



My client's criminal case was dismissed. What should I know before filing an affirmative application?

Attorneys frequently ask IDP for advice about clients who have reported an arrest, ticket, or citation that was dismissed. Once you have a disposition showing that a criminal case was dismissed, what do you need to know?

- 1. In general, a dismissed criminal case will not trigger grounds of removability and should not be the basis for a finding that your client lacks good moral character necessary for naturalization.**

The United States Supreme Court has held that “[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense.” Schwartz v. Bd. Of Bar Examiners, 353 U.S. 232, 241 (1957).

If your client was arrested and his or her case was dismissed, it is likely that the case did not result in a disposition that triggers one of the criminal grounds of removal. Most grounds of removal under INA § 237(a)(2) (criminal grounds of deportability) and INA § 212(a)(2) (criminal grounds of inadmissibility) require a conviction. Some grounds of inadmissibility can be triggered by a legal admission but generally if conduct was examined by a criminal court, the court's disposition stands¹.

- 2. Ask your client enough about the court proceedings to ensure that the case will be considered dismissed for immigration purposes.**

The exception to this general rule is for clients who initially plea guilty but the court vacates the plea due to rehabilitation. Many courts have adopted procedures that recognize rehabilitation by reducing, dismissing, or expunging convictions after an individual completes a program or after some time passes. While these efforts have tremendous benefits to clients, they may not be effective remedies for immigrants worried about criminal grounds of removability².

¹ See, Matter of Winter, 12 I&N Dec. 638 (BIA 1968), Matter of C-Y-C-, 31 I&N Dec. 623 (BIA 1950).

² Matter of Roldan, 22 I&N Dec. 512, 528 (BIA 1999) (“State rehabilitative actions which do not vacate a conviction on the merits or on any ground related to the violation of a statutory or constitutional right in



It is important to get details from your client about their criminal court case in addition to examining the certificate of disposition. IDP has published a guide to [best practices for determining your client's criminal history](#) that is designed to help you discover contacts that resulted in a rehabilitative vacatur. If you're unsure about whether your client's contact resulted in a conviction for immigration purposes, IDP may be able to advise you after you get the court file.

3. Take special consideration if your client:

- **was initially charged with sale of marijuana or a controlled substance;**
- **has an extensive history of dismissed marijuana or controlled substance charges; or**
- **the case involves an alleged violation of an order of protection.**

While almost all grounds of removal require a conviction, not all do. Individuals can trigger grounds of removal if the government has “reason to believe” they are a drug trafficker³, they are a “drug abuser or addict” under the law⁴, or there is a determination by a court that they violated an order of protection.⁵ If your client's dismissed case(s) involves one of these three grounds, you may need to do additional investigation regarding your client's risk.

4. You must disclose all arrests, even if the case was ultimately dismissed, and you should prepare your client to answer questions about the case(s).

Your client is required to disclose all arrests and may be questioned about them in an interview or court examination. While preparing for any interview or court examination, go over your client's full criminal history with him or her. Make sure that your client understands the result of the court process(es) and can testify truthfully and accurately about the disposition. Practice answering general questions, such as, “Tell me about your arrests.”

the underlying criminal proceeding are of no effect in determining whether an alien is considered convicted for immigration purposes.”)

³ INA § 212(a)(2)(C)(i) (“Any alien who...the [Department of Homeland Security] knows or has reason to believe is or has been an illicit trafficker in any controlled substance...is inadmissible.”)

⁴ INA § 212(a)(1)(A)(iv) (“Any alien...who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict is inadmissible”); INA § 237(a)(2)(B)(ii) (“Any alien who is, or at anytime after admission has been, a drug abuser or addict is deportable.”)

⁵ INA § 237(a)(2)(E)(ii) is triggered by a court determination of a violation of an order of protection.



5. What do I need to submit regarding my client's dismissed case(s)?

Generally, the best evidence that a case was dismissed is a court disposition or a letter showing the prosecutor declined to prosecute your client. These documents clearly answer the question of what was the final result of your client's arrest. Police reports and other documents in the record will provide unproven allegations and do not address the final outcome of the court proceedings. If after you submit the disposition there are further questions regarding your client's arrest(s), consult with IDP about how best to respond while preserving your client's right to have the final outcome of the criminal case be respected by federal adjudicators.

Example: dismissed criminal court case disposition

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

CERTIFICATE OF DISPOSITION
NUMBER: [REDACTED]

THE PEOPLE OF THE STATE OF NEW YORK
VS

[REDACTED]
Defendant

[REDACTED]
Date of Birth

[REDACTED]
Address

[REDACTED]
NYSID Number

BRONX NY
City State Zip

03/20/2014
Date of Arrest/Issue

Docket Number: [REDACTED]

Summons No:

PL 120.00 01 AM, PL 265.01 02 AM, PL 240.26 01 V, AC 10-133 0B V,
Arraignment Charges

Case Disposition Information:

Date Court Action
05/01/2014 DISMISSED AND SEALED

Judge
BUSCHING, L

Part
AP4

DISMISSED AND SEALED

DISMISSED AND SEALED

NO FEE CERTIFICATION

GOVERNMENT AGENCY COUNSEL ASSIGNED
 NO RECORD OF ATTORNEY READILY AVAILABLE. DEFENDANT STATES COUNSEL WAS ASSIGN
SOURCE ACCUSATORY INSTRUMENT DOCKET BOOK/CRIMS CRC3030 [CRS963]

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN
THIS COURT.

ROLLOCK, S
COURT OFFICIAL SIGNATURE AND SEAL

04/23/2018
DATE

FEE: NONE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT
SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

Example: dismissed supreme court
case disposition

BRONX COUNTY
265 EAST 161 STREET
BRONX, NY 10451

CERTIFICATE OF DISPOSITION DISMISSAL

DATE: 04/26/2018

CERTIFICATE OF DISPOSITION NUMBER: 108902

PEOPLE OF THE STATE OF NEW YORK
VS.

CASE NUMBER: [REDACTED]
LOWER COURT NUMBER(S): [REDACTED]
DATE OF ARREST: 08/21/2014
ARREST #: [REDACTED]
DATE OF BIRTH: [REDACTED]
DATE FILED: 09/12/2014

[REDACTED]
DEFENDANT

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 04/23/2018 THE ABOVE ACTION WAS DISMISSED AND ALL PENDING CRIMINAL CHARGES RELATED TO THIS ACTION WERE ALSO DISMISSED BY THE HONORABLE FABRIZIO, R THEN A JUDGE OF THIS COURT.

THE DEFENDANT WAS DISCHARGED FROM THE JURISDICTION OF THE COURT.

THE ABOVE MENTIONED DISMISSAL IS A TERMINATION OF THE CRIMINAL ACTION IN FAVOR OF THE ACCUSED AND PURSUANT TO SECTION 160.60 OF THE CRIMINAL PROCEDURE LAW "THE ARREST AND PROSECUTION SHALL BE DEEMED A NULLITY AND THE ACCUSED SHALL BE RESTORED, IN CONTEMPLATION OF LAW, TO THE STATUS OCCUPIED BEFORE THE ARREST AND PROSECUTION".

PURSUANT TO SECTION 160.50(1C) OF THE CRIMINAL PROCEDURE LAW, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THIS CASE ARE SEALED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 04/26/2018.


COURT CLERK



NASSAU DISTRICT COURT

99 Main Street, Hempstead, NY 11550

Phone: (516) 493-4200

FEE
Non-Public
Version

The People of the State of New York
vs.

Certificate of Disposition

Docket Number: [REDACTED]

Legacy Docket Number: [REDACTED]

Defendant DOB: [REDACTED]

Arrest Date: 10/12/2008

Arraignment Date: 10/13/2008

THIS IS TO CERTIFY that the undersigned has examined the files of the Nassau District Court concerning the above entitled matter and finds the following:

Count	Arraignment Charge	Charge Weight	Disposition	Disposition Date
1	PL 120.00 03 AM Aslt W/Crm Neg Caus Inj W/Weap **SEALED 160.50**	AM	ACD (03/17/09) dismiss and seal on 03/16/10	03/17/2009

Dated: February 9, 2018

MICHAEL BEGANSKAS

Chief Clerk/Clerk of the Court

CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT SEAL

It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. [Executive Law § 296 (16)]

Arraignment charges may not be the same as the original arrest charges.
 CPL 160.50: All official records (excluding published court decisions or opinions or records and briefs on appeal) related to the arrest or prosecution on file with the Division of Criminal Justice Services, any court, police agency or prosecutor's office shall not be available to any person or public or private agency.