



PRACTICE ADVISORY¹

June 2014

NOTICES TO APPEAR: LEGAL CHALLENGES AND STRATEGIES

The Notice to Appear (“NTA”)² is the charging document issued by an authorized agent of the United States Department of Homeland Security (“DHS”) to persons who will face removal in adversarial proceedings.³ Once an NTA is filed with the Executive Office for Immigration Review (“EOIR” or “immigration court”), jurisdiction vests with the immigration court and noncitizens enter into proceedings that will determine whether they may be removed from the United States.⁴

This practice advisory provides guidance regarding NTAs to attorneys representing noncitizens who: 1) likely will be issued an NTA; 2) have been issued an NTA which has not yet been filed with EOIR; or 3) have been issued an NTA which has been filed with EOIR. The advisory provides an overview of the legal requirements for an NTA and strategies available to attorneys to cancel, mitigate, or challenge the contents of the NTA. It also sets forth scenarios when it might be beneficial to petition the government to issue an NTA against a noncitizen. In addition to presenting possible legal and procedural arguments, the advisory presents possible strategies for attorneys wishing to seek prosecutorial discretion in connection with NTA issuance and filing.

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² Following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, former exclusion and deportation proceedings were merged into removal proceedings and the prior charging document, titled an Order to Show Cause, was replaced with the Notice to Appear. *See Vartelas v. Holder*, 132 S.Ct. 1479, 1480-81 (2012).

³ *See* INA § 239.

⁴ 8 C.F.R. § 1003.14(a) (2014); 8 C.F.R. § 1239.1 (2014); *see also* INA § 240 (2012).

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