

# Determining When a Case Requires BCU Handling (Continued)

## For Cases Indicating Criminal Issues (cont.)

If the requestor answered "Yes" to criminality questions on his/her DACA request then:

If...	Then...
There is clear derogatory information provided by the requestor and/or in our records;	Case is handled by the BCU DACA Team.
No derogatory information can be found in our records or it is unclear, and the requestor did not provide any additional information or documentation;	



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# Handling DACA Cases with Public Safety Concerns

## Criminal Cases with EPS Concerns

If the BCU determines the case presents issues of criminality, processing of the DACA request must be categorized as either EPS or non-EPS.

- Criminal cases determined to be Non-EPS are handled and adjudicated by the BCU DACA Team.
- Criminal cases determined to be EPS are handled by the BCU DACA Team. The BCU DACA Team shall refer the case to ICE prior to adjudicating the case, even if USCIS can deny the DACA request on its merits. If ICE does not accept the referral, the BCU will adjudicate the case.



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# Handling Cases Involving NS Concerns (Continued)

If the requestor answered "Yes" to questions on the I-821D related to NS issues of violent crimes, terrorism, human rights violations, persecution of others, etc. then:

If...	Then...
No derogatory information provided by the requestor and/or no records	The case will go through the CA & R process as a standard process
No derogatory information can be found in records and the requestor can provide information	

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## Handling Cases Indicating Possible Gang Membership / Activity (Continued)

If the requestor disclosed issues indicating gang membership on his/her I-821D, then:

If...	Then...
There is clear derogatory information provided by the requestor and/or in our records,	Case is handled by the BCU DACA Team.
No derogatory information can be found in our records or it is unclear and the requestor did not provide information,	



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## When Supervisory Review is Required for Denials Involving Issues of Criminality, Public Safety, or National Security

Denials due to the following issues of criminality require supervisory review:

- Conviction for any crime committed before reaching age 18, and was tried as an adult; or
- Conviction for a “significant misdemeanor;” or
- No criminal convictions and outwardly appears to meet the guidelines in the Secretary’s June 15, 2012 memorandum; however, based on other derogatory information obtained through routine systems and background/security checks, there are credible reasons to believe that the requestor poses a threat to national security or public safety. In these instances the officer should refer the proposed denial for supervisory review after the case has been processed through the CARRP process.

**NOTE:** These are not the only denials that require supervisory review. The full list is discussed in the Decisions module.



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# IX. Fraud and Misrepresentation



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## Module Objective

- Understand how to detect potential fraud in the DACA context and when to refer to CFDO for further research and evaluation.
- Identify what work product you can expect from the CFDO.
- Describe the purpose of the Intelligence Compass.



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# Fraud Review and Fraud Referrals

In the normal course of adjudication, officers should be aware of potential fraud indicators.

Fraud encompasses any material representation or omission, accompanied by an intent to deceive.

Fraud-related concerns should be addressed according to the March 2011 Fraud Detection SOP and the 2008 ICE/USCIS Investigation of Immigration Benefit Fraud MOA.



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## Fraud Review and Fraud Referrals (Continued)

In the immigration context, fraud is a willful misrepresentation of a material fact. An omission of a material fact can also constitute a willful misrepresentation, rising to the level of fraud.

When reviewing an immigration request, a finding of fraud is generally supported the by presence of the following three elements.

1. There must have been a misrepresentation or concealment of a fact;
2. The misrepresentation or concealment must have been willful; and
3. The fact must be material.

A finding of fraud is also supported when the immigration filing contains fraudulent documents that are germane.



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## How to Evaluate Inconsistencies

Many DACA requestors were brought to the United States as young children by their parents.

Documents that officers are generally accustomed to seeing may or may not be available.

The absence of a given document does not in and of itself mean that a guideline is not met, nor is it necessarily an indicator of fraud.

DACA requestors have spent a significant portion of their lives in the United States as minors. Thus, the requisite intent normally associated with fraud and willful misrepresentation may not be present.



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## How to Evaluate Inconsistencies (Continued)

Applying the concept of the totality of the circumstances, officers should look at the entire record, including the DACA request, the supporting documents, the results of background and security checks, and any information obtained from routine systems checks.

One example of an inconsistency could be the use of different names.

- Officers might see name discrepancies in school or employment records.
- Name discrepancies, standing alone, may not necessarily be a fraud indicator.
- Officers need not issue an RFE for evidence of a legal name change or other evidence, or refer the case to CFDO, if they can reconcile the discrepancy by applying the totality of the circumstances test.



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# Potential Fraud Indicators

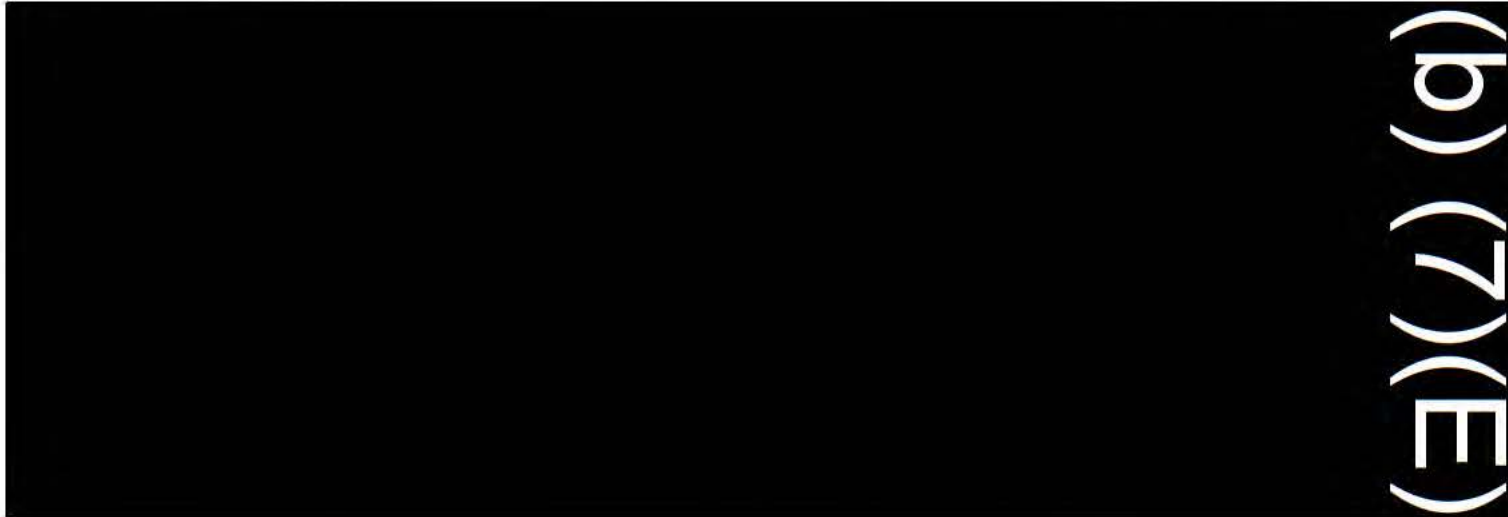
In the DACA context, examples of *potential* fraud indicators could include:

(b) (7)(E)



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## Fraud Indicators (cont'd)



When needed, CFDO can call the State DOE to verify education.



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# FDNS in the DACA Process

- The Fraud Detection and National Security (FDNS) Directorate administratively investigates allegations of immigration benefit fraud and produces a Statement of Findings (SOF) that adjudicators use to render their decisions.
- In the DACA context, the SOF will document all fraud findings and underlying issues impacting the favorable exercise of prosecutorial discretion.
- When adjudicating Forms I-821D and I-765 for DACA, officers will refer cases to the CFDO via a fraud referral sheet when there are articulable elements of fraud found within the filing. Officers will refer cases prior to taking any adjudication action even if there are issues which negate the exercise of prosecutorial discretion to defer removal.



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# The Work Product You Can Expect From the CFDO

Officers can expect a complete SOF documenting the results of the following:

- Extensive systems checks
  - USCIS systems
  - LEA systems
  - Other government systems
- Electronic records
  - Commercial databases
  - Public records
  - Education systems
- Phone calls
  - Schools
  - State Departments of Education
  - Employers



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## Limitations of the CFDO

- Interviews only in rare circumstances
- Schools may not be able to divulge information to the CFDO due to privacy laws – great variation in school documents.
  - As a result, the CFDO's inability to obtain any information from the school is not necessarily indicative of fraud.
- Always remember, many DACA requestors might have limited documentary evidence.
  - Sometimes one document can meet more than one guideline and other times, several documents, viewed together, can meet a single guideline.



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## What Will You Receive from CFDO?

- Results of investigation documented in Statement of Findings (SOF)
- Fraud Found, Fraud Not Found, Inconclusive
- Fraud Found SOF can be used to issue a Notice to Appear
- One piece of the evidence puzzle



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# CFDO Referrals and Responses

- The CFDO findings will be recorded in FDNS-DS and reported in an SOF and placed in the A-file to enable officers to make accurate and informed decisions on the DACA requests.
- Denials based on a finding of fraud must be recorded in C3.
- DACA cases denied due to confirmed fraud shall be referred for NTA issuance in accordance with the NTA memorandum dated November 7, 2011. The appropriate NTA charge will be determined on a case-by-case basis in consultation with local counsel.



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# Inadmissibility Due to Fraud or Misrepresentation

Individuals requesting DACA are not subject to the 212 inadmissibility grounds, because they are neither applying for a visa nor seeking admission to the United States. Instead, they are seeking the exercise of for deferral of removal under DACA.

## If Fraud is found in a DACA request

The presence of confirmed or suspected fraud issues are germane in deciding whether it is appropriate to defer removal under DACA.

- As a result, when an individual is found to have committed fraud in connection with a DACA request, the DACA request is denied not because the individual is inadmissible due to fraud, but rather, because the fraud negates the exercise of discretion to defer removal.
  - Denials are to be supported by a properly documented SOF.
  - NTA issuance is in accordance with the NTA memorandum dated November 7, 2011.



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# The Intelligence Compass

- Identifies trends and patterns in immigration, migrant flows, and fraud practices, as well as fraud indicators. It is an additional tool available to officers to assist them in established fraud detection procedures
- Does not in itself establish an element of fraud. It may assist officers in identifying additional lines of inquiry or identifying cases for further scrutiny or referral to Center Fraud Detection Operations (CFDO) or other FDNS officers
- No information in the Intelligence Compass will be used to determine the adjudication of any immigration benefit



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# Module Objectives

The objective of this section is to :

- Understand plain language basics;
- Introduce the use of the standard DACA RFE templates, which are mandatory; and;
- Understand and apply the elements of the new RFE templates.



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# Plain Language Basics

USCIS policy directs the use of plain language in RFEs, NOIDs, and other communications with its customers

Use of Plain Language in DACA-related RFEs and NOIDs:

- Shows customer focus
- Communicates more effectively
- Reduces time spent explaining
- Improves compliance
- Reduces ambiguity and complaints
- Reduces the likelihood of SRMTs or possible litigation



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## Plain Language Basics (Continued)

A goal of Plain Language is that the intended message is clearly and completely understood the first time an individual reads the document.

To create Plain Language content for DACA communications use:

- Simple words
- Active voice
- “You” in place of “the requestor”
- Short sentences (approx. 20 words or less) and brief paragraphs (7 sentences or less)
- Bulleted lists
- Extra blank spaces on the page for readability.



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## Word and Phrase Usage

<u>WORD TO AVOID</u>	<u>SUGGESTED ALTERNATIVES</u>
• allege	• state; explain; say; suggest
• claim	• state; explain; say; suggest
• failed to submit	• did not submit
• ludicrous	• not credible
• preposterous	• not credible
• merely	• only; or delete altogether
• outlandish	• not credible
• poppycock	• not credible
• prove	• show; establish
• ridiculous	• not credible



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## Clear and Focused RFEs

A series of RFE templates have been created for DACA and are included in the DACA SOP. These DACA RFE templates will be loaded to all centers' common drive/correspondence generator. Use of these RFE templates is mandatory. Individualized, locally created RFEs shall not be used. When an officer encounters an issue for which there is no RFE template, the officer must work through his/her supervisor to identify the issue for SCOPS so that a template can be created.

- Better requests lead to better RFE responses.
- The DACA RFE templates implement standards from the RFE initiative.



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## RFE Tips

- A key goal for DACA is consistency.
- Use the standard DACA RFE templates only.
- Add appropriate additional language to inform the requestor:
  1. What evidence was already submitted,
  2. Why the previously submitted evidence is deficient, and
  3. What evidence he/she needs to provide.



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## Neutral Tone

- ISOs are “triers of the facts.” This means that RFEs will have a neutral tone and will weigh evidence to determine only whether the basic requirements have been met.



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## Use of Legal Citation

- The RFE will use Plain Language. Officers should not insert any citations to statutes, regulations, case law, the AFM, etc.



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# XI. Decision Systems Processing



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# Module Objectives

The objective of this section is to:

- Provide a basic understanding of the requirements to properly update C3;
- Understand the C3 updates required for BCU and CFDO activity;
- Understand the supervisory review process for denials;
- Understand the categories that require supervisory review; and
- Introduce the mandatory DACA denial template.



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## Processing Decisions

- All actions taken on a DACA request must be reflected on C3, including approval, continuation, denial or a customer service inquiry.
- Standard History Action Codes will be used with the exception of SRMT actions.
- Denials based on a fraud finding must reflect its designated History Action Code ["EC"].



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# Processing Decisions BCU and CFDO C3 codes

- Cases being transferred to the BCU DACA Team – C3 shall be updated with [“FF5”] Sent to the Background Check Unit (BCU) for resolution.
- Cases being returned to Adjudications from the BCU DACA Team or just prior to final adjudications by the BCU DACA Team shall be updated with [“HCC5”] Received from Background Check Unit (BCU) with Resolution
- Cases being transferred to the CFDO with a fraud referral shall be updated with [“FF1”] Sent to the Fraud Detection Unit (FDU) for Analysis
- Cases being returned to Adjudications from the CFDO shall be updated with [“HCC1”] Returned from Fraud Detection Unit (FDU) with Results.



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## Processing Decisions – Fraud Indicators

- If fraud indicators are present during the case review process, the case shall be forwarded to the CFDO with a completed fraud referral sheet prior to any further adjudicatory actions.
- If the case is returned with a finding of fraud, the filing shall be denied with a finding of fraud “EC”.



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# Processing Decisions – RFE

For DACA requests, when requesting additional evidence, an RFE will be used. A NOID will rarely be used. Appendix D has a list of DACA RFE call ups to be used when processing a DACA request

Follow the steps below to process an RFE:

Step	Action
1	Access "Adjudicate a Case" and work in the Service Center "periodic on line" (P.O.) application
2	Press P.O. and select "Case Review"
3	Select: <ul style="list-style-type: none"> <li>• Place in Suspense</li> <li>• Original Initial Evidence Request Notice</li> </ul>
4	Press USC and you are asked to exit
5	Remove from service case RFE
6	Put a supervisory hold on the case "165"
7	Keep the "on line" P.O. and "165" application in Case A file
8	Route Case A file to director/RI/hold as per local procedures

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# Processing Decisions – NOID

Following a determination to issue a NOID, the Service Center must take the following steps to process the NOID.

Step	Action
1	Access "Adjudicate a Case" and view the case details on the form "NOID"
2	Process NOID
3	<p>Search</p> <ul style="list-style-type: none"> <li>• Case Review</li> <li>• Place in Suspense</li> <li>• Prepare to deny Notice of Denial</li> </ul>
4	Process USC and you are asked to explain
5	Processing and send the NOID
6	Put a Supervisory NOID on the form "165"
7	Keep a copy of form "NOID" and "165" and place in the A-File

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