

NLWJC - Kagan

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Welfare-Litigation

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WELFARE AND IMMIGRATION REFORM ACT CASES

The Branch is currently litigating or monitoring a number of cases involving limitations on benefits to aliens and other related issues under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA" or "Welfare Reform Act.") and the Illegal Immigration Reform and Immigrant Responsibility Act ("Immigration Reform Act").

1. The Federal Programs Branch is handling a number of class action challenges to the termination and/or denial of SSI benefits (and, in some cases, food stamps) to legal aliens pursuant to section 402 of the PRWORA which provides that such benefits cannot be paid to "qualified aliens" unless they fall within one of the specific exceptions provided in the Act. Sutich v. Callahan, (N.D. Cal.); Rodrigues v. United States, (S.D. Fla.); City of New York v. United States, (S.D.N.Y.); Abreau v. Callahan, (S.D.N.Y.); Yang v. Callahan, (D. Minn.). The legal theories presented in these cases vary somewhat but focus largely on alleged denial of equal protection and due process to legal aliens, improper retroactive application of the statute and violation of the notice and comment provisions of the Administrative Procedure Act.

We recently opposed plaintiffs' motion for preliminary injunction in Sutich, in which plaintiffs represent a circuit-wide class of SSI applicants and recipients contesting denials and terminations of SSI benefits. We argued that section 402 has a rational basis and is well within Congress' broad authority over immigration.

2. We have moved to dismiss a suit filed against the United States, seeking a declaration that section 625(a)(1) of the Immigration Reform Act and is unconstitutional. Ghaderijani v. United States, (N.D. Fla.). The challenged statute requires foreign students, as a condition for the issuance of a student visa, to pay the local school district a fee covering the full, unsubsidized cost of their secondary school education. Plaintiff, an 18-year old citizen and resident of Iran who wishes to attend a public high school in Florida, claims that, because the Florida state constitution provides for "a uniform system of free public schools," the Immigration Reform Act user fee violates the Tenth Amendment and the Florida state constitution. Her guardian, who owns property in Florida, has joined the suit recently in order to assert an equal protection claim.

3. Lewis v. Grinkler, et al., (E.D.N.Y.) is a 1979 action involving the issue of whether the state and federal defendants could restrict eligibility for non-emergency Medicaid benefits to those aliens who are permanently residing under color of law or "PRUCOL." A permanent injunction was issued by the district court in 1992 which precluded defendants from denying or restricting Medicaid eligibility for non-emergency pre-natal care benefits based on an individual's immigration status (or lack thereof). After consultation with Federal Programs and other DOJ components as well as the White House, the U.S. Attorney's Office for the Eastern District of New York filed a motion to vacate the existing injunction based on the enactment of the PRWORA. The court has not ruled on that motion.

4. In City of New York, et al. v. United States, (S.D.N.Y.) plaintiffs challenge the constitutionality of a provision of the Welfare Reform Act which provides that, notwithstanding any other provisions of Federal, state or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the INS information regarding the immigration status, of any alien in the United States. Plaintiffs also challenge a similar provisions in the 1996 Immigration Reform Act, Section 642, which grants authority, regardless of any contrary provisions of law, to federal, state and local governmental entities to furnish to and exchange information with any other governmental entity (i.e., not just INS) regarding any individual's citizenship or immigration status and also allow any official to submit information on alien status directly to the INS. Plaintiffs claim that the cited federal provisions violate the Tenth Amendment and interfere with state and local governments' exercise of their police powers.

The U.S. Attorney's Office for the Southern District of New York, has primary responsibility for defending this case and, in consultation with Federal Programs, has moved to dismiss based on federal supremacy in the area of immigration.

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Additionally, we have declined to participate in several cases challenging state (rather than federal) implementation of the Welfare Reform Act in areas such as denial of pre-natal care, food stamps or other benefits to certain categories of aliens.