



## US IMPOSES COVID TRAVEL BAN ON INDIA: HOW EFFECTIVE ARE SUCH TRAVEL BANS?

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In [previous blogs](#) we have discussed the Trump administration's numerous COVID travel bans that were extended by President Biden, and provided suggestions for overcoming them. On Friday, April 30, 2021, a new COVID-related travel ban was implemented, this time by the Biden Administration. President Biden issued a [Presidential Proclamation](#) suspending the entry into the United States of nonimmigrants who have been physically present in India in the past 14 days preceding their entry due to the current COVID-19 outbreak in India. This ban will have devastating implications for the many Indian H-1B holders who traveled to India at the height of the pandemic to care for, and possibly bury, their ill parents. These travelers, many of whom have spouses and small children in the United States, now face being stranded in India for the foreseeable future.

Like previous iterations of the COVID travel bans, the new Proclamation outlines numerous categories of individuals who are exempt from the restrictions, including green card holders, spouses of U.S. citizens or green card holders, parents of unmarried U.S. citizen or LPR children under the age of 21, may immigrant visa holders, and certain other categories of travelers. Thus, the many H-1B visa holders who have U.S. citizen children will not be impacted. The Proclamation also exempts "any noncitizen whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees". Thus, noncitizens who are covered by the ban may be able to seek national interest exception waivers, but doing so may be difficult and require proof that the traveler works in critical infrastructure.

The Proclamation takes effect at 12:01 a.m. EDT on May 4, 2021, and will not apply to noncitizens who are already on a flight to the United States that has departed before that time. Thus, impacted nonimmigrants who can book a return flight to the United States before the ban takes effect may want to consider doing so, though it may be difficult to even purchase plane tickets currently. The restrictions also will not apply to a nonimmigrant who, after leaving India, spends 14 days in a third country not subject to a COVID-19 proclamation before entering the United States. Note, though, that the entire Schengen region is subject to a travel ban and so is the United Kingdom. Hence, any travel through any of these countries, even if transiting through an airport such as Frankfurt or London, will subject the person to yet another ban even after they spend 14 days in a country outside India. As many countries have imposed restrictions on travelers from India, travelers may find it difficult to spend time in a third country, however. The United Arab Emirates, for example, recently extended its ban on flights coming from India through May 14<sup>th</sup>. Others, like Mexico, may impose fewer restrictions on incoming international flights. Moreover, consular posts in India will likely not issue H-1B visa stamps to those who are subject to the ban on the flawed reasoning that if an applicant is subject to a ban they should not even receive a visa. There is no reason not to as they can spend 14 days in another country before seeking to enter the US, but based on experience with posts in other countries subject to Covid bans, they will not get a visa and lawsuits may need to be filed as in [Gomez v. Trump](#), which involved DV lottery winners who were subject to Trump's Proclamation 10014 and who got a ruling that they should be entitled to visas even though the ban was still in effect.

As we have argued in a [previous blog](#), imposing travel bans such as this one are not an effective way to curb the spread of COVID-19. Immigrant visa holders or U.S. citizens who have recently been in India are just as likely to contract and spread the virus as nonimmigrant visa holders, so banning some categories of travelers while exempting numerous others has little utility. For example, one could be a US citizen by virtue of being born in the US, but then this person may have spent their entire life in India. This person will not be subject to the ban while a fully vaccinated H-1B visa holder who had to come to India to take care of a sick parent will be subject to the ban. Concerningly, other countries appear to be following the United States' bad example, including [Australia](#), which recently took the astonishingly draconian step of banning Australian

citizens and permanent residents who have traveled to India from returning to Australia. While some may argue that the Australian ban is more uniform as it keeps everyone out and is thus more effective, it is unnecessarily harsh and in violation of citizenship principles. By not allowing its citizens to return, they may overstay their welcome in India, fall out of status and become deportable. They may also be more susceptible to Covid by being forced to remain in India, and will not have ready access to the vaccine as they may have in Australia. The Australian ban, in addition to being cruel for abandoning its own citizens, is also perceived as discriminating against Australian citizens of Indian origin while allowing Australian citizens from other banned countries to come in. The ban against Australian citizens in India also imposes criminal penalties, with penalties of up to five years in prison and nearly 60,000 Australian dollars in fines. If the US were to impose such a ban on its citizens or permanent residents, a court may well hold that it would be unconstitutional. Trump's [initial Muslim ban](#) was successfully challenged in federal court because it also included permanent residents, which would result in a due process violation. *See, e.g., State of Washington and State of Minnesota v. Trump*, 847 F.3d 1151 (9th Cir. 2017).

Even onerous testing requirements may, in practice, result in returning citizens being banned from reentry. Canada, for example, [requires](#) that Canadian citizens who have traveled to India or Pakistan obtain a COVID test in a country other than India or Pakistan before they will be allowed reentry. Instead of being subjected to ineffective and disruptive travel bans, the United States should implement practicable testing requirements, and mandate that returning travelers quarantine for a few days prior to entry. With the vaccine becoming readily available in many parts of the world, proof of vaccination is a formidable safeguard and should enable fully vaccinated travelers to freely enter the United States.

**(This blog is for information purposes, and should not be relied upon as a substitute for legal advice).**

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