

United States Senate

WASHINGTON, DC 20510

May 31, 2023

Ur M. Jaddou, Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

RECEIVED

By ESEC at 2:28 pm, May 31, 2023

David Neal, Director
Executive Office for Immigration Review
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Dear Director Jaddou and Director Neal:

We are writing to encourage the U.S. Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) to undertake joint rulemaking to establish a process to make non-lawful permanent resident cancellation of removal (cancellation of removal) more accessible to those who are eligible. Such a process would help to streamline cancellation of removal cases and increase access to lawful permanent resident status for immigrants who are vital contributors to their American families and our communities.

Today, few avenues for immigration relief are available to those who have resided in the U.S. for many years and have built deep ties to the country. Cancellation of removal is one of those limited avenues. Under our laws, noncitizens who have resided in the U.S. for at least a decade, have a qualifying family relationship like an American spouse or child, and meet other stringent requirements may be eligible for cancellation of removal and adjustment of status. To be granted this discretionary relief, applicants must pass criminal and security background checks, demonstrate their own good moral character, and show that their qualifying family members would face exceptional and extremely unusual hardship if the applicant were deported. While only 4,000 individuals may be granted cancellation of removal each year, our laws permit individuals with pending applications to support themselves and their family members while they wait for their case to be adjudicated. These eligibility requirements ensure that the individuals who qualify for this form of relief are law-abiding, long-term residents who possess deep roots in their communities.

Unfortunately, because cancellation of removal applications generally may be filed only once an individual is in removal proceedings, many who may be statutorily eligible for—and highly deserving of—this important form of relief never have the opportunity to apply for it. Paradoxically, the more deserving a person likely is of cancellation of removal and adjustment of status, the less likely it would be for the government to pursue that individual's removal by placing them in removal proceedings.

Your respective agencies could address this issue by instituting a coordinated process that allows individuals to affirmatively request that U.S. Citizenship and Immigration Services (USCIS) officers review their cases to make preliminary determinations about their eligibility for this relief. Based upon these reviews, USCIS could use its prosecutorial discretion authority to initiate removal proceedings for individuals who are good candidates for cancellation of removal and immigration judges could give effect to these determinations unless there is good reason not to do so. Creating such a process would unlock a

path to lawful permanent resident status for deserving individuals and streamline the processing of cancellation of removal cases in immigration court—the second-most common type of case.¹

During the rulemaking process following the enactment of the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Immigration and Naturalization Service and EOIR discussed the possibility of creating such a process for a related form of relief—special rule cancellation of removal—in response to comments received.² Further support for this proposal can be found in the interim final rule related to asylum processing, which was published in March 2022. This rule outlines the authority of USCIS personnel to make eligibility determinations for statutory withholding of removal and protection under the Convention Against Torture, and immigration judges can later give effect to these decisions.

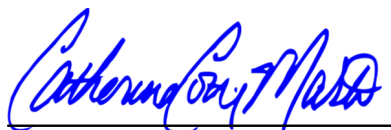
Deferred Action for Childhood Arrival (DACA) and Temporary Protected Status (TPS) recipients are among the individuals who could benefit from an improved cancellation of removal process. As you know, many face growing uncertainty about their status and it is incumbent on the administration to consider a robust suite of policy options to help address their current situations. This option should be among those considered seriously as part of a plan to protect Dreamers and TPS holders.

A joint rule would also help address concerns we hear from our communities around notario fraud. Unscrupulous practitioners seeking to leverage desperation in the community sometimes steer individuals into risky practices like filing non-meritorious asylum claims or turning themselves over to local ICE field offices so that they may be placed into removal proceedings where they can then apply for cancellation of removal. Unfortunately, many individuals do so based on faulty information or advice, with disastrous consequences for them and their families. Meanwhile, the adjudication of non-meritorious claims—especially in the asylum context—only worsens backlogs in our asylum offices and immigration courts.

It is estimated that 1.2 million undocumented individuals are married to a U.S. citizen or lawful permanent resident, and about 4.1 million U.S. citizen children have undocumented parents. Establishing a new process for cancellation of removal could have a significant positive impact on many of those individuals and help deliver on the administration’s commitment to immigrant families who deserve to stay together and live and work in the communities they call home.

We encourage USCIS and EOIR to work together on rulemaking for a streamlined cancellation of removal process. We appreciate your attention to this important matter and look forward to your response.

Sincerely,




Catherine Cortez Masto
United States Senator

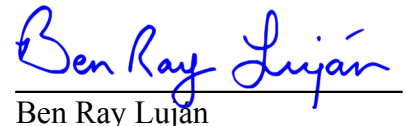


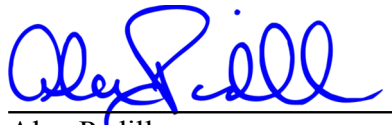
Richard J. Durbin
United States Senator

¹ 2020. “[Beyond Asylum: Deportation Relief During the Trump Administration.](#)” TRAC Immigration. Syracuse University.

² [Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries](#), 64 Fed. Reg. 27856, 27858 (May 21, 1999).


Robert Menendez
United States Senator


Ben Ray Lujan
United States Senator


Alex Padilla
United States Senator

Cc: Secretary Alejandro Mayorkas, Department of Homeland Security



U.S. Citizenship
and Immigration
Services

July 7, 2023

The Honorable Catherine Cortez Masto
United States Senate
Washington, DC 20510

Dear Senator Cortez Masto:

Thank you for your May 31, 2023 letter to the U.S. Department of Homeland Security (DHS). I am responding on behalf of the Department.

We appreciate your suggestion that DHS and the Executive Office for Immigration Review undertake joint rulemaking to establish a process to make cancellation of removal and adjustment of status for certain nonpermanent residents (cancellation of removal) more accessible to those who are eligible. DHS will consider your recommendation to establish a new process and will examine pre-existing policy and process options that may be available to noncitizens who may be eligible for cancellation of removal, but who are not in removal proceedings.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink that reads "Ur M. Jaddou".

Ur M. Jaddou
Director