

INFORMATION FOR *DURAN GONZALEZ* CLASS MEMBERS

Ninth Circuit Vacates Preliminary Injunction in I-212, *Perez-Gonzalez* Class Action; *Perez Gonzalez* No Longer Law of Ninth Circuit

December 3, 2007

On November 30, 2007, the Ninth Circuit Court of Appeals ruled in favor of the government and vacated the preliminary injunction in *Duran Gonzalez v. DHS*. *Duran Gonzalez v. DHS* is a class action challenging the Department of Homeland Security's willful refusal to follow the precedent decision of the Ninth Circuit in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). In *Perez-Gonzalez*, the Ninth Circuit determined that individuals who have previously been removed or deported may apply for adjustment of status (under INA § 245(i)) along with an accompanying I-212 waiver application.

The district court in *Duran Gonzalez* had ruled favorably for the plaintiffs. The district court granted class certification and a preliminary injunction protecting class members with pending I-212 waiver applications and individuals whose applications already have been denied. The government appealed the order granting the preliminary injunction.

The Ninth Circuit's November 30 decision vacates the preliminary injunction. However, **this decision will not go into effect until the mandate is issued.** Thus, until the mandate issues, DHS should not give any effect to a denied I-212 or deny any I-212 waiver application based on the fact that ten years have not elapsed since the applicant's last departure. Currently, the mandate is scheduled to issue on January 22, 2008. The issuance of the mandate would be stayed if a petition for rehearing is filed. Lawyers for the plaintiffs are evaluating the Ninth Circuit's decision and strongly considering seeking rehearing. In the meantime, class members should consider their options in light of this decision.

Although the mandate has not issued and the court's decision has not yet gone into effect, it is important to note that the rule in *Perez Gonzalez* is no longer the law of the circuit. Unless a panel or en banc court issues a subsequent favorable decision in *Duran Gonzalez* or another case, **noncitizens should not rely on *Perez Gonzalez*.**

Updates about this case, including a description of the class and the preliminary injunction, are posted on AILF's website at http://www.ailf.org/lac/lac_lit_92806.shtml

Plaintiffs' lawyers will provide further analysis and advice soon. This information will be posted on AILF's website at http://www.ailf.org/lac/lac_lit_92806.shtml.