



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## Frequently Asked Questions: Gathering Criminal Records (March 12, 2024)

Complete criminal records are essential to evaluate a potential client's eligibility for an immigration benefit and assess any risks a client might face by applying for one. Nearly all affirmative and defensive applications require that a non-citizen disclose all arrests and convictions. However, locating the correct records is often challenging. This FAQ provides a background on how to gather criminal records as you prepare a client's case.

### What information will an FBI background check show?

Federal Bureau of Investigation (FBI) background checks are also known as Identity History Summary Checks or Rap Sheets. FBI background checks give a record of an individual's encounters with law enforcement agencies. When a law enforcement agency fingerprints an individual in relation to a criminal matter, the law enforcement agency shares the data with the FBI. The law enforcement agency may, but does not always, update the FBI with the outcome of the arrest.

For example, the FBI background check may show an arrest, but it may not indicate whether those charges were dismissed or resulted in a criminal conviction. Here is an example from an FBI background check:

```
Arrest Date          2016-09-14
Arresting Agency     MN0270300 Brooklyn Park Police Dept Brooklyn
                    Park
Arrest Type          Adult
Charge               1
Charge Tracking Number [REDACTED]
                    Statute Theft (609.52 MN)
                    Severity Unknown
                    Disposition ( 2016-09-14; PCA - Probable Cause Arrest)
Charging Agency     MN0270300 Brooklyn Park Police Dept Brooklyn
                    Park
```

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The information above shows that the individual was arrested for theft in Brooklyn Park, Minnesota, but it does not show whether this individual was ultimately charged or convicted of theft in criminal court.

The information in an FBI background check provides is a **starting point** rather than an endpoint and indicates which courts and police departments have relevant client records. In the above example, the practitioner should reach out to the criminal court with jurisdiction over Brooklyn Park, Minnesota. See "How do I obtain a criminal disposition from a court?" for more information about how to request records from a criminal court.

### **How can my client get an FBI background check?**

Instructions for FBI background checks can be found [here](#). Requests cost \$18 and require that the applicant's fingerprints be submitted with the request on Form FD-1164.

Requests may be made online or by mail. Participating [U.S. Post Office locations](#) offer assistance in completing fingerprints on Form FD-1164 for online requests. Note that the post office typically requires the applicant to have a U.S. form of identification such as a driver's license. An applicant who has only a foreign passport will likely not be able to complete the process online.

Requests made by mail must include properly completed fingerprints on Form FD-1164. State bureaus of criminal apprehension and private companies may offer their own background check service that includes an FBI background check. These services usually charge an extra fee in addition to the \$18 fee.

Many private companies will accept a foreign passport as a form of identification, will roll the fingerprints on the form, and then provide it to the applicant to mail to the FBI. Response times from the FBI for both the online process and the mailing process are relatively quick. Online processing may take only a few hours while the FBI typically processes the mailed requests within a week.

### **What do I need to provide to U.S. Citizenship and Immigration Services (USCIS) in connection with a criminal case?**

USCIS uses criminal records to determine whether an individual is eligible for the benefit they seek. Additionally, any criminal record will be used for discretionary determinations. A list of discretionary factors can be found in the [USCIS Policy Manual](#).

USCIS often requires the following certified police and court records:

- Arrests, *even if no charges were filed;*
- Criminal charges, *even if the charges were dismissed;*
- Convictions, *even if the conviction was later vacated, expunged, or removed from an individual's record, and;*
- Juvenile arrests, charges, and adjudications, *even if they are not considered convictions under U.S. immigration.*

However, many advocates have pushed back against USCIS requesting "too many" criminal documents. For example, many states have juvenile confidentiality provisions that prohibit disclosure of juvenile records, even by the applicant. Many advocates have also argued that arrest records are prejudicial and inherently unreliable. For this reason, CLINIC recommends that as **an initial matter**, the advocate submit only the certified criminal court **disposition** and consider requests for additional criminal documents such as arrest records on a case-by-case basis in the event a Request for Evidence (RFE) is issued.

Generally, USCIS does not require documentation of traffic fines and incidents that did not involve an actual physical arrest if the penalty was only a fine of less than \$500 or points on a driver's license. If the traffic incident resulted in criminal charges *or* involved alcohol, drugs, or injury to a person or property, USCIS will require documentation of the incident. USCIS requires these records from anywhere in the world, and not only from the United States.

The instructions for each petition and application will indicate which records are required. For example, the instructions for the N-400 instructions state, “[i]f you were placed on probation, you must provide evidence to show that you completed your probationary sentence.”

### **What are certified records?**

Certified records are verified by the agency responsible for maintaining them. The records must be submitted to USCIS in the same condition that you received them. Certified records often cost more than non-certified records. Some advocates have been successful when submitting non-certified court records. Others have reported that they later receive an RFE for certified copies of the records they submitted.

### **What criminal records should I submit for a client in removal proceedings?**

Criminal records come into play at three stages of removal proceedings: removability, bond, and relief. Admissible evidence of criminal convictions is found in the regulations at 8 CFR § 1003.41.

#### Removability

At the removability stage, the Department of Homeland Security (DHS) will submit criminal records to support charges of removability based on criminal grounds. Where possible, advocates should obtain independent copies of the records used to support charges of removability to verify that the documents in the court's record are accurate.

#### Bond

It is the respondent's burden to prove eligibility for bond in immigration court in bond proceedings.<sup>1</sup> Complete criminal records are necessary to demonstrate that the respondent is not subject to mandatory detention and ineligible for bond. Additionally, criminal records are a factor under *Matter of Guerra* that an immigration judge can consider in making a bond determination. See CLINIC's [Practitioner's Guide to Obtaining Release from Immigration Detention](#) for additional information on when and how criminal records are used in a bond proceeding.

#### Relief

The respondent's conviction records must be submitted with any application for relief. Criminal records will be used for the purposes of eligibility, discretion, and, if applicable, a particularly serious crime determination. The instructions for each application will provide further information about which criminal records must be submitted. Some applications only

request “conviction records,” which may be interpreted not to include police reports. Consult with local practitioners to determine the types of records the immigration judge assigned to your client’s case requires.

It is in your client’s best interest to create a complete record of conviction, even if the records are not required by the immigration court. For example, police reports often have additional information not found in the criminal complaint. Sometimes, the additional information might make a positive impact with regard to discretion. On the other hand, there could be additional negative information that will help prepare a client for cross examination.

### **How do I obtain a criminal disposition from a court?**

#### State Court

The process for state courts varies widely. Some states make criminal records and documents available through an online database, while others may still require requests by mail. Contact the clerk of court’s office for the county in which your client was convicted to obtain information on how to obtain records in that jurisdiction. Once you have identified the location of your client’s arrest or conviction (typically available on their FBI rap sheet), you can google to obtain the contact information for that particular county court. Some courts will have a fee waiver (also known as an *in forma pauperis*, or *IFP*) available to requestors.

#### Federal Court

Federal court records are available online through [PACER \(Public Access to Court Electronic Records\)](#). Contact the local clerk’s office to inquire about the availability of records available in-person. A list of federal court contact information is available [here](#).

### **What do I do if there are no records available from the court?**

In some circumstances, court records or police reports do not exist. Alternatively, the records may exist, but a court clerk or a law enforcement agency will not release them. In the latter case, some public defenders’ offices and prosecutors’ offices will release records to immigration advocates with a signed release.

If the documents are not available, USCIS instructions indicate that an applicant can submit the following:

- An explanation of why the documents are not available, including the efforts made to obtain them If available, a letter or certified statement from the court or police department confirming that the records are not available
- Any secondary evidence that shows the disposition of the case, for example a register of actions or a publicly available records retention schedule, or;
- If there is no register of actions, a written statement signed under penalty of perjury under 28 USC § 1746.

**When will I need transcripts of the criminal proceedings?**

Although USCIS and the Executive Office for Immigration Review (EOIR) generally do not require transcripts, they can be helpful while reviewing a client's criminal record. Some written records do not indicate clearly whether an individual pled guilty to an offense. In those instances, the state court's transcript of a plea or sentencing hearing may shed more light on whether an individual was ultimately convicted of a criminal offense. Each court has a unique process for producing transcripts. Contact the clerk of court's office to inquire about the process to request transcripts. Note that court transcripts are often quite expensive.