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Consular Processing Post Pandemic

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Introduction

In June 2021 when the topic title was selected for this presentation, it was assumed that the health crisis gripping the world would be in the rearview mirror by the end of October. That assessment widely missed the mark. It now appears that certain health-related accommodations will be a necessary fixture of immigration requirements for the foreseeable future.

The policies discussed below describe a landscape of changing immigration requirements created to limit risks associated with an ever-evolving virus and differences in societal and governmental responses to it. Indeed, the article that follows was completely rewritten a week before deadline due to a White House announcement fundamentally altering the requirements and methods for managing international travel to the United States beginning in November 2021.

In this highly changeable policy environment, new rules may be adapted to address issues as they arise. Therefore, in addition to describing the current policies governing visa applications and international travel, this article provides guidance for locating information as requirements change.

Travel Restrictions—November 2021

On September 20, 2021, the White House announced a new policy¹ with a plan to rescind travel restrictions imposed by a series of Presidential Proclamations² issued pursuant to section 212(f)³ the Immigration and Nationality Act (INA). These proclamations suspend entry to the United States by certain foreign persons who are or had been present in a set of countries during the preceding 14-day period. The new policy becomes effective in early November. The exact date is not known at deadline for this article.

The November plan focuses on individual travelers rather than imposing restrictions on entire countries or regions. Unlike the Presidential Proclamations imposed during the period from January 2020 through October 2021 that focused on specific countries and regions, the November plan will apply globally.

All foreign travelers flying to the United States, regardless of citizenship or place of departure, will be required to prove that they have been fully vaccinated against COVID-19. In addition, all

¹ AILA Doc. No. 21092014.

² These include Presidential Proclamations 9984, 9992, 101143, 101990 review the complete text of these proclamations, refer to <https://www.federalregister.gov/presidential-documents/proclamations/joe-biden/2021>.

³ 8 USC 1182(f).

fully vaccinated travelers will need to provide a negative COVID-19 test within three days before boarding a flight to the U.S.

Limited exceptions will be available under the November plan. These include children for whom vaccines are not yet available, clinical trial participants and persons traveling for a humanitarian purpose who do not have access to a vaccine. Persons excepted from the vaccine requirement prior to entering the U.S. may be required to get vaccinated upon arrival. Details of the plan are not known as of the end of September 2021.

Additional components of the November plan include continuing a mask mandate at least through January 18, 2022, virus testing requirements both before departure and after arrival in the U.S. and requiring air carriers to gather information necessary to perform effective contact tracing for persons transported on a flight. Air carriers will be required to provide such information to the Center for Disease Control (CDC) upon request.

Many details of how the November plan will work, including such basic information as what vaccines will be acceptable, what proof of vaccination will be required, and how humanitarian exceptions will be determined are not known in late September 2021. The CDC is expected to provide guidelines for which vaccines will be accepted for purposes of determining who is fully vaccinated and allowed to travel to the U.S. under the November plan.

Unvaccinated U.S. citizens and noncitizen permanent residents will be required to demonstrate compliance with a separate set of rules. Such persons will have to provide proof of a negative COVID-19 test taken within one day of departure. In addition, to be boarded on an international flight to the U.S., they will have to provide proof of having purchased a COVID-19 test to be taken upon arrival.

While not explicit in the September 20th White House announcement, the plan appears to be limited to persons flying to the U.S. It is possible that the same rules, different rules, or no rules at all may apply to foreign persons seeking entry to the U.S. at a land border. Travel restrictions in place at the U.S. land borders with Canada and Mexico begun on March 24, 2020⁴, remain in effect at least through October 21, 2021.⁵

The White House has tasked the Department of Homeland Security (DHS), the Department of State (DOS) and the Federal Aviation Administration with responsibility for developing processes and directives for the implementation of the plan schedule to take effect in early November. These directives are expected to affect the boarding processes utilized by air carriers. Details of the implementation plan should become available during the month of October 2021.

Prior to the implementation of the November plan, the DHS and DOS had erected from the thin air of the statutory provisions of INA 212(f) an entire edifice of rules and procedures for determining which foreign persons could be excused from the suspension of entry to the U.S.

⁴ 85 Fed. Reg. 16547 March 24, 2020.

⁵ 86 Fed. Reg. 52609 Sept. 22, 2021 and 86 Fed. Reg. 52611 Sept. 22, 2021.

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