

Ebola screening measures rest on US law

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In this Aug. 6, 2014, file photo, a Nigerian port health official uses a thermometer on a passenger at the arrivals hall of Murtala Muhammed International Airport in Lagos, Nigeria. The Obama administration's plans to screen certain airline passengers for exposure to Ebola are based on the Constitution and long-established legal authority that would almost certainly stand up in court if challenged, public health experts say. Airline passengers arriving from three West African countries will face temperature checks using no-touch thermometers and other screening measures at five U.S. airports, starting with New York's Kennedy International on Saturday. (AP Photo/Sunday Alamba)

The Obama administration's plans to screen certain airline passengers for exposure to Ebola are based on the U.S. Constitution and long-established legal authority that would almost certainly stand up in court if challenged, public health experts say.

Airline passengers arriving from three West African countries—Liberia, Sierra Leone and Guinea—will face temperature checks using no-touch thermometers and other screening measures at five U.S. airports, starting with New York's Kennedy International on Saturday. The measures, aimed at identifying sickly passengers from countries experiencing the Ebola outbreak, will expand over the next week to Newark Liberty, Washington Dulles, Chicago's O'Hare and Hartsfield-Jackson Atlanta international airports.

Though [airline passengers](#) may find it intrusive to have their temperature taken or directed against their wishes to seek medical care, the government has wide power when it comes to public health and border control, experts say, including quarantine and isolation. Courts would likely defer to the judgment of public health professionals in the event someone sued over what they saw as an intrusion of civil liberties.

"You are subject to an entrance screening per the laws of the land," said Rebecca Katz, an associate professor of [public health policy](#) at George Washington University. "You can choose not to be screened, but then you don't get to come into the country."

The Centers for Disease Control and Prevention cite as legal authority the Commerce Clause of the Constitution, under which the government regulates trade with foreign countries. Separately, the 1944 Public Health Service Act also allows the [federal government](#) to take action to prevent communicable diseases from spreading into the country or between states.

A U.S. citizen who presents a heightened risk of disease upon arrival at the United States has a legal right to re-enter the country and be safely quarantined, said Lawrence Gostin, a public [health law](#) expert at Georgetown University. That same guarantee would not apply to non-U.S. citizens, but as a practical matter, giving them immediate treatment might be safer than putting them on a plane back home.

The list of diseases for which quarantine is authorized by law includes cholera, smallpox, plague and viral hemorrhagic fever, which includes Ebola. It can be extended to include other illnesses, as has occurred in the past decade with presidential executive orders authorizing quarantines to deal with outbreaks of severe acute respiratory syndrome, or SARS, and later, bird flu.

The CDC has said it issues a few isolation orders a year—which separates sick people from those who aren't ill—and usually for individuals arriving from other countries with infectious tuberculosis. A federal quarantine, which separates people exposed to a communicable disease but who aren't showing symptoms, is very rarely used.

"There's very little in the way of strong limits" against issuing the orders, except for the advice and best judgment of government public health experts, said Wendy Mariner, a Boston University health law professor.

"When we're thinking of these issues, we use them as a prevention measure of last resort," Mariner said. "And that's because they would only be useful in a situation where there is a very dreadful disease that is very easily transmitted and for which we have no vaccine or treatment."

Gostin said this was the first time he was aware of that the United States has done broad-based fever monitoring, though it has been done in other countries.

Still, there's no question that the airport screening taps into a broader debate about balancing the government's authority to protect public health against the obligation to uphold civil liberties—especially if the measures were made more intrusive, such as drawing blood.

Peter Jacobson, a University of Michigan professor of health law and policy, said that though he believed the screening measures were justified, it was imperative that individuals maintain the right to challenge quarantine or isolation orders in court.

"You need to assume that regardless of the ability to challenge, the courts are going to defer to the [public health](#) experts," Jacobson said. "If CDC experts testify that an individual is infected with Ebola. ... I can't imagine a court overturning a CDC quarantine or isolation."

Plus, he added, "It'd hard to see taking someone's temperature as particularly intrusive if it is—as is certainly the case with Ebola—part of treating the disease."

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