



# 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.<sup>1</sup> 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 noncitizens and their representatives. 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, they might need to see a paper trail of their previous immigration history to help piece together what happened, assess risks of applying for benefits, or 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)).<sup>2</sup> 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.<sup>3</sup>

DHS keeps lots of information about noncitizens, including 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.<sup>4</sup>

<sup>1</sup> Freedom of Information Act, 5 U.S.C. § 552.

<sup>2</sup> Dep’t of Homeland Sec., *DHS Public Organizational Chart*, [https://www.dhs.gov/sites/default/files/publications/21\\_0402\\_dhs-organizational-chart.pdf](https://www.dhs.gov/sites/default/files/publications/21_0402_dhs-organizational-chart.pdf) (last visited Nov. 2021).

<sup>3</sup> 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 is available at [https://www.dhs.gov/sites/default/files/publications/CRCL%20Handout\\_Updated%208-18-17.pdf](https://www.dhs.gov/sites/default/files/publications/CRCL%20Handout_Updated%208-18-17.pdf) (last visited Nov. 2021). The Office of the Inspector General is responsible for investigating systemic problems, 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 Nov. 2021). These DHS offices can receive a FOIA request through their respective FOIA processes. To make a FOIA request to the DHS Office of Civil Rights and Civil Liberties, please see the contact information under “Office for Civil Rights and Civil Liberties (CRCL)” at <https://www.dhs.gov/foia-contact-information>. To make a FOIA request to the Office of Inspector General, please see: <https://www.oig.dhs.gov/foia/request>.

<sup>4</sup> 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 with the Department of State (for passport records)<sup>5</sup> 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 and/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. Likewise, submitting multiple FOIA requests to various agencies can help gain a full picture of the subject's immigration history. Information from one source can help explain a response from another source.

Sometimes it can be complicated to determine which agency or component has the records sought. To help 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 under "Where to Make Your Request" 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.<sup>6</sup> 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."<sup>7</sup> 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.<sup>8</sup> USCIS created a form (Form G-639, Freedom of Information/ Privacy Act Request), to help people make their requests.<sup>9</sup> 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*, and it asks the requestor to provide more information than is required under the law. Some practitioners choose to submit a request by letter 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 can be speedier than FOIA submission by postal mail because governmental mail processing can delay receipt of forms for several weeks. See below for guidance if choosing to submit a FOIA request through an online portal, which often requires more information than necessary.

Note that the law requires that agencies respond to FOIA requests within twenty business days, unless there are "unusual circumstances."<sup>10</sup> 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 thirty days, not including appeals, and over four months for materials other

<sup>5</sup> 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," <https://www.ilrc.org/departments-state-foia-requests-personal-records>.

<sup>6</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>7</sup> 6 C.F.R. § 5.3(b).

<sup>8</sup> 6 C.F.R. § 5.3(c).

<sup>9</sup> USCIS, *Form G-639: Freedom of Information Act/ Privacy Act Request*, <https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf> (last visited Nov. 2021).

<sup>10</sup> 5 U.S.C. § 552(a)(6)(A).

than the A-file.<sup>11</sup> This time range does not include the additional wait time incurred when USCIS refers part of the FOIA request to another agency, such as ICE.)

Unfortunately, the backlogs have become endemic.<sup>12</sup> In December 2020, a federal district court judge ruled against USCIS and ICE for these chronic and harmful delays and required them to adhere to the FOIA statutory deadlines and provide regular reports on progress.<sup>13</sup> Because of this lawsuit, the government reported in June 2021 that it significantly reduced the USCIS A-file backlog to 244 requests that are especially complex, and ICE eliminated its A-file backlog entirely.<sup>14</sup> In September, USCIS reported that it had a timely completion rate of 99.14% for A-file requests filed since June 15, 2021.<sup>15</sup> If you do experience a delay with regards to a FOIA request for an A-file, please reach out to Trina Realmuto, attorney at the National Immigration Litigation Alliance ([trina@immigrationlitigation.org](mailto:trina@immigrationlitigation.org)). Advocates report that they still face severe delays with FOIA requests for records outside of the A-file.

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. **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.

<sup>11</sup> USCIS, *Check Status of FOIA Request*, <https://first.uscis.gov/#/check-status> (last visited Nov. 2021).

<sup>12</sup> Dep't of Homeland Sec., *Fiscal Year 2020 Freedom of Information Act Report to the Attorney General of the U.S. and the Director of the Office of Government Information Services*, 2 (Mar. 2021),

[https://www.dhs.gov/sites/default/files/publications/dhs\\_fy2020\\_foia\\_report\\_cleared.pdf](https://www.dhs.gov/sites/default/files/publications/dhs_fy2020_foia_report_cleared.pdf) (“DHS ended the reporting period with a backlog of 36,350 requests, an increase of about 15 percent compared to FY 2019”).

<sup>13</sup> *Nightingale v. USCIS*, 507 F.Supp.3d 1193 (N.D. Cal. 2020), appeal dismissed sub nom. *Nightingale v. USCIS*, No. 21-15288, 2021 WL 3674656 (9th Cir. July 30, 2021); see also Emily Creighton, *Immigration Impact, USCIS and ICE Must Give People Access to Their Immigration Files After Losing Lawsuit*, (Dec. 18, 2020), <https://immigrationimpact.com/2020/12/18/afiles-immigration-records-lawsuit/#.YXgguJ7MKUk>.

<sup>14</sup> Defendants' Second Compliance Report, *Nightingale v. USCIS*, 507 F.Supp.3d 1193 (2021), [https://www.americanimmigrationcouncil.org/sites/default/files/litigation\\_documents/nightingale\\_compliance\\_report\\_june\\_2021.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/nightingale_compliance_report_june_2021.pdf).

<sup>15</sup> See National Immigration Litigation Alliance, “NILA's Affirmative Litigation Docket: *Nightingale v. USCIS*, Defendants' (Third) Compliance Report” <https://immigrationlitigation.org/impact-litigation/>.

## II. Guide to Requesting Immigration Documents from Federal Agencies

AGENCY	RECORDS HELD <sup>16</sup>	HOW TO REQUEST RECORDS	ADDITIONAL INFORMATION
<b>DEPARTMENT OF HOMELAND SECURITY (DHS)</b>			
<b>USCIS</b>	<ul style="list-style-type: none"> <li>A-file (immigration file)</li> <li>Removal, detention, deportation records</li> <li>Prior immigration petitions and supporting documents</li> <li>USCIS decisions</li> <li>Certification of non-Existence of a record<sup>17</sup></li> <li>Advance parole records obtained through USCIS</li> <li>Agency policies, data, communications, and other records</li> </ul>	<p>USCIS requests may be submitted by letter request; Form G-639 by mail, fax, or e-mail; or through the <a href="https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf">Freedom of Information Act Records System (FIRST)</a>.</p> <p>USCIS offers accelerated processing for certain people in removal proceedings.</p>	<p>Form G-639: <a href="https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf">https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf</a>; and instructions: <a href="https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf">https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf</a></p> <p>USCIS's FOIA Immigration Records System (FIRST): <a href="https://first.uscis.gov/">https://first.uscis.gov/</a> (Must create a FIRST account to submit a request.)</p> <p>Additional information: <a href="https://www.uscis.gov/sites/default/files/document/guides/USCIS_FOIA_Request_Guide.pdf">https://www.uscis.gov/sites/default/files/document/guides/USCIS_FOIA_Request_Guide.pdf</a></p>
<b>CBP</b>	<ul style="list-style-type: none"> <li>Apprehensions and detentions at the border<sup>18</sup></li> <li>Interactions with CBP at the border or in the interior</li> <li>Arrival/Departure (Form I-94) records</li> <li>Voluntary return records</li> <li>Records of entries and exits<sup>19</sup></li> <li>Expedited removal orders</li> <li>Advance parole records obtained through CBP</li> </ul>	<p>CBP requests are generally submitted <a href="https://www.cbp.gov/site-policy-notices/foia">online</a>.<sup>20</sup></p> <p>CBP states that it is currently unable to process new paper FOIA requests or deliver records by physical mail because of the pandemic.<sup>21</sup></p>	<p>Online Form: <a href="https://foiaonline.gov/foiaonline/action/public/request">https://foiaonline.gov/foiaonline/action/public/request</a> (Select "CBP FOIA Division" under "Agency")</p> <p>Additional information: <a href="https://www.cbp.gov/site-policy-notices/foia">https://www.cbp.gov/site-policy-notices/foia</a></p>

<sup>16</sup> USCIS, *Submitting FOIA Requests* "Where to Make Your Request," <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/submitting-foia-requests> (last visited Nov. 2021).

<sup>17</sup> Please note that USCIS does not accept Form G-639 for requests to obtain a Certificate of Non-Existence of a Record. USCIS does not accept original requests through e-mail and will only mail certificates to U.S. addresses. Instead, submit 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. If the noncitizen's birthdate is less than 100 years before the request date, you must also include a copy of their birth or death certificate. This is a free service. Send the letter request to:

U.S. Citizenship and Immigration Services  
Attn: IMLS/Certification of Non-Existence/RM 5224  
150 Space Center Loop  
Lee's Summit, MO 64064

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

<sup>18</sup> See CBP, *What Records Can CBP Provide Under FOIA?*, <https://www.cbp.gov/site-policy-notices/foia/records> (last visited Nov. 2021). 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.

<sup>19</sup> *Id.* CBP does not have records on the entry and exit of persons arriving or departing the United States before 1982.

<sup>20</sup> Before the pandemic, it was 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. Now, they have eliminated that option entirely. See CBP, *Freedom of Information Act*, <https://www.cbp.gov/site-policy-notices/foia> (last visited Dec. 2021).

<sup>21</sup> *Id.* ("COVID-19 NOTICE: During the national COVID-19 response, CBP is unable to process new paper FOIA requests or deliver records by mail. Get your response faster, keep our workforce safe, and reduce the spread of COVID-19 by making your FOIA request online.").

ICE	<ul style="list-style-type: none"> <li>Interactions with ICE</li> <li>Student and Exchange Visitor Information (SEVIS) records</li> <li>Investigation records</li> <li>ICE arrest records (I-213 Forms)</li> <li>Detention center records</li> <li>Bond requests</li> <li>Requests for ICE detainers or warrants</li> <li>Medical records while in ICE detention</li> </ul>	<p>ICE requests may be submitted by letter request; Form G-639 by mail, fax, or email; or electronically through the <a href="#">ICE online form</a> or the <a href="#">DHS Online Request Form</a>.</p> <p>All ICE requests must include a 1) phone number, and 2) an Affirmation/Declaration form if not submitted through an online form.</p>	<p>Additional information: <a href="https://www.ice.gov/foia">https://www.ice.gov/foia</a></p> <p>Online Option #1: ICE Online Form: <a href="http://www.ice.gov/webform/foia-request-form">http://www.ice.gov/webform/foia-request-form</a></p> <p>Online Option #2: DHS FOIA Public Access Portal: <a href="https://foiarequest.dhs.gov/">https://foiarequest.dhs.gov/</a></p> <p>Instructions: <a href="http://www.ice.gov/foia/request">http://www.ice.gov/foia/request</a></p> <p>Affirmation/Declaration Form: <a href="https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf">https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf</a></p>
OBIM	<ul style="list-style-type: none"> <li>Interactions with border officials (e.g., information on removals or voluntary returns at the border)</li> </ul>	<p>OBIM requests may be submitted by letter request; Form G-639 by mail, fax, or email; or electronically through the <a href="#">DHS FOIA Public Access Portal</a>.<sup>22</sup></p> <p>If using <i>physical</i> mail, include a cover letter and the original fingerprint card (FD-258).<sup>23</sup></p> <p>If <i>emailing</i>, provide a cover letter and a <i>scanned</i> fingerprint card (FD-258).</p>	<p>Email: <a href="mailto:foia-obim@hq.dhs.gov">foia-obim@hq.dhs.gov</a></p> <p>FOIA Public Access Portal: <a href="https://foiarequest.dhs.gov/">https://foiarequest.dhs.gov/</a></p>
<b>DEPARTMENT OF JUSTICE (DOJ)</b>			
EOIR	<ul style="list-style-type: none"> <li>Court orders</li> <li>Charging documents</li> <li>Court decisions</li> </ul>	<p>Requests can be made directly to EOIR via email or mail.<sup>24</sup> <i>Do not</i> use Form G-639 with EOIR.</p> <p>EOIR requests can also be submitted through its Public Access Link (PAL), <a href="https://foia.eoir.justice.gov/app/Home.aspx">https://foia.eoir.justice.gov/app/Home.aspx</a>.<sup>25</sup></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 <a href="#">Form DOJ-361</a>, a notarized statement, or a sworn statement.</p>	<p>Email: <a href="mailto:EOIR.FOIARequests@usdoj.gov">EOIR.FOIARequests@usdoj.gov</a></p> <p>Public Access Link (PAL): <a href="https://foia.eoir.justice.gov/app/Home.aspx">https://foia.eoir.justice.gov/app/Home.aspx</a>.</p> <p>General DOJ FOIA Instructions: <a href="http://www.justice.gov/oip/dept-justice-freedom-information-act-reference-guide">http://www.justice.gov/oip/dept-justice-freedom-information-act-reference-guide</a></p> <p>EOIR FOIA Instructions: <a href="https://www.justice.gov/eoir/foia-facts">https://www.justice.gov/eoir/foia-facts</a>; <a href="https://www.justice.gov/eoir/freedom-information-act-foia">https://www.justice.gov/eoir/freedom-information-act-foia</a></p>

<sup>22</sup> Advocates have shared that sometimes OBIM incorrectly responds to FOIA requests sent via physical mail that there are no records available. They will then submit the same request by email and will receive records. Others have not experienced this issue, but state that OBIM takes months to reply to their email requests.

<sup>23</sup> FBI, *Documents: Applicant Fingerprint Form (FD-258)*, <https://www.fbi.gov/file-repository/standard-fingerprint-form-fd-258-1.pdf/view> (last visited Nov 2021).

<sup>24</sup> DOJ - EOIR, *Freedom of Information Act*, <https://www.justice.gov/eoir/freedom-information-act-foia> (last visited Nov. 2021).

<sup>25</sup> On August 25, 2021, EOIR launched its FOIA online request portal: EOIR FOIA Public Access Link. It allows requesters to submit FOIA and Privacy Act requests, check the status of their request, correspond with the EOIR FOIA Service Center, download records, and browse EOIR's reading room. Requesters must register first to begin the process:  
<https://foia.eoir.justice.gov/app/Home.aspx>.

DEPARTMENT OF STATE (DOS)			
<b>DOS</b>	<ul style="list-style-type: none"> <li>• Consular processing and other consulate records</li> <li>• Visa applications from noncitizens to enter the U.S.</li> <li>• U.S. passport applications</li> </ul>	<p>Most DOS requests must be submitted by mail or fax.<sup>26</sup> There is no special form to request personal information. <i>Do not</i> use any DHS or DOJ forms for DOS requests.</p> <p>Requests should include a description of the records (including a timeframe of the records, the offices/ embassies/ consulates originating or receiving the record); the subject's full name and any aliases, present mailing address, date of birth, place of birth (if not contesting alienage), 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:  <a href="https://foia.state.gov/">https://foia.state.gov/</a>  <a href="https://foia.state.gov/Request/Guide.aspx">https://foia.state.gov/Request/Guide.aspx</a></p> <p>ILRC's Practice Advisory on filing DOS FOIAs:  <a href="https://www.ilrc.org/departments-state-foia-requests-personal-records">https://www.ilrc.org/departments-state-foia-requests-personal-records</a></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 jobs or positions, do not address the request to a specific person. If you are making your request by mail, include the notation "Freedom of Information Act Request" on the front of your envelope. This will help ensure that the responsible office 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. USCIS provides a detailed manual that covers all aspects of FOIA requests to USCIS, last updated in 2019.<sup>27</sup>

USCIS processes all FOIA requests at the National Records Center.<sup>28</sup> Do *not* submit your FOIA request to your local USCIS office, Service Center, or Lockbox. The request can be submitted online or by letter request; Form G-639 by email, mail, or fax.

Mail	U.S. Citizenship and Immigration Services National Records Center (NRC) FOIA/PA Office P.O. Box 648010 Lee's Summit, MO
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<sup>26</sup> 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*, <https://foia.state.gov/Request/FOIA.aspx>; DOS, *Electronic Submission*, <https://foia.state.gov/Request/Submit.aspx> (last visited Nov. 2021). Also, a requester for personal records from Passport Services may send their request by email to [PPT-Public-FOIARequests@state.gov](mailto: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>.

<sup>27</sup> USCIS, *Freedom of Information Act Request Guide*, [https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS\\_FOIA\\_Request\\_Guide.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf), 5 (last updated July 10, 2019) [hereafter "USCIS FOIA Request Guide"].

<sup>28</sup> 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 15 for more information concerning such requests.



	64064-8010
For overnight and certified mail <sup>29</sup>	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
Email	<a href="mailto:uscis.foia@uscis.dhs.gov">uscis.foia@uscis.dhs.gov</a>
Electronic Submission	USCIS's Freedom of Information Act Records System (FIRST) - <a href="https://first.uscis.gov">https://first.uscis.gov</a> (See <b>Practice Tip</b> below)

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

USCIS is required under FOIA to respond to requests within 20 working days, which begins once they receive the request. Although requests for A-files comprise the majority of USCIS's FOIA requests, they consider these requests to be "voluminous," and therefore warrant an additional ten business days to respond. Under this policy, requests for A-files currently take a minimum of thirty business days for USCIS to respond.

**PRACTICE TIP: USCIS Online Request Option through "FIRST":** USCIS released an online FOIA submission portal in July 2019, called Freedom of Information Act Records System (FIRST), a digital FOIA submission and tracking system for USCIS records.<sup>30</sup> DHS claims that it allows FOIA Requesters to submit their requests faster than physical mail submissions.<sup>31</sup> This online system requires the user to set up an online MyUSCIS account to track requests and receive requested documents digitally.<sup>32</sup> 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.<sup>33</sup> To file a FOIA on behalf of someone else, the requester must provide proof of consent and verification of identity.

FIRST is only for USCIS records requests. Other DHS components have their own online portals. CBP uses its own FOIAOnline system: <https://foiaonline.gov/foiaonline/action/public/home>; and other DHS components, including ICE, OBIM, Office of Civil Rights and Civil Liberties, and the Office of the Inspector General use DHS's general FOIA Public Access Portal: <https://foiarequest.dhs.gov/>.

**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, and many practitioners prefer using a letter request.

USCIS introduced the system with the promise of making it easier and faster for requesters to obtain information. However, advocates share that responses are not received much faster than paper or email

<sup>29</sup> USCIS FOIA Request Guide, at 5.

<sup>30</sup> See USCIS, *FIRST*, <https://first.uscis.gov/>; see also USCIS, G-639, *Freedom of Information Act/Privacy Act Request*, <https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf>.

<sup>31</sup> USCIS, *Welcome to FIRST*, YouTube (July 12, 2019), <https://www.youtube.com/watch?v=FN7eQyJcV7M&feature=youtu.be>.

<sup>32</sup> *Id.*

<sup>33</sup> See USCIS, *Request Records through the Freedom of Information Act or Privacy Act*, <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-a-foiapa-request> (last visited Nov. 2021).

requests. Further, the introduction of FIRST has not overall reduced USCIS's sizeable processing backlogs.<sup>34</sup> Practitioners and 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.<sup>35</sup> You may also fax inquiries to the National Records Center at (816) 350-5785 or e-mail your questions to [FOIAPAQuestions@uscis.dhs.gov](mailto:FOIAPAQuestions@uscis.dhs.gov) or [uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov).<sup>36</sup> There are links on the USCIS FOIA webpage that allow a requester to check the status of their FOIA by entering a tracking ("control") number, which USCIS should issue upon receipt of the FOIA request.<sup>37</sup>

## 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 <sup>th</sup> Street, S.W., Mail Stop 5009 Washington, DC 20536-5009 <sup>38</sup>
Fax	(202) 732-4265
Email <sup>39</sup>	<a href="mailto:ICE-FOIA@ice.dhs.gov">ICE-FOIA@ice.dhs.gov</a>
Electronic Submission	<ul style="list-style-type: none"> <li>Option 1: ICE Online Form: <a href="http://www.ice.gov/webform/foia-request-form">http://www.ice.gov/webform/foia-request-form</a></li> <li>Option 2: DHS FOIA Public Access Portal: <a href="https://foiarequest.dhs.gov/">https://foiarequest.dhs.gov/</a> (Instructions: <a href="http://www.ice.gov/foia/request">http://www.ice.gov/foia/request</a>)</li> </ul>
Affirmation/Declaration Form	<a href="https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf">https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf</a>

All requests to ICE *must* include a daytime phone number.<sup>40</sup>

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.<sup>41</sup> 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.

<sup>34</sup> Presentation by Prof. Margaret Kwoka to the American Immigration Council's national FOIA coordination committee, (May 7, 2021), notes on file with ILRC.

<sup>35</sup> USCIS, *Request Records through the Freedom of Information Act or Privacy Act*, <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act> (last visited Nov. 2021).

<sup>36</sup> USCIS, *Check Status of FOIA Request*, <https://first.uscis.gov/#/check-status> (last visited Nov. 2021); see also DHS, *Check Status of Request*, <https://www.dhs.gov/foia-status> (last visited Nov. 2021). 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>.

<sup>37</sup> USCIS, *Check Status of FOIA Request*, <https://first.uscis.gov/#/check-status>.

<sup>38</sup> Bond Obligor requests should also be made to this address. See Office of Government Information Services, FOIA Ombuds Observer, "Overview of Immigration Record FOIA Resources," <https://www.archives.gov/ogis/resources/foia-ombuds-observer/2018-01#ice> (Aug. 29, 2018) (last visited Nov. 2021).

<sup>39</sup> Note that at the time of publication, the ICE FOIA office email inbox was full and not accepting new emails.

<sup>40</sup> For more information, see the ICE FOIA request website, <https://www.ice.gov/foia>.

<sup>41</sup> ICE, *Affirmation/Declaration*, <https://www.ice.gov/doclib/about/pdf/affirmationDeclaration.pdf> (last visited Nov. 2021).



ICE recommends email submissions during the pandemic to avoid processing delays; however, at the time of publication, the ICE FOIA office email inbox was full and not accepting new emails.<sup>42</sup> Regardless of how a request is submitted, ICE should send an acknowledgement letter that contains a tracking number within three to five business days after the request is received.<sup>43</sup> This tracking number is necessary when contacting ICE to determine the status of your request. You may also check the status of a request by visiting <http://www.dhs.gov/foia-status> and enter the “2015-ICFO-XXXXX or 2016-ICFO-XXXXX” tracking number.<sup>44</sup>

Although the online ICE FOIA form does not have a specific question regarding expedited processing, all FOIA requests can be expedited, per federal regulation.<sup>45</sup> ICE notes that it ordinarily will process an initial FOIA request or an administrative appeal of a request’s denial ahead of others only where there is a “threat to someone’s life or physical safety, or where an individual will suffer the loss of substantial due process rights” if not processed on an expedited basis.<sup>46</sup> “In most cases, a request will not be expedited merely on the basis that the requester is facing a court deadline in a judicial proceeding.” Requesters may request expedited processing within the two ICE FOIA online submission options in the document description box. For more information, refer to <https://www.ice.gov/foia>.

Note that ICE’s response to FOIA requests can be severely delayed. Advocates suggest that if you can get your desired documents from a different agency, try the alternative method first or in addition to requesting the documents from ICE.<sup>47</sup>

In March of 2020, ICE announced that its FOIA office phone number was unfortunately compromised and used to target individuals through calls and texts.<sup>48</sup> It may be helpful to advise clients that the ICE FOIA office will not directly call individuals to seek personal information, facilitate transactions, or demand money.

### 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).<sup>49</sup> 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 incorporating 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. Thus, a FOIA request with OBIM can be particularly helpful if a client gave a false name at the border or used false documentation. For example, OBIM records will provide when a person’s fingerprints were taken at the border. This information can then be used to guide and narrow your FOIA request to CBP.

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. It is

<sup>42</sup> ICE, Submitting FOIA Request, <https://www.ice.gov/foia/request>.

<sup>43</sup> *Id.*

<sup>44</sup> ICE, FOIA Overview, “The ICE Commitment to Openness,” <https://www.ice.gov/foia>.

<sup>45</sup> 6 C.F.R. 5.5(d)(1).

<sup>46</sup> ICE, FOIA Overview, “Expedited Processing,” <https://www.ice.gov/foia> (last visited Nov. 2021).

<sup>47</sup> American Immigration Council, *Approaches to Obtaining Records from Immigration Agencies Webinar* (Nov. 17, 2021), notes on file with ILRC.

<sup>48</sup> ICE, Submitting FOIA Request, <https://www.ice.gov/foia/request>; see also DC Department of Insurance, Securities, and Banking, *ICE Agent Imposter Scam* (Mar. 2020), <https://disb.dc.gov/page/ice-agent-imposter-scam>.

<sup>49</sup> DHS, *Office of Biometric Identity Management*, <https://www.dhs.gov/obim> (last updated Mar. 18, 2021).

critical to check OBIM results against FBI and CBP results to confirm that all information lines up with your client's story. 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](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).<sup>50</sup> If sending the request by email, a **scanned** version of the fingerprint card is sufficient.

Mail <sup>51</sup>	Privacy Office, Mail Stop 0655 Office of Biometric Identity Management U.S. Department of Homeland Security 2707 Martin Luther King Jr. Ave SE Washington, DC 20528-0655 <sup>52</sup>
Fax	(202) 343-4011
Email	<a href="mailto:foia-obim@hq.dhs.gov">foia-obim@hq.dhs.gov</a>
Electronic Submission	DHS Public Access Link (PAL): <a href="https://foiarequest.dhs.gov/">https://foiarequest.dhs.gov/</a>

Response times for OBIM FOIA requests increased significantly during the pandemic and sometimes stretched to a year. OBIM attributes these delays to staff not being able to come into the office to process physical mail requests, and database access issues. As with all DHS components, OBIM encourages electronic submission of FOIA requests, either by email or through the DHS online Public Access Link (PAL). If using the DHS online Public Access Link, there is an opportunity to upload a description of the documents requested, verification of third-party consent, and certification of identity.

**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." The National Information Exchange Model (NIEM) (<https://www.niem.gov/>) has a public list of codes that may help decipher OBIM records. This [list](#) provides codes for the manner of entry (e.g., "OFCU" refers to an oral false claim to U.S. citizenship), as well as immigration and some criminal charges (e.g., "1105" refers to the use of another's social security number).

Some of the form categories 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 of apprehension or the date the person entered the country. Additionally, records often label the subject as a "recidivist" even when they have only entered the country once.

Finally, exemption codes are commonly referred to by their relevant section of the FOIA statute. For example, "(b)(6)" refers to an exemption based on not revealing personnel and medical files, and "(b)(7)" refers to sensitive law enforcement information.<sup>53</sup>

<sup>50</sup> FBI, *Documents: Applicant Fingerprint Form (FD-258)*, <https://www.fbi.gov/file-repository/standard-fingerprint-form-fd-258-1.pdf/view> (last visited Nov. 2021).

<sup>51</sup> DHS, *FOIA Contact Information*, <https://www.dhs.gov/foia-contact-information> (last visited Nov. 2021).

<sup>52</sup> OBIM changed its mailing address in 2020, and OBIM has confirmed that FOIA requests sent to the prior mailing address are forwarded to the new address.

<sup>53</sup> National Archives, "IX. Request Determinations, FOIA Exemptions, and PRA Restrictions," *Freedom of Information Act (FOIA) Reference Guide* (2018), <https://www.archives.gov/foia/foia-guide#determine> (last visited Nov. 2021).

For case-specific help reading OBIM records, contact ILRC's Attorney of the Day service.<sup>54</sup>

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

Customs and Border Protection (CBP) holds invaluable immigration records, including border apprehensions<sup>55</sup> 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).<sup>56</sup>

It can take a very long time to receive a response from CBP because of persistent backlog issues. 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.<sup>57</sup>

During the pandemic, CBP stopped processing new paper FOIA requests or delivering records by mail.

To obtain records from CBP, submit an online request here: <https://foiaonline.gov/foiaonline/action/public/request> and select "CBP FOIA Division" under "Agency." CBP's online portal is distinct from other DHS components' online forms. If filing online, you must create an account first, and if you are submitting on behalf of someone else, a [Form G-28](#) or other written notarized consent should be uploaded with the request.<sup>58</sup>

Once you submit a request online, you will be notified via email when records become available. You can check the status of the request through [CBP's FOIAOnline portal](#). Advocates report that contacting the CBP FOIA public liaison can actually be helpful if you run into any issues.<sup>59</sup>

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 strategy is to use OBIM FOIA results about border encounters to narrow your FOIA requests to CBP to 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 do not have 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.
- ✓ **Email Address** - Include the requester's email address. Only use an email address that is regularly checked.
- ✓ **Processing Fees** – Include the amount the subject is comfortable paying, up to twenty-five dollars; but note that most FOIA requests filed in individual immigration cases are free and no payment is required when you first send a FOIA request.<sup>60</sup> See below for additional information on fees.

<sup>54</sup> ILRC, *Technical Assistance*, <https://www.ilrc.org/technical-assistance>.

<sup>55</sup> See CBP, *What Records Can CBP Provide Under FOIA?*, <https://www.cbp.gov/site-policy-notice/foia/records> (last updated Sept. 30, 2021). 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.

<sup>56</sup> *Id.*

<sup>57</sup> See ILRC, *FOIA Requests and Other Background Checks*, Ch. 7 (2d ed. 2019), <https://www.ilrc.org/publications/foia-requests-and-other-background-checks>.

<sup>58</sup> CBP, *How do I submit a FOIA request?*, (May 3, 2021), [https://help.cbp.gov/s/article/Article-1729?language=en\\_US](https://help.cbp.gov/s/article/Article-1729?language=en_US).

<sup>59</sup> The contact information for the CBP FOIA Office is available here: <https://www.dhs.gov/foia-contact-information#>.

<sup>60</sup> 6 C.F.R. § 5.11(a); DHS, *FOIA Fee Structure and Waivers*, <https://www.dhs.gov/foia-fee-structure-and-waivers> (last visited Nov. 2021).

- ✓ *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.<sup>61</sup> You may also seek encounters; entries and exits; fines, penalties, forfeitures, and seizures; I-94; travel (including advance parole documents) and apprehension records. Include in the description box all the categories you are seeking. The narrower the request, the faster you may receive a response.
- ✓ *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 FOIA Request Portals

DHS is increasingly encouraging electronic FOIA requests to its various components through online portals,<sup>62</sup> Nevertheless, many practitioners opt instead to send a letter request that reasonably describes the records and complies with agency-specific requirements.<sup>63</sup> The only DHS component that now requires submitting a FOIA request through its online portal is CBP. More information on how to submit requests to each component is detailed above.

Confusingly, there is not one central online portal for *all* FOIA requests to the DHS components, although DHS has a FOIA Public Access Portal that allows FOIA filings with several components. n.

The DHS online FOIA portals are:

- USCIS’s FOIA Immigration records System (FIRST): <https://first.uscis.gov/sso/login>
- CBP’s FOIAOnline: <https://foiaonline.gov/foiaonline/action/public/home>
- Other DHS components, including ICE, OBIM, Office of Civil Rights and Civil Liberties, and the Office of the Inspector General: DHS’s general FOIA Public Access Portal: <https://foiarequest.dhs.gov/>

Each of these requires its own account and registration.

The last link is a general DHS FOIA request form for components other than USCIS and ICE called the DHS FOIA Public Access Link (PAL): <https://foiarequest.dhs.gov/>.<sup>64</sup> 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 ICE and OBIM, among other components. The online form also allows the requester to seek FOIA fee waivers and expedited service, if eligible.

### DHS FOIA Public Access Link Filing Tips

To use the DHS FOIA Public Access Link, you will first need to create an account:

- ✓ *Address* – The address can be either a mailing address or residential address. Many people who do not have legal status may be concerned about giving the government their current physical address through a

<sup>61</sup> CBP does not have complete records of border apprehensions made before 2000, although they may be in the A-file maintained by USCIS.

<sup>62</sup> DHS asserts that FOIA and Privacy Act requests “by mail, fax, or email cause delays for you and for USCIS. To receive FOIA records in the fastest, most convenient format we offer, make your FOIA request online.” <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act>.

<sup>63</sup> 5 U.S.C. § 552(a)(3)(A).

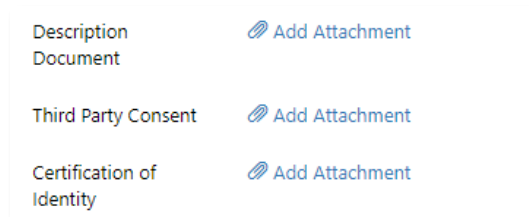
<sup>64</sup> Requesters previously had the option of using a DHS FOIA mobile application for its online submission form; however, DHS has removed this option from all mobile app stores. See DHS, *eFOIA Mobile Application*, <https://www.dhs.gov/efoia-mobile-app> (last updated: July 18, 2018).

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.

- ✓ *Phone*: Include the requester's telephone number where they can be reached. To avoid delays caused by communication problems, include only telephone numbers that are regularly checked and not likely to change in the foreseeable future.
- ✓ *Email Address* - Include the requester's email address. Only use an email address that is regularly checked.
- ✓ *Default Category* - If the request is for an individual's immigration case or personal review only, choose the option: "Private Individual."

Once you have created an account and changed your password to one that you will remember, you will be able to log in to your account. Then select "Submit Request" from the banner at the top of the page.

- ✓ *DHS Component* - Select the component for your FOIA request.
- ✓ *Suggested Requester Category* - If the request is for an individual's immigration case or personal review only, choose the option: "Private Individual."
- ✓ *Request 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 you need additional space, you may upload a description document in the same section.
- ✓ *Date Range for Record Search*: Although optional, it can be helpful to include the general date range of your search to help narrow the request and possibly receive documents faster.
- ✓ *Upload Documents* - The DHS FOIA Public Access Link provides space to upload a description document, a third-party consent form, and certification of identity. This is where you would upload a scan of a fingerprint card for an OBIM FOIA request.



Description Document	<a href="#">Add Attachment</a>
Third Party Consent	<a href="#">Add Attachment</a>
Certification of Identity	<a href="#">Add Attachment</a>

## 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:<sup>65</sup>

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;

<sup>65</sup> 6 CFR. § 5.5(e)(1).



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.<sup>66</sup>

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."<sup>67</sup> 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.<sup>68</sup> Requestors may request expedited processing with the two ICE FOIA online submission options in the document description box. For more information, refer to <https://www.ice.gov/foia>.

USCIS must grant or deny an expedited request within ten calendar days of receipt.<sup>69</sup> The decision is made on a case-by-case basis in accordance with its guidelines outlined in 6 CFR § 5.5(e).

An individual may request either expedited processing or Track 3 processing but cannot request both at the same time. "In most cases, a request will not be expedited merely on the basis that the requester is facing a court deadline in a judicial proceeding."<sup>70</sup> If there is a scheduled hearing, consider Track 3 processing, described below.<sup>71</sup>

## B. Track 3 Processing

USCIS also offers requesters the option to accelerate a request for subjects who have hearings scheduled in immigration court.<sup>72</sup> 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.

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 file. Track 3 is an accelerated process for individuals who have a hearing before an immigration judge, such as a removal proceeding.<sup>73</sup> 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; or

<sup>66</sup> If you are requesting expedited processing based on the fourth ground, per 6 CFR. § 5.5(e)(2) you must send your request to:

Senior Director of FOIA Operations  
Privacy Office, Mail Stop-0655  
Department of Homeland Security  
2707 Martin Luther King Jr. Ave SE  
Washington, D.C. 20528-0655

<sup>67</sup> DHS, *Instructions for Freedom of Information/Privacy Act Request* 5, (June 20, 2019), <https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf>.

<sup>68</sup> 6 CFR § 5.5(e)(2).

<sup>69</sup> 6 CFR § 5.5(e)(4).

<sup>70</sup> ICE, FOIA Overview, "Expedited Processing," <https://www.ice.gov/foia> (last visited Nov. 2021).

<sup>71</sup> *Id.*

<sup>72</sup> 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).

<sup>73</sup> USCIS *Freedom of Information Act Request Guide*, at 6.

- Form I-122, Order to Show Cause, with a future hearing date; or
- Form I-863, Notice of Referral to immigration judge; or
- a written notice of continuation of a future scheduled hearing before an immigration judge.<sup>74</sup>

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.<sup>75</sup>

## 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.<sup>76</sup> 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.<sup>77</sup>

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.<sup>78</sup> 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 or available on the component's FOIA request portal.

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.<sup>79</sup> 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.<sup>80</sup> 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."<sup>81</sup> For requests to USCIS, the requester must reply to the interim response within thirty days to keep the agency from closing the FOIA request.

### A. Fee Waiver

Fee waivers are generally not available for FOIA requests for individual immigration cases. Indeed, fee waivers are generally a moot point, as USCIS, CBP, and ICE most often do not charge for FOIA requests.<sup>82</sup> 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

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 15.

<sup>76</sup> Indeed, USCIS advises not to send any money when first submitting a FOIA request. *Id.* at 21.

<sup>77</sup> 6 C.F.R. § 5.11(d)(2).

<sup>78</sup> 6 C.F.R. § 5.11(a); DHS, *FOIA Fee Structure and Waivers*, <https://www.dhs.gov/foia-fee-structure-and-waivers> (last visited Nov. 2021).

<sup>79</sup> *Id.*

<sup>80</sup> 6 C.F.R. § 5.11(k)(5).

<sup>81</sup> 6 C.F.R. § 5.11(e)(4).

<sup>82</sup> According to the DHS Annual Report on FOIA, USCIS collected \$0 in FOIA fees for fiscal year 2020. See DHS, 2020 *Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services*, 27 (Mar. 2021).

[https://www.dhs.gov/sites/default/files/publications/dhs\\_fy2020\\_foia\\_report\\_cleared.pdf](https://www.dhs.gov/sites/default/files/publications/dhs_fy2020_foia_report_cleared.pdf).

of the government; and 2) disclosure of the documents is not primarily for a commercial interest.<sup>83</sup> 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.<sup>84</sup> If fees are anticipated, the requester will be notified and given a chance to respond.<sup>85</sup>

## 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 USCIS 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. DHS has made it more difficult to locate a PDF version of the Form G-639 online and instead directs requesters to use its various online platforms. But the form is still available through these links: <https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf> and instructions at <https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf>.

Type your responses or write them in black ink. If a question does not apply to you, write “N/A.” If a question requires a numeric response and your answer is “zero” or “none,” write “none” unless otherwise directed.<sup>86</sup> 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.<sup>87</sup> 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. armed forces or employment records for U.S. government employees. Requests under the Privacy Act are beyond the scope of this advisory.<sup>88</sup>

<sup>83</sup> 6 C.F.R. § 5.11(k).

<sup>84</sup> 6 C.F.R. §§ 5.11(d)(3)(i), (ii).

<sup>85</sup> 6 C.F.R. § 5.11(e). For FOIA requests to USCIS, if applicable search fees are assessed, 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.” See USCIS Freedom of Information Act Request Guide, at 23.

<sup>86</sup> USCIS, Instructions for Freedom of Information/Privacy Act Request, 2 (June 2019), <https://www.uscis.gov/sites/default/files/document/forms/g-639instr.pdf>.

<sup>87</sup> 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.

<sup>88</sup> 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*, <https://www.congress.gov/112/crpt/hrpt689/CRPT-112hrpt689.pdf> (last visited Nov. 2021).

## 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 June 2019 version of this form only allows for these three options. However, there is nothing in the statute that restricts FOIA requests to someone who is related to or represents the subject. If none of the provided categories apply to you, they 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 (e.g., a P.O. box) instead of a residential address if possible.
- ✓ *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 they 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 they have 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 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 Section VI. above for more information on fees.

- ✓ *Requester's Signature:* The requester should sign their 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.<sup>89</sup>

## 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 6 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 their birth certificate or other legal document) is Juana Morales Gonzales, and they often go by "Juana Morales," they 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, they 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."

<sup>89</sup> Be sure to use the most recent version of Form G-28, <https://www.uscis.gov/g-28> (last visited Nov. 2021).



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, they were likely issued an electronic Form I-94. To print a paper version of Form I-94 that includes an Alien Registration Number (A-number), visit CBP's website at <https://i94.cbp.dhs.gov/I94/#/home>. Instructions on how to do so are available here: <https://i94.cbp.dhs.gov/I94/I94-MPP-EN.pdf>.

- ✓ **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 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). The USCIS Online Account Number is different from an A-number. An individual 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/sites/default/files/document/forms/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, and 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 current version 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 their 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 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. More information on expedited and Track 3 processing is provided in Section V.B. above.

### **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 every additional 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 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"> <li>FBI and state background checks: These requests will often provide summary information about an individual's arrests, charges, and convictions.<sup>90</sup></li> <li>Court-specific records request: These requests will often provide detailed records of an individual's arrests, charges, convictions, and sentencing.</li> </ul>
<i>Status of Pending Immigration Applications</i>	<ul style="list-style-type: none"> <li>Enter the receipt number of the pending immigration application on USCIS's online case status website, <a href="https://egov.uscis.gov/casestatus/landing.do">https://egov.uscis.gov/casestatus/landing.do</a>.</li> <li>You could also write to the USCIS office that received the application or call the National Customer Service Center at (800) 375-5283 (or TTY 800-767-1833 for those who are hearing impaired). If you are located outside of the U.S., call 212-620-3418.</li> </ul>
<i>Consular Notification of a Visa Petition Approval</i>	Submit USCIS <a href="#">Form I-824</a> to the appropriate Lockbox facility. To check the status of your application with CBP, you can email <a href="mailto:aro.inquiry.waiver@cbp.dhs.gov">aro.inquiry.waiver@cbp.dhs.gov</a> .
<i>The Return of Original Documents</i>	Submit <a href="#">Form G-884</a> 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. <ul style="list-style-type: none"> <li>Be sure to sign the form before a notary if you are not appearing in person before a USCIS official, as USCIS will reject any unsigned forms. Do not sign the G-884 until you appear before the notary.</li> </ul>
<i>Records of Naturalization Prior to September 27, 1906<sup>91</sup></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. <sup>92</sup>

<sup>90</sup> See ILRC, *How to Check if You Have a Criminal Record* (Nov. 26, 2019), [https://www.ilrc.org/background\\_check\\_advisory](https://www.ilrc.org/background_check_advisory).

<sup>91</sup> Note that naturalization records between 1906 to 1956 are referred to as Certificate Files, or "C-Files." Between September 27, 1906 until March 31, 1956, the Federal Naturalization Service stored its citizenship records in C-Files. See USCIS, *Certificate Files, September 27, 1906-March 31, 1956*, <https://www.uscis.gov/history-and-genealogy/genealogy/historical-record-series/certificate-files-september-27-1906-march-31-1956> (last visited Nov. 2021).

<sup>92</sup> Nat'l Archives, *Research Our Records: Alien Files (A-Files)*, <https://www.archives.gov/research/immigration/aliens#:~:text=The%20United%20States%20Citizenship%20and,the%20immigrant's%20year%20of%20birth> (last visited Nov. 2021).

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

Contact the agency itself (U.S. Social Security Administration, Selective Service, etc.)



#### San Francisco

1458 Howard Street  
San Francisco, CA 94103  
t: 415.255.9499  
f: 415.255.9792

[ilrc@ilrc.org](mailto:ilrc@ilrc.org) [www.ilrc.org](http://www.ilrc.org)

#### Washington D.C.

1015 15th Street, NW  
Suite 600  
Washington, DC 20005  
t: 202.777.8999  
f: 202.293.2849

#### Austin

6633 East Hwy 290  
Suite 102  
Austin, TX 78723  
t: 512.879.1616

#### San Antonio

500 6<sup>th</sup> Street  
Suite 204  
San Antonio, TX 78215  
t: 210.760.7368

#### 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.





# 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 06/30/2022

**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. However, using this form can help ensure we

have the appropriate information to handle your request.

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

## Representative Role to the Subject of Record

Select your representative role to the Subject of the Record.

- 2.a. ☐ An Attorney  
2.b. ☐ An Accredited Representative of a Qualified Organization  
☐  
2.c. ☐ A Family Member

Select the appropriate box to provide further information regarding your representative role to the Subject of the Record.

- 3.a. ☐  
3.c.  
3.b. ☐

## Requestor's Full Name

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

## Requestor's Mailing Address [\(USPS ZIP Code Lookup\)](#)

- 5.a. In Care Of Name (if any)   
5.b. Street Number and Name   
5.c. ☐ Apt. ☐ Ste. ☐ Flr.   
5.d. City or Town   
5.e. State  5.f. ZIP Code   
5.g. Province   
5.h. Postal Code   
5.i. Country

## Requestor's Contact Information

6. Requestor's Daytime Telephone Number   
7. Requestor's Mobile Telephone Number (if any)   
8. Requestor's Email Address (if any)

I am requesting information on behalf of my child or a minor I have guardianship over.

I am requesting information on behalf of someone who is

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***Requestor's Certification***

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

☐

**9.a.** Requestor's Signature



**9.b.** Date of Signature (mm/dd/yyyy)

### Part 3. Description of Records Requested

While you are not required to respond to every **Item Number** in **Part 3.**, failure to provide complete and specific information may delay processing of your request or prevent U.S. Citizenship and

Immigration Services (USCIS) from locating the records or information requested.

1. State the purpose of your request.

**NOTE:** This field is optional. However, providing this information may assist USCIS in locating the records and information needed to respond to your request.

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***Full Name of the Subject of Record***

- |  |  |
|--|--|
| <b>2.a.</b> Family Name<br>(Last Name) |  |
| <b>2.b.</b> Given Name<br>(First Name) |  |
| <b>2.c.</b> Middle Name                |  |

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

Provide all other names the Subject of Record has ever used, including aliases, maiden name, and nicknames. If you need

extra space to complete this section, use the space provided in **Part 6. Additional Information.**

- |                  |  |
|------------------|--|
| 3.a. Family Name |  |
| 3.b.             |  |
| 5.c.             |  |
| 3.c.             |  |
| 4.a.             |  |
| 4.b.             |  |

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

**5.a.**


- 5.b.**

### Other Information About the Subject of Record

- [illegible]

### ***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 6. Additional Information.**

### Family Member 1

- 10a.** Family Name (Last Name)

**10b.** Given Name (First Name)

**10c.** Middle Name

**11.** Relationship

(Last Name)

Given Name (First Name)

Middle Name

Family Name (Last Name)

Given Name (First Name)

Middle Name

Family Name (Last Name)

Given Name (First Name)

Middle Name

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13.

Relationship

**Parents'**  
**Names for**  
**the Subject**  
**of Record**

**Father**

12a.

Family Name

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14b.

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14c. Middle Name

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12c. Middle Name

### Part 3. Description of Records Requested (continued)

#### Mother

- 15a.** Family Name (Last Name)
- 15b.** Given Name (First Name)
- 15c.** Middle Name
- 15d.** Maiden Name (if applicable)

**16.** Describe the records you are seeking. If you need additional space, use the space provided in **Part 6. Additional Information.**

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

Provide the information requested in **Item Numbers 1.a. - 7.** In addition, the Subject of Record **MUST** sign in **Item Numbers 8.a. - 8.c.**

#### Full Name of the Subject of Record

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

#### Other Information for the Subject of Record

- 2.** Date of Birth (mm/dd/yyyy)
- 3.** Country of Birth

### Mailing Address for the Subject of Record

- 4.a.** In Care Of Name (if any)
- 4.b.** Street Number and Name
- 4.c.** ☐ Apt. ☐ Ste. ☐ Flr.
- 4.d.** City or Town
- 4.e.** State  **4.f.** ZIP Code
- 4.g.** Province
- 4.h.** Postal Code
- 4.i.** Country

### Contact Information for the Subject of Record

**NOTE:** Providing this information is optional.

- 5.** Daytime Telephone Number
- 6.** Mobile Telephone Number (if any)
- 7.** Email Address (if any)

## Record Consent (continued)

### Signature of the Subject of Record

Select **only one** box.

**NOTE:** The Subject of Record **MUST** provide a signature in **Item Number 8.a. OR Item Number 8.b.** If the Subject of Record is deceased, select **Item Number 8.c.** and attach an obituary, death certificate, or other proof of death.

☐ **8.a. Notarized Affidavit of Identity**

**IMPORTANT:** 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**. If filing this request on my own behalf, I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25**. (See the **What Is the Filing Fee** section in the Form G-639 Instructions for more information.)

\_\_\_\_\_  
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**. If filing this request on my own behalf, I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25**. (See the **What Is the Filing Fee** section in the Form G-639 Instructions for more information.)

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**

## Part 5. Processing Information

**1.** Indicate if any of these circumstances apply to your request (Select all that apply).

- ☐ Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of the individual.
- ☐ An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information.
- ☐ The loss of substantial due process rights.
- ☐ A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence.

Submit a certified, detailed statement regarding the basis for your request with your Form G-639.

**2.** Do you have a pending Immigration Court hearing date?

☐ Yes ☐ No

If you answered "Yes" to **Item Number 2.**, submit a copy of one of the following documents with your Form G-639: I-862, Notice to Appear; Form I-122, Order to Show Cause; Form I-863, Note of Referral to Immigration Judge, or submit a written notice of continuation of a future scheduled hearing before the immigration judge.



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 this request or attach a separate sheet of paper. Type or print the Subject of Record's name 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 your answer refers; and sign and date each sheet.

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Page Number	Site	Part Number	Site	Item Number

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[illegible]

**Part 6. Additional Information**

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