OOD
PM 24-01

Effective 30 days after the date
of issuance of this memorandum

To: All of EOIR
From: Mary Cheng, Acting Director
Date: August 22, 2024

MARY CHENG

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UPDATED GUIDANCE FOR RECEIPT OF NOTICES TO APPEAR FILED BY THE DEPARTMENT OF HOMELAND SECURITY

PURPOSE:	Provide updated standards regarding receipt of Notices to Appear filed by the Department of Homeland Security.
OWNER:	Office of the Director.
AUTHORITY:	8 C.F.R. § 1003.0(b)(1); 8 C.F.R. § 1003.14(a).
CANCELLATION:	Policy Memorandum 19-08, *Acceptance of Notices to Appear and Use of the Interactive Scheduling System.*

This Policy Memorandum provides updated standards to Executive Office for Immigration Review (EOIR) adjudicators and personnel regarding the receipt of Notices to Appear (NTAs) filed by the Department of Homeland Security (DHS). This Policy Memorandum supersedes and rescinds Policy Memorandum 19-08, *Acceptance of Notices to Appear and Use of the Interactive Scheduling System*.

I. Failure to Prosecute and Filing of Notices to Appear

To initiate removal proceedings, a component of the Department of Homeland Security (DHS) (*e.g.*, U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), or U.S. Immigration and Customs Enforcement (ICE)) must first prepare and serve an individual with an NTA alleging that person's removability from the United States. After the Supreme Court's decision in *Pereira v. Sessions*, 585 U.S. 198 (2018), this first step has involved obtaining a time and date of the initial hearing and recording that information on the NTA. Specifically, since that time, DHS has been provided access to EOIR's Interactive Scheduling System (ISS), which allows DHS to schedule initial master calendar hearings on EOIR's dockets at the time the NTA is being issued, and to reflect that date and time on the NTA.

Once the hearing date and time is obtained and recorded and DHS serves the NTA on the individual, DHS must file that NTA with an immigration court. Critically, jurisdiction with the court does not vest until the NTA is filed. 8 C.F.R. § 1003.14(a). If DHS fails to file the NTA by

the time and date of the hearing, the immigration court does not have jurisdiction over the case under 8 C.F.R. § 1003.14(a) and the hearing cannot occur; therefore, EOIR is required to deem the case a failure to prosecute (FTP).

Because EOIR does not receive advance notice of whether the NTA will be filed, that hearing slot cannot be utilized if DHS does not file an NTA. Moreover, if an NTA is not filed by the day of the hearing, a noncitizen will not only be declined their day in court, but the empty hearing slot delays adjudication of other cases that could have been heard at that time.

The number of FTPs has significantly increased since DHS obtained access to ISS in 2018. These lost hearing slots have a significant impact on EOIR's ability to address its growing backlog. Additionally, many NTAs are filed close in time to the hearing and result in a continuance due to the late filing, which often precludes EOIR from being able to reschedule another case that is ready to proceed into that hearing slot.

As the use of ISS and the volume of new NTAs have increased, the magnitude of this problem has grown. In response, new technology has been developed and implemented which allows DHS to file the NTA and schedule the hearing simultaneously. Consequently, because of this additional technology and the need for advanced filing of NTAs to allow IJs to manage their dockets, EOIR is updating its policy to require DHS to file NTAs closer in time to service, rather than at or just before the scheduled hearing.

II. Standards Regarding Receipt of Notices to Appear

Specifically, although EOIR previously allowed DHS to file NTAs with the immigration court up until the date and time of the hearing, such a policy is no longer feasible due to the extremely high volume of NTAs the immigration courts receive and must process, the high volume of cases without filed NTAs that encumber hearing slots, and the resulting number of FTPs.[1] Even if a case does not result in a FTP, when NTAs are filed with the immigration court close in time to the hearing, hearings often must be rescheduled due to insufficient time to process the NTA or for the noncitizen to prepare for the hearing itself. Not only does this waste the hearing slots that must be rescheduled, but it also encumbers future hearing slots, contributes to the immigration court's backlog, and results in EOIR's docket being pushed further out. This is compounded by the high volume of scheduled cases that take up hearing slots that are not utilized. Additionally, EOIR cannot accept filings—including a change of venue motion, an application for relief, or a notice of appearance—until it obtains jurisdiction when the NTA is filed.

[1] The volume of new cases filed by DHS each month has more than quadrupled since 2018, increasing from approximately 26,345 per month in FY 2018 to over 100,000 per month as of FY24 Q3 (June 30, 2024).

Therefore, EOIR is amending its FTP policy to address the pending caseload, promote hearing date certainty, recoup unused hearing slots, and provide noncitizens the ability to file pleadings with EOIR prior to their hearing. This will allow for appropriate time in advance for immigration judges to consider and act on any pleadings or prepare to consider any applications, resulting in more efficient use of actual court time.

For any non-detained case in which DHS does not file the NTA with the immigration court within 120 calendar days after scheduling the case,[2] EOIR will classify that as a FTP.[3] EOIR will also reject the NTA if there is an attempt to file it more than 120 calendar days after scheduling the case. This change will apply to all NTAs issued and scheduled by DHS 30 days after the date of the issuance of this memorandum. Additionally, EOIR will apply the following standards for NTAs that were issued prior to the date of the issuance of this memorandum and have not yet been filed: If the hearing is scheduled between the effective date of this memorandum and December 31, 2025, the NTA must be filed by close of business on March 31, 2025, and if the hearing is scheduled on or after January 1, 2026, the NTA must be filed by June 30, 2025; otherwise, EOIR will classify the case as a FTP. This will allow EOIR time to repurpose the unused hearing slots and ensure that new cases can be scheduled in those time slots so all cases can be heard in a timely manner. Overall, this will increase efficiency, reduce pending case adjudication times, allow noncitizens to file documents with the immigration courts after they are served with an NTA, and allow EOIR to provide (and DHS to schedule) earlier hearing dates.

Finally, EOIR will continue to reject any NTA in which the time or date of the scheduled hearing is facially incorrect (for example, the hearing is scheduled on a weekend or holiday or at a time when the court is not open). A rejected NTA must be re-filed in order to initiate proceedings, and if DHS reschedules the case, the 120-calendar-day period will begin to run on the day the case was rescheduled.[4]

Please contact your supervisor if you have questions.[5]

[2] For purposes of calculating the 120 days, the day the case was scheduled shall count as "day 1."
[3] If DHS cancels the NTA but subsequently re-initiates proceedings with a new NTA and schedules a new hearing date and time, the 120 days shall be calculated from the day the case was rescheduled.
[4] This memorandum does not apply to any NTA that was rejected prior to the effective date of this memorandum.
[5] Nothing in this memorandum shall be construed as mandating a particular outcome in a particular case. This memorandum 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 in equity by any party against the United States; its departments, agencies, or entities; its officers, employees, or agents; or any other person.