

# COVID-19 UPDATE: ESTA Revocations and VWP Extensions of Stay

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Lippes Mathias continues to monitor the evolving immigration situation for foreign nationals in the U.S. or desiring to come to the U.S., in the face of the evolving U.S. and global response to the COVID-19 pandemic. While we [posted an update yesterday, March 15th](#), regarding travel and the granting of visas in light of the current (and possible future) travel bans, additional updates as of March 16th include the following:

## **U.S. Department of State to Revoke Certain ESTA (Electronic System for Travel Authorizations) Registrations**

It is our understanding that the U.S. Dept. of Homeland Security is planning to revoke current ESTA registrations for individuals from the banned countries so that travelers outside the U.S. do not unnecessarily attempt to travel to the U.S. when they are unable to do so. However, these revocations are without prejudice, and those individuals will be able to re-apply for ESTA Authorization in the future. It is unclear whether individuals will receive notice of these revocations proactively. What does this mean? Once the current and any additional future travel bans are lifted, foreign nationals attempting to enter the U.S. under the Visa Waiver Program should first ensure that they have current ESTA Authorization (whether their prior one is still valid or if they need to obtain a new one).

## **Possible Relief for Foreign Nationals in the U.S. Under the Visa Waiver Program**

Individuals in the U.S. pursuant to an entry under the Visa Waiver Program are allowed a maximum duration of stay of ninety (90) days. Individuals can check their authorized period of admission validity date on their I-94, found online at <https://i94.cbp.dhs.gov/I94/>, by entering in their passport information. There is no provision under U.S. law to extend the stay of an individual admitted to the U.S. under the Visa Waiver Program. The only form of discretionary relief codified for such an individual who is unable to timely depart the U.S. based on emergent circumstances is a mechanism referred to as “Satisfactory Departure” (found at 8 C.F.R. §217.3(a)). The regulation provides that if an emergency prevents an individual currently in the U.S. under the Visa Waiver Program from timely departing the U.S., then they may be granted a period of Satisfactory Departure—not to exceed 30 days—provided that the request is made while the individual is still within their authorized period of stay. If the individual is granted such Satisfactory Departure and departs the U.S. within that period, they are regarded as having made a timely departure and not overstaying their period of admission.

CBP has just announced a limited form of relief for those individuals who are unable to depart the U.S. prior to their I-94 expiration under the Visa Waiver Program pursuant to this regulation. Specifically, individuals that were admitted into the U.S. under the Visa Waiver Program either through John F. Kennedy International Airport, NY (JFK) or Newark Liberty International Airport, NJ (NEW), who find themselves unable to depart the U.S. in a timely

manner because of COVID-19 issues can request Satisfactory Departure for up to 30 days—allowing them to remain in the U.S. for up to a 30 day period without violating U.S. immigration laws. It is unclear at this time whether future requests for additional time may be granted.

Starting March 16, individuals can contact the Deferred Inspections office at JFK to request Satisfactory Departure. The Deferred Inspections Office at JFK is open Monday – Friday, 9am to 4pm ET and can be contacted (718) 553-3683 or (718) 553-3684. To request/support the request, individuals will need to provide the affected individual's name, date of birth (DOB) and passport information at the time of the request. They may also be asked to provide the original departure flight itinerary, along with the new flight itinerary. Individuals whose period of stay will expire in 14 days or less are allowed to contact JFK Deferred Inspection. For those individuals whose admission period has already expired at the time they contact JFK Deferred Inspections, CBP will discretionarily make a decision whether or not to grant the Satisfactory Departure request, on a case-by-case basis.

While the current relief is only available to those individuals who entered the U.S. under the Visa Waiver Program through JFK or Newark, efforts are underway to advocate that this mechanism be rolled out nationwide. We will continue monitoring these efforts and provide updates.

Please check back on this blog for ongoing updates as U.S. policies, recommendations and solutions evolve for foreign nationals currently in the U.S. (or those intending to travel to the U.S.) impacted by the COVID-19 pandemic and the worldwide response.

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