

January 16, 2009: *Important Information for Duran Gonzales Class Members*

Ninth Circuit Denies Petition for Rehearing; Preliminary Injunction May Be Vacated on January 23, 2009

On January 16, 2009, the Ninth Circuit denied Plaintiffs-Appellees petition for rehearing and rehearing en banc in *Duran Gonzales v. DHS*, 508 F.3d 1227 (9th Cir. 2007). *Duran Gonzales* is a circuit-wide class action challenging DHS' refusal to follow *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). In *Duran Gonzales*, the Ninth Circuit overturned *Perez-Gonzalez*, deferring to the BIA's holding that individuals who have previously been removed or deported are not eligible to apply for adjustment of status (under INA § 245(i)) along with an accompanying I-212 waiver application. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).

The Ninth Circuit's decision arose in the context of a government appeal of a preliminary injunction granted by the district court. The preliminary injunction protects certain Ninth Circuit individuals with pending I-212 waiver applications and individuals whose I-212 waiver applications already have been denied. Now that the court has denied the petition for rehearing, the mandate will issue – probably on Friday, January 23, 2009 – and the preliminary injunction order will be vacated. The case will be remanded to the district court.

Class counsel is considering all litigation options. Class counsel will provide updated information as it is available, but advise class members that absent a court order, *the preliminary injunction may be vacated as early as Friday, January 23, 2009. If the preliminary injunction is vacated, USCIS will be allowed to deny class members' I-212 applications and "give effect" to already denied applications, which could result in individuals being put in removal proceedings or being subject to reinstatement of removal.*

ADDITIONAL INFORMATION

For more information about the suit see http://www.ailf.org/lac/lac_lit_92806.shtml.

Who is a class member?

The district court's order granting class certification defines the class as follows:

- (a) Individuals who are inadmissible under INA § 212(a)(9)(C)(i)(II) and have filed an I-212 waiver application within the jurisdiction of the Ninth Circuit in conjunction with their application for adjustment of status under INA § 245(i), prior to any final reinstatement of removal determination, where USCIS denied the I-212 application because 10 years had not elapsed since the date of the applicant's last departure from the United States; and
- (b) Individuals who are inadmissible under INA § 212(a)(9)(C)(i)(II) and have filed or will file an I-212 waiver application within the jurisdiction of the Ninth Circuit in

conjunction with their application for adjustment of status under INA § 245(i), prior to any final reinstatement of removal determination, where USCIS has not yet adjudicated the application but where USCIS will deny their I-212 application on the grounds that 10 years have not elapsed since the date of the applicant's last departure from the United States.