

USCIS Authority to Issue Notices to Appear Is Expanded in Latest Policy Memorandum

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On February 28, 2025, U.S. Citizenship and Immigration Services (USCIS) issued an updated [policy memorandum](#) expanding the authority of USCIS employees to issue notice to appear (NTA) charging documents to initiate removal (deportation) proceedings against individuals whose immigration benefit requests have been denied and who are not lawfully present or are subject to other grounds of deportability.

The NTA, also known as Form I-862, places the foreign national on notice of the charges being brought against him or her, the grounds for removability, and the requirement to appear before an immigration judge on a future date. Once the NTA is filed with the immigration court, an immigration judge must decide if the individual should be removed from the United States.

Quick Hits

- USCIS issued guidance stating that it will issue a notice to appear (NTA) if an immigration benefit request is denied, and the noncitizen is no longer in lawful status or is subject to other grounds of removability. This includes situations where the noncitizen was lawfully present at the time the application or petition was submitted to USCIS.
- In cases involving fraud or misrepresentation, USCIS will issue an NTA even if the petition or application was denied for reasons other than fraud.
- Most employment-based beneficiaries are exempt from the policy, but dependent family members are not.
- In naturalization cases, USCIS will issue an NTA if it is determined that the applicant was inadmissible at the time of adjustment in or admission to the United States.

USCIS has the authority to issue NTAs under the immigration laws of the United States in parallel with U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), with the common goal of supporting the government's overall immigration enforcement priorities. The new policy memorandum expands and details the circumstances in which USCIS will or may issue an NTA and narrows the parameters for officers to employ prosecutorial discretion not to issue an NTA.

The latest guidance appears to revive a June 2018 [policy memorandum](#) issued under the prior Trump administration. In 2021, the Biden administration rescinded the June 2018 policy, with a directive to prioritize the removal of individuals posing a threat to national security, public safety, or border security. The new Trump administration guidance states that USCIS will no longer exempt classes or categories of removable foreign nationals from potential enforcement. USCIS is now instructed to issue an NTA where the agency denies a benefit request and the noncitizen is not lawfully present or is subject to other grounds of deportability.

Notably, the memo clarifies that beneficiaries of employment-based petitions will be issued NTAs only in the limited circumstance where the beneficiary is the signatory of the petition (including E-1/E-2s, H-1B beneficiary owners, and O-1 beneficiary owners). The policy does not exclude the dependent beneficiaries of employer-sponsored applicants. The memo also states that withdrawing the application will not prevent an NTA if there are criminal or other grounds for a finding of misrepresentation or fraud.

Finally, the guidance appears to narrow a USCIS officer's exercise of prosecutorial discretion, or the decision of an officer not to issue an NTA. The new policy allows for discretion "in very limited and compelling instances and on a case-by-case basis." USCIS employees are also instructed to track all exercises of prosecutorial discretion in the appropriate USCIS system. This change highlights the agency's focus on enforcement in line with the current administration's immigration priorities.

Key Takeaways

The current policy represents a significant shift toward enforcement and removal actions, and the volume of NTAs issued by USCIS is likely to increase.

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