

## **SPECIAL REQUIREMENTS FOR NONCITIZENS**

Expunged convictions are NOT expunged for immigration purposes. **A noncitizen, including a green card holder, may be deported for an expunged conviction.**

Noncitizens, including green card holders, may have to prove the disposition of all cases and the outcome of all charges. Presenting a certified copy of the case is necessary to prove the charges and case disposition for immigration applications such as citizenship.

BEFORE moving to expunge, you should take THESE STEPS:

- Obtain from the court clerk's office and safeguard five (5) certified copies of everything in the clerk's file, including charging documents and disposition;
- Keep the certified copies in several safe locations;
- Give a certified copy of the case to your attorney or family member.

## **It is Safest Not to Expunge**

If you are a noncitizen, take time to really consider whether it is worth it to expunge your criminal records. Even if your case is expunged, you still will have to prove what the charges were and the outcome of the expunged case for immigration applications such as citizenship.

**It is safest to not expunge** so the court will keep the records. Then, you can go to the court and ask for a certified copy of the records whenever you need them.

You might want to expunge to help find a job or for other reasons. **If you are a noncitizen and you decide to expunge your records, you SHOULD get FIVE (5) certified copies of all records from the court clerk's office before you file to expunge.** Keep these certified copies in various safe places.

*Bring this brochure with you when you visit an attorney.*

Prepared by the Maryland Office of the Public Defender and the University of Maryland Carey School of Law Immigration Clinic. Updated October 2017.

# **Expungement Information for Noncitizens Including Green Card Holders**

**Noncitizens, including green card holders, can be deported for expunged convictions.**

**Expungement can make immigration matters more difficult.**

**Noncitizens should get five certified copies of all records before expunging.**

## Immigration Consequences of Criminal Convictions

A criminal conviction, even for a misdemeanor, can result in drastic consequences. Any noncitizen, including someone with a green card (lawful permanent resident status), might be deported from the United States for conviction of a crime. Crimes that might lead to deportation, depending on the person's status, include:

- A drug offense (including marijuana)
- Theft (including petty theft)
- DUI or DWI
- Assault & domestic violence
- Violent crime
- Firearms offense
- Violation of protection order
- Destruction of property
- Sexual offense, and many more

For immigration, "conviction" is defined broadly. It includes any finding or admission of guilt combined with a restraint on a defendant's liberty, such as:

- Probation before judgment (PBJ)
- Guilty and *nolo contendere* pleas
- Guilty verdicts
- Pleas of not criminally responsible
- Suspended sentences
- Supervised and unsupervised probation

## THE PROBLEM WITH EXPUNGEMENT

***Even if the charge or conviction is expunged, you may have to prove you are not deportable or are eligible for immigration applications such as citizenship.***

Noncitizens may need to prove to federal immigration authorities or to an immigration judge the disposition of all criminal charges to defend against deportation or apply for citizenship.

**When a case is expunged, the records are destroyed. No one will be able to prove what the charges were or how the case turned out and you could face drastic consequences.**

The federal immigration authorities have access to FBI records (RAP sheet) and the NCIC database. When a noncitizen applies for an immigration benefit, such as applying to become a green card holder (legal permanent resident), renewing a green card, or applying for U.S. citizenship, the **federal immigration authorities will know that the individual was charged even if the case was dropped and has been expunged.** A noncitizen also may be flagged by U.S. border officials when coming back into the U.S. after a trip to another country.

## A Possible Option: Vacating a Conviction After Padilla

In *Padilla vs. Kentucky*, 130 S. Ct. 1473, 1486 (2010), the Supreme Court decided that a criminal defendant's constitutional right to effective assistance of a lawyer includes the right for a noncitizen to be advised of immigration consequences.

If a noncitizen's criminal defense attorney failed to advise them of serious immigration consequences, the noncitizen may be able to challenge and vacate the conviction (including a PBJ) through a *coram nobis* petition.

**Expunged cases, however, cannot be the subject of a *coram nobis* petition.** If you may want to seek a *coram nobis* in the future because your lawyer did not tell you about immigration consequences, you should not expunge your conviction.

However, if you consider a *coram nobis*, keep in mind that even if the conviction is vacated, the prosecutor can file the same charges again. Contact a criminal defense attorney and an immigration attorney to determine the best course of action.