Re: **[LAST NAME, First Name] – [A Number]**

Request for ICE to Join the Respondent's Motion to Reopen Pursuant to the *Duran-Gonzalez* Settlement Agreement

The above-referenced respondent represents that [he or she] is a Subclass B Member of the litigation in *Duran-Gonzalez v. DHS*, No. C06-1411 (W.D. Wash.), and requests that the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (Department), join [his or her] motion to reopen pursuant to the *Duran-Gonzalez* settlement agreement.

The respondent satisfies the requirements of section 245(i) of the Immigration and Nationality Act (INA) based upon [INSERT BASIS FOR ELIGIBILITY]. The respondent is inadmissible under INA § 212(a)(9)(C)(i)(II) because [he or she] entered or attempted to reenter the United States without being admitted on [DATE], and did so without permission after having previously been removed. The respondent properly filed a Form I-485 (Application to Adjust Status) and a Supplement A to Form I-485, Adjustment of Status Under Section 245(i), while residing within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit on [DATE], and filed a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal) on [DATE]. The Form I-485, Supplement A to Form I-485, and Form I-212 were [denied on or after August 13, 2004, or have not yet been adjudicated].

The respondent has remained physically present in the United States since the filing of the Form I-485, Supplement A to Form I-485, and Form I-212, and removal proceedings under INA § 240 were initiated against [him or her] by the filing of a Notice to Appear, subsequent to the filing of the Form I-485, Supplement A to Form I-485, and Form I-212. The respondent is the subject of a final unexecuted order of removal dated [DATE], and has no pending direct appeals of that order, including a petition for review before the U.S. Court of Appeals for the Ninth Circuit.

The respondent's application to adjust status was denied based upon a final administrative determination of inadmissibility by the [Board of Immigration Appeals or Immigration Judge] under INA § 212(a)(9)(C)(i)(II), and [his or her] final order of removal was not entered *in absentia*. The U.S. Court of Appeals for the Ninth Circuit has not applied the *Montgomery Ward* test, *see Montgomery Ward & Co., Inc. v. FTC*, 691 F.2d 1322, 1333 (9th Cir. 1982), to determine whether *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006), was properly applied retroactively to [his or her] application to adjust status.

As such, Respondent requests that the Department execute the attached Joint Motion to Reopen Pursuant to the *Duran-Gonzalez* Settlement Agreement.