

Fraud Detection Standard Operating Procedures



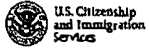
U.S. Citizenship and Immigration Services
Fraud Detection and National Security
Fraud Detection Branch

March 17, 2011



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Version Control Record

Version	Date	Description of Revision/Update
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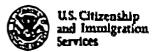
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Introduction

"The mission of the United States Citizenship and Immigration Services (USCIS) is to secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system¹."

USCIS created the Office of Fraud Detection and National Security (FDNS) in 2004 to ensure immigration benefits are not granted to individuals who pose a threat to National Security or Public Safety, or who seek to defraud our immigration system. The promotion of FDNS to a Directorate in 2010 brought about operational improvements and enhanced the integration of the FDNS mission into all facets of the USCIS mission. FDNS continues to lead the USCIS effort to ensure the integrity of the nation's immigration benefits processes.

In January of 2010, USCIS elevated the Office of Fraud Detection and National Security to the Directorate level within the agency.

"This change reflects the prioritization of our anti-fraud and national security responsibilities and will bring greater focus to them."

Alejandro Mayorkas, USCIS Director

Purpose and Scope of the Standard Operating Procedure

The purpose of this Standard Operating Procedure (SOP) is to establish procedures that ensure consistent detection, documentation, and prevention of immigration benefit fraud.

This SOP outlines the procedures for intake and processing of alleged immigration benefit fraud that has been referred to FDNS. These procedures include an explanation of how administrative inquiries, heretofore referred to as administrative investigations, are conducted and how the findings of those administrative investigations are documented. This SOP also prescribes the process for referring immigration benefit fraud cases to Immigration and Customs Enforcement (ICE) or other government or law enforcement agencies, as well as the handling of Requests for Assistance (RFA) from other government agencies.

Throughout the document, the term "USCIS Adjudications" is used in a generic sense. Therefore, it is intended to cover all adjudicative staff at Service Centers, Field Offices, Asylum Offices, etc. Any deviation from this generic use of the term is noted in the document.

There may be circumstances where local conditions do not allow for carrying out certain instructions in this SOP. In such cases, the FDNS operation will consult with their chain of command to determine if local practices can be adjusted in order to accommodate this SOP. Any and all conflicts should be brought to the attention of Headquarters FDNS (HQFDNS).

This SOP is a "living document." Since the mission of FDNS is continually evolving to meet emerging challenges and demands, changes will be made on an ongoing and as needed basis. In

¹ USCIS Mission Statement

this regard, FDNS personnel are encouraged to propose enhancements. Comments regarding changes to this SOP should be forwarded through the appropriate chain of command to the Fraud Detection Branch (FDB) in HQFDNS.

Nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the U.S., its agencies, field officers, or any other person.

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Document Structure

This document is organized so that procedures can be easily found and followed. The following provides a brief description of each section of the document:

- **Section 1: Intake:** This section describes the procedures to follow when new referrals are received and how initial processing is performed.
- **Section 2: Administrative Investigation:** This section provides the bulk of instructions on processing referrals from the Lead through Case phases.
- **Section 3: Statement of Findings:** This section describes the procedures for closing cases and completing necessary documentation.
- **Section 4: Request for Assistance:** This section describes how to process a Request for Assistance that is received from an external agency
- **Appendices:** The appendices cover reference documents that are mentioned throughout the document, including acronyms, definitions, memos, and forms².

Authority³

The Secretary of the Department of Homeland Security (DHS) maintains broad authority to administer and enforce the Immigration and Nationality Act (INA) and all other laws relating to the naturalization and immigration of aliens. Among the authority delegated by the Secretary to USCIS is to conduct interviews and investigate alleged civil violations of the immigration laws⁴.

Petitions and applications submitted to USCIS are signed under penalty of perjury and also authorize USCIS to verify information provided on the form to ensure compliance with applicable laws, regulations, and authorities. USCIS has the legal right to verify information provided on

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³ See Appendix P for more information about USCIS (FDNS) Delegated Authorities.

⁴ Title 8 Code of Federal Regulations (CFR) section 103.2(b)(7) states "The USCIS may require the taking of testimony, and may direct any necessary investigation."

applications and petitions⁵. USCIS may verify information before and after a decision is made on the application or petition.

HQFDNS is responsible for developing and maintaining policies and procedures that govern the detection of persons seeking immigration benefits who pose a threat to National Security and/or Public Safety⁶. This includes detecting and combating immigration benefit fraud and addressing background/security check issues for National Security and Public Safety concerns.

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FDNS Immigration Officer's Duties

FDNS – IOs perform administrative investigations to resolve inconsistencies in the information provided on applications, petitions, supporting documents, and/or other concerns involving immigration benefit fraud. [REDACTED]

[REDACTED] The objective of the administrative investigation is to obtain relevant information needed to render the appropriate adjudicative decision. [REDACTED]

FDNS positions are allocated based on application and petition receipts. Service Centers, Districts Offices, and larger Field Offices have more FDNS positions. Most offices have a FDNS – SIO, however, several smaller offices do not. As a result, some Field FDNS – IOs report to a Field Office Director (FOD) instead of an FDNS – SIO. If application and petition receipts change (higher or lower) or Service Center responsibilities change, FDNS positions may be reallocated accordingly.

Other USCIS employees may perform functions outlined in this SOP when authorized. The Intelligence Research Specialist (IRS) and/or Immigration Analyst (IA) may perform limited fraud verification activities in the place of the FDNS – IO. An IRS or IA cannot conduct interviews or site visits, but they may function in a supporting role in performing either of those activities.

FDNS – IOs are also responsible for developing and disseminating information concerning fraud indicators, patterns, or trends to Adjudications, providing training upon request, and performing Compliance Reviews. Additionally, FDNS – IOs perform duties for which guidance will be provided separately from those included in this SOP. That guidance will include the following topics:

⁵ As specified in 8 USC 1103, 1155, 1184, and 8 CFR parts 103, 204, 205, 207, 208, 209, and 214

⁶ U.S. Citizenship and Immigration Services Internal Memorandum of Agreement between National Security and Records Verification and Domestic Operations regarding the Governance Structure for Field Fraud Detection and National Security Operations dated January 9, 2008

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The FDNS Organizational Structure

FDNS – IOs are deployed to USCIS Service Centers and field offices⁸.

Service Center—Center Fraud Detection Operations

The Center Fraud Detection Operation (CFDO) is the FDNS organization within USCIS Service Centers. The CFDO comprises FDNS – IOs supervised by an FDNS – SIO who reports directly to the CFDO Assistant Center Director (ACD). While most CFDO work occurs in an office environment, some Service Centers conduct administrative investigations in support of FDNS' field operations.

Regional Office—Regional Operations Units

FDNS Staff employed at USCIS Regional Offices provide support to field offices. This includes monitoring the quality of field work, standardizing field operations through analysis and statistical reporting to HQFDNS, the Region and Field managers, and acting as a liaison between HQFDNS and the field offices. FDNS Regional Offices are supervised by the Associate Regional Director (ARD) for FDNS.

⁷ See USCIS Policy Memorandum 110: Disposition of Cases Involving Removable Aliens, dated July 11, 2006 (PM-110)

⁸The term Field Office is used broadly and includes District Offices, Field Offices, Asylum Offices, and Overseas Offices.

Regional Operations Units (Ops Unit) serve as "jump teams" assisting the field offices during workload peaks and staffing shortages, special casework and initiatives. The Ops Unit may be assigned to a particular field office or may conduct file reviews and systems checks from the Regional Office. Assistance may be provided on all case types including marriage fraud, employment fraud, Compliance Reviews, and National Security cases

Although the priority is to assist within the region, work may be conducted for other regions and HQFDNS, as needed.

Regional Office—Regional Fraud Quality Analysis Units

Regional Fraud Quality Analysis Units (QAUs) report to HQ–FDNS and the Regional Director. The QAU also conducts routine Quality Analysis Reviews (QAR) of all FDNS offices to assess, evaluate and ensure compliance with standard operating procedures, memorandums and other guidance.

National Benefits Center (NBC) - FDNS Operations

National Benefits Center FDNS Operations is responsible for reviewing and validating suspected fraud, National Security and Public Safety cases early in the adjudicative process. NBC FDNS Operations also reviews FBI LetterHead Memorandums (LHM) for National Security, Public Safety, and fraud impacts to pending USCIS benefits. It is also the USCIS centralized hub in distributing LHMs to Field Offices and Service Centers. NBC FDNS IOs also assist Field Offices with marriage and employment fraud cases along with participating in administrative site visits. NBC FDNS Operations is supervised by the Assistant Center Director (ACD) for FDNS.

NBC serves as a central facility for the pre-processing of immigration Forms that require an interview such as family based I-485s and N-400s. NBC also adjudicates other Forms to completion such as I-765s, I-131s, I-600s and applications associated with the Legalization program, LIFE Act, and international adoptions under the Hague Convention.

Field Office

FDNS Operations at Field Offices are generally comprised of FDNS – IOs supervised by an FDNS – SIO. FDNS Operations at Field Offices are overseen by FDNS Operations at Regional Offices. These operations receive and process fraud, Public Safety, and National Security referrals from local Adjudications staff; conduct administrative investigations; and perform other activities in support of the FDNS mission.

Refugee Affairs, Asylum, and International Operations Directorate

The Refugee Affairs, Asylum, and International Operations (RAIO) Directorate is divided into three divisions: Refugee Affairs, Asylum, and the International Operations Divisions (USCIS Offices Overseas). FDNS personnel are embedded at various RAIO offices throughout the U.S. and overseas. FDNS – IOs within the RAIO components must be sensitive to the unique laws and issues involved with Refugee and Asylum processing.

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FDNS System of Record: FDNS–Data System

The FDNS Data System (FDNS–DS) is the primary system of record and case management system for FDNS. This document refers to the use of FDNS–DS where it is integral to the function of the FDNS officer. FDNS personnel can refer to the latest revision of FDNS–DS User’s Guide to obtain detailed information on the specific steps and actions to be performed while utilizing FDNS–DS. To maximize data integrity for reporting and analysis it is imperative that each officer fully utilize the features of the system, enter all leads and cases into the system, and fully document their activities and findings appropriately in the system. Complete, detailed and accurate information is essential to ensuring the integrity of data and the usefulness of and validity of reports. The FDNS – IO should routinely update FDNS–DS.

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Immigration Fraud

FDNS administratively investigates allegations of immigration benefit fraud and produces a Statement of Findings (SOF) that can be used by Adjudications to make decisions on applications and petitions. Most FDNS investigations are conducted under the authority of Section 212(a)(6)(C)(i) of the INA, which states that “any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the U.S. or other benefit provided under the INA is inadmissible.” A charge of inadmissibility under Section 212 (a)(6)(C)(i) must be supported by the following elements:

- The applicant/beneficiary must have **misrepresented** or concealed some fact;
- The misrepresentation or concealment must have been **willful**; and
- The fact must have been **material**.⁹

Fraud encompasses any manifestation by words or conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts, an untrue statement of fact, or an incorrect or false representation. Colloquially, it is understood to mean a statement made to deceive or mislead. Further, an omission of fact may constitute a misrepresentation.

Establishing the elements of the above inadmissibility charge is at the core of the work performed during an FDNS fraud investigation. There may be instances in which sufficient evidence is not developed to establish that the applicant/beneficiary is inadmissible under section 212(a)(6)(C)(i), but the administrative investigation does determine that there is enough evidence to support a denial of the application/petition. In those instances the SOF will document the eligibility issues in order for USCIS Adjudications to make a sound adjudication of the application/petition.

⁹ See *Kungys v. U.S.*, 485 U.S. 759 (1988) which indicates that a fact is considered material if it had a tendency to influence the decision for the application or petition or shut off a relevant line of inquiry.

Immigration fraud schemes may include actions undertaken by an individual who devises and executes his or her own plan to circumvent immigration laws or large scale conspiracies formed for the purpose of defrauding USCIS and other U.S. government agencies or departments. FDNS assists ICE and other government agencies in determining how to apply the INA and other immigration-related statutes and regulations to specific immigration benefit fraud and Public Safety cases.

See "[Appendix C Common Types and Methods of Immigration Fraud](#)" for the different types of fraud.

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Section 1. Intake

The objective of the intake process is to determine if a referral from a government source or an external lead warrants further investigation. The intake process involves:

- determining whether or not the referral is complete,
- identifying the referral type,
- determining if it is new or existing,
- entering it into the system of record,
- evaluating the lead to determine whether it warrants additional processing.

Intake processing is performed by FDNS staff at Service Centers, Regional Offices, Field Offices, Asylum Offices, and the National Benefits Center (NBC)

ALL Fraud referrals **MUST** be entered into FDNS–DS to accurately record the number received, track processing, and perform quality assurance.

Complete and accurate data is essential to FDNS and USCIS managers for effective workload assessment, resource planning, and fraud trend and pattern reporting and analysis.

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1.1 Receive Referral

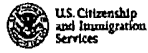
Performing Role: FDNS – IO/Immigration Analyst (IA)

The FDNS – IO receives referrals from USCIS and non-USCIS sources. All referrals received from internal USCIS sources are required to complete and submit a Fraud Referral Sheet (FRS) ([Appendix D](#)). Examples of USCIS sources include:

- Immigration Service Officers (ISO) in Service Centers and Field Offices,
- Service Center Background Check Units (BCU),
- FDNS Intelligence (Intel),
- Refugee, Asylum, International Operations (RAIO) Directorate,
- Administrative Appeals Office (AAO).

Additionally, the FDNS – IO may receive referrals from external sources, including Law Enforcement Agencies (LEA), other government agencies, and the public. Information may be in the form of a:

- letter,
- telephone call,
- walk-in report,
- e-mail, or
- other means of communication.



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1.2 Is there an Existing Record for this Referral?

Performing Role: FDNS – IO/IA

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1.2.1 Record Exists

If FDNS–DS already has information about the people, organizations, addresses or forms in the referral, thoroughly examine the information and proceed to section “[1.3 Contact and Coordinate with Owner of Existing Record.](#)”

1.2.2 Record Does Not Exist

If there is no existing information related to the referral in FDNS–DS proceed to section “[1.5 Create Appropriate Record Based on Referral Type.](#)”

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1.3 Contact and Coordinate with Owner of Existing Record

Performing Role: FDNS – IO/IA

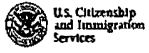
If FDNS–DS already has information about the people, organizations, addresses or forms identified in the referral, which is related to an existing Lead, Case, NS Concern, BFCA/CR, the FDNS – IO will contact the primary record owner via email or telephone and coordinate efforts to determine how best to proceed. If the primary record owner is not available, the FDNS – IO will contact other team members assigned to the FDNS–DS record.

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1.4 Process Referral Jointly?

Performing Role: FDNS – IO

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1.5 Create Appropriate Record Based on Referral Type

Performing Role: FDNS – IO/IA

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¹⁰ As of October 1, 2010, the Administrative Site Visit and Verification Program (ASVVP) conducts Compliance Reviews on pre-adjudication religious worker petitions and post-adjudication H-1B petitions.

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1.6 Is the Referral Information Sufficient?

Performing Role: FDNS – IO

The FDNS – IO determines if the referral provides sufficient information to continue processing. Initial screening by the FDNS – IO will only look for the presence of the elements listed below in the referral, not at confirming the substance of those elements:

1. includes biographical or organizational information (i.e. name or address),
2. relates to an immigration-related benefit, and
3. includes a properly completed FRS ([Appendix D](#)) (if the referral is from a USCIS source)

1.6.1 Information Sufficient

The information in a referral will be deemed sufficient if it includes the three elements listed in section “[1.6 Is the Referral Information Sufficient?](#)” For referrals that include sufficient information, the FDNS – IO will proceed to section “[1.7 Determine Process Handling.](#)”

¹¹ Referrals from USCIS Adjudications that have a final decision with a finding of fraud and were never previously referred to FDNS must be entered in FDNS–DS as a Case. Completed CR(s) with a finding of fraud are immediately entered into FDNS–DS as a Case due to system limitations. FDNS–DS limitations prevent the FDNS–IO from ‘converting’ a completed CR that has resulted in identified fraud into a Case record. A separate FDNS–DS Case record must be created by the FDNS–IO so that the Fraud Case and the Compliance Review can be worked in parallel.

1.6.2 ***Information NOT Sufficient***

If the referral does not contain a properly completed FRS (Appendix D) or lacks information necessary for further processing, the FDNS – IO will proceed to section “1.8 Decline Lead and Return to Referring Source”. A FRS (Appendix D) involving suspected marriage fraud will not be considered properly completed unless it indicates that the couple was interviewed separately, or if not, a justification is provided¹².

1.7 **Determine Process Handling**

Performing Role: FDNS – IO

The FDNS – IO will continue processing determine the type of referral and based on the referral type process accordingly.

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1.8 **Decline Lead and Return to Referring Source**

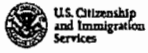
Performing Role: FDNS – IO

If the referral is unclear, incomplete or falls outside the scope of FDNS, the FDNS – IO/IA will contact the referring source, provided the source is reachable, to request additional information. If the source cannot be contacted, the processing of the referral will end without entering further information into the system of record.

¹² Adjudicators’ Field Manual, Chapter 15.4, Interview Techniques states:

(a) Basic Interview Procedures and Techniques.

(b)(7)(e)



Referrals that have been entered as a Lead and are found to be insufficient will be assigned the status of Declined.

Declined—Referrals to FDNS that have insufficient information, procedural or substantive deficiency (i.e., no supervisory concurrence, missing biographic information, etc.) are returned without investigation.

If the Lead is 'Declined', the FDNS – IO will return the FRS (Appendix D) to the USCIS source and note the reason for declination. For other government sources, local policy will dictate the method of reporting reasons for declining a referral. FDNS–DS will be updated to reflect the status of the Lead as 'Declined'. A declined case is not precluded from being referred to FDNS at a later date. If the referral is from USCIS and has no FRS (Appendix D), the FDNS – IO will return the file to the referring source with instructions to complete a FRS (Appendix D) for resubmission.

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1.9 Research Lead and Document Results

Performing Role: FDNS – IO

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1.10 Does Lead meet Case Threshold?

Performing Role: FDNS – IO

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If all of the above elements are satisfied, proceed to "[1.11 Promote Lead to Case](#)."

1.10.2 Lead Does Not Meet Case Threshold

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1.11 Promote Lead to Case

Performing Role: FDNS – IO

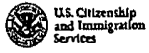
The FDNS – IO will promote a Fraud Lead to a Case in FDNS–DS. Refer to "[FDNS–DS User Guide version 2.9 section 4.12.5](#)" for instruction in promoting a Lead to a Case. Fraud Cases will be handled using one of the three processes¹³:

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¹³ Public Safety cases, as defined by PM-110, are discussed separately. These types of cases skip the Lead phase of the process and are immediately entered as Cases.



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Results from an FDNS administrative investigation and/or ICE or other government or law enforcement agency criminal investigation will be documented and returned to USCIS Adjudications for decision making.

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Section 2. Administrative Investigation

The objective of an administrative investigation is to produce information that USCIS Adjudications can use to determine an individual's eligibility for an immigration benefit.

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2.1 Create TECS Record

Performing Role: FDNS – IO

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Section "Appendix M About TECS" contains detailed instructions, for entering records into TECS, including standard language to use in the remarks section. Additional information about creating a TECS record after a SOF is included in section "3.1.1 Complete the SOF."

If the FDNS – IO decides to not create/update a TECS record, he/she should then proceed to section “2.2 Research Case and Document Results.”

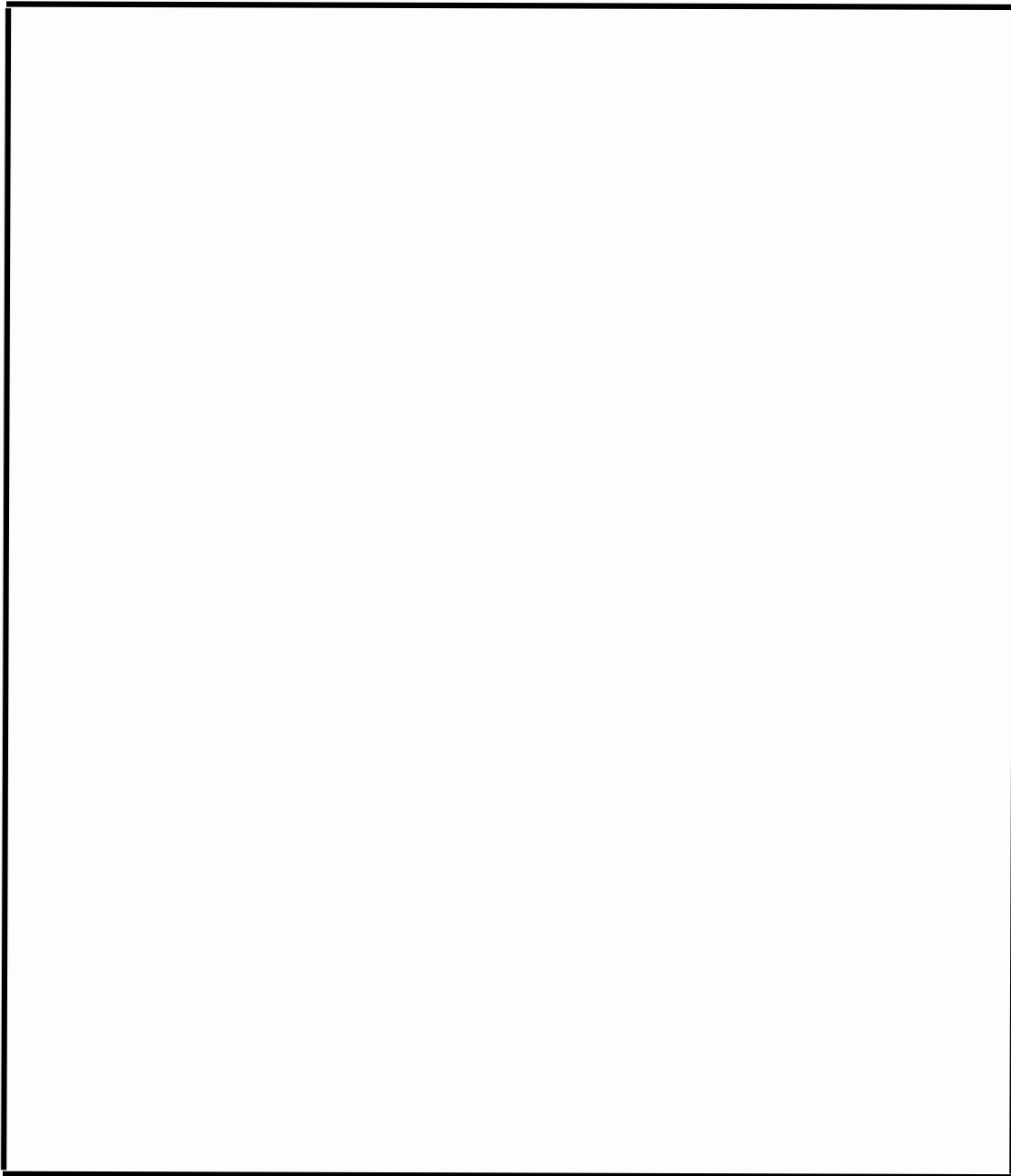
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2.2 Research Case and Document Results

Performing Role: FDNS – IO

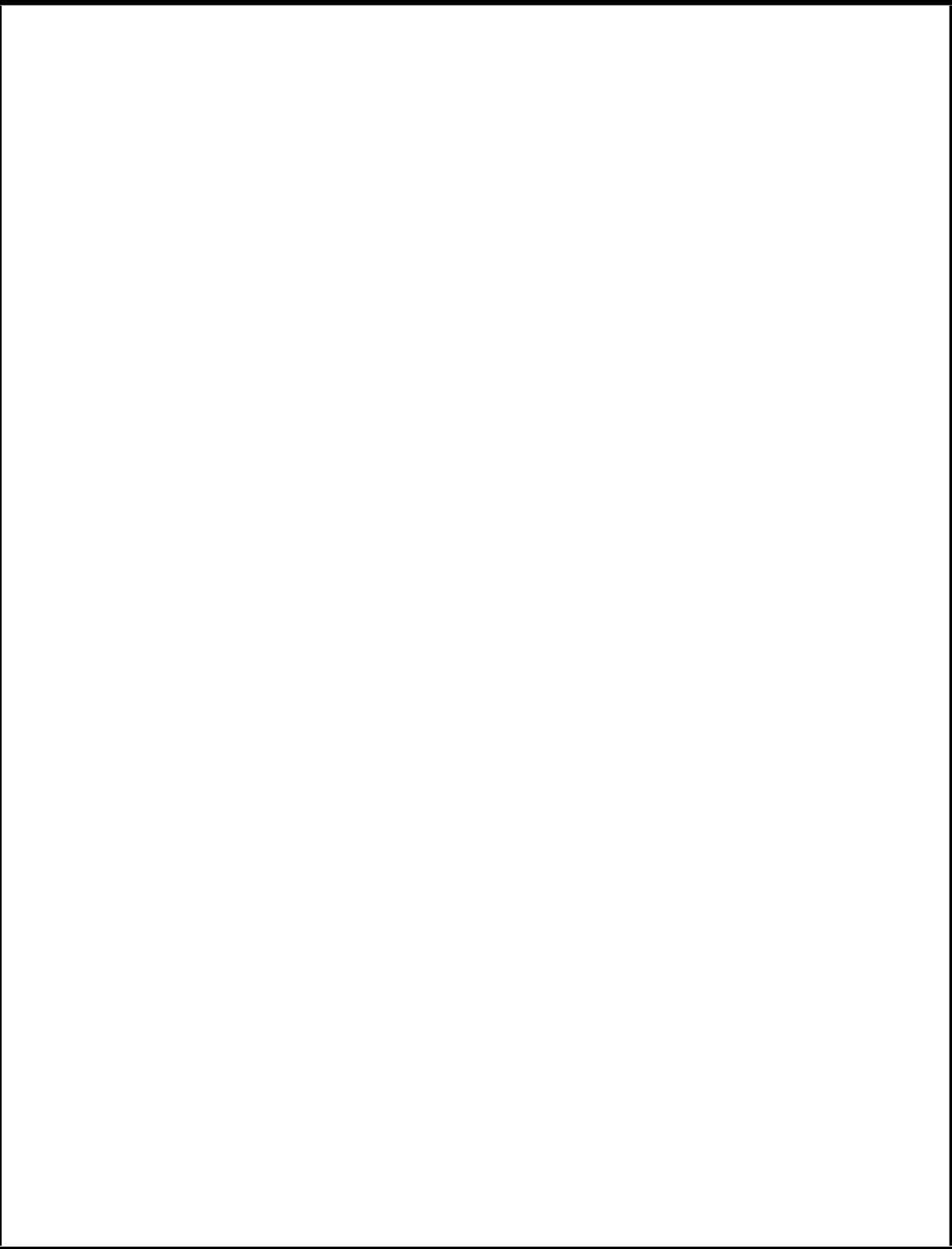
During the administrative investigation, the FDNS – IO conducts additional research to obtain sufficient evidence that the suspected fraud meets the individual elements of the charge of inadmissibility or removability (misrepresentation, willful, and material). If the research identifies fraud, the FDNS – IO analyzes the size and scope of the fraud.

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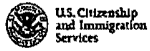
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2.3.1.2 Case Meets Other LEA Criteria

There may be cases involving fraud or suspected criminal activity that are not within the authorities of either ICE or USCIS to investigate. In coordination and concurrence with the FDNS-SIO and USCIS Chain of Command, those cases should be referred to the applicable LEA that has jurisdiction over that type of offense and the FDNS – IO will proceed to section "[2.4 Do Major Conspiracy Elements Exist?](#)."

If the case is referred to another LEA, the FDNS – IO updates FDNS-DS.

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2.3.2.2 Case Does Not Meet Other LEA Criteria

If the case does not warrant referring to another LEA, the FDNS – IO will proceed with the Administrative Investigation as outlined in section “[2.16 What Additional Activities are Needed to Produce Findings?](#),” and determine what additional activities are needed to produce a SOF.

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2.4 Do Major Conspiracy Elements Exist?

Performing Role: FDNS – IO

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2.5 Determine Scope of Major Conspiracy

Performing Role: FDNS – IO, FDNS – SIO

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2.6 Coordinate with Other FDNS Managers and USCIS Chain of Command

Performing Role: FDNS – IO, FDNS – SIO, ARD, ACD, RAIO Chief

Throughout the review, the FDNS – IO consults as appropriate with the FDNS ACD/ARD/SIO/RAIO Chief, USCIS Operations (Service Center, Field, and RAIO), Assistant U.S. Attorney, USCIS Office of Chief Counsel, ICE, Adjudications, and other LEA(s) through established channels.

If multiple USCIS offices are involved, the FDNS – SIO consults with FDNS Regional and Service Center Operations to identify and provide additional assets and, if necessary, to notify HQFDNS in order to request coordination with other regions. This request must be submitted as early in the process as possible but can be submitted during the criminal investigation or prosecution. While this process outlines the activities to be performed in most instances, it is subject to change based on the course of the investigation and advice by the U.S. Attorney's Office.

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2.7 Determine FDNS Team Lead

Performing Role: FDNS – IO, FDNS – SIO, ARD, ACD, RAIO Chief

If the Case entails a multi-jurisdictional investigation / prosecution or elements of a major conspiracy have been identified, coordination among the FDNS managers at the District and Region, the National Benefits Center, or Service Center will determine which FDNS office will manage the development of the Case by considering where the most violations occurred and what FDNS assets (including personnel) will be needed.

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2.8 Identify Additional Tasking(s)

Performing Role: FDNS – IO, FDNS – SIO, ARD, ACD, RAIO Chief

The FDNS chain of command will coordinate to determine the best course of action and any necessary additional tasks to develop the Case. These tasks may include:

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2.9 Prepare RTI or Referral to other LEA/Government Agency

Performing Role: FDNS – IO, FDNS – SIO

The FDNS – IO has determined that the fraud indicators can be articulated sufficiently to support a referral to ICE pursuant to the USCIS/ICE MOA or to another LEA.

2.9.1 Prepare RTI

If a case is going to be referred to ICE [REDACTED] the FDNS – IO will prepare a referral. The RTI is a USCIS memorandum used to refer a case to ICE for investigation/notification.

When completing a RTI, emphasis should be given to areas outlined in the following bullet points:

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The FDNS – IO will ensure the RTI is entered into the RTI sub-tab of the case and document the time spent. The FDNS – IO will also scan and attach documentary evidence identified as attached to the RTI as outlined in the “[FDNS–DS User Guide version 2.9 section 4.2.10.3.2.](#)”

2.9.2 Prepare Referral to other LEA/Government Agency

Performing Role: FDNS – IO/FDNS ACD/ARD/SIO/RAIO Chief

The referral of a Case to another LEA should include, at a minimum, identification of significant criminal activity falling under the jurisdiction of the proposed other LEA, consideration of what Personal Identifiable Information (PII) can or should be released to the other LEA, the investigative timeline, and the roles to be played by FDNS and the other LEA in the investigation. See “[Appendix N Privacy and Confidentiality Requirements.](#)” for more information.

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2.10 Submit RTI or Referral to other LEA/Government Agency for Supervisor Review

Performing Role: FDNS – IO

The FDNS – IO will forward the RTI or referral to the other LEA and to the appropriate FDNS – SIO for supervisory review.

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2.11 Concur with RTI?

Performing Role: FDNS – SIO

The FDNS – SIO reviews the RTI or referral to other LEA for content, completeness, grammar and punctuation, readability and to ensure that the RTI or referral to other LEA is supported by the facts and adheres to relevant policy memoranda.

2.11.1 FDNS – SIO Concurs

If the FDNS – SIO agrees with the RTI or referral to other LEA, they will proceed to section “[2.12 Submit Fraud RTI to ICE or Refer to other LEA.](#)”

2.11.2 FDNS – SIO Requests Additional Information

If the FDNS – SIO requires additional information to assess whether the case should be referred to ICE, they will return it to the FDNS – IO. The FDNS – IO will proceed to section “[2.2 Research Case and Document Results.](#)”

2.11.3 FDNS – SIO Does Not Concur

If the FDNS – SIO does not concur that the case should be referred to ICE or to another LEA, it will be returned to the FDNS – IO to pursue an administrative investigation. The FDNS – IO will proceed to section “[2.16 What Additional Activities are Needed to Produce Findings?](#)”

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2.12 Submit Fraud RTI to ICE or Refer to other LEA

Performing Role: FDNS – IO, FDNS – SIO, ACD, ARD, RAIO Chief

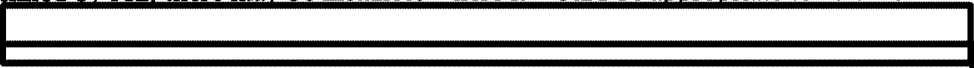
2.12.1 Fraud RTI to ICE

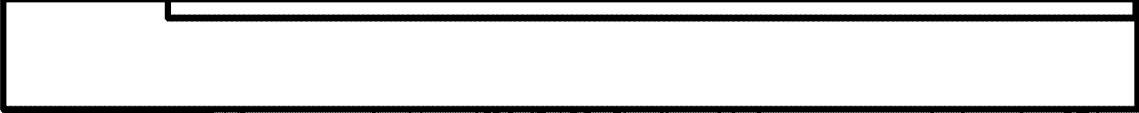
Fraud Referrals to ICE are routed to the regional ICE BFU having jurisdiction over the case (California, Nebraska, Texas, or Vermont). The FDNS – IO updates the case in FDNS–DS with “Pending BFU.” Refer to the “FDNS–DS User’s Guide” for details.

Final adjudication on the case cannot be completed until a response is received from ICE and a SOF is completed by FDNS. After referring the case to ICE, the FDNS – IO places the file(s) in a 60-day call-up for review and follow-up action.

Cases are sometimes directly referred by a FDNS Field Office to the local ICE SAC based on a local arrangement. These cases must be entered into FDNS–DS and processed as any other ICE accepted case.

2.12.2 Refer to other LEA/Government Agency

(b)(7)(e) If a case is declined by ICE, there may be instances where it would be appropriate to refer to another LEA. 

 The FDNS ACD/ARD/SIO/RAIO Chief establishes contact with the other LEA, negotiates the parameters of the investigation (e.g. the investigative timeline, the roles of each agency in the investigation), identifies the points of contact of both FDNS and the other LEA, and then instructs the FDNS – IO on follow-up timeframes and any additional steps that need to be taken.

USCIS employees must safeguard information as required by DHS and USCIS policies, including the [DHS Handbook for Safeguarding Sensitive Personally Identifiable Information](#).

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2.13 Was Case Accepted, Declined or did Time Expire?

Performing Role: FDNS – IO, ICE

Guidance for Fraud Case(s) are delineated in the ICE MOA.

2.13.1 Case Accepted by ICE or Other LEA**2.13.1.1 ICE Accepts Fraud Case**

Upon receipt of the RTI form, the ICE–BFU assigns a unique BFU number and notifies the FDNS – IO. The FDNS – IO updates the FDNS–DS record by entering the BFU number.

If the ICE–BFU accepts the case, the following is performed:

1. The FDNS – IO updates FDNS–DS to indicate ICE acceptance and proceeds to section “2.14.1 Monitor and Coordinate with ICE/Other LEA on Fraud Cases”
2. The ICE–BFU submits the case to the ICE–SAC for review.

2.13.1.2 ICE Accepts Major Conspiracy Case

The FDNS ACD/ARD/SIO/RAIO Chief should identify the project point of contact (POC) and team participants that will work together with ICE. The FDNS – IO should continue to check USCIS systems for new records. The FDNS – IO will proceed to section “2.14.1 Monitor and Coordinate with ICE/Other LEA on Fraud Cases” for further guidance on monitoring and coordinating the Case.

2.13.1.3 Other LEA Accepts Case

If another LEA accepts the case, the FDNS – IO will update FDNS–DS to indicate case acceptance by another LEA, and proceeds to section “2.14.1 Monitor and Coordinate with ICE/Other LEA on Fraud Cases.”

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2.13.2 Case Declined by ICE or Other LEA

2.13.2.1 ICE Declines Fraud Case

If the ICE–BFU declines the case, the FDNS – IO will update FDNS–DS to indicate declination and proceed to section “2.16 What Additional Activities are Needed to Produce Findings?”

2.13.2.2 ICE Declines Major Conspiracy Case



2.13.2.3 Other LEA/Government Agency Declines Case

If another LEA declines the case, the FDNS – IO will update FDNS–DS to indicate the case was declined by another LEA and proceed to section “2.16 What Additional Activities are Needed to Produce Findings?”

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2.14 Monitor and Coordinate with ICE or Other LEA(s)/Government Agencies

Performing Role: FDNS – IO

The FDNS – IO monitors the case, assisting ICE as required.

2.14.1 Monitor and Coordinate with ICE/Other LEA on Fraud Cases

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¹⁵ FDNS does not have access to TECS Case Management System (CMS) to determine whether an investigation has been opened by ICE. It may be necessary for the FDNS – IO to contact ICE to determine the status of a case.

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Case records not related to the fraud scheme are updated in FDNS-DS and returned to Adjudications for processing with a SOF attached. See section "[3.1 Complete Statement of Findings \(SOF\)](#)."

If ICE (or other LEA) requests additional support, the FDNS – IO updates FDNS-DS with details of the type of support and the amount of time spent in providing that support.

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2.15 Receive ICE or Other LEA/Government Agency Case Disposition or Time Expires

Performing Role: FDNS – IO

(b)(7)(e)

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2.16 What Additional Activities are Needed to Produce Findings?

Performing Role: FDNS – IO

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- If no additional activities are necessary proceed to section "2.30 New Evidence of Criminal Violations Discovered?"

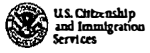
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2.17 Plan Interview (including de-confliction)

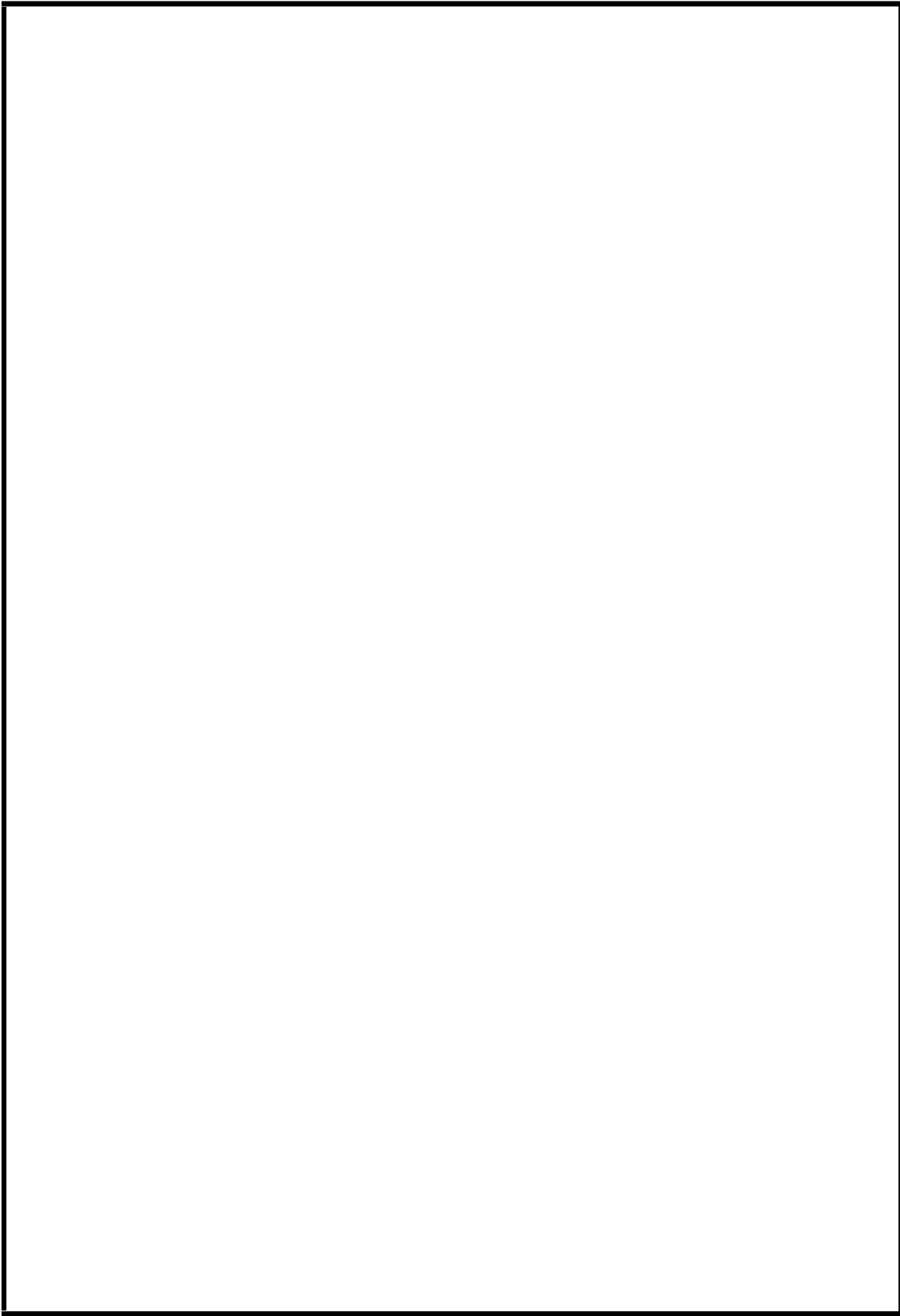
Performing Role: FDNS – IO

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(b)(5) 16 [REDACTED] the expectation is that the FDNS – SIO will manage case assignments so that
(b)(7)(e) administrative investigations are completed and the adjudication of pending applications may be done in a timely
fashion.



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2.18 Are the Subject(s) of the Interview Represented?

Performing Role: FDNS – IO

When there is a valid Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28), the FDNS – IO will notify counsel prior to conducting a structured interview¹⁸.

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2.19 Notify Attorney

Performing Role: FDNS – IO

When conducting an interview, standard practice is to notify the attorney of record/accredited representative if there is a valid G-28. Additionally, whenever a beneficiary, petitioner, or other person indicates that he/she does not consent to an interview or requests to speak to an attorney, the FDNS – IO must stop the interview and note the case file accordingly.

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2.20 Determine the Need for Special Services

Performing Role: FDNS – IO

2.20.1 Language Services

The individual being interviewed may not speak English adequately to answer the questions of the FDNS – IO competently. The FDNS – IO must decide whether to:

¹⁷ USCIS Adjudicator's Field Manual.

¹⁸ See 8 CFR 292.5 (b).

- terminate the interview
- ask the person being interviewed to provide an interpreter
- use USCIS resources to pursue/obtain an interpreter

Consistent with local policies and procedures, supervisor concurrence may be required before any language service (including transcriptions) request is made. The FDNS – IO will determine whether an interpreter should be involved in the interview and whether the applicant, petitioner, or other person of interest will provide their own interpreter or a USCIS resource will provide that service. If the FDNS – IO speaks the native language of the person being interviewed, it is important that they do not overestimate their fluency in the language. The FDNS – IO must also establish a foundation or a baseline that demonstrates the level of communication between the officer and the subject of the interview. This may be done by first asking biographic questions for which answers are already documented in the file (e.g., information from the G-325A).

If a statement is taken in a foreign language, using an interpreter, and transcribed into English, it may be necessary to produce the interpreter at a subsequent hearing. Thus, when it is known or believed that the statement will be questioned on the ground that it was not correctly interpreted, it is a good practice to have the interpreter available to testify not only as to his/her knowledge of the language but also that the statement was correctly interpreted when it was made. If not a regular USCIS or DHS employee, the interpreter should provide a statement about their qualifications. It is advisable that the FDNS – IO ensure that the interpreter will be available in the future for court proceedings. Therefore, the use of aliens without a verified immigration status is not recommended. Furthermore, before anyone who is not a regular USCIS or DHS interpreter can be used in such capacity, he or she must first be sworn to give full, accurate and complete translation.

At times, there is a need to translate a document which is relevant to a Case, but not submitted as part of the supporting documents, or the FDNS – IO has reason to suspect the accuracy of a translation which has been submitted. Some offices have access to translation services provided by employees or contracted services. In addition, a USCIS officer may request translation services for documents in all major languages from the New York District Office. Documents for translation may be mailed or faxed to the New York District Office at the following address:

USCIS
26 Federal Plaza, Room 5-506
ATTN: Supervisory Language Specialist
New York, NY 10278
Fax Number: (212) 264-6830

2.20.2 Accommodation of People with Disabilities

Section 504 of the Rehabilitation Act provides that “[n]o otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or



activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”¹⁹

In compliance with all applicable laws, FDNS will provide reasonable accommodations to subjects that have mental, physical, and/or developmental disabilities. The FDNS – IO will always handle these cases with the utmost care and sensitivity. People with disabilities must be treated with the same courtesy and professionalism as anyone else.

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2.21 Schedule Interview

Performing Role: FDNS – IO

The FDNS – IO must send appropriate communication (Form G-56, *Interview Notice*) to the attorney or accredited representative (as appropriate) and subject to notify them of the date, time, and place of the interview. The communication will advise the subject if they need to provide a translator. In addition, the FDNS – IO will ensure the G-56 includes language that advises the subject that should they fail to appear or respond, the application/~~petition~~ may be considered abandoned and therein terminated.²⁰

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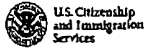
2.22 Conduct Interview and Document Results

Performing Role: FDNS – IO



¹⁹ See Rehabilitation Act of 1974 as amended by the Americans with Disabilities Act, 29 U.S.C. § 794(a) and Adjudicator’s Field Manual Section 2.8 for further guidance.

²⁰ See 8 CFR§103.2(b)(13)(ii) *Failure to appear for biometric capture, interview, or other in-person process.* Any decision based on abandonment or termination will be made by USCIS Adjudications. The FDNS–IO will note the failure to appear in the SOF.



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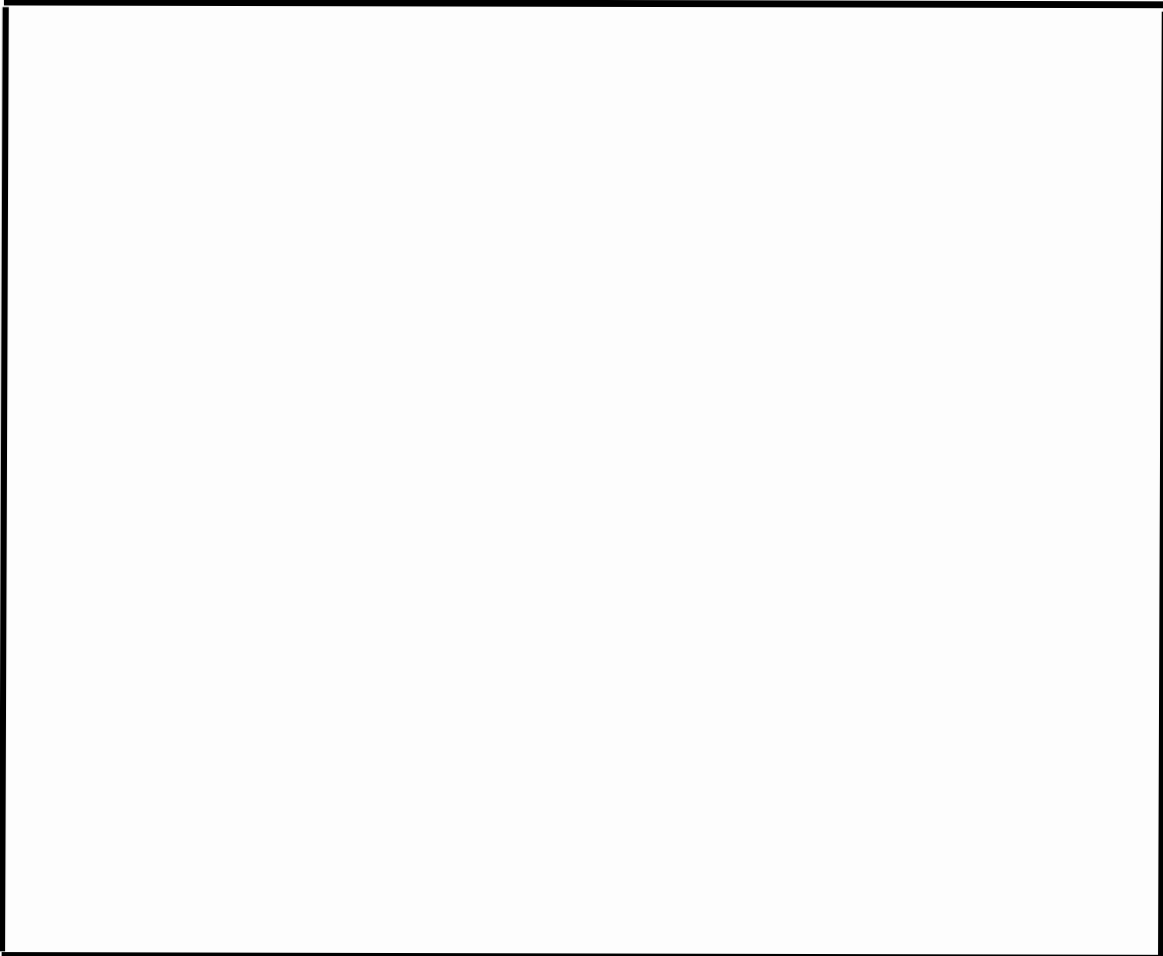
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²¹ For issues involving statutory or regulatory eligibility and that do not contain identified elements of fraud, the best practice is for the FDNS – IO to coordinate with Adjudications for issuance of a Request for Evidence (RFE).

2.23 Plan Site Visit (including de-confliction) ²²

Performing Role: FDNS – IO

In the context of an administrative investigation, an alien's participation in a site visit is voluntary. In most instances, the subject of the investigation is either an applicant or petitioner for an immigration benefit and has a vested interest in establishing their eligibility for the requested benefit. In the immigration context, the right to counsel does not mean that counsel must be advised whenever USCIS makes contact with an individual. If a person elects to interact with a representative of USCIS without counsel present, that individual is entitled to do so.²³



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²² This section does not include the Administrative Site Visit and Verification Program (ASVVP) which also conducts site visits. ASVVP site visits are not premised on fraud indicators and are instead selected by random sampling post-adjudication or as otherwise required by regulation (i.e. religious worker Compliance Reviews).

²³ *Osunsanya v. United States Citizenship and Immigration Services, et al.*, 2007 U.S. Dist. LEXIS 9474, (Mass. Feb. 12, 2007); see also *Boukhris v. Perryman*, 2002 U.S. Dist. LEXIS 1913 (N.D. ILL. Feb 7, 2002)

(b)(7)(e)

[Return to Table of Contents.](#)**2.24 Is Site De-Conflicted and Safe?**

Performing Role: FDNS – IO

If the planned site visit conflicts with a local ICE/other LEA operation, the FDNS – IO must coordinate their efforts with the agency in question. The FDNS – IO must determine whether the ICE/other LEA will concur with a modified site visit or a site visit at a future date. Modified site visits must be approved by FDNS ACD/ARD/SIO/RAIO Chief. If a future site visit is required, the FDNS – IO must coordinate with ICE/other LEA to schedule a site visit on the first available date, which does not affect or interfere with the ICE/other LEA operation. In the event that the FDNS – IO does not receive a response to the de-confliction request, the FDNS – IO must elevate the request through the chain of command. If it is determined that a modified site visit or a future site visit is not possible, the FDNS – IO must update the Site Visit tab in FDNS–DS and identify the reason the site visit was unsuccessful.

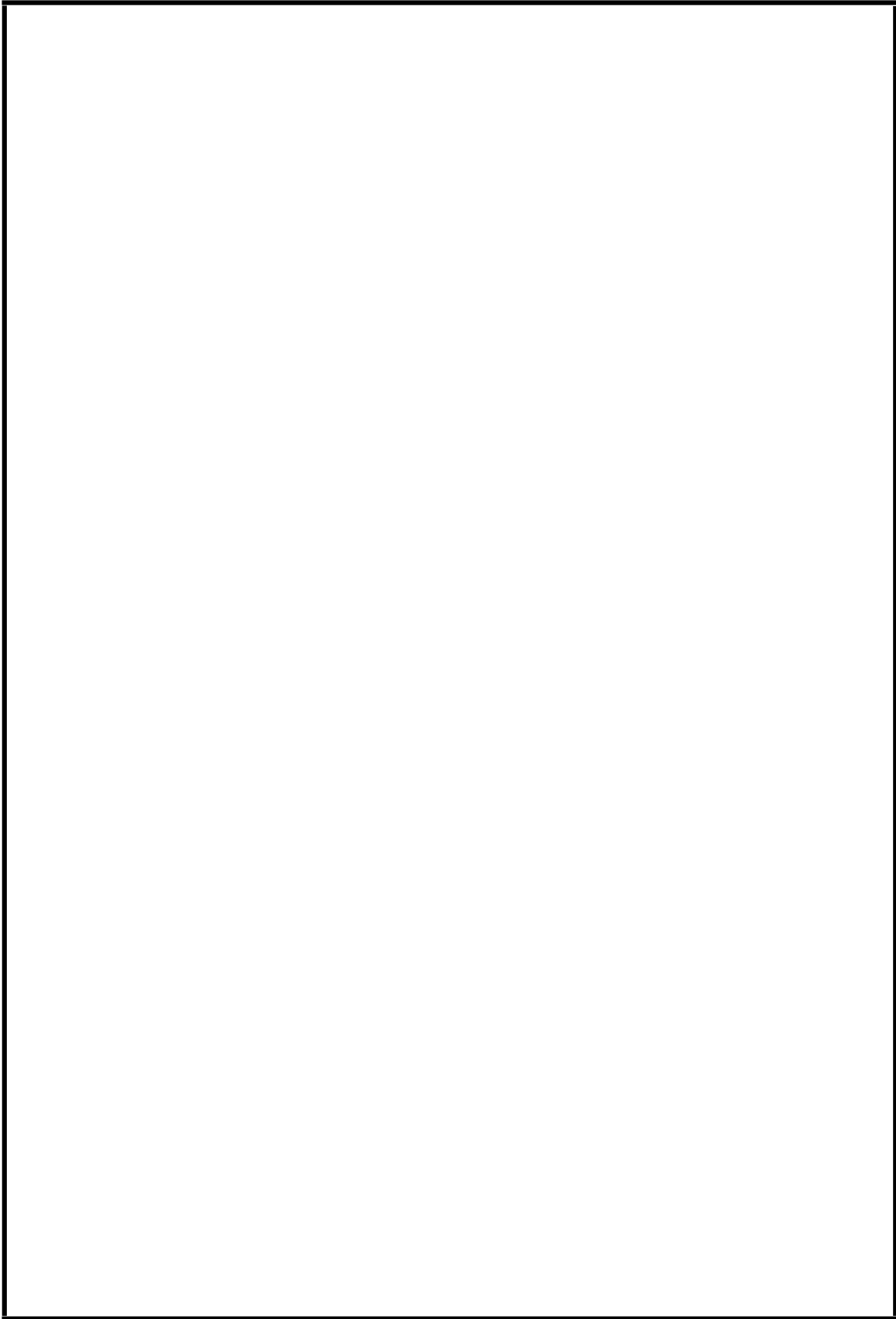
If circumstances warrant, the FDNS – IO may request assistance from ICE/other LEA. The assistance can include a site visit conducted separately by ICE/other LEA or accompanying ICE/other LEA on the site visit. Any request for assistance must be documented in the SOF.

[Return to Table of Contents.](#)**2.25 Conduct Site Visit and Document Results**

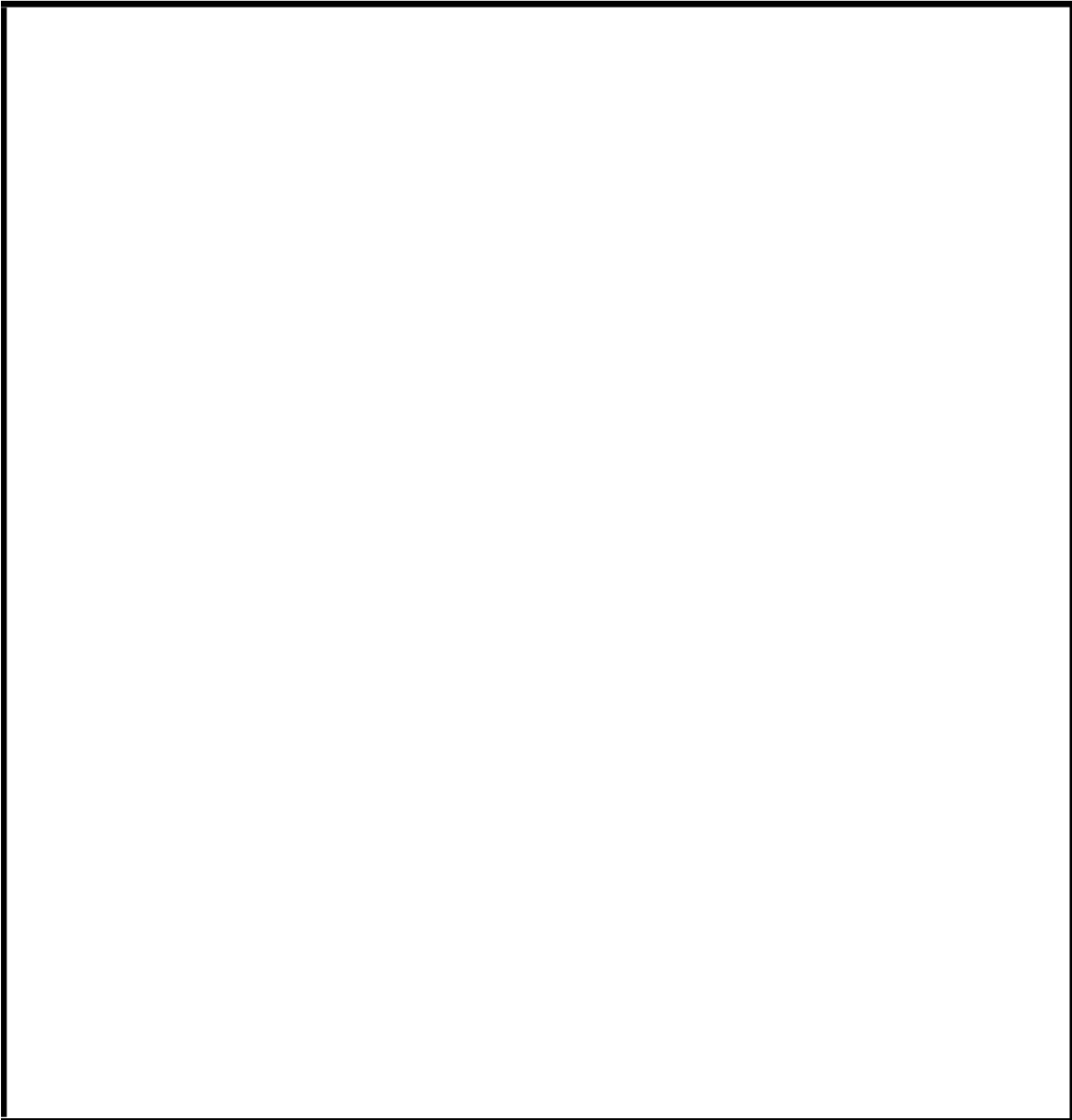
Performing Role: FDNS – IO



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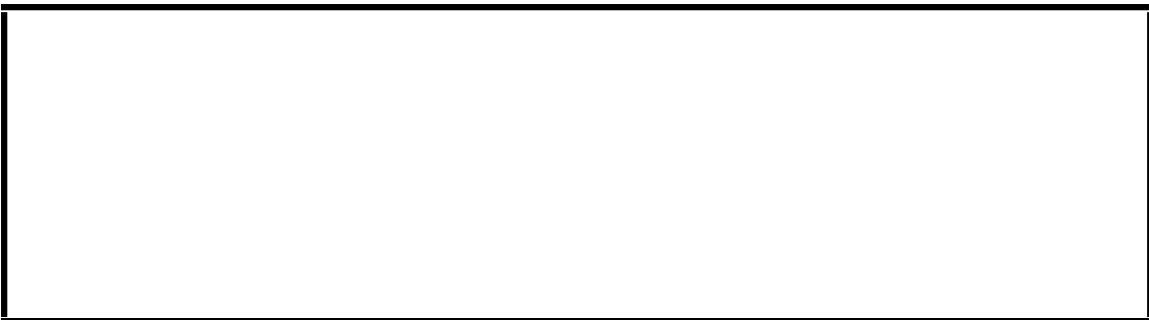


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2.26 Request Documentary Evidence

Performing Role: FDNS – IO

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(b)(7)(e)

An alien's participation in an administrative investigation is voluntary. In most instances, the subject of the investigation is either an applicant or petitioner for an immigration benefit and has a vested interest in establishing their eligibility for the requested benefit. A request for documentary evidence is often the fastest, most efficient way for an applicant/petitioner to provide exculpatory evidence. Because of this, an applicant for an immigration benefit may be willing to comply with the request

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A request for evidence will be in writing and will specify the type of evidence required.

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2.27 Was Additional Evidence Received?

Performing Role: FDNS – IO

When crafting an evidence request, a best practice is for the FDNS – IO to set the deadline for response based on the timeframe agreed upon with the applicant/petitioner. A standard response period does not exceed twelve weeks as outlined in 8 CFR²⁴. If the deadline for response to the request for evidence is not met, the FDNS – IO will record the fact in FDNS–DS and decide which of the following actions is most appropriate:

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2.28 Issue Administrative Subpoena

Performing Role: FDNS – IO/FDNS – SIO

(b)(7)(e)

²⁴ See generally 8 CFR Section 103.2 (b)(8)(iv)

(b)(5)

(b)(7)(e)



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2.29 Was Evidence Received Pursuant to Subpoena?

Performing Role: FDNS – IO

2.29.1 Evidence Received Pursuant to Subpoena

If evidence was received pursuant to the subpoena, the FDNS – IO will proceed to section “[2.16 What Additional Activities are Needed to Produce Findings?](#)”

2.29.2 Evidence Was Not Received Pursuant to Subpoena

If no response to the subpoena is received, the FDNS – IO will record the fact in FDNS–DS and decide which of the following actions is most appropriate:

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-
-



If no response is received and the sought after evidence is critical to the case, the FDNS – IO may in rare circumstances consider following the procedures contained in 8CFR 287.4(d) for requesting enforcement of the subpoena, in consultation with a local supervisor and counsel.

2.30 New Evidence of Criminal Violations Discovered?

Performing Role: FDNS – IO, FDNS – SIO, ACD, ARD, RAIO Chief



2.30.1 New Evidence Discovered

If new evidence has been uncovered, the FDNS – IO decides, in consultation with FDNS managers at the SIO, ACD, ARD or RAIO Chief - level to refer the Case to either ICE or another LEA.



2.30.2 No New Evidence Discovered

If no new evidence of criminal activity has been uncovered, the FDNS – IO will generate a SOF as outlined in "[Section 3 Statement of Findings](#)".

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Section 3. Statement of Findings

The objective of Section 3 is to produce a SOF, which is the method of communicating the results of the administrative or criminal investigation to USCIS Adjudications. The SOF should provide enough information for adjudicators to make an informed decision and include any record of suspected fraud or any other grounds of inadmissibility or removability that have been identified. Linking evidence in this way will strengthen the decision made by Adjudications.

A Statement of Finding(s) (SOFs)

memorializes the FDNS case findings from the results of either the administrative or criminal investigation. FDNS Cases must be documented in FDNS-DS completing all SOF fields, with one of three conclusions:

- 1) Fraud Found,
- 2) Fraud Not Found,
- 3) Inconclusive

In addition, the FDNS-IO must also indicate on the form(s) associated with the Case the conclusion of the FDNS Case. See § 3.1.1 Complete the SOF for more details.

3.1 Complete Statement of Findings (SOF) and Update TECS

Performing Role: FDNS – IO

The findings of the administrative or criminal investigation will be reported in a SOF in order to provide the grounds for USCIS Adjudications to come to an adjudicative decision. Additionally, TECS records will be updated in order to notify both adjudicators and LEAs when fraud has been established.


3.1.1 Complete the SOF

The FDNS – IO will complete the following elements for all SOF entries:

- **Synopsis** - a brief description of the investigation and its findings.
- **Fraud Findings** - the end-result of the administrative or criminal investigation
 - **Fraud Found**: where sufficient evidence has been documented to support a charge of inadmissibility pursuant to Section 212(a)(6)(C)(i) of the INA or other applicable ground of inadmissibility or removability.
 - **Fraud Not Found**: where the allegation of fraud has been refuted.
 - **Inconclusive**: where the allegation of fraud could neither be refuted nor sustained after all reasonable avenues of inquiry have been exhausted and there is insufficient information to sustain the allegation of fraud.
- **Referrals**
 - **Referrals to ICE**: describes if the case was referred to and accepted by ICE for criminal prosecution and the ICE findings that were received.

- **Referrals to other LEA:** describes if the case was referred to and accepted by the LEA for criminal prosecution and the LEA findings that were received.
- **Record of Actions Taken:** description of systems checks, public record information, interviews, site visits, and other actions taken during the administrative investigation.

(b)(7)(e)

- 
- **Detailed Findings:** analysis of how the evidence supports the findings of Fraud Found, Fraud Not Found, or Inconclusive. Each ground of inadmissibility or removability contains elements that must be fulfilled before a charge can be sustained. The SOF contains the analysis of facts and does not state opinions or beliefs of the FDNS – IO.
- **Attachments:** documents, images, etc. that serve as evidence to support the case finding.

The SOF form is provided in “[Appendix L Statement of Findings Template](#).”

SOF(s) for Major Conspiracies should summarize the results and findings of the major conspiracy in addition to addressing the merits of that particular application. Included in the SOF will be information such as

- prosecutions that have taken place;
- statistics on how many people were denied benefits due to fraud;
- which factors led to the approvals of some cases; and
- how the information can be used in the future to identify fraudulent files.

3.1.2 *Update TECS*

The FDNS – IO will update the TECS record with a brief summary of the findings of the administrative investigation. See “[Appendix M About TECS](#)” for further instructions.

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3.2 Submit for Supervisor Review

Performing Role: FDNS – IO

The FDNS – IO forwards the SOF for supervisory review to the next level in the FDNS chain of command.

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3.3 Review SOF

Performing Role: FDNS – SIO

The FDNS – SIO reviews the SOF for completeness, grammar and punctuation, readability and to ensure the findings are supported by the facts.

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3.4 Concur with SOF?

Performing Role: FDNS – SIO

3.4.1 Concur

If the FDNS – SIO concurs with the SOF, they return it to the FDNS – IO for submission to USCIS Adjudications. The FDNS – IO will proceed to section “3.5 Close Case.”

3.4.2 Concur with Edits

If the FDNS – SIO identifies substantive or procedural issues with the SOF that requires additional action prior to full concurrence, the FDNS – SIO will return the SOF to the FDNS – IO for corrections and changes. The FDNS – IO will proceed to section “3.1 Complete Statement of Findings (SOF) and Update TECS.”

3.4.3 Additional Activities Required

If the FDNS – SIO does not agree with the SOF, the SOF is incomplete or does not have appropriate factual information, the FDNS – SIO will return the SOF to the FDNS – IO so that it can be corrected or additional activities performed. The FDNS – IO will proceed to section “2.16 What Additional Activities are Needed to Produce Findings?”

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3.5 Close Case

Performing Role: FDNS – IO

The FDNS–DS sub-status will reflect whether the case was referred to ICE or other LEA/government agency and the outcome of the case.

To close the case in FDNS–DS:

1. Access the applicable case.
2. Complete all fields in the SOF tab ensuring the mandatory “Findings” field is completed.
3. Ensure all applicable FDNS–DS tabs including Activities, Notes, Site Check, hours, etc. are updated.
4. Change the “Status” field to “Closed.”
5. Update the “Sub-Status” field to the appropriate value.
6. Save Case.

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3.6 Return to Referring Source

Performing Role: FDNS – IO

If the Case originated from USCIS, the FDNS – IO will return it to USCIS by following the procedures below:

1. Attach the SOF and relating documentation (e.g., RTI, ICE Investigative Report, final disposition, etc.) to the right side of the file.
2. Update CLAIMS, as applicable (Service Centers only), with "Return from Center Fraud Detection Operations (CFDO) with Results."
3. Update NFTS to indicate the file is being transferred out of FDNS.
4. Prepare routing sheet (Attn: Records or Adjudications, as appropriate) including any instructions about returning the file(s).
5. Attach a routing sheet to the front of the file(s) and forward the file in accordance with local routing procedures.

If the case was initiated by a source external to FDNS, the FDNS – IO may, with supervisory concurrence, provide a written report of the findings, in lieu of an SOF, to the referring source on official USCIS letterhead, which may be sent electronically as an attachment. (Note: The body of the response may be copied from the SOF.) When completing a response, the USCIS Policy Regarding Personally Identifiable Information (PII), dated July 8, 2008, must be followed.

(b)(7)(e)

3.7 Update TECS II with Final Adjudicative Decision

Performing Role: FDNS – IO/FDNS – SISO/FDNS – SIO

If a TECS II record was created for the case, the FDNS – IO will update TECS II with the final adjudicative action/ decision. If the adjudicative decision is to grant a benefit, TECS II will be updated to reflect the applicant's current legal status.

Section 4. Request for Assistance

The objective of this section is to outline the proper method for researching, documenting and responding to a Request for Assistance (RFA). Answering RFA(s) from law enforcement and intelligence agencies is an important part of the FDNS mission. [REDACTED]

(b)(7)(e)

[REDACTED] The information discovered when conducting the research necessary to respond to a RFA can develop into a lead or a case.

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4.1 Research RFA and document results

Performing Role: FDNS – IO/IA

(b)(7)(e)

[REDACTED]

The FDNS – IO will notate in the Synopsis field of FDNS–DS the following:

- exactly what the request is for;
- the purpose for which it is needed; and
- any supporting information that was provided along with the request.

If an RFA refers to a classified case or requests classified content, then that information cannot be entered into FDNS–DS. (See the USCIS Security Handbook for safeguarding classified information.)

(b)(7)(e)

[REDACTED]

Once all research has been performed, the FDNS – IO/IA updates the FDNS–DS RFA record to reflect the results of the research, capture any data uncovered, and document any actions taken. The FDNS – IO/IA will note the time spent completing the RFA. Any correspondence between FDNS and the requestor will be scanned and attached to FDNS–DS.

The FDNS – IO will be cognizant of the Third Agency Rule²⁵:

All DHS components are considered part of one “agency” for information sharing purposes. As such, there is no restriction on internal (within DHS) information exchange and sharing provided the person has an authorized purpose for accessing the information in the performance of his or her duties (i.e., a valid need-to-know), possesses the requisite security clearance (there is no requirement for a security clearance to access sensitive but unclassified (FOUO) information), and assures adequate safeguarding and protection of the information.

Sensitive but unclassified (FOUO) information may be shared with other agencies or organizations outside of DHS, provided: a need-to-know has been established; the information is shared in the furtherance of a coordinated and official governmental activity, to include homeland defense; and if the information requested or to be discussed does not belong to USCIS, comply with the originating agency’s policy concerning third party discussion and dissemination.

Records of other agencies either loaned to USCIS or any part of the USCIS files must be protected from unauthorized disclosure. The contents of an agency’s report in possession of USCIS shall not be disclosed to another agency without the prior consent of the originating agency. Refer to the Glossary, “Appendix B Glossary of Common Terms,” for further information²⁶.

Additionally, when compiling information to complete an RFA, the FDNS – IO/IA must be aware of and respect the privacy and confidentiality requirements associated with different application types. Protections provided by the Privacy Act and other specific confidentiality provisions may limit what, with whom and how information may be shared.

The Privacy Act provides privacy protections to individuals who are U.S. Citizens or Legal Permanent Residents. By the memorandum titled “DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons” dated January 07, 2009, DHS extended Privacy Act protections to non-citizens. The Privacy Act provides no protections for corporations or organizations.

The FDNS – IO/IA must take appropriate steps to safeguard Personally Identifiable Information (PII) when transferring information within DHS networks and sharing it with third parties, including the Department of State. See the USCIS Policy Regarding Personally Identifiable Information (PII) and the DHS Handbook for Safeguarding Sensitive Personally Identifiable Information (Sensitive PII) for explanations of what constitutes PII and Sensitive PII. Refer to “Appendix B Glossary of Common Terms” and “Appendix N Privacy and Confidentiality Requirements,” for further information.

²⁵ See Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns

²⁶ See Adjudicator’s Field Manual Section 10.12

Any questions or concerns regarding the "Third Agency Rule" and PII should be directed to the FDNS – SIO.

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4.2 Submit Results to Referring Source

Performing Role: FDNS – IO/IA

The FDNS – IO/IA provides the requestor with the answers to the original request. Additionally, the requestor should be provided with any supporting information and/or information sources that would further fulfill the request or otherwise be of value to the requestor.

Responses to RFA(s) may contain attachments with Sensitive PII. Generally, the FDNS – IO/IA is permitted to share Sensitive PII with other USCIS employees, DHS components and other federal government agencies with a need to know. In all cases, USCIS employees are required to safeguard the information. Refer to OSI guidance concerning the various methods of transport and their specific protections.

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4.3 Possible Fraud identified?

Performing Role: FDNS – IO/IA

If National Security or Public Safety concerns are identified while researching an RFA, proceed to [1.1 Receive Referral](#) and treat the information as a new referral. If Fraud indicators are present, the RFA may also be promoted to a Lead.

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4.4 Close RFA

Performing Role: FDNS – IO/IA

The FDNS – IO closes the RFA in FDNS–DS.

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Appendix A List of Common Acronyms

Acronym	Definition
ADIS	Arrival Departure Information System
ACD	Assistant Center Director
ARD	Assistant Regional Director
ASVVP	Administrative Site Visit Verification Program
ATF	Alcohol, Tobacco, Firearms and Explosives Agency
ATS-P	Automated Targeting System-Passengers
AUSA	Assistant U.S. Attorney
BCAU	Background Check Analysis Unit
BCU	Background Check Unit
BFA	Benefit Fraud Assessment
BFCA	Benefit Fraud and Compliance Assessment
BFR	Benefit Fraud Referral (used by ICE)
BFU	Benefit Fraud Unit
CARRP	Controlled Application Review and Resolution Program
CBP	U.S. Customs and Border Protection
CCD	Consular Consolidated Database
CFDO	Center Fraud Detection Operations
CIA	Central Intelligence Agency
CISCOR	Citizenship and Immigration Services Central Oracle Repository
CLAIMS	Computer Linked Application Information Management System
CLAIMS4	Computer Linked Application Information System (Naturalization database)
COB	Country of Birth
COC	Country of Citizenship
COW	Central Office Washington
CR	Compliance Review
CRF	Change Request Form
CRR	Compliance Review Report
DACS	Deportable Alien Control System (replaced by EARM)
DBFTF	Document Benefit Fraud Task Force

Acronym	Definition
DEA	Drug Enforcement Agency
DHS	Department of Homeland Security
DOD	Department of Defense
DOE/COA	Date of Entry/Class of Admission
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
EAD	Employment Authorization Document
EARM	ENFORCE Alien Removal Module
EDMS	Enterprise Document Management System
EEI	Essential Elements of Information
ENFORCE	Enforcement Case Tracking System
EOIR	Executive Office Immigration Review
EPIC	El Paso Intelligence Center
ERO	Enforcement and Removal Operations
EWI	Entry Without Inspection
FBI	Federal Bureau of Investigation
FCO	File Control Office
FDB	Fraud Detection Branch
FDL	Forensic Document Laboratory
FDNS	Fraud Detection and National Security
FDNS-DS	Fraud Detection and National Security Data System
FDU	Fraud Detection Unit (Note: now known as the "Center Fraud Detection Operations (CFDO)".)
FO	Field Office
FRS	Fraud Referral Sheet
FTTTF	Foreign Terrorist Tracking Task Force
FVM	Fraud Verification Memo
GMC	Good Moral Character
HIDTA	High Intensity Drug Trafficking Area
HQ	Headquarters

Acronym	Definition
HQFDNS	Headquarters Fraud Detection and National Security
HSIR	Homeland Security Intelligence Report
IA	Immigration Analyst
IBIS	Interagency Border Inspection System
ICE	Immigration and Customs Enforcement
IJ	Immigration Judge
IO	Immigration Officer
IRS	Intelligence Research Specialist
ISO	Immigration Service Officer
ISRS	Image Storage and Retrieval System
JTTF	Joint Terrorism Task Force
KST	Known or Suspected Terrorist
LEA	Law Enforcement Agency
LHM	Letterhead Memorandum (Third-party)
MFAS	Marriage Fraud Information System
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MTR	Motion to Re-open
NBC	National Benefits Center
NCIC-T	National Crime Information Center Terrorist
NFTS	National File Tracking System
NIISO	National Immigration Information Sharing Office
NOID	Notice of Intent to Deny
NOIR	Notice of Intent to Revoke
NS	National Security
NSAU	National Security Advisory Unit
NSB	National Security Branch
NSR	National Security Request
NSRVLD	National Security Records Verification Law Division
NTA	Notice to Appear
NTC	National Terrorist Center

Acronym	Definition
OCIO	Office of Chief Information Officer
OGA	Other Government Agency
OIL	Office of Immigration Litigation
OSC	Order to Show Cause (now known as Notice to Appear (NTA))
PAS	Performance Analysis System
PII	Personally Identifiable Information
POC	Point of Contact
RAC	Resident Agent in Charge
RAPS	Refugees, Asylum and Parole System
RDF	Records Digitization Facility
REV	Revocation
RFA	Request for Assistance
RFE	Request for Evidence
RFI	Request for Information
RTI	Referral to ICE
SAC	Special Agent in Charge
SCCLAIMS	Service Center CLAIMS
SEVIS	Student and Exchange Visa Information System
SID	State Identification Number
SIO	Supervisory Immigration Officer
SLER	Sensitive Law Enforcement Report
SOF	Statement of Findings
SOP	Standard Operating Procedures/Policies
SQ11	Person Subject Query
SQ16	Organization Subject Query
TSC	Terrorist Screening Center
TSOU	Terrorist Screening Operations Unit
USCIS	United States Citizenship & Immigration Services
USSS	United States Secret Service

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Appendix B Glossary of Common Terms

Term	Definition
Benefit Fraud Compliance Assessment (BFCA)	Reviews conducted on a random sampling of particular forms to see whether the benefit was processed correctly and fraud was not missed.
Benefit Fraud Unit	Benefit Fraud Unit (BFU) was established by Immigration and Customs Enforcement (ICE) to address fraudulently filed applications and petitions for immigration-related benefits. BFU is the main liaison between FDNS and ICE and is the unit where the majority of Referrals to ICE are sent.
Case	A case is a lead that is supported by evidence of fraud that is articulable and actionable or contains a Public Safety concern. (NOTE: Fraud will be deemed articulated if a subject is linked to an immigration-related benefit and there is information to indicate fraud or willful misrepresentation of a material fact. Fraud is actionable if it is within the scope of FDNS and an investigation is likely to develop evidence that will support an administrative or criminal finding.)
Citizenship and Immigration Services Consolidated Oracle Repository (CISCOR)	Citizenship and Immigration Services Consolidated Oracle Repository; A database containing a subset of the data in CLAIMS. CISCOR links data from CLAIMS III to the FDNS Data System.
Compliance Review	A verification that is performed by USCIS to ensure that petitioners and beneficiaries are in compliance with applicable immigration laws and regulations. Verification methods may include, but are not limited to: review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic transmission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. Compliance reviews are not premised on preexisting fraud indicators.
The Computer Linked Application Information Management System (CLAIMS)	An application that provides historical and current receipt data generally associated with submissions for immigration benefits filed at USCIS Service Centers and the National Benefits Center.
Fraud (Immigration)	A willful misrepresentation of a material fact made to procure an immigration benefit. See INA Section 212 (a)(6)(C), 8 U.S.C. Section 1182 (a)(6)(C)
Homeland Security Information Report (HSIR)	An intelligence report completed to identify and provide details of fraud trends or unique situations that would be of assistance in identifying future fraud cases.

Term	Definition
Image Storage and Retrieval System (ISRS)	A database housing both biographic and biometric data (including facial images, index fingerprints, and signatures) of aliens issued immigration documents (I-551, Permanent Resident Card, travel documents, Employment Authorization Documents, etc.). Authorized USCIS users have the ability to search the data to verify the identities of card holders.
Interagency Border Inspection System (IBIS)	An electronic database administered by U.S. Customs and Border Protection for use by all Federal Law Enforcement Agencies primarily for inspection of applicants for admission to the U.S.. It provides an interface to support systems of different border inspection agencies. These include the: U.S. Customs Service's The Enforcement Communications System (TECS), Advanced Passenger Information System (APIS), POE Office Management System (POMS), Workload Analysis Modules, FBI National Crime Information Center (NCIC), National Law Enforcement Telecommunications System (NLETS), and Canadian National Law Enforcement Telecommunications System (CNLETS). Employees use this application to conduct lookout checks on applicants and petitioners before making an adjudicative decision.
Intelligence Research Specialist	Intelligence Research Specialists, assigned to the CFDO, NBC, Regional Offices and FDNS Headquarters, specialize in the gathering, analyzing, and interpreting of information from electronic databases.
Lead	Any internally or externally generated referral that is received by FDNS that includes an allegation of immigration-related benefit fraud and includes related biographic or organizational information.
National Security Concern	An individual or organization that has been determined to have an articulable link to prior, current or planned involvement in or associated with an activity, individual or organization described in sections 212(a)(3)(A), (B) or (F) or 237(a)(4)(A) or (B) of the INA.
Other Government Agency (OGA)	Federal, state or local government organizations not in the Department of Homeland Security. The term typically refers to law enforcement and intelligence agencies.
Overseas Verification Request (OVR)	A process to confirm events and statements, and authenticate documents that originated overseas and which relate to an application/petition for immigration benefits.

Term	Definition
Personally Identifiable Information (PII)	Any information that permits the identity of an individual to be directly or indirectly inferred, including other information that is linked or linkable to an individual. DHS Extended Definition: "individual" includes, but is not limited to, U.S. citizens, legal permanent residents, visitors to the U.S., and Department employers and contractors
Referral	A referral is internal or external communication which initiates action by FDNS. Referrals may include Fraud Referral Worksheets from USCIS sources or other communication from external sources, such as Other Government Agencies, Law Enforcement Agencies, and the public. Referrals may be in the form of a letter, telephone call, walk-in report, e-mail or other means of communication.
Referral to ICE (RTI) (formerly known as RFI)	A referral to Immigration and Customs Enforcement requesting an investigation when FDNS has determined that fraud/fraud indicators and/or Public Safety concerns are present in a case. A fraud RTI transmits information from the FDNS - IO to the BFU when the case meets the criteria of the USCIS – ICE Memorandum Of Agreement dated September 26, 2008, revised December 12, 2008.
Request For Assistance (RFA)	An internal or external request to FDNS for data, research or file collection. This process formalizes the communications and documentation protocols needed to ensure requests are properly fulfilled, and FDNS staff time is accounted for. Additionally, populating the FDNS DS with RFA information allows FDNS staff to determine if there is a relationship between the request and any on-going investigation at FDNS, further strengthening FDNS' anti-fraud and information sharing efforts.
Statement of Findings (SOF) (formerly known as a Fraud Verification Memo (FVM))	A written report that summarizes the activities completed by the FDNS officer which provides analysis of the facts developed. A determination of "Fraud Found," "Fraud Not Found," or "Inconclusive" must be included in the report.
Third Agency Rule	Records of other agencies either loaned to USCIS or a part of the USCIS files must be protected from unauthorized disclosure. The contents of an agency's report in possession of USCIS shall not be disclosed to another agency without the prior consent of the originating agency. This principle is generally known as the "third agency rule." See Adjudicator's Field Manual Section 10.12.

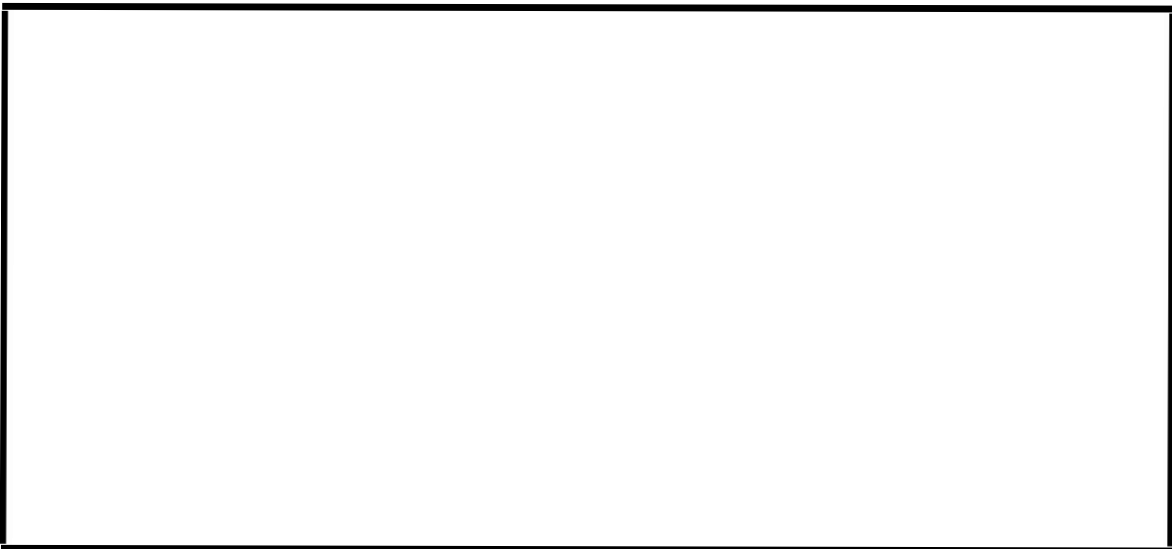
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Appendix C Common Types and Methods of Immigration Fraud

The majority of cases investigated by FDNS will be in the context of the charge of inadmissibility contained in section 212(a)(6)(C)(i) of the Act, and will involve either fraud or a willful misrepresentation of a material fact. Often times, the fraud or misrepresentation will manifest itself in the underlying relationship upon which the immigration benefit is premised. A good example of this is adjustment of status proceedings. For adjustment of status, there is typically a petition and an application. The petition establishes that there is a relationship (i.e., employer /employee or husband / wife). The application speaks to questions of admissibility (i.e., no violations of section 212 of the Act). Commonly, the fraud that rendered the applicant inadmissible is a misrepresentation or fraudulent document submitted with a petition to establish the bona fides of the relationship. With this example in mind, FDNS covers two very broad categories of fraud:

- Fraud in Relationships (employer or familial).
- Fraud involving a question of Inadmissibility, usually section 212(a)(6)(C)(i) of the Act.

Although by no means all inclusive, the two categories of fraud mentioned above are at the core of most of FDNS' fraud work.



The chart below is a sampling of some of the ways that immigration fraud manifests itself. A summary review of the examples will reveal that in most instances the fraud described is a violation of Section 212(a)(6)(C)(i) of the Act.



Fraud Type	Description	
Marriage Fraud	<div></div> <p>Form Type: I-130 Petition for Alien Relative Immigration and Nationality Act Section: 201(b), 204(c), 275(c) Regulation Section: 8 CFR 204.1, 204.2 Related Criminal Statute: 8 USC 1325</p>	(b)(7)(e)
Family Fraud	<div></div> <p>Form Type: I-130 Petition for Alien Relative, I-750 Refugee/Asylee Relative Petition, I-817 Application for Family Unity Benefits under the Family Unity Program Immigration and Nationality Act Section: 201, 203(a) Regulation Section: 8 CFR 204.1, 204.2 Related Criminal Statute: 18 USC 1546(a)</p>	(b)(7)(e)
Relationship Fraud	<div></div> <p>Form Type: I-130 Petition for Alien Relative, I-140 Petition for Alien Worker, I-129 Petition for Non-Immigrant Worker, I-730 Refugee/Asylee Relative Petition, I-817 Application for Family Unity Benefits under the Family Unity Program, I-129F Petition for Alien Fiancée Immigration and Nationality Act Section: 201, 203(a), 203(b) Related Criminal Statute: 18 USC 1546(a)</p>	(b)(7)(e)
Employment-Based Visa Fraud	<div></div>	(b)(7)(e)



Fraud Type	Description

(b)(7)(e)



Fraud Type	Description	
	<p data-bbox="1366 349 1522 407">(b)(7)(e)</p> <p data-bbox="480 533 1362 730">Form Type: I-129 Petition for Non- Immigrant Worker, I-140 Petition for Alien Worker Immigration and Nationality Act Section: 101(a)(15)(various), 203(b) Regulation Section: 8 CFR 204.5, 214.2 Related Criminal Statute: 18 USC 1546(a)</p>	
Labor Certification Fraud	<p data-bbox="1366 734 1522 945">(b)(7)(e)</p> <p data-bbox="480 1137 1362 1370">Form Type: DOL Forms ETA – 750 Application for Alien Employment Certification , ETA – 9098 Prevailing Wage Determination Request, I-129 Petition for a Non-Immigrant Worker, and I-140 Petition for Alien Worker Immigration and Nationality Act Section: 212(a)(5)(A) Regulation Section: 8 CFR 204.5, 20 CFR 656 Related Criminal Statute: 18 USC 1546(a)</p>	
Investor Fraud	<p data-bbox="1366 1375 1522 1411">(b)(7)(e)</p> <p data-bbox="480 1460 1362 1648">Form Type: I-526 Immigrant Petition by Alien Entrepreneur, I-829 Petition by Alien Entrepreneur to Remove Conditions Immigration and Nationality Act Section: 203(b)(5) Regulation Section: 8 CFR 204.6 Related Criminal Statute: 18 USC 1546(a)</p>	
Religious Worker Fraud	<p data-bbox="1366 1653 1522 1841">(b)(7)(e)</p>	

Fraud Type	Description
	<p>Form Type: I-360 Petition for Special Immigrant, I-129 Petition for Non-Immigrant Worker Immigration and Nationality Act Section: 101(a)(15)(R), 101(a)(27)(C) Regulation Section: 8 CFR 204.5(m), 8 CFR 214.2(r) Related Criminal Statute: 18 USC 1546(a)</p>
Asylum Fraud	<div data-bbox="470 622 1340 1317" style="border: 1px solid black; height: 310px; width: 545px;"></div> <p>Form Type: I-589 Application for Asylum and Withholding of Removal Immigration and Nationality Act Section: 208 Regulation Section: 8 CFR 208 Related Criminal Statute: 18 USC 1546(a)</p>
Naturalization Fraud	<div data-bbox="470 1496 1340 1951" style="border: 1px solid black; height: 203px; width: 545px;"></div>

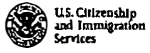
(b)(7)(e)

(b)(7)(e)

(b)(7)(e)

Fraud Type	Description
	<div data-bbox="1385 629 1505 667">(b)(7)(e)</div> <p>Form Type: N-400 Application for Naturalization Immigration and Nationality Act Section: 312, 316, 319 Regulation Section: 8 CFR 316, 8 CFR 319 Related Criminal Statute: 18 USC 1015(a), 18 USC 1546(a)</p>
Medical Waiver Fraud	<div data-bbox="1396 1254 1513 1290">(b)(7)(e)</div> <p>Form Type: N-648 Medical Certification for Disability Exceptions Immigration and Nationality Act Section: 312(b)(1) Regulation Section: 8 CFR 312.1(b)(3) Related Criminal Statute: 18 USC 1546(a)</p>
Representative or Preparer Fraud	<div data-bbox="1369 1671 1485 1706">(b)(7)(e)</div> <p>Form Type: G-28 Notice of Entry or Appearance as Attorney or Accredited Representative Immigration and Nationality Act Section: 274C(e)</p>

Fraud Type	Description	
False USC CLAIMS		(b)(7)(e)
	Immigration and Nationality Act Section: 212(a)(6)(C)(ii) Related Criminal Statute: 18 USC 911	
Identity Fraud		(b)(7)(e)
	Related Criminal Statute: 18 UCS 1546(b), 18 USC 1028A	
Non-Immigrant Visa (NIV) Fraud		(b)(7)(e)
	Immigration and Nationality Act Section: 212(a)(6)(C)(i)	
Student Visa Fraud		(b)(7)(e)
	Form Type: I-20 A/B Immigration and Nationality Act Section: 101(a)(15)(F) Regulation Section: 8 CFR 214.2(f) Related Criminal Statute: 18 USC 1546(a)	




Fraud Type	Description
Document Fraud	<div data-bbox="1404 367 1528 407">(b)(7)(e)</div>
	Related Criminal Statute: 18 USC 1546

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Appendix D Fraud Referral Sheet

[Click here to access a fillable, Microsoft Word version of the Fraud Referral Sheet \(FRS\).](#)

 U.S. Citizenship and Immigration Services	
Fraud Referral Sheet	
DATE: <input style="width: 50px;" type="text"/>	
REFERRING USCIS OFFICER: <input style="width: 150px;" type="text"/>	
REFERRING USCIS OFFICER STAMP NUMBER: <input style="width: 100px;" type="text"/>	
USCIS SUPERVISOR: <input style="width: 100px;" type="text"/>	APPROVED: <input type="checkbox"/>
RECEIPT NUMBER/A-NUMBER: <input style="width: 100px;" type="text"/>	FORM TYPE: <input style="width: 50px;" type="text"/>
ATTACHED FILES: <input style="width: 100px;" type="text"/>	
STAGE IN ADJUDICATIONS PROCESS: <input type="checkbox"/> Pre-Interview <input type="checkbox"/> Post-Interview Interview Date(s): <input style="width: 50px;" type="text"/> <input type="checkbox"/> Pre-Decision <input type="checkbox"/> Post-Decision, submitted for: <input type="checkbox"/> Documentation <input type="checkbox"/> Inquiry	
<input type="checkbox"/> EXPEDITED PROCESSING REQUESTED	
<input type="checkbox"/> Mandamus Court Date: <input style="width: 50px;" type="text"/>	
<input type="checkbox"/> Premium Processing	
<input type="checkbox"/> Congressional	
<input type="checkbox"/> Statutory/regulatory requirement N-400 120 days- start date: <input style="width: 50px;" type="text"/>	
<input type="checkbox"/> Other: <input style="width: 100px;" type="text"/>	
SUBJECT 1 INFORMATION	
(Each subject requires an individual information box, cut and paste as required)	
Full Name: <input style="width: 100px;" type="text"/>	Date of Birth: <input style="width: 50px;" type="text"/>
Country of Birth: <input style="width: 50px;" type="text"/>	Country of Citizenship: <input style="width: 50px;" type="text"/>
Aliases: <input style="width: 100px;" type="text"/>	
Associated Files: <input style="width: 100px;" type="text"/>	
SUBJECT 2 INFORMATION	
(Each subject requires an individual information box, cut and paste as required)	
Full Name: <input style="width: 100px;" type="text"/>	Date of Birth: <input style="width: 50px;" type="text"/>
Country of Birth: <input style="width: 50px;" type="text"/>	Country of Citizenship: <input style="width: 50px;" type="text"/>
Aliases: <input style="width: 100px;" type="text"/>	
Associated Files: <input style="width: 100px;" type="text"/>	



U.S. Citizenship
and Immigration
Services

Fraud Referral Sheet

SUBJECT 3 INFORMATION

(Each subject requires an individual information box, cut and paste as required)

Full Name:

Date of Birth:

Country of Birth:

Country of Citizenship:

Aliases:

Associated Files:

ORGANIZATION INFORMATION

Organization name:

FEIN:

Responsible Person (owner, president, agent, director, minister, etc):

Type of Organization:

REQUIRED: ARTICULATE REASON FOR REFERRAL

☐ Suspected Marriage Fraud

Petitioner/ Beneficiary interviewed Separately? ☐ Yes ☐ No

If the Petitioner/Beneficiary were not interviewed separately please explain the reason below:

Detailed Narrative /Derogatory Information derived from Interview(s)

Detailed Narrative /Derogatory Information derived from other sources (i.e. OGA, related files, outside data systems, tip letter)

OVERSEAS VERIFICATION REQUEST

Document Type:

☐ Attached (with translation)

Country of Jurisdiction:

Requested Action:



U.S. Citizenship
and Immigration
Services

Fraud Referral Sheet

FOR FDNS USE ONLY			
FDNS - DS Lead Number:		FDNS - DS Lead Name:	
Reviewing FDNS Officer:		Telephone:	
Lead Status:	<input type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Declined (see comments)		
Reason Closed / Declined:	<div style="border: 1px solid black; height: 100px; width: 100%;"></div>		

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Appendix E USCIS Policy Memorandum 110

CITIZENSHIP & IMMIGRATION **SERVICES**



POLICY MEMORANDUM NO. 110

SUBJECT: Disposition of Cases Involving
Removable Aliens

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U.S. Department of Homeland Security
USCIS Headquarters
20 Massachusetts Ave, NW
Washington, DC 20529U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

Subject Code: 70/1-P

TO: ASSOCIATE DIRECTOR, NATIONAL SECURITY AND RECORDS VERIFICATION
REGIONAL DIRECTORS
DISTRICT DIRECTORS
DIRECTOR, NATIONAL BENEFITS CENTER
SERVICE CENTER DIRECTORS
CHIEF, SERVICE CENTER OPERATIONS
CHIEF, FIELD OPERATIONS

FROM: Michael Aytes 
Associate Director, Domestic Operations

DATE: July 11, 2006

SUBJECT: Disposition of Cases Involving Removable Aliens

This memorandum revises guidance to USCIS officers on how to process and prioritize cases in which an alien appears to be removable.

Background

USCIS has authority to issue a Notice to Appear (NTA) and thereby initiate removal proceedings against an alien¹. By regulation, this authority has been delegated through district directors and service center directors to the director's deputy, officers and assistant officers-in-charge, assistant directors, supervisory district adjudication officers and supervisory center adjudications officers.² Deciding whether a person is removable and whether an NTA should be issued is an integral part of the adjudication of an application or petition.

Since not only USCIS, but also Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) have authority to issue NTAs, USCIS must assure that its issuance of NTAs fits within and supports the Government's overall removal priorities. In addition, just as there is an element of discretion in many of our adjudications, there is also an element of prosecutorial discretion in deciding whether to issue an NTA.³

¹ Delegation by the Secretary of the Department of Homeland Security to the Bureau of Citizenship and Immigration Services, Delegation Number 0150.1; Paragraph 2(N). However, District Directors and officers in international offices are not authorized to issue NTAs.

² 8 CFR § 239.1. However, issuance of an NTA against a current or former member of the armed forces requires advance approval of the Regional Director.

³ In exercising prosecutorial discretion, USCIS officers will refer to the INS issued memorandum entitled *Exercising Prosecutorial Discretion*, dated November 17, 2000, which describes the principles upon which agency officials can exercise prosecutorial

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uscis.gov

Our Mission - Efficient and effective administration of immigration, naturalization and citizenship benefits and services
Our Priorities: (1) National Security; (2) Efficient and effective case processing, production management and administration of USCIS; and (3) Customer Service.

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Disposition of Cases Involving Removable Aliens

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In June 2006, USCIS and ICE signed a Memorandum of Agreement (MOA) regarding the issuance of NTAs to aliens encountered during a USCIS adjudication. The entire MOA is included as Appendix 1 to this memorandum. The MOA is designed to clarify USCIS and ICE involvement in the NTA process. The MOA describes when USCIS will issue an NTA and when we will refer the matter to ICE so that it can decide whether it will issue an NTA. This memorandum provides guidance for implementing the MOA. **MOA implementation guidance applies to cases adjudicated on or after October 1, 2006.** This memorandum also describes transition procedures for cases adjudicated prior to October 1, 2006.

What the MOA and this Memorandum Do Not Cover**National Security Cases**

This memorandum does not affect the way cases with national security concerns are handled. The guidance from the Office of Fraud Detection and National Security (FDNS) will continue to govern the definition of these cases and procedures for resolution of national security hits.

TPS and Asylum cases

This memorandum does not apply to, or change NTA or notification procedures for Temporary Protected Status cases or cases processed by the Asylum Division, including asylum applications, applications for relief under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203), and credible fear and reasonable fear screenings. Separate guidance has been issued for these cases and remains in effect.

VAWA Cases

Forms I-360 processed under the Violence Against Women Act (VAWA) should continue to be processed under existing protocols. If the applicant's Form I-485 is found deniable, the guidance in this memorandum becomes applicable.

MOA Implementation Guidance

NTA issuance, apart from the categories excluded above, involving USCIS can be broken into five categories:

1. Egregious public safety cases (paragraphs '6b' and '6c' of the MOA);
2. Other criminal cases (paragraph '6d');
3. Cases where an NTA is prescribed by regulation (paragraph '6e');
4. Cases denied by USCIS based on fraud (paragraph '6f');
5. All Other Cases (paragraph '6g').

This memorandum discusses each in turn. The USCIS NTA Standard Operating Procedure (SOP), which will be issued soon, describes the mechanics of NTA issuance where USCIS will issue an NTA.

1. Egregious Public Safety Cases

An egregious public safety case is defined in the MOA as any case where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of, any of the following:

- a. Murder, rape, or sexual abuse of a minor as defined in § 101(a)(43)(A) of the Immigration and Nationality Act (INA).
- b. Illicit trafficking in firearms or destructive devices as defined in § 101(a)(43)(C) of the INA.
- c. Offenses relating to explosive materials or firearms as defined in § 101(a)(43)(E) of the INA.
- d. Crimes of violence for which the term of imprisonment imposed or where the penalty for a pending case is at least one year as defined in § 101(a)(43)(F) of the INA.
- e. An offense relating to the demand for or receipt of ransom as defined in § 101(a)(43)(H) of the INA.

discretion and the process to be followed in making and monitoring discretionary decisions. The concepts set forth therein, especially those starting on page 6 of the memo under the heading *Initiating and Pursuing Proceedings*, remain valid and should be taken into account in order to promote the efficient and effective enforcement of the immigration laws and the interests of justice.

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- f. An offense relating to child pornography as defined in § 101(a)(43)(I) of the INA.
- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in § 101(a)(43)(K)(iii) of the INA.
- h. An offense relating to alien smuggling as described in § 101(a)(43)(N) of the INA.
- i. Human Rights Violators, known or suspected street gang members, or Interpol hits.
- j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved.

The MOA indicates that, even without a conviction, an alien may be an egregious public safety case if there has been an arrest "without disposition." This applies specifically to an arrest where charges are still pending. If the alien was arrested but the charges were dropped or the alien was acquitted, the case will not be referred under this provision of the MOA. Also, if an arrest was for an offense described above, but the conviction was ultimately for an offense not defined as an egregious public safety case, the case will not be referred under this provision of the MOA.

The MOA contains a clause allowing additional types of cases to be added to this definition based on local criteria as agreed upon by the ICE Special Agent in Charge (SAC) and the USCIS District Director for field cases or by the appropriate USCIS Service Center Director in conjunction with the Fraud Detection Unit (FDU) and the ICE Benefit Fraud Unit (BFU) for center cases. However, as a matter of practice, before agreeing to a local expansion of this definition USCIS offices and centers must coordinate any such request from ICE with USCIS Headquarters. Our interest is in attempting to apply the same criteria nationwide, and it is our intention to work with ICE nationally to the extent possible with respect to possible expansion of this definition.

All egregious public safety cases must be referred to FDNS using the procedures outlined below. The case will be referred as soon as it is identified, even if the adjudication has not been completed. USCIS will interrupt adjudication and FDNS will refer the case to ICE so that ICE has an opportunity to decide if, when and how it will issue an NTA and/or detain the alien.

This referral process relates to the case, not necessarily the applicant or petitioner. If an alien⁴ is arrested during his or her encounter with USCIS (e.g. at the time of an interview), the case referral process through FDNS continues as described, but the process is essentially expedited as a result of ICE's arrest.

There are several reasons why the MOA distinguishes egregious public safety cases from other criminal and non-criminal cases. The MOA identifies this group of USCIS cases as those most likely to be ICE priority removal cases. The referral process described below ensures that these cases are brought to ICE's attention as quickly as possible, and a decision made quickly whether to apprehend and detain an alien who is an egregious risk to public safety.

The prioritization of these cases also reflects the fact that, unlike applications and petitions where the customer bears the burden of proof, in removal proceedings the government bears the burden of proof. In order to establish that an alien is amenable to removal, ICE often must acquire certified disposition records directly from the appropriate authorities before it issues an NTA on criminal grounds. Thus, early notification gives ICE both an opportunity to apprehend an egregious public safety risk and an early opportunity to acquire the required evidence for removal proceedings.

Finally, since the definition of an egregious public safety case includes arrests, for which a final disposition may still be pending, an alien described by the definition may not be subject immediately to removal proceedings. The early referral of the case by USCIS gives ICE advance notice of the pending proceedings so that it can monitor the progress of the case and take the individual into custody at the appropriate point.

If ICE determines that immediate apprehension is not appropriate, the referral process also ensures that USCIS can proceed with case processing fully cognizant of the facts of the situation. This prevents USCIS from being in the situation where it allows a deniable case to remain pending indefinitely while ICE separately pursues acquisition of the documents necessary for it to issue an NTA.

⁴A U.S. citizen could be arrested in this situation based on a warrant or indictment, but a U.S. citizen would not be an egregious public safety case by definition.

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• **Egregious Public Safety Case Referral Process**

- Egregious public safety cases discovered in the four service centers (California, Texas, Vermont, Nebraska), and the National Benefits Center will be placed in abeyance and the case (including the file, when available) immediately sent to the appropriate FDU. The FDU will refer the case to the ICE BFU via a Request for Investigation (RFI). A hard copy of the RFI will be placed in the A-file and/or Receipt file.⁵ The FDU will retain the file unless ICE requests it or the 60 days expire.
- Egregious public safety cases discovered in local offices will be placed in abeyance and the case (including the file, when available) immediately referred to the Fraud Detection and National Security Immigration Officer (FDNS IO). The FDNS IO will refer the case to the local ICE SAC via an RFI. A hard copy of the RFI will be placed in the A-file and/or Receipt file.⁶ A copy of the RFI must be sent to the ICE BFU. The FDNS IO will retain the file unless ICE requests it or the sixty days expire.

An RFI should include any relevant attachments that USCIS has at the time, such as a copy of the rap sheet, and a copy of the application.

The purpose of an RFI is to give ICE the opportunity to determine the appropriate course of action before USCIS adjudicates the case. A decision to issue an NTA may directly affect the processing of the pending application. Upon issuing the RFI, USCIS will suspend adjudication for 60 days, or until ICE provides notification of its action on the case, whichever is earlier. The case shall remain pending during this period. The entity that referred the case to ICE must ensure appropriate tracking to account for the pending case and its active status.

In response to the RFI –

- ICE may request that USCIS promptly schedule an interview for the purpose of ICE arresting and taking the alien into custody.⁷ Apprehension frees USCIS to proceed with adjudication (unless jurisdiction transfers to the Executive Office of Immigration Review (EOIR)), taking full account of the basis for apprehension.⁸
- ICE may issue an NTA. Issuance of an NTA by ICE frees USCIS to proceed with adjudication (unless jurisdiction transfers to EOIR), taking full account of the basis for the NTA.
- If ICE does not issue an NTA or otherwise provide notification of its action on the case within 60 days of the RFI, USCIS may resume its adjudication of the case, taking full account of the basis that prompted the RFI.
 - If the case is approvable, USCIS will consult with ICE prior to adjudication.
 - Once adjudicated, regardless of the decision, USCIS will notify ICE of the result by sending a copy of the original RFI to ICE with a cover memorandum advising of the outcome of the case.
 - If the alien appears to be removable on a criminal ground, then the procedures for non-egregious criminal matters should be followed (referring the completed case to ICE DRO for NTA issuance).
 - If the alien is removable on other than criminal grounds, USCIS should follow the analysis and procedures described below in sections 3 through 5 of this memorandum.

Egregious Public Safety Cases referred to ICE prior to adjudication should be called up and reviewed no later than 60 days after referral. Normally the case should be adjudicated. However, USCIS retains discretion to formally place the case in abeyance for ICE to conduct further investigation, the formal abeyance process as described at 8 CFR 103.2(b)(18) should be initiated.

If, in response to an RFI, ICE requests the file, USCIS should work with the local ICE office to determine whether copies of documents are sufficient. If ICE insists that it needs the original file, the FDU or FDNS IO will promptly ship the file if in its possession, but shall retain the original of the pending application and a copy of the supporting documentation so USCIS can proceed with adjudication if that becomes appropriate. A copy of the

⁵ Both ICE Office of Investigations and Deportation and Removal will be given access to the FDNS Data System in the near future. These procedures will be updated at that time.

⁶ Ibid.

⁷ Several recent examples around the country, notably with I-90 applications, have demonstrated the effectiveness of this strategy for apprehending egregious public safety risks.

⁸ For I-90, I-751 and I-829 processing see the additional referral and processing instructions found below.

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application or petition and supporting documents should be included in the A-file sent to ICE. In any case in which ICE requests the file, USCIS will consult with ICE before rendering a final decision on the case. However, these consultations should not delay denial of an application or petition, nor should they delay an approval if the case is approvable despite the basis for the RFI.

Since this file protocol differs from that described in NQP and the I-485 SOP, updates to those documents will be forthcoming.

USCIS District Directors are expected to work with the local ICE SAC to ensure smooth processing of referred cases. Service Center Directors will likewise continue liaison with ICE through the FDUs. In situations where issues are identified, District Directors and Service Center Directors should immediately bring them to the attention of HQFDNS through official channels.

• **An Important Note with respect to I-90, I-751 and I-829 applications filed by a permanent resident or conditional permanent resident where the applicant is an egregious public safety risk:**

• **I-90 cases:**

- If, within the 60 day RFI evaluation period, ICE takes a permanent resident who is an I-90 applicant into custody and issues an NTA, USCIS should leave the I-90 pending and in active suspense.
 - While in proceedings, a permanent resident not in custody will be issued temporary evidence of status in 6 month increments.
 - If removal proceedings are terminated or otherwise end without the alien's removal and loss of status, USCIS shall then adjudicate the I-90, and, if approved, issue the normal permanent resident documentation to which the person is entitled.
 - If the alien is ordered removed and thus loses permanent residence status, USCIS shall upon that basis deny the I-90.
- If ICE does not issue an NTA or otherwise provide notification of its action on the case within the 60 day RFI evaluation period, since the alien is a permanent resident, USCIS shall adjudicate the application. Upon adjudication of the I-90, USCIS will forward a copy of the original RFI to ICE with a cover memorandum advising that the I-90 has been adjudicated. If the application is approved, USCIS will issue the normal permanent resident documentation.

Note: This I-90 referral process supersedes the I-90 Instructions in the April 10, 2006 entitled "Permanent Resident Documentation for EOIR and I-90 Cases" insofar as that memorandum relates to I-90 applicants who can be defined as egregious public safety cases. All other policy in the April 10, 2006 memorandum remains unchanged.

- **I-751 and I-829 cases:** The law limits our review of the removal of conditions to certain specific factors, not including subsequent criminal activities.
 - If, within the 60 day RFI evaluation period, ICE takes a conditional permanent resident who is an I-751 or I-829 applicant into custody and issues an NTA, USCIS should deny the I-751 if appropriate grounds for denial exist. If the petition appears otherwise approvable, ICE Counsel should be consulted as to whether USCIS should leave the I-751/829 pending and in active suspense while the person is in proceedings. (This applies only to these egregious public safety cases. In all other cases, the I-751 or I-829 should be approved if it is otherwise approvable.)
 - If removal proceedings are terminated or otherwise end without the person's removal and loss of status, USCIS shall then adjudicate the I-751/829 and, if approved, issue the normal permanent resident documentation to which the person is entitled.
 - If the person is removed and thus loses conditional permanent residence status, USCIS shall upon that basis deny the I-751/829.
 - If ICE does not issue an NTA or otherwise provide notification of its action on the case within the 60 day RFI evaluation period, USCIS shall adjudicate the petition and, if approved, issue the normal permanent resident documentation. If approved, a copy of the original RFI and a cover memorandum advising that the case has been approved will be forwarded to ICE.

2. Other Criminal Cases

In all cases in which it appears that the alien is inadmissible or removable for a criminal offense not included on the egregious public safety case list, USCIS will complete the adjudication prior to referring the case to ICE. ICE will

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decide whether and how it will institute proceedings and whether or not they will detain the alien. USCIS will not prepare or issue an NTA in such a case. Once adjudication is complete, the FDU or FDNS IO will send an RFI and the accompanying file, if in the possession of the office or center issuing the RFI, directly to the appropriate ICE Field Operations Director (FOD) or designated POC. The FDU or FDNS IO will concurrently transmit a copy of the RFI to ICE HQ DRO Criminal Alien Division for statistical monitoring purposes.

If there is any confusion or uncertainty about classifying a case as egregious or non-egregious, the USCIS adjudicator should refer the matter as an egregious public safety case through supervisory channels to the FDU or FDNS IO.

The accompanying file will be referred to ICE with the RFI if the file is in the possession of the referring USCIS office or center.

If the file is not in the referring USCIS office, the RFI should include any relevant attachments that USCIS has, such as a copy of the rap sheet and a copy of the application. Where USCIS obtained certified conviction records through normal processing of the application, it will include those records with the RFI, but it will not hold the RFI on a completed case just to obtain those disposition records. Instead ICE will decide whether and how it will directly obtain such records as part of its decision whether and when it will issue an NTA.

• Referral Process

A case referred under this process is referred to ICE to allow it to make a determination, based on the totality of circumstances, as to whether an NTA should be issued. If ICE does decide to issue an NTA, it will determine the appropriate grounds for removal.

- **Cases adjudicated by the Service Centers:** Once adjudication is completed,⁹ if the alien is removable on a criminal charge regardless of the reason for the denial¹⁰, the file will be referred to the FDU. The FDU will refer the case to the appropriate ICE FOD via an RFI.
- **Cases adjudicated in local offices:** Once adjudication is complete,¹¹ if the alien is removable on a criminal charge regardless of the reason for the denial, the file will be sent to the FDNS IO, who will complete an RFI. The FDNS IO will then refer the case via the RFI to the local ICE FOD.

3. Cases where the NTA is Prescribed by Regulation

In certain instances the issuance of an NTA is required by regulation. These include Petitions to Remove Conditions on Residence (Form I-751), Petitions by Entrepreneur to Remove Conditions (Forms I-829), and Applications for Family Unity Benefits (Forms I-817). See 8 CFR 216.3(a), 216.6(a)(5), and 8 CFR 236.14(c).

An NTA must also be issued after the termination of refugee status by a District Director. See 8 CFR 207.9. In these instances USCIS will issue the requisite NTA as part of completing the adjudication.

4. Cases Denied by USCIS Based on Fraud

In all pending cases where there is a suspicion of fraud, USCIS, through the FDU or the FDNS IO, sends an RFI to ICE pursuant to current procedure. If ICE declines the case, USCIS FDNS initiates an administrative inquiry to verify any fraud.

In cases where fraud has been verified in a *Fraud Verification Memorandum* and the denial is at least in part based on a finding of fraud, USCIS will issue an NTA once it denies the case. The NTA must include the appropriate fraud charge.

⁹ This includes the conclusion of any administrative appeals.

¹⁰ In determining whether the alien is amenable to a charge of removal on a criminal ground, the case must be reviewed for either 212 or 237 charges as relevant, and for any previously granted waivers (e.g. an approved Form I-601). If the alien was previously in proceedings before the Executive Office of Immigration Review, the case must be reviewed to determine if a waiver was granted (e.g. 212(c), Cancellation of Removal for Certain Permanent Residents, or Form I-601). If a waiver has been previously granted the alien is not longer removable on that ground. If USCIS has received the relevant conviction documents in the course of the adjudication, that should be noted in the RFI. If there are any questions consult with USCIS counsel.

¹¹ This includes the conclusion of any administrative appeals.

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5. All Other Cases

In all other cases, once the denial of the application or petition is complete (including applications for waivers for which the applicant may be eligible), USCIS may issue an NTA where the applicant or permanent resident petitioner appears to be removable. However, if an individual submitted an application while in a valid non-immigrant status and there is no criminality surrounding the reasons for the denial and nothing else indicates that the alien will not timely depart the United States, the denial notice should clearly convey to the applicant the effect of the decision and the fact that the individual should depart the United States or potentially face removal proceedings.

If an alien is in parole status as a result of an advance parole and has not otherwise violated the terms of his or her admission, the denial will indicate that the parole is terminated 30 days after the date of the denial. Issuance of an NTA also will serve as written notice of the termination of the parole, unless otherwise specified. See 8 CFR 212.5(e).

It is important to note these provisions do not affect the ability of the District or Service Center Directors to issue voluntary departure, to recommend deferred action or to reinstate a person's nonimmigrant status. Except for national security cases, egregious public safety cases rejected by ICE, cases where an NTA is required by regulation, and fraud cases, USCIS managers retain discretion in the decision whether to issue an NTA when compelling circumstances are present. However, if an applicant is removable and there are no means of relief available (e.g., voluntary departure, reinstatement, eligibility for another status), then an NTA should normally be prepared as part of the denial. Such NTAs should be predicated on the most sustainable charge.

Additional Considerations

The primary role with respect to removal priorities and administration is ICE's. If USCIS refers an egregious public safety case or other criminal case to ICE and ICE decides not to issue an NTA, then typically USCIS will defer to the ICE decision.

Where USCIS issues an NTA, calendaring the case with the EOIR will be initiated based on local procedures coordinated with ICE Counsel and DRO. USCIS must ensure that these local procedures result in the creation of an IBIS record.

USCIS will prioritize NTA issuance in the following order: (1) cases where fraud is established, (2) cases where the NTA is prescribed by law or regulation, and (3) the 'all other cases' category. However, it is important that we promptly provide EOIR with the NTA in each case in which USCIS prepares an NTA. Offices must report to HQ Domestic Operations through normal channels any backlog with respect to NTA preparation that may exist. In furtherance of that goal, where USCIS decides to issue an NTA, the case will not be counted as a denial until the NTA is forwarded to EOIR. As noted above, this referral can be either direct or through DRO, as established by local procedures.

It is understood that many cases will contain special circumstances that are not addressed by this memorandum. As such, USCIS counsel is available to review all NTAs. Procedures for review should be set at a local level, but counsel review is particularly encouraged on NTAs that include the fraud charge. Deviations from the procedures described in this memorandum must be approved through channels by the Director of Service Center Operations or by the Director of Field Operations.

When making determinations, based upon the categories listed above, employees must keep in mind USCIS' obligations under 8 USC § 1367, which prohibits the release outside of DHS of any information relating to aliens who are seeking or have been approved for the following:

1. Immigrant status under the provisions for battered spouses and children in the Violence Against Women Act ("VAWA"),
2. Nonimmigrant status under INA Section 101(a)(15)(T), and
3. Nonimmigrant status under INA Section 101(a)(15)(U). [Limited exceptions to this prohibition can be found at 8 U.S.C. sec. 1367(b)].

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Moreover, 8 USC § 1367 prohibits any Department of Justice or Department of Homeland Security employees -- including CIS/CBP/ICE officers/agents and Immigration Judges -- from making an adverse determination of admissibility or deportability using information provided solely by the abusive spouse or parent or other member of the household.

Additionally, Legalization and SAW cases are covered under the confidentiality protections identified in Section 245(c)(5) and 210(b)(6) of the INA respectively, and LIFE legalization cases are covered under Section 1104(c)(5) LIFE Act (Pub.L. No. 106-553), which affords the same protection as those identified in Section 245A(c)(5) of the INA. In general, NTAs cannot be issued based on information obtained from legalization applications or supporting documents.

USCIS' role is largely to facilitate the execution of ICE removal priorities. ICE manages the removal docket, and also remains the prosecutor. Therefore, while USCIS can identify through a referral or an NTA that a person appears amenable to removal proceedings, the role of USCIS is not to prove removability in proceedings.

Transition Guidance

The new MOA is effective for cases adjudicated on or after October 1, 2006. Certain USCIS procedures are already consistent with the MOA-based procedures outlined in this memorandum.

- For cases adjudicated through September 30, 2006, USCIS will follow the MOA-based procedures for egregious public safety cases.
- USCIS will follow current local procedures for non-egregious public safety removable aliens and egregious public safety cases rejected by ICE.
- In the interim, USCIS will also follow the procedures outlined earlier in this memorandum with respect to cases where fraud is established and where the NTA is prescribed by regulation.
- With respect to the 'all other cases' category, some USCIS field offices as a practice routinely prepare NTAs for these cases. Those offices should not reduce their commitment to this process, but shall continue to exercise prosecutorial discretion as appropriate with respect to preparing an NTA. Offices that currently do not routinely prepare NTAs in cases in this category should begin to prepare to implement these procedures with cases adjudicated on or after October 1, 2006, and in the interim should ensure that NTAs are prepared on any case deemed significant. Cases and associated files not deemed significant enough to warrant issuance of an NTA should be handled normally after the adjudicative process is complete.

Any questions or concerns pertaining to this memorandum should be directed, through channels to Headquarters, Domestic Operations. Given the complexity of issues associated with this memorandum, it is expected that significant questions will be addressed in a following Question and Answer document that will be incorporated, in effect, into this memorandum and will be posted under this memorandum in the intranet page for Policy guidance.

The Associate Director for National Security and Records Verification has concurred with this memorandum.

This memorandum is designated as **FOR OFFICIAL USE ONLY**, and is not to be released to outside entities. It is intended for USCIS personnel performing duties relative to cases that require decisions pertaining to the placement of aliens in removal proceedings. This internal guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

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Moreover, 8 USC § 1367 prohibits any Department of Justice or Department of Homeland Security employees -- including CIS/CBP/ICE officers/agents and immigration judges -- from making an adverse determination of admissibility or deportability using information provided solely by the abusive spouse or parent or other member of the household.

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- USCIS will follow current local procedures for non-egregious public safety removable aliens and egregious public safety cases rejected by ICE.
- In the interim, USCIS will also follow the procedures outlined earlier in this memorandum with respect to cases where fraud is established and where the NTA is prescribed by regulation.
- With respect to the 'all other cases' category, some USCIS field offices as a practice routinely prepare NTAs for these cases. Those offices should not reduce their commitment to this process, but shall continue to exercise prosecutorial discretion as appropriate with respect to preparing an NTA. Offices that currently do not routinely prepare NTAs in cases in this category should begin to prepare to implement these procedures with cases adjudicated on or after October 1, 2006, and in the interim should ensure that NTAs are prepared on any case deemed significant. Cases and associated files not deemed significant enough to warrant issuance of an NTA should be handled normally after the adjudicative process is complete.

Any questions or concerns pertaining to this memorandum should be directed, through channels to Headquarters, Domestic Operations. Given the complexity of issues associated with this memorandum, it is expected that significant questions will be addressed in a following Question and Answer document that will be incorporated, in effect, into this memorandum and will be posted under this memorandum in the intranet page for Policy guidance.

The Associate Director for National Security and Records Verification has concurred with this memorandum.

This memorandum is designated as **FOR OFFICIAL USE ONLY**, and is not to be released to outside entities. It is intended for USCIS personnel performing duties relative to cases that require decisions pertaining to the placement of aliens in removal proceedings. This internal guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

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An EGREGIOUS PUBLIC SAFETY CASE is one where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of, any of the following:

- a. Murder, rape, or sexual abuse of a minor as listed in §101(a)(43)(A) of the Immigration and Nationality Act (INA).
- b. Illicit trafficking in firearms or destructive devices as defined in §101(a)(43)(C) of the INA.
- c. Offenses relating to explosive materials or firearms as defined in §101(a)(43)(E) of the INA.
- d. Crimes of violence for which the term of imprisonment imposed is at least one year as defined in §101(a)(43)(F) of the INA.
- e. An offense relating to the demand for or receipt of ransom as defined in §101(a)(43)(H) of the INA.
- f. An offense relating to child pornography as defined in §101(a)(43)(I) of the INA.
- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in §101(a)(43)(K)(iii) of the INA.
- h. An offense relating to alien smuggling as described in §101(a)(43)(N) of the INA.
- i. Human Rights Violators, known or suspected street gang members, or Interpol hits.
- j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has *not* been approved.
- k. Additional types of cases can be added based on local criteria as agreed upon by the ICE Special Agent in Charge (SAC), Office of Detention and Removal, Field Office Director (FOD), and the USCIS District Director for field cases or by the appropriate USCIS Fraud Detection Unit (FDU) and the ICE Benefit Fraud Unit (BFU) for center cases.

6. USCIS RESPONSIBILITIES

- a. This MOA does not change existing procedures relating to USCIS Asylum Division's issuance of NTAs for affirmative asylum cases, credible fear referrals or NACARA section 203 referrals. Additionally, this MOA does not change USCIS' existing procedures for issuing NTAs in Temporary Protected Status cases. USCIS may change those procedures after consultation with the ICE Point of Contact (POC)

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identified in paragraph 8, but such changes will not be considered to be a modification of this MOA.

- b. USCIS will refer all Egregious Public Safety Cases in its centers to the appropriate ICE BFU via a Referral for Investigation (RFI) prior to the completion of the USCIS adjudication. The RFI will include any relevant attachments (e.g. copy of the rap sheet). Similarly, USCIS will refer via an RFI all Egregious Public Safety Cases in the field to the local ICE SAC or designated POC with concurrent electronic notification to the ICE BFU prior to completion of the USCIS adjudication. Files (A-File, T-File, and or the receipt file) in the possession of the referring USCIS office or center will also be sent to the appropriate ICE office upon request.
- c. Upon forwarding an Egregious Public Safety RFI to the ICE SAC, designated POC or ICE BFU as described in paragraph b, USCIS will suspend adjudication for 60 days or until ICE provides notification of its action on the case, whichever is earlier. If no request is received from ICE in the 60 days, USCIS may resume adjudication of the case. If ICE requests the file anytime before adjudication, USCIS will consult with ICE prior to approving the case. In all referred cases, USCIS is to immediately notify the ICE SAC, designated POC or the ICE BFU, as appropriate, of any pending federal litigation so to coordinate how the cases will be handled.
- d. USCIS will refer, via RFI and the accompanying file, if in the possession of the referring USCIS office or center, all other cases in which an alien is inadmissible or removable from the United States based upon conviction of a criminal offense not listed under the definition of Egregious Public Safety Case in paragraph 5 of this agreement to ICE Detention and Removal (DRO). The RFIs and files in possession of the referring USCIS office or center will be forwarded upon completion of the USCIS adjudication to the appropriate Field Office Director (FOD) or designated POC. USCIS will also concurrently transmit a copy of the RFI to the HQ DRO Criminal Alien Division for statistical monitoring purposes. All referred cases to the FOD or designated POC is to include any previously obtained certified conviction records.
- e. USCIS will issue NTAs after a case has been denied where an NTA is prescribed by regulation. This includes, but may not be limited to, Form I-751, Petition to Remove Conditions on Residence; Form I-829, Petition by Entrepreneur to Remove Conditions; and Form I-817, Application for Family Unity Benefits. See 8 CFR 216.3(a) and 8 CFR

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236.14(c). USCIS will also issue an NTA after termination of an alien's refugee status by a District Director. See 8 CFR 207.9.

- f. USCIS will issue NTAs in cases in which fraud is, wholly or in part, a basis for denying the adjudication.
- g. In all other cases in which an alien becomes amenable to removal proceedings based upon a denial of an application or benefit, USCIS will issue an NTA or otherwise exercise prosecutorial discretion.

7. ICE RESPONSIBILITIES

a. The ICE SAC or ICE BFU to which USCIS has referred an Egregious Public Safety case will electronically notify the referring USCIS POC within 60 days of the referral if ICE intends to issue an NTA, return the case, or if additional time is needed for ICE to complete an investigation. If ICE continues to investigate the case after 60 days, ICE will respond in a timely manner to any USCIS inquiries about the status of the case.

b. Once USCIS has completed its adjudication of an application, petition and/or waiver in a non-egregious criminal case and has referred the file, if in the possession of the referring USCIS office or center, to the appropriate DRO FOD or designated POC, the DRO FOD or designated POC will determine whether an NTA or other charging document is appropriate, and will electronically notify the USCIS Office of Fraud and Detection and National Security of any action taken. If the DRO FOD or designated POC determines that the alien is not removable based on a criminal ground, DRO shall issue an NTA on other grounds or shall document in the file the finding that no criminal ground of removal exists and return the file to the referring USCIS office.

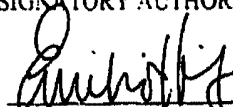
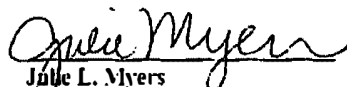
8. **POINTS OF CONTACT.** The ICE/OI Point of Contact for purposes of notification under this agreement for matters not otherwise specified is the Identity and Benefit Fraud Unit. The ICE/DRO POC for purposes of notification under this agreement for matters not otherwise specified is the HQ DRO Criminal Alien Division. The USCIS POC for purposes of notification under this agreement for matters not otherwise specified is the Office of Fraud Detection and National Security.

9. **OTHER PROVISIONS.** Nothing in this MOA is intended to conflict with existing laws, regulations, or DHS directives. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.

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10. **EFFECTIVE DATE.** The terms of this MOA will become effective upon signature of this document.
11. **MODIFICATIONS.** This MOA may be modified upon the mutual written consent of the parties.
12. **REVIEW.** The parties agree to undertake a review of the MOA within six (6) months of the effective date under paragraph 4 to determine whether any modifications are necessary to more effectively accomplish the goals of the MOA. Failure to conduct a review, however, will not result in the termination of this MOA.
13. **TERMINATION.** The terms of this MOA, and any subsequent modifications consented to by both parties, will remain in effect unless terminated as provided herein. Either party, upon 60 days written notice to the other party, may terminate this MOA.

SIGNATORY AUTHORITIES:
Dr. Emilio T. Gonzalez
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security6/20/06
Date
Julie L. Myers
Assistant Secretary
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security6/15/06
Date**FOR OFFICIAL USE ONLY****5**[Return to Table of Contents.](#)

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Appendix G Referral to ICE Template

 <p>U.S. Citizenship and Immigration Services</p>	
<p>Referral to Immigration and Customs Enforcement (RTI)</p>	
FDNS Case Number: <input type="text"/>	Date: <input type="text"/>
TO: ICE BFU - <input type="text"/> ICE SAC - <input type="text"/> ICE DRO - <input type="text"/>	ATTN: <input type="text"/>
From: USCIS Office - <input type="text"/>	
FDNS IO: <input type="text"/>	Phone/e-mail: <input type="text"/>
Reviewing FDNS Supervisor: <input type="text"/>	Phone/e-mail: <input type="text"/>
A-/receipt number (s): <input type="text"/>	
Subject information:	
Complete name: <input type="text"/>	AKA: <input type="text"/>
Subject's current address: <input type="text"/>	
Date of Birth: <input type="text"/>	Country of Birth: <input type="text"/>
Subject's A # <input type="text"/>	SSN: <input type="text"/>
Immigration status: <input type="text"/>	Referred to EOIR/IJ? <input type="checkbox"/> Yes <input type="checkbox"/> No
Administrative action can be taken immediately? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Organization information:	
Organization name: <input type="text"/>	FEIN: <input type="text"/>
Organization current address: <input type="text"/>	<input type="text"/>
Responsible person: <input type="text"/>	Organization Type: <input type="text"/>
Synopsis:	
<input type="text"/>	



U.S. Citizenship
and Immigration
Services

Referral to Immigration and Customs Enforcement (RTI)

Action Item (check only one)

- ☐ National Security (Articulate in Narrative Summary)
- ☐ Public Safety - Egregious ☐ Public Safety - Non Egregious
- ☐ Major Conspiracy
- ☐ Meets ICE MOA Criteria
- ☐ Specified Country of Interest
- ☐ Subject of TECS II record
- ☐ Misconduct of Attorney, Notary, Interpreter or Preparer
- ☐ Alien arrest not leading to inadmissibility and who committed immigration fraud

☐ Other

Requested Action:

Narrative Summary:

Attachments:

BFU use only:

Date Accepted by SAC:

Date Declined:

SAC Office:

BFU Case Number:

Reason for Declination:

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Appendix H Residence Visit Checklist

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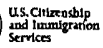
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Residence Visit Checklist

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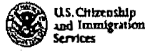
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**U.S. Citizenship
and Immigration
Services**

FDNS-DS Number:		Date:	
FDNS Officer:		USCIS Office:	
Approving FDNS Official:		Date of Approval:	
Subject(s):		A/Receipt Number(s):	
Organization:			
Address:			
Address Type: <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Other:			

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U.S. Citizenship
and Immigration
Services

Site Visit Worksheet

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Synopsis of Events:

Findings (if any):



U.S. Citizenship
and Immigration
Services

Site Visit Worksheet

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Incident Narrative:

Other Agency Assistance:

☐ ICE

☐ State/Local:

☐ Other :

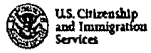
Name, Title, Agency, Contact Information of Accompanying Person(s):

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**Appendix J Elements of a Successful Interview and Recommended
Opening Questions**

[Redacted content]



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Appendix K Memorandum for Videotaped Interviews to be Included in the Record of Proceeding

Memorandum for Videotaped Interviews to be Included in the Record of Proceeding

For the Record:

Today is: _____.

The time is: _____ a.m. / p.m.

The case file number is: A _____.

The Visa Petition was filed by: _____.

a (USC / LPR/U.S. Employer) and seeks benefits of Section _____ of the Immigration and Nationality Act.

This is the United States Department of Homeland Security, Citizenship and Immigration Services, located at:

(Insert Office Address)

This is FDNS Immigration Officer _____.

This is an administrative proceeding in reference to the aforementioned case to determine if the benefits sought shall be bestowed upon the beneficiary.

This proceeding shall be conducted under oath. All statements constitute sworn testimony. An audio-visual recording will be made to ensure a complete record. Any or all statements you make may be used against you in court, or in any immigration or administrative proceeding. You are here voluntarily and you may choose to terminate this proceeding at any time, and you are free to leave this office, do you understand?

However, should you choose to terminate this proceeding, a decision will be made considering only the statements or evidence thus far presented. Do you understand?

Do you understand the importance of your testimony during this proceeding? Do you understand the possible consequence if you knowingly provide false testimony during this proceeding?

Do you have any questions?

Are you ready to proceed?

Please stand and raise your right hand. Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

Attorney of record: _____ is present.

If applicable: Your attorney is not present at this time. Do you wish to continue this proceeding without your attorney present?


_____/ / _____

Petitioner

Beneficiary

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Appendix L Statement of Findings Template

 <p>U.S. Citizenship and Immigration Services</p>	
Statement of Findings (SOF)	
FDNS-DS Number: [REDACTED]	SUBJECT: [REDACTED]
A-/Receipt Number: [REDACTED]	FDNS Officer: [REDACTED]
Date Lead/Case Opened: [REDACTED]	SOF Creation Date: [REDACTED]
<input type="checkbox"/> Fraud Referral Sheet attached	<input type="checkbox"/> Overseas Verification attached
I. Synopsis: <div style="border: 1px solid black; height: 60px; margin-top: 5px;"></div>	
II. Fraud Determination (Required): <input type="checkbox"/> A: Fraud Found <input type="checkbox"/> B: Fraud Not Found <input type="checkbox"/> C: Inconclusive (explain below) <i>Provide an explanation for item C if it was checked.</i> <div style="border: 1px solid black; height: 50px; margin-top: 5px;"></div>	
III. Public Safety Determination: <input type="checkbox"/> A: Public Safety- Egregious <input type="checkbox"/> B: Public Safety- Non-Egregious <i>Comments</i> <div style="border: 1px solid black; height: 60px; margin-top: 5px;"></div>	
IV. Referrals A. Referral to ICE: Date Submitted: [REDACTED] Date of Action by ICE: [REDACTED] BFU Number: [REDACTED] ICE action: <input type="checkbox"/> Accepted <input type="checkbox"/> Declined <input type="checkbox"/> Did not meet USCIS/ICE MOA criteria	



U.S. Citizenship
and Immigration
Services

Statement of Findings (SOF)

Comments

B. Other Referrals OCA/LEA:

Comments (FOUO/Unclassified only)

V. Record of Actions Taken:

A. Systems Checks:

- | | | |
|---|---|-------------------------------------|
| <input type="checkbox"/> CIS | <input type="checkbox"/> RAPS | <input type="checkbox"/> EARM |
| <input type="checkbox"/> CCD | <input type="checkbox"/> SEVIS | <input type="checkbox"/> USVISIT |
| <input type="checkbox"/> TECS/IBIS | <input type="checkbox"/> SC_CLAIMS/CISCOR | <input type="checkbox"/> CLAIMS/C-4 |
| <input type="checkbox"/> CLEAR (Choice Point) | <input type="checkbox"/> ACCURINT (LexisNexis) | <input type="checkbox"/> ISRS |
| <input type="checkbox"/> Intel Fusion System/ Avalanche | <input type="checkbox"/> State Wage & Earning Records | |
| <input type="checkbox"/> State Motor Vehicle Records | <input type="checkbox"/> Other: <input type="text"/> | |

Comments (FOUO/Unclassified only)

B. Public Record Information:

Note records obtained and provide commentary as necessary, or indicate not applicable.

C. Interviews:

Indicate type of interview—telephone, email, in-person or not applicable.

U.S. Citizenship
and Immigration
Services**Statement of Findings (SOF)****D. Site Visits:***Indicate whether site visits were performed, or not applicable.*☒ Site Visit worksheet attached.**E. Types of Action Other Than Interviews or Site Visits:****VI. Detailed Findings:****VII. Attachment List:***List all attachments or indicate not applicable.*[Return to Table of Contents.](#)

Appendix M About TECS

What is TECS?

TECS is the acronym for The Enforcement Communications System, a large data processing center. The center is linked to Department of Homeland Security law enforcement facilities throughout the world. TECS users include the U.S. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), the Bureau of Alcohol, Tobacco and Firearms (ATF), the Internal Revenue Service (IRS), the Drug Enforcement Administration (DEA), the Department of State, the Coast Guard, and INTERPOL Washington, DC. Anytime a FDNS – IO identifies fraud, a TECS record must be created.

TECS provides DHS's law enforcement community with:

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-
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Security Classification

TECS is a DHS, unclassified, For Official Use Only system. Information from TECS records is not releasable to anyone outside of DHS, the Department of State, or other law enforcement agencies.

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Location

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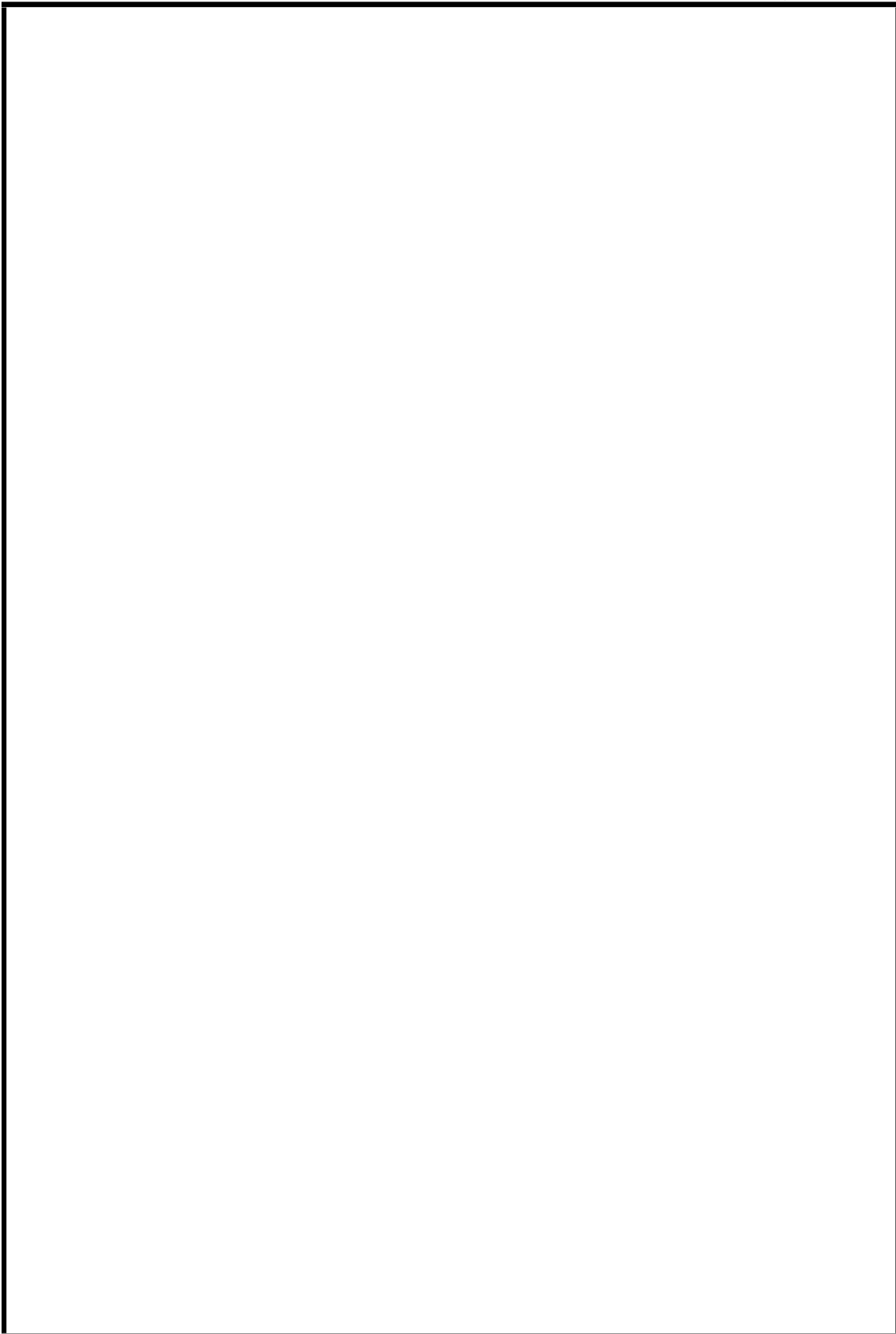
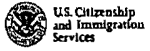
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Reasons to Create a TECS Lookout Record

USCIS creates TECS records to alert TECS users to immigration and benefit related issues, such as:

-

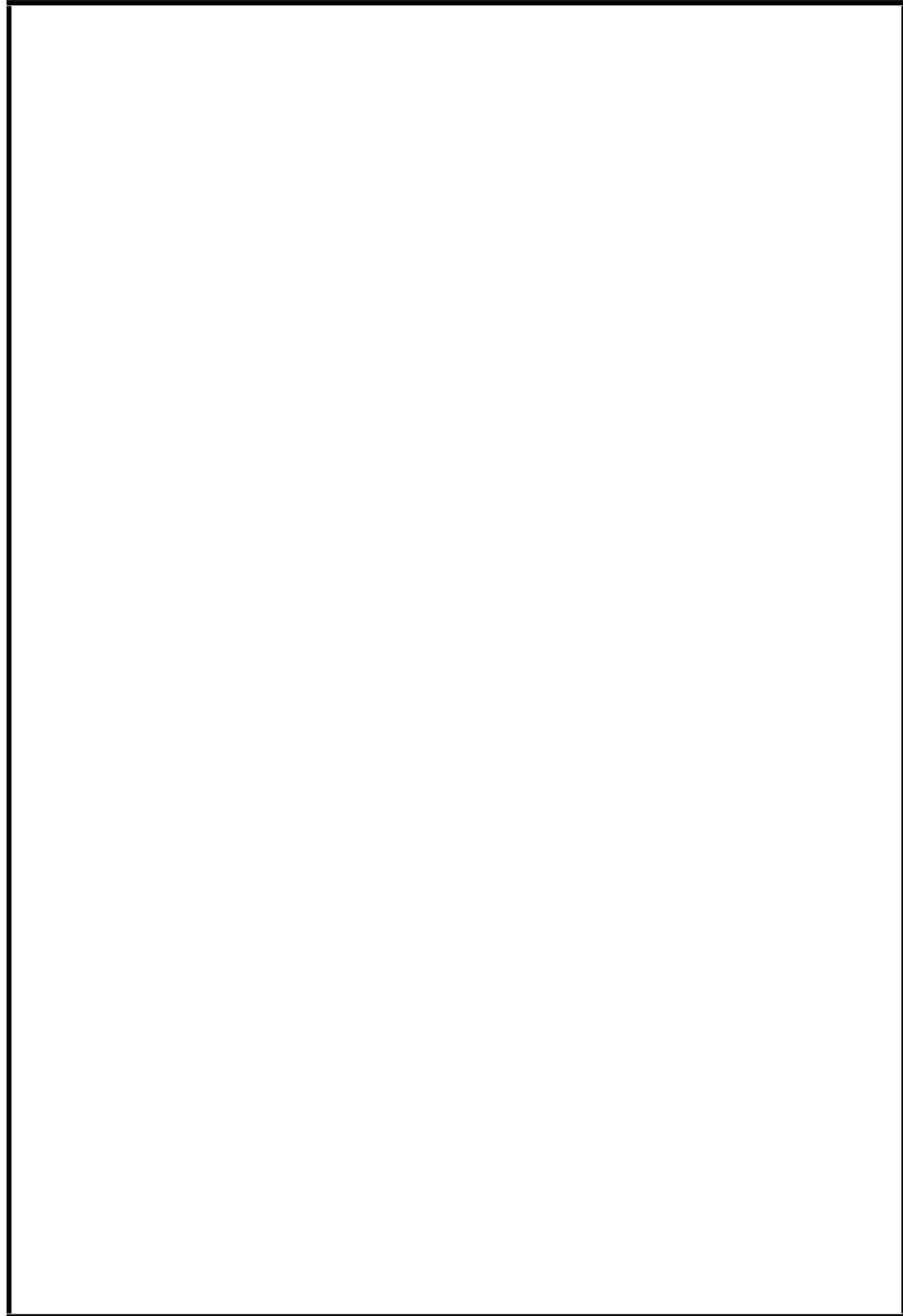
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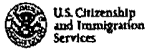




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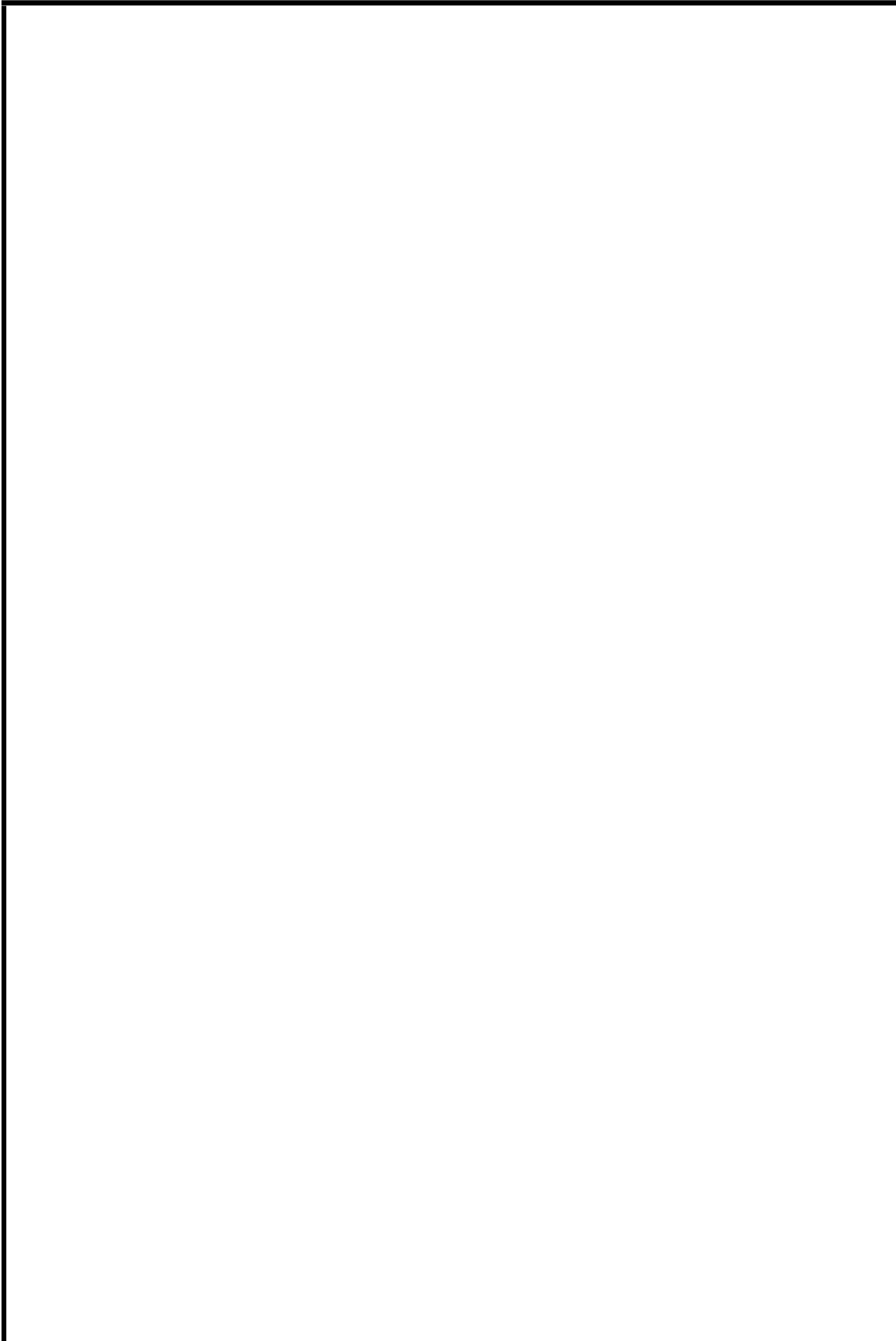
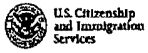




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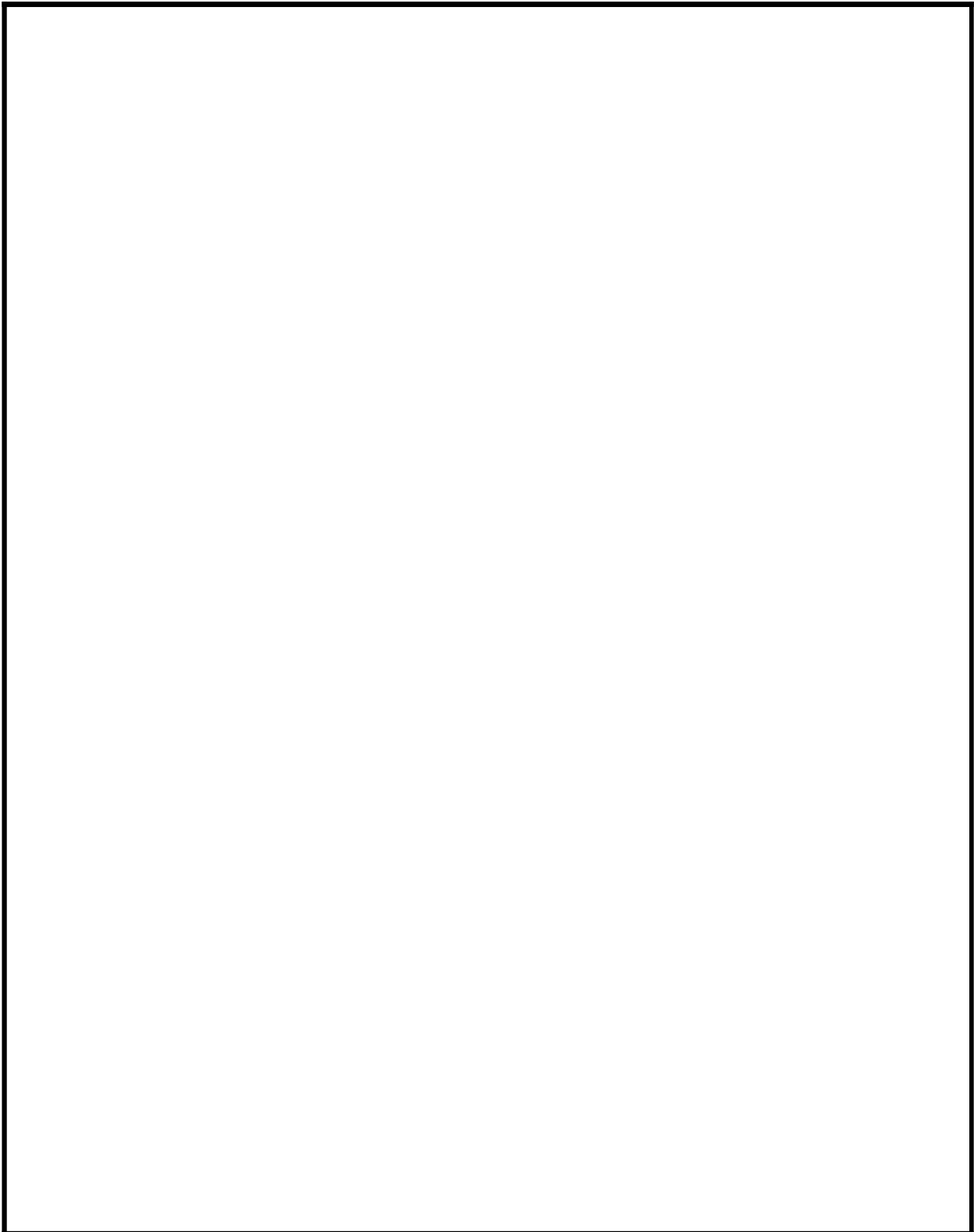


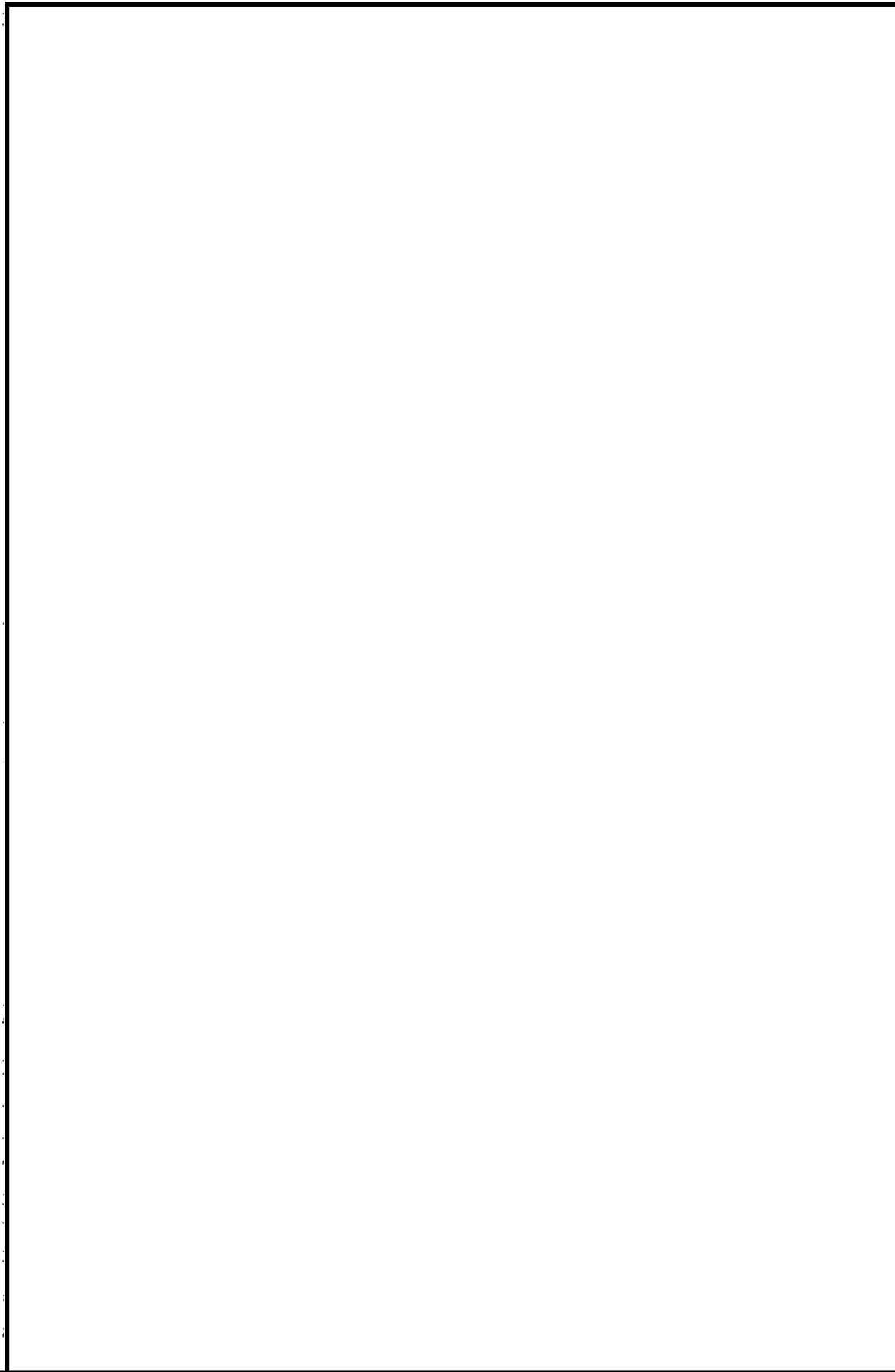


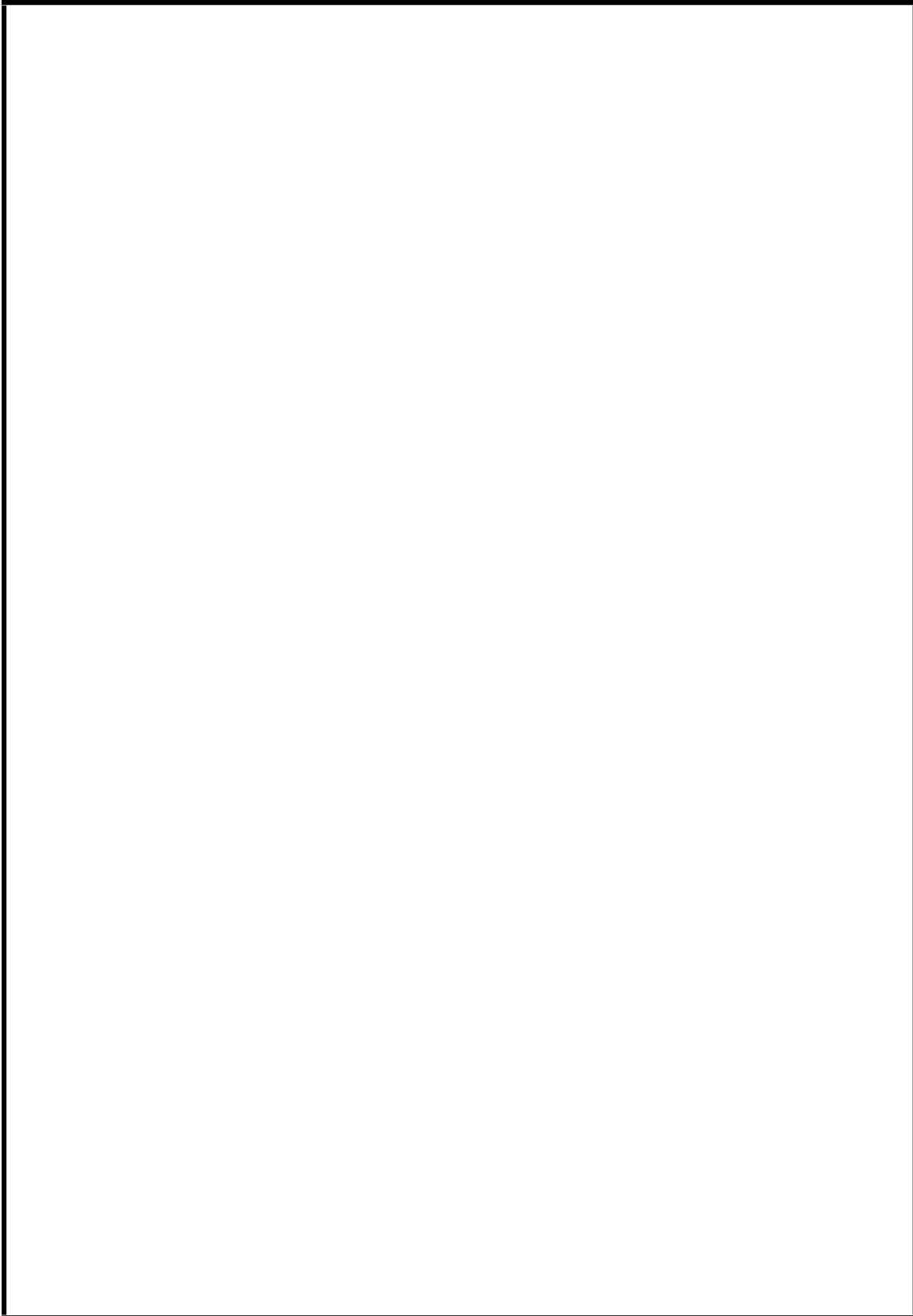
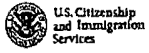


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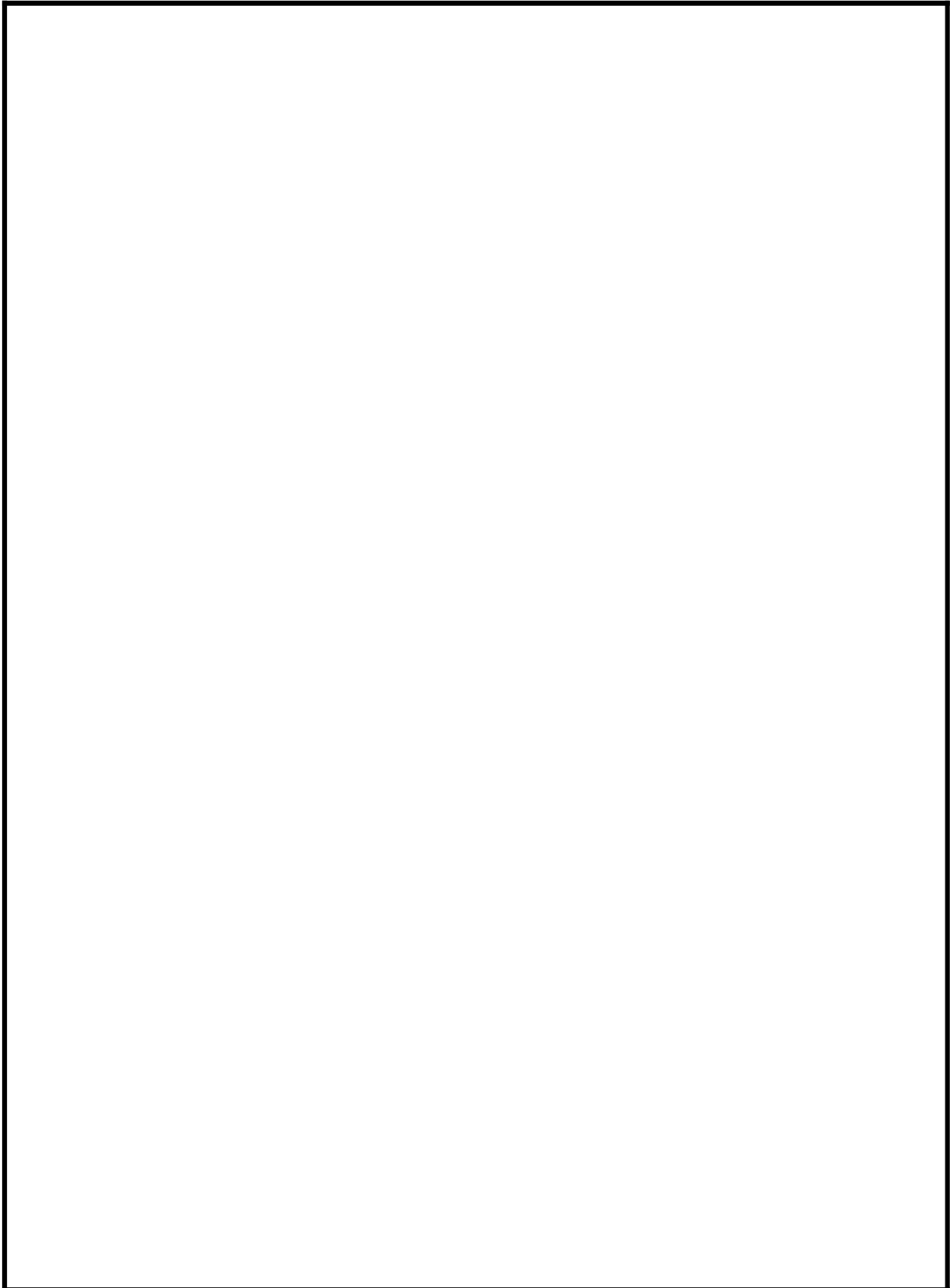


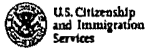
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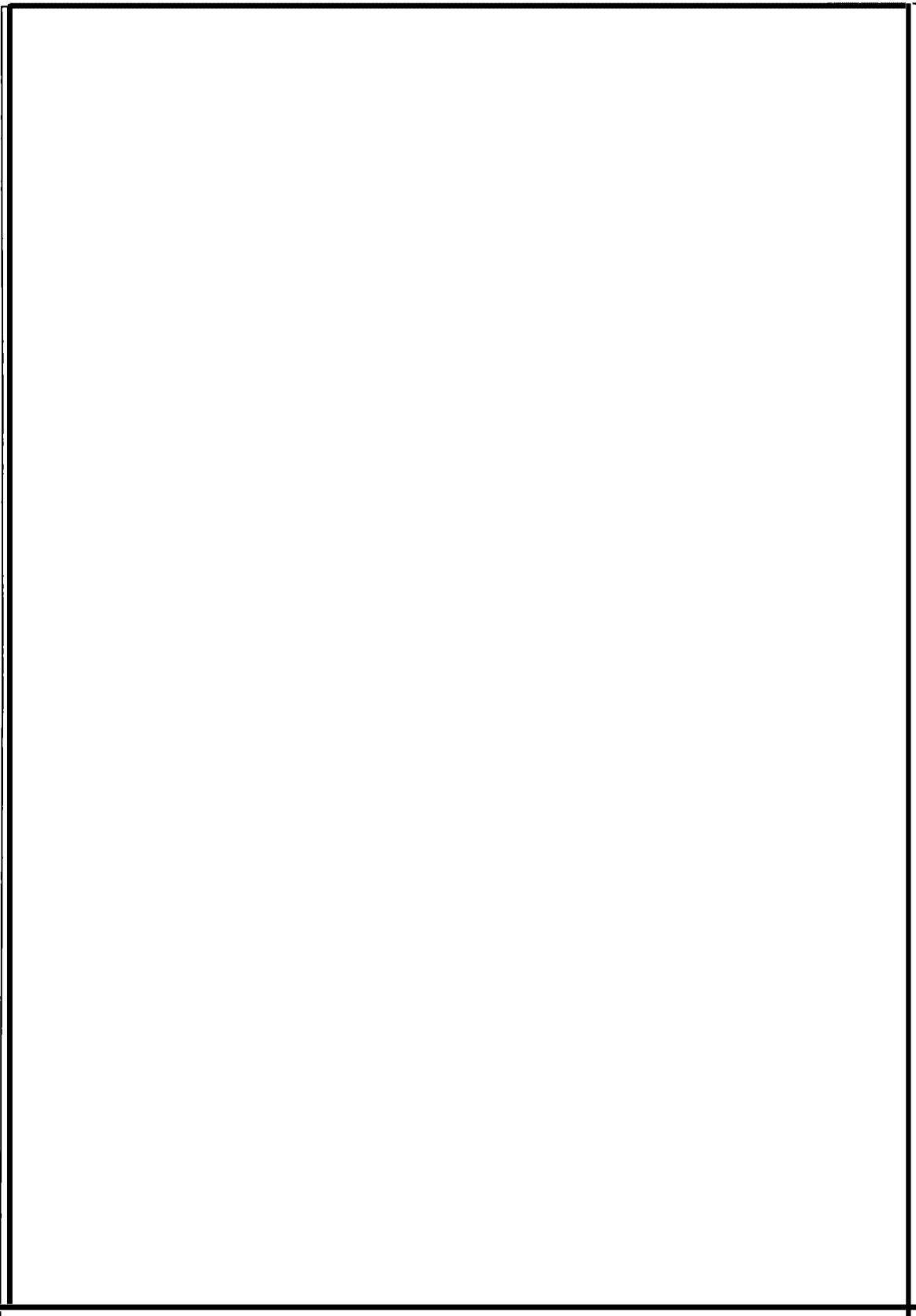
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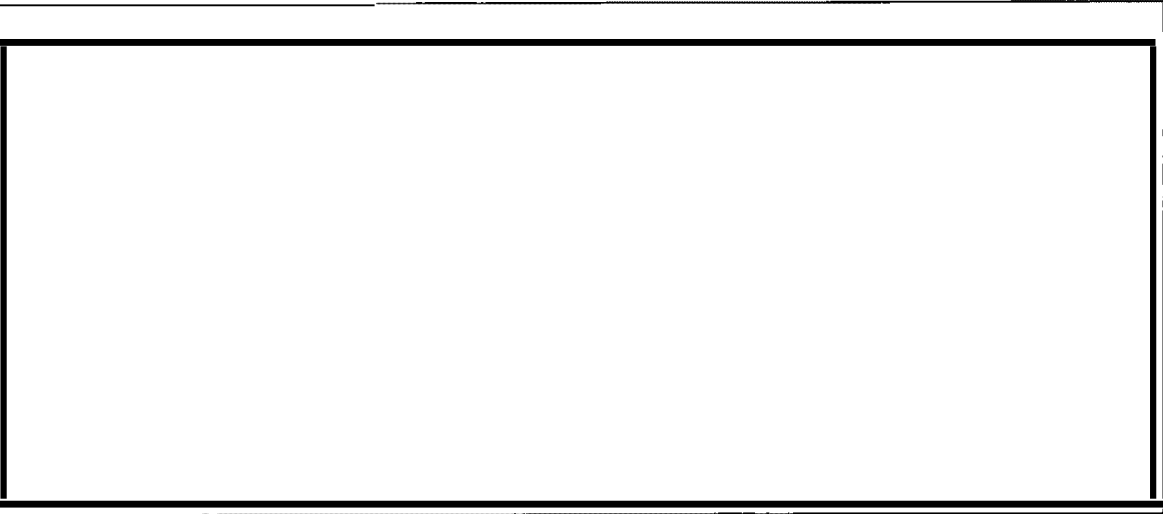




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Appendix N Privacy and Confidentiality Requirements

Overview

When conducting liaison with other government organizations, officers must be aware of and respect individual privacy rights and confidentiality requirements associated with different application types – they are not all the same.

Applicant/Beneficiary Type	Legal Provisions	Reference Material
All applicants/petitioners /beneficiaries	Privacy Act of 1974	<ul style="list-style-type: none"> - DHS Privacy Policy Guidance Memorandum Memorandum Number: 2007-1 (As amended from January 19, 2007) - DHS Handbook for Safeguarding Sensitive Personally Identifiable Information
Asylum Applicants and Asylees Individuals in credible fear and reasonable fear processes	8 C.F.R. § 208.6	<ul style="list-style-type: none"> - Confidentiality of Asylum Applications - Federal Regulations Protecting the Confidentiality of Asylum Applicants
Refugee Applicants and Refugees	By policy, 8 C.F.R. § 208.6	<ul style="list-style-type: none"> - Disclosure of Asylum-Related Information to US Intelligence and Counterterrorism Agencies signed by DHS Secretary Chertoff April 2007 - See Asylum Applicants & Asylees and Refugee Applicants & Refugees section below
Temporary Protected Status Applicants and Beneficiaries	8 USC § 1254a(c)(6) 8 C.F.R. § 244.16	See Temporary Protected Status (TPS) section below
Violence Against Women Act Applicants and Beneficiaries	8 U.S.C. § 1367 INA 101(a)(15)(T)	See Violence Against Women Act (VAWA), T and U Visas section below
Trafficking Victims ('T' visas)	8 C.F.R. § 214.11	
U Visas	INA 101(a)(15)(U) 8 C.F.R. § 214.14	
Special Agricultural Workers	8 USC § 1160(b)(5), (6) 8 CFR § 210.2(e)	<ul style="list-style-type: none"> - See Special Agricultural Workers and Legalization

		<p><u>Case below</u></p> <ul style="list-style-type: none"> – See Section 24.3 of the Adjudicator's Field Manual
Legalization	<p>8 USC § 1255A(c)(4), (5) 8 CFR § 245a.2(t), § 245a.3(n), § 245a.21, INA § 245A (c)</p>	<ul style="list-style-type: none"> – See <u>Special Agricultural Workers and Legalization Cases</u> below – See Section 24.2 of the Adjudicator's Field Manual

The FDNS – IO must be aware of and respect an individual's privacy rights and confidentiality requirements identified above and explained in more detail below. This list should not be considered exhaustive, but rather it identifies the types of files which will more commonly be seen in the course of day-to-day operations. Any questions or concerns should be directed to the employee's supervisor.

Privacy Requirements: All Applicants/Petitioners/Beneficiaries

Through the application process individuals have consented to the use of the information supplied to determine their eligibility for immigration benefits. Furthermore, by signing the application or petition, the individual certifies under penalty of perjury under the laws of the United States, that the information and evidence submitted with it is all true and correct. Taken together, these give USCIS the authority to verify the information provided; however, protections provided by the Privacy Act and other specific confidentiality provisions may limit what, with whom and how information may be shared.

As a matter of law, the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a, as amended, provides statutory privacy rights to U.S. citizens and Legal Permanent Residents (LPRs). The Privacy Act does not cover visitors or aliens. As a matter of DHS policy, any personally identifiable information (PII) that is collected, used, maintained, and/or disseminated in connection with a mixed system by DHS shall be treated as a System of Records subject to the Privacy Act regardless of whether the information pertains to a U.S. citizen, Legal Permanent Resident, visitor, or alien.

Under this policy, DHS components will handle non-U.S. person PII held in mixed systems in accordance with the fair information practices, as set forth in the Privacy Act. Non-U.S. persons have the right of access to their PII and the right to amend their records, absent an exemption under the Privacy Act; however, this policy does not extend or create a right of judicial review for non-U.S. persons. (See Memorandum dated January 07, 2009).

The Privacy Act provides privacy protections to individuals who are United States Citizens or Legal Permanent Residents. By Memorandum dated January 07, 2009, DHS extended Privacy Act protections to non-citizens. The Privacy Act provides no protections for corporations or organizations.

This means that USCIS personnel must take appropriate steps to safeguard Personally Identifiable Information (PII) when sending it within DHS networks and sharing it with third parties, including the Department of State²⁷.

Generally, USCIS employees are permitted to share Sensitive PII with other USCIS employees, DHS components and other federal government agencies on a need- to- know basis. **In all cases**, USCIS employees are required to properly safeguard the information when transmitting it.

Various methods of transport and their specific protections are listed below:

- **Email:** Officers are directed to the following link for directions on how to encrypt a file for dissemination by email: http://osi.uscis.dhs.gov/Privacy/encrypt_files.htm.
- **Fax:** If the information is to be shared by fax, the sender should alert the recipient prior to faxing so that the recipient can ensure the transmission is not left unattended.
- **Mailing Overseas:** When serviced by a military postal facility (i.e., Army Post Office/Fleet Post Office) send SENSITIVE PII materials directly to the office via the U.S. Postal Service's First Class Mail. Where the overseas office is not serviced by a military postal facility, send the SENSITIVE PII materials through the Department of State diplomatic courier.

The following sections outline additional protections which must be taken when dealing with cases involving more sensitive information.

Confidentiality: Asylum Applicants & Asylees and Refugee Applicants & Refugees

Generally, 8 C.F.R. § 208.6 prohibits the disclosure to third parties of information in or pertaining to asylum applications, credible fear determinations or reasonable fear determinations (and those of any derivatives) without the written consent of the applicant or a waiver from the Secretary of Homeland Security, unless disclosure is otherwise specifically permitted by regulation. For example, information may be provided to any U.S. Government official or contractor having a need to examine the information in connection with any U.S. government investigation concerning any criminal or civil matter. This regulation applies to asylum applications, and credible fear claims and reasonable fear claims, including requests for withholding removal. However, DHS policy extends these confidentiality provisions to refugee-related information as well.

Confidentiality is breached when information contained in or pertaining to an asylum or refugee application is disclosed in violation of the regulation, and the information disclosed is of a nature that would allow a third party to link the identity of the applicant to the fact that the applicant has applied for asylum or refugee status or facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum or refugee status.

²⁷ See the USCIS Management Directive Handling Sensitive and Non-Sensitive Personally Identifiable Information Effective September 7, 2010, Management Directive No. 140-001 and the DHS Handbook for Safeguarding Sensitive Personally Identifiable Information (Sensitive PII) for explanations of what constitutes PII and Sensitive PII.



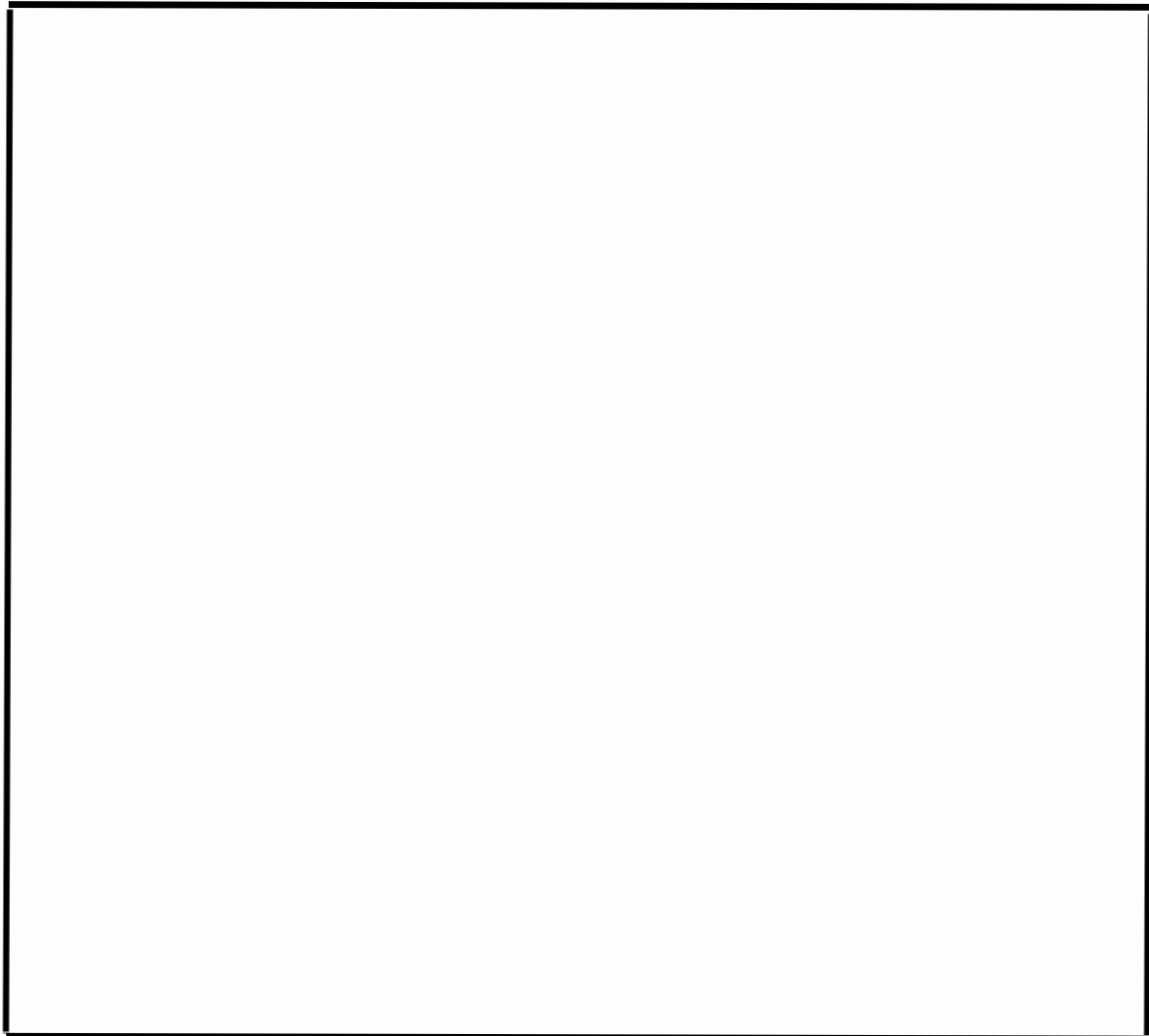
Public disclosure of such information may subject the claimant to retaliatory measures by government authorities or non-state actors in the event that the claimant is repatriated, or endanger the security of the claimant's family members or associates who may still be residing in the country of origin. Moreover, public disclosure might, albeit in rare circumstances, give rise to a plausible protection claim where one would not otherwise exist by bringing a claimant to the attention of the government authority or non-state actor.

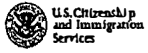
Third party sources may be contacted for inquiries about documents submitted or claims made in support of an asylum application, provided that they are not given information that would lead them to believe that the request is being made in connection with an asylum or refugee application. This is typically done in the context of Overseas Verification Requests and FDNS guidance on those procedures must be followed.

If liaison with another government official cannot be carried out in a manner that will protect the confidentiality of the asylum or refugee applicant, it must not be conducted and the requestor must be alerted to this fact.

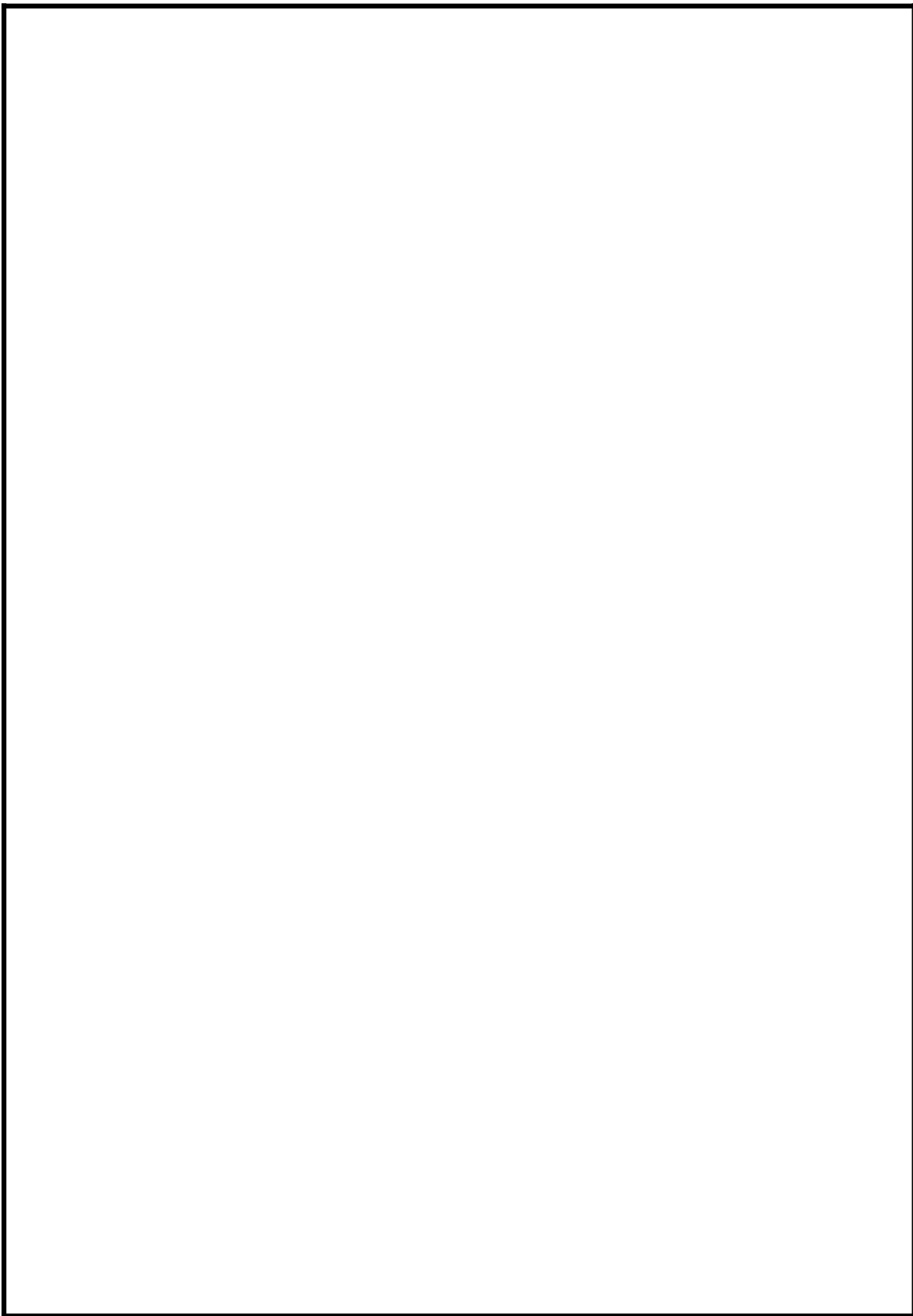
If it is deemed necessary to provide information requested by another government official, the FDNS – IO must determine whether the document is a high-risk or low-risk document.

(b)(7)(e)





(b)(7)(e)



(b)(7)(e)

Temporary Protected Status (TPS)

The confidentiality requirements for TPS applications (8 C.F.R. § 244.16) address the sharing of information with third parties. Generally, such disclosures may be made only pursuant to a court order or the written consent of the applicant. However, the regulation defines third party requestors as any requestor other than the alien, the alien's authorized representative, an officer of the Department of Justice, or any federal or state law enforcement agency. By operation of section 1512(d) of the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2310, the reference in the regulation to DOJ officers also applies to DHS officers.

Violence Against Women Act (VAWA), T and U Visas

As stated in 8 U.S.C. § 1367(a) "In general, except as provided in subsection (b) of this section, in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either such Departments) – (2) permit use by or disclosure to anyone (other than a sworn adjudicator or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) if section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (15)(U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b (B)(2)]. The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted."

In other words, verifications are generally not permissible on information relating to applicants for or beneficiaries of the benefits listed above, with the exception of back-end checks after an application is denied and all opportunities for appeal of the denial have been exhausted (e.g., a Benefit-Fraud Compliance Assessment (BFCA)). However, in certain circumstances it may be possible to carry out limited verification. If there is a question regarding the possibility of carrying out a verification of a VAWA, T or U beneficiary, please contact the Office of Chief Counsel, Refugee and Asylum Law Division, at USCIS HQ. Protected information may be encountered on form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, form I-914, *Application for T Non-Immigrant Status*, or form I-918, *Application for U Non-Immigrant Status*. Penalties for violations of the VAWA/T/U confidentiality statute include appropriate disciplinary action and civil money penalties of not more than \$5000. See 8 USC 1367(c).

Special Agricultural Workers and Legalization Cases

Sections 24.2 and 24.3 of the Adjudicator's Field Manual both state: "INS, USCIS and DHS may not use or disclose information in a legalization application or its accompanying evidence except to adjudicate the application itself, or for certain law enforcement functions and fraud proceedings. If the legalization application is granted, however, and the alien later files an immigrant visa petition or other status petition under Section 204 of the Act, INS or USCIS may use information in the legalization file in adjudicating the immigrant visa petition. This also applies to adjudicating a later naturalization application. Consult with district counsel when contemplating any use or disclosure



of this information.” See also; sections 210(b)(6), 245A(c)(4) and 245A(c)(5) of the INA; 8 C.F.R. 210.2(e) and 8 C.F.R. 245a.3(n)(4).

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Appendix O Immigration Fraud Process Maps

[Click here to access Appendix O – Immigration Fraud Process Maps.](#)

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Appendix P USCIS Delegation of Authorities

DELEGATED AUTHORITIES OF USCIS TO COMBAT BENEFIT FRAUD¹

Below is a summary of authorities delegated to USCIS. A delegation of authority to USCIS does not mean that every FDNS Officer is delegated a particular authority, nor should a delegation of authority to USCIS be interpreted as authorization to exercise a particular authority. This information is provided for informational purposes only.

The Secretary of Homeland Security is authorized to administer and enforce the immigration laws. The Secretary has complete discretion to delegate his authority to any DHS employee including USCIS employees.

8 CFR § 2.1 -- Authority of the Secretary of Homeland Security.

All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary of Homeland Security may, **in the Secretary's discretion, delegate any such authority or function to ANY official, officer, or employee** of the Department of Homeland Security, including delegation through successive re-delegation, or to any employee of the United States to the extent authorized by law. Such delegation may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion. A delegation of authority or function may in the Secretary's discretion be published in the Federal Register, but such publication is not required.

The Secretary of Homeland Security delegated to USCIS the authority to administer the immigration laws including the authority to investigate civil and criminal violations involving applications for benefits.

Delegation to the Bureau of Citizenship and Immigration Services, Department of Homeland Security Delegation Number: 0150.1, Issue Date: 06/05/2003

Following the dissolution of the INS and the creation of the Department of Homeland Security (DHS) on March 1, 2003, authority to "administer the immigration laws" was delegated to USCIS. See Delegation 0150.1(II)(H).

Authority to investigate alleged civil and criminal violations of the immigration laws, including but not limited to alleged fraud with respect to applications or determinations within the [USCIS] and make recommendations for prosecutions, or other appropriate action when deemed advisable. See Delegation 0150.1(II)(i)

¹ Prepared by HQFDNS/FDB, 8/13/09.

The Secretary of Homeland Security delegated to USCIS a wide range of investigative authorities.

Delegation to the Bureau of Citizenship and Immigration Services, Department of Homeland Security Delegation Number: 0150.1, Issue Date: 06/05/2003

The Secretary of Homeland Security (Secretary) specifically delegated to USCIS the "authority to interrogate aliens and issue subpoenas, administer oaths, take and consider evidence, and fingerprint and photograph aliens under sections 287(a), (b), and (f) of the INA, 8 U.S.C. 14576 and under 235(d) of the INA, 8 U.S.C. 1225(d)." See Delegation 0150.1(II)(S)

USCIS and ICE were granted concurrent authority to investigate benefit fraud. Through written agreement, ICE agreed to take the lead on criminal investigations. USCIS agreed to focus on detecting and combating fraud associated with applications and petitions.

Memorandum of Agreement Between USCIS and ICE on the Investigation of Immigration Benefit Fraud, September 25, 2008

In Section 2(I) of DHS Delegation Number 0150.1, Delegation to the Bureau of Citizenship and Immigration Services, and in section 2(I) of DHS Delegation Number 7030.2, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement, **USCIS and ICE received concurrent authority to investigate fraud involving immigration benefits available under the Immigration and Nationality Act (INA).**

The Secretary of Homeland Security has properly delegated authority to immigration officers including immigration officers that work for FDNS.

8 CFR § 103.1 – Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* Any immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot, [*10924] helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, chief legalization officer, supervisory legalization officer, legalization adjudicator, legalization officer and legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in § 2.1 of this chapter, or senior or supervisory officer of such employee, **is hereby**

designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

As duly appointed immigration officers, FDNS officers may interrogate or interview aliens based on the authority delegated by the Secretary of Homeland Security.

8 CFR § 287 Powers of Immigration Officers and Employees

(a) *Powers without warrant.* Any officer or employee of the Service authorized under regulations prescribed by the [Secretary] shall have power without warrant to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States

In cases involving the religious worker visa category, USCIS' personnel are specifically authorized by regulation to conduct on-site inspections. By extension, clearly the Secretary of Homeland Security has the power to delegate his authority and authorize USCIS personnel to carry out on-site inspections in similar contexts.

8 CFR § 214.2(r) Special Requirements for admission, extension, and maintenance of status.

(16) Inspections, evaluations, verifications, and compliance reviews.

The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection satisfactory completion will be a condition for approval of any petition.

FY2004 Appropriations Bill.

The Congressional Record (H9145) of October 2004, reflects Congress accommodated the Administration's request to increase the resources available for *benefit fraud enforcement*, and specifically tasked USCIS, through its Office of Fraud Detection and National Security (FDNS), responsibility for developing, implementing, directing, and overseeing the joint USCIS and ICE anti-fraud initiative.

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