



THE INEFFECTIVENESS OF THE LATEST OMICRON TRAVEL BAN FROM THE PERSPECTIVE OF IMMIGRATION LAWYERS

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By Cyrus D. Mehta & Kaitlyn Box*

On November 26, 2021, President Biden issued a [Presidential Proclamation](#) entitled “A Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019” in response to a report made by the South African government to the World Health Organization (WHO) that a new B.1.1.529 (Omicron) variant of the virus that causes COVID-19 was detected in the country. [Reports from the WHO](#) indicate that certain characteristics of the Omicron variant, including an increased risk of reinfection, make it a particular cause for concern. The Proclamation bans many travelers who have been in South Africa or neighboring countries Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, and Zimbabwe in 14 days preceding their entry from coming into the United States. The administration has [indicated](#) that it could add additional countries to the list if needed.

Unlike the previous COVID-related travel ban for India that applied only to nonimmigrants, this Proclamation, like the omnibus Proclamation of January 25, 2020, bars nonimmigrants and immigrants alike from entering the United States. The ban appears to apply even to individuals who are fully vaccinated. President Biden’s most recent Proclamation does share one commonality with its predecessors, though – it exempts numerous categories of travelers from the restrictions, including U.S. citizens, LPRs, spouses of US citizens or permanent residents, parents of minor US citizens or permanent residents, and noncitizens whose entry would be in the national interest. Several other countries have issued similar restrictions on travel from South Africa and

neighboring countries, including the European Union, Australia, Bahrain, Brazil, Canada, Egypt, Jordan, Saudi Arabia, Singapore, Thailand, Turkey, and the United Kingdom. Japan and Israel have sealed their borders to all foreigners.

On November 27, 2021, the Department of State also issued a Level 4 [Travel Health Notice](#) for South Africa, indicating: "Do not travel to South Africa due to COVID-19."

As we have argued in prior [blogs](#), travel bans are not an effective means of curbing the spread of COVID-19. Like previous iterations of the COVID-related travel bans, this most recent Proclamation outlines a number of exemptions for certain categories of travelers, all of who are just as likely to carry COVID-19 as the immigrants and nonimmigrants who are barred from entering the United States. Even a nonvaccinated U.S. citizen who had recently been present in South Africa could freely enter the United States under the Proclamation, while a fully vaccinated nonimmigrant could not. Of course, all travelers must undertake COVID tests before entering the US, and noncitizen travelers with very few exceptions must be vaccinated. Ensuring that these protocols are strictly adhered to, including testing after arrival in the US, and even quarantining as necessary, will be more effective than a travel ban. Travel bans seem to be based more on politics rather than on science so that leaders can demonstrate that they are doing something to prevent the spread of the new variant even if it has spread already and its effects are largely unknown. The existing set of Presidential Proclamations suspending the entry of nonimmigrants who had recently been present in a host of countries impacted by COVID-19 [terminated](#) as recently as November 8, 2021. Like its predecessors, the new Proclamation is likely to do little to prevent COVID-19 infections in the United States, but is sure to devastate families, separate employees from their U.S. employees, and cause untold hardship and confusion for unwary travelers. Past precedent has also shown that once a ban is imposed, it is not likely to get rescinded soon.

Furthermore, the Proclamation penalizes South Africa for detecting the Omicron variant and altering the WHO to its dangers. South African President Cyril Ramaphosa has [condemned](#) the ban, describing its uselessness in preventing the spread of COVID-19 and its potential for causing serious damage to the South African economy. Further underscoring the futility of the ban, South Africa has [higher vaccination rates](#) and more sophisticated scientific and medical facilities than most African countries, though it has still faced some

challenges in administering vaccines quickly enough. Although the Omicron variant has also been detected in Belgium, Brazil, Hong Kong, Israel, the United Kingdom, and Germany, these countries are not presently included in the ban. The travel restrictions imposed on South Africa and its neighbors may even make other countries less likely to report the discovery of other new variants, lest they too face an onerous travel ban. As a result of flights not going into South Africa, one public health official, Tulio de Oliveria, angrily [tweeted](#) that his lab will run out of reagents needed to test for the variant.

Fortunately, the U.S. Embassy in South Africa has [announced](#) that South African consulates will continue processing visa applications, and embassies in neighboring countries appear to be following suit. These operations are consistent with recent [federal court decisions](#) holding that the State Department cannot use COVID-related travel restrictions as a justification for refusing to issue visas. It is also hoped that this signals that the ban may not remain for very long. Until these ineffective travel bans are rescinded for good, however, they will continue to cause serious hardship for travelers from many African countries while doing little to prevent the spread of the Omicron variant.

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

****Kaitlyn Box graduated with a JD from Penn State Law in 2020, and is an Associate at Cyrus D. Mehta & Partners PLLC.***