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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 AURELIO DURAN GONZALEZ,

11 Plaintiff,

12 v.

13 US DEPARTMENT OF HOMELAND  
SECURITY, et al.,

14 Defendants.  
15

CASE NO. C06-1411-MJP

ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT AGREEMENT,  
AMENDMENT OF THE CLASS  
DEFINITION, AND APPROVAL OF  
NOTICE TO CLASS

16 This matter comes before the Court on the joint motion of Plaintiffs Aurelio Duran  
17 Gonzalez, et al., and Defendants United States Department of Homeland Security, et al., (Dkt.  
18 No. 98) requesting that the Court:

- 19 1. Preliminarily approve the Settlement Agreement and Release (“Settlement”).  
20 (Ex. A.)  
21 2. Amend the Definition of the certified class to the Definition agreed in the  
22 Settlement. (Ex. A, Part I, Section D.)  
23

24 ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT  
AGREEMENT, AMENDMENT OF THE CLASS  
DEFINITION, AND APPROVAL OF NOTICE TO  
CLASS- 1

1 3. Approve the Notice of Proposed Settlement Agreement and Hearing in Class  
2 Action (“Notice of Proposed Settlement”). (Ex. B.)

3 4. Find that the provisions in the Settlement for the Notice of Proposed Settlement  
4 Agreement and Hearing in Class Action satisfy the notice requirements of  
5 Federal Rule of Civil Procedure 23(e)(1)(B).

6 5. Set a fairness hearing for final determination on whether the Settlement is fair,  
7 reasonable, and adequate.

8 Having considered the parties’ joint motion and all documents submitted in support thereof, the  
9 Court GRANTS the parties’ motion.

10 IT IS ORDERED that the Settlement Agreement and Release (ECF No. xx-1) is preliminarily  
11 APPROVED;

12 IT IS FURTHER ORDERED that the Class Definition is amended as follows:

13 “Any person who:

14 1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor  
15 certification filed on or before April 30, 2001, provided that, if the immigrant  
16 visa petition or labor certification was filed after January 14, 1998:

17 a. the beneficiary was physically present in the United States on  
18 December 21, 2000, or

19 b.if a derivative beneficiary, the derivative beneficiary or the primary  
20 beneficiary was physically present in the United States on December 21,  
21 2000.

22 2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the  
23 Immigration and Nationality Act (“INA”), because he or she entered or

1 attempted to reenter the United States without being admitted after April 1,  
2 1997, and without permission after having previously been removed;

3 3. Properly filed a Form I-485 (Application to Adjust Status) and Form I-485  
4 Supplement A (Adjustment of Status Under Section 245(i)) while residing  
5 within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on  
6 or before November 30, 2007;

7 4. Filed a Form I-212 (Application for Permission to Reapply for Admission Into  
8 the United States After Deportation or Removal) on or after August 13, 2004,  
9 and on or before November 30, 2007;

10 5. Form I-485, Form I-485 Supplement A, and Form I-212 were denied by U.S.  
11 Citizenship and Immigration Services (“USCIS”) and/or the Executive Office  
12 for Immigration Review (“EOIR”) on or after August 13, 2004, or have not yet  
13 been adjudicated;

14 6. Is not currently subject to pending removal proceedings under INA § 240, or  
15 before the United States Court of Appeals for the Ninth Circuit on a petition for  
16 review of a removal order resulting from proceedings under INA § 240; and

17 7. Did not enter or attempt to reenter the United States without being admitted  
18 after November 30, 2007.

19 Class members are further divided into three subclasses, as follows:

20 1. Subclass A: Class Members (i) who have remained physically present in the  
21 United States since the filing of the Form I-485, Form I-485 Supplement A, and  
22 Form I-212, and (ii) against whom removal proceedings under INA § 240 were  
23 not initiated with the filing of a Notice to Appear subsequent to the filing of the

1 Form I-485, Form I-485 Supplement A, and Form I-212 (“Subclass A  
2 Members”);

- 3 2. Subclass B: Class Members: (i) who have remained physically present in the  
4 United States since the filing of the Form I-485, Form I-485 Supplement A, and  
5 Form I-212; (ii) against whom removal proceedings under INA § 240 were  
6 initiated by the filing of a Notice to Appear, subsequent to the filing of the Form  
7 I-485, Form I-485 Supplement A, and Form I-212; (iii) who have a final,  
8 unexecuted order of removal; (iv) who have no pending direct appeals of that  
9 order, including a petition for review before the Court of Appeals for the Ninth  
10 Circuit; (v) whose applications to adjust status were denied based upon final  
11 administrative determinations of inadmissibility by the Executive Office for  
12 Immigration Review under INA § 212(a)(9)(C)(i)(II) and whose final orders of  
13 removal were not entered *in absentia*; and (vi) for whom the Ninth Circuit Court  
14 of Appeals did not apply the *Montgomery Ward* test as set forth in the *Garfias-*  
15 *Rodriguez* decision, to determine whether *Matter of Torres-Garcia*, 23 I. & N.  
16 Dec. 866 (BIA 2006), was properly retroactively applied to them (“Subclass B  
17 Member”); and

- 18 3. Subclass C: Class Members (i) who have departed the United States after filing  
19 the Form I-485, Form I-485 Supplement A, and Form I-212, (ii) who remain  
20 physically outside the United States; and (iii) who have properly filed an  
21 immigrant visa application with the United States Department of State, or who  
22 will file an immigrant visa application within one year of the effective date of this  
23 agreement (“Subclass C Members”).”

1 IT IS FURTHER ORDERED that the Notice of Proposed Settlement Agreement and Hearing  
2 in Class Action filed as ECF No. xx-2 is APPROVED.

3 IT IS FURTHER ORDERED that the provisions for notice of the proposed settlement and  
4 hearing to the class are APPROVED.

5 IT IS FURTHER ORDERED that the fairness hearing is set for July 11, 2014 at 9 a.m.

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7 The clerk is ordered to provide copies of this order to all counsel.

8 Dated this 21<sup>st</sup> day of March, 2014.

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11 Marsha J. Pechman  
12 Chief United States District Judge  
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