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Address 1

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT – LOCATION [BOARD OF IMMIGRATION APPEALS]

In the Matter of:)
)
)
John Smith,)
)
)
)
In Removal Proceedings.)
_____)

DETAINED / NON-DETAINED

File No(s): A000 000 000

**JOINT MOTION TO REOPEN PURSUANT TO THE
DURAN-GONZALEZ SETTLEMENT AGREEMENT**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT – LOCATION [BOARD OF IMMIGRATION APPEALS]

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**JOINT MOTION TO REOPEN PURSUANT TO THE
DURAN-GONZALEZ SETTLEMENT AGREEMENT**

Pursuant to the settlement agreement in *Duran-Gonzalez v. DHS*, No. C06-1411 (W.D. Wash.), Exh. A, Settlement Agreement and Release, the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (Department), and the respondent hereby jointly move the [Immigration Judge or Board of Immigration Appeals] to reopen the removal proceedings against the respondent. The Department joins this motion for the sole and limited purpose of having the Executive Office for Immigration Review (EOIR) (1) conduct an individualized inquiry into whether *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), should apply to the respondent’s application to adjust status, pursuant to the factors articulated in *Montgomery Ward & Co., Inc. v. FTC*, 691 F.2d 1322, 1333 (9th Cir. 1982); and (2) if appropriate, adjudicate on the merits the respondent’s Application to Adjust Status (Form I-485); Supplement A to Form I-485, Adjustment of Status Under Section 245(i); and Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212).

The respondent is a *Duran-Gonzalez* Subclass B Member. See Exh. A, Settlement and Release. It is the position of the parties that: (1) with regard to a Subclass B Member who filed his or her Form I-485, Supplement A to Form I-485, and Form I-212 on or after August 13, 2004, and on or before January 26, 2006, *Torres-Garcia* is not applicable, and EOIR should adjudicate the Form I-485, Supplement A to Form I-485, and Form I-212 on their merits *de novo*; and (2) with regard to a Subclass B Member who filed his or her Form I-485, Supplement A to Form I-485, and Form I-212 on or after January 27, 2006, and on or before November 30, 2007, if EOIR determines that, pursuant to the *Montgomery Ward* test, *Torres-Garcia* should not be applied to his or her applications, EOIR should adjudicate the Form I-485, Supplement A to Form I-485, and Form I-212 on their merits *de novo*.

The parties agree that in applying the *Montgomery Ward* test, evidence demonstrating reliance on the November 13, 2006 preliminary injunction order issued by the U.S. District Court for the Western District of Washington in *Duran-Gonzales v. DHS*, 239 F.R.D. 620 (W.D. Wash. 2006), is relevant. The Department, however, reserves the right to present evidence and arguments regarding the application of the *Montgomery Ward* test in the respondent's case, including whether any reliance on the preliminary injunction order was reasonable.

The Department reserves the right to oppose the respondent's Form I-485, Supplement A to Form I-485, and Form I-212 on the basis of discretion and/or any other applicable ground. The Department further reserves the right to make any and all other available arguments and oppose any other forms of relief and/or protection should the respondent's proceedings be reopened.

Based upon the foregoing, the parties request that the [Immigration Judge or Board of Immigration Appeals] grant this joint motion to reopen [and remand to the Immigration Judge for further proceedings].

Respectfully submitted,

On behalf of
U.S. Immigration and Customs Enforcement,
U.S. Department of Homeland Security,

On behalf of the respondent,

Name #3
Assistant Chief Counsel/Senior Attorney
1234 Center Street
Anytown, ST 99999

Counsel for Respondent(s)
Law Firm (If Applicable)
Address 1
Address 2

Date: _____

Date: _____

PROPOSED ORDER SHOULD ACCOMPANY MOTIONS FILED WITH THE IMMIGRATION COURT

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT – LOCATION

_____)	DETAINED / NON-DETAINED
In the Matter of:)	
)	
John Smith,)	File No(s): A000 000 000
)	
In Removal Proceedings.)	
_____)	Immigration Judge: Last Name

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Joint Motion to Reopen Pursuant to *Duran-Gonzalez* Settlement Agreement, it is HEREBY ORDERED that the motion be:

GRANTED. These proceedings are hereby reopened for the sole and limited purpose of (1) an individualized inquiry of whether *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), should apply to the respondent’s application to adjust status, pursuant to the factors articulated in *Montgomery Ward & Co., Inc. v. FTC*, 691 F.2d 1322, 1333 (9th Cir. 1982); and (2) if appropriate, adjudication on the merits of the respondent’s Application to Adjust Status (Form I-485); Supplement A to Form I-485, Adjustment of Status Under Section 245(i); and Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212).

DENIED. _____

Immigration Judge

Date: _____

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