

April 2009

NOTICE TO CLASS MEMBERS
PROYECTO SAN PABLO vs. DHS
Civil Case No. 89-00456-TUC-RCC (D. Ariz)

This Notice provides an update for Class Members concerning the lawsuit *Proyecto San Pablo v. DHS*, Case No. 89-22456-TUC-RCC (D.Ariz.)

Class Members: You are a Class Member if you applied for legalization between May 5, 1987 and May 4, 1988 in the INS Northern or Western Region, but were denied legalization because you were deported from the United States after January 1, 1982. If you are a class member, the District Court has ordered that your legalization application be reopened and that CIS follow certain procedures in adjudicating your application.

Background: On March 27, 2001, after trial, the District Court ordered the Immigration Service to reopen the denied applications of class members and (1) provide copies of their prior deportation or exclusion files, including a copy of the tape and/or transcript of the old deportation hearing [usually between 1982-88]; and (2) accept and adjudicate the waiver applications in the same manner as the waiver applications of other legalization applicants. During the next several years, CIS did not provide complete copies of the prior deportation files, and did not adjudicate the waiver applications as the court had ordered.

Because the CIS had not complied with the 2001 court order, on June 4, 2007 the District Court ordered CIS to: (1) reopen and readjudicate all denied legalization applications filed by class members; (2) adopt a procedure for making a copy of the tape and/or transcript of the alleged prior deportation or exclusion hearing available to class members; and (3) readjudicate waiver applications filed by class members in the same manner as for other legalization applicants. CIS has filed an appeal to the Ninth Circuit Court of Appeals regarding the waiver issue. The district court's order on March 4, 2008, established certain procedures for submitting motions to reopen and waiver applications, and CIS was required to hold *Proyecto San Pablo* legalization applications in abeyance pending the appeal to the Ninth Circuit. On December 4, 2008, the Ninth Circuit Court of Appeals issued an order affirming the District Court's Order. The June 4, 2007 is now a final order binding on the CIS.

There are several steps class members should take to pursue their rights under the June 4, 2007 District Court Order:

A. Reopening Legalization Applications. If you have not already done so, you should file a motion to reopen. This can be a brief letter, stating that you are a class member and requesting that the denial be reopened pursuant to the District Court's June 4, 2007 Order. It should also include (if not previously submitted) (1) a

Freedom of Information Act request (“FOIA request”), requesting a copy of your prior deportation file **and hearing tape** (see below); (2) a waiver application to waive the alleged prior deportation (see below); and (3) a request for an extension of time to submit additional evidence and a supplemental brief after the FOIA documents have been produced.

Class members file a motion to reopen by filing Form I-290B together with the filing fee of \$585. If you cannot afford the filing fee, you can request a waiver of the fee pursuant to 8 C.F.R. §103.7(c). (See “Fee Waiver Guidance” on the CIS website at www.uscis.gov.) Form I-290 B should be sent to:

Proyecto MTR and I-765
USCIS, Nebraska Service Center
P.O. Box 87687
Lincoln, NE 68501-7687

B. Request for Copy of Prior Deportation File. It is extremely important to request a copy of your prior deportation file, and **especially** a copy of the tape and/or transcript of the hearing. For example, the file might show you were allowed to depart under “voluntary departure”. Or the records might show that the prior deportation order was improperly issued or violated the Constitutional protection of due process.

In its June 7, 2007 Order, the court ordered that if there is a prima facie showing that the prior deportation hearing was a violation of due process or a gross miscarriage of justice, and if CIS fails to produce a copy of the prior deportation hearing, then the alleged deportation cannot be used as a basis to deny the legalization application. In order to establish a prima facie case that the prior deportation hearing was a violation of due process or a gross miscarriage of justice, it is advisable to consult with an immigration attorney familiar with the procedures that must be followed in deportation cases; the immigration attorney can assist you in preparing a declaration or affidavit to make the required prima facie showing.

In order to request a complete copy of the alleged prior deportation hearing, you should fill out the “Proyecto San Pablo Freedom of Information Act File Request Form” (attached), and send two copies: one to each of the two addresses listed on the form. You should make copies of the requests and you should send them by priority mail with delivery confirmation. Once the file is obtained, it is important to have a knowledgeable immigration lawyer review the file and tape in order to see what arguments can be made about the conduct of the old deportation hearing.

C. Waivers. If you have not already done so, you should prepare and file an application for a waiver of the prior deportation. In order to file the waiver application, use Form I-690 (filing fee, \$185), available at www.uscis.gov. It is advisable to obtain the assistance of an immigration lawyer in submitting the waiver application, since the application should be supported by evidence showing why the waiver should be

approved (for example, family unity, or humanitarian considerations, or in the public interest).

If you are a Class Member, then you are entitled to a stay of deportation and work authorization until such time as CIS has made a final decision on your legalization application in conformity with the Court's June 4, 2007 Order. No filing fee is required for employment authorization (although CIS may ask for a fee to cover biometrics). Defendants are required to document your records to show that you are a class member in order to ensure that no class members are removed from the United States in violation of the Courts' orders. Please contact us immediately if you are at risk of deportation by Immigration and Customs Enforcement. Please provide us with the name and contact information for any officer that contacts you about deportation. Please tell any immigration officer that you are a *Proyecto* class member and protected by court order from deportation.

More Information: For a complete copy of the Court's orders and copies of forms, go to <http://www.uscis.gov/legal><http://uscis.gov/graphics/lawsregs/settlement.htm> or to the webpage for class counsel www.ghp-law.net or call class counsel Robert Gibbs or Robert Pauw at 1-800-654-9155 or 206-689-2270 (fax). In order to receive updated information concerning the status of this case, please keep us up to date with your contact information by phone, fax or email at info@ghp-law.net.