

Obtaining Records for AWA Matters

Pulling records can be pretty straightforward once you know the ropes. It takes time and regular follow up.

Why does USCIS want to see the records?

The obvious answer is that USCIS wants to review them. However, the answer goes a bit deeper. USCIS wants to understand the criminal records in detail and from the point of view of the victim, the police, and the prosecutor. It wants to hear what the judge or probation officer had to say about whatever incident arose. It wants to know the complete set of circumstances regardless of the determination of guilt. What records are appropriate to consider in a risk determination is a separate issue. For the moment, the maximum set of records should be pulled.

As for treatment records, USCIS wants to learn in detail what you confessed to and whether the treatments were effective. What topics were covered, how many sessions, and for how long? Was it group or individual counseling, etc.? We can talk about what is in the records and how to position your case. But, the first step is to get the records so that all the details are on the table for consideration.

Who pulls my records?

1. **You, the Client:** The petitioner was subject to court proceedings and would be more familiar with criminal records at a particular courthouse than the immigration attorney. It helps for you to make the first effort to try and pull records according to instructions below. Some clients do not have the time or inclination to pull their own records. But, your effort to be involved produces the best results. ***Let us know if you will not or cannot help pull your own records.***
2. **Criminal Defense Attorney:** Sometimes, you can reach out to your criminal defense attorney or a different one who can help you pull records in a particular location. Make contact and see what you can get. Criminal attorneys who go to court can more easily understand the workings of that courthouse.
3. **Our Law Firm:** We can help as needed. However, consider that criminal records come from all over the world and the 50 states. We are a federal immigration law firm. Our attorneys are not licensed to practice law in all states. As such, we're unfamiliar with particulars of how records are kept in the various courthouses around the country or overseas. Courthouses keep records in various formats. It's not always easy to read them. If we are to help, we can play a good supporting role and can likely be effective. It saves you money if you are able to work independently. ***The ultimate obligation to pull records remains with the client.***
4. **Court Runners:** There often are companies near the courthouse or treatment centers where you underwent proceedings. Those companies can help obtain

court records for you. Court runners typically only help obtain **court records**, not

other types of records. But, you can also search online for “**Attorney Assistance Service**” or “**Process Server**.” See what comes up in the area where you need records pulled. We can also try to help locate a suitable service as needed. Sometimes, these services will only work with attorneys. Try calling one or more and ask whether they are available to work directly with you. If you find a good one and they will only work with an attorney, let us know.

What records should be pulled?

For each type of record, request a **complete copy of your file**.

1. **Court** records
2. **Police** records
3. **Probation** records
4. **Treatment** records (related to your case)
5. Sex Offender **Registration** records

Note 1: It’s best to try and pull records directly from the courthouse, police department, or probation department first. If you have trouble obtaining **court, police, and/ or probation records**, the state **Department of Corrections** will sometimes have a combination of all 3.

Note 2: Sex offender registration records normally do not contain the following:

- Violation(s) of registration requirements and why
- Removal from **Sex Offender Registration Board**
- Evidence of rehabilitation

Court records would likely have these.

Note 3: The most important records are any that relate to the AWA offense or any felonies. The second most important offenses are any involving harm, such as assault or domestic violence. Records for other minor offenses such as drunk driving should be obtained, but perhaps just enough to learn what the case was about and the outcome. Records for arrests that do not result in a conviction should be pulled, sufficient to show the allegations and dismissals.

Note 4: Some believe that obtaining an **expungement** will avoid the need to pull criminal records for immigration purposes, but it doesn’t. It’s often difficult to obtain criminal records that have been expunged. The expungement is nearly always a good step. However, please be sure to obtain a complete copy of all criminal records for immigration purposes, whether or not expunged.

What types of records are we talking about?

Certified or Official Records: USCIS asks for certified or official records. “Official” is not defined, but generally means a response provided by an agency on letterhead, or tracking your efforts and responses from that agency. For example, if an agency requests that you submit an email inquiry, save your email communications along with the records.

Although USCIS typically requests “certified” records, we’ve not yet seen a case being denied when we send in copies that are not certified. But, that doesn’t mean your case will not be the first to be denied for that reason. Do the best you can do because some

cases may end up in court.

Tip: Get certified copies of records if you can afford it, but don't stress too much if the cost seems unreasonable and you don't want to do it. Of course, if you sense that a particular document is important and can afford to get that one certified, then do it. An example would be your plea, which can include the facts upon which you pled.

Unavailable Records: Records are considered unavailable when there is a diligent search for them that fails. The person who attempts to obtain certain records (yourself, attorney, a court runner, etc.) should provide a sworn affidavit summarizing the attempts.

Sealed Records: Sealed records are not necessarily unavailable. For example, court records that involve a minor victim are often sealed. It helps to learn what it takes to unseal them. Sealed records that cannot be obtained for US immigration purposes are "unavailable." We need to show that the sealed records cannot reasonably be unsealed and obtained for this case.

Police Records:

Tip: Pull a complete copy of your police records, also known as **police reports**.

These can usually be pulled directly from the police department where the offense occurred. If one cannot be obtained, please ask for a statement from the department clearly addressing the crime, and confirming records are unavailable.

Court Records:

Tip: Pull a complete, plain copy of your court records. You can decide if some documents should be certified. Specifically, USCIS wants the following court records:

- **Indictment** filed in court against you;
- Any **amended indictment**, modifying the charges;
- Any **plea** struck;
- Any **conviction** by trial, judge or jury;
 - If a conviction is after trial, try to get the jury instructions and **findings** by the judge or jury.
- Any **presentence report** by probation;
- Your criminal **sentence**, including sentencing terms;
- Probation or parole report that you successfully **completed your sentence**;
- Evidence of **rehabilitation**. Statements from judges or probation officers about your rehabilitation are extremely helpful. An **expungement** is helpful; and
- Any evidence of **dismissal or finding of non-guilt**.

For some records, you may need to contact the probation or parole office as noted below.

Multiple Arrests or Convictions: An FBI background check should be completed if you have more than one arrest or conviction to help verify the total number of arrests and convictions:

<https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/identity-history-summary-checks>

Treatment Provider Records:

Tip: Pull a complete copy of your treatment records. More specifically, USCIS wants

the following:

Records indicating successful completion of counseling or rehabilitation programs. Such records may include documentation of the following:

- The **beginning and ending dates** of the petitioner's treatment program
- The **total number of hours and sessions** attended
- An explanation for any **failure to attend or participate** in particular sessions
- The **structure of sessions**
- The **goals/ objectives** of the program/ plan
- The **methods used to achieve the goals** of the program and USC's treatment plan
- A **description of progress**
- **Assessments of rehabilitative status** at the beginning, during, and at the end of the treatment program

Try to obtain a **letter** from the treatment provider outlining the above points, **and/ or** any **records** in support.

SORB Registration Records:

Complete copy of all State Sex Offender Registry Board (SORB) forms.

Registration records means "**registration forms.**" In other words, you want to collect a complete copy of all the registration forms you have submitted to all police departments or registration departments in the past. These forms were likely initialed by you and contain your signature and/or fingerprint marking. You should pull forms from all locations you've ever registered. Sometimes, a complete set of registration forms is quite thick.

Probation/ Parole Records:

Discharge letter from probation or parole. Typically, it's a single document. It's either in your court records, with the parole or probation office or, as a last resort, with the state Department of Corrections office. See also the [Court Records](#) section above.

Rehabilitation:

Evidence that you are rehabilitated, which can include:

- Expungements;
- Comments from judges, probation/parole, or treatment providers; and
- Release from registration or from public display.

Tip: Pulling records for an AWA matter can be more work for some than others. So, focus on easy things first and make a to-do list for yourself.

Let us know if you have questions or need assistance with AWA processing. We can set up a phone appointment.

Allan S. Lolly

