



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

October 17, 2024

Via Regulations.gov

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
5900 Capital Gateway Dr.
Camp Springs, MD 20588-0009

Attn: Samantha L. Deshommes,
Chief, Regulatory Coordination Division

**Re: Additional Comments to Agency Information Collection Activity: Notice of Entry of Appearance as Attorney or Accredited Representative, USCIS Forms G-28 and G-28I; OMB Control Number 1615-0105
e-Docket ID number USCIS-2008-0037**

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) respectfully submits the following supplemental comments in response to the above-referenced Federal Register 30-day notice¹ dated September 17, 2024, requesting comments on the proposed revisions to Form G-28, Notice of Appearance as Attorney or Accredited Representative.

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. Our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit both the public and the government.

Our purpose in writing is to offer comments on each response provided by U.S. Citizenship and Immigration Services ("USCIS") in connection with our initial recommendations to the proposed revisions to Form G-28/G-28I (hereinafter "Form G-28") as contained in the supporting document entitled, [G-28-010 60-Day Public Comment Matrix](#) ("USCIS Matrix" or "Matrix"), posted by the USCIS on Sep 16, 2024.² In offering our comments, AILA cites and incorporates fully by this

¹ 89 FR 76126-76127, September 17, 2024.

² All hyperlinks last accessed on October 17, 2024.

AILA National Office

1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

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reference its [prior comments](#) on the earlier information collection of July 26, 2023 for the same forms and we urge USCIS to reconsider adopting them in the revised version of Form G-28.

AILA commends USCIS for Two Changes to the Form G-28

AILA applauds USCIS for its decision to allow the limited participation of paralegals in interacting with the agency on pending immigration benefits requests filed by attorneys. By permitting a designated paralegal to inquire about case status, request correspondence or notices, inquire about documents or cards that may need to be replaced, request appointment accommodations, schedule or reschedule appointments, and request a change of address, USCIS will help lawyers better serve their immigration clients and thereby lower the cost of legal services and reduce adjudicative burdens borne by the agency.

AILA is also grateful that USCIS heeded the concerns of numerous commenters and decided to refrain from requiring attorneys to disclose their date of birth information. By deciding that the agency would not collect the attorney's date of birth, USCIS avoided a needless intrusion into personal privacy, reduced the risks of identity theft, and, in keeping with the overarching purpose of the Paperwork Reduction Act (PRA), reduced the public burden hours required to complete Form G-28.

AILA remains concerned about the rejection of comments that would have created several significant opportunities to reduce the public burden.

As the Department of Homeland Security (DHS) and USCIS recognize, the completion of federal government forms, especially those prescribed by USCIS, involve public interactions and processes that often require significant paperwork and time. Specifically, the March 22, 2022, Memorandum of Eric Hysen, DHS Chief Information Officer, to DHS Component and Office Heads entitled, [Paperwork Reduction Act Burden Reduction Initiative](#) (Hysen Memo) notes:

- “[The] annual paperwork burden imposed by executive departments and agencies ... on the public has [exceeded] 9 billion hours.”
- DHS alone “imposes over 190 million hours of paperwork burden on the public each year.”
- “Reducing this burden, and thus eliminating ‘time taxes,’ is a key component of improving overall customer experience and rebuilding trust in government.”^[3]
- “DHS is establishing a target of reducing this public burden **by at least 20-million-hours agency-wide by May 30, 2023** [emphasis in original].
- USCIS’s current burden hours (as of January 7, 2022) were 82,173,255 and were targeted to be reduced by 8,645,347 burden hours, with a new target of 73,527,908 burden hours by May 30, 2023 – a 10.5% reduction.

While AILA is unaware of whether USCIS met the above-referenced 10.5% target by May 30, 2023, we believe that our recommendations would have further reduced public burden. The

³ See also Report, “Tackling the Time Tax [~] How the Federal Government Is Reducing Burdens to Accessing Critical Benefits and Services,” Executive Office of the President, July 2023, accessible here: <https://www.whitehouse.gov/wp-content/uploads/2023/07/OIRA-2023-Burden-Reduction-Report.pdf>.

USCIS G-28 Matrix Responses, which contained few or only cryptic explanations, summarily dismissed several opportunities for reductions in burden hours that AILA had proposed in our September 25, 2023, initial comments on revisions to Form G-28.

We summarize our initial comments and the USCIS Matrix Responses below.

| AILA 9/25/2023 Proposal Summary | USCIS G-28 Matrix Response |
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| <p><u>Eliminate Wet-Ink Signatures and Allow Digital Signatures.</u></p> <p>We request that USCIS modify its policy to align more closely with the more practical approach taken by ICE and EOIR by formally eliminating the requirement of the wet-ink applicant-signature on Form G-28 in its updated instructions.</p> | <p>“Client signatures are required to indicate that the client is allowing USCIS to communicate with their representative. However, while the signature must be handwritten, the form instructions for Form G-28 provide that the signature submitted to USCIS does not need to be the original signed G- 28 but can be a photocopied, scanned, or faxed copy of the original signed G-28 containing the handwritten, ink signature.”</p> |
| <p><u>Multiple, Alternate Appearances on Form G-28.</u></p> <p>A single Form G-28 should allow multiple attorneys and paralegals in the same firm to serve as alternate attorneys of record and alternate designated paralegals before USCIS. In the past, multiple attorneys in the same firm could be listed on a single G-28, thereby avoiding the need for multiple G-28 filings.</p> | <p>“Only one attorney is allowed per G-28.” [Nothing is said about allowing multiple designated paralegals on the same G-28].</p> |
| <p><u>Use of Form G-28 by the Department of State</u></p> <p>We recommend that USCIS add a specific designation in Part 4 of Form G-28 for the DOS along with a second blank to "List the specific matter in which appearance is</p> | <p>The State Department is a different cabinet agency from DHS. Form G-28 is a DHS form, and DHS has no authority to govern DOS. These suggestions (Notice of Appearance and</p> |

| <p align="center">AILA 9/25/2023 Proposal Summary</p> | <p align="center">USCIS G-28 Matrix Response</p> |
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| <p>entered." We also recommend modifying question 4 to indicate "Receipt or Case Number (if any)."</p> | <p>Case Number) should be presented to DOS.</p> |
| <p><u>USCIS Notification Procedure Re: Rejected G-28s.</u></p> <p>USCIS’s plan described situations where the agency decides it must “reject” a particular G-28 should be improved.</p> <p>AILA proposed creation of an attorney notification procedure for rejected Forms G-28 so that an attorney may quickly correct the form.</p> | <p>“USCIS has removed the word ‘reject’ and updated the instructions to read: ‘NOTE: USCIS will not recognize any Form G-28 submitted without the required information in Parts 1. through 2.’”</p> <p>[Nothing is said about AILA’s proposed notification procedure.]</p> |
| <p><u>Centralized Online USCIS Portal to Register Attorney Appearances/Withdrawals.</u></p> <p>The instructions to proposed Form G-28 prescribe a procedure for registering an attorney’s withdrawal from representation of a particular client:</p> <p>“An attorney or accredited representative or the applicant, petitioner, requestor, beneficiary or derivative, or respondent may withdraw Form G-28 at any time by submitting written notice of withdrawal, or by submitting a new Form G-28 to the office where the case is pending. The office address is on the most recent notice received</p> | <p>“DHS appreciates the suggestion, but an immigration practitioner registry exceeds what we can do through a form revision under the Paperwork Reduction Act.”</p> <p>“The updates to the Withdrawing a Form G-28 section does not create a new requirement/process. The additional content clarifies the current process.”</p> |

| AILA 9/25/2023 Proposal Summary | USCIS G-28 Matrix Response |
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| <p>regarding your case.” (Emphasis added.)</p> <p>Attorneys should not be required to track the movement of a USCIS file from one service center or field office to another, frequently without timely notice, and monitor every transfer notice or online.</p> <p>Instead, USCIS should create an online centralized repository and portal to register appearances and withdrawals of attorneys as counsel of record in matters before the agency.</p> | |
| <p><u>Allow for Limited Appearances and Limited Scope Representation.</u></p> <p>USCIS should expand limited scope representation and situations where limited appearances are allowed. The traditional system of single attorney representation in an immigration benefits request has become increasingly impractical. As shown in several cited examples, all too frequently, one party, a petitioner or applicant, is asked by a USCIS case adjudicator for relevant information that is held or controlled exclusively by another person or entity. We propose the creation of a “limited appearance pilot program” covering only the immigration benefits requests described in the cited examples.</p> | <p>“USCIS already permits some limited scope representation, such as to attend an interview with an applicant who the attorney has otherwise not been representing on their benefit request. Further clarification of limited scope attorney-client relationships is beyond the scope of the proposed G-28 revision and would also require a regulatory change/changes.”</p> |

AILA's recommendations referenced above reflect a serious, thoughtful and, from our perspective, reasonable attempt to enhance the efficiency of Form G-28 for USCIS, stakeholders and their counsel. As such, it is disappointing that USCIS seems to have failed to give due consideration to several of our proposals. The sections below will respond to each of the USCIS Matrix comments noted above and respectfully request that DHS and USCIS reconsider implementing them or, in the alternative, provide a more fulsome and considered explanation before Form G-28 is reissued in final form.

Eliminate Wet Ink Signatures and Allow Digital Signatures.

The Hysen Memo stated:

Accept electronic or digital signatures. Consistent with the 21st Century Integrated Digital Experience Act (Pub. L. 115-336), which requires agencies to accelerate the use of electronic signatures to reduce burden, the Department should avoid requiring customers to print out, sign, mail and/or fax an official form in order to promote more equitable and efficient services to the public.

(Italics in original; footnotes omitted.)

Regrettably, USCIS's matrix response deviates from the unambiguous guidance of the Hysen Memo's recommendation to adopt electronic signatures. Rather than "[accelerating] the use of electronic signatures to reduce burden," USCIS continues to require that which the Hysen memo expressly rejects, i.e. requiring "customers to print out, sign, mail and/or fax an official form." AILA respectfully requests that USCIS reconsider our proposal or, in the alternative, provide a more substantive explanation as to why it chose not "promote more equitable and efficient services to the public" in this instance.

Allow Multiple, Alternate Appearances on Form G-28

AILA encourages USCIS to reconsider the benefits of restoring the historic practice of allowing multiple, attorneys to be listed on a single Form G-28. This was the long-accepted practice at the legacy agency, Immigration and Naturalization Service, and at USCIS when the form was a single page. While recognizing the need for additional pages as evolving legal requirements warranted, AILA urges the restoration of this timesaving and burden-saving option. Permitting multiple attorney registrants in the same law firm (and for that matter, alternate paralegals in the same law firm as well) to be listed on a single Form G-28 would streamline agency adjudications and relieve public burden hours. Reducing the time and burden of unnecessary correspondence to and from the agency and the applicant/petitioner and counsel, a key purpose of the PRA, would be better achieved if multiple lawyers and paralegals could be listed on the same G-28. AILA therefore renews its request that USCIS amend Form G-28 to reinstate this salutary option.

Allow Designation of Attorney Appearances before DOS on Form G-28.

While acknowledging the obvious points that the "State Department is a different cabinet agency from DHS," and that "DHS has no authority to govern DOS," we also note that the converse is

true. DOS has no authority to govern DHS (or the content of its forms). Having acknowledged the axiomatic, AILA nonetheless urges that USCIS promptly add to the agenda of regular interagency consultations between DHS and DOS and inquire of DOS whether consensus can be reached on our recommendation regarding the addition of a DOS checkbox on the Form G-28.

Adding the checkbox would be consistent with and facilitate the FAM provision, 9 FAM 601.7-3(c)(2)(a), allowing attorney appearances before U.S. consulates by filing Form G-28, and the requirement directed to attorneys in the [Public Inquiry Form](#) of DOS's National Visa Center ("Please enter the Attorney of Record's name as it appears on Form G-28.") It would also further the objectives of the PRA by allowing a straightforward and approved way for attorneys to disclose to U.S. consular officers their representation of a particular client in consular visa and citizenship matters. A checkbox of this type would not intrude on the legal authority of each department's self-governance but rather foster public benefits through inter-departmental cooperation.

Establish a Notification Procedure and Communication Process for Rejected G-28s

In its comments, AILA expressed its recommendation that creation of both a notification procedure and a prescribed process for communication with the listed attorney (or accredited representative) as well as the listed benefit requestor on rejected Forms G-28 are essential to secure the requestor's legal rights and enable the attorney (or accredited representative) to correct any issues as quickly as possible. Unfortunately, USCIS did not address AILA's comments; instead, it simply changed the word "reject" to "will not recognize" with regard to Forms G-28 submitted without the required information in Parts 1 and 2.

When USCIS does not recognize a submitted Form G-28, either properly or improperly, it can often take weeks, and sometimes months, to get USCIS to match up a new Form G-28 with the file. Meanwhile, if the requestor does not receive USCIS notices (receipt notice, RFE, biometrics notice, interview notice, denial notice), sometimes because of postal service issues or a transcription error by USCIS of the requestor's address, the requestor may lose important legal rights and benefits.

As stated in our previous comment, AILA believes that creation of both a notification procedure and a prescribed process for communication with the listed attorney (or accredited representative) and the listed requestor on rejected Forms G-28 are essential so that an attorney (or accredited representative) may quickly correct and resubmit the Form G-28 if it is not accepted at the time of filing, and ensure that the requestor's legal rights are not adversely affected. Accordingly, we respectfully request that USCIS reconsider AILA's recommendation.

Establish a Centralized Online USCIS Portal to Record Attorney Appearances/Withdrawals.

In rejecting AILA's proposal that USCIS create an online centralized system for the entry of appearances and withdrawals of attorneys as counsel of record in immigration-benefits requests, the USCIS Matrix response expressed that "DHS appreciates the suggestion . . ." Nonetheless,

DHS and USCIS declined the invitation, asserting that “an immigration practitioner registry exceeds what we can do through a form revision under the Paperwork Reduction Act.”

As interpreted by the DHS’s Chief Information Officer, however, the PRA empowers agencies to create online systems for burden reduction and time savings. On this point, the Hysen Memo stated:

Enable online submission of all forms, where appropriate. Well-implemented online forms can reduce burden and save time. They can enable the public to access and complete forms through improved guidance, error checking, simplified navigation, and accessibility improvements, thereby creating a more efficient process.

(Italics in original.)

While acknowledging that our proposal would be an undertaking requiring additional development time and effort, we believe the Hysen Memo effectively endorses and, in fact, encourages the creation of an online centralized system for attorneys to enter appearances or withdraw as counsel of record in matters before the agency.

To amplify the PRA-related benefits of our proposal, AILA members’ collective experience confirms that the current USCIS system for attorney appearances and withdrawals is not an efficient process. The paper-based, mail-in system for entering and withdrawing attorney appearances is fraught with dysfunctionalities. For example: (a) USCIS frequently and with little advance notice changes the place for filing particular immigration benefits requests, thereby leading to misdirected filings, and (b) the entry of withdrawals of representation depends on the at-times unknown or undisclosed USCIS field office or service center that then possesses the benefit request, a process made even more challenging by the agency’s practice of transferring case types between and among its offices to conduct in-person interviews or balance adjudication workloads.

AILA’s members also find the online entry of an attorney appearance in myUSCIS similarly problematic. For example, AILA has been advised that, in a benefits request where a lawyer has already entered an appearance but in fact has resigned from representation, substitute counsel cannot make an appearance through myUSCIS unless and until prior counsel has withdrawn from representation in myUSCIS.

The adoption of a centralized online system to record attorney appearances and withdrawals would also unburden USCIS and foster the PRA’s goals due to the fact that the agency would no longer be required to provide official correspondence to a lawyer who (unbeknownst to a particular adjudicator) has already withdrawn, or to deal with the inevitable requests and motions of successor counsel seeking a duplicate of official correspondence (such as a request for evidence, notice of intent to deny or revoke, denial notice, or notice to appear for interview, naturalization ceremony, etc.) sent to prior counsel. AILA therefore respectfully requests that USCIS reconsider our recommendation that it create an online centralized repository and portal to register appearances and withdrawals of attorneys as counsel of record in matters before the agency.

We renew this recommendation, along with our previously restated recommendation to allow the listing on a single Form G-28 of multiple alternate attorneys and paralegals in the same firm, because we believe they will reduce burden hours on the agency and immigration stakeholders, in keeping with the bedrock objectives of the PRA.

Expressly Allow for Limited Appearances and Limited Scope Representation.

AILA is heartened that USCIS’s Matrix response agreed with our September 25, 2023, comment to the earlier version of the proposed Form G-28, namely, by acknowledging that the agency “already permits some limited scope representation, such as to attend an interview with an applicant who the attorney has otherwise not been representing on their benefit request.”⁴ Yet USCIS then asserted that “[further] clarification of limited scope attorney-client relationships is beyond the scope of the proposed G-28 revision and would also require a regulatory change/changes.” The legal basis for this statement, i.e. that regulatory changes are necessary to further clarify or limit the scope of attorney representation, is unclear to AILA as it is already permitted by USCIS in several instances, such as paralegal representation, limited scope representation for interviews, and on Form I-485, item 7.B (see below).

Preparer's Statement

7.a. I am not an attorney or accredited representative but have prepared this application on behalf of the applicant and with the applicant's consent.

7.b. I am an attorney or accredited representative and my representation of the applicant in this case extends does not extend beyond the preparation of this application.

NOTE: If you are an attorney or accredited representative, you may be obliged to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this application.

Can USCIS further clarify its justification so that AILA can provide further recommendations on this issue in the future?

AILA poses these issues not to question the appropriateness of these forms of limited representation (on the contrary, we agree with them) but rather to illustrate that the agency’s well-

⁴ AILA offers another example where USCIS on acknowledged the de facto practice of limited appearances in the absence of formal rulemaking, indeed, in a situation that prima facie flouts a specific rule, 8 CFR § 292.3 (prescribing disciplinary proceedings against a lawyer who consistently violates the requirement to file a G-28). It involves the agency’s policy statement (last updated on February 18, 2011) announcing that DHS will refrain from disciplining lawyers who are otherwise reluctant to submit a G-28 “based solely on the failure to submit a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) in relation to pro bono services provided at group assistance events,” accessible at: <https://www.uscis.gov/archive-alerts/statement-of-intent-regarding-filing-requirement-for-attorneys-and-accredited-representatives>.

established pattern and practice of allowing limited appearances and limited scope representation has occurred without formal rulemaking. We also believe that the current USCIS practice which informally allows the unbundling of legal services, through limited scope representation and limited appearances, without expressly recognizing their legitimacy, undermines the goals of the PRA, contrary to the public interest.⁵

As the American Bar Association has noted in its [“Unbundling Resource Center”](#):

Unbundling, or limited scope representation, is an alternative to traditional, full-service representation. Instead of handling every task in a matter from start to finish, the lawyer handles only certain parts and the client remains responsible for the others. It is like an à la carte menu for legal services, where: (1) clients get just the advice and services they need and therefore pay a more affordable overall fee; (2) lawyers expand their client base by reaching those who cannot afford full-service representation but have the means for some services; and (3) **courts benefit from greater efficiency when otherwise self-represented litigants receive some counsel.**

(Emphasis added.)

Just as the courts benefit from greater efficiency when otherwise self-represented litigants receive some counsel, AILA believes that USCIS and immigration stakeholders would similarly benefit if the agency were to modify the Form G-28 and expressly recognize alternative limited appearance options in addition to those the agency already permits. AILA therefore urges that USCIS amend Form G-28 to allow for limited scope representation and limited appearances as proposed in our comments of September 25, 2023, at pp. 9-13.

* * *

AILA appreciates the opportunity to submit its additional comments urging the adoption of significant improvements to Form G-28 as proposed in this letter and we look forward to a continuing dialogue with USCIS on this important matter.

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

⁵ The problems with the current USCIS practice whereby limited appearances and limited scope representation are allowed but not expressly or widely recognized are described in detail by Catholic Legal Immigration Network, Inc. (cliniclegal.org) in its “Practice Pointer: Limited Assistance to Noncitizens with USCIS Applications,” accessible here: <https://www.cliniclegal.org/file-download/download/public/75357>.