



February 28, 2025

PM-602-0187

Policy Memorandum

SUBJECT: Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens

Purpose

The Notice to Appear (NTA) ([Form I-862](#)) is a charging document that, among other things, instructs an alien to appear before an Immigration Judge and specifies the nature of the removal proceedings, the legal authority for the proceedings, the factual allegations supporting removal, and the charges against the alien.

U.S. Citizenship and Immigration Services (USCIS) has authority under the immigration laws¹ to issue NTAs, which are thereafter filed with the Immigration Court to commence removal proceedings under section 240 of the Immigration and Nationality Act (INA). U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) have concurrent authority to issue NTAs.

This Policy Memorandum (PM) generally describes the circumstances under which USCIS issues an NTA.

Scope

This PM applies to and will be used to guide the issuance of NTAs by all USCIS employees, unless otherwise specifically provided in this PM or other USCIS policy or guidance documents.

Authority

- [INA 101\(a\)\(43\)](#) – Definition of “aggravated felony”
- [INA 103\(a\)](#) – Powers and duties of the Secretary of Homeland Security
- [INA 208](#); [8 CFR 208](#) – Asylum and withholding of removal
- [INA 212](#) – Inadmissible aliens

¹ See, e.g., INA 103(a), 239; 8 CFR 2.1, 239.1; see also DHS Delegation of Authority 0150.1, para II.N.

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- [INA 216](#) – Conditional permanent resident status for certain alien spouses and sons and daughters
- [INA 216A](#) – Conditional permanent resident status for certain alien entrepreneurs, spouses, and children
- [INA 237](#) – Deportable aliens
- [INA 239](#); [8 CFR 239](#) – Initiation of removal proceedings
- [INA 240](#) – Removal proceedings
- [INA 242](#) – Judicial review of orders of removal
- [INA 244](#); [8 CFR 244](#) – Temporary protected status
- [INA 318](#) – Prerequisite to naturalization; burden of proof
- [Pub. L. 107-296](#) – Homeland Security Act of 2002
- [8 CFR 2.1](#) – Authority of the Secretary of Homeland Security
- [8 CFR 103](#) – Immigration benefit requests; USCIS filing requirements; biometric requirements; availability of records
- [8 CFR 207.9](#) – Termination of refugee status
- [8 CFR 216.3\(a\)](#) – Termination of conditional resident status
- [8 CFR 216.6\(a\)\(5\)](#) – Termination of status for failure to file petition
- [8 CFR 236.14\(c\)](#) – Referral of denied cases for consideration of issuance of notice to appear
- [8 CFR 236.23](#) – Procedures for request, terminations, and restrictions on information use
- Delegation of Authority 0150.1, Para II.N. – Delegation to the Bureau of Citizenship and Immigration Services

Background

USCIS is updating its NTA policy to address national security, public safety, and the overall integrity of our immigration system through enforcement of the INA against inadmissible and deportable aliens. Accordingly, USCIS will no longer exempt classes or categories of removable aliens from potential enforcement, which includes referring cases to ICE and issuance of NTAs.

Policy

USCIS issues NTAs in the following circumstances:

I. NTA Issuance Required by Statute or Regulation

USCIS issues NTAs pursuant to statute or regulation in the following circumstances (“regulatory NTAs”):

- Termination of conditional permanent resident status and denials of Petition to Remove Conditions on Residence ([Form I-751](#));²

² See [INA 216](#); [8 CFR 216.3](#), [8 CFR 216.4](#), and [8 CFR 216.5](#); Volume 6, Immigrants, Part I, Family-Based Conditional Permanent Residents, Chapter 7, Effect of Removal Proceedings [[6 USCIS-PM I.7](#)].

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- Termination of conditional permanent resident status and denials of Petition by Investor to Remove Conditions on Permanent Resident Status ([Form I-829](#));³
- Termination of refugee status;⁴
- Denials of Haitian Refugee Immigration Fairness Act (HRIFA)⁵ adjustment of status applications;
- Asylum, Nicaraguan Adjustment and Central American Relief Act (NACARA) 203, and Credible Fear cases,⁶ including:
 - Asylum referrals;⁷
 - Termination of asylum or termination of withholding of removal or deportation;⁸
 - Family unification;
 - Positive credible fear determinations;⁹ and
 - NACARA 203 cases, where suspension of deportation or cancellation of removal is not granted, and the applicant does not have asylum status or lawful immigrant or nonimmigrant status.¹⁰

This PM does not apply to or change NTA-related procedures involving Deferred Action for Childhood Arrivals (DACA).¹¹

II. National Security Cases

DHS prioritizes the apprehension and removal of aliens who pose a danger to national security. National security cases generally involve aliens who have engaged in or are suspected of terrorist activities or espionage or related activities, including those who are otherwise described in [INA 212\(a\)\(3\)](#) or [INA 237\(a\)\(4\)](#). USCIS must obtain approval from the ICE Principal Legal Advisor, or his designee, to include an INA 212(a)(3) or INA 237(a)(4) charge in an NTA.¹² USCIS should coordinate with ICE in all national security

³ See [8 CFR 216.6](#).

⁴ See [8 CFR 207.9](#).

⁵ See [8 CFR 245.15\(r\)\(2\)\(i\)](#).

⁶ The Asylum Division's issuance of a Notice of Referral to Immigration Judge ([Form I-863](#)) is separate from the regulatory authorities noted in this chapter on NTAs related to asylum, Credible Fear, and NACARA cases.

⁷ See [8 CFR 208.14\(c\)](#).

⁸ See [8 CFR 208.24\(e\)](#); see also [INA 208\(c\)\(3\)](#) (describing procedures for seeking removal when asylum status or withholding of removal or deportation is terminated). Note that the Ninth Circuit has held that USCIS lacks authority to terminate asylum status. See *Nijjar v. Holder*, 689 F.3d 1077 (9th Cir. 2012). That decision is limited to cases governed by Ninth Circuit law. See *Matter of A-S-J*, 25 I&N Dec. 893, 894 n.2 (BIA 2012).

⁹ See [8 CFR 208.30\(f\)](#) and [8 CFR 1208.30\(g\)\(2\)\(iv\)\(B\)](#) (noting that if an Immigration Judge vacates a negative credible fear determination, "DHS may commence removal proceedings under section 240 of the Act"); see also [8 CFR 208.30\(c\)\(1\)](#) (requiring that a "spouse or child of a principal alien who arrived in the United States concurrently with the principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal alien or the spouse or child declines such inclusion").

¹⁰ See [8 CFR 240.70\(d\)](#).

¹¹ See [8 CFR 236.23\(e\)](#) for restrictions on the use of information provided in a DACA request related to a DACA requestor or recipient, including family members and guardians, for initiating removal proceedings. See [8 CFR 236.23\(c\)\(2\)](#) for restrictions on the issuance of an NTA following denial of a DACA request.

¹² See Memorandum from Asa Hutchinson, Under Secretary for Border and Transportation Security, *Detention Prioritization and Notice to Appeal Documentary Requirements*, § I n.2 (Oct. 18, 2004).

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cases as required, to determine who is issuing the NTA and any other requirements for adjudication in cases that rely on or use classified information in the adjudicative process. USCIS officers will follow all internal policies and guidance for processing benefits with national security concerns prior to NTA issuance.¹³

III. Criminal Cases

DHS prioritizes the apprehension and removal of aliens who pose a threat to public safety. Generally, USCIS refers cases involving criminal conduct, arrests, or convictions to ICE for enforcement action determinations, including investigation and NTA determinations pursuant to the applicable agreement with ICE regarding Referrals to ICE (RTIs).

Subject to the RTI process, USCIS will issue an NTA against removable aliens if they have been arrested, charged with, or convicted of a criminal offense if the benefit request is denied or withdrawn, so long as the alien is not subject to mandatory detention pursuant to [INA 236\(c\)](#). In cases where the alien is also removable on non-criminal grounds, USCIS should include the criminal grounds of removal on an NTA.¹⁴ However, when a criminal charge is listed on an NTA, it must be supported by evidence in the record.¹⁵

IV. Fraud and Misrepresentation

To uphold the integrity of the immigration system and address fraud, USCIS will issue an NTA in cases presenting substantiated fraud or material misrepresentation. When fraud or material misrepresentation is part of the record and the alien is removable, USCIS will issue an NTA upon adverse action of the benefit request, or other unfavorable determination or action. An NTA will be issued against such a removable alien, even if the petition or application is denied for a ground other than fraud, such as lack of prosecution or abandonment, the application or petition is terminated based on a withdrawal by the petitioner/applicant, or where an approval is revoked, so long as the alien is removable and USCIS has determined there is fraud in the record.

¹³ National security concerns include cases involving Terrorism-Related Inadmissibility Grounds (TRIG) in [INA 212\(a\)\(3\)\(B\)](#) and [INA 212\(a\)\(3\)\(F\)](#). See [INA 237\(a\)\(4\)\(B\)](#) (corresponding grounds of deportability).

¹⁴ For example, if an alien is removable pursuant to [INA 237\(a\)\(1\)\(B\)](#) as a nonimmigrant overstay and there is evidence of a criminal offense, USCIS may elect to only list the overstay charge on the NTA.

¹⁵ [8 CFR 1003.41\(b\)](#) governs the requirements for certified copies of convictions before EOIR. At the adjudication stage, USCIS may only issue a Request for Evidence (RFE) for certified conviction documents if they are relevant to the benefit request. Of note, USCIS will not issue an RFE in all cases and, even when issuing an RFE, USCIS will not always receive a certified court disposition in response. At the NTA stage, after a benefit request is already adjudicated, USCIS does not have authority to issue an RFE, regardless of the adjudicative outcome. See generally [8 CFR 103.2\(b\)\(8\)](#) and [\(b\)\(11\)](#).

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While the NTA is not required to include the charge of fraud or misrepresentation,¹⁶ USCIS should include such a charge whenever evidence in the record supports it. Consult with USCIS OCC if questions arise about including a charge of fraud or misrepresentation.

V. Temporary Protected Status

This PM does not change NTA or notification procedures for Temporary Protected Status (TPS) cases as described in [8 CFR part 244](#). In individual TPS cases where USCIS denies an initial TPS application or re-registration or withdraws TPS, and the alien has no other lawful immigration status or other authorization to remain in the United States, officers will first follow the procedures in the applicable regulations, where required.

Once the TPS regulatory provisions have been followed or are found to be non-applicable in the specific case, officers will issue an NTA to such an alien who has no other lawful immigration status or authorization to remain in the United States following the final determination to deny or withdraw TPS, unless there is a sufficient reason to delay issuance of, or to not issue the NTA (e.g., ICE or another appropriate law enforcement agency makes a reasonable request that USCIS not immediately issue the NTA so as not to disrupt an investigation). Moreover, where the alien is already in [INA 240](#) removal proceedings or is subject to an unexecuted final order of removal, the officer must not issue another NTA without consulting with USCIS Office of Chief Counsel (OCC).¹⁷

Independent of this PM, if the Secretary terminates a country's TPS designation, certain former beneficiaries who have been granted TPS under that country's designation, but who do not have other lawful immigration status or authorization to remain in the United States, become subject to removal. In such circumstances, USCIS officers should coordinate with ICE and CBP regarding the appropriate timing of any NTA issuances to former TPS beneficiaries after the country's TPS designation ends. However, if USCIS issues an unfavorable decision on a benefit request submitted by, or on behalf of, a former TPS beneficiary who is not lawfully present in the United States, officers will follow the NTA guidance in Section VI.

VI. Aliens Not Lawfully Present in the United States or Subject to Other Grounds of Removability

USCIS will issue an NTA where, upon issuance of an unfavorable decision on a benefit request, the alien is not lawfully present in the United States.

¹⁶ Applicable charges generally include [INA 212\(a\)\(6\)\(C\)\(i\)-\(ii\)](#), [INA 237\(a\)\(1\)\(A\)](#), [INA 237\(a\)\(1\)\(G\)](#), or a similar charge determined on a case-by-case basis. Additionally, any false statements an alien makes when making a request potentially subject the individual to criminal liability under statutes such as 18 U.S.C. § 1001. This also applies to aliens that were granted asylum status by USCIS, adjusted to lawful permanent resident status, presented fraud indicators, were subject to the Post Adjustment Eligibility Review (PAER) process in an Asylum Office, and met the PAER criteria for NTA issuance.

¹⁷ See [8 CFR 1240.40](#); [Order to Show Cause and Notice of Hearing](#).

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VII. Special Circumstances involving NTA Issuance

A. Alien Requests or Other Special Circumstances

Typically, USCIS will issue an NTA after taking adverse action on a benefit request (i.e., denying an application). However, USCIS may issue an NTA in other circumstances that do not result from an adverse action or decision.

In limited circumstances, USCIS may issue an NTA if a removable alien requests that an NTA be issued in order to seek lawful status or other relief in removal proceedings. USCIS only considers such requests when the alien is removable from the United States and has previously filed a benefit request with USCIS. The request must be made in writing to the USCIS office director that has jurisdiction over the case, and USCIS must have sufficient records, evidence, and other documentation necessary to issue a legally sufficient NTA.¹⁸ Such requests will generally be viewed as disfavored absent compelling and exceptional circumstances. USCIS has full discretion to approve or reject discretionary NTA requests based on the specific facts and circumstances of the case, as well as the availability of USCIS resources to issue NTAs.

Other special circumstances include, but are not limited to:

- Family reunification for an alien who qualifies as a dependent spouse or child of a principal affirmative asylum applicant, where the principal applicant is in or is being placed in removal proceedings;
- Expedited removal cases referred for credible fear screenings;
- When an asylum applicant withdraws their asylum application;
- When USCIS rescinds asylum status based on a determination that USCIS did not have jurisdiction to grant asylum status, so long as the applicant is not already in removal proceedings or does not have an outstanding order of removal;
- Certain asylum applicants who are issued denials while in lawful immigration status and whose lawful immigration status has since expired;
- Certain applicants for relief under NACARA 203 where USCIS dismisses Form I-881 because the applicant was not deportable or removable and the applicant subsequently falls out of lawful immigration status;

¹⁸ See [INA 239\(a\)\(1\)](#) for general information needed for NTA issuance, including but not limited to: the acts or conduct alleged to be in violation of law, charges against the alien and statutory provisions alleged to have been violated, the written record of an address or telephone number provided by the alien, etc.

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- Cases where USCIS granted NACARA 203 relief to aliens who were ineligible to receive suspension of deportation or special rule cancellation of removal at the time USCIS issued the grant;
- Certain affirmative asylum applicants whose Application for Asylum and for Withholding of Removal ([Form I-589](#)) was previously referred, forwarded, or transferred to the Executive Office for Immigration Review (EOIR) by USCIS and subsequently had their removal proceedings dismissed or terminated by the Immigration Judge;
- When an Application to Replace Permanent Resident Card (Green Card) ([Form I-90](#)) is denied due to abandonment of lawful permanent resident (LPR) status;
- Where an alien's parole under INA 212(d)(5)(A) is expired or terminated, and the alien is not lawfully present in the United States.

B. Confidentiality Protections

In cases involving confidentiality protections, USCIS must comply with the provisions at [8 U.S.C. 1367\(a\)\(1\), USCIS policy, and operational guidance](#).¹⁹

C. Beneficiaries of Certain Employment-Based Petitions

USCIS will issue an NTA to a removable alien who is the beneficiary of an employment-based petition where:

- The decision on the petition is unfavorable;
- The beneficiary is not lawfully present in the United States or is otherwise removable; and
- The beneficiary is the signatory on the Petition for Nonimmigrant worker ([Form I-129](#)).²⁰

D. Certain Naturalization Cases

USCIS will issue NTAs in connection with an Application for Naturalization (Form N-400) filing in the following situations, in addition to the situations described above:

1. When the applicant may be eligible to naturalize but is also deportable under INA 237. Examples include applicants convicted of aggravated felonies prior to November

¹⁹ See USCIS Policy Manual Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 7, Privacy and Confidentiality [[1 USCIS-PM A.7](#)].

²⁰ For Form I-129, there are limited circumstances where the beneficiary is the signatory on the petition, including E-1/E-2 Extension of Stay/Change of Status, H-1B beneficiary owners, and O-1 beneficiary owners. [Under INA 239\(c\)](#), NTA service by mail is considered sufficient if there is proof of attempted delivery to the last address "provided by the alien."

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- 29, 1990, or applicants convicted of deportable offenses after obtaining lawful permanent resident (LPR) status that do not preclude GMC or otherwise make an applicant ineligible for naturalization; or
2. When it is determined that the applicant was inadmissible at the time of adjustment or admission to the United States, and thus deportable under [INA 237](#), and ineligible for naturalization under [INA 318](#).²¹

Unless USCIS exercises prosecutorial discretion in favor of the alien, an NTA will be issued in these two situations in accordance with the USCIS policy.²²

VIII. Prosecutorial Discretion

In general, prosecutorial discretion is the authority of an agency charged with enforcing a law to decide whether to enforce the law against someone. The exercise of prosecutorial discretion can mean that USCIS either decides to or not to assert the full scope of its authority as permitted under the Immigration and Nationality Act (INA); this includes the issuance of NTAs. Prosecutorial discretion not to issue an NTA to a particular alien may be exercised on a case-by-case basis by an Immigration Services Officer (ISO), Asylum Officer (AO), or a similarly situated adjudications officer in consultation with a Supervisory Immigration Services Officer (SISO), Supervisory Asylum Officer (SAO), or a similar supervisor or higher of the component that initiated or will initiate the enforcement action, regardless of which DHS entity actually files any applicable charging documents.²³ An exercise of prosecutorial discretion to not issue an NTA should only be exercised in very limited and compelling instances and on a case-by-case basis after considering all USCIS and DHS guidance, DHS's enforcement priorities, the individual facts presented, and any DHS interest(s) implicated (e.g., federal court litigation-related considerations or deconfliction with law enforcement priorities of other agencies).

Tracking Prosecutorial Discretion

In all instances where USCIS issues an NTA or exercises prosecutorial discretion, USCIS will enter the data in the appropriate USCIS system(s) to account for the action and for reporting capabilities. USCIS' exercises of prosecutorial discretion must also contain a

²¹ In [Garcia v. Attorney General](#), 553 F.3d 724 (3d Cir. 2009), the Third Circuit Court of Appeals held that the five-year statute of limitations in [INA 246\(a\)](#) applies to bar not only the initiation of rescission proceedings, but also the initiation of removal proceedings based on the LPR having been ineligible for adjustment of status at the time of adjustment. Therefore, in the Third Circuit only (Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands), an LPR cannot be placed in removal proceedings for having been ineligible for adjustment of status at the time of adjustment after the expiration of the five-year rescission period. The LPR may still be removable based on grounds unrelated to the adjustment after the five-year period. Officers should consult with OCC if there are questions regarding the applicability of this precedent.

²² See USCIS Policy Manual Volume 12, Citizenship and Naturalization, Part B, Naturalization Examination [[12 USCIS-PM B.4](#)].

²³ See [8 CFR 239.1\(a\)](#) for a complete list of officers and DHS personnel who may issue NTAs; likewise, the same personnel may exercise prosecutorial discretion.

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summary of the analysis and decision in the official record as required by DHS, USCIS, or other guidance.

Implementation

Components should refer to their operational guidance for specific processing of cases in accordance with this memorandum.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law, or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.