

# **BRINGING CLIENTS INTO ELIGIBILITY FOR DAPA AND DACA**

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**GETTING THE FACTS THROUGH FOIA  
AND CRIMINAL RECORD REVIEW**

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# PANELISTS

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# **WHY DO A RECORD REQUEST?**

- **To know what documents the government has that could affect eligibility for relief**
- **To assess potential risk of enforcement**
- **To see a paper trail of previous immigration history to help piece together what happened**

# CRIMINAL BARS TO DACA

A person must have not been convicted of

- a felony,
- a significant misdemeanor,
- three or more non-significant misdemeanors

**OR**

otherwise pose a threat to national security or public safety.

# BARS TO DAPA/ ENFORCEMENT PRIORITIES

## Priority 1

- Convicted of:
  - a felony in the convicting jurisdiction
  - an aggravated felony (as defined under immigration law)
  - an offense with an element of participation in a criminal street gang
- 16 or older and intentionally participated in an organized criminal gang to further the illegal activity of the gang
- Engaged in or suspected of terrorism or espionage, or otherwise pose a threat to national security
- Apprehended at a border or port of entry trying to unlawfully enter (after the effective date of the memo, Jan. 5, 2015)

## Priority 2

- Convicted of:
  - three or more non-significant misdemeanors
  - one significant misdemeanor
- Apprehended after unlawfully entering or reentering the U.S. *and* cannot show continuous physical presence since Jan. 1, 2014
- Significantly abused the visa or visa waiver programs

## Priority 3

- Issued a final order of removal on or after Jan. 1, 2014

# WHO CAN MAKE A FILE REQUEST?

- **Citizen or non-citizen may request own file**
- **Another person, with that person's consent -- can request a copy of the relevant file**

Note: for information relating to a child and not represented by an attorney, establish proof of parentage or guardianship by providing a copy of a birth certificate or a court order establishing guardianship.

# WHAT CAN YOU REQUEST?

**Record requests can be made for all types of information held by the government, such as:**

- what is in the Alien File (A File),
- the status of a complaint filed with the DHS Office of the Inspector General,
- tax returns, and
- criminal records

# **INFO GATHERING STRATEGY**

## **Step One: Identify the Information You Need**

**For example:**

- **Entries and exits to and from the US**
- **Record of any criminal convictions**
- **Previous immigration applications**
- **Gang records**



# INFO GATHERING STRATEGY

## Step Two: Identify the Agency that has the Information

- *In general*, most requests for a person's A file can be made directly to USCIS.
- Manifest of entries and exits to and from US, customs records, charges of removability or deportability, and other documents, are maintained by U.S. Customs and Border Protection (CBP), U.S. Office of Biometrics Identity Management (OBIM / formerly US-VISIT), or U.S. Immigration and Customs Enforcement (ICE).
- The Federal Bureau of Investigation (FBI) has criminal and immigration records.
- If a client was previously in criminal court, that court will have the records.
- If a client was previously in removal proceedings, the Immigration Court will have the records.

# **INFO GATHERING STRATEGY**

## **Step Three: How do you get the information you need**

- **Freedom of Information Act (FOIA)**
- **FBI Background Check**
- **State Criminal History Request**
- **Court Records Request**

# TIPS

- **Each agency responds to requests for its own records. Always determine whether the agency is likely to have the records you are seeking**
- **Requests must be for access to existing records. The FOIA office will not "create" records in order to respond to a request. What you are requesting must already exist in the agency records.**
- **Each government agency has its own policies for filing a request, so make sure you are using the appropriate forms and documents.**
- **If you seek information regarding third parties, either a written authorization signed by that individual permitting disclosure of those records to you, or proof that that individual is deceased (for example, a death certificate or an obituary) will help the processing of your request.**

# **WHAT IS A FOIA REQUEST?**

- **Request for information from the government**
- **Each person entitled to request government documents under Freedom of Information Act (“FOIA”)**
- **Can request documents about yourself or others**

# WHAT CAN A FOIA REQUEST REVEAL?

Determine whether client has anything in the past that could affect **eligibility**:

- Can get “A File” with past immigration applications
- Can get border records on entries/exits
- Can see what criminal documents government has on a person

# FOIA REQUESTS TO DHS

## USCIS:

- Form G-639 (available at [www.uscis.gov](http://www.uscis.gov))
- Signed under penalty of perjury or notarized
- If prepared by legal worker, must submit a G-28

## ICE:

- Form G-639 OR online fillable request form at <http://www.ice.gov/exec/forms/foiarequest/request.asp>

## CBP:

- Online fillable request form at <http://www.cbp.gov/site-policy-notices/foia>

# FOIA REQUESTS TO DHS

## **OBIM (formerly US-VISIT):**

- Form G-639 (available at [www.uscis.gov](http://www.uscis.gov))
- Signed under penalty of perjury or notarized
- If prepared by legal worker, must submit a G-28

## **DHS FOIA Request Submission Form:**

- Online fillable request form at <http://www.dhs.gov/dhs-foia-request-submission-form>
- Drop-down menu that includes USCIS, ICE, OBIM (but not CBP)

# FOIA REQUESTS TO DOJ

## EOIR:

- [EOIR.FOIARequests@usdoj.gov](mailto:EOIR.FOIARequests@usdoj.gov)
- describe the records sought and include identifying information, such as full name, aliases, immigration hearing location, and A number



# EXPEDITED FOIA REQUEST

- **You may be able to request that the agency expedite the FOIA request**
  - Imminent threat to the life or physical safety of an individual
  - Urgency to inform public
  - Impairment of substantial due process rights exists
  - Harm to substantial humanitarian concerns exists
- **USCIS may accelerate requests**
  - Track 1: simple requests
  - Track 2: complex requests
  - Track 3: “fast track” requests where the requester is in removal proceedings

# TIPS FOR FILING A FOIA REQUEST

- **Provide as much biographic information about the person as possible**
- **If don't remember or don't know a piece of information, write "unknown"**
- **Request the entire A File because it's hard to know what you don't know!**

# **INFORMATION-GATHERING STRATEGY**

**Step 1: What information do I want?**

**Step 2: Who has that information?**

**Step 3: How do I get it?**

# EXAMPLE

**Client walks into your office. She wants to start preparing for DAPA. She said that she was placed in removal proceedings in 2013 but never went to a hearing.**

# EXAMPLE (CONT)

## What information do I want?

- Immigration records
  - Removal order
    - If she received a removal order after Jan. 1, 2014, she is an enforcement priority!
  - NTA
    - Why she was placed in proceedings? Is it anything that will affect her DAPA eligibility?

## Who has that information?

- EOIR

## How do I get it?

- EOIR FOIA

# EXAMPLE

**Client walks into your office. She says that she was convicted of embezzlement in 2007 in San Diego. She has the complaint, minute orders, and order of probation, but she doesn't have the guilty plea.**

# EXAMPLE (CONT)

## What information do I want?

- Conviction
- Any other related documents

## Who has that information?

- Court in San Diego

## How do I get it?

- Records request from San Diego Court

# WHEN IS FOIA *NOT* THE BEST OPTION?

## **Criminal convictions**

- FBI background check; state background check; court-specific records request

## **Status of pending applications**

- Write to the USCIS office where the application was filed or call the National Customer Service Center at 1-800-375-5283

## **Consular notification of a visa petition approval**

- Use Form I-824

## **The return of original documents**

- Use Form G-884

## **Records of naturalization prior to September 27, 1906,**

- Contact the clerk of court where naturalization occurred

## **Information on records prior to December 1982,**

- Contact the National Archives

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



# CRIMINAL RECORDS OVERVIEW

Types of Criminal Records

FBI Identity History  
Summary

State Criminal  
History Record

Court Records

Requesting Records

Tips

Examples

# **FBI IDENTITY HISTORY SUMMARY**

- **The Department of Homeland Security (DHS) will also run this check on all applicants**
- **Shows arrests from all states, D.C., and US territories, as well as federal arrests and immigration violations**
- **Not always accurate or complete**
- **U.S. Department of Justice Order 556-73 establishes rules for individuals to obtain their records**

# REQUESTING FBI HISTORY SUMMARY

A screenshot of the FBI History Summary Request Form, showing various fields for applicant information, including name, address, and contact details.

**Step 1:**  
Complete  
Applicant  
Form

**Step 2:**  
Get  
fingerprints  
taken



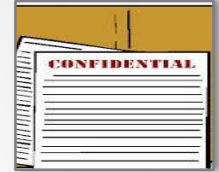
**Step 3:**  
Prepare fee  
payment



**Step 4:**  
Review  
checklist



**Step 5:**  
Mail required  
documents



**Step 6:**  
Receive FBI  
record or “no  
record”  
response

- The Criminal Justice Information Services (CJIS) Division of the FBI processes these requests
- Processing Time: 12-14 weeks

# **STATE CRIMINAL HISTORY RECORD**

- **Provides criminal history in a particular state**
- **Some requests require fingerprint submission, others only identifying information (name check)**
- **Request process varies by state**



# REQUESTING STATE RAP SHEETS

## Step 1: Find the State's Criminal Record Repository

- See: <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing> and <http://hirenetwork.org/clearinghouse>  
After clicking on the state, scroll down to “Criminal Record Repository”
- e.g. TX Department of Public Safety, MA Dept. of Criminal Justice Information Services, CA Dept. of Justice

## Step 2: Review Process and Cost for Requesting Record

- Fee waivers may be available

## Step 3: Request the State Record

## Step 4: Receive the State Record or “No Record” Letter

# STATE EXAMPLES

## Texas

<https://www.txdps.state.tx.us/internetforms/Forms/CR-63.pdf>

## Massachusetts

<http://www.mass.gov/eopss/crime-prev-personal-sfty/bkgd-check/cori/>

## California

<https://oag.ca.gov/fingerprints/security>

# **COURT RECORDS**

- **Provide the details of the case**
- **Necessary to clear up errors in other records**
- **USCIS will review certified court dispositions**

# REQUESTING COURT RECORDS

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**Find the Court and Review the Process for Requesting Records**



**Request the Complete Court Record or at least the Certified Disposition**

- Records may be available online
- Search relevant county court website for information on how to request the record
- If the person was arrested, but no charges were filed, request a document from the court clerk stating there is no record.
- If the courts has destroyed the records, obtain a letter from the court clerk stating so.



# OTHER WAYS OF OBTAINING RECORDS

- Contact:



- the defense lawyer who worked on the case
  - the parole officer (if the person is on probation or parole)
  - the arresting agency or law enforcement agency
  - the jail
- Some courts will destroy the file but keep a "docket sheet" or "minute entries/orders" (either hard copy or electronic record) that show the nature and disposition of the case

NOTE: DACA provides that if the requestor is unable to provide criminal history documentation, s/he should submit an explanation including description of efforts to obtain such evidence

# WHAT ABOUT SEALED OR EXPUNGED RECORDS?

**If any arrest or conviction has been vacated, set aside, sealed, expunged, or otherwise removed from the person's record, DACA provides the person submit:**

1. An original or court-certified copy of the order OR
2. An original statement from the court that no record exists

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If unable to provide such documentation, provide description of efforts to obtain such evidence.

It is unclear what the policy will be for DAPA. Stay tuned.

# WHAT ABOUT JUVENILE RECORDS?

**Make sure you are complying with confidentiality laws before asking for juvenile records.**

## **Ways to obtain records:**

- Juvenile/ Family Court
- Police or Probation Department
- Public or Private Defender in Case
- District or State Attorney

**USCIS does not require juvenile records protected from disclosure under state law.**

# TIPS

- **Some states require going in person to submit fingerprints to obtain the record**
  - Undocumented immigrants and others who may have an outstanding warrants should *not* go to a law enforcement agency (e.g., Police or Sheriff's Department) to have their fingerprints taken
  - Submitting fingerprints through a private agency or business
- **Indicate that the records are for personal review not for immigration purposes**
- **Review identification requirements for records requests**

# EXAMPLES

**A potential DAPA applicant says he has lived in Miami, Florida since arriving in the United States, and that he has been arrested three times in Miami for alcohol-related driving offenses.**

**A potential expanded DACA applicant from Los Angeles, California says he does not believe he has any criminal convictions, but that he has been stopped by the police often because his brother was a gang member.**

# RESOURCES

## FBI

- Applicant Form:  
<https://forms.fbi.gov/identity-history-summary-checks-review>
- Checklist: <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/identity-history-summary-request-checklist-1>
- FAQs:  
<http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/faqs>

## Juvenile Records

- Reporter's Committee for Freedom of the Press "Juvenile Access Chart," at [www.rcfp.org/secret-justice-access-juvenile-justice/juvenile-access-chart](http://www.rcfp.org/secret-justice-access-juvenile-justice/juvenile-access-chart)
- American Bar Association's Resource, "Think Before You Plead: Juvenile Collateral Consequences in the United States" at [www.beforeyouplea.com](http://www.beforeyouplea.com)
- Applying for DACA with a Juvenile Record IAN Webinar:  
[http://www.immigrationadvocates.org/nonprofit/webinars/item.4361-Applying for DACA with a Juvenile Record](http://www.immigrationadvocates.org/nonprofit/webinars/item.4361-Applying_for_DACA_with_a_Juvenile_Record)
- FAQs: DACA and Juvenile Delinquency Adjudications and Records ILRC Advisory:  
[http://www.ilrc.org/files/documents/ilrc-faq-daca\\_juv\\_del\\_adjud\\_records-2013-04\\_15.pdf](http://www.ilrc.org/files/documents/ilrc-faq-daca_juv_del_adjud_records-2013-04_15.pdf)

# QUESTIONS?

**Submit questions via the “chat” box.**



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RESOURCE CENTER

[www.adminrelief.org](http://www.adminrelief.org)

