WASHINGTON DEFENDER ASSOCIATION

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

QUICK GUIDE TO CANCELLATION OF REMOVAL FOR LAWFUL PERMANENT RESIDENTS, 8 USC § 1229b(a)[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 lawful permanent residents (LPR cancellation) is the primary form of protection available to certain long-term LPRs who have been placed in removal (deportation) proceedings. LPR cancellation is available only in immigration court, as a defense to deportation. A grant of LPR cancellation brings an end to removal proceedings, and permits a noncitizen to retain their LPR status.

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

ELIGIBILITY & BARS

To be eligible for LPR cancellation, an applicant must demonstrate[3]:

- **Seven years of continuous residence in the U.S., after having been admitted in any status.** A lawful admission is required to *start* the clock, but this period may include time during which the applicant fell out of lawful status. Commission of certain offenses (including some mere admissions of conduct) will "stop the clock" on accrual of this time,[4] as will issuance of a compliant Notice to Appear (NTA).[5]
- **Five years in LPR status.** This time continues to accrue regardless of any conviction.
- **No "aggravated felony" convictions.**[6]
- **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. Those with longer, more severe, or more recent records will need greater proof of positive equities and rehabilitation.

---

[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 *non*-LPR cancellation, see WDAIP, *Quick Guide to "10-year Cancellation of Removal" for Undocumented Noncitizens*, https://defensenet.org/resources/cancellation-of-removal-for-undocumented-persons/.

[3] 8 USC § 1229b(a); INA § 240A(a).

[4] 8 USC § 1229b(d)(1)(B); INA § 240A(d)(1)(B) (continuous residence ends upon commission of "an offense referred to in section [8 USC] 1182(a)(2) . . . or [8 USC] 1227(a)(2)"); *Barton v. Barr*, 590 U.S. 222 (2020) (holding that the "stop-time rule" is triggered upon commission of an offense referred to in the grounds of criminal *inadmissibility* even if the offense would not make the LPR deportable); note that the controlled substance and CIMT grounds of inadmissibility do not require a conviction, but can be triggered by a mere admission of conduct.

[5] *Pereira v. Sessions*, 138 S. Ct. 2105 (2018); *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).

[6] An enumerated list of "aggravated felonies" is found at 8 USC § 1101(a)(43); INA § 101(a)(43). Note: a state offense may be neither aggravated nor a felony, and still qualify as an "aggravated felony" for immigration purposes. *See* ILRC, *Aggravated Felonies*, https://www.ilrc.org/resources/practice-advisory-aggravated-felonies.

DEFENSE STRATEGIES FOR PRESERVING ELIGIBILITY FOR LPR CANCELLATION

For an LPR facing criminal charges, the main defense goal is almost always to avoid triggering deportability.[7]

Where deportability cannot be avoided, the *next* most critical defense goal is to preserve eligibility for LPR cancellation, the most common vehicle by which an LPR may seek to avoid deportation.

- **Identify eligible clients ASAP.** Ensure that your defense strategy incorporates preserving eligibility for LPR cancellation from the earliest stages of a case.
- **Don't trigger the stop-time rule.** Even if a client does not yet need—and would not yet be eligible—to apply for LPR cancellation, it is best practice to preserve eligibility in case relief becomes necessary in the future. To this end, avoid any conviction that "stops time," if your client has not yet accrued the seven years of continuous residence necessary for LPR cancellation. (See FN 4 above.)
- **Avoid conviction of an "aggravated felony."** Becoming deportable due to a conviction is never ideal, but as long as the client is not convicted of an aggravated felony (and is otherwise eligible), they will be able to apply for LPR cancellation and at least make an argument that they merit such relief.
- **Sanitize the record.** LPR cancellation requires a positive exercise of discretion, and one way to serve your client in this regard is 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.[8] Don't stipulate to police reports or charging documents, especially if they contain allegations of DV, gang, or drug activity.
- **Develop positive equities.** LPR cancellation-eligible individuals should take advantage of any available programs while incarcerated, to help demonstrate efforts at rehabilitation and addiction recovery.[9]

BURDEN

In removal proceedings, the government bears the burden of demonstrating that a lawful permanent resident is deportable (e.g., for a criminal conviction). Once that threshold has been met, the burden shifts to the LPR to prove eligibility for relief from removal (e.g., LPR cancellation).

APPLYING FOR LPR CANCELLATION

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

LPRs 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.[11]

---

[7] An LPR can be put into removal proceedings and deported if they trigger one of the crimes-based grounds of *deportability* found at 8 USC § 1227(a)(2); INA § 237(a)(2). Generally, an LPR cannot be deported for being *inadmissible* under 8 USC § 1182(a)(2); INA § 212(a)(2). However, if an LPR triggers a crimes-based inadmissibility ground and travels outside the U.S., upon reentry they are considered to be "seeking admission," and are subject to removal proceedings for being inadmissible. 8 USC § 1101(a)(13)(C)(v); INA § 101(a)(13)(C)(v). While the risks are distinct, LPRs should avoid both deportability and inadmissibility.

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

[9] *Xiao Fei Zheng v. Holder*, 644 F.3d 829, 833 (9th Cir. 2011) (positive discretionary factors include long U.S. residence, family and community ties, 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).

[10] Find WDA's immigration attorney referral list here: https://defensenet.org/case-support/immigration-attorney-referrals/.

[11] Find contact information for NWIRP here: https://www.nwirp.org/get-help/.