Public Comments from I-290B First 60-day FRN
August 9, 2019 through October 8, 2019
84 FR 39359

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USCIS-2008-0027-0070	1.0	Jean Publieee	WHY ARE US TAXPAYERS MAKING IT SO EASY FOR IMMIGRANTS TO FILE APPEALS. I THINK WE SHOULD TAKE AWAY APPEALS FOR NON CITIZNS. WHY ARE WE ALLOWING APPEALS FOR NON CITIZNES. WHY NOT GIVE THEM ON CHANCE AND THATS IT. WHY ARE WE ALLOWING ALL THESE TRILLIONS OF DOLLARS TO SATISFY FOREIGNERS. WE SHOULD BE SATISFYING OURSELVES AND KEEPING DOWN OUR EXPENSES. I BELIEVE THIS FORM SHOULD BE DISCONTINUED. I DONT THINK WE SHOUDL ALLOW APPEALS. I THINK THEE SHOULD BE A NEW DETERMINATION TO NOT ALLOW THIS APPEAL. AND DESPITE ALL THIS IF YOU DO ALLOW APPEALS WHY ISNT THERE A FEE CONNECTED WITH FILING THIS FORM OF $1,000 TO START COVERING THE COST THAT ALL THESE FOREIGNERS CLAMORING TO COME IN HERE TO COVER TH COST OF WHAT THEY DO. WHY THE HELL ARE YOU BANKRUPTING THE AVERAGE AMERICAN WHO IS WORKNIG 2 AND 3 JOBS TO STAY ALIVE TO PAY FOR THE COSTSW OF THESE FOREIGN LEACHES WHO WANT TO COME HERE TO TURN AMERICA IINTO THEIR COUNTRY. I AM SICK TO DEATH OF WHAT IS GONIG ON WITH THIS GOVT. START PROTECTING AMERICANS FOR A CHANGE. WE ARE BEING TAKEN OVER AND PLAYED AND SCAMMED AND RIPPED OFF	The commenter suggested that USCIS discontinue adjudicating administrative appeals in order to reduce government expenditures. Alternatively, the commenter suggested that USCIS charge a $1,000 fee to cover the cost of adjudicating Form I-290B. USCIS appreciates this commenter's suggestion, but USCIS will not discontinue the administrative appeals process at this time. In addition, Form I-290B currently has a filing fee of $675 and USCIS will not increase this fee to $1000 at this time. Further, USCIS filing fee changes are not addressed during the form revision process.

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			DAILY BY THESE FOEIGNERS WHO COME HERE. THEY ARE NOT COMNG HERE TO BECOME AMERICANS. THEY ARE COMING HERE TO BE SOMA,LIS OR SOMETHING ELSE. WHY DO WE WANT THAT. WHY ARE WE BEING HARMED LIKE THIS. WHY IS AMEICA BEING TURNED INTO SOMALI LAND OR SOME SUCH DIRTY HOLE. WE NEED NEW POLICIES. WE NEED CHANGE. WHAT IS GOING ON IS AN INSULT TO AMERICAN CITIZENS. ENOUGHT IS ENOUGHS. WE HAVE 25 MILLION OF HEM HERE. ENOUGH IS ENOUGH. SHUT THE DOOR.	
USCIS-2008-0027-0072	2.0	The American Immigration Lawyers Association	The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments on proposed revisions to Form I-290B, Notice of Appeal or Motion and its instructions published in the Federal Register on Friday, August 9, 2019. OMB Control Number 16150095, Docket ID No. USCIS-2008-0027.	The second commenter expressed concern regarding whether USCIS changed its jurisdiction over administrative appeals of Adam Walsh Act (AWA) "no risk" determinations without proper notice and comment. In response to the comment, USCIS is clarifying in the proposed form instructions revision that Adam Walsh Act "no risk" determinations are not appealable to either the BIA or the AAO. Instead, an affected party must file a motion with the office that issued the initial discretionary denial in order to request an administrative review of the decision. The AAO's appellate jurisdiction is based on a delegation of authority from the Secretary of

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				Homeland Security.[1] The Secretary may delegate any authority or function to administer and enforce the immigration laws to any official, officer, or Department of Homeland Security (DHS) employee.[2] Delegation Number 0150.1(U) states that USCIS—of which the AAO is a part—has "[a]uthority to exercise appellate jurisdiction over the matters described in 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003)" (citation corrected). The regulation referenced in the delegation was deleted when the Immigration and Naturalization Service was abolished and its functions were separated into three components within the newly-created DHS.[3] However, because of this delegation, the text of the former regulation remains a valid source of the AAO's appellate jurisdiction except where it has been superseded in part by statute, regulation, or delegation. The courts have upheld the AAO's jurisdiction based on the delegation. *See U.S. v. Gonzalez & Gonzalez Bonds and Insurance Agency, Inc.*, 728 F. Supp. 2d 1077, 1082-84 (N.D. Cal. 2010)

[1] *See* Delegation Number 0150.1(U) (effective March 1, 2003).
[2] 6 U.S.C. § 112(b)(1) (2012); INA § 103(a)(4), 8 U.S.C. § 1103(a)(4); 8 C.F.R. § 2.1.
[3] *See* 68 Fed. Reg. 10,923 (Mar. 6, 2003).

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				("the Secretary's delegation of appellate jurisdiction to the AAO is valid without publication in the Federal Register, so long as it is a rule of agency organization, procedure or practice"); *see also Rahman v. Napolitano*, 814 F. Supp. 2d 1098, 1103 (W.D. Wash. 2011). Regarding AWA "no risk" determinations, in *Matter of Aceijas-Quiroz*, 26 I&N Dec. 294 (BIA 2014), the Board of Immigration Appeals (the Board) held that Congress entrusted AWA "no risk" determinations to DHS, not the Board. USCIS subsequently issued a policy memorandum agreeing that DHS maintains sole jurisdiction over AWA "no risk" determinations.[4] USCIS determined that the AAO does not have jurisdiction over the determination that a petitioner presents no risk to the beneficiary under the Adam Walsh Act because the former 8 C.F.R. § 103.1(f)(3)(iii) predated the enactment on the Adam Walsh Act and Delegation 0150.1(U) therefore did not delegate DHS's appellate authority over "no risk" determinations to USCIS. In addition, because Adam Walsh "no risk" determinations are statutorily ascribed to a USCIS officer's sole and unreviewable discretion, an appeal on that discrete part of a

[4] PM-602-0124, *Initial Field Review of Appeals to the Administrative Appeals Office* (Nov. 4, 2015).

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				benefit request is not available. A USCIS policy memorandum permits the AAO to entertain *certifications* of initial decisions regarding an AWA "no risk" determination,[5] given that the AAO's certification jurisdiction is broader than its appellate jurisdiction.[6] Although it is settled that USCIS officers may certify cases involving AWA "no risk" determinations to the AAO, the Secretary has not yet delegated *appellate* authority over AWA "no risk" determinations to the AAO. Accordingly, in order for USCIS to review an adverse AWA "no risk" determination decision, the correct course of action is to file a motion to reopen or reconsider on Form I-290B. The AAO has removed references to appeals of AWA "no risk" determinations from the AAO Practice Manual, www.uscis.gov, and its decision notices. The USCIS Lockbox also rejects Form I-290B appeals of AWA "no risk" determinations. Therefore, USCIS has included this proposed language regarding the lack of appellate jurisdiction over AWA "no risk" determinations in order to reduce

[5] *Id.* (also requiring such certifications to be directed to the AAO, not the Board).
[6] USCIS officials may certify a case to the AAO even if the case type it does not have appeal rights unless the case type falls under the jurisdiction of the Board of Immigration Appeals. *See* 8 C.F.R. § 103.4(a)(4).

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				stakeholder confusion regarding this issue resulting from USCIS' prior inconsistent guidance. Notice and comment is not required to make this change in USCIS practice to correct a legal error and clarify form instructions. In any event, USCIS has provided 60-days' notice of the change and is responding to public comments. *See*, 84 Fed. Reg. 66926 (Dec. 6, 2019), and will provide an additional 30-days for public comment when this information collection package is submitted to OMB for approval.
USCIS-2008-0027-0072	2.1	The American Immigration Lawyers Association	As an initial matter, AILA applauds USCIS for its ongoing efforts to further clarify the Form I-290B and its instructions. We also appreciate the simplifications made to the Form I-290B instructions and offer recommendations in this comment for further clarifications. AILA also raises concerns in this comment regarding the agency's treatment of requests to appeal Adam Walsh Child Protection and Safety Act (AWA) "no risk" determinations to the Administrative Appeals Office (AAO).	Thank you for the comment.
USCIS-2008-0027-0072	2.2	The American Immigration Lawyers	**Comments on USCIS's Attempt to Eliminate AWA Risk Determination Appeals to the AAO** **Overview of AAO's Appellate Jurisdiction Over AWA Risk Determinations**	See response to 2.0 above.

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		Association	The AAO has appellate jurisdiction over AWA risk determinations. See USCIS Policy Memorandum PM-602-0124, Initial Field Review of Appeals to the Administrative Appeals Office (Nov. 4, 2015) (acknowledging that "DHS maintains sole jurisdiction over Adam Walsh Act risk determinations in family-based immigrant visa proceedings. As such, certification of an initial decision containing a risk determination under the Adam Walsh Act must be directed to the AAO, not the BIA.").2 See also section 10.8(a)(2) of the Adjudicators Field Manual, which states that DHS maintains sole jurisdiction over AWA risk determinations: As a statutory exception, DHS maintains sole jurisdiction over Adam Walsh Act risk determinations in family-based immigrant visa petition proceedings. As such, certification of an initial decision containing a risk determination under the Adam Walsh Act must be directed to the AAO, not the BIA. Once the AAO has resolved the Adam Walsh Act risk determination, a denied family-based immigrant visa petition can be certified to the BIA, if necessary.3 AILA acknowledges the Board of Immigration Appeals (BIA) does not have jurisdiction to review a "no risk" determination by USCIS. See Matter of Aceijas-Quiroz, 26 I&N Dec. 294 (BIA	

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			2014) (holding that the BIA lacks jurisdiction to review a "no risk" determination by the USCIS, including the appropriate standard of proof to be applied). Given the AAO's sole appellate jurisdiction over AWA risk determinations, the AAO has issued a robust number of non-precedent decisions involving AWA risk determinations. See e.g., Matter of C-L-W-, ID# 109944 (AAO May 26, 2017) (involving an appeal to the AAO of an I-129F petition that had been denied by the Vermont Service Center based on an AWA risk determination); Matter of P-M-S-, ID# 10522 (AAO Mar. 9, 2017) (involving an appeal to the AAO of an I-130 petition that had been denied by the National Benefits Center based on an AWA risk determination); Matter of W-R (AAO Feb. 16, 2016) (involving an appeal to the AAO of an I-130 petition that had been denied by the Indianapolis Field Office based on an AWA risk determination). USCIS currently posts a handful of AAO decisions involving AWA risk determinations on its "Administrative Decisions" website.4	
USCIS-2008-0027-0072	2.3	The American Immigration Lawyers Association	**USCIS Appears to be Attempting to Eliminate Appellants' AWA Risk Determination Appeal Right to the AAO Without Proper Notice and Comment** Despite the AAO's clear appellate jurisdiction over AWA risk determinations, and its legacy	See response to 2.0 above.

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			of issuing decisions involving AWA risk determinations, it appears that USCIS is attempting to eliminate appellants' AWA risk determination appeal right without providing the public with proper notice and comment of this change. In fact, far from notifying the public, USCIS has quietly eliminated any reference to the AAO's appellate jurisdiction over AWA risk determinations from its public-facing resources. AILA is extremely concerned regarding what appears to be the agency's attempt to eliminate appellants' right to appeal an AWA risk determination to the AAO, particularly given that USCIS has not provided the public with proper notice and comment regarding such a fundamental rule change. Such a fundamental rule change, which erodes the due process rights of AWA appellants, warrants public notice, as well as a meaningful opportunity for the public to comment on such a change. The agency's failure to provide proper notice and comment is an act of bad faith, fundamentally undermines due process rights of U.S. citizen and lawful permanent resident (LPR) petitioners, and erodes public trust in the agency. By way of background, up until summer of 2018, the USCIS website explicitly stated that the AAO has jurisdiction for Adam Walsh Act	

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			risk determinations. Please see a screenshot provided below of the USCIS's AAO website, dated July 6, 2018, which is attached as Exhibit A.	
USCIS-2008-0027-0072	2.4	The American Immigration Lawyers Association	In addition, up until summer of 2018, Chapter 1 of the AAO Practice Manual stated that the AAO has jurisdiction for Adam Walsh Act risk determinations and acknowledged in footnote 10 of Chapter 1 that the BIA does not have jurisdiction over Adam Walsh Act "no risk" determinations. Please see a screen shot of Chapter 1 of the AAO Practice Manual, dated July 6, 2018 provided below, and also attached to this comment as Exhibit B.	See response to 2.0 above.
USCIS-2008-0027-0072	2.5	The American Immigration Lawyers Association	Furthermore, up until at least August 2018, the USCIS I-290B website indicated that Form I-130 is under the appellate jurisdiction of the BIA, except for reviews of USCIS "no risk" determinations under the AWA. Please see a screen shot of I-290B website from August 27, 2018 provided below, and also attached to this comment as Exhibit C.	See response to 2.0 above.
USCIS-2008-0027-0072	2.6	The American Immigration Lawyers Association	Starting in the spring / summer of 2018, USCIS began quietly eliminating reference to the AAO's jurisdiction over Adam Walsh Act risk determinations from its public-facing resources, and preventing appellants from submitting an appeal to the AAO involving an AWA risk determination. Among the steps that USCIS has taken to eliminate this appeal right	See response to 2.0 above.

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			without proper notice and comment include, but are not limited, to the following:	
USCIS-2008-0027-0072	2.7	The American Immigration Lawyers Association	*On May 10, 2018, AILA reported in a comment submitted to USCIS regarding Form I-290B that AILA had received reports from AILA members who reported that upon filing an appeal of an AWA risk determination to the AAO via filing a Form I-290B with the USCIS Lockbox, that the USCIS Lockbox was rejecting the Form I-290B and instructing stakeholders to either submit their appeals to the Board of Immigration Appeals (BIA) on Form EOIR-29 or submit a motion to reopen/reconsider with USCIS. AILA expressed concern regarding the agency's actions, indicating that such actions directly contradict USCIS' own policy guidance on this issue.5	See response to 2.0 above.
USCIS-2008-0027-0072	2.8	The American Immigration Lawyers Association	*On July 11, 2018, USCIS completely eliminated from the AAO Practice Manual language previously contained in Chapter 1 of the AAO Practice Manual referencing the AAO's jurisdiction over Adam Walsh Act risk determinations.6 See Exhibit B for previous version of Chapter 1. o While AILA acknowledges that USCIS provided a note in the Table of Changes section of the AAO Practice Manual, dated July 11, 2018, which indicates that the agency "Deleted references to Adam Walsh Act "no risk" determinations in both sections,"7 AILA	See response to 2.0 above.

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			contends that such a note in the Table of Changes section was not proper notice to the public regarding such a fundamental change, which eliminated an AAO appeal right of AWA appellants, nor did the agency provide the public with the opportunity to comment on such a change.	
USCIS-2008-0027-0072	2.9	The American Immigration Lawyers Association	*On October 29, 2018, USCIS updated its Form I-290B website to provide the following language regarding Adam Walsh Act "no risk" determinations: Want to appeal a USCIS "no risk" determination under the Adam Walsh Act. You may seek further review by filing a motion to reopen or reconsider on Form I-290B, Notice of Appeal or Motion, but there is no appeal available from such a determination. 8 Please note that a change to the Form I-290B webpage subtly indicating a change in the rules and relegating review of an unfavorable Adam Walsh Act risk determination from an appeal to a motion is not proper notice of such a fundamental change, nor was there an opportunity for comment.	See response to 2.0 above.
USCIS-2008-0027-0072	2.10	The American Immigration Lawyers Association	*On August 2, 2019, USCIS eliminated from the AAO website any reference to the AAO handling Adam Walsh Act "no risk" determinations.9	See response to 2.0 above.

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USCIS-2008-0027-0072	2.11	The American Immigration Lawyers Association	To date, given the agency's lack of notice and comment regarding the agency's elimination of an appellants' AWA risk determination appeal right to the AAO, AILA continues to receive reports from AILA member and stakeholders who are unaware of the agency's elimination of this appeal right and are confused about the review process for I-130 petitions denied by USCIS based on a AWA risk determination. In particular, please note that such confusion among stakeholders and the immigration community has been exacerbated by denial notices issued by USCIS that erroneously instruct those seeking to file an appeal of the AWA risk determination to appeal the decision to the Board of Immigration Appeals (BIA) using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer. Specifically, USCIS's denial templates contain the following language: [see the PDF] AILA has received reports from its members that those who have attempted to follow these USCIS instructions are having their Form EOIR-29 rejected by the USCIS Lockbox. The USCIS Lockbox is claiming that "this office does not have jurisdiction to accept the application/petition you submitted." AILA will be submitting case examples to the Office of	See response to 2.0 above.

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			the CIS Ombudsman shortly of stakeholders encountering this issue. In light of the foregoing, AILA is concerned regarding what appears to be the agency's attempt to eliminate appellants' right to appeal an AWA risk determination to the AAO without proper notice and comment procedures.	
USCIS-2008-0027-0072	2.12	The American Immigration Lawyers Association	**Page 1, Who May Not File Form I-290B?** While limited, there are some instances where a beneficiary may have standing to file an appeal or motion with USCIS. See e.g., Matter of V-S-G- Inc., Adopted Decision 2017-06 (AAO Nov. 11, 2017); see also Administrative Appeals Office Practice Manual, Chapter 3. Appeals (March 11, 2019); USCIS Policy Memorandum PM-602-0152, Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc. (Nov. 11, 2017) (noting that beneficiaries, who are affected parties, as defined in the Matter of V-S-G- Inc. decision, may file an appeal or motion on Form I-290B with respect to a revoked Form I-140, even though existing form instructions generally preclude beneficiary filings). Moreover, as AILA previously noted in our comments submitted to USCIS on May 10, 2018, 10 AILA requests that USCIS make clear in the Form I-290B instructions that the	USCIS has added language to the Form I-290B instructions clarifying that an AC-21 beneficiary of an approved petition that has been revoked may file an appeal.

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			beneficiary of an I-140 petition that has been revoked by USCIS is permitted to file an appeal to the AAO. Accordingly, AILA suggests that Part 1 of the Form I-290B instructions entitled "Who May Not File Form I-290B?" be revised as follows to provide additional clarity: **Language proposed by USCIS:** If you are the beneficiary of a petition or application, you MAY NOT file an appeal or motion unless instructed by USCIS and as specifically permitted by law. **Revised language proposed by AILA:** If you are the beneficiary of a petition or application, generally you MAY NOT file an appeal or motion unless instructed by USCIS and as specifically permitted by law. EXCEPTION: If you are the beneficiary of a Form I-140, Immigrant Petition for Alien Worker and USCIS has revoked your approved Form I-140 and advised you that you may file a motion or appeal, you may file a Form I-290B. Please include a copy of the USCIS revocation notice with your Form I-290B.For further information about this exception, please see the USCIS webpage entitled "Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker." For further information, please also see the USCIS webpage entitled "Questions and Answers: Appeals and Motions."	

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USCIS-2008-0027-0072	2.13	The American Immigration Lawyers Association	**Page 2, Timeliness** AILA appreciates the NOTE on page 2 of the Form I-290B instructions explaining that the "date of service" is the date USCIS mailed the decision, not the date it is received. However, although USCIS contends that "[d]ecisions are normally mailed the same date as they are issued," AILA regularly receives reports of USCIS decisions that are postmarked more than 5 days after the date written on the decision. AILA urges USCIS to mail decisions on the same day that decisions are issued, or as close to the decision date as possible.	USCIS mails decisions as soon as possible.
USCIS-2008-0027-0072	2.14	The American Immigration Lawyers Association	**Page 2, Signature** AILA appreciates the addition of a NOTE on page 2 of the Form I-290B instructions explaining that "USCIS will consider a photocopied, faxed, or scanned copy of the original handwritten signature acceptable for filing purposes. The photocopy, fax, or scan must be of the original documentation containing the handwritten ink signature." AILA respectfully requests that USCIS ensure that the USCIS Lockboxes, International Field Offices, and USCIS Service Centers which accept Form I-290Bs are properly trained regarding this procedure so that Form I-290Bs are not improperly rejected when submitted with a photocopied, faxed, or scanned copy of the original handwritten signature.	USCIS offices are trained as the comment suggests. While we aim for perfection, one-off errors may occur in the hundreds of filings that USCIS receives per day, and we apologize if that occurs.

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USCIS-2008-0027-0072	2.15	The American Immigration Lawyers Association	**Page 3, How to Fill Out Form I-290B** In Item 3 of the Form I-290B instructions entitled "How to Fill Out Form I-290B", AILA suggests that USCIS provide further clarification regarding how to fill out Form I-290B, particularly for affected parties who may file a motion or appeal pro se: **Revised language proposed by AILA:** 3. Answer all question fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None," unless otherwise directed. Each question or item requires a response. A question or item left blank or unanswered does not mean "N/A" or "None".	USCIS appreciates the need for straightforward instructions and we strive to make our forms and instructions simple enough that no one completing a USCIS benefit request needs to seek assistance of any kind, especially paying for assistance from a lawyer.
USCIS-2008-0027-0072	2.16	The American Immigration Lawyers Association	**Page 3, Part 1. Information About the Applicant or Petitioner** **Language proposed by USCIS**: Item Number 3. Business or Organization Name (If applicable.) If a business or organization is filing this appeal or motion, provide its complete name, without abbreviations. **Revised language proposed by AILA:** Item	USCIS has reviewed the suggested change and decided to maintain the proposed instruction language, as the I-290B form instructions under "General Instructions" discuss the use of additional sheets of paper, when necessary.

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			Number 3. Business or Organization Name (If applicable.) If a business or organization is filing this appeal or motion, provide its complete name, without abbreviations. If there is not enough space to the complete name of the business or organization, you may use Part 7. Additional Information or attach a separate sheet of paper. If you attach a separate sheet of paper, type or print your name and A-Number (if any) at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answers refer; and sign and date each sheet.	
USCIS-2008-0027-0072	2.17	The American Immigration Lawyers Association	**Page 4, Part 2. Information About the Appeal or Motion** **Item Number 3. Immigration Form that is the Subject of This Appeal or Motion.** **Language proposed by USCIS:** Item Number 3. Immigration Form that is the Subject of This Appeal or Motion. Provide the form number for the application or petition that is the subject of your appeal or motion (for example, Form I-140, Form I-360, Form I-129, Form I-485, Form I-601). You may only file an appeal or motion for one application or petition at a time. If multiple applications or petitions are being appealed or motioned, you must file a separate Form I-290B for each application or petition. **Revised language proposed by AILA:** Item	USCIS has reviewed the suggested change and decided to maintain the proposed instruction language. The I-290B form instructions under "What is the Filing Fee" currently contain guidance, stating that only one filing fee is required for a benefit request with multiple beneficiaries.

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			Number 3. Immigration Form that is the Subject of This Appeal or Motion. Provide the form number for the application or petition that is the subject of your appeal or motion (for example, Form I-140, Form I-360, Form I-129, Form I-485, Form I-601). You may only file an appeal or motion for one application or petition at a time. A petition or application having multiple beneficiaries (for example, an H-2B petition) is a single application or petition. If multiple applications or petitions are being appealed or motioned, you must file a separate Form I-290B for each application or petition.	
USCIS-2008-0027-0072	2.18	The American Immigration Lawyers Association	**Page 7, Address Change** USCIS is proposing to delete information regarding how to file an address change for a motion or appeal that is pending before the AAO. **Language proposed by USCIS to be deleted from Form I-290B:** If you move while you have a pending appeal or motion before the AAO, please also send the AAO a written change of address notice to ensure that your decision is sent to your new address. Your change of address notice should state the type or application or petition that is the subject of the appeal or motion and reference any relevant receipt numbers and A-Numbers. The AAO's mailing address is available at	USCIS removed the language because the USCIS webpage provides information on address changes, including how to provide that information through an individual's online account.

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			www.uscis.gov/aao or by calling the USCIS National Customer Service Center at the number below. AILA recommends including language regarding how to file an address change for a motion or appeal that is pending before the AAO. AILA proposes adding the following language to the Form I-290B instructions: **Language proposed by AILA to be added to Form I-290B:** If you move while you have a pending appeal or motion before the AAO, please follow the procedures in Chapter 2 of the AAO Practice Manual to notify the AAO of an address change. The AAO Practice Manual is available at https://www.uscis.gov/aao-practice-manual.	
USCIS-2008-0027-0072	2.19	The American Immigration Lawyers Association	**Page 1, Part 1, Alternate or Safe Mailing Address** AILA thanks USCIS for providing the option for certain individuals to provide an "alternate or safe mailing address" on Page 1, Part 1 of the Form I-290B.	Thank you for the comment.
USCIS-2008-0027-0072	2.20	The American Immigration Lawyers Association	**Page 2, Part 2. Information About the Appeal or Motion** AILA also appreciates the efforts made by USCIS to clarify Part 2 of the Form I-290B entitled "Information About the Appeal or Motion." However, we believe that the form is still unnecessarily confusing regarding which box should be checked in Part 2. We would	**1.** USCIS believes that the Form I-290B is long enough as it is and to move a significant amount of text to the form itself would increase the length of the form considerably. USCIS believes that the form can be completed using the instructions as designed. 2. USCIS has included language which notifies

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			recommend the following minor changes to better clarify this section. **First,** USCIS should move the language from the Form I-290B instructions to the face of the Form I-290B itself regarding the fact that an appeal is treated in the first instance as a motion to reconsider. The form instructions are very helpful in clarifying this, but because of the importance of which box in Part 2 is checked, it would warrant moving the following language into the introductory section of Part 2 of the Form I-290B: If you file an appeal of a USCIS decision, the office that issued the decision will review the appeal before sending it to the AAO. See 8 CFR 103.3. If the office determines that favorable action is warranted, it may treat your appeal as a motion and approve your application or petition, making further AAO review unnecessary. If the office decides that favorable action is not warranted, it will forward your appeal to the AAO for review. By making this explanation more visible, applicants would better recognize that if they want the office that denied the case to review it again and they want to appeal if that office does not reverse the denial, simply checking Box 1.a and providing a brief and/or additional evidence would achieve this outcome. **Second,** in the Form I-290B instructions, USCIS should	a filer that if evidence is not included with the filing of the Form I-290B the office that made the unfavorable decision will not treat the filing as a motion to reopen. 3. USCIS has reviewed the suggested change and decided to maintain the proposed instruction language. Each motion type has different filing requirements, and the filer has the burden of demonstrating that the submission meets the motion requirements.

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			note that if the petitioner or applicant selects Box 1.b in Part 2, the office that denied the petition will not see or review the brief and/or additional evidence being sent directly to the AAO. Because efficiency in the process is improved by allowing the office that denied the case to see an explanation of the reason for the appeal so that it can, in appropriate cases, correct an erroneous denial, the instructions should make clear that the only opportunity for the office issuing the denial to see the argument in the brief is by checking Box 1.a. **Third,** AILA believes that it is unnecessary and overly complicated to provide separate boxes for a "Motion to Reopen," a "Motion to Reconsider," and a "Motion to Reopen and a Motion to Reconsider." From a processing standpoint, all three of these options are treated the same way. The office that denied the petition will review the additional legal argument and/or the new facts or documentary evidence provided, and will consider whether those warrant approving the petition or application. It would create less confusion if USCIS were to eliminate Box 1.d and Box 1.e, and simply change Box 1.f to "I am filing a motion to reopen and/or a motion to reconsider. My brief and/or additional evidence is attached." This change would simplify the form and avoid	

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			confusion about what is being requested.	
USCIS-2008-0027-0072	2.21	The American Immigration Lawyers Association	**Page 2, Part 3. Basis for the Appeal or Motion** AILA reiterates our recommendation that USCIS include a sentence on the Form I-290B or its instructions that clarifies that new evidence may be included in an appeal to the AAO. 11 This recommendation failed to be incorporated by USCIS into its proposed revisions to Form I-290B and instructions. AILA reiterates the importance of this recommendation as this additional language would help to distinguish the evidence that may be submitted in support of an appeal from a motion to reopen or motion to reconsider, for which USCIS has provided language confirming that a motion to reopen must be supported by documentary evidence "demonstrating eligibility for the requested immigration benefit at the time you filed the application or petition," and a motion to reconsider must demonstrate that the decision was incorrect "based on the evidence of record at the time of the decision." AILA proposes that USCIS revise the language in Part 3 of the Form I-290B as follows: **Language proposed by USCIS:** Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or statement of fact in the decision you are appealing. You MUST provide this information with your Form	USCIS will retain the proposed instruction requiring a statement that specifically identifies an erroneous conclusion of law or statement of fact in the decision you are appealing.

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			I-290B even if you intend to submit a brief later. **Revised language proposed by AILA:** Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or statement of fact in the decision you are appealing. You MUST provide this information with your Form I-290B even if you intend to submit a brief later. The AAO will accept new evidence on appeal. The evidence need not be new or previously available. Please see the AAO Practice Manual at https://www.uscis.gov/aao-practice-manual.	
USCIS-2008-0027-0071	3.0	Kelvin Rosado, Esperanza Center, Immigration Legal Services	The Esperanza Center, Catholic Charities of Baltimore, is a comprehensive immigrant resource center that offers hope and essential services to people who are new to the United States. Immigrants from all over the world have received important resources and compassionate guidance at the Esperanza Center since 1963. Immigration Legal Services was founded in 1994 to provide low-cost legal counseling and representation in humanitarian- and family-based immigration matters. As one of the largest non-profit immigration legal services providers in Maryland, we serve individuals from over 150 different countries who reside in Maryland or have immigration cases in Maryland. We assist	The commenter expressed concern regarding USCIS' or a third party's potential misuse of information provided by the affected party on Form I-290B for purposes other than for adjudication of an appeal or motion. USCIS appreciates the commenter's concern. However, in accordance with the Privacy Act and DHS policy to implement the Fair Information Practice Principles, USCIS has considered the use of personally identifiable information and documented its use in appropriate Privacy Impact Assessments and Systems of Record Notices. (See the response to Question 10.) Additionally, the commenter stated that the public burden cost of $8,652,000 was "huge" and could be used to

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			clients and their family members seeking to obtain, extend, or retain lawful immigration status or citizenship in the United States. We are respectfully submitting our comment in opposition of the proposed regulation in the Federal Registry for Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Appeal or Motion. These changes include giving USCIS broadened use of information provided with a filed I-290B. The right to appeal is a cornerstone of our due process, and it is a well-known legal remedy for injustices and unfair decisions, as well as to provide guidance and instructions to the legal community. If this right is foreclosed or curtailed, in any way or form, our entire legal system will suffer from the deprivation of due process. Form I-290B is a vehicle to remedy instances of the erroneous conclusion of law, or incorrect application of law or service policy, or instances requiring a reconsideration of evidence in the record. The proposed regulation of Revision of a Currently Approved Collection would result in overly broad discretion to the Agency to collect information about an applicant or petitioner for purposes beyond the scope of adjudication of a pending appellate matter which has been brought before it for reconsideration or reopening. Further, it would be inconsistent	hire additional USCIS staff and improve processing times. USCIS appreciates the commenter's concern, but the public burden cost reflects the expense incurred by affected parties to complete and file the information collection (excluding the filing fee), which includes but is not limited to legal fees, mailing costs, etc. (See response to Question 13.) This cost is incurred by affected parties and is not realized by USCIS, therefore it cannot be used towards USCIS operations. Finally, the commenter suggests that "[t]he proposed rule should not be enacted and the current regulation and purpose of the information collection in the Form I-290B should remain as is." USCIS did not publish a Notice of Proposed Rulemaking, but instead a 60-day Notice of Revision of a Currently Approved Collection. USCIS is not proposing a new regulation, but instead proposing edits to an existing information collection. These edits are in compliance with the Paperwork Reduction Act of 1995, the Administrative Procedure Act, the Privacy Act, and all relevant authorities. Further, contrary to the commenter's belief, this revision does not change how USCIS handles or shares the information collected on Form I-290B.

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			with the Fair Information Practice Principles (FIPP) that serve as the foundational principles for privacy policy at implementation of DHS regardless of petitioner, beneficiary or applicant immigration status. Revising this level of discretion for USCIS might create the illusion that the information of the Petitioner, Beneficiary, Sponsor, Legal Representative, or any other person or organization involved in the matter might be used for purposes that are not related to the appellate process, including peripheral legal claims in regards to the persons involved or mentioned in the Form I-290B.Form I290B standardizes requests for appeals and motions and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. The main purpose of the Applicant or Petitioner filing a Form I-290B is to petition for USCIS to reconsider or reopen adjudication of their petitioned immigration benefit. As of today, the person signing the form is within the	

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			understanding that all the information will be used solely for the purpose of adjudicating the matter before the Agency. If that changes, the Applicant or Petitioner will be subject to a broad discretion from the Agency or a Third Party, which can use the information for unknown and unauthorized purposes. Many applicants and petitioners who are filing this form are undocumented, or in need of an immigration benefit for themselves, a loved one, or a prospective student or employee, and the fear of the unknown of who might have their information can preclude them from even considering the option of an appeal of an adverse decision. Besides, if an employer or a school is sponsoring a person, the private information of the Petitioner should not be subject to further discovery within the rules of civil and criminal procedure, and the potential of this happening might deter the Petitioner of filing an appeal when an adverse decision by a lower adjudicating body is made. Furthermore, the Notice mentioned that an estimate of the total public burden (in cost) associated with the collection is $8,652,000. This represents a huge and exorbitant amount of money that could instead be directed to increasing the adjudicators in the Agency and expediting the current processing times. The proposed rule should not be enacted.	

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USCIS-2008-0027-0072	3.1	Kelvin Rosado, Esperanza Center, Immigration Legal Services	**Proposed Changes to I-290B:** USCIS has proposed several changes to the form and instructions for I-290B, Notice of Appeal or Motion, OMB Number 1615-0095. These changes include giving USCIS broadened use of information provided with a filed I-290B.	
USCIS-2008-0027-0073	3.2	Kelvin Rosado, Esperanza Center, Immigration Legal Services	**The fundamental right to due process:** The right to appeal is a cornerstone of our due process, and it is a well-known legal remedy for injustices and unfair decisions, as well as to provide guidance and instructions to the legal community. If this right is foreclosed or curtailed, in any way or form, our entire legal system will suffer from the deprivation of due process. Form I-290B is a vehicle to remedy instances of the erroneous conclusion of law, or incorrect application of law or service policy, or instances requiring a reconsideration of evidence in the record.	USCIS agrees that the right to appeal is important.
USCIS-2008-0027-0074	3.3	Kelvin Rosado, Esperanza Center, Immigration Legal Services	**Potential misuse of information:** The proposed regulation of Revision of a Currently Approved Collection would result in overly broad discretion to the Agency to collect information about an applicant or petitioner for purposes beyond the scope of adjudication of a pending appellate matter which has been brought before it for reconsideration or reopening. Further, it	The commenter expressed concern regarding USCIS' or a third party's potential misuse of information provided by the affected party on Form I-290B for purposes other than for adjudication of an appeal or motion. USCIS appreciates the commenter's concern. However, in accordance with the Privacy Act and DHS policy to implement the Fair Information Practice Principles, USCIS has

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			would be inconsistent with the Fair Information Practice Principles (FIPP) that serve as the foundational principles for privacy policy at implementation of DHS regardless of petitioner, beneficiary or applicant immigration status. Revising this level of discretion for USCIS might create the illusion that the information of the Petitioner, Beneficiary, Sponsor, Legal Representative, or any other person or organization involved in the matter might be used for purposes that are not related to the appellate process, including peripheral legal claims in regards to the persons involved or mentioned in the Form I-290B.	considered the use of personally identifiable information and documented its use in appropriate Privacy Impact Assessments and Systems of Record Notices. (See the response to Question 10 of the Supporting Statement.)
USCIS-2008-0027-0075	3.4	Kelvin Rosado, Esperanza Center, Immigration Legal Services	**Defined purpose of I-290B:** Form I–290B standardizes requests for appeals and motions and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I–290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. Form I–290B can also be filed with ICE by schools appealing decisions on Form I–17 filings for	The commenter stated that the public burden cost of $8,652,000 was "huge" and could be used to hire additional USCIS staff and improve processing times. USCIS appreciates the commenter's concern, but the public burden cost reflects the expense incurred by affected parties to complete and file the information collection (excluding the filing fee), which includes but is not limited to legal fees, mailing costs, etc. (See response to Question 13.) This cost is incurred by affected parties and is not realized by USCIS, therefore it cannot be used towards USCIS operations.

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			certification to ICE's Student and Exchange Visitor Program (SEVP). (Federal Register, Vol. 84, No. 154, 39359, Emphasis added). The main purpose of the Applicant or Petitioner filing a Form I-290B is to petition for USCIS to reconsider or reopen adjudication of their petitioned immigration benefit. As of today, the person signing the form is within the understanding that all the information will be used solely for the purpose of adjudicating the matter before the Agency. If that changes, the Applicant or Petitioner will be subject to a broad discretion from the Agency or a Third Party, which can use the information for unknown and unauthorized purposes. Many applicants and petitioners who are filing this form are undocumented, or in need of an immigration benefit for themselves, a loved one, or a prospective student or employee, and the fear of the unknown of who might have their information can preclude them from even considering the option of an appeal of an adverse decision. Besides, if an employer or a school is sponsoring a person, the private information of the Petitioner should not be subject to further discovery within the rules of civil and criminal procedure, and the potential of this happening might deter the Petitioner of filing an appeal when an adverse decision by a lower adjudicating body is made.	

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			Furthermore, the Notice mentioned that an estimate of the total public burden (in cost) associated with the collection is $8,652,000. This represents a huge and exorbitant amount of money that could instead be directed to increasing the adjudicators in the Agency and expediting the current processing times.	
USCIS-2008-0027-0076	3.5	Kelvin Rosado, Esperanza Center, Immigration Legal Services	**The chilling effect of proposed changes:** Therefore, expanding the collection of information for matter outside the scope of the adjudication of the pending matter before the Agency runs contrary to the regulations defining the purpose of Form I-290B. The proposed revisions could result in an applicant or petitioner who received an adverse decision from the Agency being dissuaded from seeking further remedy and due process through the Agency appellate system if they have a fear of potential misuse of their private information for unknown purposes. This would have a chilling effect on the desire to file an appeal, through Form I-290B. The proposed rule should not be enacted and the current regulation and purpose of the information collected in the Form I-290B should remain as is.	USCIS did not publish a Notice of Proposed Rulemaking, but instead a 60-day Notice of Revision of a Currently Approved Collection. USCIS is not proposing a new regulation, but instead proposing edits to an existing information collection. These edits are in compliance with the Paperwork Reduction Act of 1995, the Administrative Procedure Act, the Privacy Act, and all relevant authorities. Further, contrary to the commenter's suggestion, this revision does not change how USCIS handles or shares the information collected on Form I-290B.