

USES OF CRIMINAL COURT RECORDS IN IMMIGRATION HEARINGS

State court records can be important in immigration proceedings in a variety of ways. Immigration courts routinely use a wide range of records from a criminal trial in determining whether a particular conviction is for a crime that carries immigration consequences under Federal immigration law. Individuals applying for naturalization may need state court records to establish the required good moral character. In addition, individuals applying for deferred prosecution under the recently announced program for certain unauthorized immigrants who entered the U.S. as children may need state court records to establish their eligibility for the program.

The following are the types of records that may be included in a court file that the prosecution or immigrant may request for use in an immigration proceeding. Clerks should be aware that even if a particular record may not be admissible in an immigration proceeding, it still may be requested from the court. It will not be up to the state court to determine the admissibility of a requested document.

Records From a Plea Hearing

Written Plea Agreement	The immigration court may consider a defendant’s statement in a signed plea agreement, such as a Written Plea and Waiver of Rights Form, specifying that the defendant engaged in conduct constituting the elements of a crime that carries immigration consequences.
Transcript of Plea Colloquy	A plea colloquy is a formal discussion between a judge and a criminal defendant in which the judge ascertains the defendant’s understanding of a proposed plea. An immigration court may rely on admissions made in a plea colloquy to establish the elements of a criminal conviction.
Stipulations to Factual Basis of Plea	A stipulation is a voluntary agreement between opposing parties concerning some relevant point. Some examples of stipulations that may be requested include stipulations of the admissibility of documents, such as the contents of a police report.

Records From a Bench Trial

Rulings of Law and Findings of Fact by a Trial Judge	The immigration court may consider any explicit factual findings by the trial judge to which the defendant assented to determine the elements of a crime.
--	---

Records From a Jury Trial

Jury Instructions	In cases where a state statute defines an offense more broadly than the offense defined in Federal immigration law, the immigration court may consider jury instructions to determine if the defendant was convicted only of the crime that carries immigration consequences.
Jury Verdict Forms	Immigration courts may rely on jury verdict form stating that jury found defendant guilty “as charged in the Information.”
Jury Judgment of Conviction	The immigration court may rely on a jury judgment of conviction where it is clear as to the specific elements of the crime for which the jury is convicting the defendant.

Records of Judgments and Sentences

Judgment of Conviction	In the judgment of conviction, the court sets forth the plea, the jury verdict or the court’s findings, the adjudication, and the sentence. The judge signs the judgment, and the clerk enters it into the record. The immigration court may rely on recitations in the judgment of conviction as to the elements of the crime for which the defendant is being convicted.
Sentences	While the use of sentences in an immigration proceeding can be problematic, they still may be requested in some circumstances.
Restitution Orders	The immigration court may rely on the amount of restitution specified in a restitution order in a plea agreement where state law requires that orders be calculated on the basis of actual loss.

Post-Trial Records Prepared by Clerical Staff

Minute Orders	When a trial judge is sitting officially, with or without a court reporter, a clerk or deputy clerk keeps minutes. When the judge makes an oral order, the only record of that order may be in the minutes. Immigration courts may rely on clerk minute orders if the minute order is prepared by a court official at the time the guilty plea is taken or shortly afterward, the official is charged by law with recording the proceedings accurately, and the official exercises that duty faithfully and diligently.
Abstract of Judgment	If the abstract of judgment is prepared by a neutral officer of the court and the defendant has the right to examine it and challenge its contents, it may be used in an immigration proceeding.

Records Prepared by Outside Parties

Charging Document	An immigration court may use a charging document to determine the elements of a conviction if the defendant pled guilty to the specific counts charged.
Police Reports	The immigration court may consider a police report only if it is specifically incorporated into the guilty plea or entered into evidence by the defendant. However, a defendant might use a police record to establish conduct that might warrant discretionary relief from a removal order.
Complaint Applications	The immigration courts may use claims made in applications for the issuance of a complaint or police affidavits in support of the complaint to determine the elements of a criminal conviction if the defendant has specifically stated in a guilty plea that the court may consider them in determining if there is a factual basis for the plea and for sentencing.
Charging Documents, Complaint, Information, Indictment	Immigration courts may refer to the charging documents only in circumstances where the defendant has indicated that he or she is pleading guilty to a specific count or the jury is convicting the defendant of a specific count in the charging document.
Presentence Reports and Probation Reports	It is unlikely that a presentence report or probation report reciting the facts of the crime will be requested, as it cannot be used to establish the specific elements of a crime.

