



Homeland
Security

MEMORANDUM

To Sharon Block
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Eric Hysen
Chief Information Officer
Department of Homeland Security

SUBJECT: **Justification for Emergency Clearance of the Office of Immigration
Detention Ombudsman Case Intake Form (1601-NEW) by the Office of
Management and Budget**

Timeliness: As requested, attached please find a justification memorandum for our request for emergency clearance of the Office of the Immigration Detention Ombudsman (OIDO) Case Intake Form by the Office of Management and Budget (OMB) to obtain a valid OMB Control Number for a period of six months. This emergency request is being sought out under the Paperwork Reduction Act (PRA), 5 C.F.R. §1320.13. Pursuant to subpart (d) of the same title, OIDO is also requesting that OMB waive the requirement to publish a Federal Register notice stating its intention to request emergency processing under the PRA.

Justification: Pursuant to 6 U.S.C. §205(b), the Office of the Immigration and Detention Ombudsman (OIDO) Case Management Division (CMD) is responsible for independently and impartially reviewing cases submitted by, or on behalf of, individuals affected by potential misconduct; excessive force or violations of rights of individual detainees; or violations of law, standards of professional conduct, contract terms, policy related to immigration detention, or detention standards that occurred while in immigration detention by U.S. Department of Homeland Security (DHS) officers, or other personnel, or contracted, subcontracted, or cooperating entity personnel, and thereafter seeking to resolve the matter or provide redress as appropriate. In order to review such cases, CMD requires a formalized and approved OIDO Case Intake Form. Individuals will utilize the OIDO Case Intake Form to present their case, provide relevant details related to their case, and submit any required privacy releases.

OIDO is a new office within DHS established by Congress under Sec. 106 of the Consolidated Appropriations Act of 2020. As a new office, OIDO has not yet established a case intake system or started collecting data from the public. However, OIDO must begin intaking cases from the public and collecting the information on its Case Intake Form in order to accomplish its statutorily mandated mission.

Pursuant to 6 U.S.C. §205(b), OIDO is responsible for independently and impartially reviewing cases submitted by, or on behalf of, individuals. OIDO cannot carry out this portion of its mission until a means is established for individuals to submit cases to OIDO. The OIDO Case Intake Form is that means, and any delay in reviewing and approving the Case Intake Form delays the public's ability to submit cases to OIDO and seek redress. In addition, the information gathered by the form is essential to OIDO's mission, because it contains all of the data necessary for OIDO team members to review submitted cases and begin the process of investigating and resolving the matter.

OIDO cannot reasonably comply with the normal clearance procedures for two reasons. First, public harm is reasonably likely if normal clearance procedures are followed. Second, the unanticipated occurrence of the COVID-19 pandemic has created an emergent need for OIDO's services.

Should the OIDO Case Intake Form move through normal Office of Management and Budget (OMB) clearance channels, it is likely that review and approval of the form may take a year or more. OIDO cannot incur such a wait, as collection of the information on the OIDO Case Intake Form is essential to OIDO establishing its operations and accomplishing its mission. Moreover, compliance with normal clearance procedures is unreasonable due to the unanticipated COVID-19 pandemic and the public harm that will result if normal clearance procedures are followed.

Additionally, Congress has expressed an urgency for OIDO to begin its operations. In 6 U.S.C. §205(b), Congress explicitly included a provision to withhold obligated funding until the Department appointed an Ombudsman, a clear incentive for the office to move quickly. In meetings with Congressmembers and congressional staffers, it was made clear that OIDO should prioritize establishing field operations within detention facilities. Recently, on May 26, 2021, during a House Appropriations Subcommittee Hearing titled, "Department of Homeland Security Resource Management and Operational Priorities," Congress requested an update on OIDO operations to which DHS Secretary Mayorkas responded that OIDO should prioritize casework, complaints and concerns brought by individuals and organizations regarding conditions of immigration detention. Congress noted an interest in these cases, and, specifically, metrics of such cases. However, OIDO cannot begin this work until the public has the ability to submit cases through our Case Intake Form.

Public Harm

The United States is currently experiencing high levels of migrant entries along the Southwest border. This results in a corresponding increase in the number of migrants in immigration custody. In fiscal year 2020, U.S. Customs and Border Protection (CBP) apprehended just over 646,000 migrants.¹ As of the date of this memorandum, CBP has already apprehended over 871,000 migrants during FY 2021, and four months remain in the fiscal year.² For the months of February 2021, March 2021, and April 2021, CBP encountered over 100,000 migrants per month. Over 178,000 migrants were encountered in April 2021 alone.³ Of these, many are from vulnerable populations, including over 35,000 unaccompanied minors encountered in March and April 2021.⁴

¹ CBP Enforcement Statistics Fiscal Year 2021, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

² *See id.*

³ CBP Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁴ *See id.*

All these migrants are spending time in immigration detention facilities and encountering DHS officers and contractors. Accordingly, they have the right to seek redress through OIDO for issues occurring while they are detained. However, this avenue is unavailable to them until OIDO is able to intake cases through the OIDO Case Intake Form. Consequently, any delay in approving the Case Intake Form denies the migrant population, including vulnerable populations such as unaccompanied minors, the ability to seek redress through OIDO. This constitutes a public harm. It also hampers DHS's ability to efficiently and effectively address conditions within immigration detention.

Unanticipated Occurrence

In addition, the unanticipated occurrence of the COVID-19 pandemic has created an emergent need for OIDO's services. On March 13, 2020, the President declared a national emergency concerning the coronavirus disease 2019 (COVID-19) pandemic. Because the COVID-19 pandemic continues to cause significant risk to public health and safety, the national emergency was extended on February 24, 2021, and remains ongoing. COVID-19 poses a significant risk to individuals in immigration detention. Routine mitigation measures, such as social distancing, are difficult, if not impossible, to uphold. This reality, coupled with large migrant populations entering the U.S. from countries with limited to no vaccination efforts, results in a situation where those in immigration detention are particularly vulnerable to contracting COVID-19. OIDO serves as a vehicle for these individuals to express their concerns regarding COVID-19 and the mitigation measures implemented by DHS's detention facilities. Without emergency approval of the Case Intake Form, OIDO cannot assist either detainees or DHS with the exigent circumstances within detention facilities caused by COVID-19.

For these reasons, we ask that you approve our request for emergency clearance of the OIDO Case Intake Form to provide a valid OMB Control Number for a period of six months.

Thank you for your consideration.