

## SUPPORTING STATEMENT

### **1125-0006 Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)**

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#### **Part A. Justification**

##### 1. Necessity of Information –

**Background.** The Department has detailed regulations regarding the representation of private parties before the Board of Immigration Appeals (Board) and the Immigration Courts. An alien in removal proceedings may be represented, at no expense to the Government, by counsel who is authorized to practice before the Board and the Immigration Courts. *See* Immigration and Nationality Act (INA) §§ 240(b)(4)(A), 292, 8 U.S.C. §§ 1229a(b)(4)(A), 1362 (2006); 8 C.F.R. §§ 1003.16(b), 1003.38(g) (2009). If an alien desires to be represented before the Immigration Court by an attorney or representative, the attorney or representative must inform the Immigration Court that s/he is entering an appearance on behalf of that alien. An attorney or representative must file a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) to notify the Immigration Court of the representation. *See* 8 C.F.R. §§ 1003.17(a). The Form EOIR-28 is also served on the relevant agency of the Department of Homeland Security (DHS) – U.S. Immigration and Customs Enforcement.

On September 17, 2014, EOIR published a Notice of Proposed Rulemaking (NPRM) at 79 FR 55659, seeking to amend 8 CFR part 1003, to allow for the separate appearance of an attorney or representative in custody and bond proceedings. EOIR seeks to make changes to the Form EOIR-28 to allow a representative to designate an

appearance type according to this proposed rule.

**Information Collection.** The Form EOIR-28 collects basic information about the represented party and the attorney or representative. With respect to the represented party, the party's name, address, and identifying alien (A) number, where applicable, must be provided.

With respect to the attorney or representative, the form requires information – in the form of check boxes – about the type of representation, i.e., attorney, accredited representative, law student or law graduate, reputable individual, accredited foreign government official, or individual authorized to practice on December 23, 1952.

If the individual submitting the form is an attorney, the Form EOIR-28 collects information about bar membership and standing with the bar. For example, the Form EOIR-28 requires the attorney to indicate whether s/he is subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting him or her in the practice of law. If the attorney is subject to such an order, s/he is instructed, per the attached revisions, to not check the box indicating that s/he is an attorney and, instead, to explain the details of such order on the reverse of the form.

If the individual is an accredited representative, as defined in 8 C.F.R. § 1292.1(a)(4), s/he must provide the name of the recognized organization with which s/he is accredited. The language for the accredited representatives has been revised to clarify that the representative must be accredited to appear before EOIR.

If the individual is an accredited foreign government official, the individual must indicate, per the attached revisions, which country s/he is from.

For all representatives, whether attorney or non-attorney, the Form EOIR-28 also collects information about representation status. Specifically, a practitioner must indicate whether s/he is the primary or non-primary attorney/representative and must also denote whether s/he is providing pro bono representation.

EOIR has made a number of modifications to the current Form EOIR-28 as necessary to implement the proposed rule allowing for separate appearances. On the first page of the form, EOIR has added check boxes to indicate whether the person is entering an appearance for all proceedings; custody and bond proceedings only; or all proceedings other than custody and bond proceedings. Amendments were made to the information on the reverse side of the form clarifying that even though separate appearances in custody and bond proceedings are now allowed, limited appearances within those proceedings are still not permitted.

EOIR has also added language clarifying that the practitioner, by entering his or her appearance before EOIR, acknowledges that the practitioner will be subject to the disciplinary rules and procedures at 8 C.F.R. 1003.101 *et seq.*, including, pursuant to 8 C.F.R. §§ 292.3(h)(3), 1003.108(c), publication of the name of the practitioner and findings of misconduct should the practitioner be subject to any public discipline by EOIR. Additional language was added to the form to clarify that by entering an appearance before EOIR pursuant to the filing of a Form EOIR-28, the practitioner consents to the publication of the practitioner's name and any findings of misconduct by EOIR, should the practitioner become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* This language provides

additional notice to practitioners regarding their obligations as representatives before EOIR and the potential consequences of any misconduct and is consistent with comments and suggestions received from the public, as discussed further below.

Lastly, EOIR has added language to the information on the reverse side of the Form EOIR-28 that the attorney or Accredited Representative (with full accreditation) must register with the EOIR eRegistry in order to practice before the Immigration Court (see 8 C.F.R. § 1292.1(f)). EOIR has provided further information that registration must be completed online on the EOIR website at [www.justice.gov/eoir](http://www.justice.gov/eoir), along with references to EOIR's Immigration Court Practice Manual for additional guidance.

2. Needs and Uses - The Form EOIR-28 allows attorneys and representatives to notify the Immigration Court that they are representing an alien in immigration proceedings before the Immigration Court. Upon receipt of a form that establishes an individual is an attorney in good standing or is otherwise able to represent an alien before the Immigration Court, the Immigration Court designates the individual as the alien's legal representative during proceedings before the Immigration Court. The Form EOIR-28 also allows the Immigration Court to ensure that only individuals authorized by regulation are entering appearances on behalf of aliens facing removal from the United States.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-28 is available on EOIR's website for printing. A practitioner can type information directly into the online form and

then print it for submission to EOIR, or s/he may print the blank form in its entirety and complete it by typing or printing legibly. Attorneys and accredited representatives with full accreditation may also electronically submit forms and update existing forms through eRegistry; individuals who are not licensed attorneys or accredited representatives with full accreditation do not have this option.

4. Efforts to Identify Duplication - The only method for an individual to enter his or her appearance on behalf of an alien in proceedings before the Immigration Court is to complete and file the Form EOIR-28. A review of EOIR's forms revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection has a minor impact on small businesses or other small entities to the extent they employ attorneys or accredited representatives who represent parties in proceedings before the Immigration Courts. However, this collection does not impose undue burden on the small businesses or other entities. The form requires no filing fee, and EOIR estimates that the form takes six minutes to complete. In addition, the requested information is needed to ensure that only attorneys in good standing or otherwise qualified individuals are permitted to enter appearances and represent aliens in proceedings before EOIR.

6. Consequences of Less Frequent Collection - Failure to collect this information would

preclude individuals from entering appearances on behalf of parties in proceedings before the Immigration Court.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation - EOIR has published in the Federal Register a Notice of Proposed Rulemaking that impacts this collection. *See* 79 FR 55659.

A copy of this notice is attached. EOIR received ten comments in response to this proposed rule, three of which were substantive comments regarding this information collection. The Catholic Legal Immigration Network, Inc., comment expressed concerns that the changes to this information collection necessary to implement the rule might delay finalization and implementation of the rule, and suggested that the agency provide guidance to the immigration courts and liberally grant motions to withdraw in the interim so as not to delay implementation. The agency has worked expeditiously to implement the necessary changes to this information collection, so as to obviate any need for interim guidance prior to implementation of the rule upon finalization. Another comment received from the Louisiana State University (LSU), Paul M. Herbert Law Center, requested the addition of check boxes on the form to indicate appearance type, along with an attestation by the practitioner that s/he has explained the scope of their representation to their client, and that the practitioner has obtained their client's consent. Private Attorney Meghan Heesch provided a similar comment suggesting that EOIR either add

check boxes on the Form EOIR-28 to allow a practitioner to indicate which proceedings they are entering an appearance for or to create a completely new appearance form for custody and bond proceedings. In response to these comments, EOIR has added check boxes to the Form EOIR-28 for the practitioner to indicate the scope of their appearance. EOIR believes that it would be more burdensome to require a separate appearance form for custody and bond proceedings, but instead has made amendments to the current appearance Form EOIR-28 so that it may be used for entering an appearance in all types of proceedings before EOIR. The Form EOIR-28 currently contains a check box for the practitioner to indicate that s/he has received the alien's consent for representation, and EOIR believes that the additional language clarifying the applicability of EOIR's disciplinary rules and procedures to practitioners entering an appearance before EOIR address the remainder of LSU's concerns. The 60-day notice covering this collection will be published in the Federal Register to solicit further comments from the public. If comments are received, they will be considered and incorporated, as appropriate.

9. Payment or Gifts to Claimants - EOIR does not provide any payment or gifts to parties in immigration proceedings or their attorneys or representatives.

10. Assurance of Confidentiality - The Immigration Court retains the original form and places it in the record of proceedings, along with all other documents filed in the alien's proceeding. EOIR staff members and Immigration Judges who process, review, and adjudicate the case may access the Form EOIR-28. To the extent law permits, EOIR

protects the confidentiality of the contents of the Form EOIR-28. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - To the extent that the Form EOIR-28 includes a sensitive question by asking whether an attorney is in good standing in the bar or subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting him or her in the practice of law), such question is necessary for EOIR to determine whether the individual is duly authorized to represent aliens before the Immigration Courts. The information is used only to the extent necessary in order to make that determination. To the extent that the Form EOIR-28 includes a sensitive question by asking whether the representation is being provided on a pro bono basis, such question is necessary for EOIR to facilitate its pro bono program. Under Operating Policies and Procedures Memorandum 08-01, the particular needs of pro bono representatives who appear before EOIR should be taken into consideration. OPPM 08-01: "Facilitating Pro Bono Legal Services" (March 10, 2008), *available at* <http://www.justice.gov/eoir/efoia/ocij/oppm08/08-01.pdf>.

12. Estimate of Hour Burden

a. Number of Respondents	175,101
b. Number of Responses per Respondent	1
c. Total Annual responses	175,101
d. Hours per response	6 minutes or 0.1 hour



e. Total annual hourly reporting burden 17,510

175,101 attorneys or representatives x 1 response per respondent x 0.1 hour per response = 17,510 burden hours. It is estimated that the total time to read and complete the form and gather all materials is no more than 6 minutes.

### 13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. There are also no fees associated with filing this information collection. The estimated public cost is a maximum of \$967,777. This amount is reached by multiplying the burden hours (17,510) by \$55.27, which represents the current median hourly wage for attorneys, as set by the Bureau of Labor Statistics. \$967,777 represents the maximum estimate of cost burden. EOIR notes that this form is submitted by an immigration practitioner, who is either an attorney or other form of representative; as such, respondents are not likely to retain a practitioner to assist them in filling out the form.

For those individuals who proceed without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. This amount to the individual is not included as it is less than the estimated practitioner cost and would not add to the maximum estimate of \$967,777.

14. Estimated Cost to the Federal Government - The estimated annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-28 is \$524,137.

15. Reasons for Change in Burden - The difference in burden is due to an agency adjustment, specifically an decrease in the number of responses. Previously, EOIR estimated 179,856 respondents annually. At present, there are approximately 175,101 respondents annually. As the number of hours per response remained the same (6 minutes), the total burden hours decreased from 17,985 to 17,510 burden hours, for a difference of 475 burden hours.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Exceptions to the Certification Statement - EOIR does not request an exception to the certification of this information collection.

**Section B. Collection of Information Employing Statistical Methods**

This collection does not employ statistical methods.

## PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (OMB) approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. § 1320.

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Helaine Perlman  
Senior Counsel for Immigration  
Executive Office for Immigration Review

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Date