WASHINGTON DEFENDER ASSOCIATION

PRACTICE ADVISORY[1] | **August 2026** | Immigration Project

QUICK GUIDE TO "10-YEAR CANCELLATION OF REMOVAL" FOR UNDOCUMENTED NONCITIZENS, 8 USC § 1229b(b)[2]

This advisory is intended to serve as a quick-reference guide for defenders representing noncitizens and is not a substitute for individualized analysis. Consult with the WDA Immigration Project for case-specific assistance.

SUMMARY

Cancellation of removal for certain nonpermanent residents (10-year cancellation) is a discretionary form of relief available to qualifying undocumented noncitizens in removal (deportation) proceedings. This relief is available only in immigration court, as a defense to deportation. If granted, the noncitizen becomes a lawful permanent resident. Ten-year cancellation is hard to win, and grants are statutorily capped at 4000 per year.[3]

Note: cancellation of removal may be granted to someone only once.

ELIGIBILITY & BARS

To be eligible for 10-year cancellation, an applicant must demonstrate[4]:

- **Ten years of continuous physical presence in the U.S.** The commission of certain offenses will "stop the clock" on accrual of this time,[5] as will issuance of a compliant Notice to Appear (NTA),[6] or a prior removal or voluntary departure.[7]
- **Qualifying relative(s) who will face hardship.** The relative must be the applicant's LPR or USC spouse, parent, or child (who is under 21 at the time the immigration judge *adjudicates* the application), who would suffer "exceptional and extremely unusual hardship" if the applicant were deported.[8]

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[1] This advisory cannot replace individualized advice. Defenders are urged to submit an intake to WDA's Immigration Project at: http://www.defensenet.org/immigration-project/case-assistance.

[2] For related relief see ILRC, *Eligibility for Relief: Waivers Under INA § 212(h)*, https://www.ilrc.org/resources/eligibility-relief-waivers-under-ina-%C2%A7-212h; for *LPR* cancellation, see WDAIP, *Quick Guide to Cancellation of Removal for Lawful Permanent Residents*, https://defensenet.org/resources/cancellation-of-removal-for-lawful-permanent-residents/.

[3] 8 USC § 1229b(e)(1); 8 CFR § 240.21(c).

[4] 8 USC § 1229b(b)(1); INA § 240A(b)(1).

[5] 8 USC § 1229b(d)(1)(B) (continuous presence ends upon commission of "an offense referred to in section [8 USC] 1182(a)(2)"). All *convictions* that "stop time" under this provision will *also* bar 10-year cancellation under the crimes bar at 8 USC § 1229b(b)(1)(C). Note, however, that while certain *admissions* (i.e., to a CIMT or drug crime) will not trigger the crimes bar, they may be enough to stop time (thereby acting as a *de facto* bar). Creative plea negotiations to avoid such admissions can be key.

[6] *Pereira v. Sessions*, 138 S. Ct. 2105 (2018); *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021); *see also Quebrado Cantor v. Garland*, 17 F.4th 869 (9th Cir. 2021) (final order of removal did not stop ten years from accruing where NTA was defective).

[7] In practice, someone who reenters the U.S. unlawfully after a removal or VD, and whose prior removal order is reinstated under 8 USC § 1231(a)(5), will never have the opportunity to apply for cancellation. *But see Matter of Cisneros-Gonzalez*, 23 I&N Dec. 668 (BIA 2004) (holding that someone who reentered the U.S. after departing, accrued a new 10-year period, and was then issued a *new* NTA, would not be time-stopped from applying for cancellation by their first NTA).

[8] 8 USC § 1229b(b)(1)(D). This degree of hardship is substantially greater than what the qualifying relative would normally suffer if a loved one were deported. Factors include medical conditions, age and other circumstances of qualifying relatives,

- **No disqualifying convictions.** Any conviction for a crime listed in the grounds of deportability or inadmissibility will disqualify a noncitizen from 10-year cancellation of removal.[9]
- **Good moral character.** The applicant must be able to show "good moral character" (GMC) during the prior 10 years.[10] Certain criminal convictions (or having served sentences of more than 180 days in the aggregate within the 10-year period) preclude a finding of GMC.
- **They merit a favorable exercise of discretion.** An applicant must show their positive equities outweigh their criminal history (and other negative factors), and they are not likely to reoffend.[11] Those with longer, more severe, or more recent records will need more proof of positive equities and rehabilitation.

DEFENSE STRATEGIES FOR PRESERVING ELIGIBILITY FOR 10-YEAR CANCELLATION

Eligibility for 10-year cancellation can be a moving target. A client who does not *yet* meet the requirements may in the future (e.g., by accruing the necessary 10 years, acquiring a qualifying relative, etc.), so it is preferable to resolve a client's charges in a way that preserves their eligibility for 10-year cancellation.

- **Identify eligible clients ASAP.** Look for clients who are undocumented, have lived in the U.S. for 10 years (or close to it), and who have (or may acquire) a qualifying relative.
- **Don't trigger the stop-time rule.** Avoid any conviction (or admission) that "stops time" if your client does not yet have the ten years of physical presence necessary for cancellation. (See FN 5.)
- **Avoid bars to "good moral character."** One common challenge for showing GMC is that two or more DUIs within 10 years lead to a presumption of no GMC.[12] (See FN 10 for list of bars to GMC.)
- **Avoid conviction of removable offenses.** Try to plead undocumented clients to offenses not described in the grounds of deportability or inadmissibility (or, when possible, seek immigration-safe stipulated orders of continuance,[13] which will not constitute convictions at all for immigration purposes).
- **Seek a sentence of 180 days or less to fit within the petty offense exception for a single "crime involving moral turpitude" (CIMT).** Conviction of a single CIMT will make a person inadmissible, thus barring 10-year cancellation. However, if it is the person's *only* CIMT, has a maximum *possible* sentence of one year or less, and an *imposed* sentence (including suspended time!) of 180 days or less, it falls within the petty offense exception and will neither bar cancellation nor trigger the stop-time rule.
- **Sanitize the record.** Ten-year cancellation requires a positive exercise of discretion, so seek to sanitize the record to the extent possible. Craft a plea to the minimum conduct necessary—elaborating additional facts is not required and should be avoided.[14] Avoid stipulating to police reports or charging documents, especially if they contain allegations of domestic violence, gang, or drug activity.
- **Develop positive equities.** Cancellation-eligible individuals should take advantage of any available programs while incarcerated, to help demonstrate efforts at rehabilitation and addiction recovery.

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conditions in country of return, long-term ties to the U.S., and other facts. The analysis is of the totality of the circumstances.

[9] 8 USC § 1182(a)(2) (inadmissibility); 8 USC § 1227(a)(2) (deportability). Note: an undocumented person who has not been "admitted" to the U.S. is generally not subject to the deportability grounds, however these grounds *do* bar 10-year cancellation.

[10] 8 USC § 1101(f) (listing bars to GMC; note that some bars are permanent, and others only apply during the statutory period—here, the 10 years prior to the immigration judge's decision on cancellation (or the BIA's, if case is appealed).

[11] *Xiao Fei Zheng v. Holder*, 644 F.3d 829, 833 (9th Cir. 2011) (in exercising discretion, an adjudicator must consider all favorable and unfavorable factors; positive factors include long-term U.S. residence, family and community ties, evidence of hardship to applicant or their family if they were deported, U.S. military service, employment history, community service, property and business ties, evidence of rehabilitation after a conviction, and other character evidence).

[12] *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019) (this 2+ DUI presumption of no GMC is nearly impossible to rebut).

[13] *See* WDAIP, *Negotiating Immigration-Safe Deferred Adjudication Agreements*, https://defensenet.org/resources/negotiating-immigration-safe-deferred-adjudication-agreements-e-g-socs/.

[14] *See* WDAIP, *Just Say No! To "Real Facts,"* https://defensenet.org/resources/just-say-no-to-real-facts/.

BURDEN

In removal proceedings, the government bears the burden of proving "alienage" (i.e., that the respondent is not a U.S. citizen or national). 8 CFR § 1240.8(c). Once that threshold has been met, the burden shifts to the respondent to demonstrate that they are eligible for—and merit—relief from removal (e.g., cancellation), including that they are free from any disqualifying convictions.

APPLYING FOR 10-YEAR CANCELLATION

A noncitizen criminal defendant who appears eligible for cancellation (or other relief) should consult with immigration counsel experienced in removal defense as soon as possible.[15] A noncitizen may be subject to mandatory detention while they pursue their claim for 10-year cancellation of removal. This process can take months, and, if appeals are necessary, sometimes years.

Noncitizens detained at ICE's Northwest Processing Center in Tacoma should contact the Northwest Immigrant Rights Project (NWIRP), to inquire about direct representation, assistance filing a *pro se* application, or referrals.[16]

[15] Find WDA's immigration attorney referral list here: https://defensenet.org/case-support/immigration-attorney-referrals/.
[16] Find contact information for NWIRP here: https://www.nwirp.org/get-help/.