ukraine) and the State Department (https://travel.state.gov/content/travel/en/News/visas-news/information-for-nationals-of-Ukraine.html).

Simple Process Overview

Uniting for Ukraine provides a pathway for Ukrainian citizens and their immediate family members who are outside the United States to come to the United States and stay temporarily, with a period of parole up to two years. Ukrainians participating in Uniting for Ukraine must have a supporter in the United States who agrees to provide them...
with financial support for the duration of their stay in the United States. The process begins when the supporter files Form I-134, Declaration of Financial Support, with U.S. Citizenship and Immigration Services (USCIS) to include information both on the supporter and the Ukrainian beneficiary. Ukrainians who meet the requirements receive authorization to travel directly to the United States and seek parole at a port of entry.

Eligibility

Beneficiaries are eligible for the process if they:

- Resided in Ukraine immediately prior to the Russian invasion (until February 11, 2022) and were displaced as a result of the invasion;
- Are a Ukrainian citizen and possess a valid Ukrainian passport (or are a child included on a parent’s passport), or are a non-Ukrainian immediate family member of a Ukrainian citizen who is applying through Uniting for Ukraine;
- Have a supporter who filed a Form I-134, Declaration of Financial Support, on their behalf that has been confirmed as sufficient by USCIS;
- Complete vaccinations and other public health requirements, and;
- Clear biometric and biographic screening and vetting security checks.

Note: To be eligible for this process, children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian.

Step 1: Financial Support

Individuals participating in Uniting for Ukraine must have financial support in the United States. A U.S.-based supporter will file a Form I-134, Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the Uniting for Ukraine process.

The supporter will then be vetted by the U.S. government to protect against exploitation and abuse, and ensure that they are able to financially support the individual whom they agree to support. Financial supporters must be verified and found eligible by the U.S. government before the Ukrainian beneficiary moves forward in the process.

Step 2: Submit Biographic Information in myUSCIS

Once a supporter has demonstrated sufficient financial support and is approved, the Ukrainian beneficiary will receive an email from USCIS on how to create an account with myUSCIS and instructions on next steps. The Ukrainian beneficiary will be required to confirm their biographic information in myUSCIS and attest to completing all eligibility requirements.

Step 3: Complete Vaccination Requirements

As part of confirming eligibility requirements in their myUSCIS account, individuals who seek authorization to travel to the United States via the Uniting for Ukraine process will need to confirm prior vaccination against measles, polio, and COVID-19. If not previously vaccinated, individuals will need to receive a first dose of required vaccines prior to obtaining travel authorization to come to the United States.

Step 4: Approval to Travel to the United States

After completing requirements, Ukrainians will receive a notice to their myUSCIS account confirming whether they are
authorized to travel to the United States to seek parole. If approved, this authorization is valid for 90 days and Ukrainians are responsible to secure their own travel via air to the United States. Ukrainian citizens will need to meet other CDC travel requirements, including pre-departure testing for COVID-19.

**Step 5: Seeking Parole at the Port of Entry**

Upon their arrival at a port of entry, each individual will be inspected by U.S. Customs and Border Protection (CBP) and considered for parole for a period of up to two years, and may have conditions placed on their parole. All individuals two years of age or older will need to complete a medical screening for tuberculosis, including an IGRA test, within two weeks of arrival to the United States.

As part of the Uniting for Ukraine process, Ukrainians will undergo additional screening and vetting, to include biometric vetting. Anyone determined to pose a national security or public safety threat will be referred to U.S. Immigration and Customs Enforcement (ICE).

Ukrainians who present at U.S. land ports of entry without a valid visa or without pre-authorization to travel to the United States through Uniting for Ukraine may be denied entry and referred to apply through this program.

**Step 6: Approved for Parole**

If granted parole pursuant to this process, individuals will generally be paroled into the United States for a period of up to two years and are eligible to apply for employment authorization. Individuals may request authorization to work by filing a Form I-765, Application for Employment Authorization, with USCIS.

**Frequently Asked Questions**

**What is Uniting for Ukraine?**

*Uniting for Ukraine* is an innovative approach to provide a safe and orderly process for displaced Ukrainians who have been impacted by Russia's invasion of Ukraine. Ukrainians who have a supporter in the United States may be considered for parole, on a case-by-case basis, for a period of up to two years. Once granted parole, Ukrainians are eligible to apply for employment authorization in the United States.

**Why is the United States creating a process for Ukrainians to come to the United States?**

As a result of the Russian military’s unprovoked full-scale invasion of Ukraine and ongoing aggression, millions of Ukrainians have been forced to flee their homes. The Biden-Harris Administration remains committed to welcoming 100,000 Ukrainians and others fleeing Russia’s aggression. To meet this commitment, the Administration intends to utilize the full range of legal pathways to the United States, including new processes such as *Uniting for Ukraine* and existing opportunities such as immigrant and nonimmigrant visas, and refugee resettlement processing.

**What is parole?**

The Immigration and Nationality Act provides the Secretary of Homeland Security with discretionary authority to parole noncitizens into the United States temporarily, on a case-by-case basis, for “urgent humanitarian reasons or significant public benefit.”
Individuals who are granted parole pursuant to the *Uniting for Ukraine* process will generally be paroled into the United States for a period of up to two years and are eligible to apply for employment authorization.

**Am I eligible to participate in *Uniting for Ukraine*?**

To be eligible, Ukrainians must have been resident in Ukraine as of February 11, 2022, have a supporter in the United States, complete vaccinations and other public health requirements, and pass biometric and biographic screening and vetting security checks. Ukrainians approved via this process will be authorized to travel to the United States to be considered for parole, on a case-by-case basis, for a period of up to two years. Once paroled through this process, Ukrainians will be eligible to apply for work authorization.

**How long can I stay in the United States under *Uniting for Ukraine*?**

Individuals granted parole under this process will generally be paroled for a period not exceeding two years.

**How do I travel to the United States?**

Individuals who clear initial screening, vetting, and security checks will receive authorization to travel to the United States valid for a period of 90 days. Once authorized, they will be responsible for arranging and funding their travel to the United States. With this authorization, individuals will be able to book their own commercial air travel directly from Europe to the United States. Individuals traveling to the United States must have a valid passport, or, if a child without their own passport, be included in a parent’s passport, and adhere to travel requirements as outlined by the Centers for Disease Control and Prevention (CDC), including pre-departure testing for COVID-19.

**What is the role of a financial supporter?**

Ukrainians must have a financial supporter in the United States. Supporters initiate the *Uniting for Ukraine* process by filing the Form I-134 Declaration of Financial Support and providing information about themselves and the Ukrainian beneficiary. Supporters will be vetted by the U.S. government to ensure that they are able to support Ukrainians and to mitigate against potential exploitation.

Every Ukrainian seeking authorization to travel to the United States to seek parole must be supported by a U.S.-based individual, including representatives of non-governmental organizations. Each supporter must pass security and background vetting and demonstrate sufficient financial resources to “receive, maintain, and support” the Ukrainians they commit to support.

**Will I be able to work once I arrive in the United States?**

Yes, individuals paroled into the United States pursuant to this process may request authorization to work by filing a Form I-765, Application for Employment Authorization, with U.S. Citizenship and Immigration Services.

For more information on employment authorization in the United States, visit: [https://www.uscis.gov/i-765](https://www.uscis.gov/i-765).

**How do I apply to *Uniting for Ukraine*?**

A supporter – a U.S.-based individual, including representatives of non-government organizations – must first file a Form I-134, Declaration of Financial Support, with U.S. Citizenship and Immigration Services (USCIS) through the myUSCIS online portal. Supporters need to also include specific information on the Ukrainian beneficiary they intend...
to support. Once a supporter has been confirmed by USCIS, Ukrainian beneficiaries will receive notification from USCIS about next steps in the process to obtain authorization to travel to the United States and seek parole.

**Will Ukrainians be vetted prior to arriving to the United States?**

As part of the process, individuals will submit biographic and biometric information to the U.S. government for the purposes of security vetting. Individuals will be checked against a range of interagency intelligence, law enforcement, and counterterrorism holdings. Anyone who does not pass security checks conducted overseas will not be authorized to travel the United States.

Upon their arrival at a port of entry, each individual will be inspected by U.S. Customs and Border Protection (CBP) and undergo additional screening and vetting, to include biometric vetting. Anyone determined to pose a national security or public safety threat will be referred to U.S. Immigration and Customs Enforcement (ICE).

**Are vaccines required?**

Individuals who seek authorization to travel to the United States via the *Uniting for Ukraine* process will need to confirm prior vaccination against measles, polio, and COVID-19. If not previously vaccinated, individuals will need to receive a first dose of required vaccines prior to obtaining authorization to travel to the United States. In addition, all individuals two years of age or older will need to complete a medical screening for tuberculosis, including an Interferon-Gamma Release Assays (IGRA) test, within two weeks of arrival to the United States. Ukrainian citizens will need to meet other travel requirements as outlined by the Centers for Disease Control and Prevention (CDC), including pre-departure testing for COVID-19.

**Do Ukrainians have to be in a certain location to apply for *Uniting for Ukraine***?

This process is aimed to support Ukrainians who have been recently displaced by Russia’s invasion and who fled Ukraine after February 11, 2022. We anticipate that most eligible Ukrainians will be in neighboring countries or other EU states. However, Ukrainian citizens in other locations are also eligible for *Uniting for Ukraine*.

**How many Ukrainians will be eligible for *Uniting for Ukraine***?

The number of Ukrainians potentially eligible for *Uniting for Ukraine* will be driven by the breadth of welcome U.S.-based supporters are willing and able to provide. Therefore, we cannot estimate a specific number of potential Ukrainian beneficiaries.

In support of President Biden’s commitment to providing legal pathways to displaced Ukrainians as a result of Russia’s invasion of Ukraine, the U.S. government will welcome 100,000 Ukrainians and others fleeing Russia’s aggression. We will deliver on this commitment through the full range of legal pathways, including humanitarian parole, immigrant and nonimmigrant visas, the U.S. Refugee Admissions Program, and new processes such as *Uniting for Ukraine*.

**How long will the process take?**

We anticipate that the process will be fairly quick, but DHS cannot say definitively how long the process will take.

**Are Ukrainian children seeking to come to the United States without their parent or legal guardian eligible for *Uniting for Ukraine***?

Not at this time. Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), any child under the age...
of 18 who is not accompanied by their parent or legal guardian generally must be turned over to the Department of Health and Human Services (HHS) and vetted to protect against exploitation and abuse. Sponsors must be vetted before that child can be released and reunified. As a result, children traveling on their own, or with a non-parent or non-legal guardian adult, are not currently eligible for this process. We are working towards establishing other mechanisms to permit travel of vulnerable children and caregivers with appropriate safeguards.

What will happen to Ukrainians who arrive at the Southwest border?

From April 25, 2022, Ukrainian nationals who present at U.S. Southwest border land ports of entry without a valid visa or without pre-authorization to travel to the United States through Uniting for Ukraine may be denied entry and referred to apply through this process.

Press Releases and Statements

- April 21, 2022: President Biden to Announce Uniting for Ukraine, a New Streamlined Process to Welcome Ukrainians Fleeing Russia’s Invasion of Ukraine
- April 21, 2022: Remarks By President Biden Providing an Update on Russia and Ukraine

Additional Resources

- U.S. Citizenship and Immigration Services (USCIS)
- U.S. Department of State
- Centers for Disease Control and Prevention (CDC)

Topics

CITIZENSHIP AND IMMIGRATION SERVICES
INTERNATIONAL ENGAGEMENT

Keywords

INTERNATIONAL
RUSSIA-UKRAINE CRISIS

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