

SUPPORTING STATEMENT

Certification and Release of Records (Form EOIR-59)

Part A. Justification

1. Necessity of Information –

Background. Regulations prescribe how to make a request for access to Department of Justice (DOJ) records under the Privacy Act of 1974, 5 U.S.C. § 552a. Generally, an individual may make a request for access to his or her own records by appearing in-person or by writing to the Privacy Act Office of the DOJ component that maintains the records. 28 C.F.R. § 16.41(a). The regulations require that the requestor describe the records in sufficient detail to enable department personnel to locate the applicable system of records containing the information with a reasonable amount of effort. 28 C.F.R. § 16.41(b). The request should include, whenever possible, a description of the records sought, the time periods they were compiled, and the name or identifying number of each system of records where they are kept. *Id.* Privacy Act requests are subject to applicable fees. 28 C.F.R. § 16.41(c). Furthermore, the request must contain a verification of identity, including the requestor's full name, current address, and date and place of birth, and be signed under penalty of perjury or notarized. 28 C.F.R. § 16.41(d). Finally, parents and guardians making a request on behalf of a minor or of someone determined by a court to be incompetent must also provide proof of their relationship to the minor or individual determined to be incompetent. 28 C.F.R. § 16.41(e).

Information Collection. The Executive Office for Immigration Review (EOIR) has created the Form EOIR-59, Certification and Release of Records, to standardize and streamline Privacy Act and Freedom of Information Act (FOIA) requests for records related to cases or proceedings before EOIR. The form allows parties who are, or were, in immigration proceedings before EOIR to disclose or release their records to an attorney, accredited representative, qualified organization, or other third party. To prevent the unauthorized disclosure of records of individuals maintained by the DOJ as required under the Privacy Act of 1974, 5 U.S.C. § 552a, the Form EOIR-59 collects personal, identifying information about the subject of the records sought, the recipient of the records sought, and a parent or guardian completing the form on behalf of a minor or individual determined to be incompetent by a court.

With respect to the subject of the record, Part A of the form prompts the respondent¹ to provide the following information: alien registration number (A-number) (if any), the record subject's current legal name, other names by which the subject of the records has been known, the current address and telephone number, the previous address and telephone number (if applicable), date of birth, country of nationality or citizenship, and place of birth. Importantly, the respondent must identify whether the Department is permitted to release all of the records pertaining to the respondent or to release particular records as specified by the respondent.

EOIR has made several changes to the information collection fields in Part A.

¹ In the context of this supporting statement, "respondent" refers to the individual completing the Form EOIR-59 and does not necessarily refer to the individual noncitizen who is the subject of EOIR immigration proceedings.

First, EOIR made the following non-substantive changes:

- Changed “Alien” in the section title to “Noncitizen” to comply with DOJ policy.
- Included the abbreviation “A-numbers” for “Alien registration numbers.”
- Rephrased for clarity “Other Names You Have Been Known By Since Birth” to “Other Names By Which You Have Been Known Since Birth.”

EOIR also made the following substantive changes to Part A of the Form EOIR-59:

- Edited the Current Address and Previous Address fields to enable the respondent to enter addresses outside of the United States. An address within the United States is not required to make a request for records under the Privacy Act or the FOIA.
- Included a reminder to noncitizen respondents to complete the Form EOIR-33, Change of Address/Contact Information Form, in the event that the current address entered on the Form EOIR-59 differs from the official address currently on file with EOIR. The Form EOIR-33 is the official notice of a change of address or contact information. The reminder in Part A makes clear that the entry of a new address or contact information on the Form EOIR-59 does not serve as an official notice to EOIR of a change of address or contact information.

With respect to the records recipient information, Part B of the form prompts the respondent to provide the recipient’s full name, the organization associated with the recipient (if applicable), the recipient’s contact information (mailing address, telephone

number, and email address), the recipient's relationship to the subject of the records sought, and the recipient's EOIR ID number (if any). EOIR made the following substantive changes to Part B of the form:

- Edited the Mailing Address fields to enable the respondent to enter addresses outside of the United States. An address within the United States is not required to make a request for records under the Privacy Act or the FOIA.
- Incorporated check boxes to assist the respondent in identifying the recipient's relationship to the subject of the records sought and more clearly direct the respondent to provide the information required for recipients with an attorney-client or parent-guardian relationship with the subject of the record. The respondent can now specify whether the recipient of the records is the subject's attorney, legal representative, parent, or guardian, or if the relationship does not fit into the enumerated categories. If the respondent identifies the recipient as the subject's attorney or legal representative, the instruction under the check box directs the respondent to Part B, Item 6 to provide the EOIR ID Number of the attorney or legal representative. If the respondent identifies the recipient as the subject's parent or guardian, the instruction under the check box directs the respondent to Part C to provide further identity and guardianship verification. In addition, the entirety of Part C constitutes a substantive change to the Form EOIR-59. The purposes of the newly-created Part C are: (1) to more effectively collect the information required by 28 C.F.R. § 16.41(e) relating to parents or guardians who complete the Form EOIR-59 on behalf of the subject of the

records; and (2) to increase the efficiency of the EOIR Privacy Act and FOIA request process by ensuring the respondent provides and EOIR receives the identity and guardianship verification that is required to release records when the parent or guardian completes the form. Since its inception, the Form EOIR-59 has included instructions to consult the EOIR website for the requirements to submit a Privacy Act or FOIA request, including the identity and guardianship verification requirements of 28 C.F.R. § 16.41(e). However, respondents do not appear to take the extra step to consult the website as many parents and guardians who complete the form on behalf of a record's subject fail to provide the EOIR FOIA Office with the information required to fulfill records requests. For this reason, the EOIR FOIA Office denies a significant number of Privacy Act and FOIA requests, which results in a parent or guardian having to re-submit a request for records. The absence of Part C has therefore increased the burden to both the public and the government to efficiently engage in the records request and fulfillment process. To reduce these burdens and inefficiencies, EOIR now proposes to collect the following information in Part C of Form EOIR-59 relating to the parent or guardian completing the form on behalf of the record's subject: date of birth, place of birth, current address, relation to the record's subject, and acknowledgement by the parent or guardian that they must submit proof of their relationship to the record's subject.

EOIR also proposes a non-substantive change in the format of the information collected by Part D. The Form EOIR-59 has always included statements for the

respondent to consent to the release of records, understand that there may be a fee associated with some records requests, and declare under penalty of perjury that the information provided in the form is true and correct. With the addition of Part C, EOIR determined that the form could be better organized if these statements and the signature collection were grouped into a separate section of the form. Additionally, the title of Part D clarifies to respondents that only the subject of the record or the parent or guardian of the records subject may sign the Form EOIR-59.

Finally, EOIR made some non-substantive edits to the instructions for the form for clarity and updated links to EOIR web pages referenced in the instructions.

2. Needs and Uses - The certification and release of records form (Form EOIR-59) is optional and voluntary. Careful review of the information provided in the form is necessary to prevent wrongful disclosure of DOJ records.

3. Use of Technology - The use of this form will provide the most efficient means for collecting and processing the required data. The Form EOIR-59 will be available as a fillable pdf on EOIR's website. Information can be typed into the online form, which is then printed out for submission to EOIR either by electronic or physical mail, where appropriate. In addition, an applicant may print the form in its entirety for completion by typing or printing legibly.

4. Efforts to Identify Duplication – There is no other EOIR form to request a release of

records. The only other method for an individual to request release of their own records is by submitting a DOJ-361 Form, Certification of Identity. The DOJ-361 includes a field for social security numbers, which EOIR does not need to collect to locate and identify a requestor's records. Rather, EOIR makes the EOIR-59 available to requestors to avoid unnecessary and inadvertent collection of social security numbers. The EOIR-59 provides a field for the alien registration number (a field the DOJ-361 does not have), which in turn will enable EOIR to accurately and efficiently locate the requested records, without having to unnecessarily collect social security numbers. A review of EOIR's forms revealed no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities. The form is optional and voluntary and may be used at the discretion of individuals who are, or have been, parties in proceedings before EOIR. EOIR estimates that it will take approximately ten (10) minutes to complete the form. When used, this collection does not impose an undue burden on the requesting individuals or the recipients of the records, as the requested information is necessary to identify the subject of the records, parents or guardians completing the form on behalf of the subject of the records, and the records' recipient, and to prevent wrongful disclosure of DOJ records. The use of this form should make it easier for individuals to request records and for EOIR to more efficiently process those requests, as it is intended to collect all of the information needed to process the request, and to avoid having to follow

up with individuals to provide any missing information.

6. Consequences of Less Frequent Collection - Failure to collect this information would deprive an individual of an efficient method to request the release of their records specific to their case or immigration proceedings before EOIR.

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 – A 60-day notice covering this collection was published in the Federal Register on September 7, 2023, at 88 FR 61615. EOIR did not receive any comments in response to the 60-day notice. A 30-day notice covering this collection was published in the Federal Register on November 22, 2023, at 88 FR 81434. Copies of these notices are attached. If comments are received in response to the 30-day notice, they will be considered and incorporated where appropriate.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to parties to cases or immigration proceedings, attorneys, accredited representatives, qualified organizations, or other third parties.

10. Assurance of Confidentiality – The EOIR component processing the request will maintain the original application. For example, requests received by the immigration

court for records from a noncitizen’s removal proceedings will maintain the request in the administrative portion of the file associated with that individual record of proceedings. Those EOIR staff members processing the application may access the Form EOIR-59. EOIR protects the confidentiality of the contents of the Form EOIR-59, to the extent permitted by law, including the Privacy Act and the FOIA.

11. Justification for Sensitive Questions - There are no questions of a sensitive nature.

12. Estimate of Hour Burden

a. Number of Respondents	55,475
b. Number of Responses per Respondent	1 each
c. Total Annual Responses	55,475
d. Hours per Response	10 minutes (0.17 hours)
e. Total Annual Hourly Reporting Burden	9,246 hours

$55,475 \text{ respondents} \times 1 \text{ response per respondent} \times 10 \text{ minutes per response} = 9,246$
burden hours.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated public cost is zero.

For informational purposes only, there may be additional costs to respondents should they elect to use this optional form. Respondents may incur a cost if they hire an attorney to assist them with completing the Form EOIR-59. The Bureau of Labor Statistics reports that the national average hourly wage for lawyers is \$78.74. For those respondents who proceed without an attorney, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. There are also no fees associated with filing the Form EOIR-59.

14. Estimated Cost to the Federal Government – It is estimated that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-59 will be \$588,534. This amount includes printing costs of \$11,095, which was derived by multiplying the 2 pages of the Form EOIR-59 by an estimated \$.10 per copy by the estimated 55,475 respondents per year. This amount also includes stocking, processing, and maintenance costs of \$577,439, which was obtained by calculating the personnel and overhead costs to EOIR for processing the form.

15. Plans for Publication - The information from this collection will be used internally to locate and release records of individuals who are, or were, involved in cases or immigration proceedings before EOIR.

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

Part 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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November 28, 2023
Date