



COMMUNITY FAQ

August 23, 2024

FAQ: Eligibility for the “Keeping Families Together” Parole-In-Place Process If You or Your Family Member Has Had Contact with the Criminal Legal System

On June 17, 2024, the Biden administration announced a “Keeping Families Together” parole-in-place process (KFT parole). KFT parole allows certain undocumented spouses and step-children of U.S. citizens to stay and work in the U.S. If granted KFT parole, this opens a path to apply for lawful permanent residency (a green card). Unfortunately, the process places broad restrictions on who can be granted KFT parole, unfairly penalizing immigrants who have had contact with the police and the criminal legal system. **This unjustly leaves out many immigrants and is rooted in racist policing and prosecution practices which should not be used to tear families apart.** This resource is meant to help immigrants understand how their contact with the criminal legal system can affect their ability to get KFT parole.

What is the “Keeping Families Together” parole-in-place (KFT parole) process?

The Department of Homeland Security laid out a process for certain undocumented spouses and step-children of U.S. citizens who entered the U.S. without permission from an immigration officer (also called an “admission” or “parole”), to stay and work in the U.S. for up to 3 years upon receiving KFT parole. If granted KFT parole, they may be able to start the process of applying for a green card while in the U.S. United States Immigration and Citizenship Services (USCIS) began accepting applications on August 19, 2024. More eligibility requirements below.

If you or a family member may qualify for KFT parole but have ever been arrested by the police or had a case in criminal court, you may be ineligible for KFT parole.

Speak with an immigration attorney, especially one who has experience with reviewing criminal documents, for an individual analysis before submitting an application.



Who is eligible for KFT parole?

An undocumented spouse of a U.S. citizen is eligible if you:

- Entered the U.S. without permission from an immigration officer (without “admission” or “parole”);
- Were married to a U.S. citizen as of June 17, 2024, and are still married;
- Have been in the U.S. since at least June 17, 2014 and have remained in the U.S. since that date (some brief absences may be ok);
- **Have “no disqualifying criminal history and otherwise [are] not deemed to be a threat to public safety, national security, or border security.”**

An undocumented step-child of a U.S. citizen is eligible if you:

- Entered the U.S. without permission from an immigration officer (without “admission” or “parole”);
- Have been continuously physically present in the U.S. since at least June 17, 2024, through the date of filing the request;
- Are under age 21 and unmarried or you are the beneficiary of a family petition (I-130) filed when you were under age 21 and you were unmarried as of June 17, 2024;
- Have a parent who legally married a U.S. citizen on or before June 17, 2024, and before your 18th birthday;
- **Have “no disqualifying criminal history and otherwise [are] not deemed to be a threat to public safety, national security, or border security.”**
- *A stepchild does not need their parent to qualify for KFT parole in order to apply.*

Even if you are eligible for KFT parole, USCIS will look at everything they have about you and your case to decide whether to approve your application. More about KFT parole, applications, and benefits can be found on the [USCIS website](#).

What police or criminal system contact could make me ineligible for KFT parole?

KFT parole has complex rules for when an arrest or other contact with the criminal legal system can disqualify a person from getting approved:

Type of contact with the criminal legal system	Eligible for KFT parole?
Dismissed case.	Yes. Arrests or charges that were dismissed without you ever pleading guilty do not make you ineligible for KFT parole.
Conviction for a minor traffic offense that is not a felony.	Yes. You remain eligible for KFT parole if you have a conviction for a minor traffic offense that is not a felony, like driving without a license or driving with an expired license.

<p>Open or pending criminal charges.</p>	<p>No. Any open criminal case will result in USCIS rejecting your application without a refund of the fee. However, once the case is over, you may be eligible for KFT parole, depending on how the case is resolved.</p>
<p>Felony conviction.</p>	<p>No. <u>Any</u> felony conviction automatically makes you ineligible for KFT parole. A felony is a federal, state, or local criminal offense that is punishable by more than one year in prison. Your actual sentence does not matter. <i>Some states call these convictions by other names. For example, in New Jersey, offenses that are “fourth degree” or more serious count as felonies.</i></p>
<p>Conviction for these specific offenses.</p>	<p>No. You are automatically ineligible for KFT parole if you have any of these convictions, even if it is not a felony:</p> <ul style="list-style-type: none"> ● murder, torture, rape, or sexual abuse; ● firearm offenses; ● aggravated assault; domestic violence, stalking, child abuse, child neglect, or child abandonment; ● drug or “controlled substance” offenses (other than simple possession of 30 grams or less of marijuana); ● offenses related to slavery, peonage, involuntary servitude, and human trafficking; ● offenses relating to child pornography, sexual abuse or exploitation of minors, or solicitation of minors. <p><i>It is not always clear from the name of an offense or statute whether it would fit into one of these categories. Speak with an immigration attorney, especially one who has experience reviewing criminal records, to determine how any contact with the criminal legal system could impact your eligibility for KFT parole.</i></p>
<p>Any other conviction.</p>	<p>Maybe. All other convictions, except minor traffic offenses, will create a presumption of ineligibility of KFT parole. This means that USCIS will assume you are not eligible, but will consider other information you share about positive things in your life before making a final decision. <i>More on this below.</i></p>
<p>A conviction that was expunged or vacated through a process like Post-Conviction Relief, a Pardon, or a Withheld Adjudication.</p>	<p>Maybe. Even convictions that no longer exist, like ones that were dismissed, expunged, vacated, pardoned, deferred, annulled, invalidated, withheld, or sealed still create a presumption of ineligibility for purposes of KFT parole, even if they would not otherwise be a bar for an immigration application. This means that USCIS will assume you are not eligible, but will consider other information you share about positive things in your life before making a final decision. <i>More on this below.</i></p>

<p>Juvenile delinquency cases.</p>	<p>Maybe. Juvenile delinquency cases create a presumption of ineligibility for KFT parole even if they would not otherwise be a bar for an immigration application. This means that USCIS will assume you are not eligible, but will consider other information you share about positive things in your life before making a final decision. This likely applies to other types of youth cases, like New York Youthful Offender adjudications. <i>More on this below.</i></p>
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What does a “presumption of ineligibility” mean?

The KFT parole guidelines mention a “presumption of ineligibility” for different types of contact with the police or criminal legal system. (See the boxes above that say “maybe”) This means that USCIS is planning to deny your application *unless* they get more information from you.

What kind of information should I show to support that USCIS should not deny my KFT parole application based on a “presumption of ineligibility”?

For all KFT parole applications, USCIS will use a case-by-case determination called “totality of the circumstances” to decide whether to grant KFT parole. This is a discretionary decision. USCIS will review what information they have about you. They will look to see if the positive factors in your life outweigh the negative factors, which they consider to be your contact with the criminal legal system.

These are examples of information you might consider submitting to highlight your positive factors and that your arrest or conviction should not be used to deny your application. What to submit depends on your individual situation. KFT parole is a new process. As USCIS looks at applications in the coming weeks and months, we hope to learn more about how they will look at criminal records and what kind of documents or evidence might help or hurt your case.

<p>Examples of what to explain or show about your contact with the criminal legal system.</p>	<ul style="list-style-type: none"> ○ If your arrest or contact with the criminal legal system happened a long time ago. ○ If you were young when you were arrested or had contact with the criminal legal system, especially if you were a juvenile and your case was handled by a juvenile court or had a specific outcome because you were under a certain age. ○ The outcome of any cases, including the sentence and how serious the offense was considered by the court where the case was heard. USCIS has indicated they will consider whether the criminal case was “violent” but there is no definition of this. ○ Any explanation about what was happening in your life around the time you had any contact with the police or
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	<p>criminal legal system, including any physical or mental health barriers that may have been present.</p> <ul style="list-style-type: none"> ○ Any evidence of how your life has changed since an arrest or contact with the criminal legal system. ○ If you have a conviction that was vacated, expunged, pardoned, adjudication withheld: consider showing the court order or grant of expungement or vacatur of your conviction. <p><i>** Speak with an immigration attorney, especially one who has experience reviewing criminal documents, to analyze the risks of submitting documents like arrest records, police reports and other court records about a criminal case. These documents can be unreliable, inaccurate, and in some cases harmful to immigration cases. **</i></p>
<p>Examples of what to show about positive factors (equities and ties to the U.S.).</p>	<ul style="list-style-type: none"> ○ Length of time you have been in the U.S. ○ Family ties in the U.S., including: <ul style="list-style-type: none"> ■ any family members who are U.S. citizens or have green cards ■ if you are a primary caregiver for a U.S. citizen child, elderly parent or in-law ■ if you are a primary caregiver for anyone with disabilities ■ if you or your U.S. citizen spouse are current or former members of the U.S. military. ○ Any physical or mental health treatment care or needs you have and/or receive in the U.S. ○ Community ties, including: <ul style="list-style-type: none"> ■ any community or religious groups you belong to ■ ownership of any businesses or properties ■ anything else showing your engagement in your community. ○ Education history ○ If you have been a victim of or witness to criminal activity, including domestic violence, or civil rights violation or labor rights violation under investigation by a labor agency, particularly if related to the criminal conduct at issue.



What does USCIS consider a “threat” to public safety, national security, or border security?

For KFT parole, USCIS has broad discretion to decide who they believe is a “threat” to public safety, national security, or border security.

Some factors that USCIS has stated they will consider include: reviewing your criminal history, “participation in activities that threaten the U.S.,” a recent arrest while entering the U.S. without authorization, or an arrest after entry into the U.S. without authorization after November 1, 2020, with an exception for stepchildren who otherwise are eligible for KFT parole.

Can I apply for this program if I am currently in removal proceedings?

Yes. If you are currently in removal proceedings, do not have a final order of removal, and meet the requirements for KFT parole, you are eligible to apply.

Can I apply for this program if I have a prior removal order?

If you have an unexecuted order of removal (meaning you have not departed the U.S.), you are still eligible for KFT parole but USCIS will apply a **presumption of ineligibility**. This means USCIS will assume you are not eligible unless you share about positive things in your life including explaining any circumstances behind the removal order. *Speak with a trusted immigration attorney about risks of applying for KFT parole before applying if you have an unexecuted order of removal.*

If you have an order of removal and have been deported, you are not eligible for KFT parole even if you have physically returned to the U.S. without permission.

If I submit an application for KFT parole and it is denied, is there a risk that ICE will arrest me or begin removal proceedings against me?

Once they receive the KFT parole application, USCIS will take your fingerprints and biometrics to conduct background checks, which includes reviewing your criminal and immigration history, including any previous removal orders.

USCIS will request more information or may ultimately deny a KFT parole application if they believe you do not meet the qualifications. USCIS and ICE have the discretion to decide whether to start removal proceedings against you based on their internal priorities. They could decide to do this even if your criminal history is not a bar to KFT parole. *Speak with a trusted immigration attorney before submitting a KFT parole application to determine if you are eligible and whether there are risks in submitting an application.*



What documents are needed to review to determine if I could be eligible for KFT parole?

To determine whether your contact with the criminal legal system could be a disqualification from KFT parole, a trusted immigration attorney will need to review documents to provide individual analysis on your KFT parole eligibility. They will need to see documents relating to:

<p>Any contact with the criminal legal system, including all arrests, dismissed cases, or criminal convictions.</p>	<ul style="list-style-type: none"> ● Get Certificates of Disposition for every time you've been arrested or had to go to criminal court. ● For arrests in New York City, request Certificates of Disposition at the court where you appeared. ● For arrests outside of New York City, contact the court directly or work with an attorney to request a copy of the court judgment or disposition. ● Your previous criminal defense attorney(s) may also help you in locating case documents. If you had an assigned attorney in New York City but don't know how to find them, contact the public defense offices (English / Spanish). ● Work with an attorney to get a RAP sheet (criminal history sheet) if you aren't sure of your arrest or criminal history.
<p>Any past contact or applications with Immigration agencies.</p>	<ul style="list-style-type: none"> ● Any contact you had with any immigration agency, including USCIS, Customs and Border Protection (CBP), or Immigration and Customs Enforcement (ICE). ● If you were previously in Immigration Court or ordered deported, you will need to gather documents from your case, like the charging document ("Notice to Appear") and any orders or decisions from the Immigration Judge, Board of Immigration Appeals, or federal Circuit Court of Appeals. ● If you previously were represented by an immigration attorney in any application, they may have copies of these documents. ● If you submitted previous immigration applications and you or a previous attorney do not have the documents, you may need to file a Freedom of Information Act (FOIA) request with the Executive Office of Immigration Review (EOIR) or U.S. Citizenship and Immigration Services.

If you think you may qualify for KFT and have had contact with the police or criminal legal system, speak with an immigration attorney, especially one who has experience with reviewing criminal documents, about whether you are eligible and any risks before submitting an application.