



Immigration Consequences of Expungement

Expunging Maryland criminal records can be dangerous for noncitizens!

What is expungement and why is it dangerous for noncitizens?

To “expunge” a record in Maryland means to remove it from public inspection. The federal government, however, may retain access to your records, so it does not fully disappear. ***Expungement does not undo the conviction for immigration purposes, and federal immigration authorities will generally still be able to see that you were charged with a crime.***

This can create a problem because in Maryland, expunged case records are often literally destroyed. So, immigration authorities may know you have been charged with a crime, and they will expect YOU to be able to provide the documents that prove what happened in court – for example, if the case was dismissed, or you pled to a less serious charge – but the documents will no longer be available. ***If you cannot provide certified copies of the case documents, the law often allows immigration authorities to assume the worst about how the case ended.*** This means that ***expungement can actually make your record look worse than it really is in the eyes of immigration officials.***

If you ever need to submit an immigration application, defend yourself from deportation in immigration court, or if you are flagged by border officials when returning to the U.S. after a trip abroad, you will need certified copies of the case documents, and you won’t be able to get them if the case has been expunged. It is very important that you protect yourself by getting several certified copies of the entire case file before you ask to expunge your case and before it is automatically expunged under Maryland law.

What is automatic expungement and what should I do to protect myself?

If your case resolved on or after October 1, 2021, and all charges were entered *nolle prosequi* (dropped by the prosecutor); dismissed by the judge; or you were found not guilty/acquitted of all charges, your case will automatically be expunged 3 years after the day the case resolved. ***You must obtain certified copies of your court documents within 3 years of the resolution of your case, or they will no longer be available.*** Instructions on how to get certified copies are below.

If you made an agreement to place your case on the *stet* or inactive docket, it is important to understand whether it will be entered *nolle prosequi* at some point (for example, after you complete the required community service, or pay restitution), or whether it will simply remain on the *stet* docket for three years. If the case is entered *nolle prosequi*, then it will be automatically expunged three years after that happens, and you must take care to get certified copies in time. Ask your attorney if you are not sure, or simply get the certified copies just to be safe.

It is *critical* for noncitizens to keep certified copies of all important case records!

Regardless of how your case was resolved, what crime you were charged with, or your immigration status, **you should request certified copies** of your records. Doing so will ensure that should you ever need to provide proof of the charges and disposition of your case, you will be able to do so. **It is best to get certified copies of your records within 3 years, regardless of whether or not your case will be automatically expunged.**

These documents will be very important if you ever need to submit an immigration application, defend yourself from deportation in immigration court, or if you are flagged by border officials when returning to the U.S. after a trip abroad. Expungement will not prevent any of these things from happening, and you will not be able to access the documents you need unless you have kept your own certified copies.

How do I get Certified Copies?

To obtain copies of your court records, you must go in person to the criminal clerk’s office at the courthouse where your case was heard, and **request three to five certified copies of the entire case file.**

Before you go, locate your case paperwork or find your case on [Maryland Judiciary Case Search](#). Note the case number and the exact way in which your name is spelled in the case record – you can use the spaces below. Also take note of whether the case was in the Circuit Court or the District Court, so you can make sure to go to the correct Clerk’s Office (if your case began in District Court but ended up in Circuit Court, you should start at the Circuit Court Clerk’s Office but you may need to go to both). Call the Clerk’s Office ahead of your visit to confirm that the documents you need to copy are available. A directory of the state’s courthouses can be found by scanning the adjacent QR code.



DISTRICT / CIRCUIT (circle one) CLERK’S OFFICE LOCATED AT: _____

CASE NUMBER: _____ *CASE NAME:* _____

There is a fee for certified copies – \$0.50 per page plus \$5.00 for the clerk’s certification. If you were represented by the Maryland Office of the Public Defender (“MOPD”) and you cannot afford the fee, talk to your attorney; in some cases they can make the request for you.

For older matters, your records may be held at the Maryland State Archive. To request your records from the archive, fill out the form found by scanning the adjacent QR code, and follow the instructions to submit it. The fee for a full file is \$50 and \$35 for part of a file.



Once you have these copies, keep them in separate, safe locations. If you were represented by the MOPD, you can ask our staff to scan and upload copies of the most important documents to your file. If you have an immigration lawyer, you should give them a copy.

Is expungement ever good for a noncitizen?

Having a clean criminal record is helpful when applying for housing, employment, loans etc., so expungement may have benefits in other areas of your life, even though it can create risks in the immigration context. You will have to weigh these benefits against the immigration risk. There are also a few situations in which expungement might actually be helpful to your immigration situation (although there will still be trade-offs):

- 1) **If you have DACA and you were convicted of a disqualifying crime or crimes.** Many criminal convictions automatically disqualify you from receiving or renewing DACA. If your conviction is expunged, it will *not* automatically disqualify you from DACA, though it is still *essential* that you keep certified copies of all documents. Note that if you have DACA but were not *convicted*, or if you were convicted of something that does not disqualify you from DACA, expungement might not be as helpful to you. If you have DACA and were convicted of a crime, you should talk to an immigration attorney if at all possible.
- 2) **If you are undocumented or otherwise deportable, and you are not currently in removal proceedings and have no plan to request any immigration status.** Under current DHS policy (as of June 2024), expunging a case *may* make it less likely that ICE will prioritize you for deportation based on that case. However, expungement is no guarantee of safety! This policy could change without warning in the future, particularly under a new presidential administration. Even under the current policy, expungement is only one of many factors that ICE considers. While expungement *might* make ICE less likely to prioritize you for removal, it can also make it harder to defend yourself if you *are* placed in removal proceedings, especially if you have not kept certified copies of the case file.
- 3) **If you have consulted with an immigration lawyer and come up with an individualized plan.**

A better alternative? Consider a *coram nobis* petition

A *coram nobis* petition is a request to vacate a conviction because of a legal error. Although a *coram nobis* can be based on many different kinds of legal defects, noncitizens often pursue *coram nobis* relief when their lawyers did not advise them about the immigration consequences of their plea. Because a *coram nobis* can actually undo the conviction, rather than just hiding it, ***coram nobis* petitions can remove a conviction from your record for immigration purposes; expungement cannot.**

You likely cannot file a *coram nobis* if your case has been expunged, so if you want to seek a *coram nobis*, do not expunge your conviction. You are not entitled to a free lawyer to help with a *coram nobis* petition, but if you cannot afford a lawyer, the Office of the Public Defender can sometimes help. To request representation, send a detailed letter including your name, case number, the problem that you think existed in your case, and the type of immigration consequences you are facing now, to 217 E. Redwood Street, Suite 1020, Baltimore, MD 21202.

When is expungement voluntary?

If your case did *not* end in a way that makes it subject to automatic expungement, or if it is subject to automatic expungement but the three years have not yet elapsed, you may still be eligible to *request* expungement voluntarily, if you want to. Whether and when you can request expungement depends on exactly how the case ended.

If your case was placed on the stet docket (and has not been entered *nolle prosequi*), you may request expungement 3 years from the date it was placed on the stet docket. If you received a Probation Before Judgment (“**PBJ**”) or entered a **PBJ(c) agreement**, you may request expungement 3 years from the date of the PBJ/PBJ(c), or when you successfully complete probation, whichever is later. If you were **convicted** of some or all of the charges, you *might* be allowed to request expungement after 5, 7, 10, or 15 years. To see if your convictions are eligible for expungement, talk to an attorney or read more by scanning the QR code:



Should I request voluntary expungement?

Do you have several certified copies of all the case documents? If not, you should not request expungement! Even if you get certified copies, it may still be best not to expunge. You should consult with an immigration attorney before expunging if at all possible. Here are some questions to think about when deciding whether to request expungement:

- *What benefit would I get from expungement?* If you do not have a strong reason to expunge immediately, consider waiting.
- *Am I certain that I can keep certified copies of the case file safe forever?* If you expunge, you will not be able to replace these documents if your copies are lost. If you have any doubts about your ability to keep track of these copies and keep them safe indefinitely, it is likely safest not to expunge.
- *Do I ever hope to change my immigration status?* If you do, you will almost certainly need access to the case records, so expungement is a significant risk.
- *Could I pursue coram nobis relief?* If so, do not expunge.
- *Do I plan to travel outside the US?* If so, you will need certified copies of the case documents in case you are flagged at the border. It is risky to expunge because if the copies you have were lost you could never get new ones.
- *Would I contest my removal if ICE tried to deport me?* If you already know that you are not going to try to obtain status and would not contest your removal if the government tried to deport you, then expungement might not be as risky for you. If you change your mind in the future, however, the records will likely already be gone.