



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/33-C

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 27, 2001

MEMORANDUM FOR REGIONAL DIRECTORS

FROM: Michael A. Pearson/s/ *W. R. Yates*
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Use of State Agency Records Regarding Arrest Printouts for Naturalization
Quality Procedures (NQP) Purposes

The initial section of TOPIC V., section B. of the NQP4 memorandum is hereby revised to read:

B. Dispositions of Arrests

Officers are required to consider all criminal charges, including those that have been dismissed, expunged, diverted, *nolle prosequere*, and "no papered," before adjudicating an N-400. However, officers are only required to request copies of dispositions of the following types of arrests and/or convictions:

- 1) All arrests/convictions during the statutory period;
- 2) All arrests/convictions on or after November 29, 1990 that may be aggravated felonies as defined in section 101(a)(43) of the INA;
- 3) All arrests/convictions for murder;
- 4) Any arrest/conviction at any time that may be the basis for issuing a Notice to Appear, whether or not the crime was an aggravated felony;
- 5) Any conviction(s) outside the statutory period that, in conjunction with a conviction within the statutory period, would require INS to consider whether the applicant has reformed from earlier crimes involving moral turpitude;
- 6) Any arrest/conviction outside the statutory period that, in conjunction with another conviction, could preclude the applicant from establishing good moral character (e.g. a Second controlled substance offense or a second crime involving moral turpitude);
- 7) any arrest/conviction outside or inside the statutory period where the applicant would still

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be on probation at the time of adjudication of the N-400 or may have served 180 days incarceration during the statutory period; (In these cases, the officers must request evidence of the successful completion of probation or evidence of the release from confinement date) and

- 8) only for convictions listed in 1 through 7 above, any arrest record for which a final court disposition is already in the file but the disposition **does not** reflect the date that the offense was committed or the conviction date. (Note that neither NQP3 nor NQP4 requires applicants to submit additional disposition information for arrests when the applicant has already submitted final court dispositions for the offenses and the dispositions contain complete and adequate information.)

Regardless of the date on which the evidence was issued, the term "police clearance" means official evidence of a record of arrests, lack of arrests, or confirmation that an arrest did not result in court action from a local police department or from a state agency responsible for maintaining arrest records. When an arrest record is needed, to complete required information regarding a conviction, or to document that there were no arrests, or to document that an arrest did not lead to court action, and a state report is available, the state report should be preferred over a clearance from a local police department¹.

Court disposition information should be documented by properly authenticated documents from the court.

This is not intended to limit the discretion of any officer in requesting documentation that the officer needs to properly assess an applicant's good moral character or adjudicate an individual case. For example, an officer adjudicating a naturalization application is not required to request the court disposition for an 18-year old simple battery when the applicant has an otherwise clean record. However, the officer has discretion to request a disposition for such an offense if the officer decides that he or she needs the information to properly determine the applicant's present good moral character and such information may be necessary to support a denial on discretionary grounds.

¹ The majority of states have laws mandating that crimes be reported to a central state authority. States that currently have a statutory requirement regarding arrest reporting for crime trends and statistics are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Nebraska, Nevada, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Vermont, West Virginia, Wisconsin and Wyoming. This list is found in Appendix D to the Bureau of Justice Statistics' September 1999 report "Bridging Gaps in Police Crime Data." <http://www.ojp.usdoj.gov/bjs/abstract/bgpcd.htm> This list will be updated if more current information becomes available.

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TOPIC V., section D. of the NQP4 memorandum is hereby revised to read:

D. Police Clearances for Unclassifiable Fingerprints

An office may receive a case for which two sets of fingerprints have been rejected by the FBI as unclassifiable, or a case for which fingerprinting was waived because the applicant could not provide any fingerprints due to a permanent disability. For these cases, the officer must request, and the applicant must provide, police clearances for all jurisdictions where the applicant resided for the relevant statutory period prior to adjudicating the N-400. This does **not** apply to applicants who were 75 years of age or older (waived) on the date of filing the application. The majority of states have laws mandating that crimes be reported to a central state authority. When a state report is available, the state report should be preferred over a report from a local police department.

The restrictions on the use of CALDOJ rap sheets in the Los Angeles District in the "NQP Amendment Concerning California Department of Justice Criminal History Printouts" Policy Memorandum of May 17, 1999 are removed.

The NQP guidance stated above must be used for the adjudication of all currently pending N-400s being processed under either NQP3 or NQP4. The "statutory period" discussed in "**B. Dispositions of Arrests**" does **not** apply to other applications and petitions which follow the policy regarding fingerprint integrity found in NQP (e.g., Forms I-485, I-589, I-590, I-600, I-600A, I-687, I-700, I-817 and I-881).