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San Francisco
1663 Mission Street
Suite 602
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

Washington D.C.
1016 16th Street, NW
Suite 100
Washington, DC 20036
t: 202.777.8999
f: 202.293.2849

ilrc@ilrc.org
www.ilrc.org

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November 4, 2016

Samantha Deshommes,
Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529-2140

RE: Agency Information Collection Activities: Freedom of Information/Privacy Act Request, Form G- 639; Revision of a Currently Approved Collection (Sep. 9, 2016); Docket No. USCIS-2008-002; OMB Control Number 1615-0102

Dear Acting Chief Deshommes:

The Immigrant Legal Resource Center (ILRC) submits the following comments in response to the notice of revisions to Form G-639, *Freedom of Information/Privacy Act Request*, and *Instructions for Freedom of Information/Privacy Act Request*.

Founded in 1979, the Immigrant Legal Resource Center is a national resource center that provides training, consultations, publications and advocacy support to individuals and groups assisting low-income persons with immigration matters. The ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

With respect to Freedom of Information Act (FOIA) requests, our organization provides training, written resources, and technical assistance to practitioners on FOIA requests. We operate a national technical assistance line to assist immigration attorneys as they navigate through records requests for their clients and write some of the only national resources on FOIA requests for individual immigration cases. Because of our focus on this complex area of the law, we have a distinct interest in ensuring that Form G-639 and accompanying instructions are clear and understandable to applicants. We express the following suggestions to the proposed revisions to Form G-639 and Instructions:

I. ALLOW SIMULTANEOUS REQUEST UNDER FREEDOM OF INFORMATION ACT AND PRIVACY ACT

Form G-639 requires requestors to choose between a request under the Freedom of Information Act (FOIA) and the Privacy Act (PA). Because requests

under each act can disclose different documents, ILRC recommends that a requestor who is eligible and interested in filing both be allowed to request a search under both FOIA and the PA with one application.

Recommendations: Create a box under Part 1, Type of Request, that allows a Requestor to check “Freedom of Information Act (FOIA) and Privacy Act (PA).”

II. DELETE ERRONEOUS LANGUAGE THAT THE INFORMATION REQUESTED IN PART 4 IS REQUIRED

The G-639 instructions state in two different places that the information provided in Form G-639 is voluntary. Page 2 of the Instructions states: “Providing the information requested on this request is voluntary. However, failure to provide complete and specific information may delay processing of your request or create an inability for USCIS to locate the records or information requested.” Page 7 of the instructions states similarly: “DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay USCIS’ ability to provide responsive records or result in USCIS’s inability to locate documents you have requested.”

Yet, Part 4 of Form G-639 instructs: “The information requested in Part 4. is REQUIRED” (emphasis in original). Part 4 asks the Requestor to list the country of her birth. The burden of proving alienage is on the government in removal proceedings.¹ Practitioners report that the government sometimes uses FOIA requests as evidence of alienage where the Requestor listed her country of birth in this section on Form G-639. By stating incorrectly that this information is required, the current version of Form G-639 may force immigrants to choose between conceding alienage and filling out Form G-639 to obtain information necessary to defend against removal or assess eligibility for immigration relief.

Recommendation: Delete the first line of Part 4, “NOTE: The information requested in Part 4. is REQUIRED. Complete all applicable Item Numbers. In addition, the Subject of Record MUST sign Part 4. of this request” so that it reads, “NOTE: Complete all applicable Item Numbers. In addition, the Subject of Record MUST sign Part 4. of this request.” Alternatively, the question regarding country of birth could be moved to Part 3, which specifically says that the Requestor is not required to respond to each item.

III. ADD INFORMATION ABOUT ONLINE FOIA AND PA REQUEST FORM TO INSTRUCTIONS.

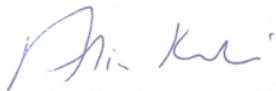
The Department of Homeland Security (DHS) created an electronic submission form for FOIA and PA requests. These submissions forms should be mentioned in the Instructions.

¹ *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153 (1923) (“It is true that the burden of proving alienage rests upon the Government.”), overruled on other grounds by *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984); Gordon, Mailman, & Yale-Loehr, *Immigration Law and Procedure* § 64.03 (rev. ed. 2009) (“INA § 240(a)(1) provides that IJs shall determine whether ‘an alien’ is inadmissible or deportable. It therefore remains the government’s burden to first establish the court’s jurisdiction by proving that the person in court is, in fact, ‘an alien.’”).

Recommendation: Page 1 of the Instructions, “When May I Use Form G-639?” states: “NOTE: Form G-639 is not required to make a FOIA/PA request; however, you must make all FOIA/PA requests in writing and in accordance with the applicable statutory and regulatory requirements under the FOIA and PA.” Add a sentence regarding the online submission form so that it reads: “NOTE: Form G-639 is not required to make a FOIA/PA request; however, you must make all FOIA/PA requests in writing and in accordance with the applicable statutory and regulatory requirements under the FOIA and PA. To make a FOIA/PA request electronically, visit <https://www.dhs.gov/dhs-foia-request-submission-form>.”

Thank you for your consideration of ILRC’s views. Should you have any questions regarding these comments, please feel free to contact Jose Magana-Salgado at (202) 777-8999 or jmagana@ilrc.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alison Kamhi".

Alison Kamhi
Staff Attorney