



RECENT CALIFORNIA “CLEAN SLATE” INITIATIVES & IMMIGRANTS

How a new automatic expungements law **does not** erase
convictions for immigration purposes

JULY 2023

There is a new law in California that went into effect in 2023 called the **California Clean Slate Act (SB 731)**. Under the Clean Slate Act, authorities will automatically expunge - or dismiss - certain arrests and criminal convictions. The California Department of Justice will be reviewing criminal records state-wide on a monthly basis for those convictions and arrests that will be expunged. When identifying records to be expunged, the government will consider, among other things, whether the person has successfully completed a drug diversion program.

It's important to note that an *expungement* is a dismissal of a conviction or arrest record, but not for all purposes. While expungement provides relief in the California state criminal legal system, it doesn't provide the same relief in the immigration context. The general rule in immigration law is that state expungements are not recognized by immigration authorities as erasing a conviction or arrest. This means that, even though a conviction or arrest may be expunged under California law, it will still be on the record for immigration purposes and could result in deportation or make certain immigrants ineligible for permanent residence (green card) or U.S. citizenship.

CONSULT WITH AN IMMIGRATION ATTORNEY BEFORE FILING

If your criminal arrest or conviction was automatically expunged under the new law, it could still be on your record for immigration purposes. You should consult with a

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trusted immigration attorney before applying for any immigration benefit, seeking any immigration relief, or applying for naturalization. Even if your conviction is “expunged” under the new law, you must disclose the prior conviction if you are trying to obtain an immigration benefit or relief from deportation. Failure to do so can result in denial of your application.

To find a trusted immigration legal services provider in your area, you can access the National Immigration Legal Services Directory from the *Immigration Advocates Network* here: ilrc.me/gethelp.

WHAT STEPS TO TAKE IF YOUR CONVICTION IS EXPUNGED

- 1.** Obtain a full copy of the criminal case that was expunged including court records and police records. You may be asked by immigration authorities to present evidence about the expunged convictions. If so, it will be helpful to have records of the expunged convictions.
- 2.** If you need your criminal conviction erased for immigration purposes to prevent a deportation or to apply for status, you can still file a “vacatur for cause” on the expunged case. A “vacatur for cause” will be recognized as eliminating the prior conviction for immigration purposes. Consult with an attorney to find out if there was a defect in your criminal proceedings. **Examples of defects in the criminal proceedings could include the following:**
 - Your lawyer did not advise you of the immigration consequences of the plea or participation in a diversion program.
 - The court failed to advise you at the time of the plea that the conviction could have immigration consequences that could lead to deportation, inadmissibility, or denial of naturalization.
 - You failed to understand the immigration consequences of a plea for another reason such as an interpreter was not provided to you.

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HOW AN EXPUNGEMENT CAN AFFECT YOUR CASE

- 1.** Deferred Action for Childhood Arrivals (DACA) has strict limitations if you've been convicted of certain crimes. However, in certain circumstances an expungement will allow U.S. Citizenship & Immigration Services (USCIS) to consider renewing or granting DACA, even where the applicant has an otherwise disqualifying conviction.

For example: If you had DACA and you had a prior conviction for a misdemeanor Driving Under the Influence (DUI) which caused you to lose your DACA status, an expungement under the California law will count as having that conviction removed or taken away for DACA purposes and you might be able to get a new DACA issued.

- 2.** If you have a relatively minor drug offense arrest or conviction not related to sales or distribution, such as for a simple possession of controlled substance, that occurred prior to July 14, 2011, the expungement may be recognized for immigration purposes.

KEY TAKEAWAYS

- 1.** If your conviction or arrest was expunged under the new law, **DO NOT apply for any immigration benefit without consulting an immigration attorney first.** Applying for a benefit where criminal history is an issue could result in detention or deportation even if your conviction has been expunged by the State of California.
- 2. If detained by ICE, do not answer any questions about a prior arrest or conviction.** Ask to speak to an attorney. If filling out an application for an immigration benefit, consult with an attorney before answering any questions about a prior arrest or conviction.
- 3.** Before applying for any benefit, **request all records of the expunged conviction**



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from the court or your previous attorney.

4. Consult with an attorney to see if you qualify to erase your conviction for immigration purposes through a **“vacatur for cause.”**

Are you a California Community College (CCC) or a California State University (CSU) student? If so, you qualify for **FREE** immigration legal services!

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