



U.S. Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

February 8, 2023

Via Email

Mr. Joseph Nye
OMB Policy Analyst
Office of Information and Regulatory Affairs
New Executive Office Building
Washington, DC 20530

Dear Mr. Nye:

As the Pardon Attorney of the United States in the Office of the Pardon Attorney (PARDON), I am seeking an emergency review and approval of the attached amended Certificate of Pardon Application for Simple Possession of Marijuana (Certificate Application) pursuant to the requirements of the Paperwork Reduction Act (PRA). Emergency approval was initially granted to the original version of this form on October 19, 2022, under OMB Approval Number 1123-0014. This letter requests emergency approval of the amended Certificate by February 10, 2023, in accordance with 44 U.S.C. §§ 3507(j)(1) and 3507(j)(2).

This emergency processing is essential because the President issued a proclamation of pardon on October 6, 2022, available here: [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana | The White House](#) (Proclamation), and has specifically directed the Office of the Pardon Attorney to develop procedures to comply with the proclamation “as soon as reasonably practicable.” Further, the Department has issued a statement promising that “[t]he Justice Department will expeditiously administer the President’s proclamation, which pardons individuals who engaged in simple possession of marijuana, restoring political, civil, and other rights to those convicted of that offense. In the coming days, the Office of the Pardon Attorney will begin implementing a process to provide impacted individuals with certificates of pardon.”

While the initial emergency approval enabled our office to prepare the form for public use within a short time frame, unforeseen delays and concerns regarding the verification of the applicants’ immigration status arose. The concerns have since been addressed with the amended form, which requires a small change to the collection of information: we now ask applicants to provide their immigration number(s) so that PARDON can verify their lawful permanent resident status. PARDON must verify residency status to ensure that the applicant satisfies the

proclamation's mandate that only "current United States citizens and lawful permanent residents" are eligible for pardon.

The collection of immigration numbers will be used to verify immigration status using the Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS-USCIS), Systematic Alien Verification for Entitlements (SAVE) program. PARDON has already coordinated with the SAVE program administrators to receive access and has a valid Memorandum of Understanding in place for the purpose of this verification process. Further, the form advises applicants of the use of the SAVE program to verify lawful permanent residency status.

Importantly, there is virtually no change to the burden the collection will cause to the individual applicant, as the form allows the applicant to submit one out of a variety of immigration numbers, and immigration number is a piece of data readily in hand for persons with lawful permanent residency status. However, given the delay that has already taken place, the normal clearance procedures would fail to satisfy this specific presidential directive and would breach the public promise of the Department that processing on these applications will begin as quickly as possible.

Application is Essential to Providing Proof of Pardon to Eligible Pardon Recipients

The expedited approval of the Certificate is essential to provide pardon recipients proof of pardon. The proclamation of October 6, 2022 granted pardon to all eligible persons, namely those who have been convicted of simple marijuana possession under federal or D.C. Codes. *See* Proclamation. Though the grant of pardon is effective the date the proclamation was issued, for practical purposes, no one who has received a pardon has the corresponding proof that the pardon applies to them. Proof of pardon is necessary to record the fact of pardon on each recipient's criminal record and to restore any civil disabilities that may be attendant to the conviction, such as restriction from public housing, voting rights, or eligibility for student loans.

A 90-day, or even a shorter 60-day Office of Management and Budget (OMB) clearance process would prevent my office from fulfilling the President's directive to begin issuing certificates proving the fact of pardon as "soon as reasonably practicable." Now that all outstanding concerns have been addressed, publication of the amended form without delay is essential.

The Proclamation is an Extraordinary Grant of Clemency that Necessitates Emergency Action

In the ordinary practice of the Office of the Pardon Attorney, clemency applicants submit petitions for clemency to our office, we conduct investigations and make recommendations through the Deputy Attorney General to the White House, and the President makes the ultimate decision on each clemency application, absent some administrative requirements. When the President makes a decision to grant or deny clemency, he immediately informs my Office, who conveys the substance of the President's decision to the clemency petitioner immediately; in the case of grant of clemency, the notice to the recipient is nearly always undertaken on the same date that the President signs a warrant of clemency, and corresponding proof of the grant is

mailed to the recipient with all due speed. Often the recipient receives the warrant evidencing the grant of clemency within a day. Such speed is required due both to the momentous nature of the President's action and to the immense impact the pardon grant has on the recipient.

Instead, the Proclamation has granted pardon to an unknown number of eligible persons, although we have provided some estimates in the attached documentation, based on best available data, regarding estimated numbers in the class of affected persons who could apply for proof of the pardon based on best available data. However, we have no individualized information regarding specific pardon recipients. Importantly, PARDON's records indicate that virtually no person who we believe would qualify under this Proclamation grant has a petition pending in this Office. Thus, we require those who qualify to complete the subject Certificate Application so that we can verify the eligibility of the person for pardon. **We have no other practical means of obtaining such information.**

The impact of a pardon on the lives of the Proclamation recipients is no less than those who are granted clemency after application and individual notice. Though some brief delay in providing notice and proof to those recipients is inevitable given the very nature of the Proclamation, any delay more than strictly necessary will unjustly deprive pardoned persons of the full restoration of their rights as citizens of this country. Indeed, the unforeseen concerns that caused delay and amendment to the original application have already proven detrimental. Our office has already been provided notice of persons who are entitled to cease restitution payments flowing from their conviction or who are required to submit certificates to the courts to avoid the imposition of prison or probationary sentences. While we have been able to address a portion of these concerns with *ad hoc* review, any further delay in publication of the form will unnecessarily deprive pardon recipients of the opportunity to seek relief as a routine matter. Further, any additional unwarranted delays will obstruct the President's clear desire to return those eligible to the full rights of citizenship with all haste.

The Proclamation was Announced Publicly and We Have Already Received Significant Inquiry Regarding the Procedures Necessary to Attain Proof of Pardon

The October 6, 2022 Proclamation was the first of its kind in over 45 years. The announcement was made with significant fanfare by the White House. The President provided accompanying remarks, the Department of Justice has provided public statement, and the announcement has garnered significant press attention. My Office has already received hundreds of inquiries from persons who believe they may qualify under the Proclamation, as well as inquiries from members of the press who wish to report on the necessary procedures for obtaining a certificate of pardon. Any delay in answering those inquiries could result in the frustration of eligible Proclamation recipients, who, if not provided a clear response to their questions, could choose to forego any future inquiries. Because the plain language of the Proclamation directs that the Pardon Attorney "shall administer and effectuate the issuance of certificates of pardon to eligible applicants who have been charged or convicted for the offense of simple possession of marijuana," it is clear that the President intends that those who qualify under the Proclamation to receive proof of their pardon. Lack of responsiveness to valid inquiries by pardon recipients at this juncture could very well thwart that intent.

Expedited Approval Provides a Temporary Measure to Allow Claims to be Processed within the Statutory Time Limits While the Application Undergoes the Normal Clearance Procedures

Finally, PARDON's request for expedited approval should be granted because it is a temporary measure to allow claims to be processed as soon as possible, while the amended Certificate Application undergoes the normal clearance procedures. If additional comments are received during the PRA clearance process, the Certificate Application can be further amended. Moreover, the amended Certificate Application is brief, closely modeled on a form used to authenticate those eligible for Pardon under the Carter Proclamation of January 1977 and seeks only such information as is necessary to verify the eligibility of the applicant for the pardon. It therefore should raise few unique concerns for OMB.

Thank you for your prompt consideration of this request. Please contact Kira Gillespie, Deputy Pardon Attorney of the Office of the Pardon Attorney by email at kira.gillespie@usdoj.gov or by phone at (202) 616-6073 if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth G. Oyer".

Elizabeth G. Oyer
Pardon Attorney
Office of the Pardon Attorney
U.S. Department of Justice