

Dated: April 28, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0031]

Privacy Act of 1974; United States Immigration and Customs Enforcement-011 Removable Alien Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of amended Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to amend DHS/ICE-011 Removable Alien Records System to add two new routine uses. These routine uses would allow U.S. Immigration and Customs Enforcement to share information about individuals in ICE detention with entities that seek to provide legal educational and orientation programs. DHS is seeking public comment on these proposed routine uses.

DATES: Written comments must be submitted on or before June 4, 2009. This new system will be effective June 4, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS-2009-0031 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202-732-3300), United States Immigration and Customs Enforcement Privacy Officer, United States

Immigration and Customs Enforcement. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to amend a U.S. Immigration and Customs Enforcement (ICE) system of records known as the DHS/ICE-011 Removable Alien Records System (RARS) (74 FR 5665, Jan. 30, 2009) to add two new routine uses. RARS contains information about individual aliens who have been removed or are alleged to be removable from the United States by DHS/ICE under Federal immigration laws. These new routine uses would allow ICE to share information about aliens who are in ICE detention during removal proceedings with entities that seek to provide legal educational and orientation programs to persons in ICE detention.

Specifically, proposed Routine Use Q would permit ICE to share information about aliens in removal proceedings with the U.S. Department of Justice's Executive Office of Immigration Review (EOIR) or their contractors, consultants, or others performing or working on a contract for EOIR, so that EOIR may arrange for the provision of educational services to those aliens under EOIR's Legal Orientation Program. New Routine Use R would allow the sharing of the same information with attorneys or legal representatives for the purpose of facilitating group presentations to aliens in detention that will provide the aliens with information about their rights under U.S. immigration law and procedures. Routine Use R would support know-your-rights educational programs that are sponsored by private sector law firms and public interest legal organizations, but are not associated with the EOIR Legal Orientation Program.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other

identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE Removable Alien Records System.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS

DHS/ICE-011

SYSTEM NAME:

Removable Alien Records System (RARS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Immigration and Customs Enforcement Headquarters in Washington, DC and in field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include aliens removed and alleged to be removable by DHS/ICE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include:

- Alien's name;
- Alien file number;
- Date of birth;
- Country of birth;
- United States addresses;
- Foreign addresses;
- ICE case file number;
- Subject ID and Person ID;
- Fingerprint Identification (FINS)

number;

- Bureau of Prisons/U.S. Marshals Service number;
- FBI number;
- Event ID;
- Immigration bond number;
- Charge;
- Amount of bond;
- Hearing date;
- Case assignment;
- Scheduling date;
- Sections of law under which excludability/removability is alleged;
- Data collected to support DHS/ICE's position on excludability/removability, including information on any violations of law and conviction information;
- Date, place, and type of last entry into the United States;
- Attorney/representative's contact information (Last Name; First Name; Middle Name; Suffix; Law Firm; Dates of representation; whether a G-28 has been filed)
- Family data;
- DHS/ICE agents assigned;
- Employer Information: (Employer Name; Employment Start Date and End Date; County; Address; Zip Code; Telephone number; Compensation Type; Salary/Wage;);
- Government decisions concerning an individual's request for immigration benefits and information about other immigration-related actions by the Government (e.g., dismissals, entry of orders of removal, etc.); and
- Other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 8 U.S.C. 1103, 1227, 1228, 1229, 1229a, and 1231.

PURPOSE(S):

The purpose of this system is to assist DHS/ICE in the removal and detention of aliens in accordance with immigration and nationality laws. This system also serves as a docket and control system by providing management with information concerning the status and/or disposition of removable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative

body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act

requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses, in the course of a civil or criminal proceeding before a court or adjudicative body when

1. DHS or any component thereof; or
2. any employee of DHS in his or her official capacity; or

3. any employee of DHS in his or her individual capacity where the agency has agreed to represent the employee; or

4. the United States, where DHS determines that litigation is likely to affect DHS or any of its components, is a party to litigation or has an interest in such litigation, and DHS determines that use of such records is relevant and necessary to the litigation, provided however that in each case, DHS determines that disclosure of the information to the recipient is a use of the information that is compatible with the purpose for which it was collected.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

J. To other Federal, State, local, or foreign government agencies, individuals, and organizations during the course of an investigation, proceeding, or activity within the purview of immigration and nationality laws to elicit information required by DHS/ICE to carry out its functions and statutory mandates.

K. To the appropriate foreign government agency charged with enforcing or implementing laws where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

L. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

M. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

N. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

O. To foreign governments for the purpose of coordinating and conducting the removal of aliens from the United States to other nations.

P. To family members and attorneys or other agents acting on behalf of an alien to assist those individuals in determining whether (1) the alien has been arrested by DHS for immigration violations, and (2) the location of the alien if in DHS custody, provided however, that the requesting individuals are able to verify the alien's date of birth or Alien Registration Number (A-Number), or can otherwise present adequate verification of a familial or agency relationship with the alien.

Q. To the U.S. Department of Justice Executive Office of Immigration Review (EOIR) or their contractors, consultants, or others performing or working on a contract for EOIR, for the purpose of providing information about aliens who are or may be placed in removal proceedings so that EOIR may arrange for the provision of educational services to those aliens under EOIR's Legal Orientation Program.

R. To attorneys or legal representatives for the purpose of facilitating group presentations to aliens in detention that will provide the aliens with information about their rights under U.S. immigration law and procedures.

S. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records are retrieved by Name, A-file number, alien's Bureau of Prisons/U.S. Marshal number, case number, subject ID, person ID, FINS number, event ID, state ID, FBI number, and/or bond number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Cases that have been closed for a year are archived and stored in the database for 75 years, then deleted. Copies of forms used within this system of records are placed in the alien's file. Electronic copies of records (copies from electronic mail and word processing systems) which are produced and made part of the file are deleted within 180 days after the recordkeeping copy is produced.

SYSTEM MANAGER AND ADDRESS:

Director, Detention and Removal Operations, Immigration and Customs Enforcement Headquarters, 500 12th Street, SW., Washington, DC 20024.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, CBP will consider requests individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in

writing to United States Immigration and Customs Enforcement, Freedom of Information Act Office, 800 North Capitol Street, NW., Room 585, Washington, DC 20536.

When seeking records about yourself from this system of records or any other ICE system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the ICE may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Alien; alien's attorney/representative; DHS/ICE agent; other Federal, State, local and foreign agencies; and the courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: April 28, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary; Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, DHS.

ACTION: Notice of Publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available four Privacy Impact Assessments on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between January 1, 2009, and March 31, 2009.

DATES: The Privacy Impact Assessments will be available on the DHS Web site until July 6, 2009, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT:

Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or e-mail: pia@dhs.gov.

SUPPLEMENTARY INFORMATION: Between January 1, 2009, and March 31, 2009, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published four Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, <http://www.dhs.gov/privacy>, under the link for "Privacy Impact Assessments." These PIAs cover four separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

System: Correspondence Handling and Management Planning System.

Component: U.S. Citizenship and Immigration Services.

Date of approval: January 13, 2009.

The U.S. Citizenship and Immigration Service (USCIS), Texas Service Center developed the Correspondence Handling and Management Planning System (CHAMPS). The CHAMPS system is designed to facilitate workflow management, production evaluation, and time and attendance

functions. USCIS conducted this PIA because CHAMPS collects and uses personally identifiable information (PII).

System: Directory Services and Email System.

Component: DHS Wide.

Date of approval: January 14, 2009.

The U.S. Coast Guard manages and operates the Directory Services Electronic Mail System (DSES). DSES currently handles all e-mail traffic in, out, and between DHS, its Components, and the Internet, and provides a directory of users' official contact information. This PIA was conducted to assess the risks associated with the processing, storage, and transmission of PII within the DSES system.

System: Maryland 3.

Component: Transportation Security Administration.

Date of approval: February 20, 2009.

The Transportation Security Administration (TSA) conducts name-based Security Threat Assessments (STA) and fingerprint-based Criminal History Records Checks (CHRCs) on pilots who operate aircraft and apply for privileges to fly to or from the three General Aviation airports in the Washington, DC restricted flight zones (Potomac Airfield, Washington Executive/Hyde Field, and College Park Airport), otherwise known as the Maryland Three (MD-3) program, and for the Airport Security Coordinator (ASC) at a MD-3 airport. For the STA process, TSA compares the biographical information of these pilots and ASCs, hereafter referred to as individuals, against Federal terrorist, immigration, and law enforcement databases. For the CHRC, TSA forwards the fingerprints to the Federal Bureau of Investigation, which conducts fingerprint-based CHRCs on individuals.

System: Department of Homeland Security General Contact List.

Component: DHS Wide.

Date of approval: March 27, 2009.

Many DHS operations and projects collect a minimal amount of contact information in order to distribute information and perform various other administrative tasks. Department Headquarters conducted this PIA because contact lists contain PII. The Department added the following systems to this PIA:

- National Protection and Programs Directorate Vehicle-Borne Explosive Device (VBED) Training.

- U.S. Coast Guard 2009 World Maritime Day Parallel Event.

- Transportation Security Administration Inquiry Management System (IMS).

- Science and Technology Project Execution System.

- Science and Technology Multi-Band Radio Project.

- United States Citizenship and Immigration Services Teachers of English to Speakers of Other Languages (TESOL) Conference Booth Follow Up List.

- DHS Sunflower Asset Management System (SAMS).

- United States Citizenship and Immigration Services Customer Service Portal Alert by Mail.

- United States Citizenship and Immigration Services Customer Service Portal Forms by Mail.

- U.S. Coast Guard Navigation Systems Information Dissemination Network (NSIDN).

- U.S. Coast Guard List Server (CGLS).

Dated: April 28, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection

Activities: Form I-140, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I-140, Immigrant Petition for Alien Worker; OMB Control Number 1615-0015.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 6, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please