


# Memorandum



**BIA 10-01**

Subject <b>CASE HOLD - <i>Carachuri-Rosendo</i> issues in the 5th and 7th Circuit</b>	Date <b>January 6, 2010</b>
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To  
**Board Legal Staff**

From  
**David L. Neal, Acting Chairman** 

The Supreme Court has granted certiorari in *Carachuri-Rosendo v. Holder*, No. 09-60 (5th Circuit). This case raises the question of whether a second or subsequent state conviction for possession of a controlled substance is an aggravated felony under section 101(a)(43)(B) of the Act, or instead is only an aggravated felony if the State applied a recidivist enhancement in the second or subsequent conviction. The circuits have split on this issue, with the Fifth and Seventh Circuits holding that the second conviction qualifies as an aggravated felony regardless of whether the second state prosecution relied upon the defendant's status as a recidivist. The Board, and other circuits, hold to the contrary. See *Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007); *Matter of Thomas*, 24 I&N Dec. 416 (BIA 2007).

In light of the above, I am directing, pursuant to 8 C.F.R. § 1003.1(e)(8)(iii), that the adjudication time limits be temporarily suspended in individual cases arising in the Fifth and Seventh Circuits which turn on the issue of whether two possession convictions amount to an aggravated felony. If a case can be resolved on other grounds, it should not be put on hold. If you find a case that falls within this hold category, please bring it to the attention of your team leader or Senior Panel Attorney.