

**SPECIAL REQUIREMENTS FOR  
NONCITIZENS**

Expunged convictions are NOT necessarily 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 arrests. Presenting a certified copy of the case is necessary to prove the case disposition for immigration applications such as citizenship.

If a noncitizen decides to expunge despite these warnings, these extra steps MUST be taken:

- Obtain from the court clerk's office and safeguard five (5) certified copies of the disposition prior to expungement
- Keep the certified copies in various 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. If your case is expunged, it will be your responsibility to prove the outcome of the expunged case for Immigration.

**It is safest to not expunge** because then the court will maintain records. Then, you can go to the court and ask for a copy of the record whenever you need it.

You may want to expunge to help find a job or for other reasons. **If you are a noncitizen and you decide to expunge your record, you MUST get FIVE (5) certified copies of all cases before you expunge.** Keep these certified copies in various safe locations.

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

Prepared by the University of Maryland Carey School of Law Immigration Clinic and the Maryland Office of the Public Defender in April 2013. Updated July 2014.

**WERE YOU BORN OUTSIDE THE U.S.?**

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

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

If you are a noncitizen, you may be deported for having a criminal conviction, even if it is expunged.

Expungement can also make immigration matters more difficult.

## Immigration Consequences of Criminal Convictions

Many criminal convictions, even for misdemeanors, can result in drastic consequences for noncitizens. Any noncitizen, including someone with a green card (lawful permanent resident status), may be deported from the United States for committing a crime. Crimes that may lead to deportation include:

- A drug offense (including possession of marijuana/paraphernalia)
- Theft (including petty theft)
- DUI
- Assault & domestic violence
- Violent crime
- Firearms offense
- Stalking
- Destruction of property
- Sexual offense, and many more

For immigration, a conviction is broadly defined. 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
- Suspended and unsuspended probation

## THE PROBLEM WITH EXPUNGEMENT

*Even with an expungement, you remain deportable or ineligible for certain immigration benefits.*

Noncitizens may need to prove to federal immigration authorities or to an Immigration Judge the disposition of all criminal cases to defend a deportation case or apply for citizenship. **When a case is expunged, the records are destroyed. No one will then be unable to prove how the case turned out and could face drastic consequences.**

The federal immigration authorities have access to FBI Identification Records (RAP sheet). 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 arrested even if the case has been expunged. A noncitizen may also be flagged by U.S. customs officials when coming back into the U.S. after a trip to another country.

## A Possible Option: Collaterally Attacking 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 counsel 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.** It is important to remember that if you may seek a *coram nobis* in the future, you should not expunge your convictions.

If you do seek a *coram nobis*, keep in mind that it is a risk because even if the conviction is vacated, the State may re-try you. Contact a criminal defense attorney and an immigration attorney to determine the best course of action.