

President Biden Issues New COVID-19 Travel Ban

On Monday, January 25, 2021, President Joseph Biden issued a Presidential Proclamation that imposes a new coronavirus-related travel ban barring entry to the United States for most foreign nationals who have visited various European countries, Brazil and South Africa within the past 14 days. The White House subsequently posted the [full text](#) of the proclamation.

The proclamation is the first one issued by the President barring foreign travelers from entering the United States and builds upon the previous travel restrictions imposed by former President Trump. President Biden issued this proclamation after reports of a variant strain of the COVID-19 virus were discovered in Europe, Brazil, and South Africa.

The new order bans entry into the United States of all foreign nationals who were physically present within the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa during the 14 day period immediately preceding their attempted entry to the United States. The order applies to all foreign nationals (i.e. non-U.S. citizens) who have visited these areas, not just citizens of the 30 affected countries.

The 26 Schengen Area countries are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. The restriction also includes Ireland and the United Kingdom, which are technically not part of the Schengen Area countries.

Additionally, the Biden administration has indicated that all international travelers to the U.S. must provide proof of a negative COVID-19 test to airlines within three days prior to their departure. This requirement was noted in a January 21 executive order, but specifics as to the implementation of the order have not yet been released.

Like previous coronavirus-related travel bans, the new order contains several key

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exemptions to the travel restrictions. The following are categories of foreign nationals who are **exempt** from the order:

1. Lawful Permanent Residents (i.e. “green card” holders).
2. Spouses of U.S. citizens or Lawful Permanent Residents.
3. Parents or legal guardians of U.S. citizens or Lawful Permanent Residents (provided the U.S. citizen or Lawful Permanent Resident is unmarried and under the age of 21).
4. Siblings of U.S. citizens or Lawful Permanent Residents (provided the foreign national sibling is unmarried and under the age of 21).
5. Any foreign national who is a child, foster child, or ward of a U.S. citizen or Lawful Permanent Resident, or who is a prospective adoptee seeking to enter the United States.

There are additional very specific exemptions in the order, but the vast majority of foreign nationals who qualify for an exemption will fall into one of the five numbered categories above, including many Dorsey clients.

However, most foreign nationals based in (or presently visiting) any of the 26 Schengen countries, the UK, Republic of Ireland, Brazil or South Africa who seek to visit the United States on a B-1 business or B-2 tourist visa will be affected. Likewise, foreign nationals on work visas without familial ties to U.S. citizens or green card holders will be subject to the restrictions. Immigrant visa processing is suspended.

These travel restrictions largely continue the policy of the departing Trump administration and can be expected to disrupt easy travel between Europe, Brazil, South Africa and the United States for the foreseeable future.

The restrictions applying to European countries and Brazil came into effect on January 26, 2021. The restrictions applying to South Africa will come into force at 12:01am Eastern Standard Time on Saturday, January 30, 2021. All restrictions will remain in place indefinitely, subject to periodic reevaluation every 30 days by the Secretary of Health and Human Services.

Affected persons traveling from South Africa should consider returning to the United States before the ban takes effect. Foreign nationals traveling on flights that depart South Africa before the time of implementation but arrive in the U.S. after the time of implementation **will** be permitted to enter the U.S. Those who attempt to return to the U.S. before the ban is implemented should expect large increases in airfare expense, turmoil at airports, and substantial travel delays as there will likely be many people attempting to squeeze through before the door closes.

In the specific case of U.S. employers who have European, Brazilian or South African employees **currently in the United States** on a temporary basis (whether on a B-1 visa or ESTA), or who have European, Brazilian or South African employees who regularly travel between the United States and their home country, Dorsey recommends the employer seeks legal counsel to explore options.

Finally, please note that:

1. As with previous coronavirus-related travel bans, enforcement is at the point of origin, i.e. in Europe, Brazil or South Africa before foreign nationals board aircraft. This means airlines will continue to be the primary mechanism for the enforcement of the restrictions.
2. Foreign nationals who attempt to circumvent the travel restrictions through fraud, willful misrepresentation of a material fact, or illegal entry will be deemed a priority for removal by the U.S. Department of Homeland Security and may be open to additional sanctions or repercussions, including potential bars to U.S. travel in the future.

Dorsey Recommendations for Travelers:

- Restrictions on travel issued in January and February 2020 barring travelers from People's Republic of China and Iran still apply. All travelers who have departed these countries in the last 14 days will be unable to enter the United States.
- While airlines and transportation officials have now had experience implementing the basic framework of this travel ban, travelers should still expect delays, confusion, and possible uneven enforcement. Be prepared for setbacks, and stay calm.
- For foreign nationals who qualify for one of the exemptions listed above, travel with documentation of your exemption. For example, if you qualify for an exemption based on a U.S. citizen child, ideally you should travel with a copy of your U.S. citizen child's birth certificate and passport. For exemptions based on marriage, carry copies of your marriage certificate and spouse's passport if possible. Make sure your critical documents are accompanied by English translations.
- Be proactive. Understand if the travel restrictions apply to you, and be sure to document your travel and itinerary.
- If you **are** subject to the travel restrictions, you must wait 14 days outside of the restricted country before seeking to enter the United States. Do not count partial days towards the 14 day requirement; generally partial days are not counted in an immigration/customs context. Be prepared to document 14 days outside of the restricted country, using visa exit and entry stamps, receipts for hotels and/or lodgings, receipt for meals, and other documentation to establish that you have been outside of the restricted country for at least 14 days.
- Be prudent. In the current immigration and customs environment, U.S. immigration and customs officials are increasingly enforcement-oriented. In an unstable, uncertain, and quickly evolving situation like this, err on the side of caution. Penalties for non-compliance with immigration regulations can be severe and lifelong, including a permanent bar from entering the United States. While this is unlikely, carefully weigh the temporary inconvenience of a 14 day wait against the potential lifetime risks of non-compliance.

Current Dorsey clients, employers, business travelers, and others impacted by the travel ban should closely monitor the situation, including by regularly checking the U.S. government's [coronavirus website](#) and Dorsey & Whitney's [Coronavirus Resource Center](#).

If you would like to contact an attorney to discuss how this order may affect you or your business, please visit our [immigration practice group](#).

