

**February 10, 2009: *Important Information for Duran Gonzales Class Members***

**District Court Denied Preliminary Injunction and Temporary Restraining Order Expired; Class Members May Be Subject to Removal**

On February 6, 2009, the district court denied Plaintiffs' request for a preliminary injunction. A preliminary injunction would have stopped the government from denying class members' I-212 applications and giving legal effect to class members' denied I-212. The previously granted temporary restraining order (TRO) also expired on February 6, 2009. As a result, *USCIS now is 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.*

*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).

Plaintiffs asked the Ninth Circuit to rehear the case en banc. On January 16, 2009, the Ninth Circuit denied the request. The following week, 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). The amended complaint alleges that the government cannot apply the *Duran Gonzales* decision retroactively to the detriment of class members who relied on *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). On January 23, 2009 – the same day the Ninth Circuit issued the mandate – the district court granted a TRO protecting class members. Subsequently, the TRO expired and the court denied the request for a preliminary injunction. In denying the preliminary injunction, the court found that Plaintiffs did not raise serious questions on the merits of their retroactivity claim and that they are not likely to succeed on the merits. Plaintiffs' motions to amend the complaint and to amend and redefine the class remain pending.

Class counsel is considering all litigation options. 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).