



USCIS Issues New NTA Guidance Memo

March 2025

On Feb. 28, 2025, U.S. Citizenship and Immigration Services (USCIS) issued a [policy memorandum](#) titled “Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.” The memo closely mirrors the [June 2018 NTA Guidance](#) from the first Trump administration that expanded situations where USCIS was directed to issue NTAs against individuals applying for immigration benefits. With the return to this policy, more individuals are likely to be placed into removal proceedings, which will further contribute to the already overburdened immigration court system.

Key points from the 2025 memo for practitioners:

1. **Criminal Offenses:** USCIS will issue an NTA against removable noncitizens if they have been arrested, charged with, or convicted of a criminal offense and their immigration benefit application is denied *or* withdrawn. In certain situations, USCIS will refer the matter to Immigration and Customs Enforcement (ICE) rather than issue an NTA.
2. **Fraud or Misrepresentation:** USCIS will issue an NTA in cases presenting substantiated fraud or material misrepresentation, even if the petition or application is denied due to lack of prosecution, abandonment, or withdrawal.
3. **Temporary Protected Status (TPS):** USCIS will generally issue an NTA if it denies an initial or re-registration TPS application, or if the application is withdrawn, and the applicant has no other lawful status or authorization to remain in the United States. If the Department of Homeland Security (DHS) Secretary terminates a country’s TPS designation, and the former TPS recipient has no other legal status or authorization to remain in the United States, USCIS “should coordinate with ICE and Customs and Border Protection (CBP) regarding the appropriate timing of any NTA issuances to former TPS beneficiaries after the country’s TPS designation ends.”
4. **Lack of Lawful Status:** USCIS will issue an NTA if an application, petition, or benefit request is denied, and the noncitizen is not lawfully present in the United States. There are *no* protections for beneficiaries of survivor-based benefits such as U visas, T visas, or the Violence Against Women Act (VAWA). However, USCIS must follow the confidentiality provisions at 8 USC § 1367.
5. **Naturalization:** USCIS will issue an NTA if it determines a naturalization applicant was inadmissible at the time of adjustment or admission to the United States.

This policy memo does *not* apply to or change NTA-related procedures involving Deferred Action for Childhood Arrivals (DACA), as the regulations provide special protections to DACA recipients.

CLINIC Analysis:

A return to the 2018 policy means that practitioners must carefully assess each case at the start of representation. This policy does not mean that clients should not apply for benefits with USCIS; there is risk in *not* filing applications for available benefits as well. It simply means that clients must be informed as to the risks and benefits and make an informed decision on how they wish to proceed. Practitioners must ensure that clients are statutorily eligible for the relief they seek before filing any application with USCIS. It is crucial to ensure applications contain all necessary supporting documentation, as failure to include a critical piece of evidence (such as a birth certificate, medical exam, or passport copy) could result in the denial of a benefit and a referral to immigration court. Finally, practitioners must make it a regular practice to file [USCIS FOIA requests](#) prior to filing benefits applications before USCIS, particularly for naturalization clients, as USCIS will be reviewing whether the underlying lawful permanent resident status was properly granted.

A pre-filing discussion with a client at risk of removal should include the following points:

- A review of the potential benefits of pursuing the application or petition, including the prospect of obtaining permanent legal status if the application is approved.
- A careful review of risks involved, particularly the likelihood of a referral to immigration court if the application or petition is denied.
- A discussion to clarify whether the practitioner will represent the client if removal proceedings are initiated against the client. Many nonprofit practitioners are partially accredited representatives and thus not authorized to practice in immigration court. If this is the case, clients must be informed that they will need to seek alternate legal representation if issued an NTA.
- The practitioner should ensure that the client fully understands the information presented and is able to make an informed decision. It is best practice to document this discussion in writing and have it signed by the client, either as part of the retainer agreement or as a separate informed consent document. Please see sample below.

**DRAFT Informed Consent Document for Individuals Subject to NTA Issuance under
February 2025 USCIS Guidance (non-DACA-related applications)¹**

On _____, I, _____, met with my lawyer/representative, _____, and we discussed the following:

1. I am eligible to apply for _____ with U.S. Citizenship & Immigration Services (USCIS).
2. USCIS issued a policy in February 2025 that discusses when noncitizens who apply for immigration benefits with USCIS will be placed into removal proceedings (or issued a “Notice to Appear” in removal proceedings). The guidelines suggest that most individuals who are removable and are denied benefits will be placed into removal proceedings.

“Removal proceedings” are the legal process the U.S. government uses to try to remove (deport) a noncitizen from the United States. These proceedings happen in an immigration court, where an Immigration Judge makes the final decision. The process can take a long time, often many months or years, and can include several hearings. Some people may be detained by the Immigration & Customs Enforcement (ICE) during removal proceedings, which can make the removal process go much faster. During removal proceedings, the noncitizen can either agree to leave the U.S. or challenge the removal. Whether an individual can win a removal case and be able to stay in the United States depends on the case. Options for staying in the U.S. may include contesting the charges or admitting the charges are true but applying for some kind of immigration benefit to remain in the U.S., such as adjustment to permanent resident status or cancellation of removal.

3. My lawyer/representative explained how the USCIS policy could apply to my case:

¹ Note to practitioner: ensure that the client is amenable to § 240 proceedings as opposed to some more summary procedure in which case a different risk assessment and advisal should occur. Examples include expedited removal (for those who entered within the past two years *or* who entered on parole at any time), reinstatement of removal, execution of a previously unexecuted order, and § 238(b) removal for non-LPRs with aggravated felonies. Note also that this advisal does not include statutorily or regulatorily mandated NTA issuance, such as for asylum referrals.

4. My lawyer/representative discussed the **risks** of filing the application. These risks include (check all that apply):
- I could be placed into removal proceedings. If I were placed into removal proceedings, I might have the following options to fight my case in court: _____
 - If placed into removal proceedings, I could be detained. If I were detained, I might be placed in:
 - Mandatory detention. This means that I would not be eligible for bond during proceedings.
 - “Discretionary” detention. This means I could seek a bond. My lawyer/representative discussed bond factors with me.
5. My lawyer/representative and I discussed the benefits of filing the application. These include:
- My application could be approved without any referral to ICE or NTA.
 - If approved, I would have the following status: _____
 - Benefits associated with this status (immediate and long-term): _____
 - Other benefits/reasons to proceed: _____
(include discussion of preserving time-limited relief if applicable)
6. I understand that my lawyer/representative cannot guarantee any outcome in my case. We cannot predict with certainty whether USCIS will approve my application. We also cannot predict whether I will be placed in removal proceedings if my application is not approved. Additionally, we cannot predict if I would be detained, or how much any bond would be. If I am placed into removal proceedings, there is no guarantee that an immigration judge would rule in my favor. I also understand that there is no guarantee that I won’t be placed into removal proceedings if I don’t apply. In other words, it is possible that ICE could put me into removal proceedings at any time, even if I don’t file this application with USCIS.
7. If I were placed into removal proceedings, my lawyer/representative **WOULD / WOULD NOT** represent me. [If no: I understand that it is my responsibility to find a lawyer or representative for any removal case if I want representation]

I understand the above information. My lawyer/representative has answered any questions that I have about the above information. I understand the risks and benefits of filing an application for _____ . Having been advised of the above, I choose:

- To file an application for _____ with USCIS.

Articulated reasons: _____

Legal self-defense plan:

- Keep in regular contact with my lawyer/representative.

- Notify my lawyer/representative immediately of any changes in my life that may affect my application or eligibility for immigration relief (e.g. change in marital status, an arrest, or becoming a crime-victim).
- Keep my address and phone number current.
- Review know-your-rights materials.
- Plan ahead for possible removal proceedings and bond.
- Other steps: _____

Not to file an application for _____ with USCIS at this time.

Articulated reasons: _____

Name