



USCIS Teleconference on Notice to Appear (NTA) Updated Policy Guidance

Sept. 27, 2018

On Sept. 27, the Public Engagement Division (PED) held a stakeholder teleconference to discuss the USCIS [Updated Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens](#) policy memorandum (PM) that was issued on June 28. USCIS representatives provided an overview of the memorandum and addressed many questions submitted in advance. Below are a summary of the PM and the questions and answers from the teleconference.

Background

The policy memorandum outlines how our issuance of NTAs and referral of cases to U.S. Immigration and Customs Enforcement (ICE) supports the removal priorities of DHS, including those identified in the executive order. It also updates USCIS guidelines for issuing NTAs and referring cases to ICE.

The new PM supersedes PM-602-0050, [Revised Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Removable Aliens](#), dated November 7, 2011. We have issued a separate PM, [Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) When Processing a Case Involving Information Submitted by a Deferred Action for Childhood Arrivals \(DACA\) Requestor in Connection With a DACA Request or a DACA-Related Benefit Request \(Past or Pending\) or Pursuing Termination of DACA](#), in conjunction with this memorandum and will be applied to cases involving DACA recipients and requestors.

Importantly, we continue to issue NTAs under previous authority and this memo expands the cases in which we may issue an NTA.

These PMs will not apply to the use of discretion in adjudicating cases. Guidance on how the enforcement priorities will affect our use of discretion in adjudicating cases will be addressed in a separate policy memorandum.

Overview of the 2011 Prior Policy Memo and 2018 Updated Policy Memo

We issued a new policy memorandum on June 28, 2018 and it became effective immediately. It updates the agency's guidelines for issuing NTAs, except for the categories of cases

excluded from the new PM as stated above. We also issued a separate policy memorandum that confirms and clarifies that the NTA and referral policies reflected in the 2011 general NTA memo continue to apply to DACA requestors and recipients. Through the new NTA policy memorandum, we are carrying out Executive Order 13768, [Enhancing Public Safety in the Interior of the United States](#), which establishes immigration policies for enhancing public safety and articulates the priorities for removing foreign nationals from the United States – promoting national security and the integrity of the immigration system.

This PM updates the policy for issuing NTAs in the following categories of cases where the individual is removable:

- Cases where fraud or misrepresentation is substantiated, and/or cases where there is evidence that the applicant abused any program related to the receipt of public benefits. We will issue an NTA in these cases even if the case is denied for reasons other than fraud.
- Criminal cases where an applicant is convicted of or charged with a criminal offense or committed acts that are chargeable as a criminal offense, even if the criminal conduct was not the basis for the denial or the ground of removability. We will, where circumstances warrant, refer cases to ICE before adjudication of an immigration benefits request pending before USCIS without issuing an NTA.
- Certain N-400 cases where applicants are deportable, ineligible to naturalize, or where the application has been denied on good moral character grounds
- Cases in which an applicant will be unlawfully present in the United States when the petition or application is denied.

The following categories are unchanged by this PM:

- Cases involving national security concerns;
- Cases where issuing an NTA is required by statute or regulation;
- Temporary Protected Status (TPS) cases, except where, after applying TPS regulatory provisions, a TPS denial or withdrawal results in an individual having no other lawful immigration status; and
- Cases involving DACA recipients and requestors when (1) processing an initial or renewal DACA request or DACA-related benefit request or (2) processing a DACA recipient for possible termination of DACA.

Starting Oct. 1, we may issue NTAs on denied status-impacting applications, including but not limited to, [Form I-485, Application to Register Permanent Residence or Adjust Status](#), and [Form I-539, Application to Extend/Change Nonimmigrant Status](#).

We will not implement the June 2018 NTA Policy Memo with respect to employment-based petitions and humanitarian applications and petitions at this time. Existing guidance for these case types will remain in effect.

Questions

General Processing

Q1. How will the effective date (listed in the memo as July 20, 2018) be applied to applications filed on or after that date?

A1. The memo was signed into effect on June 28, 2018, and gave operational components 30 days to finalize operational guidance. The implementation was then delayed until that guidance could be finalized. We will begin incremental implementation on Oct. 1, 2018, on applications including, but not limited to:

- Form I-485, Application to Register Permanent Residence; and
- Form I-539, Application to Extend/Change Nonimmigrant Status

Q2. What does the NTA do?

A2. An NTA is a document that instructs an individual to appear before an immigration judge. This is the first step in starting removal proceedings.

Q3. Does USCIS interpret the memo to apply to currently pending cases or to cases filed after the date of the memo? Will the memo be applied to cases filed before the memo is issued, before the date the memo was made public, or before establishing each office's creation of processes for referrals?

A3. We will use an incremental approach to implement the memo for denials issued on or after Oct. 1, 2018, regardless of when the application or petition was filed. As always, we have the authority and discretion to issue an NTA on any case where the individual is removable.

Q4. What issue is the Policy Memorandum addressing?

A4. This PM updates the policy for issuing NTAs in the following categories of cases where the individual is removable:

- Cases where fraud or misrepresentation is substantiated, and/or cases where there is evidence that the applicant abused any program related to the receipt of public benefits. We will issue an NTA in these cases even if the fraud was not the basis for the denial or charged as a ground of removability.
- Criminal cases where an applicant is convicted of or charged with a criminal offense, or committed acts that are chargeable as a criminal offense, even if the criminal conduct was not the basis for the denial or the ground of removability. We will, where circumstances warrant, refer cases to ICE before adjudication of an immigration benefits request pending before USCIS without issuing an NTA.
- Certain N-400 cases where applicants are deportable, ineligible to naturalize, or where the application has been denied on good moral character grounds
- Cases in which an applicant will be unlawfully present in the United States when the petition or application is denied.

We are committed to adjudicating all petitions, applications and requests fairly, efficiently, and effectively on a case-by-case basis to determine if they meet all standards required under applicable law, policies, and regulations.

Q5. There will be many situations in which the applicant or beneficiary, after receiving a denial decision, will want to depart the United States without appearing before an immigration judge. Can USCIS cancel an NTA once issued if the applicant's case is reopened and approved?

A5. Once an NTA has been filed with the Executive Office for Immigration Review (EOIR), we cannot cancel the NTA. When this situation arises, we will coordinate with ICE, who will determine if a motion to terminate removal proceedings is warranted.

Q6. If an application is withdrawn, will USCIS still issue an NTA if the individual is removable?

A6. Withdrawal of a benefit request does not interrupt our authority or responsibility to pursue enforcement actions as appropriate. We may issue an NTA if the individual is removable even if they withdraw their application before we adjudicate it.

Q7. Will NTAs be issued merely upon the denial of a benefit, without aggravating factors such as fraud or criminal factors?

A7. We may issue NTAs merely upon the denial of a benefit application, without the presence of fraud or criminal factors, if the applicant is removable. The 2018 NTA PM aligns USCIS policy on NTA issuance with President Trump's removal priorities as outlined in Executive Order 13768, Enhancing Public Safety in the Interior of the United States, and the Department of Homeland Security's removal priorities.

We will prioritize for removal individuals who have been convicted of or charged with a criminal offense, have committed acts that constitute a chargeable criminal offense, have engaged in fraud or willful misrepresentation in connection with any official matter, have abused any program related to receipt of public benefits, are subject to a final order of removal but have not departed, pose a risk to public safety or national security, or are unlawfully present in the United States.

Q8. Where can the process guidance be found? How does the restructuring impact implementation of the NTA memo?

A8. Our operational guidance is not publicly available. However, we will host a public-facing webpage that will be updated as we continue to implement the new NTA PM. The NTA PM has no bearing on, and is not impacted by, any operational restructuring within USCIS.

Q9. Are there any additional planned public engagements?

A9. We plan to host public engagements as the incremental implementation of the NTA PM progresses.

Q10. In the case of someone who timely filed a non-frivolous extension or change of status petition, could USCIS provide a 10-14 day grace period to allow the person to depart the U.S. before issuance of the NTA? If the goal is to have better departure compliance this would seem to accomplish that goal without further stressing the resources of EOIR and without placing people in proceedings that always have and want to comply with applicable immigration rules.

A10. Beginning Oct. 1, we will add language to many denial letters, ensuring that benefit seekers have adequate notice when denied a benefit, and explaining to that if they are no longer in a period of authorized stay and do not depart the U.S., we may issue an NTA. We will also provide details on how applicants can review information regarding their period of authorized stay, check travel compliance, or validate departure from the U.S. Generally, we will not issue an NTA immediately upon denial of a benefit request, unless required by statute or regulation, but will wait for the expiration of the period in which to file a permitted appeal or motion before issuing an NTA.

Q11. What is the timeline for issuing an NTA following the denial of a decision? Will this be communicated to the individual in the denial decision or in a separate notice?

A11. Generally, we will not issue an NTA immediately upon denial of a benefit request, but will wait for the expiration of the appeal or motion period. Usually, appeals must be filed within 33 days from the date of the decision (not the date the applicant received the decision). Shorter appeal periods may apply to some cases, such as the revocation of the approval of a petition, which has an 18 day deadline.

We will include language in many denial notices warning applicants that if they are no longer in a period of authorized stay and do not leave the U.S., we may issue them an NTA.

Q12. Section III of the memo requires issuance of an NTA for “abuse of public benefits.” What circumstances would constitute “abuse of public benefits” and what evidentiary standard will be put in place to trigger a determination of abuse? What training will USCIS officers receive on this determination?

A12. This initial implementation does not include cases with evidence of abuse of public benefits.

Q13. Will USCIS issue an NTA on an I-140 H-1B portability case, where an unfavorable decision on the petition was issued, if the beneficiary is eligible to receive the 60-day grace period?

A13. I-140 petitions are not applications and are therefore not included in this part of the NTA PM implementation.

Q14. How does the NTA rule apply to cases where the I-94 is expired but the applicant is under the 240 day period on or after the date of denial? Don't they get reasonable time to pack up and leave the country?

A14. The 240-day period is granted to certain I-129 classifications. I-129 petitions are not applications, and they are not included in this part of the NTA PM implementation.

Q15. Would USCIS consider exceptions to issuing NTAs in cases of physical impossibility to voluntarily depart?

A15. If an adjudicator believes an exercise of prosecutorial discretion not to issue an NTA is warranted, they may submit a recommendation to the Prosecutorial Review Panel, which will decide whether to recommend the exercise of prosecutorial discretion based on the individual facts of the case.

Q16. Will USCIS issue NTAs in cases where an alien has multiple pending good faith applications/petitions and only one is refused?

A16. Generally, our officers will ensure petitions and applications which impact status or authorized periods of stay are adjudicated before issuing an NTA, but may issue an NTA in specific cases as appropriate while applications or petitions remain pending.

Q17. Can the attorney affirmatively request USCIS to issue a notice to appear?

A17. The accredited representative of a removable alien with a pending or adjudicated application or petition may request USCIS to issue an NTA to seek lawful status or other relief in removal proceedings. The request must be made in writing to the USCIS office that has jurisdiction over the case, and we retain discretion to deny such a request.

Q18. Before this updated policy, what was USCIS doing for individuals who committed crimes or were found to be unlawfully present after being denied a benefit?

A18. It has always been our policy to issue NTAs and to fully cooperate with law enforcement partners. When we fully implement the new NTA PM, our officers will issue NTAs in a wider range of cases where the individual is removable and there is evidence of fraud or misrepresentation, criminal activity, or where an applicant is denied an immigration benefit and is unlawfully present in the U.S. Previously, we referred some of these cases to ICE for NTA issuance.

Q19. What types of criminal offenses can be cause for removal without a conviction?

A19. See the Immigration and Nationality Act Section 212(a)(2). In addition, Section 237(a)(2) lists criminal offenses that make someone removable, some of which do not require a conviction.

Q20. What criteria would an immigration services officer use to determine if an immigrant should be issued an NTA for posing a risk to public safety?

A20. To maintain the integrity of our internal processes, and because these are case-by-case determinations, we will not comment on specific criteria. However, immigration services officers will refer cases with suspected public safety concerns via appropriate procedures for further investigation.

Q21. Does this new NTA policy memorandum mean that any individual who loses status will be issued an NTA?

A21. Individuals who are removable based on DHS enforcement priorities may be subject to removal proceedings through the issuance of an NTA. This includes individuals who, upon denial of an application, petition, or other request before USCIS, are not lawfully present in the U.S.

Q22. How does USCIS intend to inform applicants and petitioners about this policy?

A22. As we do with all policy memos, we provided a news release when we issued the memo, and the policy memo itself is available on the USCIS website. Additionally, we are participating in this engagement. We also note that applicants and petitioners should be well aware of this memo due to its issuance nearly three months ago with a delayed effective date.

Training

Q23. How is USCIS preparing its adjudicators to implement this policy?

A23. We hosted training for officers who currently generate and issue NTAs. In addition, we will continue to conduct comprehensive training sessions for any officers who will be issuing NTAs as part of the NTA PM implementation.

Q24. Will all ISOs adjudicating filings be given training and have the authority to issue NTAs, or will only some officers have NTA issuing authority? How are NTAs reviewed before being issued? What kind of training do officers receive in how to make a legally supported NTA?

A24. 8 CFR 239.1 designates who is authorized to issue an NTA and this policy memorandum does not make changes to that designation. Before issuing any NTA, it is carefully reviewed to determine if it is legally sufficient and complies with USCIS policy. When necessary, USCIS counsel may review NTAs before we issue them.

Q25. What kind and level of training/supervisor review is happening at the start of the policy's implementation?

A25. We have prepared training materials on the new policy for its adjudicators. NTAs based on this policy memo may have additional review before issuance.

Q26. Section IV of the memo requires issuance of an NTA for “removable aliens who committed acts that constitute a chargeable criminal offense.” What training will USCIS officials receive in determining what constitutes a chargeable criminal offense? Will USCIS officers be making “probable cause” determinations and, if so, using what evidence?

A26. NTAs will only contain legally supportable charges. If an individual has been charged with a removable offense but there is no disposition and the INA requires one, then it will not be charged on the NTA. Additionally, this part of the implementation does not change the current process for issuing NTAs on cases with criminal issues.

Motions and Appeals

Q27. How does USCIS expect to handle situations in which there is a denial and an NTA could be issued, but the applicant or petitioner can file a Motion to Reconsider or Reopen? What about applications where no MTR can be filed, but the application can be refiled to cure the reason for the original denial?

A27. While we may issue an NTA at any time, we generally allow 33 days from the date of the decision to file an appeal or motion (not the date the applicant received the decision). A shorter appeal period may apply to some cases such as the revocation of the approval of a petition, which has an 18 day deadline. The decision will tell the applicant how long they have to file the appeal. There is no extension to this deadline.

Q28. How long will offices wait after denial for NTA issuance, especially in the case of abandonment or no-show denials?

A28. Generally, we will not issue an NTA immediately upon denial of a benefit request, but will wait for the expiration of the appeal or motion period. Appeals must be filed within 33 days from the date of the decision (not the date the applicant received the decision) except where a shorter appeal period applies, such as for the revocation of the approval of a petition, which has an 18 day deadline.

However, we reserve the right to issue an NTA at any time based on the facts and circumstances of a particular case. Generally a denial does not by itself bar someone from resubmitting their immigration petition or application.

Q29. Are there any concerns about the processing times for appeals or motions to reopen lengthening in response to more denials?

A29. There is no indication that the agency will be expecting any increase in denials based on the new NTA PM. [Processing times](#) are listed on our website for all of USCIS, including the AAO, service centers, field offices and the National Benefits Center.

Q30. What if the case does not qualify for administrative relief, is refiling with a new fee the only option?

A30. Generally, a denial does not by itself bar someone from resubmitting their immigration petition or application.

Q31. What guidance is being given regarding the pursuit of an appeal where the timing of an appeal would result in potential NTA issuance?

A31. If an appeal is filed within the allowed 33 days or 18 days, we will, generally, not issue an NTA. However, we reserve the option to issue an NTA before or after the filing of an appeal, as appropriate.

Q32. If an NTA is issued but a MTR is filed and successful, how will that be handled? In light of Attorney General Sessions' decision this week in Matter of S-O-G and F-D-B, how will these cases be terminated?

A32. Generally, we will not issue an NTA until the decision on an appeal or motion is completed. Should removal proceedings start before the end of administrative review, and favorable action is taken on the motion or appeal, we will work with ICE to ensure they are aware of the favorable administrative action.

Program Specific Scenarios

Q33. Under the new NTA policy, will USCIS issue NTAs to applicants after denying a provisional waiver? If an application is found deficient in a curable way, will that applicant be placed in removal proceedings or be allowed some period of time to cure the defect and refile?

A33. Provisional waivers do not confer status or authorized stay and are not included in this part of the NTA PM implementation.

Q34. Does USCIS plan on publishing publicly-available guidance on scenarios that will result in the issuance of an NTA, similar to how it may have done with other policy memos?

A34. Internal USCIS guidance is not publicly available. However, we will host a public-facing webpage that will be updated as we continue to implement the new NTA PM.

Q35. Will children be treated any differently than adults under the new NTA policy memo? For example, will they be automatically issued an NTA if an application is denied and they lack lawful status? If so, will they be any more likely to receive prosecutorial discretion than adults?

A35. Individuals who are removable based on DHS enforcement priorities may be subject to removal proceedings through the issuance of an NTA, regardless of age. Prosecutorial discretion does not apply to any specific type or category of cases, but may be exercised on a case-by-case basis through the use of the Prosecutorial Review Panel. If an officer believes an exercise of prosecutorial discretion is warranted, they may submit a recommendation to the

panel, which will decide whether to recommend the exercise of prosecutorial discretion based on the individual facts of the case. The appropriate office director must concur with the recommendation.

Processing Times and Statistics

Q36. Can you summarize the impact of the new policy at the adjudicator level? How will this improve adjudications?

A36. The 2018 NTA PM addresses the issuances of NTAs, not the adjudication of a case. It does not impact the adjudicators other than they now will issue NTAs in a broader range of cases than they had been in the past.

Q37. Will this memo influence application processing times? How does USCIS anticipate this policy impacting processing times?

A37. We have implemented a range of process and operational reforms, hired additional staff, and expanded our facilities to ensure our ability to adjudicate applications keeps pace with the increasing demand for its services over recent years.

Q38. Can USCIS provide basic statistics on the number of NTAs issued each year?

A38. NTA statistics are reported by the [DHS Office of Immigration Statistics](#). Their reports can be found by searching keywords “enforcement actions” on their website.

Q39. How many additional NTAs does USCIS expect as a result of this policy change?

A39. We anticipate the number of NTAs issued will increase; however, it is not possible to determine the precise number at this time.

ICE

Q40. Can you provide clarification regarding NTA issuance in cases involving criminal offenses? At what point or in what circumstances are these cases now referred to ICE for determination of NTA issuance?

A40. This part of the implementation does not change the current process for issuing NTAs on cases with criminal issues. We will continue to issue an NTA for these cases as appropriate.

Q41. Page 5 of the memo notes, “USCIS may consider referring groups of cases with articulated suspicions of fraud to ICE prior to adjudication. USCIS will not refer to ICE individual applications or petitions involving suspected fraud, except as agreed upon by USCIS and ICE.” What are the parameters for which cases will be referred to ICE?

A41. This part of the implementation does not change the current processes for issuing NTAs on cases with fraud.

Q42. The memo continues, “When USCIS refers a case to ICE for investigation, USCIS will suspend adjudication for 60 days, but they may resume the administrative process should ICE not respond within that timeframe or provide a Case Closure Notice or case status report within 120 days of accepting the referral.” What does this mean in practice? Will USCIS go forward with adjudication without waiting to hear back from ICE?

A42. This part of the implementation does not change the current process for issuing NTAs on cases with criminality or fraud.

Q43. Page 7 of the memo notes, “USCIS should refer an EPS case to ICE prior to adjudication and before an NTA is issued if there are circumstances that warrant such action.” What are those circumstances?

A43. This part of the implementation does not change the current processes for issuing NTAs on cases with criminality.

Q44. Page 7 of the memo notes, “For Form I-90 applications, and any adjudications involving EPS concerns where USCIS has not issued an NTA, USCIS will refer these cases to ICE after adjudication.” Clarification is requested on how these cases will be handled.

A44. This part of the implementation does not change the current processes for issuing NTAs on cases with criminality.

Q45. Page 10 of the memo notes, “USCIS will continue to conduct its administrative review during the course of removal proceedings. If USCIS takes favorable action upon motion or appeal, such that an individual is no longer removable, USCIS should advise ICE counsel so that appropriate action can be taken in removal proceedings.” What does this mean in practice? Is there a process in place to ensure appeals are fully reviewed before removal proceedings begin?

A45. This policy does not change or limit motion or appeal rights. We are not precluded from issuing an NTA before or after the filing of a motion or appeal as it deems appropriate. Should removal proceedings start before the end of administrative review and favorable action is taken on the motion or appeal, we will work with ICE to ensure they are aware of the favorable administrative action.

Q46. Why does USCIS prioritize issuance of NTAs when someone is charged with a crime? Are there due process concerns?

A46. We can only issue NTAs against individuals who are removable under immigration law. In some instances, an individual who is charged with a criminal offense may be removable without conviction or removable for non-criminal reasons. We are prioritizing the issuance of NTAs based on Executive Order 13768 and guidance issued by DHS.

Q47. Will this policy mean that there will be more ICE arrests at USCIS offices?

A47. NTAs issued by USCIS may be served by regular mail or in person. ICE enforcement activities are not directly linked to our NTA issuance processes.

Q48. Can we say with accuracy that we will now be sending more people to ICE?

A48. Actually, the outcome of this NTA PM is that, upon full implementation, we will refer fewer people to ICE. Historically, we referred aliens with criminal issues (EPS and non-EPS) to ICE and allowed ICE to decide whether to take action to remove these aliens. That procedure was initiated by a Referral to ICE (RTI). If ICE accepted the RTI, they would investigate the subject and possibly issue an NTA to place the subject in removal proceedings. If the RTI was declined, we would continue adjudication and, regardless of approval or denial, would not issue an NTA.

This middle step, issuing an RTI, was unnecessary for many criminal cases. We have the authority to issue NTAs directly. Instead of referring cases to ICE so they can issue the NTA, we will, upon full implementation of the new NTA PM, and for categories of cases expressly laid out in the NTA PM, adjudicate the application/petition and issue NTAs directly under the updated NTA PM. We reserve the right to refer cases to ICE as appropriate.

Fraud

Q49. The new memo calls for NTA issuance any time there is evidence of fraud, misrepresentation, or abuse of public benefits programs in the record, even if that is not the reason for the denial. There will be situations in which fraud on a party other than the applicant may be present (such as a representative or employer), but as a result of the denial the applicant or beneficiary is now unlawfully present. Will suspected fraud on the part of another actor result in the issuance of an NTA for the applicant or beneficiary?

A49. This part of the implementation does not change the current processes for issuing NTAs on cases with fraud.

Q50. Will USCIS issue NTAs in “suspected fraud” cases without issuing an RFE or NOID (given the new RFE policy) that provides the individual an opportunity to rebut derogatory evidence upon which USCIS is basing its denial decision?

A50. Generally, we will continue to issue an RFE or NOID on cases where fraud is suspected.

Q51. Before the new NTA policy, the agency was required to prepare a formal Statement of Findings before it could move forward with an NTA where there was suspected fraud. Is an SOF still required under the new policy?

A51. Generally, we are not required to have a “fraud found” SOF to trigger NTA issuance. The new NTA policy allows us to issue an NTA where fraud is part of the record and the alien is removable. We will issue an NTA even if the application is denied for a ground other than

fraud, so long as the applicant is removable and there is evidence of fraud in the record. The NTA may not necessarily include the charge of fraud.

Q52. Why are cases that involve fraud sometimes not charged in the NTA with fraud, as indicated in this new policy?

A52. The charges that are included in the NTA are determined by the evidence of record, as appropriate.

Prosecutorial Discretion Review Panels

Q53. The memo also makes reference to other operational processes, specifically NTA Panels and Prosecutorial Discretion Panels. We have heard anecdotally from practitioners that there are no longer NTA panels in certain offices. Have NTA panels been reconstituted? Which local supervisory officers serve on the panels?

A53. The 2018 NTA PM requires each office authorized to issue NTAs to establish a Prosecutorial Review Panel. Each panel must include a local supervisory officer and local USCIS Office of Chief Counsel attorney, for legal sufficiency review, to review recommendations to exercise prosecutorial discretion to not issue an NTA. The panel will provide a recommendation to the field office director, who will make the decision on whether to exercise prosecutorial discretion to not issue an NTA. The 2018 NTA PM mandates only one NTA-related panel in each office; these panels will replace the existing NTA panels established in certain offices across the country and will only convene when a recommendation to not issue an NTA is submitted.

Q54. The memo states that prosecutorial review panels will be maintained in each office authorized to issue NTAs. Given the number of offices in the area authorized to issue NTAs, will there be multiple prosecutorial review panels in the area? How will any restructuring impact issuance of NTAs? Can DHS identify where prosecutorial discretionary panels will be maintained?

A54. Each office authorized to issue NTAs will establish and maintain its own Prosecutorial Review Panel.

Q55. How do you expect the prosecutorial discretion, outlined in Section VIII of the NTA memo, to be exercised? Will such prosecutorial discretion apply to the whole memo?

A55. Prosecutorial discretion may be exercised on a case-by-case basis through the use of the Prosecutorial Review Panel. If an adjudicator believes prosecutorial discretion is warranted, they may submit a recommendation to the panel, which will decide whether to recommend the exercise of prosecutorial discretion not to issue an NTA based on the individual facts of the case. The appropriate office director must concur with the recommendation.

Q56. What is the Prosecutorial Review Panel (PRP) and what is the process for requesting review? Is it anticipated that the decision of the PRP is non-reviewable in federal court? Will there be timelines or processing goals for issuing decisions on requests to the PRP?

A56. The Prosecutorial Review Panel is an internal process for evaluating prosecutorial discretion to not issue an NTA. When reviewing cases for possible NTA issuance, officers will take into consideration all positive and negative equities present in the individual's immigration record to determine if the exercise of prosecutorial discretion to not issue an NTA may be warranted.

Coordination

Q57. What is the status of the discretionary guidance memo referenced in the NTA memo as forthcoming?

A57. This memorandum is still under development.

Q58. How will this memorandum interact with the Accrual of Unlawful Presence memo? Specifically, will the issuance of an NTA follow every denial for a benefit for applicants for which a violation of status is determined to have occurred?

A58. This memo was not drafted in conjunction with any other memo. If an individual, at the time of denial of an application, is removable for any reason an NTA would be appropriate under the new NTA PM.

Q59. How will this memo interact with the RFE/NOID memo? Specifically, how will the agency handle requests that claim a denial was issued in error (for a piece of initial evidence deemed missing that was in fact submitted), and that denial causes the applicant to fall out of status?

A59. This memo was not drafted in conjunction with any other memo. This memo does not change or limit motion or appeal rights.

Asylum

Q60. Will this NTA perpetuate family separation or further inhibit efforts to reunite individuals with their family members?

A60. No, this memorandum does not change our issuance of NTAs as required by regulation in the affirmative asylum and credible fear processes. This is a USCIS memo and does not affect ICE and CBP.

TPS/DACA

Q61. Will USCIS issue NTAs for nationals impacted by the terminated TPS designations?

A61. The 2018 NTA PM does not change NTA or notification procedures for TPS cases as described in 8 CFR part 244. If we issue an unfavorable decision on an application other than for TPS submitted by an individual whose TPS designation was terminated, and that person

is not otherwise lawfully present in the United States, officers may issue an NTA in accordance with the NTA PM.

Q62. Does this apply to TPS?

A62. This policy memorandum does not alter the handling of TPS cases, which continue to be covered by previous internal guidance issued in 2003. However, where TPS regulatory provisions were followed and a final determination on TPS results in a denial or withdrawal and the individual has no other lawful immigration status, the new NTA policy will apply. This is not included in this part of the NTA PM implementation.

Q63. Does this apply to DACA requestors and recipients?

A63. The PM entitled [Updated Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens](#) does not apply to 1) DACA requestors when processing a DACA request or DACA-related benefit request, and (2) DACA recipients when the Federal Government is seeking termination of a DACA approval.

The PM entitled [Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) When Processing a Case Involving Information Submitted by a Deferred Action for Childhood Arrivals \(DACA\) Requestor in Connection With a DACA Request or a DACA-Related Benefit Request \(Past or Pending\) or Pursuing Termination of DACA](#) applies in those cases.

Adjudicators must continue to refer to PM 602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, dated November 7, 2011, to determine whether an RTI or NTA should be issued in such cases.

Q64. Will there be additional FAQs posted for DACA and TPS recipients? The memo and talking points are not overly clear due to all of the references to other policy memos, one of which doesn't seem to be available online.

A64. Additional FAQs about DACA and TPS are not posted with general FAQs about the new NTA PM as these are separate processes.

Q65. If I apply for a non-DACA related immigration benefit with USCIS, will the information I submitted in my DACA request or DACA related benefit request be used to issue an NTA for me or a family member I listed in my DACA request or DACA-related benefit request?

A65. It depends. When processing a non-DACA-related application, petition or request, USCIS adjudicators will refer to PM 602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, dated November 7, 2011, to determine whether any information submitted by a DACA requestor in connection with a DACA request or a DACA-related benefit request (past or pending) may be included in, or relied upon to generate, NTAs or RTIs.