



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

I. Introduction

The Freedom of Information Act (FOIA) entitles every person access to certain information from the federal government.¹ A person can file a request under this act, called “a FOIA request,” to any federal agency to request documents about themselves or others. A FOIA request can be an invaluable tool in immigration law to help an immigrant and their representative. There are many reasons a person may want to see documents 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 their previous immigration history to help piece together what happened, assess risks of applying for benefits, and determine what relief might be possible.

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 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 U.S. Visitor and Immigration Status Indicator Technology (US-VISIT)). There are several other DHS components that may be of interest to practitioners, depending on the purpose of their FOIA request, including the Office of Civil Rights and Civil Liberties, and the Office of the Inspector General.²

DHS keeps an immigration file (also known as an “A-file”) on all immigrants with whom it comes into contact. Any person, regardless of immigration status, is entitled under FOIA to request a copy of their immigration records from any of the DHS components.³

¹ Freedom of Information Act, 5 U.S.C. § 552.

² The DHS Office of Civil Rights and Civil Liberties internally investigates complaints from the public against any office of DHS and performs inspections of ICE and CBP detention facilities. An overview of their functions is available at https://www.dhs.gov/sites/default/files/publications/CRCL%20Handout_Updated%208-18-17.pdf (last visited Dec. 2019). The Office of the Inspector General is responsible for investigating systemic problems and fraud, waste, and abuse in any DHS component, including ICE and CBP. The Inspector General also investigates detention conditions. To see a list of the typical reports and audits that the office conducts, review <https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations> (last visited Dec. 2019). These DHS offices can receive a FOIA request through the central DHS online system at the DHS Privacy Act/FOIA Submission Form, <https://www.dhs.gov/dhs-foia-privacy-act-request-submission-form> (last visited Dec. 2019). This system has a dropdown menu where the requester chooses the relevant office for the FOIA request.

³ Because the process for submitting requests can differ among DHS components, be sure to visit the relevant agency’s website for the most up-to-date information.

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 an individual may file a FOIA request with any federal government agency. Depending on the case, you may want to file a FOIA request at the Department of State (for passport records)⁴ 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 <http://www.ilrc.org>.

PRACTICE TIP: Because each component within DHS is responsible for responding to requests for its own records, it is important to determine which component is likely to have the records sought and direct the request to that component. For example, if requesting a copy of a green card application, submit the FOIA to USCIS. However, if you are looking for more information about an expedited removal at the border, then submit to CBP or OBIM. In some cases, it may be best to submit requests to multiple components because of differences in processing times and variation in thoroughness of responses.

Sometimes it can be complicated to determine which agency or component may have the records sought. To help you make this determination, USCIS provides a list of records/request types, and the agency 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 or online where permitted. The statute requires only that the requester reasonably describe the records sought.⁵ 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."⁶ The written request should also state specifically that it is a records request under FOIA, and provide contact information for the requester. If a requester does not provide sufficient information, the component may request additional information, or the request may be administratively closed.⁷

The government created Form G-639, Freedom of Information/ Privacy Act Request, to help people make their requests.⁸ 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. A letter 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 the necessary information is provided. Online filing is speedier than FOIA submission by postal mail because governmental mail processing can delay receipt of forms for several weeks because the mail is diverted for security screening before it is delivered to the addressee.

Note that the law requires that agencies respond to FOIA requests within twenty business days, unless there are "unusual circumstances."⁹ However, USCIS, CBP, and other DHS agencies rarely meet this statutory deadline. Many requesters wait several months for a response. (For example, USCIS's current average wait time for processing an A-file FOIA is about fifty days, not including appeals.¹⁰ This time range does not include

⁴ For a detailed discussion of FOIA requests to the Department of State, see the ILRC's Practice Advisory, "Department of State FOIA Requests for Personal Records," available at <https://www.ilrc.org/department-state-foia-requests-personal-records>.

⁵ 5 U.S.C. § 552(a)(3)(A).

⁶ 6 C.F.R. § 5.3(b).

⁷ 6 C.F.R. § 5.3(c).

⁸ USCIS, *Form G-639: Freedom of Information Act/ Privacy Act Request*, available at <http://www.uscis.gov/g-639> (last visited Dec. 2019).

⁹ 5 U.S.C. § 552(a)(6)(A).

¹⁰ USCIS, *Check Status of FOIA Request*, <https://first.uscis.gov/#/check-status> (last visited Dec. 2019).

the additional wait time incurred when USCIS refers part of the FOIA request to another agency, such as ICE.) Unfortunately, the backlogs continue to expand. At the time of publication, a federal district court judge has certified a national class action in a lawsuit against USCIS and ICE for these chronic and harmful delays.¹¹

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 DHS’s 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 “requester” will refer to a person who is seeking the records, usually an immigration advocate or the person themselves. “Subject” will refer to the “subject of record,” the person whose documents are being requested.

¹¹ *Nightingale v. USCIS*, 3:19-cv-03512 (N.D. Cal. filed Oct. 15, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/nightingale_order_granting_class_certification.pdf.

II. Guide to Requesting Immigration Documents from Federal Agencies

AGENCY	RECORDS HELD ¹²	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 record¹³ • Advance parole records obtained through USCIS 	<p>USCIS requests may be submitted by letter request; Form G-639 by mail, fax, or e-mail; through the DHS Online Request Form, or through the Freedom of Information Act Records System (FIRST).</p> <p>USCIS offers accelerated processing for certain people in removal proceedings.</p>	<p>Form G-639 and Instructions: https://www.uscis.gov/g-639</p> <p>Online Option #1: DHS Online Request Form: https://www.dhs.gov/freedom-information-act-foia</p> <p>Online Option #2: FIRST https://first.uscis.gov/</p>
CBP	<ul style="list-style-type: none"> • Apprehensions and detentions at the border¹⁴ • Interactions with CBP at the border or in the interior • Form I-94 records • Voluntary return records • Records of entries and exits¹⁵ • Expedited removal orders • Advance parole records obtained through CBP 	<p>CBP requests are generally submitted online.¹⁶</p>	<p>Online Form: https://foiaonline.gov/foiaonline/action/public/request (Select "CBP FOIA Division" under "Agency")</p>
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>Online Option #1: ICE Online Form: http://www.ice.gov/webform/foia-request-form</p> <p>Online Option #2: DHS Online Request Form: https://www.dhs.gov/freedom-information-act-foia</p>

¹² 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> (last visited Dec. 2019).

¹³ Please note that USCIS does not accept Form G-639 for requests to obtain a Certificate of Non-existence of a Record. They also do not accept original requests through e-mail and will only mail certificates to U.S. addresses. Such requests should instead be made by submitting a letter that includes the subject's name(s) (including all variants and aliases), birthdate, birthplace, entry information, and past and present addresses in the United States. Send letter request should be sent to:

U.S. Citizenship and Immigration Services
 Attn: Certification of Non-Existence
 1200 1st St. NE, 2nd Floor
 Washington D.C. 20529-2204.

Questions may be directed to certificateofnonexistence@uscis.dhs.gov. More information can be found at <https://www.uscis.gov/history-and-genealogy/genealogy/genealogy-frequently-asked-questions>.

¹⁴ See CBP, *What Records Can CBP Provide Under FOIA?*, available at <https://www.cbp.gov/site-policy-notices/foia/records> (last updated Nov. 30, 2018). Records of apprehensions before 2000 may be available in the subject's A-file maintained by USCIS. CBP does not have complete records of apprehensions by CBP made before 2000.

¹⁵ *Id.* CBP does not have records on the entry and exit of persons arriving or departing the U.S. before 1982.

¹⁶ It is possible to file a FOIA by mail to CBP, but CBP makes clear that it takes longer to both receive and respond to mailed requests.

			<p>Instructions: http://www.ice.gov/foia/request</p> <p>Affirmation/Declaration Form: https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf</p>
OBIM	<ul style="list-style-type: none"> Interactions with border officials (e.g., information on removals or voluntary returns at the border) 	OBIM requests may be submitted by letter request; Form G-639 by mail, fax, or email; or electronically through the DHS Online Request Form. Requests must include an original fingerprint card (FD-258). ¹⁷	<p>Email: foia-obim@hq.dhs.gov</p> <p>Online Request Form: http://www.dhs.gov/dhs-foia-request-submission-form</p>
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.¹⁸ Do not use Form G-639 with EOIR.</p> <p>All requests should include the subject's A-number, name, immigration hearing location, and a description of the records.</p> <p>Requests must also include a verification of identity such as Form DOJ-361, a notarized statement, or a sworn statement.</p>	<p>Email: EOIR.FOIARequests@usdoj.gov</p> <p>General DOJ FOIA Instructions: http://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide</p> <p>EOIR FOIA Instructions: https://www.justice.gov/eoir/foia-facts</p>
Department of State (DOS)			
DOS	<ul style="list-style-type: none"> Consular processing and other consulate records Visa applications Passport applications 	<p>Most DOS requests must be submitted by mail or fax.¹⁹</p> <p>Requests should include a description of the records (including a timeframe of the records); the name, address, date of birth, place of birth, telephone number of the requester; the amount the requester is willing to pay for the request; and a notarized signature or Under Penalty of Perjury Statement.</p>	<p>Additional Information: https://foia.state.gov/Request/Guide.aspx</p> <p>ILRC's Practice Advisory on filing DOS FOIAs: https://www.ilrc.org/department-state-foia-requests-personal-records</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

¹⁷ FBI, *Documents: Applicant Fingerprint Form (FD-258)*, <https://www.fbi.gov/file-repository/standard-fingerprint-form-fd-258-1.pdf/view> (last visited Dec 2019).

¹⁸ DOJ - EOIR, *Freedom of Information Act*, <https://www.justice.gov/eoir/foia-facts> (last visited Dec. 2019).

¹⁹ 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;DOS.ElectronicSubmission,https://foia.state.gov/Request/Submit.aspx> (last visited Dec. 2019). Also, a requester for personal records from Passport Services may send their request by email to PPT-Public-FOIARequests@state.gov. But if the requester wishes to receive a certified or apostilled copy of any passport or consular records, the request must be mailed along with the required consular service fee to: U.S. Department of State, Passport Services, Office of Law Enforcement Liaison, 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166. See DOS, *Information Access Guide*, § V.5, <https://foia.state.gov/Request/Guide.aspx>.

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. U.S. Citizenship and Immigration Services (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.²⁰ The request can be submitted online or by letter request; Form G-639 by email, mail, or fax, or online.

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 and certified mail	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	(816) 350-5785 or (802) 860-6908
Email	uscis.foia@uscis.dhs.gov
Electronic Submission	<ul style="list-style-type: none"> • Option 1: https://www.dhs.gov/freedom-information-act-foia • Option 2: Freedom of Information Act Records System (“FIRST”) - https://first.uscis.gov (See Practice Tip below)

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 to avoid having documents withheld for privacy reasons.

In July 2019, USCIS published a detailed manual, available online, that covers all aspects of FOIA requests to USCIS.²¹

PRACTICE TIP: New USCIS Online Request Option through “FIRST”: USCIS released an online FOIA submission portal in July 2019, called Freedom of Information Act Records System (FIRST), the first fully digital FOIA submission and tracking system for USCIS records.²² DHS claims that it allows FOIA Requesters to submit their

²⁰ Requests for a Certificate of Non-existence 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 footnote 11 for more information concerning such requests.

²¹ USCIS, *Freedom of Information Act Request Guide*, available at https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf (last updated July 10, 2019).

²² See USCIS, *FIRST*, <https://first.uscis.gov/>; see also USCIS, G-639, *Freedom of Information Act/Privacy Act Request*, <https://www.uscis.gov/g-639>.

requests faster than physical mail submissions.²³ This online system requires the user to set up an online MyUSCIS account to track requests and receive requested documents digitally.²⁴ It also requires users to provide information such as country of birth to complete the request.

Individuals can file online FOIAs through this system to: (1) request their own immigration record; (2) file a FOIA on behalf of someone else; and (3) to request non-A-file information such as USCIS policies, data, or communications.²⁵ Although at the time of publication the USCIS website notes that requests for records on behalf of someone else are not yet available through FIRST, ILRC confirmed with USCIS's FOIA officer that it is in fact possible to use FIRST to file on behalf of someone else. The officer confirmed that consent and verification of identity will need to be provided as well.

CAUTION: The online FIRST system requires responses to the following questions: purpose of request, name, aliases, mailing address, country of birth, and information about family members. The system does not allow an individual to continue without answering these questions. Many individuals may not wish to use the FIRST system because they do not want to enter their country of birth (and thus concede alienage) or information about their family members. FIRST is NOT required. As outlined above, there are several other options for submitting a FOIA request to USCIS.

This system has been introduced with the promise of making it easier and faster for requesters to obtain information. One concern, especially during the Trump administration, however, is how easy it might make it for the government to obtain information about requesters as well. Practitioners and their clients will need to make individual determinations about whether FIRST is an appropriate method to send a FOIA request.

For questions about filing a request and assistance in obtaining records from USCIS, see their FOIA informational webpage, which contains addresses, contact information, and status requests.²⁶ You may also fax inquiries to the National Records Center at (816) 350-5785 or e-mail your questions to FOIAPAQuestions@uscis.dhs.gov.²⁷ There are links on the USCIS FOIA webpage that allow a requester to check the status of their FOIA by entering the control number, which USCIS should issue upon receipt of the FOIA request.²⁸

B. U.S. Immigration and Customs Enforcement (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 12 th Street, S.W., Mail Stop 5009 Washington, DC 20536-5009 ²⁹
Fax	(202) 732-4265
Email	ICE-FOIA@dhs.gov

²³ USCIS, *Welcome to FIRST*, YouTube (July 12, 2019), <https://www.youtube.com/watch?v=FN7eQyJcV7M&feature=youtu.be>.

²⁴ *Id.*

²⁵ See *How to File a FOIA/PA Request*, available at <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-a-foiapa-request> (last updated July 24, 2019).

²⁶ USCIS, *USCIS Freedom of Information Act and Privacy Act*, <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act> (last visited Dec. 2019).

²⁷ USCIS, *Check Status of FOIA Request*, <https://first.uscis.gov/#/check-status> (last visited Dec. 2019); see also DHS, *Check Status of Request*, <https://www.dhs.gov/foia-status> (last visited Dec. 2019). 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>.

²⁸ *Id.*

²⁹ Bond Obligor requests should also be made to this address.

Electronic Submission	<ul style="list-style-type: none"> • Option 1: https://www.dhs.gov/freedom-information-act-foia • Option 2: https://www.ice.gov/webform/foia-request-form
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All requests to ICE *must* include a daytime phone number.³⁰

If the request is submitted by means 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 them personally, the name and address of a third party. The Affirmation/Declaration form is available on the ICE FOIA website.³¹ By signing the form, the subject indicates that they are responsible for applicable fees and that they understand 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.³² Requesters may request expediting processing within the two ICE FOIA online submission options in the document description box.

C. U.S. Office of Biometrics Identity Management (OBIM)

The U.S. Office of Biometrics Identity Management (OBIM) was created in 2013 to replace the U.S. Visitor and Immigration Status Indicator Technology (US-VISIT) Program. OBIM is the arm of DHS that houses and supplies the agency’s biometric data. This system, called the Automated Biometric Identification System, also known as IDENT, includes millions of unique identities (including a person’s right index fingerprint and photograph).³³ Although sometimes heavily redacted, OBIM records include the IDENT information along with the date and location it was collected, which can be a great resource for practitioners seeking border records. DHS is also beginning to incorporate pre-digital fingerprint records into the OBIM database, which will further increase the usefulness of OBIM records for some clients.

PRACTICE TIP: Many practitioners file requests with both CBP and OBIM to find records about their clients’ interactions at the border, as the two components index their records differently and may have different records on file. OBIM categorizes its records by fingerprint, so a FOIA request with OBIM can be particularly helpful if a client gave a false name at the border or used false documentation. OBIM’s usefulness has increased in the face of slow and/or incomplete FOIA responses from CBP, as OBIM’s response rate is generally faster than CBP’s.

Practitioners also recommend filing an FBI records request when filing an OBIM FOIA request. This is because OBIM FOIA records responses may note that the subject was arrested at the border, but will not indicate whether there was a voluntary return or expedited removal. An FBI rap sheet can help fill in the gaps. See ILRC’s Practice Advisory “How to Check if You Have a Criminal Record,” for guidance on how to request an individual’s criminal and immigration history from the FBI:

https://www.ilrc.org/sites/default/files/resources/practice_advisory_-_background_checks_final.pdf.

One way to submit a FOIA request to OBIM is by using Form G-639 by email, mail, or fax, or using the electronic DHS submission form. FOIA requests can also be submitted in a letter. If using Form G-639, note that the form allows you to include an alien registration number (A-number), but including an A-number is optional. Many individuals may not have an A-number. OBIM requests also require an FBI fingerprint card (FD-258).³⁴

³⁰ For more information, see the ICE FOIA request website, http://www.ice.gov/foia/submitting_request.htm.

³¹ ICE, *Affirmation/Declaration*, available at <https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf> (last visited Dec. 2019).

³² 6 C.F.R. 5.5(d)(1).

³³ DHS, *Office of Biometric Identity Management*, <https://www.dhs.gov/obim> (last updated Oct. 7, 2019).

³⁴ FBI, *Documents: Applicant Fingerprint Form (FD-258)*, <https://www.fbi.gov/file-repository/standard-fingerprint-form-fd-258-1.pdf/view> (last visited Dec 2019).

Mail ³⁵	The Privacy Office U.S. Department of Homeland Security 245 Murray Lane SW STOP-0655 Washington, DC 20528-0655
Fax	(202) 343-4011
Email	foia-obim@hq.dhs.gov
Electronic Submission	http://www.dhs.gov/dhs-foia-request-submission-form

PRACTICE TIP: OBIM records can be confusing to read. OBIM uses many abbreviations to describe different kinds of border interactions. For example, the term “PWAM” means “present without admission Mexico.” Moreover, some of the categories on the forms are not always intuitive. For example, it seems that “entry date” is often the date that the requester submitted the FOIA request, or the date the database was checked in some manner (such as triggered by a biometrics background check), not the date the subject entered the country. By contrast “date loaded” is often the date the person entered the country. Additionally, the records often label the subject as a “recidivist” even when they have only entered the country once. For case-specific help reading OBIM records, contact ILRC’s Attorney of the Day service.³⁶

D. U.S. Customs and Border Protection (CBP)

Customs and Border Protection (CBP) holds invaluable immigration records, including border apprehensions³⁷ and encounters; background investigations; detentions by border patrol or at a port of entry; expedited removals by CBP; records regarding the subject’s inspection or examination upon their arrival at a U.S. port of entry; voluntary returns; commercial documents; contracts; entries and exits; fines, penalties, forfeitures, and seizures; I-94 records; imports and exports; media; and travel (including advance parole documents obtained through CBP).³⁸

Note that it can take a very long time to receive a response from CBP because of persistent backlog issues. The monthly statistics that CBP is required to post show that the agency had more open FOIA requests in August 2019 (20,607) than in June 2017 (5,510).³⁹ CBP responses also may not be complete, or may come back saying that no responsive records have been found. In cases where you know that records exist, but CBP has not produced any, consider appealing.⁴⁰

If you would like to obtain records from CBP, submit an online request by going to <https://www.cbp.gov/site-policy-notices/foia>. CBP processes FOIA requests differently than the DHS components listed above. Form G-639 is not required and in fact is not 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 as well, because the two components index their records differently and may have different records on file. Another

³⁵ DHS, *FOIA Contact Information*, <https://www.dhs.gov/foia-contact-information> (last updated Dec. 4, 2019).

³⁶ ILRC, *Technical Assistance*, <https://www.ilrc.org/technical-assistance> (last visited Dec. 2019).

³⁷ See CBP, *What Records Can CBP Provide Under FOIA?*, available at <https://www.cbp.gov/site-policy-notices/foia/records> (last updated Nov. 30, 2018). Records of apprehensions before 2000 may be available in the subject’s A-file maintained by USCIS. CBP does not have complete records of apprehensions by CBP made before 2000.

³⁸ *Id.*

³⁹ CBP, *FOIA Monthly Reports*, available at <https://www.cbp.gov/site-policy-notices/foia/monthly-reports> (last visited Dec. 2019).

⁴⁰ See ILRC, *FOIA Requests and Other Background Checks*, Ch. 7 (2d ed. 2019), available at <https://www.ilrc.org/publications/foia-requests-and-other-background-checks>.

strategy is to use OBIM FOIA results about border encounters to make specific FOIA requests to CBP about records on particular dates, which can yield additional information.

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. It is always safest to list a mailing address (e.g., a post office box) instead of a residential address.
- ✓ *Type of Records Requested* – Provide a clear and detailed description of the records being requested in the “Description” box. Details such as birth date, A-number, parents’ names, alias used at the time of entry, dates, times, officer names, certificate numbers, document types, and entry numbers are all helpful to include. CBP also provides a drop-down list of types of records, including border apprehension⁴¹ and encounters; entries and exits; fines, penalties, forfeitures, and seizures; I-94; travel (including advance parole documents) and apprehension records. If you are looking for one of these in particular, select that category. If you are looking for multiple types of documents, CBP advises the requester to select “Other,” and include in the description box all of the categories you are seeking.
- ✓ *Attach Supporting Files* – The CBP form permits requesters to upload supporting files. If you are filing a FOIA request on behalf of someone else (other than your own 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 requester 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 requester.

IV. DHS Online Request Submission Form

DHS created an online fillable FOIA request form at <http://www.dhs.gov/dhs-foia-request-submission-form>.⁴² This FOIA request form has a drop-down menu where the requester can select the component within DHS where the FOIA request should be sent. Through this online form, a requester 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 should not be used for CPB FOIA requests, which must be submitted using CBP’s online form.

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. It is always safest to list a mailing address (e.g., a post office box) instead of a residential address.
- ✓ *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

⁴¹ CBP does not have complete records of border apprehensions made before 2000, although they may be in the A-file maintained by USCIS.

⁴² Requesters previously had the option of using a DHS FOIA mobile application for its online submission form; however, DHS has removed this option from all mobile app stores. See DHS, *eFOIA Mobile Application*, <https://www.dhs.gov/efoia-mobile-app> (last updated: July 18, 2018).

seeking records from USCIS, the requester should note the subject's date of birth and A-number (if they have one) in the "Description" box.

- ✓ *Requester 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."

V. Expediting a FOIA Request and Track 3 Processing

A. Expediting a Request

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 there is a compelling reason why a requester needs documents sooner, the requester can ask the agency to expedite the request. Federal regulations provide that a request can be expedited if it involves:⁴³

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.⁴⁴

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.

The first or third ground may apply to some requesters in immigration FOIAs. If so, write a detailed explanation of how they apply and include with it a certification that the information provided is "complete, true, and correct to the best of your knowledge and belief."⁴⁵ Also submit supporting evidence to help establish the urgency of your FOIA request. A request for expedited processing can be made at the time of the initial request or at a later date.⁴⁶

B. Track 3 Processing

USCIS also offers requesters the option to accelerate a request for subjects who have hearings scheduled in immigration court.⁴⁷ 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, those awaiting pending appeals, or persons who have missed their scheduled hearings, are not eligible.

⁴³ 6 C.F.R. § 5.5(e)(1).

⁴⁴ 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
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

⁴⁵ DHS, *Instructions for Freedom of Information/Privacy Act Request 5*, (June 20, 2019), available at https://www.uscis.gov/system/files_force/files/form/g-639instr.pdf.

⁴⁶ 6 C.F.R. § 5.5(e)(2).

⁴⁷ 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).

USCIS uses a three-track system for its FOIA requests. Track 1 is deemed simple because a requester needs only a few documents. Track 2 is complex because it may involve a complete copy of a person's. Track 3 is an accelerated process for individuals who have a hearing before an immigration judge, such as a removal proceeding.⁴⁸ Note that Track 3 processing is available for FOIA requests with USCIS only.

To receive Track 3 processing with USCIS, write a brief cover letter requesting Track 3 processing and provide proof of an upcoming hearing in immigration court, such as Form I-862 Notice to Appear, with a future hearing date; Form I-122, Order to Show Cause, with a future hearing date; Form I-863, Notice of Referral to Immigration Judge; or a written notice of continuation of a future scheduled hearing before an Immigration Judge.⁴⁹ Include the cover letter and proof of an upcoming hearing with the FOIA request. USCIS has stated that a person can request an expedited FOIA request or Track 3 processing, but not both simultaneously.⁵⁰

VI. FOIA Fees

Most FOIA requests filed in individual immigration cases are free. Further, no payment is required when you first send a FOIA request.⁵¹ 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 one hundred pages copied are free. Additionally, agencies currently do not charge at all if the total amount is fourteen dollars 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 nothing. Furthermore, if an agency takes more than twenty business days to respond to a request, the agency cannot charge any search fees.⁵²

Technically, however, by submitting a FOIA request, the requester is agreeing to pay all applicable fees up to twenty-five dollars, should the costs go over what is provided for free.⁵³ Current practice for FOIA responses may not require any copies, as often the materials are sent by compact disk, or with online requests, responses may be sent by email attachments.

The requester will be notified if they owe any money up to twenty-five dollars, and is ordinarily expected to pay that amount before the agency sends the requested documents.⁵⁴ If the requester does not wish to agree to pay twenty-five dollars upfront, the requester can specify a greater or lesser amount when making the FOIA request and/or by submitting a fee waiver request.⁵⁵ Most of the online submission forms take this into consideration and require the requester to state the maximum amount that they will pay.

If the agency expects the work to cost more than either twenty-five dollars or the amount stated by the requester, the agency will send the requester an interim response stating the actual or estimated amount of the fees for the requested records. No additional work in excess of twenty-five dollars or the amount stated by the requester will be done unless the requester agrees in writing to pay the additional amount. In this situation, the requester will also be able to contact FOIA personnel within the agency for the purpose of "reformulating [the] request to meet the requestor's needs at a lower cost."⁵⁶ For requests to USCIS, the requester must reply to the interim response within thirty days to keep the agency from closing the FOIA request.

⁴⁸ USCIS, *FOIA/Privacy Act Overview* (Nov. 30, 2018), <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/foia-privacy-act-overview/foiaprivacy-act-overview> (last visited Dec. 2019).

⁴⁹ *Id.*

⁵⁰ USCIS, *Freedom of Information Act Request Guide*, 15, (July 10, 2019), available at https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf (last visited Dec. 2019).

⁵¹ Indeed, USCIS advises to not send any money when first submitting a FOIA request. *Id.* at 21.

⁵² 6 C.F.R. § 5.11(d)(2).

⁵³ 6 C.F.R. § 5.11(a); DHS, *Instructions for Freedom of Information/Privacy Act Request*, USCIS Form G-639 (June 20, 2019), available at https://www.uscis.gov/system/files_force/files/form/g-639instr.pdf (last visited Dec. 2019).

⁵⁴ *Id.*

⁵⁵ 6 C.F.R. § 5.11(k)(5).

⁵⁶ 6 C.F.R. § 5.11(e)(4).

Fee waivers are generally not available for FOIA requests for individual immigration cases. Indeed, fee waivers are generally a moot point, as USCIS most often does not charge for FOIA requests.⁵⁷

By regulation, a person can qualify for a fee waiver only if they demonstrate: 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.⁵⁸ While most FOIA requests for individual immigration cases likely do not qualify for a fee waiver, DHS will not charge a fee for non-commercial requesters up to one hundred pages of duplication or the cost equivalent or up to two hours of search time.⁵⁹ If any fees are anticipated, the requester will be notified in advance and given a chance to respond.⁶⁰

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, or online as permitted; state that the request is being made under FOIA; reasonably describe the records sought; and provide contact information for the requester. A requester 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 submitted on Form G-639 or an online form because these options help ensure that the information necessary to process the request is provided.

USCIS created a new Form G-639 with an issue date of June 20, 2019. Make sure you are using the current 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 request could be incomplete.

A. 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.⁶¹ Privacy Act requests are only available for U.S. citizens and lawful permanent residents and allow these requesters to access and amend certain records the government maintains on individuals, such as service records for people who served in the U.S.

⁵⁷ According to the DHS Annual Report on FOIA, USCIS collected \$0 in FOIA fees for 2018. See DHS, *2018 Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services* (Mar. 2019)

https://www.dhs.gov/sites/default/files/publications/dhs_fy2018_foia_report_updated.pdf (last visited Dec. 2019).

⁵⁸ 6 C.F.R. § 5.11(k).

⁵⁹ 6 C.F.R. §§ 5.11(d)(3)(i), (ii).

⁶⁰ 6 C.F.R. § 5.11(e). 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 "United States Treasury, Attn: FOIA/PA Office." USCIS, *Freedom of Information Act Request Guide*, 23, available at

https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf (last visited Dec. 2019).

⁶¹ 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 requesters with the maximum amount of information available under the law.

armed forces or employment records for U.S. government employees. Requests under the Privacy Act are beyond the scope of this advisory.⁶²

B. Part 2: Requester 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 requester, or the requester's representative.

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

Items 2.a. - 2.c. Representative Role to the Subject of Record

In this item, specify whether you are an attorney, accredited representative, or family member. The 6/20/19 version of this form only allows for these three options, with no box for "other." However, there is nothing in the statute that restricts FOIA requests to someone who is related to or represents the subject. If an individual is filing a FOIA request in a different capacity, she may want to submit a letter request instead of using the G-639 for this reason.

Items 4.a. – 4.c. Requester's Full Name

Enter the full legal name of person requesting the file.

Items 5.a. – 5.i. Requester'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 requester.
- ✓ *Street Number, Street Name, City, State, Zip Code:* Write the full address of the requester. The address can be either a mailing address (including a post office box) or a residential address. If the requester 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 write "N/A." If the mailing address is outside the United States and the country uses the province system, then write the name of the province where correspondence should be delivered.
- ✓ *Postal Code:* If the mailing address is within the United States, then write "N/A" in the postal code box. If the documents will be mailed to a country that uses the postal code system, then 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 6. – 8. Requester's Contact Information

- ✓ *Requester's Daytime Telephone Number:* Write the requester's telephone number where she can be reached.
- ✓ *Requester's Mobile Telephone Number (if any):* Write the requester's cell phone number if it is different from the daytime phone number.
- ✓ *Requester's Email Address (if any):* Write the requester'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.

⁶² 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>.

Items 9.a. - 9.b. Requester's Certification

By signing, the requester 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. Requester will be notified in advance if there will be any charges. See § 3.7.

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

Persons representing the subject and signing the form as the requester should include a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.⁶³

C. Part 3: Description of Records Requested**Item 1: Purpose**

This portion is optional, but specificity can help identify the record needed and speed up the response in some instances. Providing a general purpose may assist DHS in locating the file. It is best to be specific, but do NOT reveal anything about immigration strategy or any facts that the subject does not want the government to know. For example, if seeking information about whether the government has any evidence that the subject may have used a false document when they applied for an immigration benefit, do *not* 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, write something simple, such as "requesting immigration records for personal review."

Items 2.a – 2.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 3.a – 4.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 *another 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 their file under a different name, even a fake name that they used in the past, add that name as well.

Items 5.a. – 5.c: Full Name of the Subject of Record at Time of Entry into the United States

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

Items 6.a. – 9: Other Information About the Subject of Record

- ✓ *Form I-94 Number Arrival-Departure Record:* If the subject entered with a visa, they 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 they 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 eleven-digit I-94 number. If the subject does not know the number or is unsure if they ever had an I-94, write "Unknown." If the subject is sure they do not have one (this will be the case for anyone who entered without papers and has never had immigration status), write "None."

I-94# (11-digit number)

⁶³ Be sure to use the most recent version of Form G-28, available at <https://www.uscis.gov/g-28> (last visited Aug. 2019).

Departure Number: 626633123 12

OMB No. 1651-0111

I-94
Departure Record

14 Family Name: SAMPLE

15 First (Given) Name: JANE

16 Birth Date (Day/Mo/Yr): 23, 03, 68

17 Country of Citizenship: NEW ZEALAND

ADMITTED ATL
JUN 25 2006
L-1
April 23, 2009

CBP Form I-94 (10/04)
STAPLE HERE
See Other Side

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 <http://www.cbp.gov/i94>.

- ✓ *Passport/Travel Document*: Enter the number of the travel document used to enter the United States here.
- ✓ *Alien Registration Number (A-Number)*: The A-number is the single most important item of information to help DHS locate the Subject's A-file. A person usually has an alien registration number (A-number) only if they have 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 their A-number or is unsure if they have 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*.

If the subject does not know their 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, their 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 they have previously filed any application, petition, or request to USCIS using its online filing system (previously known as USCIS ELIS). They may have also received a USCIS Online Account Number on a USCIS Online Account Access Notice if they filed an application, petition, or request to a USCIS Lockbox facility by mail. For more information on how to find the USCIS Online Account Number, if it applies, please review the applicable section on page four 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 they have filed a petition, 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 10.a. – 13: 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 to include, complete the information for additional family members under *Family Member 2* and by using *Additional Information*.

PRACTICE TIP: If the subject is the beneficiary in a family-based immigration case and is looking for decisions and documents related to a family-based petition, it can be helpful to have the beneficiary be either the subject or the requester for the FOIA from USCIS, but to include an affidavit of consent from the petitioner. This will help ensure receipt of as many responsive records about the case as possible.

Items 14.a. – 14.c.: Parents' Names for the Subject of Record

The 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 16: Description of Records Requested

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 [subject'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.

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

Every person submitting a FOIA request must complete the *entire* Verification of Identity and Subject of Record Consent section for the agency to verify that the subject is who they say they are.

PRACTICE TIP: Form G-639 requires the subject to include their name twice—in *Part Three, Description of Records Requested* and *Part Four, 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 Four: Items 1.a.–1.c.* will automatically populate based on your answers in Part Three.

Items 1.a – 1.c.: Full Name of the Subject of Record

Fill in the full legal name of the person whose record is being sought here.

Items 2 – 3: 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 they were born, write the name of the country used at the time of 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 their country of birth. To avoid this, the subject may simply decline to write their 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.

Items 4.a. – 4.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 5 – 7: Contact Information for the Subject of Record

Providing contact information for the subject is optional. If the subject is represented by the requester, we recommend not providing contact information for the Subject, and thereby forcing DHS to contact only the requester 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 8.a. – 8.c.: Signature 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 their 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 they agree to pay costs incurred for the request up to twenty-five dollars, and that they consent to USCIS releasing their file to the requester named on the form. In the presence of the notary, the subject should sign their 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 they witnessed the signing of the form, their daytime telephone number, their signature, and the date on which their 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 they agree to pay up to twenty-five dollars for the request. By signing, the subject also consents to release documents to the requester listed in Part 3 of the form. If the subject chooses this option, they must sign under the statement.
- ✓ *Deceased Subject of Record* – If the subject of Record is deceased, the requester 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, they must show proof of that relationship.
- ✓ *Submitted without Consent of Subject* – If the requester cannot get a signature from the subject (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.

E. Part 5: Processing Information

Here the requester can request expedited processing if the listed circumstances apply to their FOIA request. Also, if they have a pending immigration court hearing, they should check the box Yes in **Item 2**, and they will be processed as Track 3, accelerated request, for USCIS. A notice of an upcoming scheduled hearing must be attached.

F. Part 6: Additional Information

This section provides extra space for any additional information on questions 1.a – 7.d. Additional pages can be attached if more space is needed, but the requester should be sure to list the subject’s name and A-number (if any) on the top of the page and indicate the question number that is being answered.

PRACTICE TIP: The requester 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:

<i>Criminal Convictions</i>	<ul style="list-style-type: none"> FBI and state background checks: These requests will often provide summary information about an individual's arrests, charges, and convictions.⁶⁴ Court-specific records request: These requests will often provide detailed records of an individual's arrests, charges, convictions, and sentencing.
<i>Status of Pending Immigration Applications</i>	<ul style="list-style-type: none"> 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.
<i>Consular Notification of a Visa Petition Approval</i>	Submit USCIS Form I-824 to the appropriate Lockbox facility.
<i>The Return of Original Documents</i>	Submit Form G-884 to the USCIS district office, suboffice, or service center that is currently processing your application, or to the office that last took action on the application.
<i>Records of Naturalization Prior to September 27, 1906</i>	Contact the court clerk where the naturalization occurred.
<i>Information on USCIS Manifest Arrivals prior to December 1982</i>	Contact the National Archives. Also, note that USCIS transfers A-files to the National Archives one hundred years after the immigrant's year of birth. ⁶⁵
<i>Proof of Status (i.e., Social Security benefit, Selective Service requirement)</i>	Contact the agency itself (SSA, Selective Service, etc.)

⁶⁴ See ILRC, *How to Check if You Have a Criminal Record* (Nov. 26, 2019), https://www.ilrc.org/background_check_advisory.

⁶⁵ Nat'l Archives, *Research Our Records: Immigrant Records*, <https://www.archives.gov/research/immigration> (last visited Dec. 2019).



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.