

## NOTICE OF PROPOSED SETTLEMENT AGREEMENT AND HEARING IN A CLASS ACTION

**Duran Gonzalez, et al. v. Department of Homeland Security, et al., Civil Action No. 06-1411-MJP in the United States District Court for the Western District of Washington**

**TO:** All persons (1) who resided within the Ninth Circuit when they applied for adjustment of status under section 245(i) of the Immigration and Nationality Act (INA); (2) are inadmissible because they re-entered illegally or attempted to illegally re-enter the United States without permission after having been removed; (3) filed a Form I-212 requesting permission to reapply for admission between August 13, 2004 and November 30, 2007; and (4) who did not re-enter the United States on or after November 30, 2007.

You are hereby notified that a hearing has been scheduled for July 11, 2014, 2014, at 9:00 a.m., before the Honorable Marsha J. Pechman of the U.S. District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Suite 14206, Seattle, Washington, for consideration of a proposed settlement of the claims that have been brought on your behalf in this lawsuit.

### **THE PURPOSE OF THIS NOTICE:**

This notice has three purposes: 1) to tell you about the proposed settlement and the fairness hearing; 2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and 3) to explain how you may object to the proposed settlement if you disagree with it.

### **THE BASIS FOR THIS CASE:**

A class action lawsuit alleged that the Department of Homeland Security was improperly processing the Form I-212 applications for permission to reapply for admission of persons who were otherwise eligible to apply for special adjustment of status under INA § 245(i). The Ninth Circuit had determined that individuals did not have to wait outside of the United States for ten years before seeking such permission (*Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004)), but the Board of Immigration Appeals (“Board”) disagreed (*Matter of Torres Garcia*, 23 I. & N. Dec. 866 (BIA 2006)). During the course of this case, the Ninth Circuit overturned its earlier decision and deferred to the position of the Board. In such cases, however, there was an open question as to whether that determination should apply to those who filed their applications between the two Ninth Circuit decisions.

The Ninth Circuit subsequently determined that individual applicants should have an opportunity to show that they reasonably relied on the earlier Ninth Circuit decision, but did not decide how that opportunity should be provided.

The parties have reached a tentative settlement that the Court has preliminarily approved. The settlement is not an admission of wrongdoing or an indication that any law was violated.

## **A DESCRIPTION OF THE PROPOSED SETTLEMENT:**

The following description is only a summary of the key points in the proposed settlement agreement. Information on how to obtain a copy of the full, proposed agreement is provided after this summary.

### **Those who may qualify as class members:**

- 1) They re-entered or attempted to re-enter the United States after having been removed and without receiving permission to reapply for admission into the United States; AND
- 2) They filed a Form I-485 Application to Adjust Status and a Supplement A to Form I-485, Adjustment of Status Under Section 245(i) ("Form I-485A"), between August 13, 2004 and November 30, 2007; AND
- 3) They filed a Form I-212, Application for Permission to Reapply for Admission, after that re-entry between August 13, 2004 and November 30, 2007; AND
- 4) At the time of filing their application (Form I-485 and Form I-485A), they resided within the jurisdiction of the Ninth Circuit Court of Appeals (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon and Washington); AND
- 5) Apart from inadmissibility due to their re-entry or attempted reentry, they were otherwise eligible to apply for special adjustment of status under INA § 245(i), as they were not otherwise inadmissible, or if otherwise inadmissible, they qualified for a waiver for that ground of inadmissibility.

Even if they satisfy the factors (1 through 5) above, persons will not qualify under the settlement agreement if *any* of the following apply:

### **Those who do not qualify as class members:**

- (a) They re-entered the United States after having been removed after November 30, 2007;
- (b) They are currently in removal proceedings under INA § 240 OR have a petition for review of a removal order from such proceedings currently pending before the Ninth Circuit Court of Appeals (this does not include a petition for review of a reinstatement order—a person in that situation remains eligible under the settlement);
- (c) The Ninth Circuit Court of Appeals has denied or dismissed their petition for review from a removal order after applying the proper retroactivity analysis set forth in *Montgomery Ward & Co., Inc. v. FTC*, 691 F.2d 1322, 1328 (9th Cir. 1982) and determining that *Matter of Torres Garcia* applies to the person;
- (d) Their application was rejected because they were deemed statutorily ineligible to apply for special adjustment of status under INA § 245(i) for a reason other than inadmissibility under INA § 212(a)(9)(C)(i)(II).

## **THE SUMMARY OF THE TERMS:**

Those who qualify as class members may seek reopening of their Form I-212 applications with USCIS or a joint motion to reopen their removal proceedings before the immigration

court or the Board (whichever applies) without paying a fee for such reopening, as long as they commence the submission process within the deadlines provided within section IV of the proposed settlement agreement. In presenting any request for reopening in accordance with this settlement, class members should submit documentation to establish their class membership as well as documentation demonstrating any reasonable reliance on *Perez-Gonzalez* and other relevant evidence to the *Montgomery Ward* factors.

The settlement provides each class member a forum for determining whether, under the law of the Ninth Circuit, that class member's decision to file for adjustment of status and to seek permission to reapply for admission in reliance on *Perez-Gonzalez* and the district court's injunction in this case was reasonable. The settlement does not guarantee that the Form I-212 will be approved for any class member. In addition, with the exception of those who filed their Forms I-212 between August 13, 2004 and January 26, 2006, the settlement does not guarantee that the class member's reliance will be deemed reasonable.

Class members who are in the United States and have not been placed into removal proceedings under INA § 240 subsequent to the filing of their Form I-485, Form I-485A, and Form I-212, should file their requests for reopening with the United States Citizenship and Immigration Services ("USCIS"). Similarly, class members who are subjects of orders of "reinstatement of removal" under INA § 241(a)(5) should file their requests for reopening with the USCIS. Class members who are in the United States and are subject to a final removal order arising from removal proceedings under INA § 240 initiated after the denial of their Form I-485, Form I-485A, and Form I-212 should file their requests for reopening with Immigration and Customs Enforcement ("ICE"). Finally, class members who are outside of the United States must take steps to apply for an immigrant visa through the U.S. Department of State, and seek reopening of their Form I-212 with USCIS.

The agreement further provides that, in consideration of the other provisions in the agreement, class members release all defendants from all "settled claims." For a complete description of the terms, releases and "settled claims," you should obtain a full copy of the proposed settlement agreement. Defendants do not admit any wrongdoing, fault, or liability. The settlement agreement cannot be used against defendants as evidence of any presumption, concession, or admission of any liability, negligence, fault, or wrongdoing in future actions, and may not be used against defendants to establish a presumption in any other litigation.

The agreement resolves all claims by Class Counsel for an award of attorneys' fees and costs.

**FOR FURTHER INFORMATION:**

THIS IS A SUMMARY OF THE PROPOSED AGREEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE AGREEMENT. Copies of the proposed settlement may be obtained from: 1) the USCIS website ([www.uscis.gov](http://www.uscis.gov)); 2) the ICE website ([www.ice.gov](http://www.ice.gov)); 3) the Northwest Immigrant Rights Project website ([www.nwirp.org](http://www.nwirp.org)); 4) National Immigration Project of the National Lawyer's Guild website

(nationalimmigrationproject.org/); or 5) American Immigration Council website (www.legalactioncenter.org/litigation/adjustment-status-under-%C2%A7-245i-noncitizens-previously-removed-duran-gonzalez-class-action).

**PROCEDURES FOR AGREEMENT OR OBJECTION:**

IF YOU AGREE with the proposed settlement, you do not need to do anything at this time. If you wish to attend, you may be present at the public hearing on the proposed settlement as stated above.

IF YOU DISAGREE with the proposed settlement, you have a right to object to it and to the dismissal of the remaining claims in the lawsuit. Your objections will be considered by the Court as it reviews the settlement ONLY IF you follow these procedures:

1. Objections must be filed in writing by mail with the Clerk of the United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Seattle, WA 98101 - 9906. CONTACT CLASS COUNSEL, NOT THE COURT, REGARDING THE FAIRNESS HEARING.

**ALL OBJECTIONS MUST CONTAIN THE FOLLOWING INFORMATION:**

- a. Name, address, and telephone number of the person filing the objection.
- b. A statement of the reasons for the objection.
- c. A statement that copies of the objections have also been sent to the attorneys listed at the end of this notice.

2. You must send copies of your objections to both attorneys listed at the end of this notice.

3. The deadline for receipt of written objections by the Court and the attorneys listed below is June 27 2014. Objections filed by mail must be postmarked on or before June 25th, 2014 to be considered timely. Objections filed or mailed after the above dates will not be considered. Class members who fail to lodge objections on or before June 27, 2014, will not be permitted to testify at the settlement hearing.

4. No later than July 8, 2014, the attorneys for plaintiffs and defendants shall file and serve responses, if any, to objections they timely receive from persons opposed to the proposed settlement.

**ATTORNEYS' NAMES AND ADDRESSES FOR PLAINTIFFS AND DEFENDANTS:**

**For Plaintiffs:**

*Duran-Gonzalez* Class Settlement  
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**For Defendants:**

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