

Building Your Case from the Ground Up: A Guide to 10-Year Cancellation of Removal



This guide was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: www.firrp.org. We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.

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Important Words to Know

Immigration Law has a lot of technical words. Here’s a list of some of the words you’ll see a lot in this guide and a short explanation of what they mean.

- **Immigration Judge (“Judge”)**: this is the person who will make a decision about your case. He or she holds hearings in the courtroom and wears a black robe. This person doesn’t work for ICE. It’s her job to look at the facts of your case and apply the law fairly.
- **Immigration and Customs Enforcement (“ICE”)**: this is the agency that has put you in deportation proceedings and is in charge of detaining you. ICE is part of the Department of Homeland Security, or “DHS.”
- **Government Attorney**: this is the lawyer who represents ICE when you go to your court hearings. He or she sits at the table next to you and also talks to the Judge. It’s usually this attorney’s job to explain to the Judge why ICE thinks you should be deported.
- **Deportation**: ICE has put you in deportation proceedings, which are also called “removal proceedings.” If the Judge orders you deported or “removed” from the United States, you will be sent back to the country where you are a citizen and will not be able to return legally to the U.S. for at least ten years.

1. Introduction

Hello! This is a guide from the Florence Project that explains one way to fight your case and stop your deportation. The tool we'll talk about here is called "10-Year Cancellation of Removal." This tool helps people without permanent residency (a green card) to become permanent residents (green card holders).

What does "10-Year Cancellation of Removal" mean? It means that you may be eligible to stop your deportation and get a green card if you meet **ALL** of these requirements:

- You've been in the US for more than 10 years without long trips to your home country. Long trips are anything more than three months.
- You've been a good member of the community—you have what's called "good moral character."
- You don't have any criminal convictions that make you ineligible to get a green card.
- You have a parent, husband or wife, or a child who has a green card or is a US citizen **AND**—most importantly, **you can show that your deportation would cause your parent, your husband or your wife, or your child a hardship that is much, much bigger than what every other family would experience.**

Remember, the person who will experience the hardship has to be your parent, your husband or wife, or your child AND that person has to be a permanent resident OR a US citizen.

What does exceptional and extremely unusual hardship mean? We know that every family suffers a lot when someone is in detention and deported.

Here are some reasons why a family might suffer extremely when a person is deported:

- Someone in the family is very, very sick and depends on you to help pay the medical bills.
- Someone in the family has to stay in the United States to receive medical treatment and couldn't come back to your country with you.
- Your kids have special needs or disabilities that they receive help for in school or at the doctor, and that help isn't available in your country.

Remember, these are just some examples of why your family would suffer a lot of hardship. Think about your own life and try to come up with ideas from your own experience. Then, complete the worksheet at the end of this packet.

You need to show the Judge that your family will suffer "exceptional and extremely unusual" hardship if you're deported. Here are some reasons that the Judge probably won't think are extreme enough to give you a green card:

- It's been a long time since you were in your country
- You have a job and a house here
- Your kids don't want to go back to your country
- Your family member has an illness that can be treated in your country, like asthma



Please remember that “10-Year Cancellation of Removal” cases are not easy to win. You really need to show the Judge that you’ve been a great member of the U.S. community for a long time AND that your family would suffer extremely if you were deported. It’s a long road from here to winning your case and most people who apply do not win. This guide will help you gather your toolkit. We’ll walk you through your first court hearings, filling out your application, preparing your testimony, and appealing your case if necessary. Let’s get started!

2. Laying a Foundation: How to Apply for “10-Year Cancellation of Removal”

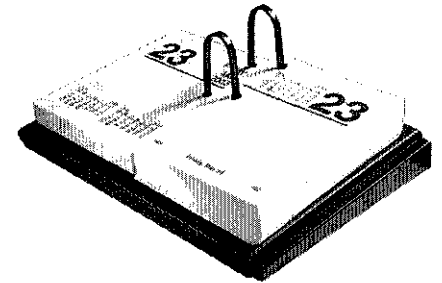
a. Your first court hearings

First, let’s talk about the basics of immigration court. If you feel confused about court, you’re not alone! Immigration law is complicated, even for lawyers. Let’s figure out who is going to be in court and what’s going to happen in your first hearings.



- The **Judge** will be at the front of the room and will ask you questions. He will be dressed like the man on the left. The Judge will be making the decision about your case so it’s important to be respectful, polite, and prepared.
- A **government attorney**. When you go to court, a lawyer representing ICE will be there. His job is to enforce the immigration laws, which may result in an order of deportation against you.
- An **interpreter**. Don’t worry if you don’t speak English—an interpreter will be there in person or over the phone. Just make sure you speak up and tell the Judge that you don’t speak or understand English well and need an interpreter.

The first few hearings that you’ll go to will be “master calendar” hearings. At those hearings, you’ll be in court with a group of other detainees. At “master calendar” hearings, the Judge will check in with you about your case and see what you want to do. It isn’t time yet to show her all your evidence of the reasons why you should stay in the country. If you want more time to talk to an attorney, the Judge will give you a few weeks to do so. You’ll then come back for another master calendar hearing.



When you come back to court, the Judge will ask you if you want to admit or deny the charges against you. That means that the Judge wants to know if you want to force the government attorney to prove the charges against you. If the government attorney says that you should be deported because of your criminal convictions, making him prove the charges against you can be an important step. Certain types of criminal convictions, even for pretty minor crimes, can make you ineligible for “10-Year Cancellation of Removal,” so be careful about admitting anything about your criminal record when responding to your charges in Immigration Court.

b. Eligibility for “10-Year Cancellation”

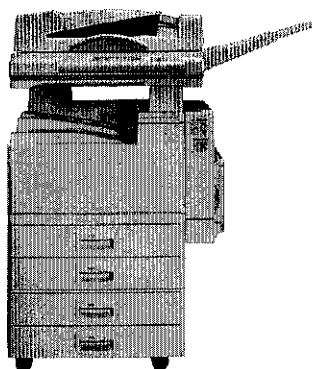
If the Judge decides that at least some of the charges against you are correct, she’ll then ask you questions to figure out if you are eligible for “10-Year Cancellation of Removal.” She’ll ask questions to make sure you meet the requirements to apply. Take a look at the requirements on page 3 if you can’t

remember. If the Judge agrees that you are eligible to present your case for “10-Year Cancellation” to her, she’ll give you a copy of the application. Remember, just because the Judge says you’re eligible for “10-Year Cancellation” does not mean that you’ve won your case! It means that the Judge thinks that you’ve met the basic requirements and is giving you a chance to show her that your family would suffer the exceptional and extremely unusual hardship that we talked about on page 3.

c. Filling out and turning in the application

Before your final hearing, you’ll come back to court for one more “master calendar” hearing to turn in your application for “10-Year Cancellation of Removal.” It’s important that you fill out the application completely so that the Judge will accept it and schedule a final hearing for you to present all your evidence of hardship. You will also need to fill out a fee waiver request so that you don’t need to pay to apply. The fee waiver is attached to the end of this packet.

A short guide on how to fill out your application is at the end of this packet.



When you’ve completed the application, make two extra copies and bring them to court with you. The original will go to the Judge. Another copy will go to the government attorney and you’ll keep a copy for yourself. This is important, so don’t forget!

Once you turn in your application, the Judge will give you a date for a final hearing. At this hearing, you’ll appear without a group of detainees. The hearing will last a few hours. This hearing will be your opportunity to present your case to the Judge.

3. Brick by Brick: Gathering Evidence

Remember, the better the evidence that you have of the hardship that your family will face if you’re deported, the stronger your case will be!

Start gathering evidence as soon as you decide that you want to apply for “10-Year Cancellation of Removal.” **Take a look at the list of evidence in Appendix 3. This will give you ideas of what documents to gather.** Many of these documents take time for your family to find and to mail to you. We know it’s not easy to gather all of these documents while you’re detained. Ask a trusted family member or friend to help you get these documents together. Make sure that he mails you **copies, not originals**, of these documents.

The type of evidence that you’ll gather depends on the type of hardship you are trying to prove. For example, if your daughter has cancer and needs treatment here in the US, you’ll need a letter from her doctor that explains her condition. You’ll want copies of her medical records and pictures of her.



Or, if you’re a single mom whose kids have never been to your country, you’ll want to get letters from their teachers about how they’re doing in school and whether they have any special needs. You’ll need copies of their birth certificates to show that they’re US citizens. You’ll want to document all the opportunities that they have here that they won’t have in your country.



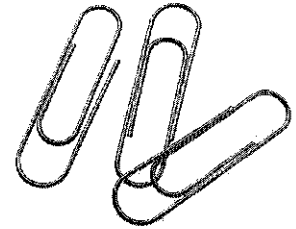
Every person applying for “10-Year Cancellation of Removal” will also want to

get as many letters of reference as possible. These should be from friends, family, and employers and should talk about all the good contributions that you've made to the United States. Again, there is a long list of examples of good types of evidence in Appendix 3.

Remember, all the documents you submit need to be in English. If you receive documents in another language, you can translate them. Just put your translation in with the original letter and attach a signed copy of the "Certificate of Translation" that's at the end of this packet.

Once you have all your documents together, organize them. Make a list of everything you have and then put it on top. You can divide your documents into categories like these:

1. Family Ties in the US (birth certificates, marriage certificates)
2. Evidence of Hardship if I Am Deported
3. Evidence that I Have Been in the U.S. for 10 Years or More
4. Evidence that I Have Good Moral Character (volunteering, going to church, helping the community)
5. Evidence of Employment History and Property in the US
6. Evidence of Rehabilitation (if you have criminal history)



Attach a signed and dated copy of "Certificate of Service" at the end of this packet to the last page of all your evidence. Then make two copies of all your evidence. The original will go to the Judge, a copy will go to the government attorney and you'll keep a copy for yourself. If you want to send the documents to the court before your final date, put a cover sheet with your name and A-number on top. Put the packets in envelopes. One should say "To the Immigration Judge" and the other should say "To ICE Litigation." Put them in the mail to the Judge and ICE.

4. The Finishing Touches: Preparing Your Testimony



Once you've laid a foundation and build strong walls, you need to put the finishing touches on your house. Spending time preparing your testimony for the final hearing will help you do that. At your final hearing, you'll have an opportunity to tell the judge why you think you should stay in the United States. Keep these tips in mind when practicing your testimony:

- **Be prepared.** Write a list of the specific reasons why your family would suffer if you were deported. Don't just say things like "they'll miss me" or "they need me to pay the bills." That won't be much help—all families go through that. **Think about the reasons why your family will suffer much more than normal if you're deported and explain those reasons to the Judge.** Write them down on a piece of paper. For example, you'll need to explain how much your daughter's cancer treatment costs, how you take care of her when she's sick, how this treatment isn't available in your home country, and how you pay all the family's medical bills. Practice explaining them to a friend or a family member over the phone.
- **Be honest.** Your job is to tell the Judge about the circumstances of your life. If you have criminal convictions and the judge asks you about them, tell her what happened. Lying will just make things worse, and the Judge and government attorney often have ways to figure out if you are lying.
- **Turn negatives into positives.** If you had a problem with drugs and alcohol in the past, explain

how you've overcome those problems—did you go to AA meetings or complete a rehabilitation program? Tell the Judge about those things, too.

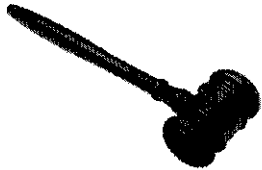
- **Don't be defensive.** Admitting that you made mistakes, even if that mistake was just coming to the U.S. without the proper documentation, can show the Judge that you are sorry. It can also show the Judge that you won't repeat those mistakes in the future.



- **Speak from the heart.** Judges see a lot of people every day. You can make your testimony stand out by speaking sincerely. Think of a funny story about your family to share. Think about a story that will show the Judge how much your family needs you. Explain to the Judge why your deportation would hurt your family very much. Tell her about your plans for the future. Write all of these down on a piece of paper so you won't forget. Don't worry if you become nervous or emotional in court.

- **Ask your family members to testify in court.** Your family can come and tell the Judge about the reasons why you should stay in the United States. Help your family member prepare by asking her to write down all the reasons why she would suffer if you were in another country. Make sure she practices testifying using this list before going to court. Your family members can also come and watch your final hearing to show the judge that they support you. Remember, some of the detention centers won't let small children come to court.
- **Answer the Judge's questions.** The Judge may want to ask you some specific questions. A list of what she may ask is at the end of this guide. In addition to practicing your testimony, you should practice responses to those questions so you'll be prepared. Remember, be respectful when the Judge speaks. Refer to the Judge as "Your Honor," "Ma'am," or "Sir."

5. Weighing the Evidence: The Judge's Decision



In most cases, the Judge will give you her decision at the end of your final hearing. She'll tell you whether or not she'll approve your application for "10-Year Cancellation of Removal." There are a few possibilities for the Judge's decision:

- If the Judge approves your application and the government attorney does not want to appeal that decision, you'll likely be released the same day.
- If the Judge approves your application and the government attorney appeals that decision, you'll likely have to wait until the Board of Immigration Appeals gives you a final decision.

If the Judge denies your application, you have the option of appealing that decision and saying that the judge was wrong. You'll need to tell the judge at your final hearing that you want to appeal. She'll give you some paperwork that needs to be mailed within 30 days of her decision.

6. Frequently Asked Questions

1. Can I apply for "10-Year Cancellation of Removal" from my home country if I get a voluntary departure or a deportation?

No. If you decide not to fight your case, you will not be able to change your mind and try to fight for 10-Year Cancellation of Removal from outside of the United States after being deported. If you are

deported, then you probably will not be able to apply for another chance to live in the United States lawfully for at least 10 years. In fact, depending on your conviction(s), you might never be able to apply for a visa. Also, if you come back without permission and get caught, you may face years in federal prison. Finally, if you have already lived in the U.S. unlawfully for more than 1 year before you are deported and you re-enter the U.S. unlawfully after your deportation, you will lose any chance of getting legal status in the U.S. through your family members who are citizens or lawful permanent residents in the future, including citizen spouses and children.

2. Can I get a bond and fight my case for “10-Year Cancellation of Removal” from outside of detention?

Possibly! One good thing to know is that if you are eligible for “10-Year Cancellation of Removal,” you may be eligible for a bond. A bond is a certain amount of money that you pay as a promise that you will go to all your immigration court hearings in the future. The lowest bond possible is \$1500. There is no maximum. Tell the judge that you are interested in a bond.

3. What if I have a lot of criminal convictions? Can I still apply for “10-Year Cancellation of Removal?”

It depends. You can speak with an attorney about your specific convictions to see how they affect your case. Immigration law is very complicated, so don't rely on the advice of other detainees or anyone who is not an attorney.

4. My wife is really sick and I pay for all her medications. But, she's not a permanent resident or a citizen of the U.S. Can I use evidence of her illness to apply for “10-Year Cancellation of Removal?”

No. Remember that your relative has to be your parent, your husband or wife, or your child AND that person has to be a U.S. citizen or permanent resident. Because your wife isn't a U.S. citizen or permanent resident, the difficulties that she will experience if you were deported won't be considered with your application.

Appendix 1. Hardship Worksheet

Family Member 1

Think about your parents, husband or wife, and children. Who is a permanent resident of the US or a US citizen?

What documents will you gather to prove that person's citizenship or permanent residency?

Why would this person suffer if I were deported?

How is that hardship much more serious than what most people would experience?

Does this person have any medical conditions or disabilities? If so, what are they?

Is there any reason why this person could not care for himself or herself if I were deported?

If your relative is a child, why would it be impossible for him or her to with you to your country?

Does your child have any special needs in school? What are they?

Family Member 2

Think about your parents, husband or wife, and children. Who is a permanent resident of the US or a US citizen?

What documents will you gather to prove that person's citizenship or permanent residency?

Why would this person suffer if I were deported?

How is that hardship much more serious than what most people would experience?

Does this person have any medical conditions or disabilities? If so, what are they?

Is there any reason why this person could not care for himself or herself if I were deported?

If your relative is a child, why would it be impossible for him or her to with you to your country?

Does your child have any special needs in school? What are they?

Appendix 2. Filling Out Your Application

The Immigration Judge can provide you with a copy of the application for “10-Year Cancellation of Removal” or you can also ask front desk at the Court. The form is also available at <http://www.justice.gov/eoir/formslist.htm>.

You must use a *pen or typewriter* to fill out the form. Do not use a pencil. If you are unsure of the answer to a question, that’s okay. For example, if you can’t remember all of your past addresses, write down as much as you know and indicate that you are guessing or might have missing or incorrect information. If a question does not apply to you, just put “N/A” in the box.

If there is not enough room on the form for you to answer a question completely, just continue your answer on another piece of paper. The notes below will give you some tips for filling out each part of the application.

42B Application

Part 1

- If you are detained, use the address for the detention center.

Part 2

- You’ll need to indicate who your qualifying relatives are and what their immigration status is. Remember, this is your parent, husband or wife, or child who is a US citizen or legal permanent resident. Also, be sure that the date you indicate for the beginning of your residency gives you at least 10 full years of residence in the U.S. since the time you were served with the papers putting you in removal proceedings (the “Notice to Appear”).
- Watch out! The last box, which states that you or your child has suffered battery or extreme cruelty by a spouse or parent, is for a different kind of application. Don’t mark this box if you’re applying for “10-Year Cancellation of Removal.” If your lawful permanent resident or citizen spouse or parent has abused you or your child, you may be eligible for another way to fight your case.

Part 3

- If you used a different name when you entered the U.S. include that information here.
- One question asks for the date that you *first* arrived in the U.S. This may be different than your answer to the question of when you began to live in the U.S. continuously if you came to the U.S. before you moved here.
- List the place where you first arrived in the U.S.
- If you crossed into the United States illegally or without documentation, mark “entered without inspection” when it asks how you came to the U.S.
- The application asks you to list all of your entries and departures from the U.S. even if it was for less than one day. If you left and came back many times for the same reason (for example, if you went to Mexico several times just for the day to go shopping or to visit family) then you can indicate something to the effect of “day trip once a month to Mexico for shopping.” If you’ve traveled outside the U.S. a lot, you may need to use another piece of paper to answer this question. Watch out, because if you left the U.S. for more than 90 days at a time, that trip will break your “continuous physical presence” in the U.S. such that you will have to start the 10-year clock over once you returned from that trip.

Part 4

- If you have *never* married, please mark “I am not married” and skip to question the questions about your spouse
- When listing your work history, begin with the job you had just before coming to detention and work backwards. If you cannot remember all of the details of your work history, use your best guess. Try to include as much information as you can remember, such as the city and state name in the address section.

Part 5

- Fill in if you have received any government benefits programs in the U.S. Those could include food stamps, unemployment, TANF, etc.
- List all of your children as well as their immigration status. If you have more than 3 children, you can attach additional sheets of paper. If the child does not have any income because he is very young or for another reason you should put N/A in the questions regarding average earnings and weekly income.
- One question asks if your spouse and children would return to your country of origin with you if you were deported. If they will not come with you, explain why they need to stay here. For example, if your wife needs special medical care here that is not available in your home country, mention that here.
- Another question asks if anyone else in your family, *not* including yourself, has ever gotten government benefits. This includes things like social security, food stamps, and unemployment. It should not harm your case to state that people in your family have received government assistance.
- One question asks you to fill in if you’ve ever been arrested, convicted, fined, imprisoned, or put on probation. It is **very** important to include any and all arrests, court appearances, convictions, etc. even if you think that ICE does not know about it or the charges were dismissed. Even list traffic tickets. ICE *will* find your “rap sheet” and other conviction documents before your hearing. If you do not reveal the charges now and they later come out at the hearing, the judge may think you trying to hide something and it *will* hurt your case. If you think that you may not remember your criminal history perfectly, then you can note that the answers provided are “to the best of your recollection” and that you “might be missing or forgetting an incident.”
- Another question wants to know about all groups you’ve been involved with since you were 16 years old. This includes things like church groups, sports programs, and school groups.

G-325A

- If you’ve never been married before, just list N/A
- List your addresses from the most recent to the least recent. If you’re currently detained, use the detention center’s address
- If you can’t remember exactly when you lived someplace, use the abbreviation “apprx” or “+/-” to show that you’re making an estimation
- List your previous jobs from most recent to least recent
- Check the box to indicate that the form is filed along with an application to be a Permanent Resident

Fee Waiver

- If you are currently detained and not paying any bills, you can put 0’s when asked about your monthly expenses and income.

Appendix 3. Evidence Checklist

Remember, these are examples. You don't need to gather all of these documents to win your case, but try for as many as possible. Check each one off as you receive it!

Letters of support from as many family members as possible (including drawings from children). These letters should specify how your permanent resident or U.S. citizen wife, parent, or child will suffer if you are deported.	
Letters of support from friends	
Letters from people who know you (neighbors, landlord, boss)	
Letters showing community involvement and good character (church, volunteering)	
Proof of financial support your family (rent receipt, child support) and proof of financial hardship since your detention (past due notices for bills or rent)	
Photos of family (birthday parties, holidays, pets, babies, etc.)	

Certificates from any rehabilitation classes you've taken, like anger management, domestic violence, AA, substance abuse, parenting.	

Tax Records	
Pay Stubs	
Social Security Records	
Letter showing that you have a job when you get out of detention	
Proof of English Language Training, GED, college, etc.	
Certificates and diplomas from school and training courses	

Copies of your children's school records, including letters from teachers or counselors about how your kids are doing in school. Ask the writer to include how moving to your home country would cause problems for your kids.	
Copies of medical records for your parent, spouse, or child if they are sick or suffer from any kind of disability	
Copies of your children's birth certificates	
Copies of proof of legal status for your parents, husband, or wife (birth certificate, naturalization certificate, green card or Mica)	
Copy of your marriage certificate	
Proof of any debt that your family has that you were helping to pay off (mortgage, car loans, school, medical, etc.)	

Appendix 4. Certificate of Service

Use the following certificate if you will give the documents to the ICE attorney and the judge in court.

I, _____ (your name here), hereby certify that I hand-delivered a copy of this document to a representative of ICE Litigation on the date below.

Signed:

Date:

Use the following certificate if you will mail the documents to the government attorney and Judge before the hearing.

I, _____ (your name here), hereby certify that I placed a copy of this document in the mail to ICE Litigation at

(list address for the ICE office at the detention center where you are staying) on the date below.

Signed:

Date:

Appendix 5. Sample Certificate of Translation

I, _____ (name of translator), certify that I am competent to translate this document from its original language into English and that the translation is true and accurate to the best of my abilities.

Signature of translator

Date