

NLWJC - Kagan

Counsel - Box 035 - Folder 008

**California Letter to Department of
Justice**



U. S. Department of Justice

Office of Legal Counsel

DRAFT

Office of the
Deputy Assistant Attorney General

Washington, D. C. 20530

October 22, 1996

Daniel M. Kolkey
Counsel to the Governor and
Legal Affairs Secretary
Governor's Office
Sacramento, CA 95814

Dear Mr. Kolkey:

I am writing in response to your request for advice regarding the effective date by which states are to withdraw eligibility for federal public benefits to non-qualified aliens under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA").

At the outset, I should note that the question of the effective date of Section 401 of the PRA is distinct from the question of how to verify compliance with the requirements of that provision. As to the later question, the Department of Justice and other federal agencies are currently considering how best to implement the verification requirements of Section 432 of the PRA. It is my understanding that the Administration will provide guidance to the States on this question as soon as is practicable following the completion of this analysis, and will certainly do so within the 18 month period provided in the statute.

With respect to the former question, the Department must unfortunately decline to provide formal legal advice. As Attorney General (later Justice) Frank Murphy stated long ago in response to a request from the United States Senate, it is the "time-honored position" of the Attorney General not to provide legal opinions to persons outside of the Executive Branch. See Request of the Senate for an Opinion as to the Powers of the President "In Emergency or State of War", 39 Op. Att'y Gen. 343, 347 (1939). The Attorney General is expressly authorized to provide legal opinions in only two instances. First, the Attorney General "shall give [her] advice and opinion on questions of law when required by the President." 28 U.S.C. § 511. Second, "the head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his [or her] department." 28 U.S.C. § 512. These statutes, in substantially this form, have been in effect since 1789. See 1 Op. Att'y Gen. 211, 212 (1818) (Attorney General is only authorized to give official opinions to the President or department heads).

While I am unable to provide you with legal advice, (it may assist you) to know that the Supreme Court has held that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment. Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991). As you know, Section 401 of the PRA contains no express effective date.

I hope this information proves helpful to you.

Sincerely,

*typically do
this -
voluntarily.*

Randolph D. Moss
Deputy Assistant Attorney General
Office of Legal Counsel



GOVERNOR'S OFFICE

October 7, 1996

By Telecopy and U.S. Mail

Lisa Jacobs, Esq.
Counsel to Assistant Attorney General
for Policy Development
U.S. Department of Justice
Tenth and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Personal Responsibility and Work Opportunity Reconciliation Act

Dear Ms. Jacobs:

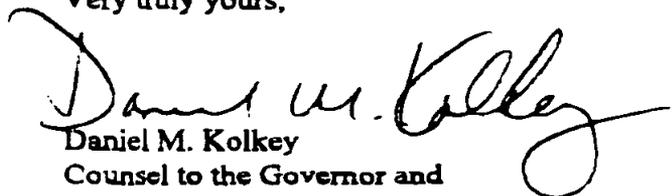
In accordance with our telephone conversation on October 7, 1996, this letter seeks guidance from the U.S. Department of Justice with respect to the effective date by which States are to withdraw eligibility for federal public benefits to non-qualified aliens under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

As you are aware, Section 432 of Title IV of the Act provides that not later than 18 months after the date of enactment, "the Attorney General of the United States ... shall promulgate regulations requiring verification that a person applying for a Federal public benefit (as defined in section 401(c)) ... is a qualified alien and is eligible to receive such benefit." States are to comply with those regulations within two years.

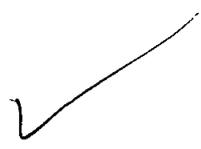
Please advise us of the position of the U.S. Department of Justice as to the effective date by which States are to withdraw federal benefits from non-qualified aliens. Do you take the position that States are not to terminate federal benefits until after the promulgation of those regulations, or are they to terminate federal benefits before such regulations are promulgated and thereafter conform their verification procedures to the regulations once they are promulgated?

We very much appreciate your guidance in this area.

Very truly yours,


Daniel M. Kolkey
Counsel to the Governor and
Legal Affairs Secretary

GOVERNOR PETE WILSON • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841



E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

15-Oct-1996 04:25pm

TO: Elena Kagan
TO: Diana M. Fortuna

FROM: Emily Bromberg
 Intergovernmental Affairs

SUBJECT: ca

randy from justice just told me that the state of ca sent justice a letter asking for its legal opinion on whether the "ineligible legal alien provisions take effect immediately". randy says his inclination was to answer by saying that the justice dept only gives legal advice to its client, the fed gov't. this sounds absolutely right. elena--can you get a copy of the letter and talk to randy? wilson is looking for a place to lay blame. we should be smart about this.

**GOVERNOR'S OFFICE**

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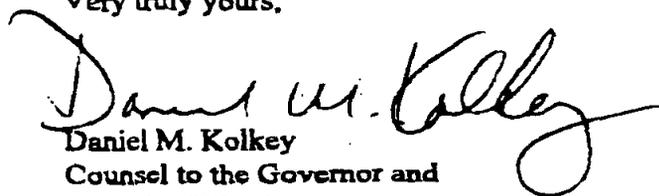
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