



AMERICAN IMMIGRATION LAW FOUNDATION

TRO Granted in I-212, Perez-Gonzalez Class Action October 11, 2006

The district court granted plaintiffs' motion for a temporary restraining order in *Duran Gonzalez v. DHS*, 2:06-cv-1411 (W.D. Wash), the class action challenging DHS' willful refusal to follow the Ninth Circuit in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). District Court Judge Marsha J. Pechman said that government is "enjoined from applying or enforcing the policy set forth in Part 3(A) of the *Perez-Gonzalez* Memo." This subpart of the March 31, 2006 memo directs USCIS field officers to deny I-212s "in any case" where ten years has not elapsed from the date of the applicant's last departure.

The court's order does not affect individuals outside of the Ninth Circuit.

Pursuant to the Court's order, USCIS district offices and the Administrative Appeals Office cannot deny any I-212 application pending in the Ninth Circuit based on the fact that ten years has not elapsed since the applicant's last departure. In addition, DHS cannot give legal effect to an I-212 that was denied on this basis, and, thus, at least temporarily, protects qualifying I-212 applicants against reinstatement of removal under INA § 241(a)(5).

Although the court's order also forbids USCIS to give legal effect to any I-212 denial issued after March 31, 2006 – the date of USCIS's *Perez-Gonzalez* Memo – USCIS also denied I-212s on this basis before the policy was issued on March 31. The court's order does apply to these earlier denials as well and counsel will seek to have the court make the matter clear in the preliminary injunction (which will be argued on November 6, 2006).

If DHS denied your client's I-212 because 10 years had not elapsed after their departure from the US and/or DHS has arrested your client and/or reinstated a prior removal order against your client, please email us immediately at clearinghouse@ailf.org. If you have already contacted us about the denial of your client's I-212, you do not need to contact us again unless there has been a development.

To read the court's order and for more information about the suit, please see http://www.ailf.org/lac/lac_lit.shtml.

The suit is brought by Northwest Immigrants Right Project, the American Immigration Law Foundation, and Van Der Hout, Brigagliano & Nightingale, LLP.