



FRIENDS OF FARMWORKERS

EXPUNGING CRIMINAL RECORDS FOR NON-CITIZENS IN PENNSYLVANIA

Sealing or expunging a conviction does NOT remove the conviction from an individual's record for immigration purposes: The Immigration and Nationality Act (INA) includes a specific definition of conviction: a formal admission or adjudication of guilt, combined with some restraint on the defendant's liberty. A state expungement does not remove the existence of those two elements.

SEALING OR EXPUNGING A CONVICTION CAN, IN FACT, MAKE THE IMMIGRATION PROCESS MORE DIFFICULT FOR APPLICANTS

- When seeking an immigration benefit, individuals are required to submit documentation of any and all prior arrests, charges, and convictions. Generally, an immigration adjudicator will require a certified copy of a criminal disposition to prove its outcome.
- If an applicant's criminal record is sealed or expunged, it is virtually impossible to retrieve this necessary documentation.
- Sealing or expunging records effectively destroys proof that individuals need to show immigration judges, U.S. Citizenship and Immigration Service (USCIS) officials, and consular officers.

What this means: Do NOT assist a non-citizen client with sealing or expunging his or her criminal record without first consulting an immigration attorney. Be sure to warn clients of the fact that there may still be immigration consequences as a result of their original conviction(s).

SOME CRIMINAL CONDUCT OR ARRESTS WITHOUT A CONVICTION CAN LEAD TO IMMIGRATION CONSEQUENCES

- In certain types of cases, individuals are also required to provide documentation of all arrests, in order for an immigration judge or USCIS officer to determine whether the applicant has been a "person of good moral character," or has not been convicted of a certain category of offense.
- Admission of past criminal behavior—whether or not they were arrested, charged, or convicted—can also affect an individual's ability to receive various types of immigration benefits, including bond.
- Generally speaking, individuals in deportation proceedings, or seeking an immigration benefit, must explain all contact with law enforcement and/or past criminal activity, even if it did not lead to a conviction.

What this means: Be aware that your client's arrest, alone, may implicate immigration consequences.

CRIMINAL CHARGES OR CONVICTIONS CAN AFFECT ANY INDIVIDUAL WHO IS NOT A U.S. CITIZEN

- Both undocumented individuals and individuals with legal status can be deported as the result of a criminal charge or conviction, including lawful permanent residents (green card holders), spouses of citizens, and individuals with U.S. citizen children.

What this means: If your client is documented but has not yet become a citizen, certain criminal convictions can have dire consequences. Deportation does NOT affect only undocumented individuals.

SEVERAL TYPES OF CRIMINAL CONVICTION MAY TRIGGER REMOVAL PROCEEDINGS FOR NONCITIZENS

- The immigration system uses several terms of art to describe criminal convictions that may have dire consequences for non-citizens. These terms of art do *not* correspond to their common meanings in the criminal justice system.
- Relatively minor state misdemeanors can have grossly disproportionate immigration consequences.
- Some immigration consequences of criminal convictions depend on the type and length of sentence imposed, others do not. Sometimes the timing of a criminal act that results in a conviction is crucial, other times it is not.

What this means: Consult an immigration expert if your client is charged with, or has been convicted of, any crime.

PENNSYLVANIA'S ACCELERATED REHABILITATIVE DISPOSITION (ARD) STATUTE

- There is no immigration statute, regulation, or agency-wide guidance to clarify how Immigration and Customs Enforcement (ICE) deals with prosecutions under PA's ARD process.
- When a defendant meets all the requirements of ARD, the process concludes with a judge's order dismissing the charges, and therefore the disposition does not meet the definition of "conviction," described above, under the INA.
- The judge "shall also order the expungement of the defendant's arrest record" upon successful completion of ARD requirements, so non-citizens are advised to keep all personal copies of documents relating to this process.
- *However:* Pursuant to current national enforcement priorities, the ICE Field Office with jurisdiction over Pennsylvania has made it clear that some criminal activity (DUI, DV, and drug charges, e.g.) makes a non-citizen an enforcement priority *even when the charges are dismissed after successful completion of the ARD process.*

What this means: Successful completion of ARD may not shield your client from negative immigration consequences.