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Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

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MEMORANDUM FOR DISTRIBUTION LIST

FROM: Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Supplemental NSEERS Guidance for Call-in Registrants

The purpose of this memorandum is to provide further guidance to Service officers in determining appropriate action for aliens who are subject to call-in registration pursuant to National Security Entry Exit Registration System (NSEERS) requirements. This guidance expands and clarifies existing policy contained in the November 21, 2002 memorandum issued by the Office of Field Operations titled *Registration of Certain Nonimmigrant Aliens Already Admitted to the United States* (November 21 memorandum).

This memorandum addresses three principal points. First, it will give guidance about indices checks for call-in registrants. Second, it will provide general guidance on exercising prosecutorial discretion and issuing Notices To Appear (NTAs) in cases of call-in registrants. Third, it will reiterate outstanding guidance on late registration pursuant to the November 21 memorandum.

This memorandum does not address the process within district offices for referring cases to enforcement officers for further review and possible action. Each office should have established procedures for such referrals. Such local practices reflect, among other factors, variables in resources and demands upon those resources. Nothing contained herein seeks to redefine previously determined roles and responsibilities, nor should this be interpreted as changing local office cooperative efforts. This memorandum is intended solely as internal guidance and does not create any rights or liberty interests for any aliens.

1) Indices checks for call-in registrants

Commencing immediately, indices checks for call-in NSEERS registrants will be conducted pursuant to the guidance contained in this memorandum. This guidance expands the guidance contained in the November 21 memorandum.

Appearance for Registration. Upon initial encounter of a call-in NSEERS registrant, the following indices checks must be performed by registration officers who conduct enrollments of registrants:

- Interagency Border Inspection System (IBIS);
- Central Index System (CIS);
- Computer Linked Application Information Management System (CLAIMS);
- Deportable Alien Control System (DACS).

IDENT checks are performed as part of NSEERS registration. IBIS and IDENT hits should be resolved in accordance with the November 21 memorandum. Officers are reminded that CIS and IDENT contain "pointers" to other indices, including NAILS, NCIC, and DACS that should alert to additional databases sources to be checked as part of the registration process. Screen prints from database checks should be sent along with any referral for enforcement processing.

Referral to Enforcement. If a registrant is referred to an enforcement officer for further review, the enforcement officer must perform the following additional record checks:

- Confirm accuracy of previous checks;
- National Crime Information Center (NCIC) criminal history;
- Criminal Investigative Reporting System (CIRS);

Initiation of Removal Proceedings/Custody Decisions/Risk Assessment. In most cases, the first two series of indices checks should provide sufficient information to decide whether to initiate removal proceedings and make a determination about custody and/or release. If negative information, or other grounds for reasonable suspicion are developed, a final series of manual third agency checks are available that may be requested through the Joint Terrorism Task Force (JTTF). They are:

- NCIC Violent Gang Terrorism Organization File (VIGTOF);
- FBI Automated Case System (ACS);
- Foreign Terrorist Tracking Task Force (FTTTF);
- Counter-Terrorism Link (CT-LINK).

The December 20, 2001, memorandum issued by the Office of Field Operations, titled *Criminal Indices Checks*, enumerates the specific records checks to be completed prior to releasing a subject from INS custody. These checks apply to aliens placed in INS removal proceedings, including aliens who are released on bond or on recognizance. This policy has not changed.

2) Exercising Prosecutorial Discretion, Issuance of Notices To Appear, and Custody Determinations

Call-in registrants who appear and are found to be in the United States unlawfully will present a variety of facts and circumstances. Decisions with respect to the appropriate disposition of those cases must be made on a case-by-case basis giving careful consideration to the totality of the facts and circumstances of a particular situation. As a general rule, NTAs should be served upon those individuals who are found to be in unlawful status subject to the proper exercise of prosecutorial

discretion. Service policy on exercising prosecutorial discretion is contained in a November 17, 2000, memorandum issued by the Commissioner entitled *Exercising Prosecutorial Discretion* and is found at Appendix 14-6 to the Special Agent's Field Manual.

When an alien is served an NTA, that alien must receive a custody determination within the time period described in 8 CFR 287.3(d). Custody determinations remain within the complete discretion of District Directors and Chief Patrol Agents. The totality of circumstances of each case should form the basis for the determination. Custody determinations should be based on outstanding policy, procedure, guidance, and standard criteria of whether an individual presents a danger to the community, security risk, or a risk to abscond. Guidance that will assist in making custody decisions is contained in the November 21 memorandum which supplements the general guidance of the October 7, 1998, policy memorandum from the Executive Associate Commissioner for Field Operations, *Detention Guidelines Effective October 9, 1998* (1998 Detention Guidelines).

The following is general guidance that should be considered when making determinations as to the disposition of cases of call-in registrants in certain situations. The situations described are not intended to be all-inclusive or dispositive as guidance, but rather are intended to present several scenarios and the possible outcomes.

Registrants in Unlawful Status with Applications for Benefits Pending. Call-in registrants who are not in lawful status may request or apply for benefits that, upon approval, would provide valid immigration status or relief from removal, such as adjustment of status (I-485), asylum (I-589), extension of temporary stay, reinstatement to nonimmigrant status, or temporary protected status. The mere filing of an application for benefits does not in and of itself mean that an NTA should not be issued. However, the exercise of prosecutorial discretion may ordinarily be considered by the registering officer if a call-in registrant has a currently filed request or application for a benefit, appears to be immediately and prima facie eligible for the benefit sought, and if no adverse or disqualifying information is developed through indices checks or other sources. If prosecutorial discretion is exercised in favor of the alien and no NTA is issued, registration may be completed and the request or application for the benefit adjudicated in the normal course of processing without referral to an enforcement officer. If the request or application is ultimately denied, removal proceedings should ordinarily be initiated. When an NTA is issued, the availability of relief should be taken into account in making custody determinations, per existing practice.

Registrants in Unlawful Status Who are Beneficiaries of Pending or Approved Visa Petitions and/or Labor Certification Applications. Call-in registrants who are beneficiaries of pending or approved immigrant visa petitions and/or labor certification applications, but who have not filed for adjustment of status (whether or not they may be immediately eligible for a benefit) and are not maintaining lawful nonimmigrant status should ordinarily be processed for removal, issued an NTA, and a custody determination made. This includes registrants who may have a claim to a prospective benefit pursuant to the Immigration and Nationality Act, including but not limited to Section 245(i). In cases presenting these or similar circumstances, the facts supporting the immigrant visa petition and/or labor certification application may be useful in making a custody determination.

Registrants in Unlawful Status with No Apparent Relief Available. Registrants who are in the United States unlawfully and who appear to be ineligible for any form of relief that would permanently or temporarily regularize their status in the United States receive consideration on a case by case basis, but should ordinarily be processed for removal, issued an NTA, and a custody determination made. Registrants who have been convicted of crimes disqualifying them from eligibility from the benefit sought should ordinarily be placed in removal proceedings.

The totality of these and other circumstances present should be taken into account in making decisions as to the disposition of a particular case. The November 21 memorandum remains in effect as supplemented and clarified by this and future memoranda. District Directors and Chief Patrol Agents should ensure that all service officers making determinations concerning call-in registrants have received and read or re-read the November 21 memorandum for a clearer understanding of outstanding policies. This memorandum is meant to reinforce the guidance contained in the November 21 memorandum as well as highlight some of the issues that have arisen since its initial issuance. Familiarity with the November 21 memorandum and this memorandum should enable officers to effectively and efficiently decide issues relating to the disposition of cases involving call-in registrants.

3) General Guidance Concerning Late Registration/Failure to Register

The November 21 memorandum provided the following guidance:

"If the evidence [provided by the alien] establishes that the failure to comply with the FR Notice by December 16, 2002 [and subsequently published dates] was reasonably excusable or not willful, the alien may be allowed to register late. If the evidence does not adequately support the alien's claim that the failure to apply for special registration by December 16, 2002 [and subsequently published dates] was reasonably excusable or not willful, the alien should be referred to Investigations for initiation of removal proceedings (or processed for removal or withdrawal at a POE when the alien applies for admission in the future)."

This guidance is straightforward and remains in effect. It essentially states that if a call-in registrant presents a reasonable excuse for appearing late, is currently maintaining a lawful nonimmigrant status (other than appearing late for registration), and no derogatory information is developed through indices checks or other sources, then registration should be permitted with no other adverse consequences. This guidance is effective for late registrants appearing at district and sub-offices and for individuals who have failed to register and are encountered in the field, such as at worksites or at Border Patrol checkpoints. See the November 21 memorandum for further guidance in connection with late registration or failure to register issues.

Questions concerning this guidance may be directed through channels to John Torres at (202) 307-6670 for Enforcement issues or Leonard Gradowski at (202) 307-0208 for Benefits issues.