

n a t i o n a l I M M I G R A T I O N p r o j e c t of the National Lawyers Guild

Comparing Local OPLA Interim Guidance Requirements For Documenting Criminal Histories¹

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Recently, the 25 main field locations of the DHS Office of Principal Legal Advisor (OPLA) released guidance for requesting Prosecutorial Discretion (PD) to implement the department-wide memorandum² issued by ICE Principal Legal Advisor John Trasviña (“Trasviña memo”), which provided interim guidance to OPLA attorneys about how and when to exercise prosecutorial discretion (“PD”) under DHS’ interim enforcement priorities. This comparison builds upon our [recent practice alert](#), “Advocating for Clients in Removal Proceedings Using the OPLA Prosecutorial Discretion Memo,”³ and contains a brief overview of the variation in requirements for criminal history documentation, along with a chart containing each of the guidance provisions relating to criminal histories.⁴ NIPNLG reviewed copies of the guidance issued by all 25 of the main field offices, 23 of which were issued on OPLA

¹ Released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). This comparison was written by Katie McCoy and Cristina Velez of NIPNLG. The authors thank Sophia Gurulé and Ariel Mena of Bronx Defenders for their review and comments, and the immigration practice community, particularly NIPNLG members, for sharing local guidance materials. This comparison is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case. Counsel should independently confirm whether the relevant OPLA PD guidance has changed since the date of this publication.

² See John D. Trasviña, *Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities*, May 27, 2021, available at https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_interim-guidance.pdf.

³ See National Immigration Project of the National Lawyers Guild (NIPNLG) and Immigrant Legal Resource Center (ILRC), *Practice Alert: Advocating for Clients in Removal Proceedings Using the OPLA Prosecutorial Discretion Memo*, June 21, 2021, available at https://www.nipnlg.org/PDFs/practitioners/practice_advisories/gen/2021_22Jun_opla-pd-memo.pdf

⁴ Note that in addition to the 25 main field offices, individual sub-offices have released additional guidance for the form and process of PD requests, and local stakeholder meeting notes may contain additional detail. NIPNLG restricted its comparison to the provisions of the main field location guidance relating to documentation of criminal histories required for making PD requests.

letterhead or in standard operating procedures, 1 set of instructions that was issued by the Dallas Field Office in the form of an email to practitioners, and 1 set of instructions that was shared during the AILA-OPLA Newark meeting on July 22, 2021.

To some extent, all OPLA guidance requires either a sworn statement, comprehensive chart, or list documenting every arrest and conviction. Aside from this, the requirements are slightly different for each, with the exception of Atlanta, Baltimore, El Paso, and Phoenix. Some of the guidance requires the submission of background checks or clearance letters in addition to criminal records. Of note, Buffalo, Chicago, Denver, Miami, and San Antonio all state that noncitizens should “err on the side of full disclosure,” and some explicitly hint that if information regarding their criminal history is not affirmatively disclosed, their request could be denied. Only Detroit, Philadelphia, and Seattle OPLA guidance state that OPLA may request additional information or documentation before making a final determination.

The local OPLA guidance instructions are grouped on an ascending scale of information and documentation required for a PD request. Below that is a chart providing the specific language of each OPLA office regarding criminal histories, whether it requires an additional background check, and whether it holds pro se requests to the same standards as represented noncitizens.

For copies of the local OPLA guidance relied on for this comparison and additional questions, please contact Cristina Velez at cristina@nipnlg.org.

Scale of Most Relaxed to Most Demanding Requirements

Least demanding (suggesting, but not requiring, documents to include regarding arrests and convictions):

1. New Orleans makes no mention of specific criminal records or documentation required but only states that noncitizens must explain all aggravating factors thoroughly. The OPLA standard operating procedure (SOP) states that the ACC should review the criminal record as reflected in EARM or an updated FBI rapsheet.
2. Dallas only requires clients with criminal histories to include a timeline of arrests and convictions, along with any mitigating factors and evidence of rehabilitation, but does not require specific arrest and conviction records.
3. Boston and Minneapolis/St. Paul OPLA do not require specific documentation for convictions but recommend providing a comprehensive list of criminal history, along with arrest and conviction records.
4. Buffalo similarly does not require specific supporting documents but does require an affidavit setting forth all arrests and convictions. Attorneys are encouraged to “use their best judgment” when determining which documents to submit in support of the request.

5. Denver requires a comprehensive list of any criminal history with arrest and conviction documentation but does not require specific documentation. It does note that fully explaining all criminal arrests and convictions with supporting documentation is “in [the] client’s best interest.”
6. Orlando requires the submission of supporting documentation that includes a comprehensive list of any criminal history and documentation regarding all arrests, convictions, and “any other encounter with law enforcement,” but also does not specify the records to be submitted.
7. San Diego is unspecific as to documentation of arrests and convictions, but requires that noncitizens seeking discretion provide a “police clearance letter, CALDOJ report, FBI rap sheet or other similar documents to establish the lack of a criminal history.”

Somewhere in the middle (arrest and conviction reports or a sworn statement listing all arrests and convictions and clearance letters):

1. Seattle requires a sworn declaration explaining whether the noncitizen has ever been arrested or convicted anywhere in the world, and if so, they must submit a chart documenting their complete criminal history. No specific records are required, but Seattle OPLA may request additional documentation when reviewing the request.
2. Miami requires, at a minimum, that noncitizens submit a sworn declaration stating whether they have ever been arrested or convicted anywhere in the world. But Miami also requires either a police clearance letter from each locality within the U.S. where the noncitizen has resided or “other reliable evidence” of the noncitizen’s entire criminal history.
3. San Antonio requires a sworn statement attesting to all arrests, detentions, expungements, or convictions anywhere in the world and all accompanying records. It does not state what specific documents must be included. Noncitizens must also submit a police clearance letter from a U.S. law enforcement agency.

Most demanding (arrest records, police reports, conviction records and sworn statements requiring explanations):

1. Detroit requires arrest reports and conviction records for all arrests, charges, and convictions in the U.S. or abroad.
2. Newark PD requests must include a complete list of the noncitizen’s criminal history, with supporting documentation of all arrests, disposition of arrests, criminal charges, police reports, and any pending charges.
3. Washington, D.C. requires a comprehensive list of any arrests, convictions, or other criminal history, including an explanation of what occurred and documents showing the outcome of the case. If unavailable, the noncitizen must explain why.
4. San Francisco requires a sworn declaration explaining whether the noncitizen has been arrested or convicted and a comprehensive criminal history chart, listing the disposition of each arrest, if so. Police and probation reports are required, and the noncitizen must provide a background check from the California Department of Justice with their rap sheet if they have not been fingerprinted by DHS.

5. Honolulu requires a statement made under penalty of perjury addressing any arrests or convictions anywhere in the country and providing “all details” of any arrest or conviction. The guidance does not explain whether criminal records must be submitted in conjunction with the statement.
6. Philadelphia requires a sworn statement addressing prior criminal history, explaining the underlying circumstances of the criminal conduct, how they complied with the court’s order, and any rehabilitation. No specific documentation of criminal records is required but it is encouraged.
7. New York doesn’t require the submission of police reports but does require noncitizens to submit a sworn statement explaining the circumstances surrounding each arrest or conviction. Noncitizens with no criminal history must provide a Certificate of Good Conduct from any city where they have resided while in the U.S.
8. Los Angeles requires not only all arrest records and conviction records but also a sworn statement from the noncitizen “providing details” around each arrest and/or conviction. An FBI background check or state criminal history from the noncitizen’s current state of residence must also be submitted.
9. Atlanta, Baltimore, El Paso, and Phoenix requirements are almost identical. All require submission of the complete record of conviction, including the charging document. Police reports are also required for any pending charges and when a charge of DUI/DWI, hit and run, assault/battery, domestic violence related crimes, robbery, child abuse/neglect, and/or sex offenses led to a conviction, even if the conviction is for a lesser charge. Baltimore also requires a “complete recitation of criminal history.”
10. Houston requires, “at a minimum,” a comprehensive chart informing of all arrests and records, along with corresponding police reports and court records.

OPLA Location	Criminal convictions?	Policy on Background checks?	Different policy for pro se noncitizens?
Atlanta	<ul style="list-style-type: none"> ● For criminal convictions, a complete record of conviction, including the charging document, is required. <ul style="list-style-type: none"> ○ Police reports are required “when the following charges resulted in a conviction, even if to a lesser charge: DUI/DWI, hit and run, assault/battery, domestic violence related crimes, robbery, child abuse/neglect, and sex offenses” ● For pending charges, the charging document and any police reports are required. 	<ul style="list-style-type: none"> ● Need to provide FBI background check (even if no criminal history) 	<ul style="list-style-type: none"> ● Pro se litigants are encouraged to include as much information as possible but are not expected to produce all items listed.

	<ul style="list-style-type: none"> ● If criminal records cannot be obtained, the applicant must explain why and what efforts were made to attempt to obtain the records ● PD requests should contain a discussion of the negative equities, “including criminal history.” ● The guidance notes at the beginning of the instructions that failure to include documents requested “may result in delays and/or denial.” 		
Baltimore	<p>Under negative equities, the guidance says to include complete recitation of criminal history (including any arrest, nolle prosequi, expungement, etc.)</p> <ul style="list-style-type: none"> ● For criminal convictions, a complete record of conviction, including the charging document, is required. <ul style="list-style-type: none"> ○ Police reports are required “when the following charges resulted in a conviction, even if to a lesser charge: DUI/DWI, hit and run, assault/battery, domestic violence related crimes, robbery, child abuse/neglect, and sex offenses” ● For pending charges, the charging document and any police reports are required. ● If criminal records cannot be obtained, the applicant must explain why and what efforts were made to attempt to obtain the records ● PD requests should contain a discussion of the negative equities, “including criminal history.” ● The guidance notes at the beginning of the instructions that failure to include documents requested “may result in delays and/or denial.” 	<ul style="list-style-type: none"> ● Need FBI summary check 	
Boston	<p>These documents are not required but are included as examples of “supporting documents to aid in evaluating the case”:</p>	<ul style="list-style-type: none"> ● An FBI Criminal Background Check, State Criminal History Check from current 	

	<ul style="list-style-type: none"> ● Comprehensive list of any criminal history with arrests and convictions ● Arrest records, conviction records, protective orders, Dep’t of Children and Families records 	state of residence (e.g. Criminal Offender Record Information (CORI) for MA residents), and a sworn affidavit attesting to whether the non-citizen has been arrested or convicted anywhere in the world.	
Buffalo	<ul style="list-style-type: none"> ● Include any court records/criminal dispositions if applicable ● Submit an affidavit from the respondent that sets forth any criminality: arrests and convictions ● “Full disclosure is necessary to ensure fair assessment,” which includes all arrests, detentions, and expungements <ul style="list-style-type: none"> ○ Warns that if the applicant omits arrests or if the information does not match the record, “this could contribute to an unfavorable decision.” 		<ul style="list-style-type: none"> ● “OPLA Buffalo will do an affirmative review of pro se noncitizen matters with an eye towards providing the most favorable disposition to the noncitizen.”
Chicago	<p>Noncitizens must provide “an explicit comprehensive statement of any criminal history (or lack thereof) anywhere in the world”</p> <ul style="list-style-type: none"> ● States that OPLA Chicago will confirm the absence or presence of criminal history ● Includes a footnote stating that petitioner’s should “err on the side of full disclosure, no matter the circumstances. This includes fully disclosing all negative (including arrests, detentions, expungements) and positive factors.” <p>But then the cover sheet says if arrested, the following documents <u>must</u> be included:</p>	<ul style="list-style-type: none"> ● If no criminal history in US / no fingerprints in the system, then <i>represented</i> noncitizens must provide an official letter from the State Police or local police department confirming they have been checked and do not have a record. ● Warns that if criminal history does not align 	<ul style="list-style-type: none"> ● “OPLA Chicago will be flexible with submissions by unrepresented noncitizens and not require a specific format of the request. OPLA Chicago may still require follow-up information before deciding whether any type of discretion is appropriate.”

	<ul style="list-style-type: none"> • Criminal history chart, listing offenses (including all traffic offenses), relevant statute, arrest date, conviction date, and sentence imposed, and actual time served; and • Certified judgments of conviction and charging document for all offenses listed in the Criminal History Chart 	with information affirmatively disclosed, this may result in denial of PD	
Dallas	<p>“If your client has a criminal history, please include a timeline of any arrests and convictions, an explanation of any extenuating circumstances, sentences imposed and served, and any indicia of rehabilitation.”*</p> <p>*guidance shared via email from a practitioner who received it via the local OPLA liaison.</p>		
Denver	<p>Each request must contain:</p> <ul style="list-style-type: none"> • A comprehensive list of any criminal history with arrest and conviction documentation. • If no criminal history, a sworn statement of good moral character or clearance from the local police department must be included. • “It is in your client’s best interest to submit a request that fully explains all criminal arrests and convictions that is supported by related documentation.” 	<ul style="list-style-type: none"> • If no fingerprints are on file with DHS, either a sworn statement of good moral character or a clearance letter from the local police department must be included. 	

<p>Detroit</p>	<ul style="list-style-type: none"> ● Where a noncitizen has been arrested, charged, or convicted of a crime in the United States or abroad, the noncitizen should provide a comprehensive list of any criminal history with arrests and convictions and all arrest reports and conviction records. ● Noncitizens should submit an affidavit addressing all mitigating and aggravating factors, including their “criminal history in the United States and abroad, or lack thereof.” 		<ul style="list-style-type: none"> ● Pro se requests are not required to submit supporting documents, but must submit their name, A#, a short explanation of their case, and address why PD should be exercised in their favor. ● Every request by a pro se noncitizen must be signed by the noncitizen, even if not in affidavit form.
<p>El Paso</p>	<ul style="list-style-type: none"> ● For criminal convictions, a complete record of conviction, including the charging document, is required. <ul style="list-style-type: none"> ○ Police reports are required “when the following charges resulted in a conviction, even if to a lesser charge: DUI/DWI, hit and run, assault/battery, domestic violence related crimes, robbery, child abuse/neglect, and sex offenses” ● For pending charges, the charging document and any police reports are required. ● If criminal records cannot be obtained, the applicant must explain why and what efforts were made to attempt to obtain the records ● PD requests should contain a discussion of the negative equities, “including criminal history.” ● The guidance notes at the beginning of the instructions that failure to include documents requested “may result in delays and/or denial.” 	<ul style="list-style-type: none"> ● FBI summary check encouraged 	

Honolulu	Declaration signed under penalty of perjury addressing whether the noncitizen has any criminal arrests or convictions in any country and, if so, all details of the arrests and/or convictions	<ul style="list-style-type: none"> Any noncitizens who have not yet complied with the biometrics process will be required to obtain a police clearance letter. 	<ul style="list-style-type: none"> Pro se noncitizens are not required to follow a formal process to apply for PD.
Houston	Supporting documentation <u>must</u> include at a minimum: <ul style="list-style-type: none"> A comprehensive criminal history chart that informs of all arrests and convictions with corresponding court records and police reports Police clearance letters 	<ul style="list-style-type: none"> No background check requirement Police clearance letters required 	<ul style="list-style-type: none"> The specific format is not required for pro se applicants.
Los Angeles	<ul style="list-style-type: none"> Include arrest reports and conviction records Include an affidavit either that the noncitizen has never been arrested or convicted of a crime anywhere in the world; or if the noncitizen has, the sworn statement should provide details surrounding the arrests and/or conviction. Comprehensive list of any criminal history with arrests and convictions and arrest records, conviction records, and protective orders. 	<ul style="list-style-type: none"> Requires either FBI background check or state criminal history from current state of residence along with arrest reports and conviction records. 	
Miami	Represented noncitizens “should err on the side of overinclusion and full disclosure. At a minimum, the PD request must include:” <ul style="list-style-type: none"> A declaration, executed under penalty of perjury, stating whether they have ever been arrested or convicted of any crimes anywhere in the world 	<ul style="list-style-type: none"> Police clearance letter from jurisdictions in which the noncitizen has resided in the US or other reliable evidence of the noncitizen’s entire criminal history. 	“OPLA Miami attorneys will engage unrepresented (<i>pro se</i>) noncitizens to obtain confirmation, in writing, to the satisfaction of OPLA Miami, that the noncitizen has no disqualifying criminal history.”
Minneapolis/St. Paul	Requests should include: <ul style="list-style-type: none"> “Supporting documentation to aid in evaluating the case, including a comprehensive list of any criminal history as well as documentation regarding all 		

	arrests, convictions, and any other encounter with law enforcement.”		
New Orleans	The contents of the PD request should fully develop the mitigating factors and equities . . . along with aggravating factors, such as criminal history. <ul style="list-style-type: none"> For relevant documentation that should be included, criminal records are not explicitly mentioned. 		
Newark	The request must include: <ul style="list-style-type: none"> Complete history of a criminal record including conviction records, all arrests, dispositions of all criminal charges, police reports, any pending criminal charges “A discussion of any negative factors” 	<ul style="list-style-type: none"> If no fingerprints are on file with DHS, a statement of good conduct or a police clearance letter from the local department is required 	
New York	Sworn statement including, at minimum: <ul style="list-style-type: none"> The circumstances of any arrest (or attestation that they have not committed any crimes anywhere in the world). Comprehensive list of any/all criminal history with corresponding arrest and conviction records. 	<ul style="list-style-type: none"> If no criminal history is claimed, then a Certificate of Good Conduct from any city where they have resided while in the U.S. 	
Orlando	A comprehensive list of any criminal history as well as documentation regarding all arrests, convictions, and any other encounter with law enforcement.		
Philadelphia	<ul style="list-style-type: none"> If there is evidence of prior criminal activity, the noncitizen must address prior conduct, including evidence of rehabilitation in the body of the mail. The PD request should include a sworn statement explaining the underlying circumstances of the offense conduct, how they complied with the court’s sentence, and their rehabilitation. 	<ul style="list-style-type: none"> If biometrics were not previously taken, the request must include evidence of a police clearance from the respondent’s local police department. 	<ul style="list-style-type: none"> Pro se applicants may submit their request by mail or in person.

	<ul style="list-style-type: none"> • “Even though a DUI conviction is not a disqualifying offense for PD purposes, OPLA still considers it a very serious offense.” 		
Phoenix	<ul style="list-style-type: none"> • For criminal convictions, a complete record of conviction, including the charging document, is required. <ul style="list-style-type: none"> ○ Police reports are required “when the following charges resulted in a conviction, even if to a lesser charge: DUI/DWI, hit and run, assault/battery, domestic violence related crimes, robbery, child abuse/neglect, and sex offenses.” • For pending charges, the charging document and any police reports are required. • If criminal records cannot be obtained, the applicant must explain why and what efforts were made to attempt to obtain the records. • The guidance notes at the beginning of the instructions that failure to include documents requested “may result in delays and/or denial.” 		<ul style="list-style-type: none"> • Pro se applicants are “not expected” to provide all documentation requested but “are encouraged to include as much information as possible.”
San Antonio	<p>“Err on the side of full disclosure, no matter the circumstances.”</p> <ul style="list-style-type: none"> • Disclose all arrests, detentions, expungements • Include copies of criminal records (foreign and domestic) <p>To prove a noncitizen’s good character, the request packet should include:</p> <ul style="list-style-type: none"> • Clearance letter from a U.S. law enforcement agency • Attestation under oath and notarized from the noncitizen stating whether or not he has committed any crime outside of the United States and accompanying criminal records. 		

	<ul style="list-style-type: none"> • If criminal records are unavailable, the noncitizen should detail the circumstances of the crime and resulting criminal sentence or fine. 		
San Diego	<p>“The burden is on the respondent to establish a clear criminal history and can be done with a police clearance letter, CALDOJ report, FBI rap sheet or other similar documents to establish the lack of a criminal history.”</p> <ul style="list-style-type: none"> • No instructions as to what kind of documentation to include of a noncitizen’s prior contacts with law enforcement. 		
San Francisco	<ul style="list-style-type: none"> • Must include a declaration executed under penalty of perjury that explains whether the noncitizen has ever been arrested or convicted for any crimes anywhere in the world. • If they have any convictions, a comprehensive criminal history chart, including all arrests and convictions and the disposition of all arrests must be provided. Police and probation reports must be submitted. 	<ul style="list-style-type: none"> • If the noncitizen has not submitted biometrics or otherwise been fingerprinted by DHS, they must be fingerprinted by California’s Department of Justice and submit the responsive criminal history printout 	<ul style="list-style-type: none"> • No formal requirements are prescribed for pro se applicants; “in fact, pro se noncitizens may make oral requests for PD in court.” • But ACCs will neither provide legal advice to pro se applicants nor prompt them to request dismissal of their immigration proceedings. They will only encourage the noncitizen to seek counsel.
Seattle	<ul style="list-style-type: none"> • Must include a declaration executed under penalty of perjury that explains whether the noncitizen has ever been arrested or convicted for any crimes anywhere in the world 	<ul style="list-style-type: none"> • Noncitizens are encouraged to promptly comply with biometrics requirements 	<ul style="list-style-type: none"> • For pro se requests, there are no specific formal requirements

	<ul style="list-style-type: none"> • If so, must provide a criminal history chart that includes a comprehensive list of any criminal history with arrests and convictions. • Reviewing OPLA attorney may then request additional documentation 		
Washington, D.C.	<ul style="list-style-type: none"> • Supporting documentation should include: a comprehensive list of any arrests, convictions, or other criminal history • A noncitizen requesting PD who has committed any crime is expected to provide an explanation of what occurred and criminal court documents showing the outcome of the case. If not provided, the noncitizen should provide a reason why the documents are unavailable. 	<ul style="list-style-type: none"> • Letters of recommendation or certifications from the FBI or local police departments indicating the noncitizen's arrest record (or that there is no arrest record) will strengthen the request. 	