

1 Jeremiah Johnson
2 Johnson & McDermed, LLP
3 400 Montgomery Street, Suite 680
4 San Francisco, California 94104
5 Tel. 415.276.5803
6 Fax. 415.843.0493
7 jeremiah@jmcclaw.com

DETAINED

6 Counsel for Respondent

7 UNITED STATES DEPARTMENT OF JUSTICE
8 EXECUTIVE OFFICE OF IMMIGRATION REVIEW
9
10 IMMIGRATION COURT
11 SAN FRANCISCO, CALIFORNIA

13	_____)	
14	In the Matter of:)	File No. A
15	DOE, John,)	Next Scheduled Hearing:
16	Respondent,)	
17	In Removal Proceedings.)	Before:
18	_____)	
19	_____)	

21 **RESPONDENT'S PRE HEARING BRIEF**

1 **I. INTRODUCTION**

2 Respondent, Mr. John Doe, through counsel, respectfully submits Respondent’s pre-
3 hearing brief in support of his application for a cancellation of removal for certain permanent
4 residents pursuant to INA § 240A(a). Respondent has lived in the United States as a lawful
5 permanent resident for 17 years. Furthermore, Mr. Doe demonstrates strong family ties to the
6 United States, a solid work ethic and a tangible and sincere plan for rehabilitation that warrant
7 this Court’s exercise of favorable discretion. Because Mr. Doe’s positive equities outweigh his
8 adverse factors, this Court should grant Respondent’s request for cancellation of removal for
9 certain permanent residents under INA § 240A(a).
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13 **II. BRIEF STATEMENT OF FACTS AND CASE**

14 Mr. Doe is a citizen and native of Mexico who was accorded lawful permanent resident
15 status in the United States on March 20, 1996. Exh. A. Mr. Doe has strong family ties to the
16 United States and has a long history of work. Tab D-E.
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18 Mr. Doe has suffered several convictions including multiple driving under the influence
19 offenses. On August 3, 2013 Mr. Doe was returning to the United States from a brief trip
20 abroad. Subsequently, the Department of Homeland Security issued a Notice to Appear alleging
21 Mr. Doe is removable for having been convicted of two or more offenses for which the aggregate
22 sentences to confinement actually imposed were five years or more. See INA § 212 (a)(2)(B).
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26 **III. ARGUMENT**

27 **A. Respondent Is Statutorily Eligible And Warrants A Grant Of A Waiver Of**
28 **Removal Under INA § 240A(a).**

1 This Court should grant the application for cancellation of removal for certain permanent
2 residents under INA § 240A(a) because of Mr. Doe’s strong family ties with the United States;
3 evidence of hardship to Respondent and his family if removal occurs; history of employment;
4 and sincere evidence of rehabilitation.
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6 On March 20, 1996 Mr. Doe was accorded lawful permanent resident status in the United
7 States. Exh. 1. Mr. Doe did not suffer any convictions for 7 years after having been accorded
8 lawful permanent resident status. Moreover, Mr. Doe has not been convicted of any aggravated
9 felony. Therefore, Mr. Doe is eligible for cancellation of removal for certain lawful permanent
10 residents. See INA § 240A(a).
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13 **B. Because Respondent’s Positive Equities Outweigh Any Adverse Factors, A**
14 **Waiver Of Removal Should Be Granted As A Matter Of Discretion.**
15

16 In addition to demonstrating statutory eligibility, an applicant for cancellation of removal
17 bears the burden of showing that relief is warranted in the exercise of discretion. See INA §
18 240A(a); see also Matter of C-V-T-, 22 I. & N. Dec. 7, 8-9 (BIA 1998). The Board has held that
19 the general standards developed for the exercise of discretion under INA § 212(c) are also
20 applicable to the exercise of discretion under INA § 240A(a). Matter of C-V-T-, *supra* at 10; see
21 also Matter of Sotelo-Sotelo, 23 I. & N. Dec. 201, 202 (BIA 2001) (affirming Matter of C-V-T-
22 and emphasizing that the discretionary determination “will depend in each case on the nature and
23 circumstances of the ground of [removability] sought waived”). In keeping with the standards
24 developed under former Section 212(c) of the Act, the Court should consider the record as a
25 whole and balance the adverse factors evidencing the alien’s undesirability as a permanent
26 resident with the social and humane considerations presented in his favor to determine whether a
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1 grant of relief would be in the best interest of this country. Matter of C-V-T-, *supra* at 11;
2 Matter of Edwards, 20 I. & N. Dec. 191, 195 (BIA 1990); Matter of Marin, 16 I. & N. Dec. 581,
3 584 (BIA 1978). There is no threshold requirement that the applicant show unusual or
4 outstanding equities; rather the Court must weigh the favorable and adverse factors to balance
5 the “totality of the evidence” before reaching a conclusion as to whether the applicant warrants a
6 grant of cancellation of removal in the exercise of discretion. Matter of Sotelo-Sotelo, *supra* at
7 204 (*quoting* Matter of C-V-T-, *supra* at 10); Matter of Edwards, *supra* at 196.
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10 When exercising discretion in a cancellation of removal case, positive factors to be
11 considered include, but are not limited to, family ties in the United States, residence of long
12 duration in this country, evidence of hardship to the applicant and his family if removal occurs, a
13 history of employment, existence of property or business ties, proof of genuine rehabilitation if a
14 criminal record exists, and other evidence attesting to the applicant’s good moral character.
15 Matter of C-V-T-, *supra* at 11; Matter of Edwards, *supra* at 196; Matter of Marin, *supra* at 584-
16 585. Adverse factors to be considered include the nature and underlying circumstances of the
17 removal ground at issue and any other evidence that could be indicative of an applicant’s bad
18 character or undesirability as a permanent resident of this country. Matter of C-V-T-, *supra* at
19 11; Matter of Marin, *supra* at 584.
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22 Here, Mr. Doe’s positive equities are substantial. Some “outstanding equities” include
23 long residence in the United States and the existence of United States citizen family. Matter of
24 Arrequin, 21 I. & N. Dec. 38 (BIA 1995). Although Mr. Doe is a citizen of Mexico, he has
25 established a home here in the United States. Mr. Doe entered the United States as a lawful
26 permanent resident in 1996. From the beginning, Mr. Doe embraced his adopted home and has
27 worked hard to be a positive and contributing member of his community. See Tab D (“I have
28

1 come to know [John] as funny, responsible, helpful and proud father of 2. He always has a kind
2 word to say and always has provided a helping hand”)

3
4 Moreover, Mr. Doe’s close-knit extended family is here in the United States and would
5 suffer hardship were he to be removed. See Tab D. (“he is a caring individual and is always
6 seeking ways to help out, and if he doesn’t have the solution, especially if it’s a financial
7 situation he won’t mind sharing his savings to help out when someone’s in need. I see my
8 brother as a person whom has fallen real hard and struggling to find his way back.”) (“John has
9 always been a responsible father when it comes to his children ...Although John and Ludy did
10 not remain together as a couple they have never disagreed that the most important thing is to
11 make sure that both their kids have what they need ...”); See also Salcido-Salcido v. INS, 138 F.
12 3d 1292 (9th Cir. 1998) (separation from the family may be “[t]he most important single
13 [hardship] factor.”)

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16 Mr. Doe is a well loved and much needed member of his family. See Tab D. Mr. Doe’s
17 family is here in the United States and want to see Respondent remain with them in the United
18 States. *Id.*

19
20 Mr. Doe’s excellent work history and filing of taxes warrants a favorable exercise of
21 discretion and a grant of a waiver of removal. See Tab E. Mr. Doe has a long history of working
22 hard to help his family and has employment waiting for him when released. *Supra.* (“John Doe
23 ... was on track to being offered permanent full-time employment at The Ranch Winery. We
24 were satisfied with his work performance and would be pleased to have him back when he is
25 legally able to do so.”)

26
27 Respondent has lived in the United States for a long time and has established strong ties
28 to the United States and an excellent work history. Respondent is a hardworking lawful

1 permanent resident that is part of a close-knit American family. Respondent’s positive equities
2 warrant that this court exercise favorable discretion and grant waiver of removal.

3
4 Upon a balance of considerations, Respondent’s positive equities are at least as favorable
5 as Board precedent. Respondent has established at least as positive equities as other noncitizens
6 that were granted relief under similar forms of relief. In Matter of C-V-T-, the Respondent was
7 convicted for a drug felony under section 11.71.04 of the Alaskan Statute. The Board
8 determined that respondent’s seven years of residency in the United States, evidence of
9 rehabilitation and a distant brother in California who respondent had not been in touch with for
10 many years were “significant equities” warranting favorable exercise of discretion. Matter of C-
11 V-T-, *supra* at 14.
12

13 In the present case, Mr. Doe has significantly closer family ties than a distant brother.
14 Furthermore, Mr. Doe has resided in the United States for a far longer period of time than the
15 respondent in C-V-T- could claim.
16

17 In another example, the Board in Matter of Arrequin, 21 I. & N. 38 (BIA 1995), granted
18 deportation relief under INA § 212(c) despite a conviction for importing 78.45 kilograms of
19 marijuana. A close reading of Arrequin reveals similar positive equities (close family ties and
20 acceptance of responsibility.) As such, a favorable exercise of discretion is warranted.
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24 **C. Mr. Doe Is A Person Of Good Moral Character And Therefore Warrants A**
25 **Favorable Exercise Of Discretion.**

26 Inherently in cases involving cancellation of removal for certain lawful permanent
27 residents there will be acts of crimes involving moral turpitude. Here, Mr. Doe has numerous
28 criminal convictions, including several driving under the influence convictions. Indeed, “[i]t

1 appears that Mr. Doe’s problems and reasons for detention are largely due to substance abuse
2 ...” Tab C. Nevertheless, an applicant for a waiver may still establish good moral character.
3 Mr. Doe has presented overwhelming documents showing he is a dutiful son and giving family
4 member, and a hard and responsible worker. See Tab D (“he is a caring individual and is always
5 seeking ways to help out, and if he doesn’t have the solution, especially if it’s a financial
6 situation he won’t mind sharing his savings to help out when someone’s in need. I see my
7 brother as a person whom has fallen real hard and struggling to find his way back.”) Such traits
8 demonstrate Mr. Doe’s good moral character.
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11 Moreover, and perhaps more importantly, Mr. Doe has shown a real “desire to turn his
12 life around” and is “very sincere about doing everything in his power to turn his life around by
13 becoming clean and sober if he is allowed to remain in the United States.” Tab C. Indeed, a
14 social worker has
15

16 been visiting John Doe at West County Detention Facility on Fridays for nearly the past
17 three months ... During this time I have been impressed with Mr. Doe’s desire to turn his
18 life around. He has been regularly attending the D.E.U.C.E. program, and due to his own
19 initiative has been accepted into long term (6 to 12 months) residential substance abuse
20 rehabilitation programs upon release.

21 ... he is very sincere about doing everything in his power to turn his life around by
22 becoming clean and sober if he is allowed to remain in the United States.

23 Because Mr. Doe presents real, tangible and sincere rehabilitation, this Court should
24 grant this application for cancellation of removal.
25

26 **IV. CONCLUSION**
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1 For all above reasons, this Court should find Respondent statutorily eligible for
2 cancellation of removal under INA § 240A(a) and warrants favorable exercise of discretion
3 because Respondent's positive equities outweigh his adverse factors.
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5 Dated this 27th day of February 2014

Respectfully submitted,

8 Jeremiah Johnson
9 Johnson & McDermed
10 Counsel for Respondent