

January 30, 2013: Important Information for *Duran-Gonzales* Class Members

This week, a panel of the Ninth Circuit Court of Appeals issued a decision with implications for *Duran Gonzales* class members. In [*Carrillo de Palacios v. Holder*](#), the court – in accordance with the en banc decision in [*Garfias-Rodriguez v. Holder*](#) – engaged in a retroactivity analysis to determine whether [*Duran Gonzales I*](#) applies retroactively to someone who applied for adjustment of status with an I-212 waiver after the BIA’s decision in [*Matter of Torres-Garcia*](#) (Jan. 26, 2006). The panel held that *Duran Gonzales I*, adopting *Matter of Torres-Garcia*, applies to someone who filed their applications after the BIA’s decision. As a result, the petitioner in that case is not eligible for adjustment of status under INA § 245(i).

Importantly, however, the petition for rehearing en banc in *Duran Gonzales II* still is pending before the court. Class counsel have argued that *Duran Gonzales I* should not apply retroactively to *all* individuals who relied upon *Perez-Gonzales* and applied for adjustment and an I-212 waiver before *Duran Gonzales I* (i.e., those whose adjustment of status and I-212 waiver applications were pending at any time on or after August 13, 2004 and on or before November 30, 2007). Moreover, there is a pending Ninth Circuit petition for review, *Vargas-Saavedra v. Holder*, No. 11-71259, raising the issue of whether *Duran Gonzales I* applies retroactively to a person who applied for adjustment *before Matter of Torres-Garcia*.

What Should Class Members Do Now?

If your client filed his adjustment application along with the I-212 waiver application *before Matter of Torres-Garcia* (Jan. 26, 2006), you may ask the court, BIA or IJ to hold the case pending a resolution of *Vargas-Saavedra* and/or the rehearing petition in *Duran Gonzales*.

If your client filed his adjustment application along with the I-212 waiver application *after Matter of Torres-Garcia* (Jan. 26, 2006) but before *Duran Gonzales I* (Nov. 30, 2007), you may notify the court, BIA, or IJ that the issue decided in *Carrillo de Palacios* has been raised in the petition for rehearing en banc in *Duran Gonzales* and ask that the case be held pending resolution of the petition. If an en banc panel grants the petition, the decision in *Carrillo de Palacios* is potentially subject to reversal.

Please contact us immediately at clearinghouse@immcouncil.org if you have a client who is class member and who applied for adjustment of status before November 30, 2007 – the date *Duran Gonzales I* was issued – and faces immediate deportation.

For more information about the suit see <http://www.legalactioncenter.org/litigation/adjustment-status-under-%C2%A7-245i-noncitizens-previously-removed-duran-gonzalez-class-action>. Class counsel will provide updated information as it is available.