

New USCIS Policy Threatens Public Safety

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A recent change in immigration policy is adversely impacting a vulnerable population, and is likely to have a chilling effect on immigrants reporting crime and cooperating with law enforcement. Undocumented immigrant victims of domestic abuse, who prior to the updated guidance could freely file petitions for U Nonimmigrant status or Violence Against Women Act (VAWA) self-petitions without fear of bringing on deportation proceedings, now may suffer the very real repercussions of an unfavorable petition or application. If unsuccessful, they now face a mandated issuance of a Notice to Appear (NTA), which is the charging document that initiates removal proceedings.

In a letter dated June 28, 2018, the United States Citizenship and Immigration Services (USCIS) issued “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.” [Policy Memorandum 602-0050.1](#), in pertinent part, provides updated guidelines regarding USCIS’s issuances of NTAs in Immigration Court. The new guidelines serve to ensure conformity with [Executive Order 13768](#), and replaced, in its entirety, [Policy Memorandum 602-00550](#) published in November 2011.

The previous Policy Memorandum established guidelines for NTA issuance “in a manner that promotes the sound use of the resources of the Department of Homeland Security (DHS) and the Department of Justice (DOJ)...” Accordingly, NTAs were issued in a manner consistent with the “Government’s overall removal priorities.” This meant that USCIS was only mandated to issue an NTA when required by statute or regulation, and when fraud was substantiated by a Statement of Findings on the record in petitions or applications by an undocumented immigrant. In instances where an undocumented immigrant was under investigation, arrested, or convicted of any serious crime—defined as “Egregious Public Safety (EPS) Cases” in the Policy Memorandum—USCIS was required to refer the case to Immigration and Customs Enforcement (ICE) but was not mandated to issue an NTA. This, among other things, has been changed by the June 28, 2018 letter.

In the updated guidance, USCIS will now be mandated to issue an NTA in instances where an undocumented immigrant has an “unfavorable decision on an application, petition, or benefit request.” This far-reaching guidance would, for instance, encompass vulnerable undocumented immigrants of domestic abuse who are denied Violence Against Women Act (VAWA) self-petitions and U Nonimmigrant status. A U Visa application provides immigration relief to victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Thus, the law creates an incentive for immigrants to report crime and cooperate with law enforcement, which benefits

everyone.

While the ramifications of USCIS's updated NTA issuance policy remains uncertain, this sweeping change raises immediate concerns. Importantly, this new policy may exacerbate the already increasing [Immigration Court backlog](#) and overburden DHS resources with hearings at the expense of those who should be prioritized. The policy also has the effect of discouraging undocumented immigrants from reporting [domestic violence](#), and cooperating with authorities, which thereby threatens public safety. Further, the updated guidance may make undocumented immigrants hesitant to file a petition for U Nonimmigrant status or a VAWA self-petition for fear that denial will lead to deportation. Of course, for lawyers representing this vulnerable population, it is crucial that the potential consequences are discussed with clients before moving forward with applications of any kind.

Nicholas Bette assisted with this post.

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