

Plaintiffs File for Rehearing En Banc in *Duran Gonzales*, 245(i)/I-212 Litigation

On February 27, 2008, Plaintiffs-Appellees filed a petition for rehearing en banc in *Duran Gonzales v. DHS*, 508 F.3d 1227 (9th Cir. 2007). The Ninth Circuit had granted an extension for filing until February 28, 2008.

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).

Counsel in *Duran Gonzales* prepared a Q&A to address issues that have arisen following the Ninth Circuit's adverse decision, including the effective date of the decision, qualifications for class membership, and strategies for class members and others affected by the decision. Counsel also remind practitioners that INA § 212(a)(9)(C)(i)(II) applies only to individuals who were ordered removed and then reentered unlawfully any time on or after April 1, 1997; thus, these individuals are not barred from adjusting under INA § 245(i), though they may be subject to reinstatement of removal. More information about the lawsuit and the Q&A are available at http://www.aifl.org/lac/lac_lit_92806.shtml.