

**January 22, 2009: Important Information for Duran-Gonzales Class Members**

**Amended Complaint and Application for Temporary Restraining Order Filed**

On January 21, 2009, class counsel filed a motion to amend the complaint, a motion to amend and redefine the class, and a request for a temporary restraining order (TRO) and preliminary injunction. These motions were made in light of the Ninth Circuit's denial of the petition for rehearing and rehearing en banc in *Duran-Gonzales v. DHS*, 508 F.3d 1227 (9th Cir. 2007). Read more about the denial of the rehearing petition at <http://www.aifl.org/lac/chdocs/Duran-Gonzalez-denial.pdf>.

The amended complaint alleges that the government cannot apply the *Duran-Gonzales* decision, which adopted *Matter of Torres-Garcia*, 23 I. & N. Dec. 866 (BIA 2006), retroactively to the detriment of Plaintiffs and class members who relied on *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). The complaint and separate motion ask the court to redefine the class as follows:

Individuals who are inadmissible under INA § 212(a)(9)(C)(i)(II) and whose I-212 waiver applications were filed within the jurisdiction of the Ninth Circuit in conjunction with applications for adjustment of status under INA § 245(i) and were pending at any time on or after August 13, 2004 [the date of *Perez-Gonzalez*] and on or before November 30, 2007 [the date of *Duran-Gonzales*] and prior to any final reinstatement of removal decision.

In addition, class counsel have asked the court to issue an immediate temporary restraining order for the amended class, restraining the government from (a) denying any pending I-212 waiver applications; and (b) giving legal effect to any denied I-212 waiver application, including treating any denial as a final administrative decision.

Class counsel remind current class members that the Ninth Circuit vacated the District Court's preliminary injunction and the mandate issues on Friday, January 23, 2009. Absent a court order, if the mandate issues, 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. Class counsel hope that the court will consider the application for a TRO *before* the mandate issues, but there is no guarantee that the court will do so. Class counsel will provide updated information as it is available

For more information about the suit see [http://www.aifl.org/lac/lac\\_lit\\_92806.shtml](http://www.aifl.org/lac/lac_lit_92806.shtml).