

SUPPORTING STATEMENT

OMB No. 1125-0006

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

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. A noncitizen 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 a noncitizen 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 noncitizen. If an individual is appearing as a representative in a practitioner disciplinary proceeding, the representative must inform the Immigration Court that s/he is entering an appearance. 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 component of the Department of Homeland Security (DHS) – U.S. Immigration and Customs Enforcement – as the opposing party in the proceeding.

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. If the individual is an accredited foreign government official, the individual must indicate 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. On the second page of the form, a practitioner appearing “on behalf of” an attorney must provide the date of the hearing for the appearance.

The attorney attestation section allows qualified representatives ordered by EOIR to appear on a respondent’s behalf to indicate that they are appearing pursuant to an EOIR order for the provision of a qualified representative, as opposed to at the respondent’s request. EOIR provides qualified representatives to unrepresented immigration detainees with serious mental disorders who are deemed by an immigration judge to be mentally incompetent to represent themselves in immigration proceedings, and as such do not possess the mental capacity to consent to representation.

As part of the reauthorization process, EOIR has made several non-substantive changes to the current Form EOIR-28 for clarity. First, EOIR moved the word “alien” on the first page to the subsequent sentence, which now reads, in part, “provide “Alien” (“A”) number,” to clearly denote the information that is requested in the fillable box underneath it. Second, EOIR moved “Law Firm/Organization” to the line below the “Name” field, and moved “Address” below “Law Firm/Organization” to eliminate any confusion regarding the information that is being requested. Third, EOIR corrected its website address to ensure filers have the accurate information to access its website. Fourth, EOIR updated the information regarding how to obtain automated case information by inserting the website address and updating the toll number. EOIR also consolidated the section on “further information” with that of “cases before EOIR” to

create space for the expansion a fillable box. Fifth, EOIR has made all website addresses on the form Section 508 of the Rehabilitation Act of 1973 compliant by underlining them and changing their font to blue. Lastly, the revision date of the form has been updated.

In addition to the aforementioned non-substantive changes, EOIR is proposing to make five minor but substantive changes. First, EOIR added to the text for the checkbox applicable to a reputable individual to make clear that the individual must confirm that s/he satisfies the regulatory criteria at satisfy 8 C.F.R. 1291.1(a)(3)(ii), and to direct the individual to provide further information regarding the individual's satisfaction of all the requirements under 8 C.F.R. 1291.1(a)(3). EOIR has added language to this effect on the second page, under the additional information section, which informs reputable individuals that the text field below "additional information" can be used to provide the information needed to satisfy 8 C.F.R. 1291.1(a)(3). Second, EOIR added "Organization" as an alternate option for representatives to identify the law firm or organization with which they are associated. Third, EOIR added language explaining the types of appearance before the Immigration Court and corresponding obligations of an attorney or representative, as well as the Court's obligations relating to the respective appearances.

Fourth, EOIR modified the paragraph explaining what constitutes an appearance on behalf of a respondent to add the term "practitioner of record" and an accompanying brief description of the responsibility of a "practitioner of record." Fifth and finally, EOIR modified the appearances paragraph to clarify the appropriate use of Form EOIR-28 and Form EOIR-61. The modification now makes clear that Form EOIR-61 is to be

used for the entry of a limited appearance and notes how the entry of a limited appearance differs from that of a practitioner of record.

2. Needs and Uses - The Form EOIR-28 allows attorneys and representatives to notify the Immigration Court that they are representing a respondent 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 a noncitizen before the Immigration Court, the Immigration Court designates the individual as the respondent's legal representative during the 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 respondents 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, which is an electronic process that requires attorneys and accredited representatives to enter and maintain a profile of their information with EOIR, receive an EOIR Identification Number, and once registered, these attorneys and accredited

representatives may appear before all Immigration Courts and electronically file documents. 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 to represent a respondent in proceedings before the Immigration Court is to complete and file the Form EOIR-28. A review of all EOIR 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 any 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 noncitizen in proceedings before EOIR, as required by regulation. *See* 8 C.F.R. § 1003.17(a).

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 - The 60-day notice covering this collection was published in the Federal Register on September 16, 2024. 89 Fed. Reg. 75584. No comments were received. The 30-day notice covering this collection was also published in the Federal Register on November 21, 2024. 89 Fed. Reg. 92160. No comments were received.

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 proceeding, along with all other documents filed in the respondent'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 only would release information contained within the Form EOIR-28 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 disbarring, 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 noncitizens 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 the EOIR Director’s Memorandum 22-01, the particular needs of pro bono representatives who appear before EOIR should be taken into consideration. *See* DM 22-01: Encouraging and Facilitating Pro Bono Legal Services, Nov. 5, 2021, *available at* [Encouraging and Facilitating Pro Bono Legal Services \(justice.gov\)](https://www.justice.gov/eoir/encouraging-and-facilitating-pro-bono-legal-services).

12. Estimate of Hour Burden

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|---|-----------------------|
| a. Number of Respondents | 1,536,921 |
| b. Number of Responses per Respondent | 1 |
| c. Total Annual responses | 1,536,921 |
| d. Hours per response | 6 minutes or 0.1 hour |
| e. Total annual hourly reporting burden | 153,692 |

1,536,921 attorneys or representatives x 1 response per respondent x 0.1 hour per response = 153,692 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 \$10,770,735. This amount is reached by multiplying the burden hours (153,692) by \$70.08, which represents the current median hourly wage for attorneys, as set by the Bureau of Labor Statistics. \$10,770,735 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 \$10,770,735.

14. Estimated Cost to the Federal Government - The estimated annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-28 is \$4,934,905.

15. Reasons for Change in Burden - The difference in burden is due to an agency adjustment, specifically an increase in the number of respondents. Previously, EOIR

estimated 622,689 respondents annually. At present, there are approximately 1,536,921 respondents annually. As the number of hours per response remained the same (6 minutes), the total burden hours increased from 62,269 to 153,692 burden hours, for a difference of 91,423 burden hours. Because of the higher number of respondents, the cost burden similarly increased to reflect the adjustment for the number of applicants.

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.

Alexander Y. Hartman
Senior Associate General Counsel
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Date