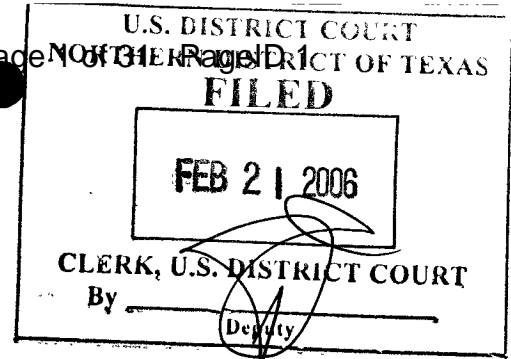


*my feed*



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

Maria Magdalena GUTIERREZ §  
Plaintiff §  
v. ORIGINAL §  
U.S. DEPARTMENT §  
OF HOMELAND SECURITY §  
Defendant §

CIVIL ACTION NO. **3-06CV0328-M**

*228129*

COMPLAINT

TO THE HONORABLE JUDGE OF THE COURT:

MARIA MAGDALENA GUTIERREZ, PLAINTIFF in the above captioned cause, through counsel now complains of the U.S. Department of Homeland Security, and for cause of action respectfully shows the following:

Introduction

1. This is an action under the Freedom of Information Act.
2. Maria Magdalena Gutierrez is a person, present in the United States and residing in Dallas, Texas, entitled to receive pages improperly withheld in response to her properly executed request for documents under the Freedom of Information Act.
3. Defendant Department of Homeland Security (DHS) is a Department of the Executive Branch of the United States Government, and includes component entities USCIS, USICE, USCBP, and maintains and controls records of the former INS. The DHS is an agency within the meaning of 5 U.S.C. § 552(f).
4. Therefore, she asks the District Court to order the Department of Homeland Security to produce the improperly withheld documents.

Jurisdiction

5. The District Court has jurisdiction to pursuant to 5 U.S.C. §552(a)(4)(B), “to enjoin the agency from withholding agency records and to order production of any agency records improperly withheld from the complainant.”

**Summary of procedural history**

6. On March 4, 2005, Maria Gutierrez filed a request with the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service (INS), for all records in its possession that pertained to her. A copy of the request and return receipt are Appendix 1 in the *Plaintiff's Appendix of Documents*, filed together with this *Complaint*. The request was made under the Freedom of Information Act/Privacy Act (FOIA), 5 USC §§ 552, 552a.

7. By form G-639, Maria M. Gutierrez requested copies of all documents in the file of Maria M. Gutierrez including but not limited to

All information actually or constructively in possession of the United States Department of Justice or the Department of Homeland Security, or any subdivision thereof, in any way related to Maria Magdalena Gutierrez, and all information in possession of any agent of the BCIS, BCBP or BICE or any person that will act in concert with the BCIS, BCBP or BICE in any matter related to Maria Magdalena Gutierrez, or any application filed by or on behalf of Maria Magdalena Gutierrez.

8. Counsel for Maria M. Gutierrez received a letter from the U.S. Citizenship and Immigration Services, dated March 11, 2005, which assigned this request control number DAL2005000517. A copy of the letter is Appendix 2. On July 21, 2005, Counsel submitted an Appeal of the denial of Ms. Gutierrez's Freedom of Information Act Request because the U.S. Citizenship and Immigration Services had failed to provide any response to the request. A copy of the Appeal and return receipts is Appendix 3. In that appeal, Ms. Gutierrez specifically requested:

“copies of the I-589, *Application for Asylum and Withholding of Removal*, the registration

form under the ABC settlement filed by Maria M. Gutierrez, and all other documents Maria M. Gutierrez or others filed on her behalf or otherwise delivered to the INS in Los Angeles, California at any time, during or before the year 1997.”

9. On August 4, 2005, counsel for Maria M. Gutierrez received a response to the Freedom of Information Act submitted on behalf of Maria M. Gutierrez, by letter dated July 26, 2006. A copy of the cover letter for their response is Appendix 4. The U.S. Citizenship and Immigration Services response indicated it had identified 54 pages total, but only 44 pages were enclosed in their entirety. The U.S. Citizenship and Immigration Services stated they were withholding 10 pages, 2 pages in full and 8 pages in part. The Defendant still has not produced the asylum application that the Plaintiff filed in California in about 1991. This is in effect a partial denial of the FOIA-PA request. No intelligible reason for the denial has been provided. The excuse made does not supply sufficient information to determine its legitimacy.

10. Maria M. Gutierrez, through Counsel, appealed the denial of 10 pages of documents relating to Maria M. Gutierrez to the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, FOIA Unit on August 11, 2005. A copy of the appeal and the return receipts is Appendix 5. On September 13, 2005, Counsel received a letter from the FOIA Unit assigning the appeal control number APP2005000768. A copy of this letter is Appendix 6. On November 21, 2005 and December 22, 2005, trying to avoid the necessity of litigation, Counsel sent letters to the FOIA Appeals Office requesting a determination of the appeal and production of the withheld pages. Copies of both letters, with return receipts are Appendix 7. By letter dated January 13, 2005 the FOIA Unit informed counsel, “Your request is currently number 1969 on the list of 2269 pending cases to be worked. We will answer your request as quickly as possible.” A copy of this letter is Appendix 8.

11. Instead of providing the information the law required Defendants to provide to the

Plaintiff, the Defendants on January 18, 2006, the Department of Homeland Security issued a *Notice to Appear* placing Maria Gutierrez in removal proceedings. Still hoping to avoid litigation, counsel telephoned the U.S. Department of Homeland Security, FOIA Unit, on January 23, 2005 to inquire as to the status of the appeal and was instructed to speak with Natasha Watkins. Counsel left a message for Ms. Watkins on her voicemail, but as of February 17, 2006 Ms. Watkins has not returned counsel's call. Counsel sent a letter to the U.S. Department of Homeland Security, FOIA Unit, as well as the U.S Attorney's Office on January 26, 2006 requesting production of the withheld documents so that Ms. Gutierrez may prepare for her upcoming removal proceedings. Copies of both the letter and return receipts are Appendix 9. Counsel has received no response from either office. This complaint follows.

### **Argument**

12. Under the Freedom of Information Act, an agency shall make records promptly available to any person, upon a request which (i) reasonably describes such records, and (ii) is made in accordance with the agency's rules regarding requests. 5 U.S.C. §552(a)(3). The agency must determine whether to comply with a request within 20 days (excluding Saturdays, Sundays, and legal public holidays) and must "immediately notify" the requestor of the determination and reasons therefore. 5 U.S.C. §552(a)(6)(A)(i). "Unless requested material falls into one of the specific statutory exemptions, it must be made available on demand to any member of the general public." O'Rourke v. United States Department of Justice, 684 F.Supp. 716, 718-19 (D.C. 1988), citing Moorefield v. United States Secret Service, 611 F.2d 1021, 1023 (5th Cir. 1980) and NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 220, 57 L. Ed. 2d 159, 98 S. Ct. 2311 (1978). The agency has the burden of establishing that withheld documents fall within one of the statutory exemptions. See 5 U.S.C. §552(a)(4)(B).

13. Ms. Gutierrez requested, in accordance with agency regulations, all information in the control of Defendant agency in any way related to Maria M. Gutierrez or any applications filed by or on behalf of Maria M. Gutierrez. Ms. Gutierrez further specified, in her other correspondence with Defendant that she was specifically seeking

copies of the I-589, *Application for Asylum and Withholding of Removal*, the registration form under the ABC settlement filed by Maria M. Gutierrez, and all other documents Maria M. Gutierrez or others filed on her behalf or otherwise delivered to the INS in Los Angeles, California at any time, during or before the year 1997.

The information requested by Ms. Gutierrez constitutes agency records available under the Freedom of Information Act. See O'Rourke, 684 F.Supp. at 718-19. The Department of Homeland Security has withheld documents relating to Maria M. Gutierrez without providing enough information for Plaintiff to determine what was withheld and why. See 5 U.S.C. §552(a)(6)(A)(i); Fiduccia v. U.S. Department of Justice, 185 F.3d 1035, 1043 (9th Cir. 1999). Defendant improperly withheld records responsive to Ms. Gutierrez's Freedom of Information Act request, specifically copies of Ms. Gutierrez's registration form under the ABC settlement agreement filed in Los Angeles, California during or before 1997, and Ms. Gutierrez's I-589, *Application for Asylum and Withholding of Removal*, filed in Los Angeles California in or around 1991.

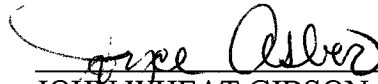
14. Ms. Gutierrez has exhausted administrative remedies with respect to her request. Ms. Gutierrez filed an administrative appeal with respect to the agency determination regarding her request. According the letter from DHS, the DHS FOIA unit which handles appeals received Ms. Gutierrez's appeal on August 16, 2005. As of February 17, 2005, DHS still has not notified Ms. Gutierrez of a determination regarding her appeal. The agency must make a determination with respect to an appeal within 20 days (excluding Saturdays, Sundays, and legal public holidays). 5 U.S.C. §552(a)(6)(A)(ii). DHS has failed to make a timely determination regarding

Ms. Gutierrez's appeal, as it has now been six months since DHS received her appeal. See 5 U.S.C. §552(a)(6)(A)(ii).

**Requested Relief**

WHEREFORE, Maria M. Gutierrez, Plaintiff, prays that this Court order defendants to disclose the requested records in their entirety and make copies available to plaintiff, provide for expeditious proceedings in this action, award Plaintiff its costs and reasonable attorneys fees incurred in this action, and grant such other relief as the Court may deem just and proper.

Respectfully submitted,



---

JOHN WHEAT GIBSON, P.C.

By Joyce Asber

Massachusetts Bar No. 658030

701 Commerce, Suite 110

Dallas, Texas 75202

(214) 748-6944, FAX (214) 748-8693

ATTORNEY FOR MARIA M. GUTIERREZ

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

Maria Magdalena GUTIERREZ §  
Plaintiff §  
V. §  
U.S. DEPARTMENT §  
OF HOMELAND SECURITY §  
Defendant §

CIVIL ACTION NO. \_\_\_\_\_

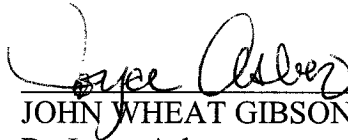
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case:

1. Maria Magdalena Gutierrez;
2. Mirzan Gutierrez.

These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

Respectfully submitted,



JOHN WHEAT GIBSON, P.C.  
By Joyce Asber  
Massachusetts Bar No. 658030  
701 Commerce, Suite 110  
Dallas, Texas 75202  
(214) 748-6944, FAX (214) 748-8693  
ATTORNEY FOR MARIA M. GUTIERREZ

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

Maria Magdalena GUTIERREZ §  
Plaintiff §  
§  
V. §  
§  
U.S. DEPARTMENT §  
OF HOMELAND SECURITY §  
Defendant §

CIVIL ACTION NO. \_\_\_\_\_

PLAINTIFF'S APPENDIX OF DOCUMENTS

Maria Magdalena Gutierrez, Plaintiff, now submits this *Plaintiff's Appendix of Documents* in support of her *Complaint* under the Freedom of Information Act:

- Appendix 1 Plaintiff's request under the Freedom of Information Act, with return receipt
- Appendix 2 Letter from Defendant, DHS, acknowledging receipt of Plaintiff's request under the Freedom of Information Act dated March 11, 2005
- Appendix 3 Plaintiff's first administrative appeal, with return receipt
- Appendix 4 Cover Letter Defendant responding to Plaintiff's request under the Freedom of Information Act and releasing some documents
- Appendix 5 Plaintiff's second administrative appeal, with return receipt
- Appendix 6 Letter from Defendant acknowledging receipt of Plaintiff's appeal, dated August 24, 2005
- Appendix 7 Plaintiff's letters requesting a determination of her appeal, dated November 21, 2005 and December 22, 2005, with return receipts
- Appendix 8 Letter from Defendant indicating status of Plaintiff's appeal dated January 13, 2006
- Appendix 9 Plaintiff's third letter requesting determination of her appeal, dated January 26, 2006 with return receipts.

Respectfully submitted,

  
\_\_\_\_\_

JOHN WHEAT GIBSON, P.C.  
By Joyce Asber  
Massachusetts Bar No. 658030  
701 Commerce, Suite 110  
Dallas, Texas 75202  
(214) 748-6944, FAX (214) 748-8693  
ATTORNEY FOR MARIA M. GUTIERREZ



**John Wheat Gibson, P.C., Attorney at Law**

**701 Commerce, Suite 110, Dallas, Texas 75202**

(214) 748-6944; mobile (214)207-8712; fax (214)-748-8693; E-Mail [jwg@ticnet.com](mailto:jwg@ticnet.com)

John Wheat Gibson

Salvador Ibarra (1946-1992)

*Cursed is the man who withholds justice from  
the alien, the fatherless, or the widow.  
Deuteronomy 27:19*

**MAILED**  
March 1, 2006

CERTIFIED LETTER  
7004 1160 0004 1256 0768

U.S. Department of Homeland Security  
USCIS  
Attn: FOIA Officer Mike Lopez  
8101 N. Stemmons Freeway  
Dallas, Texas 75247

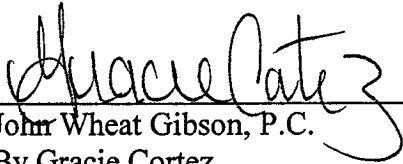
Re: GUTIERREZ, Maria Magdalena  
A 75 362 024  
G-639, *Freedom of Information/Privacy Act Request*

Dear Mr. Lopez:

Please find enclosed form G-639, *Freedom of Information/Privacy Act Request*, filed on behalf of our client Maria Magdalena Gutierrez, together with the G-28 showing John Wheat Gibson as the attorney of record.

Please contact this office if you have any questions, requests or concerns.

Respectfully Submitted,

  
\_\_\_\_\_  
John Wheat Gibson, P.C.  
By Gracie Cortez  
Legal Secretary

Enclosures

Cc: Maria Magdalena Gutierrez

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

U.S. Department of Homeland Security  
 Bureau of Citizenship and Immigration Services  
 Attn: FOIA Officer Mike Lopez  
 8101 N. Stemmons Freeway  
 Dallas, Texas 75247

**CERTIFIED LETTER**  
 7004 1160 0004 1256 0768

PS Form 3800, June 2002

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  Address
- B. Received by (Printed Name)  C. Date of Delivery
- D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.
4. Restricted Delivery? (Extra Fee)  Yes

*Hand Delivered* **FOIA request**

Domestic Return Receipt

102595-02-M-154

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
*(Certificate of Mail Only. No Restricted Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**FOIA request**

7004 1160 0004 1256 0768

Postage	\$ .37	Certified Fee	
Return Receipt Fee (Endorsement Required)		Restricted Delivery Fee (Endorsement Required)	4.42

U.S. Department of Homeland Security  
 Bureau of Citizenship and Immigration Services  
 Attn: FOIA Officer Mike Lopez  
 8101 N. Stemmons Freeway  
 Dallas, Texas 75247

Postmark Here  
 MAR 20 4 2005  
 DALLAS TX 75247

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Department of Justice  
Immigration and Naturalization Service

OMB NO. 1115-0087

**Freedom of Information/Privacy Act Request**

The completion of this form is optional.

Any written format for Freedom of Information or Privacy Act requests is acceptable.

**START HERE - Please type or print and read instructions on the reverse before completing this form.**

1. Type of Request: *(Check appropriate box)*

- Freedom of Information Act (FOIA) *(Complete all items except 7)*
- Privacy Act (PA) *(Item 7 must be completed in addition to all other applicable items)*
- Amendment *(PA only, Item 7 must be completed in addition to all other applicable items)*

2. Requester Information:

Name of Requester: John Wheat Gibson, P.C.		Daytime Telephone: 214-748-6944
Address <i>(Street Number and Name)</i> : 701 Commerce Street		Apt. No Suite 110
City: Dallas	State: Texas	Zip Code: 75202

*By my signature, I consent to the following:*

Pay all costs incurred for search, duplication, and review of materials up to \$25.00, when applicable. *(See Instructions)*

Signature of requester: *John Wheat Gibson*

- Deceased Subject - Proof of death must be attached. *(Obituary, Death Certificate or other proof of death required)*

3. Consent to Release Information. *(Complete if name is different from Requester) (Item 7 must be completed)*

Print Name of Person Giving Consent: Maria M Gutierrez	Signature of Person Giving Consent: <i>MARIA M. GUTIERREZ</i>
---	--

*By my signature, I consent to the following: (check applicable boxes)*

- Allow the Requester named in item 2 to see  all of my records or  a portion of my record. If a portion, specify what part *(i.e. copy of application)*

*(Consent is required for records for United States Citizens (USC and Lawful Permanent Residents (LPR))*

4. Action Requested *(Check One)*:  Copy  In-Person Review

5. Information needed to search for records:

Specific information, document(s), or record(s) desired: *(Identify by name, date, subject matter, and location of information)*  
See Attachment

Purpose: *(Optional: you are not required to state the purpose for your request; however, doing so may assist the INS in locating the records needed to respond to your request.)*

6. Data NEEDED on SUBJECT of Record: *(If data marked with asterisk (\*) is not provided records may not be located)*

* Family Name Gutierrez	Given Name: Maria	Middle Initial: M
* Other names used, if any: None	* Name at time of entry into the U.S.: Maria Magdalena Gutierrez	I-94 Admissions #:
* Alien Registration #: 75 362 024	* Petition or Claim Receipt #: ZHN0500019770	* Country Birth: Guatemala
Names of other family members that may appear on requested record(s) <i>(i.e., Spouse, Daughter, Son)</i> : Mirzan Carolina Ortiz		* Date of Birth or Appx. Year 11/15/1962
Country of Origin <i>(Place of Departure)</i> : Guatemala	Port-of-Entry into the U.S.: Laredo Texas	Date of Entry: 12/03/1986
Manner of Entry: <i>(Air, Sea, Land)</i> Land	Mode of Travel: <i>(Name of Carrier)</i> walking	SSN: 642 64 9750
Name of Naturalization Certifications: None	Certificate #:	Naturalization Date:
Address at the time of Naturalization:	Court and Location:	

## Attachment to Form G-639

5. Specific information, documents, or records desired:

All information actually or constructively in possession of the United States Department of Justice or the Department of Homeland Security, or any subdivision thereof, in any way related to Maria Magdalena Gutierrez, and all information in possession of any agent of the BCIS, BCBP, or BICE or any person that will act in concert with BCIS, BCBP, or BICE in any matter related to Maria Magdalena Gutierrez, or any application filed by or on behalf of Maria Magdalena Gutierrez.

U.S. Department of Justice  
Immigration and Naturalization Service

**Notice of Entry of Appearance  
as Attorney or Representative**

**Appearances** - An appearance shall be filed on this form by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. **Availability of Records** - During the time a case is pending, and except as otherwise provided in 8 CFR 103.2 (b), a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with 8 CFR 103.10, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he/she may, in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his/her receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in 8 CFR 103.10.

In re: <b>Maria Magdalena Gutierrez</b>	Date: <b>03/04/2005</b>
	File No. <b>75 362 024</b>

I hereby enter my appearance as attorney for (or representative of), and at the request of the following named person(s):

Name: <b>Maria M Gutierrez</b>	<input type="checkbox"/> Petitioner	<input checked="" type="checkbox"/> Applicant
	<input type="checkbox"/> Beneficiary	

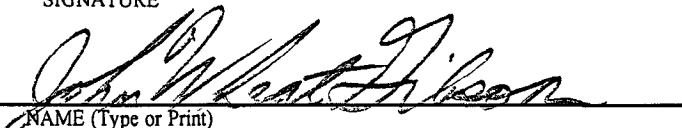
Address: (Apt. No.)	(Number & Street)	(City)	(State)	(Zip Code)
	<b>8704 Rustown</b>	<b>Dallas</b>	<b>TX</b>	<b>75228</b>

Name:	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Applicant
	<input type="checkbox"/> Beneficiary	

Address: (Apt. No.)	(Number & Street)	(City)	(State)	(Zip Code)
---------------------	-------------------	--------	---------	------------

Check Applicable Item(s) below:

- 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia  
Texas Supreme Court and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.  
Name of Court
- 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:
- 3. I am associated with \_\_\_\_\_ the attorney of record previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)
- 4. Others (Explain Fully.)

SIGNATURE 	COMPLETE ADDRESS <b>John Wheat Gibson, P.C. 701 Commerce Street, Suite 110 Dallas, Texas 75202</b>
NAME (Type or Print) <b>John Wheat Gibson</b>	TELEPHONE NUMBER <b>(214) 748-6944</b>

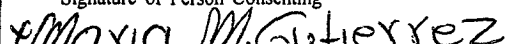
PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

John Wheat Gibson

(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSURE IS IN CONNECTION WITH THE FOLLOWING MATTER:

**ANY**

Name of Person Consenting <b>Maria M Gutierrez</b>	Signature of Person Consenting 	Date <b>03/04/2005</b>
---	--	---------------------------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)



U.S. Citizenship  
and Immigration  
Services

March 11, 2005

DAL2005000517

John Wheat Gibson  
Attorney at Law  
701 Commerce Street  
Suite 110  
Dallas, TX 75202

Dear John Wheat Gibson:

We received your request for information relating to Gutierrez, Maria M on March 11, 2005.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. 552). It has been assigned the following control number: DAL2005000517. Please cite this number in any further inquiry about this request.

In accordance with Department of Homeland Security Regulations (6 CFR 5.3(c)), your request is deemed to constitute an agreement to pay any fees that may be chargeable up to \$25.00. Fees may be charged for searching for records sought at the respective clerical, professional, and/or managerial rates of \$4.00/\$7.00/\$10.25 per quarter hour, and for duplication of copies at the rate of \$.10 per copy. The first 100 copies and two hours of search time are not charged, and the remaining combined charges for search and duplication must exceed \$14.00 before we will charge you any fees. Most requests do not require any fees; however, if fees in excess of \$25.00 are required, we will notify you beforehand.

Additionally, we respond to requests on a first-in, first-out basis and on a multi-track system. With this system we consider each request according to the complexity and volume so that requesters with a simple and quick response do not wait for extended periods of time while we review complex voluminous requests. Because of the nature of your request we have placed your request on the simple track.

If you have further questions, please address your inquiry to this office, Attention: FOIA/PA Officer.

Sincerely,

A handwritten signature in cursive script that reads "Angela K. Barrows".

Angela K. Barrows  
District Director

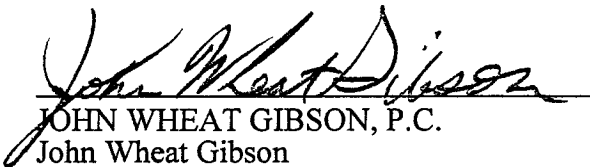


3. No reason for the denial has been provided. Maria M. Gutierrez requires the documents to prove her eligibility for legal resident status under the N.A.C.A.R.A. Specifically, Maria M. Gutierrez requests copies of the I-589, *Application for Asylum and Withholding of Removal*, the registration form under the ABC settlement filed by Maria M. Gutierrez, and all other documents Maria M. Gutierrez or others filed on her behalf or otherwise delivered to the I.N.S. in Los Angeles, California, at any time, during or before the year 1997.

4. Maria M. Gutierrez now appeals from the denial of the request for copies of all documents relating to Maria M. Gutierrez.

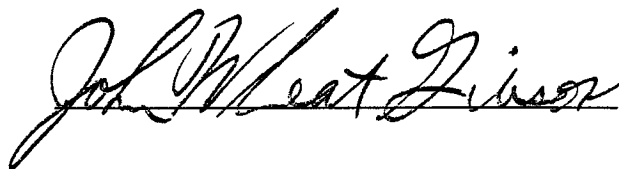
WHEREFORE, Maria M. Gutierrez appeals from the denial of the Freedom of Information Act-Privacy Act request that was filed in the above-captioned case and respectfully moves that the Director of Homeland Security order the U.S. Citizenship and Immigration Services to produce and deliver instant the materials requested.

Respectfully submitted,

  
JOHN WHEAT GIBSON, P.C.  
John Wheat Gibson  
Texas Bar No. 07868500  
701 Commerce Street, Suite 110  
Dallas, Texas 75202  
(214) 748-6944  
ATTORNEY FOR MARIA M. GUTIEREZ

*CERTIFICATE OF SERVICE*

I certify that a true copy of the above *Notice of Appeal* was served on Office of the District Counsel/DA, P.O. Box 561363, Dallas, TX 75356-1363 for the BCIS by first class mail on July 21, 2005.





**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addresser

B. Received by (Printed Name)  C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

USCIS FOIA/PA  
 Appeals Office  
 111 Massachusetts Ave., NW 2nd Floor  
 Washington, D.C. 20529

1. Article Addressed to:
2. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.  
 4. Restricted Delivery? (Extra Fee)  Yes

7004 1160 0004 1256 4798

*FOIA Appeal - BCS for Maria M. Gutierrez*

Domestic Return Receipt 102585-02-M-154

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic, First Class, Registered Mail, Signature Required)  
 For delivery information visit our website at www.usps.com®

*FOIA Appeal BCS USE*

7003 1010 0004 5069 4798

Postage \$	.37	Postmark Here
Certified Fee	4.05	
Return Receipt Fee (Endorsement Required)		
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 Street, City, State, ZIP+4®: 111 Massachusetts Ave., NW-2nd Floor, Washington, D.C. 20529

PS Form 3800, July 21 2005



U.S. Citizenship  
and Immigration  
Services

July 26, 2005

DAL2005000517

John Wheat Gibson  
Attorney at Law  
701 Commerce Street  
Suite 110  
Dallas, TX 75202

RECEIVED  
AUG 4 2005

Dear Mr. Gibson:

This is in response to your Freedom of Information Act (FOIA) request received in this office March 11, 2005, regarding the subject: Gutierrez, Maria M.

We have completed the review of all documents responsive to your request and have identified 54 pages that are responsive to your request. Enclosed are 44 pages in their entirety, and 8 pages in part. We are withholding 2 pages in full.

Deletions have been made of information that is exempt from the mandatory disclosure provisions of the Freedom of Information Act (5 USC 552).

One withheld page will disclose techniques and procedures for law enforcement investigations or prosecutions that could risk circumvention of the law. This information is exempt pursuant to (5 USC 552)(b)(7)(e).

Portions that are partially released to you represent names or other personal information about third parties. This disclosure would constitute a "clear and unwarranted invasion of privacy". This information is exempt pursuant to (5 USC 552)(b)(6).

The remaining withheld information consists of information related solely to the internal rules or practices of an agency. This information is exempt pursuant to (5 USC 552)(b)(2).

In the event you wish to appeal this determination, you may write to the USCIS FOIA/PA Appeals Office, 111 Massachusetts Ave., NW, 2<sup>nd</sup> Floor, Washington, DC 20529, within 60 days of receipt of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Angela K. Barrows  
District Director

Enclosure(s)

U.S. DEPARTMENT OF JUSTICE  
DEPARTMENT OF HOMELAND SECURITY  
OFFICE OF INFORMATION AND PRIVACY

Re: MARIA M. GUTIERREZ  
A75 362 024  
DAL 2005000517

§  
§  
§  
§  
§  
§

APPEAL OF A DENIAL OF A  
FREEDOM OF INFORMATION  
ACT-PRIVACY ACT REQUEST

NOTICE OF APPEAL

TO THE DIRECTOR, DEPARTMENT OF HOMELAND SECURITY:

Maria M. Gutierrez, through counsel appeals the denial of a request for copies of documents in possession of the Bureau of Citizenship and Immigration Services (formerly the Immigration and Naturalization Service), and in support thereof respectfully would show the following:

1. On March 4, 2005, counsel for Maria M. Gutierrez submitted a properly executed form G-28 and form G-639, requesting information as provided by the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a.
2. On August 4, 2005, counsel for Maria M. Gutierrez received a letter from the U.S. Citizenship and Immigration Services, which assigned control number 2005000517. The July 26, 2005 letter stated that there were 54 pages total, but only 44 pages were enclosed. The U.S. Citizenship and Immigration Services stated they were withholding 10 pages, 2 pages in full and 8 pages in part. By form G-639, Maria M. Gutierrez requested copies of all documents in the file of Maria M. Gutierrez including but not limited to:

All information actually or constructively in possession of the United States Department of Justice or the Department of Homeland Security, or any subdivision thereof, in any way related to Maria Magdalena Gutierrez, and all information in possession of any agent of the BCIS, BCBP or BICE (formerly the INS) or any person that will act in concert with the BCIS, BCBP or BICE in any matter related to Maria M. Gutierrez, or any application filed by or on behalf of Maria M. Gutierrez.

As of August 4, 2005, the additional 10 pages of information have not been provided.

This is in effect a partial denial of the FOIA-PA request.

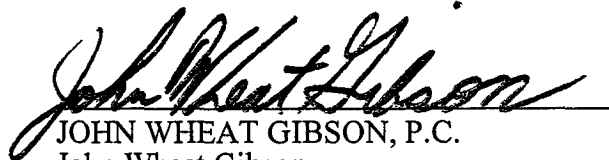
APPENDIX 5

3. No intelligible reason for the denial has been provided. The excuse made does not supply sufficient information to determine its legitimacy.

4. Maria M. Gutierrez now appeals from the denial of 10 pages of documents relating to Maria M. Gutierrez.

WHEREFORE, Maria M. Gutierrez appeals from the denial of the Freedom of Information Act-Privacy Act request that was filed in the above-captioned case and respectfully moves that the Attorney General order the Bureau of Citizenship and Immigration Services to produce and deliver instantly the materials requested.

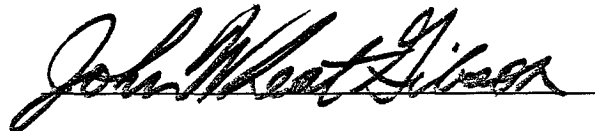
Respectfully submitted,



JOHN WHEAT GIBSON, P.C.  
John Wheat Gibson  
Texas Bar No. 07868500  
701 Commerce Street, Suite 110  
Dallas, Texas 75202  
(214) 748-6944  
ATTORNEY FOR MARIA M. GUTIERREZ

*CERTIFICATE OF SERVICE*

I certify that a true copy of the above *Notice of Appeal* was served on Office of the District Counsel/DA, P.O. Box 561363, Dallas, TX 75356-1363 for the BCIS by first class mail on August 10, 2005.



**SENDER: COMPLETE THIS SECTION**

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**Appeals Office**  
 111 Massachusetts Ave., NW 2nd Floor  
 Washington, D.C. 20529

**COMPLETE THIS SECTION ON DELIVERY**

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 Addressee

B. Received by (Printed Name)  Addressee

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3. Service Type  
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 4. Restricted Delivery? (Extra Fee)  Yes

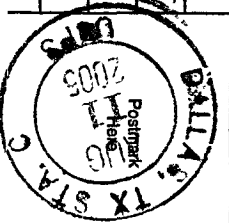
2. **CERTIFIED MAIL**  
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*FOIA Appeal BCIS - Maria M. Gutierrez*  
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*FOIA Appeal BCIS*

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Sent To: **USCIS FOIA/PA**  
 Street / or P.O. B: **Appeals Office**  
 City, St: **111 Massachusetts Ave., NW 2nd Floor**  
**Washington, D.C. 20529**

U.S. Department of Homeland Security  
2nd Floor, FOIA Unit  
111 Mass Avenue, NW  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

August 24, 2005

APP2005000768

John Wheat Gibson  
Attorney at Law  
701 Commerce Street  
Suite 110  
Dallas, TX 75202

Dear John Wheat Gibson:

Re: DAL2005000517

This is to advise you that we received your administrative appeal regarding the action by the Dallas District Office relating to Gutierrez, Maria M, on August 16, 2005.

We have the responsibility of adjudicating appeals and will make every effort to respond to your request as quickly as possible. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. We have assigned control number APP2005000768 to your appeal. Please mention this number in any future correspondence to this office regarding this matter.

We will notify you of the decision on your appeal as quickly as possible. However, we must first contact the Dallas District Office and obtain the background material on your request. If you have further questions, please direct your inquiry to this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Magda S. Ortiz".

Magda S. Ortiz  
Director, FOIA/PA Branch

RECEIVED  
SEP 13 2005

**John Wheat Gibson, P.C., Attorney at Law**  
701 Commerce, Suite 110, Dallas, Texas 75202

(214) 748-6944; mobile (214) 207-8712; fax (214) 748-8693; E-Mail jwg@jwgpc.com

John Wheat Gibson  
Joyce Asber  
Salvador Ibarra (1946-1992)

*Cursed is the man who withholds justice from  
the alien, the fatherless, or the widow.  
Deuteronomy 27:19*

7005 0390 0004 3695 7750

November 21, 2005

U.S. Department of Homeland Security  
2nd Floor, FOIA Unit  
111 Mass Avenue, NW  
Washington, D.C. 20529

RE: APP2005000768 (DAL2005000517) Maria M. Gutierrez

Dear Sir or Madam:

On August 16, 2005 you received an appeal from the denial of 10 pages, 2 pages in part and 8 pages in full, requested under the Freedom of Information Act-Privacy Act for Maria M. Gutierrez. As of this date, our office has not received a decision regarding that appeal. Pursuant to 5 U.S.C. §552(a)(6)(A)(ii), the agency is required to make a determination with respect to an appeal within 20 days of receiving the appeal.

It has been more than 20 days since you received Ms. Gutierrez's appeal. Please complete processing of this appeal. If we do not receive the requested documents on or before December 22, 2005 we will file suit in the District Court to enjoin withholding of documents.

Thank you for your prompt attention to this matter.

Respectfully submitted,



JOHN WHEAT GIBSON, P.C.

By Joyce Asber

Massachusetts Bar No. 658030

ATTORNEY FOR REINA M. CALLES

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

US Department of Homeland Security  
 2nd Floor, FOIA Unit  
 111 Mass Avenue, NW  
 Washington, D.C. 20529

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A. Signature  Agent  
 Addressee

B. Received by (Printed Name)  C. Date of Delivery  
 [Signature] 2/25

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3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
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- Restricted Delivery (Extra Fee)  Yes

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 DALLAS, TX  
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US Department of Homeland Security  
 2nd Floor, FOIA Unit  
 111 Mass Avenue, NW  
 Washington, D.C. 20529

See instructions



**John Wheat Gibson, P.C., Attorney at Law**  
**701 Commerce, Suite 110, Dallas, Texas 75202**

(214) 748-6944; mobile (214) 207-8712; fax (214) 748-8693; E-Mail [jwg@jwgpcc.com](mailto:jwg@jwgpcc.com)

John Wheat Gibson  
Joyce Asber  
Salvador Ibarra (1946-1992)

*Cursed is the man who withholds justice from  
the alien, the fatherless, or the widow.  
Deuteronomy 27:19*

7005 0390 0004 3695 9228

By certified letter, return receipt requested

**MAILED**

December 22, 2005

U.S. Department of Homeland Security  
2nd Floor, FOIA Unit  
111 Mass Avenue, NW  
Washington, D.C. 20529

RE: APP2005000768 (DAL2005000517) Maria M. Gutierrez

Dear Sir or Madam:

On August 16, 2005 you received an appeal from the denial of 10 pages, 2 pages in part and 8 pages in full, requested under the Freedom of Information Act-Privacy Act for Maria M. Gutierrez. Pursuant to 5 U.S.C. §552(a)(6)(A)(ii), the agency is required to make a determination with respect to an appeal within 20 days of receiving the appeal. On November 29, 2005 you received our letter requesting a determination regarding our appeal, as the statutorily mandated period for rendering a determination had passed. As of this date, our office has not received a decision regarding the appeal, or a response to our letter requesting a determination of the appeal.

It has been more than 20 days since you received Ms. Gutierrez's appeal. Please complete processing of this appeal. If we do not receive the requested documents we will file suit in the District Court to enjoin withholding of documents.

Thank you for your prompt attention to this matter.

Respectfully submitted,



JOHN WHEAT GIBSON, P.C.

By Joyce Asber

Massachusetts Bar No. 658030

ATTORNEY FOR MARIA M. GUTIERREZ

**COMPLETE THIS SECTION**

Items 1, 2, and 3. Also complete Restricted Delivery is desired. Name and address on the reverse can return the card to you. card to the back of the mailpiece, if space permits.

sent to:

Department of Homeland Security  
 FOIA Unit  
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**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Address

B. Received by (Printed Name)  C. Date of Delivery

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**HAPPY HOLIDAYS**

30 0004 3695 9228

February 2004

Domestic Return Receipt

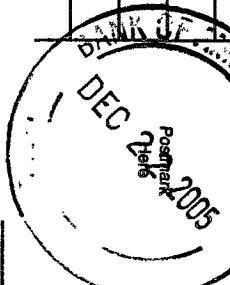
102595-02-M-154

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**Sent To**  
 U.S. Department of Homeland Security  
 2nd Floor FOIA Unit  
 111 Mass Avenue NW  
 Washington DC 20529-0001

PS Form 3800, April 2003

7005 0390 0004 3695 9228

U.S. Department of Homeland Security  
2nd Floor, FOIA Unit  
111 Mass Avenue, NW  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

January 13, 2006

APP2005000768

John Wheat Gibson  
Attorney at Law  
701 Commerce Street  
Suite 110  
Dallas, TX 75202

Dear John Wheat Gibson:

This letter is in response to your status request, regarding the Freedom of Information Act request for information about the subject: Gutierrez, Maria M, received on August 16, 2005.

Your request is currently number 1969 on the list of 2269 pending cases to be worked.

We will answer your request as quickly as possible. If you should have any additional questions about your request, please direct your inquiries to this office at the above address. You may also call us at 202-272-8269 or fax any correspondence to 202-272-8331.

Sincerely,

A handwritten signature in black ink, appearing to read "Magda S. Ortiz". The signature is fluid and cursive, with a large, stylized "O" in the middle.

Magda S. Ortiz  
Director, FOIA/PA Branch

RECEIVED JAN 23 2006

**John Wheat Gibson, P.C., Attorney at Law**  
**701 Commerce, Suite 110, Dallas, Texas 75202**

(214) 748-6944; mobile (214) 207-8712; fax (214) 748-8693; E-Mail [jwg@jwgpc.com](mailto:jwg@jwgpc.com)

John Wheat Gibson  
Joyce Asber  
Salvador Ibarra (1946-1992)

*Cursed is the man who withholds justice from  
the alien, the fatherless, or the widow.  
Deuteronomy 27:19*

7005 0390 0004 3695 5329

By certified letter, return receipt requested

January 26, 2006

U.S. Department of Homeland Security  
2nd Floor, FOIA Unit  
111 Mass Avenue, NW  
Washington, D.C. 20529

RE: Failure to Respond to FOIA Request  
APP2005000768 (DAL2005000517) Maria M. Gutierrez

Dear Sir or Madam:

On August 16, 2005 you received an appeal from the denial of 10 pages, two pages in part and eight pages in full, requested under the Freedom of Information Act-Privacy Act for Maria M. Gutierrez. Pursuant to 5 U.S.C. §552(a)(6)(A)(ii), the agency is required to make a determination with respect to an appeal within 20 days of receiving the appeal. On November 29, 2005 and January 10, 2006 you received our letters requesting a determination regarding our appeal, as the statutorily mandated period for rendering a determination had passed. As of this date, our office has not received a written decision regarding the appeal.

On January 18, 2006, the Department of Homeland Security issued a Notice to Appear, placing Maria Gutierrez in removal proceedings. Counsel telephoned the U.S. Department of Homeland Security, FOIA Unit on January 23, 2006 to inquire as to the status of this appeal and was instructed to speak with Natasha Watkins. Counsel then left a message for Ms. Watkins on her voicemail, but Ms. Watkins has not returned counsel's call.

Counsel would like to resolve this matter without either party having to expend the time and resources necessary for suit in district court. However, in light of Ms. Gutierrez's upcoming removal hearing, it is imperative that she receive the requested copy of her entire A file immediately, especially the asylum application, form I-589 that she filed in 1991 in California.

If we do not receive the requested documents on or before February 13, 2006 we will file suit in the District Court to obtain the documents, as provided by the FOIA.

Thank you for your prompt attention to this matter.

Respectfully submitted,



---

JOHN WHEAT GIBSON, P.C.

By Joyce Asber

Massachusetts Bar No. 658030

ATTORNEY FOR MARIA M. GUTIERREZ

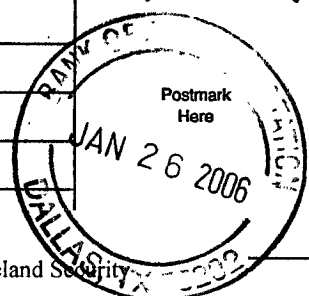
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*Letter RE: Non-Response to FOIA*

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Total		



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 City, S 111 Mass Avenue NW  
 Washington DC 20529-0001

JS 44 (Rev. 3/99)

FEB 21 2006

CIVIL COVER SHEET

8-06CV0328-M

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of indexing the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Maria Magdalena Gutierrez
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
U.S. Department of Homeland Security
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
John Wheat Gibson P.C.
701 Commerce St. Suite 110
Dallas, Texas 75202 (214) 748-6944

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
DEFENDANT

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 another district (specify)
6 Multidistrict Litigation
7 Magistrate Judgment
Appeal to District Judge from

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
5 USC sec. 552 - Plaintiff is entitled to receive pages improperly withheld in agency response to Plaintiff's request under the Freedom of Information Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Injunction CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions): IF ANY JUDGE DOCKET NUMBER

DATE 2-17-06 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE