



A STEP-BY-STEP GUIDE TO COMPLETING FOIA REQUESTS WITH DHS

By Alison Kamhi

I. Introductionⁱ

The Freedom of Information Act (“FOIA”) entitles every person access to certain information from the federal government.ⁱⁱ A person can file a request under this act, called “a FOIA request,” to any federal agency to request documents about herself or others. A FOIA request can be an invaluable tool in immigration law to help an immigrant and her representative. There are many reasons a person may want to see the documents about her that the government has. When the person is applying for an immigration benefit or fighting removal, it is not only helpful, but also often critical to the success of the person’s case to have a copy of certain documents. For example, the person might need to see a paper trail of her previous immigration history to help piece together what happened.

The Department of Homeland Security (“DHS”) is often the most important federal agency for immigration practitioners and their clients to target with a FOIA request. This is because DHS has many components that deal exclusively with immigration. The most important components for immigration purposes are U.S. Citizenship and Immigration Services (“USCIS”); U.S. Customs and Border Protection (“CBP”); U.S. Immigration and Customs Enforcement (“ICE”); and U.S. Office of Biometrics Identity Management (“OBIM,” formerly US-VISIT). DHS keeps an immigration file (also known as an “A-file”) on all immigrants with whom it comes into contact. Fortunately, a person is entitled under FOIA to request a copy of her A-file, as well as other immigration records, from any of the DHS components.ⁱⁱⁱ

This practice advisory will walk through how to file a FOIA request with USCIS, CBP, ICE, and OBIM because they are the main federal components that keep immigration records. Note, however, that a FOIA request is an option for any federal government agency. Depending on the case, you may want to file a FOIA request at the Department of State (for passport records) or the Department of Justice (for immigration court records). For a detailed discussion of FOIA requests, see the ILRC’s manual, *FOIA Requests and Other Background Checks*, available at www.ilrc.org.

PRACTICE TIP: Because each component within DHS is responsible for responding to requests for its own records, it is important that before submitting your request, you determine which component is likely to have the records you are seeking and direct your request to that component. For example, if you want to obtain a copy of your green card application, the request should be made to USCIS.

However, if you are looking for more information about your expedited removal at the border, then you should submit your request to CBP or OBIM. In some cases, you may want to, and indeed it may be best, to submit requests to multiple components.

Sometimes it can be complicated to determine which component may have the records you are looking for. To help you make this determination, USCIS provides a list of records/request types, and the component that is likely to keep those records. The list is available on the USCIS FOIA website at <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/submitting-foia-requests>.

All FOIA requests to DHS must be made in writing. The statute requires only that the Requestor “reasonably describe[]” the records sought.^{iv} DHS regulations provide more specifics: “To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number.”^v The written request should also state specifically that it is a records request under FOIA, and provide contact information for the Requestor. If a Requestor does not provide sufficient information, the component may request additional information, or the request may be administratively closed.^{vi}

The government created Form G-639, Freedom of Information/Privacy Act Request, to help people make their requests.^{vii} Form G-639 may be used to make a FOIA request to USCIS, ICE, and OBIM (but not CBP). However, Form G-639 is NOT required. Some practitioners choose to submit a letter request instead; this may be preferable in cases where you do not wish to disclose much information about the client, as the G-639 has many questions seeking personal and biographical information about the Subject. Other practitioners use G-639 where it is accepted. A FOIA response may take less time and be more complete if you submit it using the standardized form or an online form because these options help ensure that you provide the information necessary to process the request.

This practice advisory will detail how to complete a FOIA request for USCIS, ICE, OBIM, and CBP. **Section II** charts the most common agencies holding immigration-related materials and the necessary steps to file a FOIA request with each of them. **Section III** details the requirements for submitting FOIA requests to USCIS, ICE, OBIM, and CBP. **Section IV** includes alternatives to Form G-639, such as online submission options. **Sections V** and **VI** address how to expedite FOIA requests, and potential FOIA fees, respectively. **Section VII** provides step-by-step instructions on how to complete Form G-639. **Section VIII** discusses situations in which a FOIA request may not be the most effective tool and provides alternative ways to obtain information in those situations. A blank Form G-639 is also included for your reference.

For clarity, throughout this document the term “Requestor” will refer to a person who is seeking the records, usually an immigration advocate or the person herself. “Subject” will refer to the “Subject of Record,” the person whose documents are being requested. Lastly, we will use the term “you” to reference generally the person seeking the records.

II. Guide to Requesting Immigration Documents from Federal Agencies

Agency	Records Held ^{viii}	How to Request Records	Additional Information
Department of Homeland Security (DHS)			
USCIS	<ul style="list-style-type: none"> • A-file • Removal, detention, deportation records • Prior immigration petitions and supporting documents • USCIS decisions • Certification of non-existence of a record^{ix} • Advance parole records obtained through USCIS 	<p>USCIS requests may be submitted by letter request; Form G-639 by mail, fax, or e-mail; or through the DHS Online Request Form.</p> <p>USCIS offers accelerated processing for certain people in removal proceedings.</p>	<p>Form G-639 and Instructions:</p> <p>Online Request Form: http://www.dhs.gov/dhs-foia-request-submission-form</p>
		<p>CBP requests must be submitted online.</p>	<p>Online Form: https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate</p>
CBP	<ul style="list-style-type: none"> • Apprehensions and detentions at the border^x • Interactions with CBP at the border or in the interior • Form I-94 records • Voluntary return records • Records of entries and exits^{xi} • Expedited removal orders • Advance parole records obtained through CBP 		
ICE	<ul style="list-style-type: none"> • Interactions with ICE • SEVIS records • Investigation records • ICE arrest records (I-213 Forms) • Detention center records • Bond requests • Requests for ICE detainers or warrants 	<p>ICE requests may be submitted by letter request; Form G-639 by mail, fax, or email; or electronically through the ICE online form or the DHS Online Request Form.</p> <p>All ICE requests must include a 1) phone number, and 2) if not submitted through an online form, an Affirmation/Declaration form.</p>	<p>ICE Online Form: http://www.ice.gov/webform/foia-request-form</p> <p>DHS Online Request Form: http://www.dhs.gov/dhs-foia-request-submission-form</p> <p>Instructions: http://www.ice.gov/foia/request</p> <p>Affirmation/Declaration Form: http://www.ice.gov/doclib/about/pdf/affirmation-declaration.pdf</p>
		<p>OBIM requests may be submitted by letter request; Form G-639 by mail, fax, or email; or electronically through the DHS Online Request Form. They should include an original fingerprint card or A-number.</p>	<p>Online Request Form: http://www.dhs.gov/dhs-foia-request-submission-form</p>
OBIM	<ul style="list-style-type: none"> • Interactions with Border Officials 		

Department of Justice (DOJ)			
EOIR	<ul style="list-style-type: none"> • Court Orders • Charging Documents • Court Decisions 	<p>Requests should be made directly to EOIR via email or mail. Do not use Form G-639 with EOIR.^{xii}</p> <p>All requests should include 1) the Subject's A-number, 2) the Subject's name, and 3) a description of the record.</p> <p>Requests must also include a verification of identity such as Form DOJ-361, a notarized statement, or a sworn statement.</p>	<p>DOJ FOIA Instructions: http://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide</p>
	Department of State (DOS)		
DOS	<ul style="list-style-type: none"> • Consular processing and other consulate records • Visa applications • Passport applications 	<p>DOS requests can be made by mail or fax.^{xiii}</p> <p>Requests must include a description of the records; the name, address, and telephone number of the requestor; the amount the requestor is willing to pay for the request; the timeframe for the records request; and an original signature.</p>	<p>Additional Information: https://foia.state.gov/Request/Guide.aspx</p>

III. FOIA Requests to USCIS, ICE, OBIM, and CBP

There are four main components within DHS that hold immigration records, (1) U.S. Citizenship and Immigration Services (“USCIS”); (2) U.S. Immigration and Customs Enforcement (“ICE”); (3) U.S. Office of Biometrics Identity Management (“OBIM,” formerly US-VISIT); and (4) U.S. Customs and Border Protection (“CBP”). Because individual employees of DHS may change job positions, do not address the request to a specific person. If you are making your request by mail, you should include the notation “Freedom of Information Act Request” on the front of your envelope. This will help ensure that the responsible individual receives the request without delay.

A. USCIS

USCIS is the most common place to submit an immigration-related FOIA request because USCIS keeps records of prior petitions and decisions and often has the Subject's A-file. **Do not submit your FOIA request to your local USCIS office, Service Center, or Lockbox.** USCIS processes all FOIA requests at the National Records Center.^{xiv} The request can be submitted by letter request; Form G-639 by email, mail, or fax; or by using the electronic DHS submission form:^{xv}

Mail: U.S. Citizenship and Immigration Services
National Records Center (NRC)
FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

For overnight or certified mail, send the request to:
U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
150 Space Center Loop, Suite 300
Lee's Summit, MO 64064-2139

Fax: (802) 288-1793 or (816) 350-5785

Email: uscis.foia@uscis.dhs.gov

Electronically: <http://www.dhs.gov/dhs-foia-request-submission-form>

If you are submitting a FOIA request by email on behalf of someone other than yourself, scan and include the Subject's notarized signature or signature made under penalty of perjury in order to avoid having documents withheld for privacy reasons.

For questions about filing a request and assistance in obtaining records from USCIS, contact the USCIS National Customer Service Center at: (800) 375-5283. If you need accommodation during the call, you may instead contact the Center at: (800) 877-8339 TTY/ASCII, (866) 377-8642 Voice, or (877) 709-5798 Video Relay Service (VRS).^{xvi} You may also fax inquiries to the National Records Center at (816) 350-5785 or e-mail your questions to FOIAPAQuestions@uscis.dhs.gov.^{xvii} To seek a status update about pending requests, visit <https://egov.uscis.gov/foiawebstatus/> and enter your Control Number, which USCIS should have given to you after receiving your FOIA request.

B. ICE

You can submit your FOIA request to ICE by letter request; by Form G-639 and an accompanying Affirmation/Declaration form (see below) by mail, fax, or e-mail; or by using the electronic ICE or DHS submission forms:

Mail: U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

Fax: (202) 732-4265

E-mail: ICE-FOIA@dhs.gov

Electronic Submission: <http://www.ice.gov/webform/foia-request-form>; or
<http://www.dhs.gov/freedom-information-act-foia>

All requests to ICE **must** include a daytime phone number.^{xviii}

If the request is submitted other than through the online form, ICE requires that an "Affirmation/Declaration" form be included, with the Subject's name, date of birth, and, if the Subject does not want the records sent to her personally, the name and address of a third party. The Affirmation/Declaration form is available on the ICE FOIA website at <http://www.ice.gov/doclib/about/pdf/affirmation-declaration.pdf>. By signing the form, the Subject indicates that she is responsible for applicable fees and that she understands that knowingly or willfully seeking or obtaining access to records about another person under false pretense is punishable by a fine of up to \$5,000.

Although the online ICE FOIA form does not have a specific question regarding expedited processing, all FOIA requests can be expedited, per federal regulation.^{xix} Requestors may request expediting processing on the online ICE FOIA form in the document description box.

C. OBIM

You can submit a FOIA request to OBIM by letter request; Form G-639 by email, mail, or fax; or by using the electronic DHS submission form. OBIM indexes its records by fingerprint, so to maximize the records you receive from OBIM, you should include an FBI fingerprint card (FD-258).

Mail:	U.S. Department of Homeland Security 245 Murray Lane SW STOP-0628 Washington, DC 20528-0628
Fax:	(202) 298-5201
Email:	OBIM-FOIA@ice.dhs.gov
Electronically:	http://www.dhs.gov/dhs-foia-request-submission-form

D. CBP

If you would like to obtain records from CBP, submit an online request by going to <https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>.

CBP currently processes FOIA requests differently than the DHS components listed above. CBP only accepts requests through the online link above. Form G-639 is not required and in fact may not be accepted except as a supporting document to the online submission. If you are looking for records of border entries and exits, it is prudent to file a FOIA request with OBIM (formerly US-VISIT) as well, because the two components index their records differently and may have different records on file.

Filing Tips

- ✓ **Address** – The address can be either a mailing address or residential address. Many people who are here without legal status may be concerned about giving the government their current physical address through a FOIA request. We are unaware of anyone currently being picked up by immigration authorities based on filing a FOIA request; however, there is no guarantee, particularly under the current administration. Because of this, we strongly recommend listing a mailing address (e.g., a post office box) instead of a residential address.
- ✓ **Type of Records Requested** – CBP provides a drop-down list of types of records, including border apprehension^{xx} and encounters; commercial documents; contracts; entries and exits; fines, penalties, forfeitures, and seizures; I-94; imports and exports; media; travel (including advance parole documents) and apprehension records; and “other.” If you are looking for one of these in particular, select that category. If you are looking for multiple categories, CBP advises the Requestor to list “other,” and include in the description box all of the categories you are seeking.
- ✓ **Description Box** – Provide in the description box as much information as you can on the type of records you are seeking. Details such as birthdate, A-number, parents’ names, alias used at the time of entry, dates, times, officer names, certificate numbers, document type, and entry numbers are all helpful to include.

- ✓ **Attach Supporting Files** – The CBP form permits Requestors to upload supporting files. If you are filing a FOIA request on behalf of someone else (not your minor child), you will need to attach either a signed Form G-28 (if you are representing the Subject) or a written notarized consent that will allow a third party to access the Subject’s records. Otherwise, we recommend not uploading additional files unless the Requestor is seeking specific, difficult to locate documents, where additional information could be helpful. In general, there is no need to provide additional files; if CBP requires more information than what was provided on the online form, it can contact the Requestor.

IV. DHS Online Request Submission Form & DHS eFOIA App

DHS created an online fillable FOIA request form at <http://www.dhs.gov/dhs-foia-request-submission-form>. This FOIA request form has a drop-down menu where the Requestor can select the component within DHS where the FOIA request should be sent. Through this online form, a Requestor can file a FOIA with USCIS, ICE, and OBIM, among others. The online form also allows the Requester to seek FOIA fee waivers and expedited service, if eligible. The online form remains unavailable for CPB FOIA requests, which must be submitted using CBP’s online form.

Filing Tips

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- ✓ **Description** – Providing a general description may assist DHS in locating the documents you need. It is best to be specific, but do NOT reveal anything about the Subject’s immigration strategy or any facts that you do not want the government to know. If you are not requesting specific documentation, then we recommend you complete this section by writing, “Requesting immigration records for personal review.” If seeking records from USCIS, the Requestor should note the Subject’s date of birth and A-number (if she has one) in the description box.
- ✓ **Requestor Category** – If the request is for an individual’s immigration case or personal review only, choose the first option (“An individual seeking information for personal use and not for commercial use”).

DHS released an Apple and Android friendly FOIA application of its online submission form. Users can now submit FOIA requests and check the status of their requests on their phones. The mobile application mirrors the Online Request Submission Form and can be used to request USCIS, ICE, or OBIM FOIAs, among others. Users can also request expedited service and fee waivers via their cellular phones. For more information and links to download the app, please visit: <http://www.dhs.gov/efoia-mobile-app>.

V. Expediting a FOIA Request and Track 3 Processing

DHS components use a multi-track system to process FOIA requests on a first-in, first-out basis. This means that requests can take many months, depending on the request and the component. If you have a compelling reason why you need your documents sooner, you can ask the agency to expedite the FOIA request. Federal regulations provide that a request can be expedited if it involves:^{xxi}

- 1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- 2) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;
- 3) The loss of substantial due process rights; or
- 4) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.^{xxii}

The second and fourth grounds only apply to requests for certain kinds of information about the government sought for the purpose of educating the public, and will rarely apply in individual immigration FOIA requests. But if you believe that the first or third ground applies to you, you should write a detailed explanation of why you need the response urgently and include in your statement a certification that the information you provide is "complete, true, and correct to the best of your knowledge and belief."^{xxiii} You should also submit supporting evidence to help establish the urgency of your FOIA request.

In addition to expediting a request, USCIS also offers Requestors the option to accelerate a request for Subjects who have hearings scheduled in immigration court.^{xxiv} This covers many, but not all, individuals in removal proceedings. Anyone who does not have a hearing scheduled, such as people who have final orders of removal, are awaiting pending appeals, or have missed their scheduled hearings, are not eligible. USCIS uses a three-track system for its FOIA requests. Track 1 is for simple requests for a few documents; Track 2 is for more complex requests, such as for a complete copy of the person's file; and Track 3 is an accelerated process for certain cases in removal proceedings.^{xxv} In order to receive Track 3 processing with USCIS, you need to write a brief cover letter requesting Track 3 processing and provide a copy of the Notice to Appear, Order to Show Cause, Notice of Referral to Immigration Proceedings, or Notice of Hearing. USCIS has stated that a person can request an expedited FOIA request or Track 3 processing, but not both simultaneously.

VI. FOIA Fees

Most FOIA requests filed in individual immigration cases are free. Although federal agencies can recover certain costs for the time spent searching for records and the number of pages copied, the first two hours of search time are free, and the first 100 pages copied are free. Additionally, agencies currently do not charge at all if the total amount is \$14.00 or less. Most FOIA requests, especially for people who have had little to no interaction with immigration authorities, fall well under this threshold and cost the Requestor nothing. Furthermore, if an agency takes more than 20 business days to respond to a request, the agency cannot charge any search fees.

Technically, however, by submitting a FOIA request, the Requestor is agreeing to pay all applicable fees up to \$25.00, should the costs go over what is provided for free. The Requestor will be notified if she owes any money up to \$25.00, and is ordinarily expected to pay that amount before the agency sends the requested documents. If the Requestor does not wish to agree to \$25.00 upfront, the Requestor can specify a greater or lesser amount when making the FOIA request and/or by submitting a fee waiver request. Most of the online submission forms take this into consideration and require the Requestor to state the maximum amount that she will pay.

If the agency expects the work to cost more than either \$25.00 or the amount stated by the Requestor, the agency will send the Requestor an interim response stating the actual or estimated amount of the fees for the requested records. No additional work in excess of \$25.00 or the amount stated by the Requestor will be done unless the Requestor agrees in writing to pay the additional amount. In this

situation, the Requestor will also be able to contact FOIA personnel within the agency for the purpose of “reformulating [the] request to meet the [R]equestor’s needs at a lower cost.” For requests to USCIS, the Requestor must reply to the interim response within 30 days to keep the agency from closing the FOIA request.

Fee waivers are generally not available for FOIA requests for individual immigration cases. By regulation, a person can qualify for a fee waiver only if she demonstrates: 1) disclosure of the documents is in the public interest because the documents are likely to contribute significantly to the public’s understanding of the government; and 2) disclosure of the documents is not primarily for a commercial interest. Most FOIA requests for immigration cases would not meet this standard; you should thus think through how much money you or your client can pay for the FOIA request and state that amount upfront, especially if it is less than \$25.00. If the Requestor states \$0, she will be given all of the records up to the \$14.00 mark, over which agencies begin charging.

For FOIA requests to USCIS, when preparing for payment of any applicable search fees, make sure your checks or money orders are from a bank or other financial institution located in the United States and payable in U.S. currency. You must also make the checks or money orders payable to “U.S. Department of Homeland Security.” Do not use the initials “USDHS” or “DHS.”

VII. Instructions for Filling Out a FOIA Request on Form G-639

In this section, we walk through each numbered section of Form G-639. Remember that Form G-639 is not required for a FOIA request; however, it is a frequently used form accepted by USCIS, OBIM, and ICE.

PRACTICE TIP: Form G-639 is NOT required. Form G-639 was created by DHS to make filing and processing FOIA requests easier, but it is an optional form. A FOIA request need only be in writing, state that the request is being made under FOIA, reasonably describe the records sought, and provide contact information for the Requestor. In some cases, you may not want to use Form G-639 and may choose to submit a letter request instead. Some practitioners send a letter request in cases where they do not wish to disclose much information about the client (and do not want to have to leave many questions blank on the G-639). Note, however, that a FOIA response may take less time and be more complete if you submit it using Form G-639 or an online form because these options help ensure that you provide the information necessary to process the request.

USCIS created a new Form G-639 with an issue date of April 17, 2017. Make sure you are using the correct form because previous versions are no longer accepted. The form is frequently updated, so always check for the latest version of the form at <http://www.uscis.gov/g-639>.

Type your responses or write them in black ink. If you do not know the information requested, the request could be delayed or the documents provided in response to the FOIA request could be incomplete.

1. Part 1: Type of Request

Item 1a – b: Check the box that describes the request type. You should only check one box.

If submitting a FOIA or Privacy Act request, you should check the first box. If you are seeking to amend a government record covered by the Privacy Act, check the second box.^{xxvi} Privacy Act requests are only available for U.S. citizens and lawful permanent residents and allow these Requestors to access and amend certain records the government maintains on individuals, such as service records for people who served in the U.S. armed forces or employment records for U.S. government employees. Requests under the Privacy Act are beyond the scope of this advisory.^{xxvii}

2. Part 2: Requestor Information

Item 1: Check the Yes box if you are requesting your own records. Attorneys or representatives who are filling out the G-639 on behalf of their clients should check the No box. In these cases, the attorney is the Requestor, or the Requestor's representative.

If you are seeking your own records, skip the remainder of the questions in Part 2 (items 2a – 7b). Requestors seeking records on behalf of someone else should complete all of Part 2.

Items 3a – i:

Requestor's Mailing Address

- ✓ *In Care of Name (if any)* – Write the name of the person or agency receiving the documents, if someone other than the Requestor.
- ✓ *Street Number, Street Name, City, State, Zip Code* – Write the full address of the Requestor. The address can be either a mailing address (including a post office box) or a residential address. If the Requestor is the same person as the Subject, we strongly recommend using a mailing address instead of a residential address.
- ✓ *Province* – If the mailing address is within the United States, then in the province box you should write “N/A.” If the mailing address is outside the United States and the country uses the province system, then you should write the name of the province where correspondence should be delivered.
- ✓ *Postal Code* – If the mailing address is within the United States, then you should write “N/A” in the postal code box. If the documents will be mailed to a country that uses the postal code system, then you should write the postal code where correspondence should be delivered.
- ✓ *Country* – Write the name of the country where the mailing address is located. If the address is within the United States, then write, “United States.”

Items 4 – 6:

Requestor's Contact Information

- ✓ *Requestor's Daytime Telephone Number* – Write the Requestor's telephone number where she can be reached.
- ✓ *Requestor's Mobile Telephone Number (if any)* – Write the Requestor's cell phone number if it is different from the daytime phone number.
- ✓ *Requestor's E-mail Address (if any)* – Write the Requestor's email address, if she has one.

To avoid delays caused by communication problems, include only telephone numbers that are regularly checked and not likely to change in the foreseeable future. If including an email address, only include one that is regularly checked.

Items 7a – b:

Requestor's Certification

By signing, the Requestor agrees to pay all costs for the search, duplication, and review of the documents up to \$25.00, when applicable. DHS will not charge for the first two hours of research or

the first 100 pages copied. This means that if the file is small, DHS may not charge the Requestor at all. See **Section VI**.

- ✓ *Requestor's Signature* – The Requestor should sign her complete name here with the date. A stamped or typed name in place of a signature will not be accepted.

If you are representing the Subject and signing the form as the Requestor, you should include a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.^{xxviii}

PRACTICE TIP: Older Form G-639 versions listed the Requestor's certification at the end of the form, but it is now included upfront. If you are the Requestor, do not forget to sign Part 2 7a-b, in the middle of Page 1 of the form.

3. Part 3: Description of Records Requested

Item 1:

Purpose

This portion is optional. However, providing a general purpose may assist DHS in locating the file. It is best to be specific, but do NOT reveal anything about your immigration strategy or any facts that you do not want the government to know. For example, if you want to know whether the government has any evidence that the Subject may have used a false document when she applied for an immigration benefit, you do NOT want to disclose this possibility on the FOIA request by writing that the purpose is to search for records related to the Subject's use of fraudulent documents. Instead, you can write something simple, such as "requesting immigration records for personal review."

Items 2a – c:

Full Name of the Subject of Record

- ✓ *Family Name* – Write the Subject's *current* last name.
- ✓ *Given Name* – Write the Subject's *current* first name.
- ✓ *Middle Name* – Write the Subject's *current* middle name.

Items 3a – c:

Other Names Used by the Subject of Record

- ✓ *Other Names Used* – List any names or permutations that the Subject has ever used. If the Subject has used more than one "other name," include the additional name(s) in *Part 5 Additional Information* (discussed below). Include any maiden name, the adding/dropping of a middle initial, or the adding or dropping of the mother's last name. For example, if the Subject's legal name (as it appears on her birth certificate or other legal document) is Juana Morales Gonzales, and she often goes by "Juana Morales," she should add "Juana Morales" as an *other name used*. If the Subject has not used other names, write "N/A" in each box. If the Subject is looking to find records in her file under a different name, even a fake name that she used in the past, she should add that name as well.

Items 4a – c:

Full Name of the Subject of Record at Time of Entry into the United States

Include the Subject's complete name when she entered the United States. This may be the same as the Subject's current full name.

Items 5 – 8:**Other Information for the Subject of Record**

- ✓ *Form I-94 Number Arrival-Departure Record* – If the Subject entered with a visa, she may have received a little white card called Form I-94 from CBP upon entering the country that looks similar to the picture below. If she received certain forms of immigration relief, such as U nonimmigrant status, she should have received a paper I-94 in the mail from USCIS. Write in the Subject's 11-digit I-94 number. If the Subject does not know the number or is unsure if she ever had an I-94, write "Unknown." If the Subject is sure she does not have one (this will be the case for anyone who entered without papers and has never had immigration status), write "N/A."

If the information the Subject seeks relates to a specific entry, provide the I-94 number for that entry and explain the request in the *Additional Information* section.

If the Subject was admitted into the United States by CBP at an airport or seaport after April 30, 2013, she was likely issued an electronic Form I-94. To retrieve a paper version of Form I-94, visit CBP's website at www.cbp.gov/i94.^{xxix}

- ✓ *Alien Registration Number (A-Number)* – A person usually has an alien registration number ("A-number") only if she has been in contact with immigration authorities, filed an immigration petition, or had a certain type of immigration case in the past. This number begins with an "A" and is generally seven, eight, or nine digits long. If the Subject has an A-number, write it in the appropriate box. If the Subject does not remember her A-number or is unsure if she has one, write "Unknown." If the Subject does not have one, write "None." Sometimes people who have had multiple interactions with immigration authorities have multiple A-numbers. In this case, be sure to include all of the additional A-numbers in *Additional Information*.

The A-number is the single most important item of information to help DHS locate the Subject's A-file. If the Subject does not know her A-number, then more identifying information should be provided to assist the government in locating the file. If a Subject does not have an A-number, her presence might not be known by DHS, and DHS might not have any records on that person.

- ✓ *USCIS Online Account Number (if any)* – The Subject has a USCIS Online Account Number if she has previously filed any application, petition, or request to USCIS using its online filing system (previously known as USCIS ELIS). She may have also received a USCIS Online Account Number on a USCIS Online Account Access Notice if she filed an application, petition, or request to a USCIS Lockbox facility by mail. For more information on how to find your USCIS Online Account Number, if you have one, please review the applicable section on page 3 of the G-639 instructions, available at https://www.uscis.gov/system/files_force/files/form/g-639instr.pdf.

- ✓ *Application, Petition, or Request Receipt Number* – If any immigrant petition, application, or request has been filed for the Subject, write the receipt number here. Receipt numbers are found in the upper left corner of Form I-797C, Notice of Action. If the Subject does not know the number or is unsure if she has had a petition filed for her, write “Unknown.” If an immigrant petition has not been filed, write “None.” If the Subject has filed multiple immigration petitions or applications, you can include the additional receipt numbers in *Additional Information*.

Items 9 – 12:

Information About Family Members that May Appear on Requested Records

This information is used to collect records related to the Subject that might have been filed by or for family members. Write in information about relatives who may appear in the Subject’s records. For example, write in the name of any family member who submitted a family-based petition for the subject. If there are multiple relatives that you want to include, complete the information for additional family members under *Family Member 2* and by using *Additional Information*.

Items 13 – 14:

Parents’ Names for the Subject of Record

The G-639 Form asks specifically for information about the Subject’s parents. However, the G-639 does not ask about the family members’ address or immigration status. Because of this, there is minimal risk in including the full names of the Subject’s parents.

Item 15:

Description of Records Sought

If you are not requesting specific documentation, we recommend you complete the *Description of Records Sought* section by writing, “Requesting copy of all files relating to [client’s name] for personal review.” Although it is likely that many records will be provided unless you specifically limit the request, it is best to explicitly state that you seek all available documentation regarding the Subject.

4. Part 4: Verification of Identity and Subject of Record Consent

Every person submitting a FOIA request, whether to USCIS, ICE, or OBIM, must complete the *entire* Verification of Identity and Subject of Record Consent section for the agency to verify that the Subject is who she says she is.

PRACTICE TIP: Form G-639 requires the Subject of Record to include her name twice – in *Part 3, Description of Records Requested* and *Part 4, Verification of Identity and Subject of Record Consent*. When completing this information, always confirm that the name listed is consistent in both sections. This will help avoid any agency confusion. If you are using the fillable PDF form on the USCIS website, Part 4 items 1a – c will automatically populate based on your answers in Part 3.

Items 2a – i:

Mailing Address for the Subject of Record

- ✓ Form G-639 used to require a *residential* address; the new version thankfully requires only a *mailing* address. Many people who are here without legal status or who have certain criminal or immigration violations may be concerned about giving the government their current physical address through a FOIA request. We are unaware of anyone currently being picked up by immigration authorities based on filing a FOIA request; however there is no guarantee. It is always

safest to list a mailing address (e.g., a post office box) instead of a residential address. If the mail is sent to someone other than the Subject, include an “In Care of [Name]” as part of the mailing address.

Items 3 – 4:

Other Information for the Subject of Record

- ✓ *Date of Birth* – The date should be written as month/day/year. Ex.: 01/31/2015.
- ✓ *Country of Birth* – Write the name of the country in which the Subject was born. If the name of the birth country has changed since she was born, write the name of the country used at the time of her birth.

PRACTICE TIP: For many immigrants, it may not be in their best interest to disclose in a FOIA request that they were born outside of the United States. For example, anyone contesting alienage (e.g., holding the government to its burden to show the person is not a U.S. citizen) will not want to list her country of birth. To avoid this, the Subject may simply decline to write her country of birth or write: “The government alleges [insert country name],” or “The Notice to Appear alleges that client is from [insert country name].” Although Form G-639 states that the information regarding country of birth is required, it is not mandated by statute or regulations. Furthermore, each reviewing officer has the discretion to determine how to handle a request when certain information is missing. Practitioners note that the government generally provides the requested records even when the country of birth is not listed.

Items 5 – 7:

Contact Information for the Subject of Record

Providing contact information for the Subject is optional. If the Subject is represented by the Requestor, we recommend not providing contact information for the Subject, and thereby forcing DHS to contact only the Requestor if there is any question. If you do provide contact information for the Subject, include only telephone numbers and email addresses that are regularly checked and not likely to change in the foreseeable future to avoid delays.

Items 8a – 8c:

Signature and Notarized Affidavit or Declaration of the Subject of Record

Whether the FOIA request is made by a person seeking her own file or another person’s file, the Subject must either (1) provide her signature before a notary public in item 8.a, OR (2) sign the declaration under penalty of perjury in item 8.b. The Subject should choose one and not sign both.

- ✓ *Notarized Affidavit of Identity* – The Subject should read and understand the certification, which states that she agrees to pay costs incurred for the request up to \$25 and that she consents to USCIS releasing her file to the Requestor named on the form. In the presence of the notary, the Subject should sign her complete name above the *Signature of Subject of Record* line and write the date on which the form is signed above the *Date of Signature* line. The notary must provide the date on which she witnessed the signing of the form, her daytime telephone number, her signature, and the date on which her commission expires.

Notaries outside of the United States perform different functions and have differing levels of authority. Before signing this document outside of the United States, research the various requirements that will need to be satisfied before DHS recognizes the signature of a foreign notary.

- ✓ *Declaration under Penalty of Perjury* – The Subject may choose to sign the declaration under penalty of perjury. By signing the statement, the Subject verifies under penalty of perjury that the information on the form is complete, true, and correct and that she agrees to pay up to \$25 for the request. By signing, the Subject also consents to release documents to the Requestor listed in Part 3 of the form. If the Subject chooses this option, she must sign under the statement.
- ✓ *Deceased Subject of Record* – If the Subject of Record is deceased, the Requestor must provide a COPY of the obituary, death certificate, funeral memorial, or other proof of death before any records are released.
- ✓ *Minor Subject of Record* – If a parent and/or legal guardian is submitting a FOIA on behalf of a minor or someone under a legal guardianship, she must show proof of that relationship.
- ✓ *Submitted Without Consent of Subject* – If the Requestor cannot get a signature from the Subject of Record (such as in the case of an estranged relative), the agency will respond to the FOIA request with information that is in the public record or that does not violate the Subject's personal privacy interests. In such situations, USCIS's policy is to release nonexempt applications, petitions, and documents related to the Subject.^{xxx}

5. Part 5: Additional Information

The current Form G-639 contains an *Additional Information* section as Part 5 of the form. If you wish to explain an answer you provided on the form or if you wish to include additional information not requested by the form, it can be included in this section. If further space is needed, you can make additional copies of Page 4 and attach them behind the first four pages of the form.

If you provide information in this section, make sure to include the name of the Subject, the A-number, the Subject's signature, and the date of signature for each *Additional Information* page. You will also need to write what question your additional information is elaborating by listing the *Page Number*, *Part Number*, and *Item Number* in the appropriate boxes above the explanation.

PRACTICE TIP: The Requestor and Subject should each keep a copy of the G-639 filing to reference throughout the immigration case. Some practitioners submit the G-639 with a cover letter. This can be helpful if you are including additional documents, such as a G-28.

VIII. Other Ways to Request Records

Although a FOIA response can provide valuable information about a Subject's immigration history, it may not be complete or it may not be the most effective way to obtain the information you need. Below is a list of situations in which a FOIA request is not the best option, followed by the preferred method of obtaining that information:

Criminal Convictions

- FBI and state background checks: These requests will often provide summary information about an individual's arrests, charges, and convictions.
- Court-specific records request: These requests will often provide detailed records of an individual's arrests, charges, convictions, and sentencing.

Status of Pending Immigration Applications

- Enter the receipt number of the pending immigration application on USCIS's online case status website, <https://egov.uscis.gov/casestatus/landing.do>.
- You could also write to the USCIS office that received the application or call the National Customer Service Center at (800) 375-5283.

Consular Notification of a Visa Petition Approval

- Submit USCIS Form I-824 to the appropriate Lockbox facility.

The Return of Original Documents

- Submit Form G-884 to the USCIS office that is currently processing your application or to the office that last took action on the application.

Records of Naturalization Prior to September 27, 1906

- Contact the court clerk where the naturalization occurred.

Information on Records Prior to December 1982

- Contact the National Archives.

Proof of Status (i.e., Social Security benefit, Selective Service requirement)

- Contact the agency itself (SSA, Selective Service, etc.).

END NOTES

ⁱ Thanks to Aidin Castillo and former ILRC interns Rocio Sanchez and Wesley Cheung for drafting earlier versions, and to Jose Magana-Salgado and Lena Graber for their editing assistance. For questions regarding the content of this advisory, please contact Alison Kamhi at akamhi@ilrc.org.

ⁱⁱ Freedom of Information Act, 5 U.S.C. § 552.

ⁱⁱⁱ Because the process for submitting requests can differ among DHS components, be sure to visit the agency's website for the most up-to-date information.

^{iv} 5 U.S.C. § 552(a)(3)(A).

^v 6 C.F.R. 5.3(b).

^{vi} 6 C.F.R. § 5.3(c).

^{vii} Form G-639 is available at <http://www.uscis.gov/g-639>.

^{viii} USCIS, *Submitting FOIA Requests*, available at <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/submitting-foia-requests>.

^{ix} Please note that USCIS does not accept Form G-639 for requests to obtain a Certificate of Nonexistence of a Record. Such requests should instead be made in the form of request letters that include the Subject's name(s), birthdate, birthplace, entry information, and past and present addresses in the United States. These letters should be sent to:

USCIS, Attn: Records Services Branch
1200 1st St. NE, 2nd Floor
Washington D.C. 20529-2204.

More information can be found at <https://www.uscis.gov/unassigned/faq/how-do-i-get-certification-non-existence-record-or-no-naturalization-record-deceased-immigrant>.

^x Records of apprehensions before 2000 are maintained by USCIS.

^{xi} CBP does not have records before 1982.

^{xii} DOJ, *Fact Sheet: How to File a Freedom of Information Act Request with EOIR*, available at <http://www.justice.gov/sites/default/files/eoir/legacy/2008/10/15/FOIAInstructions100908.pdf>.

^{xiii} DOS has an online submission option for FOIA requests, but the online option is not available for requests about personal information. See DOS, *How to Make a FOIA Request*, available at <https://foia.state.gov/Request/FOIA.aspx>.

^{xiv} Requests for a Certificate of Nonexistence of a Record are an exception. Such requests should be made directly to the USCIS Records Services Branch and cannot be submitted using Form G-639. See Note VIII, *supra*, for more information concerning such requests.

^{xv} From October 15, 2014 to May 1, 2015, USCIS piloted a FOIA online system for records that did not include personally identifiable information. This pilot program has ended, and USCIS no longer accepts requests through this system. Requests must be sent by mail, fax, email, or electronically through DHS.

^{xvi} DHS, *USCIS Freedom of Information Act and Privacy Act*, (May 30, 2017), available at <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act>.

^{xvii} For more information about how to file a FOIA request with USCIS, visit the USCIS FOIA website at <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request>.

^{xviii} For more information, see the ICE FOIA request website, http://www.ice.gov/foia/submitting_request.htm.

^{xix} 6 C.F.R. 5.5(d)(1).

^{xx} CBP does not have complete records of border apprehensions made before 2000, although they may be in the A-file maintained by USCIS.

^{xxi} 6 C.F.R. § 5.5(e)(1).

^{xxii} If you are requesting expedited processing on the basis of the fourth ground, per 6 C.F.R. § 5.5(e)(2) you must send your request to:

Senior Director of FOIA Operations
Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW STOP-0655

Washington, D.C. 20598-0655.

^{xxiii} DHS, *Instructions for Freedom of Information/Privacy Act Request 5*, (2017), available at https://www.uscis.gov/system/files_force/files/form/g-639instr.pdf.

^{xxiv} Track 3 is for individuals who have been served with a charging document and scheduled for a hearing in immigration court as a result. See Special FOIA Processing Track for Individuals Appearing Before an Immigration Judge, 72 Fed. Reg. 9017 (Feb. 28, 2017).

^{xxv} USCIS, *FOIA/Privacy Act Overview*, available at <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/foia-privacy-act-overview/foiaprivacy-act-overview>.

^{xxvi} Many agencies automatically treat applicable requests as being made under both FOIA and the Privacy Act. This approach is beneficial, where applicable, because it provides Requestors with the maximum amount of information available under the law.

^{xxvii} For more information on the Privacy Act, see U.S. House of Representatives, *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*, available at <http://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guide-on-Using-FOIA.2012.pdf>.

^{xxviii} Be sure to use the most recent version of Form G-28, available at <http://www.uscis.gov/g-28>.

^{xxix} Older versions of Form G-639 requested the Subject's port of entry into the United States, date of entry, manner of entry, and mode of travel. The current form no longer requests this information. This change is an improvement because immigrants are no longer asked to speculate or concede any issues regarding their entries, which could affect their immigration case.

^{xxx} USCIS, *FOIA Request Guide*, available at <http://www.uscis.gov/sites/default/files/USCIS/About%20Us/FOIA/uscisfoiarequestguide%2810%29.pdf>.



Freedom of Information/Privacy Act Request

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form G-639
OMB No. 1615-0102
Expires 04/30/2020

NOTE: Use of this form is optional. USCIS accepts any written request, regardless of format, provided that the request complies with the applicable requirements under the FOIA and the Privacy Act.

▶ **START HERE - Type or print in black ink.**

Part 1. Type of Request

Select **only one** box.

NOTE: If you are filing this request on behalf of another individual, respond as it would apply to that individual.

- 1.a. Freedom of Information Act (FOIA)/Privacy Act (PA)
- 1.b. Amendment of Record (PA only)

Part 2. Requestor Information

- 1. Are you the Subject of Record for this request?
 Yes No

If you answered "No" to **Item Number 1.**, provide the information requested in **Part 2.** If you answered "Yes" to **Item Number 1.**, skip to **Part 3.**

Requestor's Full Name

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name

Requestor's Mailing Address

- 3.a. In Care Of Name (if any)
- 3.b. Street Number and Name
- 3.c. Apt. Ste. Flr.
- 3.d. City or Town
- 3.e. State 3.f. ZIP Code
- 3.g. Province
- 3.h. Postal Code
- 3.i. Country

Requestor's Contact Information

- 4. Requestor's Daytime Telephone Number
- 5. Requestor's Mobile Telephone Number (if any)
- 6. Requestor's Email Address (if any)

Requestor's Certification

By my signature, I consent to pay all costs incurred for search, duplication, and review of documents up to **\$25.** (See Form G-639 Instructions for more information.)

- 7.a. Requestor's Signature
➡
- 7.b. Date of Signature (mm/dd/yyyy)

Part 3. Description of Records Requested

NOTE: While you are not required to respond to every item in **Part 3.**, failure to provide complete and specific information may delay processing of your request or create an inability for U.S. Citizenship and Immigration Services (USCIS) to locate the records or information requested.

- 1. **Purpose (Optional:** You are not required to state the purpose of your request. However, providing this information may assist USCIS in locating the records needed to respond to your request.)

Full Name of the Subject of Record

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name

Part 3. Description of Records Requested
(continued)

Other Names Used by the Subject of Record (if any)

Provide all other names you have ever used, including aliases, maiden name, and nicknames. If you need extra space to complete this section, use the space provided in **Part 5. Additional Information**.

Additional Information.

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name

Full Name of the Subject of Record at Time of Entry into the United States

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name

Other Information About the Subject of Record

- 5. Form I-94 Number Arrival-Departure Record
▶
- 6. Alien Registration Number (A-Number) (if any)
▶ A-
- 7. USCIS Online Account Number (if any)
▶
- 8. Application, Petition, or Request Receipt Number
▶

Information About Family Members that May Appear on Requested Records

For example, provide the requested information about a spouse or children. If you need extra space to complete this section, use the space provided in **Part 5. Additional Information**.

Family Member 1

- 9.a. Family Name (Last Name)
- 9.b. Given Name (First Name)
- 9.c. Middle Name
- 10. Relationship

Family Member 2

- 11.a. Family Name (Last Name)
- 11.b. Given Name (First Name)
- 11.c. Middle Name
- 12. Relationship

Parents' Names for the Subject of Record

Father

- 13.a. Family Name (Last Name)
- 13.b. Given Name (First Name)
- 13.c. Middle Name

Mother

- 14.a. Family Name (Last Name)
- 14.b. Given Name (First Name)
- 14.c. Middle Name
- 14.d. Maiden Name (if applicable)

15. Description of Records Sought.

Provide a description of the records you are seeking. If you need additional space, use the space provided in **Part 5. Additional Information**.

Part 4. Verification of Identity and Subject of Record Consent

NOTE: Complete all applicable **Item Numbers**. In addition, the Subject of Record **MUST** sign **Part 4.** of this request.

Full Name of the Subject of Record

- 1.a. Family Name (Last Name)
- 1.b. Given Name (First Name)
- 1.c. Middle Name

Part 4. Verification of Identity and Subject of Record Consent (continued)

Mailing Address for the Subject of Record

2.a. In Care Of Name (if any)

2.b. Street Number and Name

2.c. Apt. Ste. Flr.

2.d. City or Town

2.e. State 2.f. ZIP Code

2.g. Province

2.h. Postal Code

2.i. Country

Other Information for the Subject of Record

3. Date of Birth (mm/dd/yyyy)

4. Country of Birth

Contact Information for the Subject of Record

Providing this information is **optional**.

5. Daytime Telephone Number

6. Mobile Telephone Number (if any)

7. Email Address (if any)

Signature and Notarized Affidavit or Declaration of the Subject of Record

Select **only one** box.

NOTE: The Subject of Record **MUST** provide a signature in **Item Number 8.a. Notarized Affidavit of Identity OR Item Number 8.b. Declaration Under Penalty of Perjury**. If the Subject of Record is deceased, read **Item Number 8.c. Deceased Subject of Record** and attach proof of death.

8.a. Notarized Affidavit of Identity

(Do **NOT** sign and date below until the notary public provides instructions to you.)

By my signature, I consent to USCIS releasing the requested records to the requestor (if applicable) named in **Part 2**. I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25** (if filing this request for myself).

Signature of Subject of Record

Date of Signature (mm/dd/yyyy)

Subscribed and sworn to before me on this _____ day of _____ in the year _____.

Daytime Telephone Number _____

Signature of Notary

My Commission Expires on (mm/dd/yyyy)

8.b. Declaration Under Penalty of Perjury

By my signature, I consent to USCIS releasing the requested records to the requestor (if applicable) named in **Part 2**. I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25** (if filing this request for myself).

I certify, swear, or affirm, under penalty of perjury under the laws of the United States of America, that the information in this request is complete, true, and correct.

Signature of Subject of Record

Date of Signature (mm/dd/yyyy)

8.c. Deceased Subject of Record

(**NOTE:** You **MUST** attach an obituary, death certificate, or other proof of death.)

Part 5. Additional Information

If you need extra space to provide any additional information within this request, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with your request or attach a separate sheet of paper. Type or print the name of the Subject of Record and his or her A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which the information refers; and sign and date each sheet.

1.a. Family Name (Last Name)
1.b. Given Name (First Name)
1.c. Middle Name

2. Alien Registration Number (A-Number) (if any)
▶ A-

3.a. Page Number 3.b. Part Number 3.c. Item Number

3.d. _____

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d. _____

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d. _____

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d. _____

