

SUPPORTING STATEMENT

New Collection of Information:

Form EOIR-86, Notice of Appeal of a Civil Money Penalty for Contempt (OMB Control No. Requested)

Revisions to Previously Approved Collections of Information:

Form EOIR-27, Notice of Entry of Appearance as an Attorney or Representative Before the Board of Immigration Appeals (OMB Control No. 1125-0005)

and

Form EOIR-28, Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (OMB Control No. 1125-0006)

Part A. Justification

1. Necessity of Information – EOIR is publishing a notice of proposed rulemaking pursuant to section 103(g) of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 (“HSA”), Public Law 107-296, 116 Stat. 2135 (as amended). Under the HSA, the Attorney General retains the authority to “establish such regulations, . . . issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out” the Attorney General’s authorities under the INA. HSA 1102, 116 Stat. at 2273-74; INA 103(g)(2), 8 U.S.C. 1103(g)(2). Further, the INA explicitly authorizes the Attorney General to prescribe regulations related to Immigration Judges’ authority to issue civil money penalties for any contemptuous action or inaction. INA 240(b)(1), 8 U.S.C. 1229a(b)(1) (stating that an Immigration Judge has “authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the [Immigration] [J]udge’s proper exercise of authority”). The proposed rule: (1) defines the scope of the

Immigration Judge's contempt authority; (2) provides procedures for Immigration Judges or the Chief Immigration Judge to make contempt findings and penalty determinations and collect penalty payment; (3) establish an appellate process for sanctioned individuals to appeal the Chief Immigration Judge's order imposing a civil money penalty for contempt to the Board of Immigration Appeals (Board); and (4) implements oversight of the use of contempt authority. This rule also proposes conforming changes to grounds for practitioner discipline.

The rule proposes to authorize Immigration Judges to impose a civil money penalty as a sanction only for specified types of contemptuous conduct: (1) an attorney's or representative's repeated failures to appear or to appear on time for scheduled hearings or pre-hearing conferences without good cause; (2) repeated failures to comply with Immigration Judge orders to timely file pleadings, applications, pre-hearing statements, evidentiary submissions, or any other filings, without good cause; (3) disorderly or abusive behavior or language in the courtroom and before the Immigration Judge or abusive language in any filing with the Immigration Court; (4) knowingly or recklessly making a false statement of material fact or law or knowingly or recklessly offering false evidence, and for practitioners, failing to take appropriate remedial measures after becoming aware of the falsity of previous material statements or evidence; or (5) willfully misleading, misinforming, threatening, or deceiving any person (including a party to a case or an officer or employee of the Department), concerning any relevant matter relating to a case.

These standards would apply to conduct that occurs inside or outside of the courtroom. The proposed rule would allow for the imposition of a civil money penalty on the following individuals: (1) aliens who are the subject of the EOIR immigration proceedings; (2) an alien's attorney or representative in such proceedings; and (3) witnesses in EOIR immigration proceedings, other than witnesses who are current employees of the federal government acting in their official capacity (e.g., the Department of Homeland Security (DHS) attorney of record who is the opposing party in EOIR immigration proceedings).

The Immigration Judge would first be required to issue a written warning to an individual that a violation has occurred; the warning must describe the specific conduct, explain why the conduct is sanctionable, notify the individual that continuing to engage in the specified conduct may result in the initiation of contempt proceedings and the imposition of a civil money penalty, and notify the individual that they may, but are not required to, respond orally or in writing to the warning within 10 days of issuance. If further contemptuous conduct occurs, the proposed rule requires the Immigration Judge to make such a finding on the record, at which point the Immigration Judge may initiate the civil money penalty process by serving a Notice of Intent to Impose a Civil Money Penalty ("CMP Notice") on the individual. The CMP Notice would include: (1) the name and address of the sanctioned individual; (2) a description of the conduct in question; (3) the alleged charge or charges of contemptuous conduct; (4) an explanation of how the conduct in question

delayed, disrupted, or obstructed the adjudicatory process; (5) a brief description of any warnings provided; and (6) the Immigration Judge's proposed amount for the civil money penalty.

The CMP Notice would then be referred to the Chief Immigration Judge or his or her designee for a decision. The individual would have 30 days to file a response to the CMP Notice in support of the individual's position on the charges in the CMP Notice. The Chief Immigration Judge may then issue a written decision determining whether there is clear and convincing evidence that the individual engaged in contemptuous conduct that delayed, disrupted, or obstructed the adjudicatory process, and if so found, specifying the civil money penalty amount imposed and instructions for payment of the penalty.

Notably, this rule proposes an appeal process to provide an additional layer of procedural protections to individuals found in contempt. Following the Chief Immigration Judge's order imposing a civil money penalty, the individual found in contempt would be able to challenge that order by filing an appeal with the Board. The proposed appeal process would require the individual to simultaneously serve a copy of the appeal and other related filings on the EOIR General Counsel, who would represent the agency in such appeal proceedings. The Board would set a simultaneous briefing schedule of 20 days (but not more than 35 days) for the parties. Following review, the Board would issue a written decision affirming, modifying, or vacating

with prejudice the civil money penalty. The Board's order would become the final agency decision on the date the order is issued. An individual found in contempt would be required to pay the penalty within 30 days of the Board's final order.

Currently, there is no EOIR form for an individual to initiate an appeal with the Board of an order issued by the Chief Immigration Judge imposing a civil money penalty for contempt. EOIR's existing appeal forms only permit the appeal of Immigration Judge decisions in removal proceedings (EOIR-26, Notice of Appeal from a Decision of an Immigration Judge (OMB Control No. 1125-0002)) and the appeal of disciplinary action imposed on an attorney or authorized representative pursuant to 8 C.F.R. §§ 1003.101-1003.111 (EOIR-45, Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case). Forms EOIR-26 and EOIR-45 were designed to collect information necessary for the Board to adjudicate appeal types established by separate and distinct administrative adjudicatory processes. Neither of the existing appeal forms collect the information necessary for the Board to adjudicate an appeal of a civil money penalty order for contemptuous conduct by an alien, their representative of record, or witnesses appearing in EOIR immigration proceedings. For these reasons, EOIR proposes a new collection of information, Form EOIR-86, Notice of Appeal of a Civil Money Penalty for Contempt. The proposed Form EOIR-86 would require the appellant to identify himself or herself, to state the decision being appealed, and to explain the basis for the appeal. The new form will also provide the appellant with instructions as to where and how to serve the EOIR

General Counsel as a party to contempt proceedings. Individuals will be able to download and complete the form either electronically or by printing and handwriting responses. Individuals will be able to submit forms to EOIR by mail and hand delivery. Individuals will also be able to submit completed forms via email while EOIR updates its electronic filing and case management systems to integrate the proposed Form EOIR-86.

The proposed rulemaking permits individuals in contempt proceedings before the agency to be represented by counsel, at no expense to the government. So that counsel may enter their appearance on behalf of individuals in contempt proceedings, EOIR also proposes to modify two currently approved collections of information: Form EOIR-27, Notice of Entry of Appearance as an Attorney or Representative Before the Board of Immigration Appeals (OMB Control No. 1125-0005); and Form EOIR-28, Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (OMB Control No. 1125-0006). Both forms will be updated to add an option for an attorney or authorized representative to enter an appearance to represent an individual who is the subject of contempt proceedings before the Chief Immigration Judge or the Board.

2. Needs and Uses - The proposed Form EOIR-86 is intended to be used by individuals to appeal to the Board an order of the Chief Immigration Judge finding the individual in contempt and sanctioning the contemptuous individual with a civil money penalty.

This new collection of information will help the Board differentiate appeals of decisions involving civil money penalties from other types of appeals and will collect all of the information necessary for the Board to adjudicate this civil money penalty appeal in accordance with the proposed regulations. An individual would be required to complete the form to exercise the appeal rights afforded to the individual under the proposed regulations. Should a sanctioned individual wish to retain counsel to represent the individual in contempt proceedings, the retained practitioner must complete and file either a Form EOIR-27 or EOIR-28 to enter their appearance in the contempt proceeding on behalf of the sanctioned individual.

3. Use of Technology - The use of these forms will provide the most efficient means for collecting and processing the required information. The forms will be available on EOIR's website along with all of EOIR's other forms. Individuals may download and complete the forms as fillable PDFs. Alternatively, individuals may print the forms and complete it by printing legibly. The forms may be printed and submitted to EOIR by mail or hand delivery. Alternatively, the forms may be electronically submitted to EOIR by email. Once EOIR further expands its existing electronic filing and case manage systems to account for contempt proceedings, the forms may be submitted electronically through one of EOIR's existing electronic filing systems.

4. Efforts to Identify Duplication - Currently, there is no EOIR form for the appeal of a civil money penalty to the Board. While EOIR does have other appeal forms, those

forms collect information and fulfill purposes specific to distinct administrative proceeding types; the information collected by the existing appeal forms cannot be used specifically for the purpose of contesting an order of the Chief Immigration Judge issuing a civil money penalty for contempt. As the current appeal forms serve completely different uses and purposes, there is no duplication of effort if EOIR creates a new appeal form specific to contempt proceedings.

5. Impact on Small Businesses – This collection of information is not expected to have a particular impact on small businesses.

6. Consequences of Less Frequent Collection – The proposed regulations afford individuals sanctioned with a civil money penalty the right to appeal such penalty. The proposed Form EOIR-86 is the mechanism by which individuals will exercise this right, and failure to collect this information would preclude individuals from exercising this right. Sanctioned individuals would also be afforded the right to be represented by counsel in such contempt proceedings, and the proposed revisions to Forms EOIR-27 and EOIR-28 would be the mechanism by which retained counsel will enter their appearance on behalf of sanctioned individuals. Failure to collect this information would preclude an individual from exercising their right to representation in contempt proceedings.

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 – EOIR published a Notice of Proposed Rulemaking covering this collection in the Federal Register. *See* 91 Fed. Reg. 47979 (Jul. 30, 2026). A copy of this notice is attached, which includes a copy of the preamble and the proposed regulations.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to parties in EOIR proceedings or their attorneys or representatives.

10. Assurance of Confidentiality – EOIR will retain the original forms in the official record of contempt proceedings, along with all other documents filed in the contempt proceeding. The record of contempt proceedings will be maintained separately from the official record for other types of EOIR proceedings, such as removal proceedings. EOIR personnel who process, review, and adjudicate the contempt proceeding may access the forms and documents filed with the forms. To the extent permitted by law, EOIR will protect the confidentiality of the contents of the forms and all other documents filed in the contempt proceeding. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions – There are no questions of a sensitive nature included in this information collection.

12. Estimate of Hour Burden

EOIR-86, Notice of Appeal of a Civil Money Penalty for Contempt

a. Number of Respondents	50
b. Number of Responses per Respondent	1 each
c. Total Annual Responses	50
d. Hours per Response	1 hours
e. Total Annual Hourly Reporting Burden	50 hours

50 respondents x 1 response per respondent x 1 hour per response = 50 burden hours.

EOIR-27, Notice of Entry of Appearance as an Attorney or Representative Before the Board of Immigration Appeals

a. Number of Respondents	42,126
b. Number of Responses per Respondent	1 each
c. Total Annual Responses	42,126
d. Hours per Response	0.1 hours
e. Total Annual Hourly Reporting Burden	4,213 hours

42,126 respondents x 1 response per respondent x 6 minutes per response = 4,213 burden hours.

EOIR-28, Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court

a. Number of Respondents	1,536,921
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b. Number of Responses per Respondent	1 each
c. Total Annual Responses	1,536,921
d. Hours per Response	0.1 hours
e. Total Annual Hourly Reporting Burden	153,692 hours

1,536,921 respondents x 1 response per respondent x 6 minutes per response = 153,692 burden hours.

13. Estimate of Cost Burden

For the proposed Form EOIR-86, the agency estimates the upper bound for aggregate costs for all respondents at \$39,278 annually. There are no capital or start-up costs associated with this information collection. EOIR estimates a \$675 filing fee for a respondent to file a completed Form EOIR-86. If a respondent chooses to file a completed form by mail or hand delivery, there is an estimated printing cost of \$1.00 per response (\$0.10 printing fee per page x 5 pages x 2 copies = \$1.00 per response) and an estimated postage cost of \$20.20 per response (\$10.10 Priority Mail Flat Rate postage per response x 2 copies = \$20.20 in postage per response). EOIR anticipates that civil money penalties will most often be sanctioned against attorneys and authorized representatives, and so most forms are not likely to require separate legal assistance to complete.

However, for those respondents that do retain a practitioner to assist with completing the form, there would be an additional cost of \$89.35 per form, which represents the current national average hourly wage for attorneys, as set by the Bureau of Labor Statistics (\$89.35 per hour x 1 hour to complete = \$89.35 per response). Together, these estimated

costs total \$39,278 annually $((\$675 \text{ filing fee} + \$1.00 \text{ printing cost} + \$20.20 \text{ postage cost} + \$89.35 \text{ professional assistance cost}) \times 50 \text{ respondents} = \$39,278)$. The lower bound of the aggregate estimated annual cost is \$33,750 because printing and postage costs may be avoided if an individual completes the form electronically and because professional legal assistance is not required to complete the form.

For those individuals who retain a practitioner, the practitioner must file an EOIR-27 or EOIR-28 along with the completed EOIR-86. The estimated cost burden for the EOIR-27 and EOIR-28 are as follows.

- EOIR-27: The agency estimates the upper bound of aggregate costs for all respondents at \$385,031.64 $((\$0.20 \text{ printing per form} + \$8.94 \text{ practitioner wage per form}) \times 42,126 \text{ responses annually} = \$385,031.64 \text{ annually})$. There are no capital or start-up costs or filing fees associated with this form. Assuming the form is included in the same mailed envelope as the filings it accompanies, there is an estimated printing cost of \$0.20 for forms filed by mail or hand delivery $(\$0.10 \text{ printing fee per page} \times 2 \text{ pages per form} = \$0.20 \text{ printing per form})$, though such costs may be avoided by submitting the form electronically. There is an estimated labor cost of \$8.94 per form for the practitioner to complete the form $(\$89.35 \text{ per hour} \times 0.1 \text{ hour to complete} = \$8.94 \text{ per form})$.
- EOIR-28: The agency estimates the upper bound of annual aggregate costs for all respondents at \$14,047,457.94 $((\$0.20 \text{ printing per form} + \$8.94 \text{ practitioner wage per form}) \times 1,536,921 \text{ responses annually} = \$14,047,457.94 \text{ annually})$. There

are no capital or start-up costs or filing fees associated with this form. Assuming the form is included in the same mailed envelope as the filings it accompanies, there is an estimated printing cost of \$0.20 for forms filed by mail or hand delivery ($\$0.10 \text{ printing fee per page} \times 2 \text{ pages per form} = \$0.20 \text{ printing per form}$), though such costs may be avoided by submitting the form electronically. There is an estimated cost of \$8.94 for the practitioner to complete the form ($\$89.35 \text{ per hour} \times 0.1 \text{ hour to complete} = \8.94 per form).

14. Estimated Cost to the Federal Government

The estimated upper bound for the annual aggregate cost to the Federal Government for the proposed Form EOIR-86 is \$227.84, including printing, processing, and overhead costs. This estimate is an upper bound because it assumes that EOIR would print all forms received.

- Printing: $\$0.10 \text{ per page} \times 5 \text{ pages per form} \times 50 \text{ responses annually} = \$25 \text{ annual printing cost}$
- Processing: $\$35.74 \text{ per hour} \times 5 \text{ minutes} \times 50 \text{ responses annually} = \$148.92 \text{ annual processing cost}$
- Overhead: $(\$25 \text{ annual printing cost} + \$148.92 \text{ annual processing cost}) \times 31\% = \53.92

The estimated upper bound for the annual aggregate cost to the Federal Government for the EOIR-27 is \$174,739.08, including printing, processing, and overhead costs. This

estimate is an upper bound because it assumes EOIR would print all forms received.

- Printing: $\$0.10 \text{ per page} \times 2 \text{ pages per form} \times 42,126 \text{ responses annually} =$
 $\$8,425.20 \text{ annual printing cost}$
- Processing: $\$35.74 \text{ per hour} \times 5 \text{ minutes} \times 42,126 \text{ responses annually} =$
 $\$124,963.41 \text{ annual processing cost}$
- Overhead: $(\$8,425.20 \text{ printing cost} + \$124,963.41 \text{ processing cost}) \times 31\% =$
 $\$41,350.47$

The estimated annual aggregate cost to the Federal Government for the EOIR-28 is \$6,675,960.94, including printing, processing, and overhead costs. This estimate is an upper bound because it assumes EOIR would print all forms received.

- Printing: $\$0.10 \text{ per page} \times 2 \text{ pages per form} \times 1,536,921 \text{ responses annually} =$
 $\$307,384.20 \text{ annual printing cost}$
- Processing: $\$37.54 \text{ per hour} \times 5 \text{ minutes} \times 1,536,921 \text{ responses annually} =$
 $\$4,788,769.19 \text{ annual processing cost}$
- Overhead: $(\$307,384.20 \text{ printing cost} + \$4,788,769.19 \text{ processing cost}) \times 31\% =$
 $\$1,579,807.55 \text{ annual overhead cost}$

15. Reasons for Change in Burden – The proposed Form EOIR-86 is a new collection. EOIR estimates that 50 individuals will complete the Form EOIR-86 annually. Assuming that all 50 of the estimated respondents retain an attorney or practitioner to assist with completing the EOIR-86, the agency may receive an additional 50 responses each for

Forms EOIR-27 and EOIR-28 than reported previously. The public cost burden estimates for Forms EOIR-27 and EOIR-28 may have changed due to increases in the median hourly wage estimate for attorneys. Similarly, the cost burden estimates to the Federal Government for Forms EOIR-27 and EOIR-28 may have changed due to increases in the average hourly wage for the government employee position responsible for processing the forms. The annual cost burden for the EOIR-28 increased because the prior information collection request erroneously or inadvertently failed to include such information.

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.

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