



# Could the Government Quarantine America's Workforce?

Insights

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During the height of the novel coronavirus' (COVID-19) outbreak in China, the country isolated Wuhan to contain the spread of the virus. As global cases of COVID-19 cases have skyrocketed during the last several weeks, Italy, Spain, and France have imposed a similar strict quarantine of all residents. We are now starting to see similar measures being imposed here in the United States on a localized basis. The question many are now asking...

## ***To combat the COVID-19 crisis, could the federal government quarantine all U.S. Citizens?***

The federal government has the power to apprehend, detain, or conditionally release individuals to prevent "the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President." 42 U.S.C. § 264(b). Regulations implementing quarantine procedures "may provide for the apprehension and examination of any individual ***reasonably believed to be infected with a communicable disease in a qualifying stage***" who is (or is about to be) traveling between states or is a probable source of infection while traveling between states. 42 U.S.C. § 264(d). A disease is in its "qualifying stage" if it is communicable or if it is pre-communicable, but likely to cause a public health emergency. *Id.* The federal government has delegated its powers to prevent communicable diseases to the Centers for Disease Control and Prevention (CDC).

While the federal government has not used this section to implement mass quarantines, both former Presidents George W. Bush and Barack Obama used their executive order powers in response to the SARS and Ebola outbreaks. See Revised List of Quarantinable Communicable Diseases, 79 FR 45671; Revised List of Quarantinable Communicable Diseases, 68 FR 17255. Under the latest executive order, the federal government may apprehend or detain individuals to prevent the spread of cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fever, severe acute respiratory syndromes, and flu that can cause a pandemic.

Individual states also have the police power to protect the health, safety and welfare of people within their borders. The Supreme Court has repeatedly upheld a state's quarantine powers in *Jacobson v. Commonwealth of Massachusetts*, 197 11, 25 (1905); *Compagnie Francaise de Navigation a Vapeur v. La. State Bd. Of Health*, 186 U.S. 380, 387 (1902); *Ogden v. Gibbons*, 22 U.S. (9 Wheat)1, 203, 6 L.Ed. 23 (1824).

***But, realistically, can the government shut down your town? Your county? Your state? The entire country?***

Any limitations on personal freedoms in the United States are likely to lead to legal challenges, and the District Court of New Jersey recently addressed government powers and limitations in the case of *Hickox v. Christie*, 205 F. Supp. 3d 579 (D. N.J. 2016). Hickox worked as a nurse and traveled to Africa to assist in the Ebola crisis. When she returned, she flew into the Newark, New Jersey airport. Then Governor Christie had issued an Executive Order creating an Ebola Preparedness Plan, in which the Department of Health was given the authority to screen travelers and quarantine them if they posed a danger to public health. Though she did not have an elevated temperature at the airport, the Department decided to quarantine her. She was quarantined for approximately 80 hours. After her release, she filed suit claiming that the governor and public health officials violated her constitutional rights and falsely imprisoned her, among other claims.

The court dismissed Hickox's claims noting that government officials had qualified immunity and that quarantines may be used to protect public health. Recognizing the government's power to prevent the introduction, transmission, or spread of communicable diseases has been delegated to the CDC, the Court noted that the CDC commonly plays a supportive role while states take the lead in quarantines. By state law, the department of health had the power to "maintain and enforce proper and sufficient quarantine, where deemed necessary ... [and] [r]emove any person infected with a communicable disease to a suitable place, if in its judgment removal is necessary and can be accomplished without any undue risk to the person infected." Though the court recognized the tendency to overreact and that restrictions can be so arbitrary or overbroad that they are impermissible, it also recognized that Ebola had ravaged countries, no cure existed, and the state "could reasonably have thought that prevention and containment were paramount."

While it is well-settled that states have the power to enact quarantine laws for the safety of the population, the measures can't be overbroad. For example, in *Jew Ho v. Williamson*, 103 F.10 (C.C.D. Cal. 1900), the court struck down quarantine orders that essentially sealed off San Francisco's Chinatown in a purported effort to stop the spread of the bubonic plague. The court found that the quarantine order was "unreasonable, unjust, and oppressive," it was "not in harmony with the declared purpose" of preventing the spread of disease, and discriminatorily targeted people of Chinese origin.

Similarly, in *In re Smith*, 101 Sickels 68, 146 N.Y. 68, 40 N.E. 497 (1895), the court struck down a blanket quarantine of individuals who refused vaccination, even if the individual had no reason to suspect infection or exposure to disease.

However, quarantines or isolation measures that are not arbitrary, capricious, or otherwise overbroad are likely to be upheld. In *U.S. ex rel. Siegel v. Shinnick*, 219 F. Supp. 789 (E.D.B.Y. 1963), the court upheld an administrative order requiring a woman to be quarantined for 14 days – the incubation period for small pox. The *Shinnick* Court recognized that public health officers are tasked with measuring risk to the public and proceeding reasonably to secure public health. "They deal in a terrible context of the consequences of mistaken indulgence can be irretrievably tragic."

### **The bottom line...**

In short, both federal and state governments can impose quarantines. However, it is unlikely that any such quarantine will be as broad or far-reaching as those imposed in China, Italy, or Spain. Americans have a tremendous work ethic and are free-spirited; it would be extremely difficult to enforce any broad-reaching quarantine order.

If you have COVID-19 or are exposed to it, listen to your health care providers. Consult reputable sources for information. Wash your hands. And we will get through this together, no quarantine needed (fingers crossed).

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