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Office of the Attorney General
Washington, D.C. 20530

MAR 20 1990

Honorable Michael Davidson
Counsel
Office of Senate Legal Counsel
United States Senate
Washington, D.C. 20510-7250

Dear Mr. Davidson:

Pursuant to 2 U.S.C. 288k(b), I write to advise you that the Department of Justice has determined not to appeal the district court's decision in Elias v. Department of State, 721 F. Supp. 243 (N.D. Cal. 1989). This determination was made not because the Department has decided that it agrees on the merits with the court's ruling but for tactical reasons: this case is a poor vehicle for appeal on the merits, because of a failure to articulate a persuasive defense in the district court.

The instant litigation is an individual action challenging the constitutionality of R.S. § 1993, 10 Stat. 604. That statute provided that "[a]ll children heretofore born or hereafter born out of the limits of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States * * * ." Thus, this law provided citizenship "only to children of citizen fathers." Montana v. Kennedy, 366 U.S. 308, 311 (1961).

R.S. § 1993 was amended by Congress in 1934. See 48 Stat. 797. The amendment "granted citizenship, subject to a five-year continuous residence requirement and an oath, to the foreign-born child of either a citizen father or a citizen mother." Rogers v. Bellei, 401 U.S. 815, 824 (1971). However, Congress "specifically made the [amendment] prospective" only. Montana v. Kennedy, 366 U.S. at 312.

Plaintiff was born in Canada in 1921 to a Canadian father and American mother. Her parents died in the 1960's. On October 2, 1987, she applied for a United States passport in San Francisco. The State Department denied her passport application on the ground that she was not a United States citizen, having been born to a citizen mother and alien father in Canada prior to the 1934 amendment of R.S. § 1993. Plaintiff thereafter filed this suit seeking to compel the State Department to issue her a passport, and the district court thereafter issued the cited opinion holding that R.S. § 1993 is unconstitutional.

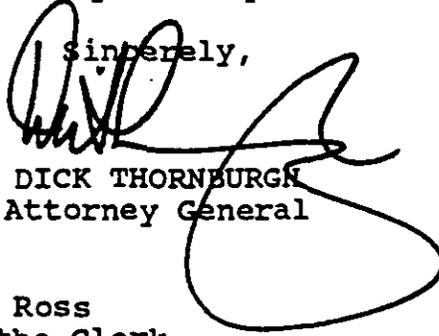
This decision applies only to the individual plaintiff in this action, and leaves the government free to defend the statute

in other litigation. If such litigation is brought, the Department will then have an opportunity to consider fully the grounds available for defending the validity of the statute.

If your office wishes to defend the statute on appeal in the case at bar, we must hear from you promptly. We have until April 9, 1990, to file a notice of appeal from the court's judgment, which was reentered on February 8, 1990, and we would prefer to resolve this matter in advance of that date.

Thank you very much for your cooperation.

Sincerely,



DICK THORNBURGH
Attorney General

cc: Honorable Steven R. Ross
General Counsel to the Clerk
United States House of Representatives
Washington, D.C. 20515