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U.S. Immigration and Customs Enforcement

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ICE Interim Litigation Position Regarding Motions to Reopen in Light of the U.S. Supreme Court Decision in *Niz-Chavez v. Garland*

June 9, 2021

On April 29, 2021, the Supreme Court decided *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), which involved eligibility for “cancellation of removal,” a type of discretionary immigration relief available in removal proceedings that requires noncitizens to demonstrate that they have accrued a specific period of continuous residence or continuous physical presence in the United States. In *Niz-Chavez*, the Supreme Court held that the two-step process, whereby (1) DHS serves upon a noncitizen a Notice to Appear (NTA) for removal proceedings that does not include the time and/or place of the first removal hearing and (2) the immigration court later serves a notice of hearing providing that information, does not trigger the “stop-time rule” that cuts off the noncitizen’s accrual of the required time.

In light of this ruling, some noncitizens who were denied cancellation of removal for apparent failure to accrue the statutorily required period of continuous residence or continuous physical presence or who decided not to pursue cancellation relief under the belief that the NTA they were issued under this two-step process terminated their accrual of the required period of time may now be eligible to request such relief from removal in removal proceedings. To address such cases, **for 180 days from the date of the Supreme Court’s decision (i.e., until November 16, 2021), ICE attorneys handling removal cases before the Executive Office for Immigration Review (EOIR) will presumptively exercise their prosecutorial discretion to join or not oppose a motion to reopen filed by such noncitizens who demonstrate that they are prima facie eligible** for cancellation of removal. To the extent they have not already done so, such noncitizens will need to submit complete cancellation of removal applications, along with any required supporting

documents. ICE attorneys will review such motions or joint motion requests on a case-by-case basis, consistent with applicable guidance on the exercise of prosecutorial discretion, including the May 27, 2021, memorandum from the ICE Principal Legal Advisor, [Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities](#). The decision whether to reopen such cases will remain within the discretion of EOIR.

Under this interim litigation position, when EOIR grants such a motion to reopen, eligible noncitizens will have an opportunity to present their cancellation of removal claims to an immigration judge and receive a decision on the merits. This position is an example of ICE's expectation that, when exercising their prosecutorial discretion, our immigration attorneys will adhere to the enduring principles that apply to all of their activities: upholding the rule of law; discharging duties ethically in accordance with the law and professional standards of conduct; following the guidelines and strategic directives of senior leadership; and exercising considered judgment and doing justice in individual cases, consistent with agency priorities.

Questions about this litigation position or the process for initiating a joint motion to reopen should be directed to your [local ICE Office of the Principal Legal Advisor field location](#).
