



June 28, 2018

PM-602-0161

Policy Memorandum

SUBJECT: Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) When Processing a Case Involving Information Submitted by a Deferred Action for Childhood Arrivals (DACA) Requestor in Connection With a DACA Request or a DACA-Related Benefit Request (Past or Pending) or Pursuing Termination of DACA

Purpose

This Policy Memorandum (PM) confirms and clarifies which Notice to Appear (NTA) and referral policies apply: (1) to DACA requestors when processing a DACA request or DACA-related benefit request,¹ and (2) to DACA recipients when the Federal Government is seeking to terminate DACA. This PM is issued in conjunction with the memorandum titled *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, dated June 28, 2018, (General NTA PM) which is applicable to all cases before United States Citizenship and Immigration Services (USCIS), except as noted in this PM and other USCIS policy or guidance documents. This PM also provides guidance on when information submitted by a DACA requestor in connection with a DACA request or a DACA-related benefit request (past or pending) may be included in or relied upon to generate NTAs or Referrals to ICE (RTIs) in connection with the adjudication of a non-DACA-related benefit request pursuant to the General NTA PM. Finally, this PM confirms that, notwithstanding the General NTA PM, existing USCIS policy regarding the use or sharing of information provided to USCIS by DACA requestors remains in effect.

¹ DACA-related benefit request means a Form I-765, Application for Employment Authorization, or a Form I-765 WS Worksheet filed together with, or based upon the approval of, a Form I-821D, Consideration of Deferred Action for Childhood Arrivals. If applicable, it also means a Form I-131, Application for Travel Document, requesting advance parole under the standards associated with the DACA policy.

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Scope

This PM applies to and shall be used by all USCIS employees, effective immediately, unless otherwise specifically provided in this PM or other USCIS policy or guidance documents.

Authority

Immigration and Nationality Act (INA) §§ 101(a)(43), 103(a), 212, 237, 239, 240, and 242; Title 8, Code of Federal Regulations (8 CFR) §§ 2.1, 103, 236.14(c), and 239.

Background

Executive Order 13768 directs the Secretary of Homeland Security to immediately take all appropriate action to enforce our immigration laws, as they are critically important to the national security and public safety of the United States.

On February 20, 2017, the Department of Homeland Security (DHS or the Department) issued an implementation memorandum, *Enforcement of the Immigration Laws to Serve the National Interest*,² which defined immigration enforcement priorities. The memorandum sets forth guidance for all DHS personnel regarding the Department's enforcement priorities, but it specifically exempted the June 15, 2012, DACA memorandum, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*.

USCIS has legal authority under the immigration laws³ to issue a Form I-862, Notice to Appear, which is thereafter filed with the Immigration Court to commence removal proceedings.⁴ This PM confirms and clarifies which policy guidance USCIS will use: (1) to determine whether to generate RTIs or issue NTAs when processing any DACA or DACA-related requests or when processing non-DACA-related immigration benefit requests, where USCIS seeks to include or rely on information submitted by a DACA requestor in connection with a DACA request or a DACA-related benefit request to generate an NTA or RTI, or (2) when the Federal Government is seeking to terminate DACA.

² See https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf

³ See, e.g., INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1.

⁴ *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, international District Directors and officers are not authorized to issue NTAs.

Policy

Referrals to ICE and NTA Issuance

Notwithstanding the issuance of the PM titled *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, when (1) processing an initial or renewal DACA request or DACA-related benefit request or (2) processing a DACA recipient for possible termination of DACA, USCIS will continue to follow the existing DACA information-sharing policy⁵ regarding any information provided in a DACA request or DACA-related benefit request.

Consistent with that policy, which has been in effect since June 2012, and notwithstanding the General NTA PM, adjudicators must continue to refer to PM 602-0050, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*,⁶ dated November 7, 2011, to determine whether an RTI or NTA should be issued in such cases.

Similarly, when processing a non-DACA-related application, petition, or request, adjudicators must refer to PM 602-0050 to determine whether any information submitted by a DACA requestor in connection with a DACA request or a DACA-related benefit request (past or pending) may be included in or relied upon to generate NTAs or RTIs, pursuant to the General NTA PM. If inclusion or reliance on such information would not be consistent with the existing DACA information-sharing policy, and there is otherwise insufficient evidence upon which to issue an RTI or NTA under the General NTA PM, then the adjudicator may not pursue the RTI or NTA at that time.

Information-Sharing Policy

Nothing in this PM, which is being issued solely for purposes of clarity and guidance, reflects any change to existing USCIS policy regarding the use or sharing of information provided by DACA requestors. To the extent there is any actual or perceived inconsistency between this memorandum and existing USCIS policy regarding the use or sharing of information provided by DACA requestors, USCIS employees should follow the existing USCIS information policy.

⁵ See FAQ 19 and 20 at <https://www.uscis.gov/archive/frequently-asked-questions> (last accessed May 24, 2018). As of the date of this memorandum, the policy stated in FAQ 19 remains in effect in its entirety, with the exception of the language “may be modified, superseded, or rescinded at any time without notice,” which has been enjoined by a federal court. See *CASA de Maryland v. DHS*, No. 17-cv-2942-RWT (D. Md. Mar. 15, 2018), ECF No. 49, Amended Order.

⁶ USCIS will archive the November 7, 2011 NTA guidance for this purpose.

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Implementation

Refer to operational guidance for specific processing of cases in accordance with this PM.

Use

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

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Service Center Operations Directorate.