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10-1976

Fiallo v. Bell

Lewis F. Powell Jr.

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SG motion traffin points out Congress' broad provers over immigration. The That Colgress made a conscious decision to exclude these classes - as well as several other classes of children and "forents" has those terms are commonly used. Finally, SG claims there is a rational basis for the discrimination - avo substantial administrative problems, and Mage Finale children cutting down chances totter a of (less chance with mothers of illegition treated defferently from mothers mates, belouse their Names are on birth w/ necker to uningro certificate) Affellants have filed an officition to the So's motion, adding withing wew. My thinking is no longer quite so strongly on appellants' side - perhaps Congress. sower over immigration, plus need to avoid fraud, is enough to justify it. But & still behave it should be argued. Not to argue it we indicate that Congress has a carte blauche in Kninigration matters. Flit PREJAMINARY MEMO CPR, Men May 20, 1976 Conference The List 2, Sheet 1 a tally No. 73-6297 Appeal from ED NY (3-judge court; rhimme Moore, Bramwell; Weinstein sex discours FIALLO, et al. dissenting) juation. ν., Federal/civil Notethat the could LEVY, Att'y General, et al. Timely Acchion The Immigration and Nationality Act, B U.S.C. §§ 1101 et son. exempts papers in this case will be from intelligration quotas the mothers of children who are permanent residents or the one Th citizens of the United States, even if the children are illegitimate; the Act Skewise exempts from the quotas even the illegitimate children of mothers who are citizens ne Man Score Nong we. or permanent residents. The Act, however, contains no similar exemption for the eschew. fathers of illopitimate children or their offspring. The three-judge court, with one judge dissenting, uphold the scheme against appellants' constitutional attach.

1. <u>EAGTS</u>: One of the appellants is an American citizen by birth, who attempted to have his appellant father declared a "parent" under the Act so that the father, a Jamaican citizen, might remain permanently in the U.S. Another appellant is a naturalized American citizen who attempted to have his illegitimate son, a citizen of the French West Indics and also an appellant, officially declared bis "child" under the Act so that the son could reside permanently in the U.S. with bis father. Two appellants are permanent residents of the U.S. who sought to have their appellant father, a Jamaican who had not matried their mother before her death, classified as their "parent" so that he might live with them in this country.

The three-judge court found that all these applications either A formed down or inevitably would be, because of the provisions of 8 U.S.C. 1101(b)(1) and (2), which define "child," "parent," "father," and "mother," and 8 U.S. 1151(b), which lifts the memigration quotas for those who fall within the definitions. The court also accepted appellants' claim that, because of numerical quotas and occupational certification requirements, the alien fathers and child had no other practical way to become permanent residents of the U.S.

<u>THREE-JUDGE COURT DECISION</u>: The court first held that one of the appellants, whose application had been denied by the U.S. Consul in the Dominican Republic, had standing to challenge that action. The court declined to extend the doctrine of non-reviewability of consular action, see. <u>e.g.</u>, <u>Lozs-Bedoya</u> v. <u>(NS)</u>, 410 F. 2d 343 (CA 10 1975), beyond the visa setting where it originated.

On the merits, the court held that the classification attacked was a valid exercise of Congress' very broad power to decide who may and who may not be admitted to the United States, citing <u>Kleindienst</u> v. Mandal, 408 U.S. 753 (1972).

- 2 -

The court said that "while Congress" view about what kind of marital or parental relation should be encouraged in this country may differ from the individual views held by the members of the courts, it is not for the judiciary to usurp the legislative function. . . " J.S., app. A. p. 5. The court thought the classification constitutional unless "wholly devoid of any conceivable rational purpose" or "fundamentally aimed at achieving a goal unrelated to the regulation of immigration." J.S., app. ... p. 7. The statute met this test, "in view of the need to establish administrative procedures abroad which can process immigration applications efficiently, avoid extremely difficult problems of investigation and proof, and minimize the potential for sham claims." J.S., app. A. p. 8. It would be harder, for example, for an unrelated adult to pose as an unwed mother (the real mother's name would likely be on a birth certificate) than as an unwed fother.

The court accepted that the purpose of the statute was to allow families to be re-united, but thought that the definition of "family" was up to Congress. Moreover, the court noted, the "possibility of poining one's closest family in the United States is a privilege granted by statute, not a right given by the Constitution, " J.S., app. "... p. 10. As to the citizen or resident whose relative is excluded, "the burder of separation . . . when [he] determines not to leave this country in order to be with the alien, is not the equivalent of the statutory destruction of the marriage or form of relationship." Id. The court also paraded some horribles in a footnote:

"Counsel for the Government persuasively suggested at oral argument that plaintiffs' position could have sobering consequences if adopted by immigration officials; an unwed mother living here could bring to the Coiled States all of her illegitimate children, each of whom could bring over his or her biological lather; each father could then bring over <u>all</u> of the children he has ever fathered, and thereafter <u>each of those</u> children could bring over his or her mother, who could then bring over all of <u>her</u> illegitimate children, etc., etc., otc." J.S., app. A at pp. jii-iv, n. 15.

- 3 -

The three-judge court therefore dismissed appellants' complaint.

Judge Weinstein dissented in a thorough and wide ranging opinion. He focused on the interests of the parent or child already resident in or a citizen of this country. "The question thus becomes whether a Congressional classification of citizens and permanent residents which severely disadvantages them may escape traditional constitutional scrutiny merely because it is set in alienage legislation. " J.S., app. B, p. 7. The classification offected the right to "conceive and raise one's children," Stanley v. Illinois, 405 U.S. 645, 651 (1972). Judge Weinstein would have struck it down because it was impormissibly based on gender and illegitimacy, citing, inter alia, Jimenez v. Weinberger, 417 U.S. 628 (1974), and Weber v. Aetna Cas. & Surety Co., 406 U.S. 164 (1972). on illegitimacy: Weinberger v. Weischfeld, 410 U.S. 636 (1975): Frontiero v. Richardson, 411 U.S. 677 (1975). on gender.

Julge wearshing four for the special roles for unwed fathers were enacted to prevent sporious claims, and in any event did not serve that purpose: claims involving a mother-child relationship were investigated by looking to the same sort of evidence that would be relevant to a father-child relationship. "Women : laining to be mothers of illegitimate children and men claiming to be fathers of legitimated. legitimate, or illegitimate children in a step-child situation, and their respective children, would have as much difficulty or ease in presenting fraudulent proof as would a man claiming to be the fother of an illegitimate child and his child." J.S., app. B. p. 21. He found nothing to indicate that Congress intended to make some judgment about the relative strength of unwed mother-child family units or legitimate father-child units, on the one hand, as compared with illegitimate fatherchild units, on the other hand, and thought there was no empirical basis for such a

judgment in any event. If the Act was based on such a presumption, it was an impermissible conclusive presumption in the absence of some mechanism by which illegitimate father-son units could show, as Judge Weinstein (hought appellants could, that they really were a family unit that should be reunited.

3. <u>CONTENTIONS</u>: Stressing the "total arbitrariness and complete irrationality" of the classification, as well as the "wholly speculative" nature of the three-judge court's spurious claims analysis, appellants' arguments basically track the dissenting opinion.

4. <u>DISCUSSION</u>: The statute permits on American citizen parent to bring in an illegitimate child if the parent is a woman, but does not allow a parent who is a man to do so. If also permits an American citizen child to bring in his alien father if the child is legitimate, but does not allow the child to do so if the child is illegitimate. So long as one looks, as the majority did, to the interests of the alien seeking admission to the United States, the case is fairly easy. But as Judge Weinstein makes clear, the majority opinion largely fails to deal with the interests of the American citizens and permanent U.S. residents who wish to re-unite their families in this country. A response might do so with more precision.

There is no response.

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5/10/76

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Court USDC, E.D. N. Y.	Presence 6. 3-16	
Court	Voled an	
Argued	Assigned	No. 75-629
Submitted	Amounced	

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RAMON MARTIN FIALLO, ETC., ET AL.

v:s.

EDWARD H. LEVI, ET AL.

3/1/76 - Appeal

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lfp/ss 11/17/76

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November 17, 1976

No. 75-6297 Fiallo, et al v. Levi, Attorney ______ General of the United States, et al.

This is an appeal from a three-judge District Court in New York that sustained (2 to 1) the validity of provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., defining "parent" and "child".

The plaintiffs below (appellants here) are three sets of unwed, biological fathers and their illegitimate children. The effect of the definitions is to exclude (from preferential status and hence admission in spite of immigration quotas) the unwed alien fathers of illegitimate children who are American citizens, and also to exclude the alien illegitimate children of unwed fathers who are American citizens.

For example, Fiallo (one of the appellants) is an infant and an American citizen by birth. He applied to the American consul in the Dominican Republic to have his alien unwed father officially declared to be his parent under the immigration laws so that the latter could immigrate or remain permanently in the United States. At the time of this suit both parents of Fiallo were living together in this country with him, and the unwed father could quality as a parent if he legitimatized Fiallo. But the degree of the father's desire to legitimatize his illegitimate son, and remain in America, may be indicated by the fact that he has declined to legitimatize his son by marrying the boy's mother.

Another appellant, Warner, a naturalized American citizen, wants to have his illegitimate son, a citizen of French West Indies, officially declared to be his child within the meaning of the Act so that the boy may remain permanently with his father in this country. Again, the boy was neither the father's legitimate nor legitimiated offspring, and hence did not come within the Act's definition of a child.

Decision of CA2

After rejecting, in a single paragraph, the government's argument that the refusal of visa by a U.S. counsul is not subject to judicial review (i.e., is non justiciable), CA2 addressed the merits. It started "with the proposition that congressional power to make rules for the admission and exclusion of aliens is exceptionally broad." <u>Kliendienst</u> v. <u>Mandel</u>, 408 U.S. 753, 766. As stated in <u>Mandel</u>, an alien has no constitutional right to enter or remain in this country. In specifying the kind of relationships which justify special preference, under the immigration laws, CA2 emphasized the wide latitude and discretion of Congress.

The statutory definitions distinguish between the preference accorded unwed mothers and unwed fathers, according preferential treatments to the mothers that are denied the fathers and the

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illegitimate children of such fathers. CA2 sustained this distinction because of the increased opportunity for fraud with respect to unwed fathers as compared with unwed mothers:

"However, in view of the need to establish administrative procedures abroad which can process immigration applications efficiently, avoid extremely difficult problems of investigation and proof, and minimize the potential for sham claims, we cannot say that the legislative decision to exclude unwed, biological fathers and their illegitimate children from the statutory definitions of parent and child is patently unreasonable, <u>Cf. Faustino</u> v. <u>INS</u>, <u>supra</u>. For example, while the names of biological mothers routinely appear on such documents as birth certificates, this may not be the case where unmarried fathers have not acknowledged paternity officially at about the time of birth. Although such evidence would not necessarily be conclusive of one's status as a parent, nevertheless we perceive that it might be more difficult for an unrelated adult to pose as a child's mother than a child's father, where the birth certificate contains a definite name and identification of the mother only."

SG's Brief

The SG argues first that the issues presented by this appeal are nonjusticiable, contending that the formulation of policies with respect to the admission of aliens is a basic characteristic of sovereignty and is entrusted by the Constitution exclusively to the political branches of government. I suppose this is the "political question" argument which I find difficult to distinguish between the "justiciability" argument in a context such as this case.

The SG further argues, as would be expected, that even if immigration policy determinations by the legislative and

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executive branches may be reviewed by the courts, § 101(b) (containing these definitions) has a rational basis and furthers legitimate objectives of the immigration laws.

Addressing the argument that there is a gender based discrimination (against unwed fathers), the SG's brief notes the "serious potential for immigration fraud" with respect to

unwed fathers:

"The determination of <u>paternity</u> [as contrasted with maternity] of an illegitimate is difficult under the best of circumstances; it is all the more difficult when it depends upon events that may have occurred in foreign countries many years earlier."

Position of Appellants

In a brief by the New York Legal Aid Society that makes the most of a bad case, the focus is on the alleged "fundamental constitutional rights" - not of the aliens but of the illegitimate children who are citizens of this country and whose alien fathers are not admitted, and upon the unwed fathers who live in this country and whose illegitimate alien children are not admitted. The perceived fundamental constitutional right, asserted as the basis for the compelling state interest test, is the "family relationship" whether It be "legitimate or illegitimate".

As the SC's brief points out persuasively, appellants misconceive the purpose of the immigration laws as well as the extent of congressional authority and discretion with respect to immigrants. The purpose of such laws was not to unite in this country biological families under any and all circumstances. Its purpose was to control the entry of aliens, and as I am presently advised the classification here challenged at least has the minimal rational basis required for immigration legislation.

As I view the classification to be valid, I need not decide the "political question" issue - although logically that is the threshold question.

1.F.P., Jr.

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12/6/76 ec//

TO: Mr. Justice Powell

FROM: Cone Comey

RE: No. 75-6297, Fiallo v. Levi

BOBTAIL BENCH MEMO

There are essentially two issues in this case. The first issue is whether the "equal protection" **chain** claim in the immigration context is reviewable. The second question, assuming reviewability, is whether there is a rational basis **to the** support the distinction in treatment at issue in this statutory scheme.

I. REVIEWABILITY

The SG is on firm ground when he contends that Congress has broad power over issues concerning the **shain** admission of allens. But this in itself does not mean that the exercise of that power is always <u>unreviewable</u>. Just last Term several decisions of this Court indicated that review in the immigration area is <u>narrow</u>; those **distinction or billine** decisions did not suggest that judicial review was <u>nonexistent</u>. "It is important to note that the authority to control immigration is not only vested solely in the Federal Government, [citations omitted], but also that the power over allens is of a political character and **ther** therefore subject only to narrow judicial review." **Hampton v. Mow Sun Wong**, 96 S. Ct. 1895 (1976), at **1904** n. 21. "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." <u>Matthews v. Diaz</u>, 96 S.Ct., at 1891 (1976). But the judicial **Constitution** branch is authorized to intervene where "the paramount law of the constitution" so requires. <u>Fong Yue Ting v. United States</u>, 149 U.S. 698, 713, <u>cited in Hampton v. Mow Sun Wong</u>, 96 S.Ct. at 1904 n.21. The question here is simply whether in a case of this sort the Constitution authorizes limited judicial intervention.

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I think the answer is yes, and I rely on primarily on ter two factors. First, note that the nature of the immigration problation in the instant case is not squarely within that P "political character" of the immigration regulation. The instant role does not involve exclusion of a class of people based on t factors like country of origin, which are closely related to the "political character" of immigration regulation but rather on a factor common to all applications applicants:

I think the answer is yes. , I rely in this regard primarily dependent on the fact that Congress has access to this country on an applicant's relationship to a citizen or permanent resident. Thus, as the dissenting judge below noted, this is not a simple case of classifying aliens for the purpose of preferring some over others for entry. Here, the congressional purpose was to make some attempt to reunify Surilies, and part of the congressional concern was focused on citizens ane mobermanent residents. When Congress attempts to take some action in the immigration area to further an interest shared by all citizens and permanent residents (reunification of a split family), surely there are some constitutional limits on the districtions the Congress can draw. For example, I doubt that five members of this Court would be willing to find "unreviewable" a congressional statute that allowed whites and whites alone to bring in their immediate relatives free of all immigration quotas. All three judges below found the substantimy claim to reviewable, and I would agree with chem.

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On the marits, I don't find this to be a difficult case. There is in this immigration area, as in the area of Indian affairs, a long history of considerable deference to congressional judgments. And although there may be judicial review in this case, I would emphasize the fact that it is a narrow and limited. The majority of CA2 a applied a standard of review which I think is perhaps appropriate, and which appears to require a somewhat less justification than the regular rational basis

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test: "Unless the immigration laws in question are wholly devoid of any conceivable rational purpose, or are fundamentally aimed at achieving a goal unrelated to the regulation of immigration, they are not • unconstitutional encroachments on the right to equal protection of the laws." App. at 57.

Applying that test, or even a somewhat more stringent test, to the facts of this case, I find the distinction in the creatment rational. The SC makes two arguments with respect to the basis for the distinction in treatment. The first 🛲 is that the congressional purpose was to reunite families where there was a stong interest in intimacy, and that it was reasonable for Congress to conclude that no such intimacy generally exists between natural fathers and their illegitimate children, especially those the fathers who have never chosen to legitimate their sons or daughters. I would not rely on this argument. In the first place, it runs contrary to what the Court has recently and the context of domestic regulations. We have been moving to a position where legitimate And illegitimate familes are a considered to have a strong degree of family intimacy and unity, and I would not start to assume the opposite in the immigration context. Second, I can see no reason to rely on this somewhat 🖼 🚛 "distasteful" argument the SG puts forth a second and entirely sufficient reason for the • distinction in treatment: administrative convenience. See Brief for the United States at 44. The SG argues that paternity determinations are very difficult to make, in taper ally when the child has been born, perhaps many years carlier, in a

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foreign country. There is a logitimate governmental concern with the problem of fraud in the immigration area. Whatever may be the Court's willingness to accept administrative convenience in the court's millingness and the court where our review of the decisions of the congress and the executive is narrow and limited.

5.

It seems to me that you have the following options: 9 Minute <u>FIRST:</u> you could **con** conclude that there can be no judicial **memory** review of the equal protection claim. That position is not **main the inconsistent with broad language in immigration cases, Month** though I do not think it is the most appropriate way to resolve this case.

SECOND: you could conclude that there is very limited **int** judicial review, especially in a case like this where the right of access is hinged on a relationship to citizens and permanent residents. You could then find the statute's distinction in treatment to be **•** rational, relying on (1) the government's "lack of intimacy" argument; or (2) the administrative convenience-opportunity and incentive for fraud argument, or (3) both (1) and (2). As already indicated, J would avoid reliance on the degree of intimacy between fathers and their illegitimate children, and would rely exclusively on the administrative.

Argued 12/7/76 75-6297 <u>FIALLO V. LEVI</u> appeal from N.Y. 3 &/ct shart surfamiled the Immigration law attacked by appellants The act (\$ 1101) definer "karent "+ "child". Effort of defenction is to exclude from cartain profession admissione (alme quotor): (i) used fathers (alience) of ellegitments children who are u.s. catigen or legally have (ii) illigituate dulleran (alien) of of unwed father who are U.S. an tryme or legally have. × Goit argues that a goit does not have to allow any allow or any exceptions or programmen. Deope of venew of Conquening action on to Immigration is narrow & theory but her is on one who attacker such lagerlation . good's intereste are substantial; (i) in limiting preference adminute, (ii) in manying found trandulent adminion. (too lows of ather country a to legetimay vary; also defficilly of dependence proof)

mun Calvo (appellante) Euclie nghts of aligen - not alian. Disconverter vs. fundamental myters of catagone ato live with Hein families Unger the statutory exclusion in over-broad. Should be indischarlinged determination in each case

Deputy A. G. Harold Tylen (for u.s.) Illegetimese alone does not 4x cloude Congressional scheme in refional. Profesencer go only to mather + has allegetimate child.

No. 75-6297 Conf. 12/10/76 Fiallo v. Levi afferm 9-D The Chief Justice affer 山口がた ゴチャッキット 丁、 Power of Congress affin w/respect to immigrate The statute is one of brondert of is not enterely all powers . insternal. a different mile would inorte fraudalent entry. Some handslips result Siewart, J. affer Breenan, & Office This case deals Power of Congress with actions at suc loave little latitude. core of Congressional power over Jungeation. Congress, nover, in this area , in virtually unlimited . Even the this statula would be invational under E/V standarde, Congress has exceptional anthinty

Marshall, J. 7 White, J. Penal Congress can exclude Blackmun, J. Off Powell, J. Coffin Repaist, J. affen not like mandel where there were substantive Court. nghts wooload . Secony notice

Supreme Court of the United States Bashington, Ø. C. 2054.9 COMPLEX OF December 13, 1976 JUSTICE THURGOOD MARSHALL Dear Chief: You have assigned me the opinion in No. 75-6297, Fiano v. Levi. I am sorry but it will be impossible for me to take this one. You will common my vote was that "the most I can do is join in the judgment," Obviously J cannot write the opinion itself. I just cannot get around my dissent in Kleindienst v. Mandel, 408 U.S. 753. Indeed I would not want to,

Sincerely, т.м.

The Chief Justice

cc: The Conference

lfp/ss 2/12/77

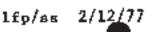
Add this as a footnote 15, keyed as indicated to page 19.

15. The inherent difficult of determining paternity of an illegitimate is compounded when it depends upon events that may have occurred in foreign countries may years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to the likelihood of freudulent visa applications and the problems of proof and perhaps increased immigration that likely would result and

from a more generous drewing of the line

Add a footnote along the following lines:.

The government argues that the challenged sections of the Act, embodying as they do "a substantive policy regulating the admission of aliens into the United States . . . is not an appropriate subject for judicial review." Br., at 15-24. Although our cases reflect acceptance of a judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens, there is no occasion to consider in this case whether there are or may be actions of the Congress with respect to aliens that are so essentially policy and political in character as to be **manjustifiesble**.



MEMORANDUM

TO:	Gene Comey	DATE :	February 12, 1977
FROM:	Lewis F. Powell, Jr.		

No. 75-6297 Fiallo

As you suggested, it has not required a vast amount of my time to review your first draft of an opinion. Indeed, I think you have it very nearly ready for a printed chambers draft.

You will not be surprised by my principal comment: For a case of this intrinsic simplicitly, and with the Conference vote 9 and "zip", al9 pages of text are just too many. See what you can do to cut the draft down. Although I have not attempted, critically, to suggest where the "cutting" should come, it occurs to me that the following are possibilities:

(1) The statement of the facts with respect to each of the claimants perhaps could be summarized in a general way.

(2) The discussion of the border search cases seens a bit discursive, and can be tightened up.

(3) The same should be attempted with respect to the discussion of <u>Mandel</u> (p. 11, 12).

(4) The legislative history also can be stated in more conclusory terms - perhaps in a single paragraph. Appellant's claim with respect to the legislative history is frivolous, as two or three of your quotations indicate.

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Rather than dealing separately with the "second" and "third" alleged distinguishing factors, it may be feasible to treat them together since the underlying reasoning is the same. I think one can give short shrift to both of them on the basis of prior cases. I have tinkered some with the paragraph on page 13, as it seems to be a rather weak statement standing alone. This may be a further reason for treating the second and third factors together.

Some of the notes also should be examined closely with the view to elimination or reduction. All of the information in the notes is interesting background, but I doubt that it is worthwhile - in this case - to be quite a fulsome in describing the scope of the immigration laws.

Despite the foregoing comments, I think you have a good straightforward draft and have properly relied on the congressional power over immigration.

L.F.P., Jr.

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Supreme Court of the Aniled States Washington. B. C. 20343

CHANNEPS OF JUSTICE POTTER STEWART

February 18, 1977

Re: No, 75-6297, Fiallo v. Bell

Dear Lewis,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

ç. 67

Mr. Justice Powell

Copies to the Conference



Supreme Court of the Muited States Inshington, P. G. 20343

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CHANNERS CF JUSTICE HARRY & DLACKMUN

February 22, 1977

Re: No. 75-6297 - Fiallo v. Bell

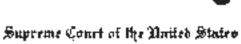
Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

cc; The Conference



Washington, D. C. 20549

UNAMERAL OF USED OF THE OF THE

February 22, 1977

Re: No. 75-6297, F(allo v. Bell

Dear Lewis:

 $^{-1}$ shall try my hand at a dissent "with all deliberate speed."

Sincerely,

Mr. Justice Powell

cc: The Conference

Supreme Çourt of the United States Washington, P. C. 20549

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CHARGENESS OF JUSTICE WILLIAM P. REPNOJIST

Pebruary 24, 1977

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Re: No. 75-6297 - Fiallo v. Bell

Dear Lowis:

Please join me.

sincerely,

Mr. Justice Powell

Copies to the Conference





Supreme Court of the United States Mashington, B. C. 20543

CHANGERS OF LUST OF JOHN MALE STOVENS

March 7, 1977

Re: 75-6297 - Fiallo v. Sell

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Dear Lowis:

Please join me.

Respectfully,

Mr. Justice Powell Copies to the Conference ើម ភូមិ -

MAR 1.1 15/1 -9 10 AM

N(TE) Where it is fractile, a syllabul (headnote) will be retrieved, as is bring done in elementian with this case. At the time the optimation is bound the syllabul resulting an part of the optimation of the U are but has Seen provided by the Reputer of the locate for the reader. See Child States & Person Lambar Ga. 200 (0.8, a21, 337)

SUPREME COURT OF THE UNITED STATES

Syllabos:

FIALLO, A MINOR, BY RODRIGUEZ, ET AL. E. BELL, ATTORNEY GENERAL, ET AL.

APPEAL FROM THE UNITED STATES DESTRICT COURT FOR 7216 EASTERN DESTRICT OF NEW YORK

No. 55-6297. Argued Discuber 7, 1976-Decuise March --, 2977.

Sections 101 (50 (1) (10) (5) (102 (5) (2) of 0 = haracteritors and Nation (1). Act of 1953, which have the offert of excluding the relationship between an illeviting to child and his matrix, in these tax approved to be matter ilnotionship from the spaces productive antequation states accorded by the Act to the tends" or "parent" of a United States entry or "wild perform the resident head not be be entry (1) to be 5 to 2.

(a) The Court's case: in we long to explored the parter in exploit evolute alreas as a fouritational constraint attribute events of by the Covernment's political departments torigits into the form physical control." Sharedowsky we direct, 145-15 is 20th 210, see that Khurdenst we Mundet, 405 U S (753) *Harshalles v. Sharefunction*, 362-17 S (580, 558-589), and an Information the instant case warranting a more set relaing patient sector in the instant case warranting a more set relaing patient sectorial than has generally been applied in domigration mores. Pp 5-9

(b) In enacting the childraged statutory provides. Congress was specifically endowned with charty agrithe previous that without the disgutance child on relation to his mother assaid have the some status as a legitimetric child and the legislature history of these provisions influcts at interfaced clock or the provide principle limitage treastature by various of the relationship between an efficiency theory have been aged drawn by Congress provide part of the provide stature by various of the relationship between an efficiency theory have been aged drawn by Congress provide the index (such as these based on aged drawn by Congress provide to its determinant to provide some first not efficiency with relief from caracter antiographic restructions that would otherwise hunder resultioning of the furthy in this country. The decision is the whole to show r^{1} there is a proviquestion within Congress (exclusive provide). Provide the provide restrictions that would otherwise hunder resultion as the provide distribution within Congress (exclusive provide). Provide the provide this country. The decision is the whole to show r^{1} there is a provi-

(a) Whether Congress' determination that preferred all status is not waranated for allographics children and their neuroph forbusy results.

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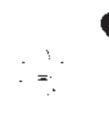
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Syllabus

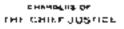
From a prevential absorber in any the set of how family the or a considerative factor is problems of proof that could which in parently define indications of a solution of proof that could which the problem for the legitic we domain. *Kinger est*, we *Model*, support at 770, [Pp] 10-11.

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а.



Supreme Court of the Nuited States Tashington, P. C. 20549



March 14, 1977

Re: 75-6297 <u>Fiallo</u> v. <u>Bell</u>

Dear Lewis:

I join.

Regards,

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Mr. Justice Powell

cc: The Conference

Dissent in bared on theory Io: The Chier J Hest act created a "fundam fel 12. Jakes of Stangan Mr. Justice Stowart right " in children who as Mr. Justice Mbits Mr. Justice Blackoun ation to bring in alien Mr. Justice Powell biological father - but Mr. Justice Rohnquist Mr. Justice Stevens ittigener only of lage and a "remular "meht" From: Mr. Justico Marshall father who are cetequer but Circulated: MAR 21 1977 my as to lagetimate chills Recirculated: 1st DRAFT argues the rights " Keinewed SUPREME COURT OF THE UNITED STATES accorded am atimen not the o. 75-6297 Ramon Martin Fiello, etc., et al., I On Appeal from the United Appellants, Thur U ten States District Court for v. the Eastern District of Griffin B. Bell, Individually and: New York. as Attorney General of the United States, et al. [April =, 1977] MR. JUSTICE MARSHALL, dissenting. Until today I thought it clear that when Congress grants benefits to some citizens but not to others, it is our duty to insure that the decision comparts with Fifth Amendment principles of due process and equal protection . Today, howexult - N ever, is uphololog legislation that provides relief from the to ent hardships of junnigration requirements, the Court appears to hold that such discrimination among citizens, however invidi-Mu. K.S. ous and irrational, must be tolerated. Since I cannot agree that Congress has license to dony fundamental rights to viti-The city tens according to the most disfavored criteria simply because the Inanigration and Nationality Act is involved. I dissent. film t netetion The Introgration and Nationality Act of 1952, 8 U. S. C. un beli *i* t sequestablishes the terms and conditions for entry into the United States. Among its various conditions, the ne Art requires that an alien seeking to enter the United States as a legal periphonal resident must some within a restrictive alien numerical quota and must satisfy certain labor configution See 511546 (2007) 152, 184 (201, 202, 212 (a) (4), 8 C. S. C. 152 (a) 152 (a) 152 (a) 141 as smeaded by the integration and <u>Nationality</u> Act Amendments of 1976, Pub. L. No. 94-571 The humanation Laws create - certainly This context - no "righti" exforces citizen except in behalf of al - net in position to tet in

75-6297-DISSENT

FIALLO V. BELL

90 Stat. 2703 "1976 Amendments." In recognition of the fact that such requirements frequently separate families. Congress has provided that American citizens may petition to have the requirements waived for their immediate famžies: sponse, parents, children. INA §§ 204 (a) (b), 212 (a)(14), 8 U. S. C. §§ 1151 (a), (b), 1182 (a)(14)."

Printle 8 O. S. C. § 1151 (a) and (b) (1970) provide:

*§ 1141. Nomercoal instations on total lawfol solmassing—Quarterly and prime fortations.

f'(z) Exclusive of special imaginate defined in section 1102 (z) (27) of the title, and of the immediate relatory of limited States catizens specified in subjection 2b) of this section, the number of alies who may be is not immediate by whereas acquire the states of alies are also leveled unsubjective to the United States (or permutative reading), or whereas of the factors for permutative reading by the task of the United States (or permutative reading), or whereas provide the end reading of the states (z) of this title enter conditionally (i) shall rat in any of the first three quarters of any fixed year exceed a total of 170,600.

"Emmediate relations defined

"(b) The "ignordance relatives" referred to in subsection (a) of this section shall mean the children, sponses, and parents of a cuttern of the Garrost States: Provided, "that in the case of parents, such sitisch mean has all boot treaty-one years of age. The manufacte relatives specified in this subsection who are otherwise qualified for addition is inducered bractations in this diagram".

The charges made by the 1976 Amendment were not material to this case.

[170] S. U. S. C. § U82 (a) (14) (1970) provides:

*§ 1082 Excludable aliens—Corner, i. classes ...

"Tak Everyt as otherwise provided in this chapter, the following closes of pages doll be under the traverne visus and shall be eveloped from other received inter the United Statist

"(14) Alicon serving to other the United States for the purpose of performing shallow or markalled theory unless the Secretary of Labor has determined and settified to the Secretary of State and to the Arrange General that (A) there are not sufficient workers in the United States who are able, withing, qualified, and areabable at the time of application for a visual determination to the United States and at the place merkich the-

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75-62:0-DiSSENT

FIALLO 7. BELL

The privilege is accorded only to those parents and children who satisfy the statute's definitions. Under $1NA \leq 101$ (b) (1), a "child" is defined as an animarried person under 21 years of age who is a legitimate or legitimated child; a stepchild, an adopted child, or an illegitimate child by whots or on whose behalf a privilege is sought by victure of the celationship of the child to its biological mother -8 U.S.C ≤ 1101 (b)(1). A "privat" is defined under INA ≤ 101 (b)(2) solely

For the simulfermer of the 1979 Ameridanesis on this section, see to $h_{\rm c}$ actually

[8]Tube S. R. S. C. § 1101 (50111) (provide-1)

"The term (ch(b) areas an unmarried person under twenty one years of age who $\sqrt{-1}$

"(A) a legitimate child; et-

"(B) a step-bild whether or not horn out of wedlock, provided the child had not reached the age of eighteen years at the rine the matriage erroring the status of step-hild ex-street; or

C(C) is child legitimated under the law of the rinkly residence or domicale or under the law of the father's re-idence or domicale whether in or notsafe the United States, it such legitimation takes place before the circle random the logitation of gates, and the rhold is in the legitation of the logitation parent or parents at the take of such legitimation.

(4D) an diegument stability, through others or on whose behalf a status, grividuse, of benefit is sought by virtue of the solutionship at the child to its network partners.

(16) a child adopted reliae under the age of fraction weres if the child has thereafter been in the legit ensteady of, and has resulted with the adopting parent or parents for at least two years: *Provided*. That as entural percent of any such adopted while shell thereafter, by virtue of

after 4- described to perform such skalled or anishibet labor and (B) the employment of such alphas will not inversely affect the wages and working conditions of the workers in the limited States similarly employed. The evolution of alients under this paragraph shall apply to special minigrants defined in some 2101 (a) (27) (A) of this (if he other than the priority means or children of United States estimated of alients languable admitted to the United States for parameter readeneet, to preference nonogram places described in sections 1153 (a) (3) and 1153 (a) (5) of this (6), and to assigned entropy described in section 1155 (a) (8) of this title temphesis added).

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FIALLO v. BELL,

on the basis of the individual's relationship with a "child" as defined by § 101 (b)(1). S U, S, U § (101 (b)(2))? The definitions cover virtually all parent-child relationships except that of bological father-illegitimate child. Thus while all American citizens are cluttled to bring in their alien children without regard to either the uncorrical quota or the labor certification requirement, fathers are denied this privilege with respect to their illegitimate children. Similarly, all citizens are allowed to have their parents enter without regard to the labor certification requirement, and, if the entires is over 21, also without regard to the quota. Illegitimate children, however, are denied such preferences for their fathers,

The unfortunate consequences of these onlissions are graphically illustrated by the case of appellant Cleophus Warner,⁴

(110) S. D. S. C. § (10) (6042) (solvides).

"The terms 'partic,' 'father,' or 'mother' mean a parent father, or mother only where the relation-hip exists by reason of any of the circumstances cell forth to subdivision (1) of the subsection."

¹ Instituting this still with Women were Ramon Fullo and Trever and Early Wilson. [60]. Fields in fere-sector-out American citizen and the Wilson's testinged permittent resident along, sock the waver of the Liber.

such periodiage, las accorded any right, privilege, or status under this chapter,

[&]quot;(F) a child, under the age of fearteen at the time a petition is filled in his behalf to accord a closefeature as an introducte relative order section 1151 (b) of this title, who is an orphat, because of the death or disappearance of, abundomment or description by, or separation at his freen, both parents or for rebeau the side of straining parent is incopable of providing the proper circ which will be gravided the child if admitted to the Child States and who has in writing increasedly released the child for emigration and the point, wherher been independed by a limited states child and the species who period darged abroad by a limited states child and be species who period darged abroad by a limited states child and be species who period darged abroad by a limited states child and be species who period darged abroad by a limited states child with the previous respirements of any, of the child's proposal residence *Provided*. That no control prior to prior adoptive parent of any statication when the previous states of any of the child's proposal residence *Provided*. That no control parent of prior adoptive parent of any statication, provides, or states of any provides, he accorded any right, provides, or states under the child spectra."

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FIALLO 2. BELL

Mr. Warner is a naturalized citizen of the United States who, pursuant to 8 U. S. C. § 1154.° petitioned the Attorney General for an immigrant visa for his illegitimate son Serge, a citizen of the French West Indies. Despite the fact that Mr. Warner acknowledged his paternity and registered as Serge's father shortly after his birth, has his name on Serge's birth certificate, and has supported and maintained Serge short birth, the special dispensation from the quota and labor certification requirements was denied because Serge was not a "child" under the statute. It matters not that, as the Government concedes. Tr. 25-26, Serge's mother has alacedoned Serge to his father and has, by marrying another man, upparently reinfered impossible, under French West holies how, Mr. Warner's ever legitimating Serge. Mr. Warner is simply not Serge's "parent."

П

The Government contends that this legislation is not subject to judicial review. Pointing to the fact that aliens have no constitutional right to immigrate to the United States and to a long line of cases that recognize that policies pertaining to

Since these situations cannot recar, however, 1 will feeds on Mr. Warner, whose physic, autoritanately, can be repeated.

"The entries seeking theorem. At a character (1 - 150), for bi- of the sponse, parent, or sheld must the a so-called Form 1-130 putition with the Attacking Control. See text accomponying in 7, infra, for a description of the precedure.

conflication requirements for their respective fathers. Although the 1976 Amendments removed the exampliants from the labor certification requirement for the parent-shift relationships) increated over the example times. There is a saving of the providing "The anendments much by this Act shift not operate to affect the conflement in amingrant states of the other of consideration for two operate of an interigrant visit of the billion and by the presence states, under section 200 (a) of the humigation and by the affect on the flow on the day before the effective date of the Act, on the basis of a petition filed with the Visioney General prior to such effective dates". Interigration and Nationality Act, Amendments of 1976 § 9.

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the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. The Government concludes that "the congressional decision whether or to whom to extend such a valuable privilege ..., is not a subject of fadicial concern." Appellees brief, at 22.

The Court eightly rejects this expansive claim and recognizes that "our cases reflect acceptance of a limited judicial responsibility even with respect to the power of Congress to regulate the admission and exclusion of aliens," Ante, at 6 n. 5. 11 points ont, however, that the scrutiny is circunscribed. Congress has "broad power to determine which classes of aliens may lawfully enter the country" and its political judgments warrant deference. Ante, at 5-7.

I wholeheartedly agree with the Court's rejection of the Government's claim of unreviewable discretion. Indeed, as 1 observed in Kleindeinst v. Mandel, 408 U. 8, 753, 781 (Mate-SHALL J., dissenting), the old immigration cases that reflect an absolute "hands-off" approach by this Court "are not the strongest precedents in the United States Reports." I ampleased to see the Court reveal once again a "reluctance to rely on them completely." *Ibid.* I also have no quarrel with the principle that the essentially political judgments by Congress as to which foreigners may enter and which may not deserve deference from the judiciary.

My disagreement with the Court arises from its application of the principle in this case. The review the majority purports to require turns out to be completely "toothless." Cf. Trimble v. Gardon. \rightarrow U. S. $\rightarrow \rightarrow$ (1977). After observing the effects of the denial of preferential status to appellants, the majority concludes: "(B)ut the decision numerholess remains one isolely for the responsibility of the Congress and wholly outside the power of this Court to control." Ante, at Ω . Such "review" reflects more than due deference: it is abdication.⁴ Assuming, arypoindo, that such deference might

[&]quot;The nuclearity data not even engage in the modest degree of senating

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FIALLO C. BULL

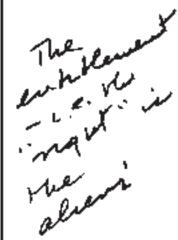
be appropriate in some situations – a supposition I find difficult to accept - it is particularly inappropriate in this case.

This case, unlike most immigration cases that gone before the Court, directly involves the rights of entireds, not aliens. Congress extended to American citizens the right to choose to be remaited in the United States with their immediate families. The focus was on entired and their cred for relatificant the hardships occasioned by the immigration laws. The right to seek such relief was given only to the citizen, not the alien, 8 U.S.C. § 1454.¹¹ If the citizen does not petition the Attarney General for the special "immediate relationship, can rerelive no preference. S U.S.C. § 1153 (d). It is irrelevant that aliens have no constitutional right to munigrate and that Americans have no constitutional right to compel the ad-

required by Kienelinest v. Mandel, 408 (i. 8, 753 (1972)). See discussion (afray. That (phote, i submit, is due to the first the statute could not even press that standard of review. See Part 111, (afra:

"Investigations consultation; approval; authorization to grant preference status

This S D S, C § 1155 (d) concludes a consular officer from granting prefercorial status as variation of the relation? Fundal his has been authorized to do so as provided by sortion 1255.^o



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FIALLO C. RELL

mission of their families. The essential fact here is that Congress dod choose to extend such privileges to American citizens but then denied them to a small class of citizens. When Congress draws such lines among citizens, the Constitution requires that the decision comport with Fifth Amendment principles of equal protection and due process. The simple fact that the discrimination is set in immigration legislation cannot insulate from scrutiny the invultions abridgement of citizens' fundamental interests.

The majority responds that in Kleindicust v. Mandel, 408 U. S. 753 (1972), the Court recognized that First Amendment rights of citizens were "implicated" but refused to engage in the close structurizing usually required in First Anomhraent cases. Therefore, it argues, no more exacting standard is required here. In that case, Mandel, a Belgian "revolutionary Marxist," could visit this country only if the Attorney General waived the statutery prohibition of visus to "aliens who advocate the economic, international, and governmental doctriues of world communism/? [8] U. S. C. § 1182 (a)(25), The Attorney General denied the waiver and suit was broughtby Mendel and several citizens who claimed their First Amondment right to hear Mandel in person was abridged by the denial. Rejecting the government's contention that it had "unfettored discretion, and any reason or no reason for [denying a waiver] asy he given." the Court upheld the denial only after finding that it was based on a "legitimate and bonafide" reason. Mandel's abuses of visa privileges on a prior visit. 408 U/S., at 769. At the same time, however, the Court close not to scrutinize more closely and accepted the reason without weighing against it the claimed First Amendment interest. It feared becoming carbrolled in the "daagerous and undesitable" task of considering, every time an alien was denoted a waiver, such factors as the projected number of people wishing to speak with the aben and the probity of his ideas, 408 U.S., at 753,

FIALLO & BELL

Whatever the merits of the Court's fears in Mandel, cl. 408 U. S., at 774 (MARSHALL, J., dissenting) the present case is clearly distinguishable in two essential respects. First, in Mondet, Congress had not focused on eitigens and their need for relief. Rather the governmental action was concerned with keeping out "undesirables." The impact on the citizens' right to bear was an incidental and unavoidable consequence of that political jurigrant. This case presents a qualitatively different situation. Here, the purpose of the legislation is to accord rights, but to aliens, but to United States citizens. In so doing. Congress deliberately chose, for masons purelated to foreign policy concerns or threats to national security, to deny those rights to a class of entirens traditionally subject to discrimination. Second, in Mandel, unlike the present case, appelloes concoded the ability of Congress to enact legislation broadly prohibiting the entry of all aliens with Mandel's beliefs." Their concern was directed instead to the exercise of the discretion granted the Attorney General to waive the prohibition. In the present case, by contrast, we are asked to engage in the traditional task of reviewing the validity of a general Act of Congress challenged as unconstitutional on its face. Totally absent therefore is the specter of involving the rourts in second-guessing countless individual determinations by the Attorney General as to the merits of a particular alien's entrance,

when the

III

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Once it is established that this discrimination among citizens caonot escape traditional constitutional scrutiny simply because it is set in immigration legislation, the result is vir-

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[&]quot;The Court noted: "[Appellers] consists that Congress reach exact a blacker probabilion against entry of all above follow into the class defined by §§ 212 fol (25) (D) and (G) (V), and that First Amendment regime could not concrete that decision " 408 U, S, at 767 . But see id, at 779 0, 4 (Mathematic, J., dissenting).

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FIALLO F. BELL

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tually foreordained. One can hardly imagine a more vulnerable statute.

The class of citizeus denied the special privilege of reindification in this county is defined on the basis of two traditionally disfavored classifications-gender and legitunacy. Fathers cannot obtain preferred status for their illigitimate children; mothers can. Conversely, every child except the itlegitimate degitimate, legitimated, step, adopted-can obtain preferred status for his or her alien father. The Court has little tolerance for either form of discrimination. We require that gender based classifications "serve important governmental objectives and ..., be substantially related to achievement of those objectives." Califono v. Webster, — V. S. — (1977); Califano v. Goldfarb. — U. S. —, — (1977); Craig v. Boren, —, U. S. —, — (1976); see also Weinberger v. Wiensepteld, 420 U. S. 636 (1975); Stanton v. Stanton, 421 U. S. 7 (1975); Taylor v. Louisiana, 419 U. S. 522 (1975); Frontiero v. Richardson, 411 U. S. 577 (1973); Reed v. Reed, 404 U. S. 71 (1971). We are similarly hostile to begislation excluding illegationates from governmental beneficence. Inding it "illogical and unjust" to deprive a child "simply because its normal father has not married its mother "Gomez v. Perez. 409 U. S. 535, 538 (1973). See also Trimble v. Gordon. — $U_1 | S | = 1$ (1976); Jimenes v. Weinberger, 417–10, 8, 628 (1974); Beaty v. Weinberger, 478 F. 23 300 (UA5 1973), aff.d. 418 U. S. 901 (1974); New Jersey Welfare Rights Organization v. Cabill, 411 U. S. 619 (1973); Weber v. Actua Cumulty and Survey Co., 406 U. S. 164 (1972); Dams v. Richardson, 342 F. Supp. 588 (Conn. 1972) affid 409 U. S. 1069 (1972): Griffin v Richardson, 346 F. Supp. 1126 (Md., (1972). aff.d. 409 U. S. 1069 (1972); Glana v. American Guaranty and Lightlify Insurance Co., 301 U.S. 73 (1968); Long v. Louissiana, 394 U. S. 68 (1968); ef. Mathems v. Lucas, 427 F. S. (1976); Labine v. Vincent, 401 U. S. 532 (1971). But it is not shouly the invidious classifications that make

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FIALLO E. BELL

the statute so vulnerable to constitutional attack. In addition, the right infrieged is the constitutionally protected "right to live together as a family," *Moore* v. City of East Chereford, — U.S. —, — (1977) (Provent, J. desenting), The right belongs to both the fighter who seeks to bring his whild in and the child who seeks the entrance of his or herfather.

"It is no less important for a child to be cared for by its . . . parent when that parent is male rather than female. And a father, no less than a mother, has a constitutionally protected right to the 'companionship, care, custody, and management' of the children he has sired and raised . . .! Stanley v. Illinuis, 405 U. S. 645, 651 (1972)." Weinberger v. Wiesenfeld, 420 U. S. 636, 652 (1975).

In view of the legislation's denial of this right to these classes, it is clear that, whatever the verbal formula, the Government bears a substantial burden to justify the statute.

B

There is no dispute that the purpose of these special preference provisions is to reunify families separated by the immigration laws. As Congress itself declared "[1] he legislative history of the Immigration and Nationality Act clearly indicates that the Congress intended (in these provisions) to provide for a liberal treatment of children and was concerned with the problem of keeping families of United States entirens and investigracts united." II, R. Rep. No. 1199, 85th Cong... by Sess. 7. It is also clear that when Congress extended the providege to cover the illegitimate-mother relationship in 1957, if dish so to alleviate bandships it found in several enses denying preferential status to illegitimate children and Order mothers. Id., at 7.8; S. Rep. No. 1057, Soft Cong... 1st Sess...4.

The legislative history, however, gives no indication of why these privileges were absolutely decied illegitimate children

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and their fathers." The Government suggests that Congress may have believed that "such persons are unlikely to have maintained a close personal relationship with their offspring." Appellees' brief at 17. If so, Congress' chosen shorthand for "closeness, is obviously over-inclusive. No one can dispute that there are legitimate, legitimated, step, and adoptive parentchild relationships and mother-illegitimate child relationships that are not close and yet are accorded the preferential status. indeed, the most dramatic illustration of the overmelusiveness is the fact that while Mr. Warner can never be deemed a "parent" of Serge, nevertheless, if he should marry, his wife could qualify as a steppurent, entitled to obtain for Serge the prefergatial status that Mr. Warner cannot obtain. Andrade v Esperdy, 270 F. Supp. 516 (SDNY 1967); Nature v. Esperdy, 239 F. Supp. 531 (SDNY 1965).¹⁹ Similarly, a man who, in an adulterous affair, fathers a child cutside his marriage cannot be the "parent" of that child, but has wife may petction as stepparent. Matter of Stattz, Interitu Dec. 2401 (A. G. June 30, 1975).

That the statute is under-inclusive is also undisputed. Appolloes' brief, at 17; Tr., at 21. Indeed, the Government could

² Tois discuss should don't as to the darger over present in legislation forlying sights along gender and legislations that it must very likely ender a theory to a structure effective. ² California Very likely \sim 40 S $\rightarrow \sim 10000$ (SEENESS, J., concurring) that led Cangress in 28 structure of the particles are there to their dilegionate children.

 10 21 + 2NS series to hald a gloss, in such closes, responding to addition 20 the tensories between the permuter and the father of the illegistrate, supertride to the close familie and 1. Matter of Harris, Interim Det. No. 2008 (1970). The data close familie and been defined but we know that it includes a situation where the firther excipation is and shall have been together at a summanic. Matter of The 41 MeN Det. 440 (1965), and excludes the task where means the first or stephenther ever have with or cared for the defidation in the first of the 41 MeN Det. 440 (1965), and excludes the task where means to neutrino stephenther ever have with or cared for the defi-Matter of Harris, rapped Matter of Annala and Montore 13 3AN Der. 5 (1) (1984). Matter of Source, (2) 48N Dec 650 (1968). Matter of March, et H. 50N Dec 537 (1966). The only court to review the enterpretation less tracted at the last of the basis of Experding 270 F. Supp. 546 (SDNY 1957).

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FIALLO 1, DELL

not dispute it in view of the close relationships exhibited in appolants cases precognized in our previous cases, see, e. g., Triable v. Gordon, U. S. (1977): Weber v. Actual Casualty and Surgin Co., 405 U. S. 164, 166 (1972): Stanley v. Illicois, 405 U. S. 645 (1972), and established in numerous studies ¹⁵

The Government suggests that Congress may have decided to accept the inaccurate classifications of this statute because it considered a case-by-case assessment of closeness and patervity not worth the <u>administrative costs</u>. This attempted costilication is plainly inadequate. In Stanley 2, Illinois, supra, we expressed out low regard for the use of "administrative convenience" as the tationals for interfering with a father s right to care for his illegiturate child.

"Procedure by presumption is always cheaper and easier than individualized determination. But when, as here the procedure forceloses the determinative issues of completence and care, when it explicitly disdains present treatities in deforence to past fortualities it applied yisks running roughshod over the unperiant interests of both parent and chaid. It therefore cannot stand." $405 \text{ U}, S_{\odot}$ at 657.

Socialso Grann V. Aroutnan Guarantee and Liability Insurance. Company, 301 U. S. 731 (1968).

This Court has been equally intelerant of the rationale when it is used to deny rights to the Elegitimate child. While we are sensitive to "the lucking problems with respect to proof

We const rely on adm. costs

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FIALLO F. BELL

of paternity." Trimble v. Gorden, $\cdots = 0, S, - \cdots =$ quoting Games v. Perez, 400 U. S. 535, 538 (1973), we are carefulnot to allow them to be "made into impenetrable barriers that work to shield otherwise invidious discrimination." *M.*, at --. We require, at a minimum, that the "statute [be] carefully tuned to alternative considerations." *id.*, quoting Matthears v. Lucas, 427 U. S., at --, and not exclude all illegitimates simply because some situations involve difficulties of proof. *Thid.*

Given such hostility to the administrative conventence preament when invidious classifications and fundamental rights are involved, it is apparent that the rationale is inadequate in the present case. As I observed earlier since Congress gave no indication that administrative costs were its concern we should scrutinize the hypothesis closely. The likelihood of such a rationale is diminished runsiderably by the comprehensive and elaborate administrative procedures already established and camboyed by the immigration and Naturalization Service (INS) in passing on clauns of the existence of a parent-child relationship. All petitions are handled on a case-by-case basis with the petitioner bearing the burden of proof. Murcover, the INS is no stranger to cases requiring proof of paternity. When, for example, a citizen stepmother petitions for the entrance of her husband's illegitimate child, she must necessarily prove that her husband is the child's father." Indeed, it is ironic that if Mr. Warner

¹³ The exists preof is a brith certificate that same the father. Review of Immagnetical Problem. Heatings on H. R. 10992 before the Subcomm. on boundenties, Citizenship, and International Low of the House Comm. on the Jacherry 94 Cong., 1-t and 2d Sess., 150-152, 254 (1975) 1676), Alternatively, etc. The father with the relationship, looks at school decoments which any none the father, and considers from the matural model of subch any none the father, and considers form of enerody or support. *Park*. The Setward also rates to local public determinant constraints from a consider statements in the setward also rates to local public determinant and they exist, but a does not require their because. Alternative administrative recognition procedures , . , permuly available to the entired tablet , . , are imported.

55-6295-DISSENT

FIALLO & BELL

marries and his wife petitions for Serge, her proof will, in fact, be one step more complex than his would be not only must she prove his paternity, but she must also prove their marriage. Nevertheless she would be cutified to an opportanity to prove those facts: he is not.

Nor is a fear of involvment with foreign laws and records a persuasive explanation of the omission. In administering the Act with respect to legitimated children, for example, the critical issue is whether the steps undertaken are adequate under local law to reader the child legitimate and the Service has become expert in such matters.³⁸ - 1 note, in this connection, that where a child was born in a country in which all children are legitimate.³⁹ proof of paternity is the critical issue and the proof problems are identical to those involved with an illigitimate child.

¹⁹ See, e. y. Matter of G. S. I&N. Dec. 518 (1961) (Hungary); Matter of Le, 14 IwN Dis. 379 (1973) (Prophe's Republic of China).

combersome and time constraining and are regarded by consular offerers as equally exitable with evert determinations in charactering fractificent elatities to the parental relationship " $Id_{\rm e}$ of 151.

¹¹The variations are many. In some countries legitimation may be presimplished only by anarriage of the natural parents, Matter of Illancollur, 14 JacN Dec. 427 (1973) (Philippines); Matter of P. 7 LUN Dec. 448 (1957) (Portugal): Matter of W. 9 IAN Dec. 223 (1991) (Surfaam); Matter of J. 9 Jack Drv. 246 (1962) (British Gupana); Matter of C. [9] I&N. Dec. 597 (1962). (Spain): by court decree. Matter of J and Y. 3 15; N. Dev. 557 (1949) Matter of Danega, 15 1&N. Dec. --- (I. D. 2375, 1975) (Ellerate or by formal recognition, Matter of K. S MAN Dre 73 (1958) (Poland): Matter of Jacobs, 21 I&N Doc. 365 (1966) (Yugoslavial: Matter of G. 9 I&N Dec. 518 (1961) (Hungary): Matter of Printer 11 JAN Dec. 041 (1996) (1Virgin Islands), Multer of Sinchrie [13] IAN Dec 613 (1970) (Program); Matter of Kubicka, 14 IAN Dec 303. (I. D. 2189, 1972) (Poloud); Matter of Coker, 14 I&N 521 (1974). (Numerics): Matter of Kim, 14 IAN 561 (1974) (Korea) In some countries a child horn out of weaherk is deemed the legalmente child of bitle parents. Matter of G, 9 IAN 518 (1961). (Bingaryi) of Metter of Lo. 14 1&N Dec. 379 (1974) (People's Republic of China)

75-6297-DISSENT

FIALLO D. BELL

Given the existence of these procedures and expertise, it is difficult indeed to give much weight to the hypothesized administrative convenience rationale. Moreover, as noted previously, this Court will not allow enseems with proof to "justify an impenetrable barrier that works to shield otherwise invidious discrimination." Gomez, 409 U. S., at 538. As the facts of this case conclusively demonstrate. Congress bgs "failed to consider the possibility of a middle ground between the extremes of complete exclusion and case-by-case determisnation of paternity," Trimble. --- U. S., at ---. Mr. Warner is a classic example of someona who can readily prove both paternity and closeness. The Government concedes this, Tr., at 21 22. The fact that he is denied the opportunity demonstrates beyond peradiventure that Congress has failed to "carefully take (the statute) to alternative coasiderations." Id., at 10. quoting Mathews v. Lucas, 427 U.S., at-. Thet failure is fatal to the statute.¹⁵ Trimble, --- U. S., at ----,

IV.

When Congress grants a fundamental right to all but an invidiously selected class of citizens, and it is ahundantly clear that such discrimination would be intelerable in any context but immigration, it is our duty to strike the legislation down. Because the Court condones the invidious discrimination in this case simply because it is embedded in the immigration laws, I must dissent.

¹ Sates resolved where are detered to be whittenly densed privileger on the basis of zerolet and legitimacy. *Hamplon* 8. Mon. Sub. Basg, $(--1)^{1/2} S \longrightarrow (1976)$. Sugaround v. Denguk, 413 U. S. 634 (1973); *Geolum. v. Rechardson*, 403 U. S. 305 (1971); it is clear that appellantly For and Theory Wilson, if they meet the terms of the savings clause of the 1976 (nontrollineous, should also be completed to rehe). See a. 3, 440/a.

Suprems Court of 169 Puiled States Machington, P. C. (20303)

CHANGERS DA JUSTICE JARON R WHITE

April 5, 1977

Re: No. 75-6297 -- <u>Bamon Nartin Fielln</u>, <u>et al</u>. v. <u>Criffin B. Bell</u>

Dear Thurgood:

Please add at the foot of your dissenting opinion in this case the following:

"MR. JUSTICE WHITE also dissents, substantially for the reasons stated by MR. JUSTICE MARSHALL in his dissenting opinion."

Sincerely,

Bym

Mr. Justice Marshall

Copies to the Conference

ec/// 4/9/77

To: Justice Powell

From: Gene Comey

Re: <u>Fiallo</u> v. <u>Bell</u>

I have taken a look at your rough draft of a footnote to be used as a response to Justice Marshall's dissent. On page 2 of that proposed footnote there is the following statement:

The relevant sections of the Act make clear that the "right" is one to immigrate, conferred upon the repair "child" or "parent" (as defined) of a United States citizen or lawful permanent resident alien. No <u>right</u> is conferred upon the citizen or resident alien. . . Congress intended to create a preference status for certain nonresident glions, not to create enforceable rights for American citizens. (Emphases in gover Greet).

I agree that this point must be the central concern of a response to the dissent, but when we put it in those terms and compare our point to parts of the legislative history, 1 again wonder whether we are on the "right" side of this vote.

Though not quoted on pages 32-33 of the appellee's brief, the House Report which accompanied the 1952 bill granting preferential status to legitimate and legitimated children suggests exactly the opposite:

H.R. 5678 implements the underlying intention of our immigration laws regarding the preservation of the family unit. An American citizen will have the right to bring his alien spouse (wife or husband) as a nonquota immigrant. Similarly, he will be able to bring his alien minor child as a nonquota immigrant.

We discuss the 1952 Act briefly on page 9 of our opinion, simply as a starting point for discussion of the 1957 amendments expanding *network* the definition to include mother and illegitimate child. But the quoted language of the 1952 Act explaining the purpose of the

1952 Act (on which the 1957 amendments are based) is very hard to get around.

This particular piece of immigration legislation is in a sense somewhat unique. It does not define eligibility according to the characteristics of the person coming across the border. Instead, it defines eligibility according to whether someone in this country (i) has a designated relationship with you and (ii) files a petition on your behalf. Thus, it is quite possible to say that Justice Marshall is correct without doing too much, if any, damage to the immigration precedents.

For example, suppose this Court is confronted with that section of the immigration act that seeks to keep out those who have been convicted of crimes involving moral turpitude. Obviously, their familes in this country can claim that to keep them out infringes this family relationship while allowing others with a similar family relationship to enter the country. But that claim will get them nowhere, since Congress can decide within extremely broad limits who is entitled to come into the country.

But in this case Congress has not directly exercised that power. Instead, it has said that an American citizen or permanent legal resident has a "right" to have the companionship of someone in a foreign country if the person in this country has a certain relationship with that other person. A natural mother who resides in this country can bring in her illegitimate children, but a natural father cannot. In both cases the persons seeking to come across the border are the same, and Congress has not objected to the children themselves. Thus, Congress is not attempting to draw

a distinction as to whether the putative immigrant is desirable, but it has instead drawn a distinction according to whether the person in this country "deserves" the right to trigger the putative immigrant's admission. This is not the usual immigration case in which Congress draws distinctions as to who is a desirable immigrant.

Perhaps we could talk after you read this memo.

But Congress at least may have decided that in adamy entrance thy the child of the mother it knew this to be a fact whereas palandy - ale coherend Her presumption that accompania manage - an our of the most deffecult of all "facts" to prove a verify,

lfp/ss 4/9/77

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The thoughtful dissenting opinion of our Brother Mr. Justice Marshall would be persuasive if its basic premise is accepted. The dissent is grounded on the assumption that the relevant provisions of the Act grant "a fundamental right" to American citizens, a right "given only to the citizen", not to the alien. <u>Post</u>, at 7, 9, 16. The assumption is facially plausible because certainly the families of aliens are concerned. But its fallacy is demonstrable from principles of sovereignty, language of the Act, and the decisions of this Court.

The title of the Act - Immigration and Nationality Act - identifies the sovereign power, entrusted by the Constitution to the political branches of government, to admit or exclude foreigners in accordance with perceived national interests. Although few, if any countries have been more generous than the United States in extending the privilege to immigrate or in providing sanctuary to the oppressed, limits and classifications as to who shall be admitted are traditional and necessary elements of legislation in this area. In such a line-drawing process exclusions - as in this case - often result in separations of relatives and in hardships. But a nonresident alien has no right to enter the United States except as authorized by law, and a citizen or resident alien - whatever the relationship may be - normally can assert no greater or different right to have a nonresident admitted. If the law were otherwise, the sovereign power of the government to determine which aliens to admit would be frustrated.

The relevant sections of the Act make clear that the "right" is one to immigrate, conferred upon the "child" or "parent" (as defined) of a United States citizen or a lawful permanent resident alien. No <u>right</u> is conferred upon the citizen or resident alien. The provisions In question relate solely to a special immigration preference, a privilege accorded to persons who are not citizens or permanent resident aliens. Moreover, the statutory language is replate with references to "status" (<u>c.g.</u>, "entitlement to immigration status", "an immigrant visa of an alien entitled to a preference status", etc.), making clear that Concress intended to create a preference status for certain

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lfp/ss 4/9/77

Possible footnote in Fiello

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The relevant sections of the Act make clear that the "right" is one to immigrate, conferred upon the "child" or "parent" (as defined) of a United States citizen or a lawful permanent resident Alien. No <u>right</u> is conferred upontthe citizen or esident alien. The provisions in question relately solely to a special immigration preference, a privilege accorded to persons who are not citizens or permanent resident aliens. Moreover, the statutory language is replate with references to "status" (e.g., "entitlement to immigration status", "an immigrant visa of an alien entitled to a preference status", etc.), making clear that Congress intended to create a preference status for certain

2.

lfp/ss 4/11/77

The thoughtful dissenting opinion of our Brother Mr. Justice Marshall is grounded on the assumption that the relevant provisions of the Act grant "a fundamental right" to American citizens, a right "given only to the citizen not the alien", post at 7, 9, 16. "But we need not consider in this case whether, and to what extent, a provision for the admission of aliens creates for cirizens a right of constitutional dimensions The right advan accorted here is to the equal protection embodied in the Due Process Clause of the Fifth Amendment. It is asserted not in the customary setting of domestic legislation but as a challenge to the exercise by Congress of its exceptionally broad power to admit or exclude foreigners in accordance with perceived national interests. Although few if any countries have been more generous than the United States in extending the privilege to immigrate or to provide sanctuary to the oppressed, limits and classifications as to who shall be admitted are traditional and necessary elements of legislation in this area. Whatever right may accrue in a citizen by virtue of a

provision of the Immigration and Nationality Act, it must be viewed in light of - and weighed against - the scope of the sovereign power of government to determine immigration policy. We recognize the concern and genuine interest of citizens who desire the admission of relatives of various degrees of relationship, but the primary focus of immigration legislation - as the terms of the Act make plain - is on the aliens who desire admission. The relevant statutory language is replete with referencesvto""status" (e.g., "entitlement to immigration status", "an alien entitled to a preference status", etc.), reflecting congressional intent to create a preference status for certain nonresident aliens, having in mind relationships with citizens and also problems of identification, administration and minimizing the potential for lumigration We cannot say that The classifications in this case, made solely to fraud.

determine immigration status, are wholly irrational.

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lfp/aa 4/11/77

Rider, Fiallo

To accommodate this goal, Congress has accorded a special "preference status" to certain aliens who are related by blood or marriage to citizens. But there are widely varying relationships and degrees of kinship. It is appropriate for Congress to consider not only these relationships but also problems of identification, administration and minimizing the potential for immigration fraud. In the inevitable process of "line-drawing", Congress has determined that certain classes of immigrants are more likely than others to satisfy national objectives, and has granted preferential status only to those immigrants.



Supreme Çmurt of the Ibilied States Washington, D. C. 20549

CHANGLAS OF JUSTICE WHICH DRICTNAN, JH.

April 14, 1977

RE: No. 75-6297 Fiallo v. Bell

Dear Thurgood:

Please join me.

Sincerely.

Bil

Mr. Justice Marshall

cc: The Conference

1fp/ss 4/25/77

Fiallo v. Bell

This is another case involving the application of the Equal Protection Clause to distinctions based on legitimacy of children.

Here, however, the attack is on provisions of the Immigration and Nationality Act with respect to the admission into the United States of nonresident aliens. The Act does draw rether sharp distinctions based solely on legitimacy.

For reasons stated in <u>an opinion filed today with the</u> Cherk, we sustain the validity of these provisions. Our prior cases long have recognized that the power to draw lines - as to the admission or exclusion of <u>aliens</u> - is a fundamental attribute of sovereignty, subject only to the most limited judicial review. In short, fuite different standards are applicable as to the classification at issue. in this case from those appropriate when reviewing a state classification as in <u>Trimble</u> v. <u>Gordon</u>.

Accordingly, the judgment of the U.S. District Court for the Eastern District of New York is affirmed.

Mr. Justice Marshall has filed a dissenting opinion, in which Mr. Justice Brennan joined. Mr. Justice White filed a dissenting statement. Court. Although we recognize the relevance of <u>Labine</u>, we think its rationale has been substantially undercut by more recent cases.

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The Chief Justice and Justices Stewart, Blackmun And Rehnquist filed dissenting statements. Justice Rehnquist filed a dissenting opinion. 2.

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CHAMBERS DRAFT 2/14 SUPREME COURT OF THE UNITED STATES

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LFP

No. 75-6297

Ramon Martin Faillo, etc., et al., Appeilants, v. Griffin B. Ball, Individually and as Attorney General of the United States, et al.

[February ---, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether \$\$101(b)(1)(D) and 101(b)(2) of the Immigration and Nationality Act of 1952 (the Act), \$ U. S. C. \$\$1101(b)(1)(D) and 1101(b)(2), violate due process of law by excluding the relationship between an illegitimate child and his or her natural father from the preferences accorded by the Act to the child or parent of a United States citizen or lawful permanent resident alien,

The grants special preference immigration status to aliens who fidalify as the "children" or "parents" of United States entirens and lawful permanent residents. Aliens who qualify under the statutory definitions of "child" or "parent" may be except from any applicable integration quota or manerical limitation, and may secure an immigrant visa without obtaining a labor certification." Under § 101 (b) (1), a "child" is

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 $^{^{12}}$ To $\approx 8.4^{12}$ S. C. § 1082 (a) (14) : see 1 Gauten and Recentedd, Innuigration Law and Procedure, § 2.40, at 2-195 – Efficience Japanese 1, 1977, the potenti-field relationship on longer traggers on exemption from the labor estimation paparene at Japanese and Nationality Act Amendments of

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FIALLO & BELL

defined as an unmarried person under 21 years of age who is a legitimate or legitimated child, a stepchild, an adopted child, or an illegitimate child seeking preference by virtue of his relationship with his natural mother? The definition does

1976 Pelo 5, No. 94-571, § 5, 20 Sect. 2705 (Oz). 25, 1578). The 1976 Americkie constraint a subarge of non-density when provides that the autombusities

"-hall not exercise to affect the entitlement to immigrant status or the schere of consideration for the number of an energy of class of an alien quithstation state or entities and 223.4 ± 35 the framely that and Nationably Act, as in effect on the day before the effective date of this state, on the basis of a polytes filed with the Attorney General prior to such effective date." Immigration and Nationably Act Amendments of 1976, § 9.

Section 101 (b) (11 provides)

201) The term 'dubl' means an intractive person on let twenty-one years of one who $s\!-\!\!\!\!\!\!$

"(A) in Signature shifts on

(D) a steppind, which are on not have so of works's provided the shift had not postford the age of eighteen years at the trace the marmagestructing the status of steppind scenaral, or

(C) a child featurated under the law of the child's reaching or detective or under the law of the influence or disperior, whether in or outside the United States, if such legitimation takes gives before the child touches the age of eighteen neurs and the child is in the legit controly of the legitimating processory is sets in the tage of such legitimation.

(10) an elligit to be sheld, by, through where, or on where hele'f a status, provider, at brought is sought by virtue of the relationship of the solid to its point. I mother:

1240 a child adopted willie ender the age of further years if the shild less threaders begin as the legal costs in of, and has possible with, the adopting promition parents for at least two wears. *Provided*, That reinvited parent of any such adopted. Field shall thereafter by other of such parent of any such adopted. Field shall thereafter by other of such parent of any tight provider on statis nuclear this despite

 $\Gamma(F)$ and Γd_{i} under the size of fourthes of the tank a potnion is field in its behalf to accord a classification as an unarrelative relative order section 1151 (b) of this title, who caus orphane bounds of the death or disappearative of all advances or describe by, or separation or loss from both process, or for whom the side of services p , but is incap the of proceeding the project cute whom will be provided the right of advances to the United

75-6297-OPINION

FIALLO 6. BELL

not extend to an illegitimate calld seeking preference by virtue of his relationship with his natural father. Moreover, under $5 101 (b) (2) \le U. \le U. \le 1101 (b) (2)$, a person qualifies as a "parent" for purposes of the Act safely on the basis of the person's relationship with a "child," and as a result the natural father of an illegitimate child who is either a United State's artizen or permutent resident alien is not entitled to preferential treatment as a "parent."

The special freference innegration status provided for these who satisfy the statutory "parent-cheld" relationship depends on whether the energy ant's selargive is a Ur sted State's citizen or permanent resident alien. A United State's citizen is allowed the entry of his "parent" or "cheld" without regard to either an applicable numerical quota or the labor certification requirement. S.U.S. C. §§ 1151 (a) (b), 1182 (a) (14). On the other hand, a United States permanent resident after is allowed the curry of the "parent" or "child" subject to numerical limitations but without regard to the labor certification requirement. S.U.S. C. § 1182 (a) (14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40 n. 18. But see n. 1, supra.

Appellants are three sets of unwed natural fathers and their illegitimate offspring who sought, either as an alien father or an alien child, a special inneigration preference by vertue of a relationship to a citizen or resident alien child or parent. In each instance the applicant was informed that he was incligible for an icomprant visa notes be qualified for admission

States and who has in writing introducibly released the child for entertation and subaption, who has been subopted abroad by a United States citizette ate" his openess who presentables on and observed the child prior to or during the adoption proceedings, or who is connect to the United States for suboption by a United States entropy and the child's property resplicitly the attendaption respection and of any of the child's property resplicitly the attendaption respection at a formy of the child's property resplicitly that the adoption properties at a prior of prior adoption parent resplicitly child shall distribute to visiting of such parentage, be accorded any right provider, or states which the displace."

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75-0297---OPINIĜN

FIALLO v. SELL

under the general numerical limitations and, in the case of the alien parents, received the requisite labor certification.² But see a 1, super-

Appellants first this action in July of 1974 in the United States District Court for the Eastern District of New York challenging the constitutionality of §§ 101 (b)(1) and 101 (b) (2) of the Act under the First, Fifth, and Ninth Amendments. Appellants alleged that the statutory provisions (i) denied them equal protoction by discriminating equivist natural fathers and their illegitimate children "on the basis of the father's matrial status, the illegitimate children "on the basis of the father's matrial status, the illegitimate children of the child and the sex of the parent without either compelling or rational justification"; (ii) denied there due process of law to the extend that there was established "an univarianted conclusive presumption of the absence of strong psychological and emotional ties between natural fathers and their children born out of wellock and not legitimated"; and (di) "serievely barden[ed] and in-

Appellant Geophys W. ner in entandized there States retain is the anomic father of appellant Source Warner, which was been in 1971 to the Strench West Teches. In 1972, reaction Cleaplers Warner pour most the Juniproton and Naturalization Serney to closely. Serge as Warner's "child" for purposes of allowing in internation for the period was drained on the groupd dist there was no evaluate that Serge was Warner's legitimate or inginity period.

Appellants Triver Weben at LE of Weben, permittent resident attent, are the elegitatistic oblighter of appellant virbur. Weben, a contrast of Japania. Following the death of their mother in 1974. Theory and Furtenergit to obtain an innergy of view for their futher. We are informed by the Government that although the applie team is not yet been rejected, deatal to contour source the children are norther by tracte nor legitim ded of spring of Atthen Weben.

Appellent Remon Martin Fiello, a United States sitizes by hirth, currently resolves a the Daminican Republic with his natural father, one-flow Robert Follo-Sime a citizen of that compty. The figher instated provoluties to obtain an incorregant versus the "porent" of his displicate out but the Gauss States Consul for the Daminican Republic inferrited appellant fait of some that he could not qualify for the preferential states a conference in "porents" reflex for log structure Region Faillo.

FIALLO F BELL

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fringe[d] upon the rights of natural fathers and their children, born out of wellock and not legitimated, to mutual association, to privacy, to establish a home, to raise natural children and to be raised by the natural father. Appellants sought to evolute permanently enforcement of the challenged statutory provisions to the extent that the statute predicted them from qualifying for the special preference accorded other "parents" and "children."

A three-judge District Court was convened to consider the constitutional issues. After noting that Congress' power to fashion rules for the allocision of allens was "exceptionally broad," the District Court held, with one judge disserting, that the statistory provisions at issue were neither "wholly devoid of all conceivable rational purpose" nor "fundationtally almost at achieving goals unrelated to the regulation of immigration." Fields v. Levil, 406 F. Supp. 162, 165, 166 (1975). The court therefore granted judgment for the Goveroment and dismissed the action.

We noted probable jurisdiction, 426 U.S. 919 (1976), and for the reasons set forth below we affirm.

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At the jortset, it is important to underscore the familed scope of indical inquiry into immigration legislation. This Court has repeatedly emphasized that "over no conceivable subject is the legislative power of Congress once complete that it is over" the admission of aliens. Oceanic Navigation Co. v. Standalan, 214 U. S. 320, 330 (1909); see, e.g., Klenn-dienst v. Mandel, 408 U. S. 753, 765 (1972). Our cases "have long recognized the power to expel or eaching aliens us a fundamental score ign attribute exercised by the Government's political departments largely minute from judicial control," Shanghnessy v. Merzel, 345 U. S. 538, 547 (1995); Lem Maon Sing v. United States, 549 U. S. 608 (1993); The Charge Ex-

75/6297--OPINION

FIALLO & BILL

classon Case, 130 U. S. 581 (1889). Our recent adjudications have not departed from this long-established rule. Just last Term for example, the Coart had occasion to note that "the power over aliens is of a political character and therefore subject to only narrow judicial review." Hampton V. Mow San Woog, 95 S. Ct. 1905, 1904–1905, n. 21, eiting Fong Yae Ting v. United States, 149 U. S. at 713; see Matthews V. Diaz, 96 S. Ct. 1893, 1892 (1976). And we observed recently that in the exercise of its bread power over inonigration and totanalization. "Congress regularly makes rules that woold be imarreptable if applied to eitizens." Matthews V. Diaz, 96 S. Ct., at 1891.

Appellants apparently do not evaluate the most for special judicial deference to congressional policy choices in the immigration context," but instead suggest that "a mique con-

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"The state is not clean. As to the extent of the power of Congress under review, there is not merely is page of history" — but a whole volume Policies permitted 2 in the entry of clients and their right to reducin here are pre-shorts, concerned with the policies routhets of generateout. In the enforcement of these policies, the Elecentric Branch of the Generatories nuclei testant the procedured suffiguration due process. — But they the formulation of these policies is entrasted evolutions to Congress has been as cleart to firmly embedded in the legelative and judicial theories of our body politicies any acpect of our government.

"We are not prepared to down marshaw when an more senarize to burnan rights that any performance, expendity these acts have been to an areabars in protocolar civil fiberties mader. The Constitution and much therefore order out constitution of system recognize congressional power in dealing with allows? Id. at 531-532.

We are no more inclined to zerons for this late of cases and v them we were five years againship we detailed Klaw doord v Max/d, 408~V S 753, 767 (1972)

* The Government argues that the challenged versions of the Vit variable ing as they do "a substantive policy regulating the colong-tion of change.

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75-5297-OPHN10N

FIALLO & BELL

lescing of factors" makes the instant case sufficiently malike prior inclusion cases to warrant more searching judicial scruthly. Brief, at 52-55. Appellants first observe that since the statutory provisions were designed to repeate families wherever possible, the purpose of the statute was in afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border sepreh decisions in Almendu-Sandus v. United States, 413 U. S. 266 (1973) and United States v. Brigoni-Powee, 422 U. S. 873 (1975), for the proposition that the courts must sometimize congressional legislation in the immigration area to protect against violations of the rights of citizens. At issue in the border search cases was the nature of the protections mandated by the Fourth Amendment with respect to govcontent procedures designed to such the illegal entry of alteria Nothing in the equivipols in these cases suggests that Congress has anything bet exceptionally broad power to de-Definition which classes of aliens may lawfully enter the montry. See 413 U. S., at 272: 422 U. S., at 883-884.

The second distinguishing factor highlighted by appullants is that none of our prior intribution cases involved "doubles harroled" discrimination based on sex and illegitionary, infringed upon the due process rights of sitiz as and local permanent residents, or implicated "the fundamental constitutional interests of United States edizers and permanent residents in a familial relationship." Brief, or 54 see id., at 16-18. But this Court has resolved signific challenges to iteraignation legislation haved on other emistivational signs of ultizons, and has rejected the suggestion that more search-

into the Datied States $(-1.66)^2$ not an upper risk which for judge 4 and preview 2. Relef (a) (5.24. Our case select prepares of a leasted judged responsibility trades the Constitution even with respect to the power of Congress to a galaxie decomposite and evolution of the state the trades the dimension and evolution of the state there is a flore is no constant to consider in the constant of the character theory of the state of the state of the constant of the constant

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"The conditions of eatry for every alien, the particular classes of phones that shall be denied entry phogener, the basis for determining such classification, the right to terminate bospitality toward aliens, the grounds upon which such determination shall be based, have been recognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control." Id_{c} at 596.

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As originally enacted in 1982, § 101 (b)(1) of the Act defined a "child" as an untourried legitimate or legitimated child or stepchild under 21 years of age. The Board of Insinigration Appeals and the Attorney General subsequently coordided that the fadure of this definition to refer to flegriimate withtren rendered cooligible for preferented non-ports status both the illegiturate after child of a citizen mother, Matter of A+, 5 J. & N. Der, 272, 283–284 (A. G.) and the nlico mother of a estively bora out of wedlock. Matter of P++, 7 L & N. Der, 448 (B. I. A.). The Attorney General recommended that the matter be brought to the attention of Congress, Matter of A = . 5 I, & N. Bog. at 284, and the Act was amonded in 1957 to include what is now 8 U, S, C $\stackrel{<}{_\sim}$ 101 (b) (D(D), Sec. 0. 3, supra. Congress was specifically concentral with the relationship between a shild bern out of wedfock and his or her natural mother, and the legislative history of the 1957 another treffects an intentional choice not to

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provide preferential immigration status by virtue of the relationship between an illegitimate child and his or her natural father.⁶

This distinction is just one of many drawn by Congress persuant to its determination to provide some-bat not allfamilies with relief from various immigration testriction that would otherwise hinder requiriestion of the family in this country. In addition to the distinction at issue here, Congress has decided that children, whether legitimate or notenanot qualify for preferential status if they are married or are over 21 years of npc. S.U.S.C. \$1101 (b)(4). Legittmated children are ineligible for preferential status taless their legitimation occurred prior to their 18th bittlulay and at a time when they are in the legal custody of the legitunating parent or parents, 8 U.S. C. \$1101 (b)(1)(C). Adopted children are not entitled to preferential status unless they had been adopted before the age of 14 and have thereafter lived in the costroly of their adopting or adopted parents for at least two years, S U, S. C. § 1101 (b)(1)(b). And stepchildren cannot qualify unless they were under 18 at the time of the marriage creating the stepchild relationship. S $U, S, C, \S (101, 6)(1)(B)$.

With respect to each of these legislative policy distinctions, if could be argued that the line should have been drawn at a different point and that the statistory definitions deny pref-

[&]quot;Sources Rep. No. 1057. Sign Grag, 1-2 Sever 4 (1957). Observes descenwas designed "to charity the low on that the elegithetic shift world a velotion to his models energy the constraints under the intergration laws as a log-timete shift") Complicate added: If IR Rep. No. 1191. Such Crag. 181. Sever, 7 (1957). (the intercelerant was designed the elevents the bardway and provide a four and hometaritetic adjustication of monigration close location details added): Of weight do called to of work close to a locating challent laws of weight and the called to of work close to a locating challent laws of works and the called to of work close to a locating challent laws of works and the called to of work close to a locating challent laws of locating laws as the state of S. Kurneris () (the constant mould closely the law so that at illing timete chall would, in relation to his matches, expective the same states under the immigration laws of a law at his matches, expective so that at

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erential status to parents and children who share strong family u.e.s. Cf. Matthews v. Diaz, 96 S. Cz. 1883, 1893 (1976). But it is clear from our cases, see Part II, sugra, that these are policy questions retrusted exclusively to the political branches of our Government, and we have no judicial authority to substitute our political judgment for that of the Congress.

Appellants suggest that the distinction drawn in § 101 (b) (1)(D) is unconstitutional upder any standard of review ringe it infringes upon the constitutional rights of citizens and legal permanent residents without furthering legitimate govemmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their natural fathers to be rounited in this country than for legitimate or legitimated children and their parents, or for illegitimate children and their natural mothers. And appellants also note that the statute fails to establish a procedure under which illegitimate children and their natural fathers could establish the existence and strength of their facally relationship. Those are admittedly the consequences of the rougressional decision not to accord preferential status to that particular class of aliens, but the decision concluders? remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Harisiades v. Shaughnessy, 342 U. S. 580, 597 (1952) (Frankfurter, J., concurring). Congress obviously has determented that preferential status is non-warranted for illegitimate children and their natural fathers, perhaps because of a perceived absence in most cases of close family ties as well as a concernwith the serious problems of proof that usually lark in paternity determinations.⁴ In any event, it is not the judicial

⁴ The athetent difficulty of determining the patientity of an illegation of chald is comparable when it depends upon events that and move occurred in foreign constructs at by years call of . Congress new real have given substantial weight, in indepting the classification here challenged, to these

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rols in cases of this sort to probe and test the justifications for the logislative decision." *Kleindreust* v. *Mandel*, 408 U.S. 753, 770 (1972).

IV

We hold that \$\$ 101 (b)(1)(D) and 101 (b)(2) of the Immigration and Nationality Act of 1952 are not unconstitational by virtue of the exclusion of the relationship between an illegitumate child and his natural father from the preferences accorded by the Act to the "child" or "parent" of a United States citizen or having permanent resident.

Affirmed.

problems of proof and the potential for franchile this applications that woold have resulted from a more generics drawing of the late

Appellicity cosist that the starting distinction is based on an overforced coal random determine performing the relationship of traved forthers and their their interactive conterming the relationship of traved forthers, and their their interactive deal with the problems of provide performing interactive and the cosity handle the problems of provide performing and the heir would cosity handle the problems of provide two works in determining the paternity of an effective to deal with the problems of provide two works in determining the paternity of an effective to deal with the problems of provide the cosity is a segment should be addressed to the Congress rather than the cosity following the paternity of an effective photon belows of the cosity following the paternity of an effective photon below the the cosity following the paternity of an effective photon below the cosity following the paternity of an effective photon below the cosity following the paternity of an effective photon below the the cosity fold of the theory and the worth moton is that a belowing down in the 05th Congress would have eliminated the challenges distance of -31 B (5000), 900, Quing — Seve (1975).

ЭW CHAMBERS DRAFF SUPREME COURT OF THE UNITED STATES No. 75-6297 Tr. Ramon Martin Fabilo, (etc) et al.,) Appellants, On Appeal from the United States District Court for 22. the Restern District of Griffin B. Bell, Individually and New York. as Attorney General of the United States, et al. [February ---, 1977] Ma. JUSTICE POWELL delivered the opinion of the Court, This case " The issue in this oper is whether \$\$ 101 (b)(1)(D) and 101 (b)(2) of the Langeation and Nationality Act of 1952 (the Act), S_U, S. C. §§ 1101 (b)(1)(D) and 1101 (b)(2)_D. \odot violate vise process of law by excluding the relationship servicen an illegitionate child and has or her matural father from the proferences accorded by the Act to the child or parent. of a United States citizen or lawful permanent resident alien. (i).e.-The grants special preference immigration status to aliens who qualify as the "children" or "parents" of United States citizens, and lawful prenanent residents; Aliens who qualify Q٢ under the statutory deactions of "child" or "parent" may be COLORAD exempt from any applicable inneignation quota or numerical limitation, and may secure an immigrant visa without obtaining a l<u>abor certification</u>∬Under §101(b)(1), a "child" is hadre Card to the God Hand (a) (at the second Cardon - population of the state of the second s 490. https://www.inters.spir.ac.2.403. Hitterapy Job are 1, 1977, the parent clobe relationships to leager triggers on everyonic fram the labor certification requirement. Immigration and Nationality Act Amendments of

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defined as an unmatried person under 21 years of age who is a legitimate or legitimated child, a stepchild an adopted child, or so illegitimate child seeking preference by virtue of his relationship with his natural mother? The definition does

 (1976) Public L. No. 94-571 [§ 5, 90 Stat. 2705 (Oct. 20, 1976)]. The 1976 Amendments contain a surviegs of even however, which provides that the correction of s

Table not operate to affect the entitlement to emmigrant status or the order of scaladeration for a name of an annugrant visu of an alien entitled to a problement status, under section 203 (a) of the Innegration and Nationality Art, as in effect on the day before the effective date of this Act, for the basic of a petition field with the Attorney Growth prior to such effective date." Innegration and Nationality Act, Americanity of 1976, § 9.

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 $^{19}\Omega$. The term 'child' means an animarmed person under twenty-one years of age who $\sigma-$

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1.(B) a stepsilized, whether or not horn out of wegoek, provided the sothat had not non-brief the age of eighteen yours at the time the animage ending the status of stepsibility correct; or

2000 a could fegitimized under the law of the right- respires at domote as under the law of the further's resulting at domatde, whether is or public the United States, if such legitimation takes place before the shell reaches the specificity to a voiry and the dolbf of in the legitimating of the hyptimating part of or purents at the large of such legitimation.

"(D) on identificate clubbility, through whom, or on whose held II status, providing, or benefit is sought by vertice of the relationship of the clubbility in morphomethers.

(105) a child adopted while under the age of fourteen verse of the child has discretized been in the legal custody of, and has respect with the adoptory potent of provide for at least two vectors. *Francolod*, That mameteral potent of any such adopted child shall discretized by order of such particles, he accorded only right providege, or states upder the chapter.

(110) a child, under the age of feathers at the title a petition is filled in (as b b d) to accord a closification as the indicating trader sectors (115) (b) of this title, who is an orphone because of the death of singuptar effect of the nhumber of description because of the death of singuptar effect of the nhumber of description by, or we match or how from both (according to both the sole of surviving parents incorphile of providing the project care which will be provided the death of adoption to the fitted. more to p.3

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not extend to an illegitimate child seeking preference by virtue of histrelationship with his natural father. Moreover, under \$ 101.(b)(2), \$ U. \$, C. \$ 1101.(b)(2), s person qualifies as a"parent" for purposes of the Act solely on the basis of theperson's relationship with a "child" scalas a result the naturalfather of an illegitimate child who is either a United Statesendized or permanent resident align is not certified to preferential treatment as a "parent."

> The special preference immigration status provided for those who satisfy the statutory "parent-child" relationship depends on whether the immigrati's relative is a United States citizen or permanent resident alien. A United States causes is allowed the entry of his "parent" or "child" without regard to either an applicable numerical quota or the labor certification requirement. S U. S C. \$\$151(a). (b), 1282 (a)(14). On the other hand, a United States permanent resident alien is allowed the entry of the "parent" or "child" subject to numerical limitations but without regard to the labor certification requirement. S U. S. C. \$\$1182(a)(14); see 1 Gordon & Resenfield. Intelligation law and Procedure, at \$2.40 fr. $18.^{2}$.

> Apprilants are three sets of newed natural fathers and their illegatimate offspring who sought either as an alice father or as alice childer special munigration preference by votue of a relationship to a catizen or resident alien child or parent. In each instance the applicant was informed that be was inclugible for an immigrate visa unless he quablied for admission

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States and whether in writing interactably released the child for entigration and adoption: whether been adopted absended the child for entigration and adoption: whether been adopted absended the child proof to or during the adoption proceedings: or whether coming to the United States for adoption by a United States entrand and spaces whether completel with the preadoption requirements, of any, of the child's proposed residence. *Provided*. That no matural parent or prior adoptions proved residence whether adoption instantic parent or prior adoptions provide any right, privilege, or status under this elegator."

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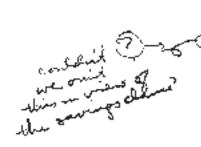
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under the general numerical limitations and in the case of the alien parents, received the requisite labor certification.⁴ Box see n.4. supra

Appellance filed this across in July of 1974 in the United States Distance Coart for the Eastern Distance of New York challenging the constitutionality of \$4.001 (b) (1) and 101 (b) (2) of the Act under the First, Frith, and Ninth Amendments. Appellants alleged that the statutory provisions (i) denied them equal protection by discriminating against metural fathem equal protection by discriminating against metural fathers and their illegitimate children for the basis of the father's marital status, the illegitimate of the child and the set of the parent without either compelling or rational justification"; (ii) denied them due process of how to the extent that there was established for unwarranted conclusive presumption of the absence of strong psychological and continual ties between natural fathers and their children bora out of wedlock and not legitimated"; and (iii) "seriously londen[ed] and in-

AppeBert Chapters Warrer, a contratived United States entired, is the considuation of appell in Serge Warrer, who was barn as 1971 in the French West Index. In 1972 Eppelback Chapters Warrer protosonic the line grateric cost Notaribution Service to straight Serge as Warrer's Telebilit for purposes of initializing an innergraph was but the petition was denied on the ground that there was no doubted that Serge was Warrer's burblets or begins for the theorem.

Appellent's Tzevor Wilson and Earl Wilson, permanent resident aliens, and the direction to children, of appellant Arthur Wilson, a critical of Jamarca. Following the death of their mother in 1974, Trevor and Earl solution to obtain an unit grant with for them follow. We are referenced by the Growthan at the difficulty for application has not yet been rejected, detail is contained the difficult are reacher significant legrangianed of pring of Arthur Wilson.



[&]quot;Appellant Recent Martin Ballo a finned State citizen by Linth, contently results in the Departure Republic with his partial father appellant Ranne Follo-Sole, a citizen of that country. The father to that the pressbared to also as a consigned trust is the "print" of $n_{\rm eff}$ disponants sole, but the United State Council for the Dominian Republic informed appellant Follo-Sole that he could not qualify for the preferential parts, consider to guarants' trubbes he logitimated Remon Follo.

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fringe[d] upon the rights of natural fathers and their children, burn out of wellock and not legitimated, to metual association, to privacy, to establish a horne, to raise natural children and to be taised by the natural father_A. Appellants sought to evidin permanently coforcement of the challenged statutory provisions to the extent that the statute procluded them from qualifying for the special preference accorded other "parents" and "children."

A three-judge District Court was convened to consider the constitutional issues. After noting that Congress' power to fashion rules for the admission of alterns was "exceptionally bread." the District Court held, with one judge dissenting, that the statutory provisions at issue were adither "wholly devoid of any conceivable rational purpose" core "fundamentally amed at achieving goals correlated to the regulation of munigration," Fadlic v. Leta, 406 F. Supp. 162, 165–166 (1975). The court therefore granted judgment for the Covernment and dismissed the action.

We noted probable jurisdiction, 426 U. 8, 919 (1976), and for the reasons set forth below we official

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Al the outset if is important to underscore the limited scope of judictal inquiry into immigration legislation. This Court has repeatedly emphasized that "over no conversable subject is the legislatice power of Congress more complete than it is over "the admission of aliens. Oceanic Narryation Co. v. Strandon 214 U.S. 320–330 (1909)) see (e.g. Kleandanst x. Mondel, 408 U.S. 753–765 (1972) – Our cases "have long recognized the power to experior exclude alness as a fundamental sourceage articleute exercised by the Government's painteed departments largely minime from judicial control." Stranghenessy v. (Mezzle 345 U.S. 590, 210 (1953); see, e.g. Harodades v. Stranghenessy, 342 U.S. 580 (1952); Lem Moon Song v. United States, 158 U.S. 538–547 (1895); Forg Yac Trong v. United States, 149 U.S. 698 (1893); The Chinese Ex-



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chosion Case, 130 U. S. 581 (1889). Our recent adjustications declarates have not departed from this long-established rule. Just last Term, for example, the Court had occasion to note that "the power over aliens is of a political character and therefore subject to only narrow indicial review." Hampton v. More Sun Word, 20 S. C1, 1805, 1904–1905, z. 21, eiting Form The Tong v. United States, 140 U. S., at 713; see Matthews v. Diaz, 26 S. Ct. 1883–1892 (1976). And we observed recently that in the exercise of its broad power over immigration and paturalmation. "Congress regularly makes rules that would be unacceptable if applied to citizees." Matthews V. Diaz, 96 S. Ct., at 1891."

Appellants apparently do not challenge the near for special judicial deference to congressional policy choices in the immigration context," but instead suggest that if a unique coas-

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The state is not chose. As to the extent of the power of Congress under review share is put specify to place it history it. But a whole informe Policies periodicing to the correlation from and their right to resource here are periodicity concerned with the policies conduct of government. In the information of these policies, the Eventrice Branch of the Generation must respect the precedural safeguerds of due process. That the formulation of these policies is muttacted evolve when the Congress has because about as finite embedded in the bigolative and policial resource of year body policies and safeguer of our government is an policial resource of year body policies and safeguer of our government.

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We are no more it chard to reconsider this has of class today there we write five years ago when we dended *Kirkodicast* v. *Mandel*, 468 U. S. 753, 767 (1972)

*The Government argues that the challenged seer cas of the Act could dying as they do ha substantive policy regulating the solution of these

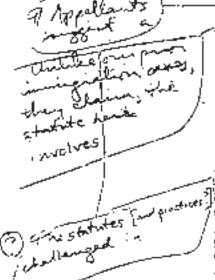
Untine for the Court [Concurring] in Galance Peters 347 1.5. 522 (1954).

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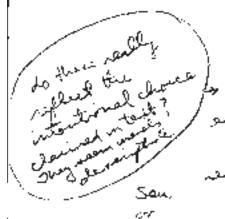
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This distinction is just one of many drawn by Congress pursuant to its determination to provide some-but not allfamilies with relief from various immigration restriction, that would otherwise hinder requification of the family in this country In addition to the distinction at issue here. Congreas has decided that children, whether legitimate or not, cannot qualify for preferential status if they are married or are over 21 years of age, [S U. S. C. § 1101 (b)(1). Legitimated children are ineligible for preferential status unless their legitimation occurred prior to their 18th birthday and at a time when they are in the logal custody of the legitimatiog parent or purchts, S. U. S. C. \$1101 (b)(1)(C). Adopted couldren are not entitled to preferencial status unless they shall be produced before the age of 14 and have thereafter lived in the custorly of their adopting or adopted parents for at least two years, 8 U. S. C. § 1101 (b)(1)(E). And stepchildren cannot qualify unless they were under 18 at the time of the marriage creating the stepchild relationship. S $U = S, C, \le 1101 (b)(1)(B),$

With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions dony pref-

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^{Somie Bop Nr. 1987 85th Cong., b) Sola 4 (1987) the convoluent was designed its charge the law so that the displanate child would a relation to the kin mather enjoy the same states under the amongration laws to a legitancie child (2011) the same states under the amongration laws to a legitancie child (2011) the same states under the amongration laws to a legitancie child (2011) the convolution was despited into advecte the bardelip and provide a foir and humanitarity adjudentian of incorporate involving thickness of well-take and the asther of such children; it templates added). The form law so the use there is an incorporate child would be used to be used to a state of Solar children; it the amondates involving the convolving the same states of Solar children; it the amondates is added). The off children is the provide solar to be used the same states and the use of the amondation to be used the same states and the amongration laws as a legitimate child; it completes added).}

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creatial status to parents and children who share strong family ites. *Cl. Matthews* v. *Datz*, 96 S. Ct. 1883, 1893 (1976). But it is clear from our cases, see Part \mathbf{R} supra, that these are policy questions entrusted exclusively to the political branches of our Government and we have no judicial authority to substitute our political julgment for that of the Congress.

Appellants suggest that the distinction drawn in \S 101 (b) (1)(D) is an onstitutional under any standard of review since it infringes upon the constitutional rights of citizens and legal permanent residents without furthering legitimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate thildren and their entury fathers to be required in this country than for legitimate or lepitimated children and their parents, or for illegitimate children and their natural mothers. And appellants also note that the statute fails to establish a procedure under which illegitimate children and their natural fathers could <u>establish</u> the existence and strength of their family relationship. These are admittedly the consequences of the congressional decision not to accord preferential status to that particular class of aliens, but the decision nonetheless remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Haristodos v. Shatighnessy 342 U. S. 580, 597 (1952) (Frankfurter, J. concurring). Congress electoristy has determined that proferencial status is not warranted for allegitimate children and their natural fathers, perhaps because of a perceived's

absence in most cases of close family ties as well as a concern? with the serious problems of proof that usually buck in paternity determinations." In any event, it is not the turbeful

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¹ The subscent difficulty of determining the patentity of an discriminate child is competitized when it depends upon overas that in whave is courted in foreign countries many versus entire. Congress new well have given substantial weight in adapting the classification here childings), to these.

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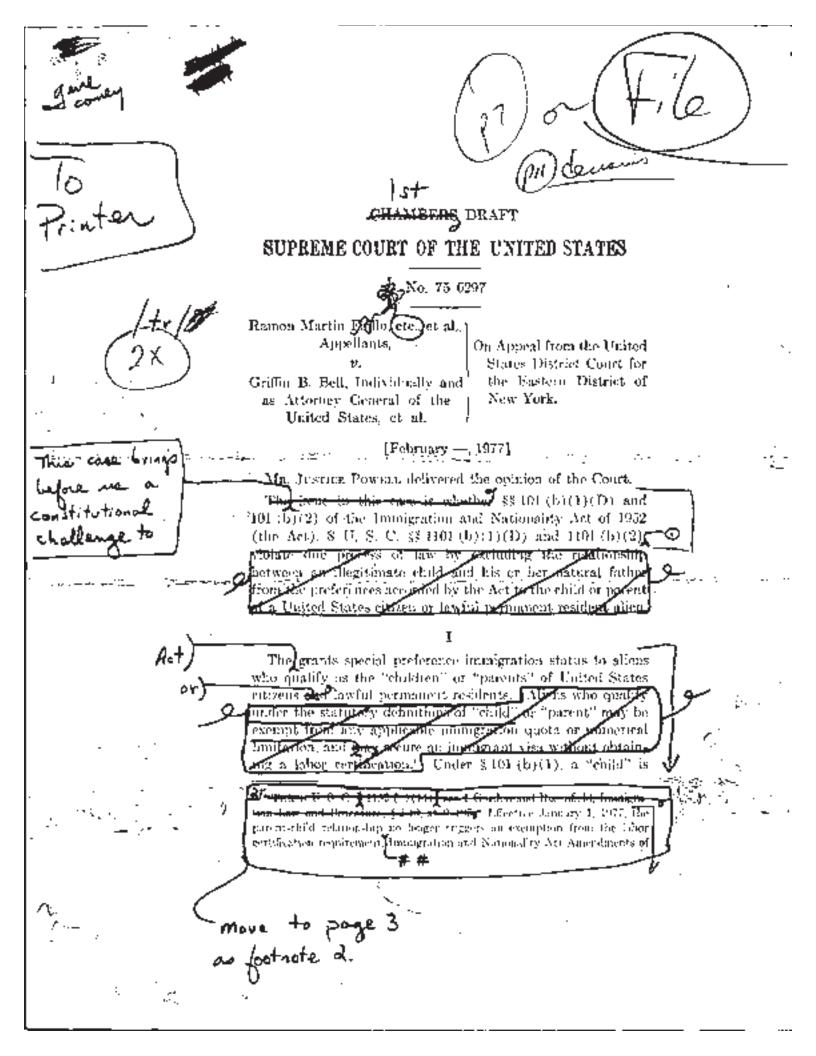
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We hold that \$\$ 101 (h)(1)(D) and 101 (h)(2) of the Introduction and Nationality Act of 1952 are not uncoestitutional by virtue of the exclusion of the relationship between an identificate child and his natural father from the preferences accorded by the Act to the "child" or "parent" of a United States citizen or lawful permanent resident.

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problems of proof and the prioritial for fraction to its applications that would have τ solved from a many generative $d\tau$, weag of the late.

Appellicits insist about the strategy distribution is based on an exercised and conducted precisive percenterating the relationship of inward fathers and their disgrimute distribution and that existing a distributive procedures, which had here decodered to deliver in the problems of precing partition, relationship and legram their with respect to summarily according to precise and father. I could easily fundie the problems of precised parents, and fathered is derived to deliver to summarily according to the decomposed in the problems of precised parents, and fathered is polynomial and respect to summarily according to the decomposed in the problem of an integration of precise provide respective the suggement should be addressed to the Congress subset the she courts fathered in that regard it is worth noting that a ball introduced in the 94th Congress would have a linearced the readinged display on -11 [4, 10005, 944). Congress --5 (2075).



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defined as an unmarried person under 21 years of age who is a legitumate or legitimated child, a stepchild to adopted child, or an illegitimate child socking preference by virtue of his relationship with his natural mother.¹ The definition does

1956, Puls T. No. Pr. 572, 8-5, 90 Sect. 2766 (Oer. 20, 1956). The 1976 An endnesses contains a saving cellar r. low-ever, which provides that the ender-threats

Which not operate to the first the entitlement to intrinstant states or the order of consideration for isotrate of stranggraph way of a minor orbital to a profession state, under station 203 () of the function and Networking Act, as in effect on the day before the effective data of this Act, as in effect on the day before the effective data of this Act, as the factory field with the Actorney Coner 5 prior to each effective date," Technization and Nationally Act Amendments of 1976, § 0.

Section 10: 00101 provides:

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 $^{12}(1)$ The term tohd, there are assumed person under twenty-one years of operations \sim

"(A" a legitimate child) or

(100) a supplied, whether on not been out of weights, provided the child had not proched the new of eighteen pears at the time the marriage whether the status of stepshild confirmation.

1000 c which the transfer tracket the flow of the right's positive or descents or under the flow of the first right position or enders give what equilation or entropy the flowed States, if such flowing flow it is a flow of the flow of eight term years and the other is in the legal rank of y of the logiting time to be the top of states of the particulation.

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This we fide adapted while some the specific features y_i is if the child by there for these in the legal custorfy of, and the wedded with, the admitting potent of periods for at least two we do a three block There no matural potent of periods for at least two we do a three block There no matural potent of the other block of all dath there for the visition of such potentiage, by according our maturative critical product the elements

(12) a solid prior the sign of formation is the spinor potential is held in his behalf to near the relevant tion as an generalized potential ender on term 1251 by of the title who is an orphan here as of the double of doupped over of, double court or described by, of separation or best from, both potents of for when the sole of our block (court is spinor), block provide a the proper spin which will be provided the child it admitted to the United

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sol extend to an illegitimate child socking preference by virtue of his relationship with his natural father. Moreover, under § 0(1/b)(2), S. U. S. C. § 1101/(i)(2), a person qualifies as a "parant" for purposes of the Act solely on the basis of the person's relationship with a "child" are as a result, the natural father of an illegitimate child who is other a United States eithers or permanent resident alter is not entitled to preferential treatment as a "parent."

The special preference inunigration states provided for those who satisfy the statutory "parent-child" relationship depends an whether the initialigrant's relative is a United States charge or permanent resident alien. A United States citizen is allowed the entry of his "parent" or "child" without regard to *either* an applicable numerical quota or the labor certification requirement. SULS, C. \$ 1151 (a). (b), 1182 (a)(14). On the other hand, a United States permanent resident alient is allowed the entry of the "parent" or "child" subject to transmission the united States permanent resident alient is allowed the entry of the "parent" or "child" subject to transmission the without regard to the labor certific ration requirement. SULS, C. \$ (182 (a)(14); see 1 Gordon & Rosenfield, lumingration Law and Proceedure, at \$ 2.49 n. 18.

Appellants are three sets of onwed natural fathers and their illegitionate offspring who sought, either as an about father or an alien child, a special intraignation preference by virtue of a relationship to a citizen or resolved alien child or parent. In each instance the applicant was informed that he was incligible for an intraignant visa unless be qualified for admission

Since of which with a interview by released the shift for early, the and eduction which has been elepted abraid by a finited Since enjoy and the space who proves d_{ij} , we are discovered the child typer to a during the adoption proceedings for who is form give the finited Since for a better be a United States estages and space who have completed with the proceeding to be relative of any of the field's proposed residence *Proceeded*. That no path of primes or prior indepting present of any such that Spall there in the visites of each parent get be accorded any right, provideget or space this chapter."

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under the general numerical imitations and, in the case of the alien parents received the requisite labor certification,? **But** see n 1 current

Appellacts filed this action in July of 1974 in the United States District Court for the Eastern District of New York challenging the constitutionality of §§ 101 (b) (f) and 101 (b) (2) of the Act under the East, Fifth, and Ninth Amendments. Appellants alleged that the statutory provisions (i) denied there equal protection by discentionality against natural fathere equal protection by discentionality against natural fathere and their filent near control does the basis of the father's marital status, the fill gitimacy of the child and the sex of the parent without other compelling or rational justification"; (ii) denied there due process of law to the extent that there was established "an anwarranted mechanism presumption of the abarete of strong psychological and emotional ties between natural fathers and their children horn out of wellock and ""-not-legitimated"? and "(iii) "seriously-hirdenfed] and in-

Appellant Ramon Martin Fields a United States option by Earth, contrastly results as the Dimonstral Republic with his pound forber, appelling Ramon Fields-States of the option of the forber. The fother interest prescharts to this in an interaction we use the "general" of his Plegisies record but the Ungood States Discond for the Denne on Record to informed appelling Fields-Some that he could not qualify for the prefer ated States accorded in "gurents" unless he legitar and Ramon Fields.

Appelled Cooples Werter a reductory United States scheme is the inweal labor of a pollari Serge Warren, when we bern in 1971 or the French West Index. In 1972 <u>applies</u> Charles Warren performed the Innormation and Naturalization Service to g^{i} with Serge $i \in W$, mark inf (F) to purpose of above, or neorgical visit but its pollar was denoted on the grouph due there we are undered by Serge was Warner's formation to the grouph due there we are undered by Serge was Warner's bound as the of legitic state of purpose.

Appellents Trever Weben and Fail Wilson, permanent webent about the the Regionant children of appellent Arthur Wilson a contrast of Junction. Following the death of their webber in 1974. There are directed sought to obtain an unmortant way for their letter. We are informed by the Growtheorem that although the application has not set been rejected, donal is certain due the children are performing for legitimate nor legitimated efforts give Arthur Wilson.

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fringe [d] upon the rights of natural fathers and their children born out of wellock and not legitimated, to mutual association, to privacy, to establish a bonn, to raise natural children add to be raised by the natural father. Appellar is sought to enjoin permanently referencent of the challenged statutory provisions to the extent that the statute procluded there from qualifying for the spaceal preference accorded other "parents" and "children."

A three-judge District Court was convened to consider the constitutional issues. After noting that Coagress' power to fashion rules for the admission of allows was "exceptionally broad" the District Court held, with one judge dissenting, that the statistory provisions at issue were neither "wholly devoid of approxisivable rational purpose" nor "fundamentally almost at achieving goals unrelated to the regulation of inmigration." Fields v. Lexi, 406 F. Sopp. 162, 165, 166 (1975). The court therefore groated judgment for the Governmentant dismissed the action.

We noted probable jurisduction (426) 0. S. 979 (1976), and for the reasons set forth below we affirm.

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At the outset, it is important to underscore the binited score of patienal negative introduction begistation. These Court has repeatedly emphasized that "over no consolvable subject is the legislative power of Coogress more complete them it is over 1 the admission of aliens. Oceana Nerogation Co. v. Strandara, 214 U. S. 320, 386 (1909); **Sec. V.** Klevedensity, Mondel, 408 U. S. 753, 765 (1972). Our cases "have long recognized the power to expedior exclude aliens as a fundational soversign attribute expressed by the Government's political departments largely increase from (advect control" Shanghnessy v. Meg.) 345 U. S. 206, 210 (1953); so, v. g. Harvalades v. Shanghnessy, 342 U. S. 580 (1952), Let Mean Shanghnessy v. Meg.) 345 U. S. 538, 547 (1865), Foreg Fac-Ting v. United States, 149 U. S. 698, 1893); The Chinese Ex-

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classion Case, 130 U. S. 581 (1889). Our recent adjac have not departed from this long-established rule. Just fast Terms for example, the Court had cecasion to note that "the power over alices is of a political character and therefore subject to only parrow individ review." Hampton y More Sur-Wong, 96 1; Co. 1995, 1996, 1996, c. 34, eiting Foug Yur Ting 426 4.0. 88. v. United States (49.17, S. a. 713; Mailhews V. Diaz 90 101 s.n. al (1976) SQC1. 1999, (1976). And we observed recently that in the exercise of its broad nover over immigration and natural-4a b 4.0 ization. "Congress regularly makes rules that would be unac-81- 82 nt 📯 Appellants apparently do not challenge the need for special ନ୍ଦତ judicial deference to congressional policy choices in the immigration context? but instead suggest that "a unique coa-Mr. dustice Frankfurter neted that attended franch could be add for Writing. the view? But due practs, places some limitations on somerssion. I prover in the introduction area. Name we write propose dense if the in Galven 347 - 4 📢 The slate is not clean. As to the extent of the provided Courters ender review, there is not morely to page of bistory' . . . but a whole in lume Policies pertaining to the entry of about and chear right to remain here are predictly conversed with the political conduct of geo manner. In the cafor-sphere of these prefiches, the Execution Republic of the Construments much request the procedural sylegentics of due process. Red thus the formulation of The Copyright is the fighted revelopsed in the gravitation of become about us fittedy embedded up the legislative and indexed device of out bala politic as any aspect of neg governgoed in ... "We are use prepared to devic correlated wiser of more sensitive to formal rights than our predictions, repetially these who have been most zerlous in privating rivil fibernes under the Construction, and enough therefore under one constitution <u>is when mengrate</u> emgravement power m stealing with allens?" Id at 55 782. We are no more inclined to reconsider this line of eases to by then we we be from years legal which we do noted K^{0} would be $d \in M$ and $d \in M(k_{1}) \in \mathbb{R}, \ \pi 52 \in \mathbb{C}$ 787/(1972). Whe Covernment argues that the shall-shared so time of the Ast, end-sideing as they do its substantive policy regulating the admission of data-

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lescing of foctors" makes the instant case sufficiently unlike prior intuigration cases to warrant more searching judicial scruticy. Brief, at 52–55. Appellants first observe that since the statutory provisions were designed to reagate families wherever possible, the purpose of the statute was to alfood rights not to alieve but to United States citizens and legal permanent residents. Appellants then rely on our horder search decisions in Almeida-Sanchez v. United States 413 U. S. 266 (1973) and United States v. Bright: Paner, 422. U. S. 873 (1975), for the proposition that the courts must scrutionae congressional legislation in the intraignation area to protect against violations of the rights of citizens. At issue in the burder search cases was the nature of the protections mandated by the Fourth Amendment with respect to govcrument procedures designed to stem the filegal matry of aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to detertritic which classes of aliens may lawfully enter the country. [See 413 1] S., at 272: 422 1], S., at 883-884.

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The second distinguishing factor wighlighted by appellar to replicat order of our prior interigration encounded floathebarreled" discrimination based on sex and dlegitimary, infringed upon the due process rights of citiz as and legal permanent residents is implicated "the fundar ordal constitrational interests of United States ritizers and permanent residents in a familial relationship." Brast arised events trational interests of United States ritizers and permanent residents in a familial relationship." Brast arised events 16-18. But this United for the suggestion that more sourchinvestigration legislation based on other constructional rights of citizens, and has rejected the suggestion that more sourch-

into the limit of States (1, 2) the limit of (2, 3) is the limit of (2, 3) is the limit of the limit o

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ing judicial scrating is required. In Kleindienst v. Mandel, 408 U. S. 753 (1972), for example, United States citizens challenged the power of the Attorney General to deny a visato an alten who as a proponent of "the reasonic, international, and governmental doctrines of world communism," .was includible to receive a visa and $r 8 \times 8, C \notin 1182$ (a) (28) (D) absent a waiver by the Attorney General. The prizeappelles in that case conceded Congress could prohibit entry of all aliens falling into the class defined by \$4182 (a)(28). discretion to approve a waiver was fighted by the Constitution and that their First Amendment rights were absidged by the denial of Mandel's request for a visa, . The Court held that "when the Eventive exercises this [delegated] power negatively on the basis of a facially fegitineate and houz file reason, the courts will not0 or look behind the excreme of that discription, oprivest it by balancing its justification equinst the First Amondment interests of those who seek personal communication with the applicant." 408 U.S. at 769-770. We can see no reason to review the broad congressional policy. choice at issue here under a more exacting standard than was applied to the Erst Anne-depart challenge of the Attorney General's doining in Kleindienst v. Mandel

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Finally, appellants characterize our prior immigration cases as involving foreign policy matters and congressional choices to exclude or expel groups of alicos that were "specifically

and cloarly bereaved to pose a grittle threat to rational secountry." eiting Harisindes v. Shanghnessy, 342 U. S. 580 (1952), "or to the general welfare of the country," eiting Boutifier v. Immigration and Naturalization Service, 387 U. S. US (1967). We find no indication in our prior cases that the scope of judicial review is a function of the nature of the policy choice at issue. To the contrary, "[s]ince decisions in these matters may implicate our relations with foreign powers and since a wide variety of classifications must be defined in

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light of changing political and economic circomstances, such decisions are frequently of a political character and "[1]be masses that produce judicial review of political questions also doctate a narrow standard of review of decisions made by Congress or the President in the area of humigration and $4.3 \times 6^{\circ}$ congress or the President in the area of humigration and $4.3 \times 6^{\circ}$ enturalization." Matthews v. Lemme 56 C. (1052). See flarmadax v. Shauphnessy, 342 U.S. 580, 588-589 (1052). As Justice Frankfurter observed in his concurrence in Harizondex v. Shauphnessy:

"The conditions of entry for every alien, the particular classes of aliens that shall be denied entry alregibler, the basis for determining such classification, the right for terminate huspitality toward aliens, the grounds upon which such determination shall be based, have here recognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control." M_0 at 596, 111

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "choid" as no unmarried legitimate or legitimated clidd or stepchild under 21 years of age. The Roard of Inmigration Appeals and the Attorney General subsequently concluded that the fadure of this definition to refer to dlegitimute children rendered ineligible for preferential mongantastatus both the illegitimate alien child of a citizen mother, Matter of A+, 5 L & N. Dec. 272, 283–284 (A. G.) and the alien mother of a citizen born out of wedlinck. Matter of P ---, 7 L & N. Der, 448 (H, I, A.N. (The Attorney General resonamembed that the norther he brought to the attention of Congress. Matter of A-+, 5 I, & N. Dor., at 284, and the Act was <u>amended in 1957</u> to include what is now 8 U, S, C, § 101 (b): (I)(D). See 1. 1 supra. Compress was specifically ronceroud with the relationship between a child been out of worklock and his of her natural mother, and the legislative history of the 1957 amendment reflects an intentional choice aut to

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provide preferential immigration status by virtue of the relationship between an illegitunate chold and his or her natural father \mathbf{V}

This distinction is just one of many drawn by Corgress pursuppr to its determination to provide some -- but not allfaccilies with relief from various inimigration restriction that would otherwise hinder reunification of the family in this country In addition to the distinction at issue here. Congress has decided that children, whether legitimate or not. cannot qualify for preferential status if they are matried or are over 21 years of age, [8 U. S. C. § 1101 (b) (1) [Legitimated children are incligible for preferential status unless their legitimation scorred prior to their 18th birthday and at a time when they is the legal costody of the legitimating parent or parents. S. U. S. C. §1101 (b)(1)(C). Adopted children are not entitled to preferential status unlessthey halt-bern adopted before the age of 14 and have thereafter lived in the sustaily of their adopting or adopted parents. for at least two years S U, S. C. § 1101 (b) (D (E) - And stepchildren cannot qualify unless they were under 18 at the, time of the norriage erecting the stepchild relationship. S. U.S.C. §1401 (b)(1)(B).

With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn of a different point and that the statutory definitions deny pref-

*Senate Rep. No. (157, 85th Cong. 1st Sec. 4 (1957) file presentations was designed "to charity the Sense status maler the outdogration investor from to his worker onjoy the sense status maler the outdogration investor legatimate shalt $-\frac{1}{2}$) (repulseds added): H. R. Rep. No. 1199, 85th Cong., 1-t. Sec., 7. (1957) (the amendment was desired "to a leview the horizon and previde a four and human-term of predeminant of maingration waves unvolving shalter hore are of wellack and the mathers of stath stabilities (the term added): H. R. 1950 (1957) (repeated stath stabilities (the term added): H. R. 1950 (1957) (repeated the horizon of the mathematic of wellack and the mathers of stath stabilities (the term added): H. Cong. Rev. 14630 (1957) (repeated to the investor of the law of the status of the law status illege mate shall model, in relation to his mather errory the same status under the investor laws as a fortimate child."] (complexity added)

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erectial status to parents and children who share strong family tees. Cf. Matthews v. Diez 96-S--C4 1956, 1959 (1976). But it is clear from our cases, see Part 11, supratthat these are policy questions outrusted exclusively to the political branches of our Government, and we have no judicial authority to substitute our political judgment for that of the Corpress.

Appellants suggest that the distinction draws in § 101 (b). (1)(D) is appointitutional under any standard of review since it infringes upon the constitutional rights of eitheurs and legal permanent residents without furthering legitimate govcruterntal interests - Appellants note in this tegard that the statute makes it more difficult for illegitimate children and their natural fathers to be requited in this country than for legitimate or legitimated children and their purcuts, or for illigitimate children and their natural mothers. And appellants also note that the statute foils to establish a projecture under which illogitimate children and their natural fathers: could mainlish the existence and strength of their family refationship. Those are admittedly the consequences of the congressional decision not to accord preferential status to the particular class of abons, but the decision ponetheless remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Harisiades v. Shaughnessy, 342 U. S. 580, 597 (1952) (Frankfurter, J. concurring). Congress obviously has determined that preferential status is not warranted for illegitimate children and their natural fathers, perbaps because of a perceivedabsence in most cases of close family this as well as a concern. with the serieus problems of proof that usually bok in parternity determinations." Its any event, it is not the judicial

When universit difficulty of ifst summing the potentity of the thegenmate child is composited when it depends open events that may have on one if in foreign countries many years caller. Congress may real in to given substantial weight, in adopting the classification here challenged, to class

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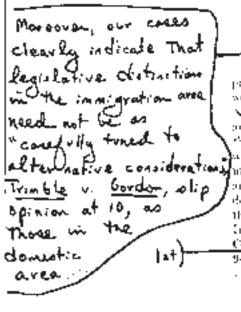
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role in coses of this sort to probe and test the justifications for the legislative decisions. *Kleindunst* v. Mandul, 408 C. S. 753, 770 (1972).

IV

We hold that \$\$ 101 (b)(1)(D) and 101 (b)(2) of the Immigration and Nationality Act of 1952 are not unconstarational by virtue of the evolusion of the relationship between an illegitimate child and his natural father from the preferences accorded by the Act to the "child" or "parent" of a United States entires of lawful permatent resident.

A firmed.



problems of proof and the presence) for framinality visit applications that would have resulted from a more generous drawing of the line Appellants in as that the statutory definements between an an overbrand and outdoted successing the relationship of anived factors and which disgummas chaldren, and that existing administrative procedures which had been developed to ded with the problems of proving paternity, into their, and legitimation with respect to statistically measured is preserving and field during the patients of an identification of proving paternity, and field during the patients of an identification of proving paternity, and field during the patients of an identification of providents of providents determining the patients of an identification of the imply note that this explorent is hold be addressed to the Congress rather that the events field d, in that regard of a worth noting the reliability the events field d, in that regard of a worth noting the reliability of the 90th Congress worth there eliminated the challenged distribution. If R (0065, 940) (005) \sum Sec. (2055).

To:	The	Çht. (
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From: Mr.

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to Howell

SUPREME COURT OF THE UNITED STATES (1-1)

No. 75 6297

 Ramon Martin Fiallo etc., et sl., Appellants,
 On Appeal from the United States District Court for States District Court for the Eastern District of New York

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 Appellants,

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 States District Court for States, of pl

(February -- 1977).

Ms. JUSTICE Powerst delivored the opinion of the Court

This case brings before us a constitutional challenge to \$\$ 101 (b)(1)(1)) and 101 (b)(2) of the lumingration and Nationality Act of 1952 (the Act), 8 U, S, C, \$\$ 101 (b)(1) (D) and 1101 (b)(2)

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The Act grouts special preference introgration status to aliens who obalify as the "children' or "parents" of United States ritizens or lawful personnent residents. Finder £101 (10)(1), a "child" is defined as an obscarr of person worder 21 years of age who is a legitimate or legitimated child, a step child, an adopted child, or an illegitimate child seeking pretpriace by virtue of his relationship with his natural mother.

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FIALLO E. BELL

The definition does not extend to an illegitimate child seeking preference by varue of his relationship with his natural father. Moreover, under ± 101 (b)(2), ± 5 U, S, U, ± 1101 (b)(2), a person qualifies as a "parent" for purposes of the Actsolely on the basis of the person's relationship with a "child." As a result, the natural father of an illegitimate child who is either a United States either or permanent resident alien is not entitled to preferential treatment as a "parent."

The special preference inamigration status provided for those who satisfy the statutory "parent-child" relationship depends on whether the immigract's relative is a United States citizen or permanent resident alien. A United States citizen

 $\mathcal{C}(\mathbf{F})$ a child, maker the age of features or the time a particular filled in the behalf to accord a classification as an immediate relative upder section 2151 (b) of this title, who is an orphon because of the death or disappearonce of, abandomeent or directions by, or separation or loss from, both parents, or for whom the sole or surraying parent is mappede of providing the project curv which will be provided the child if admitted to the Uzerod States and who has in writing intervalidly released the child for emigration and obspiring who has been adopted abread by a United States child and displace who has been adopted abread by a United States child and displace who has been adopted abread by a United States child and its space who has provided by som and observed the child for emigration and its space who has provided by and observed the child prior to be during the adoption proceedings; or who is easing to the United States for adoption by a United States cutates and space who have complied with the preoduption requirements, if any, of the child's proposed respirate *Provided*. That we befored parents or prior adoptive parent of any such while shall thereafter, by visions of states parentages be accorded any right, privilege or status under this chapter."

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in or outside the United States, if such leadination takes place before the child reaches the age of eighteen years and the child is in the legal co-tady of the legation top parent of porents of the time of such legitimation.

[&]quot;(D) an allegitimate right, by, through where, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its notwired conther;

[&]quot;[10] a child adopted while under the age of fourteen veges if the child has thereafter been in the legal custody of, and has resided with, the adopting parent of parents for at least two years. *Provided*. That no control parent of any such adopted child shall thereafter, by victor of such parentage, be accorded any tagin, provider, or status under this chapter.

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is allowed the entry of his "parent" or "child" without regard to *either* an applicable numerical quota or the labor certification requirement. $||S||U, S||C|| \leq 1151$ (a). (b), 1182 (a)(14). On the other hand, a United States permanent resident alien is allowed the entry of the "parent" or "child" subject to numerical limitations but without regard to the labor certification requirement. $||S||U, S||C|| \leq 1182$ (a)(14): see I Gordan & Rosenfield, Immigration Law and Procedure, at ≤ 2.40 a, 18.7

Appellants are three sets of unwed natural fathers and their illegitimate offspring who sought, either as an alten father or an alten child, a special immigration preference by virtue of a relationship to a citizen or resident alten child or parent. In each instance the applicant was informed that he was incligible for an immigratit visa unless he qualified for admission under the general immerical limitations and, in the case of the alten parents, received the requisite labor certification.⁴

Appellant Cleophis Watner, a particulated United States entited, is the nuwed father of appellant Serge Watner, who was been in 1971 in the French West Index . In 1972 Cleophias Warner perturbed the Innugra-

² Effective January 1, 1977, the parent-child relationship to longer triggers an exemption (rope the labor certification requirement). (rangestion and Nationality Act Appendicents of 1976, Pab. 1. No. 94-571, § 5, 90, Stat. 2705, (Der. 20, 1976). The RGE Amendments content a saving-closer, bowever, which provides that the amendments.

[&]quot;shall not operate to alloc" the entitlement to intrigrant status of the order of consideration for isomore of all manipulatives of an alien entitled to a preference status, under section 200(10) of the framegation and Nationality Act, as in effect on the day before the effective date of chia. Act, on the basis of a petition filed with the American Greetal program as such effective date.¹ Integration and Nationality Act Americanstan at 1976.²§ 9.

³ Appellant Ranson Morris Faills, a United States estimate both, currently resides in the Dominian Repeble with his material father, appellant Range Fields-Sone, a citizen of their country. The father initialed procedures to obtain an animatant visa as the "parent" of his allegitamate son, but the United States Consul for the Dominian Republic informed appellant Fields-Sone that he could not specify for the preferential status accorded to up tents" unless by legitamated Rannon Fudlo.

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Appellants filed this action in July of 1974 is the United States District Court for the Eastern District of New York challenging the constitutionality of §§ 101 (b)(1) and 101 (b). (2) of the Act under the First, Fifth, and Ninth Amendments. Appellants alleged that the statutory provisions (1) denied them equal protection by discriminating against natural fathers and their illegitumate children "on the basis of the father's marital status, the illegitimicy of the child and the sex of the parent without either compelling or rational justification"; (ii) denied them due process of law to the extent that there was established by unwarranted conclusive presupption of the absence of strong psychological and emotions) tics between natural fathers and their children burn out of wedlock and not legammated"; and (iii) "seriously burdenfed] and infringe[d] upon the rights of untural fathers and their children. harn out of wedlock and not legitimated, to mutual association, to privacy, to establish a home, to mise natural children and to be raised by the initial father [1] Appellants sought to enjoin permanently enforcement of the challenged statutory provisions to the extent that the statute precluded them from qualifying for the special preference accorded other "parents" and "children,"

A three-judge District Court was convened to consider the constitutional issues. After noting that Congress' power to fashion rules for the admission of aliens was "exceptionally

tion and Naturalization Service to a saily Serge as Warner's 'child" for purposes of the among an intergraph vis that the patimon was denied on the ground that there was no evolution that Serge was Wegter's legitimate an legitimated offspring

Appelbarts Theory Welson and Farl Welson performent resident aliens, are the dividinate children of appellact Archeit Welson a criticer of Jannicy. Following the feeth of their vierbor in (974, Trever and Earl sengle to obtain a manigram was for their vierbor. We are intermed by the Growtharmit that although the application has not verderer reported, denial is contain since the children are product logitimated offsprate of Arther Walson,

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FIALD P. BELL

broad." the District Coart held, with one judge dissenting, that the statutory provisions at issue were orither "wholly devoid of any concervable actional purpose" nor "iteratgmentally aimed at achieving goals unrelated to the regulation of immigration." *Fould* v. *Leve*, 406 F. Supp. 102, 165, 166 (1975). The coart therefore granted judgment for the Govcrament and dismissed the action.

We noted probable jurisdiction, 426 11 S, 919 (1976), and for the reasons set forth below we affirm.

16

At the outset, it is important to underscore the limited geope of judicial inquiry into immigration legislation. This Court has repeatedly emphasized that "over no ennectvable subject is the legislative power of Congress more complete than it is over? the admission of aliens. Decade Navigation Co. v. Stranghun, 214 U. S. 320, 339 (1909); accord. Kleindienst v. Mandel, 408 U. S. 753, 765 (1972). Our cases "have long recognized the power to expel or exclude aliens as a fundamontal sovereign attribute exercised by the Government's political departments largely immune from judicial control." Shanghorisiy v. Metril 345 U. S. 206, 210 (1953); see, e. g., Harislades v. Shnughnessy, 342 U. S. 580 (1952); Lem Moon Storg v. Parted States, 158/10/8, 598, 547 (1895); Fong Fur Ting v. United States, 149 U. S. 698 (4893); The Chinese Exclassion Case, 130 F. S. 581 (1889). Our recent decisions have not departed from this long-established role. It is last Terro, for example, the Court had occasion to note that "the power over aligns is of a political character and therefore subject to only narrow judicial review," Hampton v. More Sun Woog. 426 U. S. 88, 101 (0, 21 + 1976) citing Fong Fue Targ v. United States, 149 U. S., at 713; acroad, Matthews v. Durz, 426 V. S. 67 Si 52 (1976). And we abserved recently that in the exercise of its broad power over juituigtation and naturalization. "Congress regularly makes rules that would be poor-

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ceptable if applied to citizens." Matthews v. Deat, 426 U. S., at S0."

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context.) but instead suggest that "a anotae coalescing of factors" makes the instant case sufficiently aplike prior inamigration cases to warrant more searching judicial scrutizy. Brief, at 52-55. Appellants first observe that since the statutory provisions were designed to receive families

⁴ Wrang for the Court in Galage v. Prov. 347 U.S. 522 (1980), Mr. Justice Frankfurter needs that impact, exist he said for the view" that due process pieces some *Busicarons* on congressional power on the burn gration arts. We new writing on a clear state."

"We are not proposed to dema anisolves where or more densitive inform on rights than our predicessors, repetially these who have been most realized in protecting awill like rise under the Constitution and tange therefore under our constitutional system teorgraphic congressional protection dealing with allows $[-M_{\odot}]_{0} \gtrsim 330-352$.

We are no more inclused to reconsider this line of cases to by their vewere five years, go when we decided *Kielenbergt v. Mandel*, 405 U/S/758, 767 (1972)

⁵ The Government argues that the dedicaged sections of the Act embeddeing as they do to sub-solution policy regulating the tables are of diens into the Gauted States (1, proj not an appropriate subject for pide d review)". Brief, at 15–24. Our cases reflect acceptance of a lamined policial responsibility render the Constitution even with respect to the power of Congress to regulate the coherstant and reclassion of there, and there is no policies to regulate the coherstant and reclassion of there, and there is no policies with respect to allow that are sole-sole of a policies) in of the Congress with respect to allow that are sole-sole to be policies) in planation as to be proportionable.

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wherever possible, the purpose of the statute was to affind rights not to aliens but to United States citatens and legal permanent residents. Appeliants then rely on our border search decisions in Almeida-Souther v. United States 413 U. S. 266 (1973) and United States v. Brigont-Power, 422 U. S. 873 (1975), for the proposition that the courts carst scrutinize congressional legislation is the immigration area to protect against violations of the rights of citizens. At estue in the border search cases, however, was the nature of the protections mandated by the Fourth Amendment with respect to government procedures designed to stem the illegal entity of aliens. Nothing in the opinions in those cases suggests that Congress has anything but extendionally bread power to determine which classes of aliens tiny lawfully order the country. Ser 413 U. S. at 272: 422 U. S. at 883-884.

App-Eants sugg st a second distinguishing factor. They argue that none of the prior introjgration cases of this Court involved "double-barreled" discrimination based on sex and illegitimary, infringed upon the due process rights of citizens and legal permanent residents, and implicated "the fundamental constitutional interests of United States citizens and permanent residents in a familial relationship." Hrist, at 53. 54) see 66, at 16–18. But this Court has resalved somilar chaiimpes to jumigration legislation based on other constitutional rights of entireus, and has rejected the suggestion that more searching judicial scritting is required. In Khilologost y-Mandel, 408 U. S. 753 (1972), for example, United States etc. zens challenged the power of the Attorney General to draw a visa to an alien who, as a proponent of "the concorro, international, and governmental doctrines of world communisat." was ineligible to receive a visa under 8 U.S. C. 8 (182 07)(28). (D) absent a waiver by the Attorney General. The objectappelless in that case conceled that Congress could prohibit entry of all aliens falling into the class defined by 3 1182 (a) (28)(D). They contended, however, that the Attorney Gen-

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cral's statutory discretion to approve a waiver was Emited by the Constitution and that their First Amendment rights were abright by the denial of Mandel's request for a visa. The Court held that "when the Executive exercises this [delegated] power negatively on the basis of a facially legitimate and homfoir reason, the courts will neither look trained the exercise of that discretion, nor test it by balancing its [instification against time First Amendment interests of these who seek personal communication with the applicant.' 408 U. S. at 769-770. We can see no reason to review the broad congressional policy choice at issue here under a more exacting standard than was applied in Kleindienst v. Mandel, a First Amendment case,

Finally, appellants characterize our prior isomgration cases. as anyolving foreign policy matters and congressional choices to exclude or expel groups of aliens that were "specifically and clearly perceived to pass a grave threat to inducing) securvey" enting Harisiades v. Shrughnessy, 342 U. S. 580 (1952), "or to the general welfare of the cutotry," eding Boutdier v. Immigration and Naturalization Service, 387 V. S. 118 (1967). We find no indication in our prior cases that the scope of judicial review is a function of the nature of the policy above at issue. To the contrary, "Isdiace decisions in these matters may implicate our relations with foreign powers and since a wide variety of classifications must be defined in light of changing political and economic circumstances, such decisions are frequently of a political chameter," and "it flureasons that preclade inducial review of political questions also dictate a narrow standard of review of decisions made by Congress of the President in the area of immigration and (1976). See Harisindes v. Shaudourssy, 342 U. S. 580, 588-589 (1952). As Mr. Justice Frankfurter observed in his concurrence in Harisiades 8, Shaughnessy:

"The cotalitions of entry for every alien, the particular classes of aliens thus shall be denied entry altogener,

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the basis for determining such classification, the right to terminate hospitality toward aliens, the grounds aponwhich such determination shall be based, have been recognized as matters safely for the responsibility of the Congress and wholly outside the power of this Court to control." Id_0 at 596.

111

As originally enacted in 1952, £404 (b)(4) of the Act defined a "child" as an immarized legitimate or legitimated child or stepchild under 21 years of age. The Board of Inmigration Appeals and the Attorney General subsequently concluded that the failure of this definition to refer to flegititeate children rendered incligible for preferential nonpusta status both the illegitimate alien cludd of a citizen mother. Matter of A [1, 5, 1] & N. Der, 272 (283-284) (A. G.) and the alieve mother of a citizen bory out of weillock. Matter of $F \rightarrow \gamma_i$ 7 I. & N. Dec. 448 (B, I, A.). The Attorney General recummended that the matter be brought to the attention of Congress. Matter of Astrony, 5 I, & N. Doe, at 284, and the Act was amended in 1957 to include what is now 8 F, S, C, 3 101 (b) (1)(D) See a. I. supra. Congress was specifically notcerned with the relationship between a child born out of wellock and his or her natural mother, and the legislative history of the 1957 amendment reflects an intentional choice not to provide preferential immigration status by virtue of the relationship between an illegitimate child and his or Lee natural father."

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^{*}Sensite Rep. No. 1057. S5th Cong. 1st Sec. 1 (1957) (the considered was designed "to therefor the law so that the digital matched have defined to the first only the same static order the universities -36×10^{10} for both 2 equal the same static order the universities -36×10^{10} for both 2 equal the same static order the universities -36×10^{10} for the matched order the universities -36×10^{10} static for 36×10^{10} static order the universities -36×10^{10} static order the university of the static order to the trading static order to the university of the univ

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This distinction is just one of many drawn by Congress pursuant to its determination to provide some --bal not allfamilies with relief from various itomigration restrictions that would otherwise hinder reactification of the family in this country. In addition to the distinction at issue here, Congress has decided that children, whether legitimate or not, cannot qualify for preferential status if they are married or are over 21 years of age. 8 U. S. C. 8 (10) (b)(1). Legitimated children are incligible for preferential status unless their legitimation occurred prior to their 18th histoiday and at a time when they were in the legal custody of the legitimating parent or parents. § U. S. C. §1101(b)(1)(C). Adopted children are not eatitled to preferential status unless they were adopted before the age of 14 and bave thereafter fived in the castody of their adopting or adopted parents for at least two years, 8 U, 8, C, % t102 (b)(1); E). And stepchildren cannot qualify unless they were under 18 at the time of the marriage creating the stepchild relationship. 8 U. S. C. § 1401 (b)(4)(B).

With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions dony preferential status to parents and children who share strong family tics. Cf. Matthews v. Diaz, 426–16, S. 67, S3–S4 (1976). But it is clear from our cases, see Part II. mpro, that these are policy questions entrusted exclusively to the political branches of our Government, and we have no judicial authority to substitute our political judgment for that of the Congress.

Appellants suggest that the distinction drawn in \$ 101 (b) (1)(D) is unconstitutional under any standard of review since it infringes upon the constitutional rights of entites and

Kennedy) (the provident "would elsity the law so that an illegitimate child would, to referior to his mother, edgit, the space states under the immigration laws as a legitimate child") (emphasis added).

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FIALLO & BELL

legal permanent residents without furthering legitimate goveromental actorests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their patoral fathers to be remained in this country than for legitimate or legitimated children and their parents, or forillegizionate children and their natural mothers. And appellatits also note that the statute fails to establish a procedure uselor which illegitimate children and their natural fathers. could prove the existence and strength of their family relationship. Those are admittedly the consequences of the congressional decision not to accord preferencial status to this particular class of aliens, but the decision monetheless remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Harisindes v. Shnayhenessy, 342 U. S. 580, 597 (1952) (Frankfurter, J., concurring), Congress aboundly has determined that preferential status is not warranted for illegitineate children and their natural fathers, perhaps because of a perceived absence in most cases of close family ties as we'l as a concern with the serious problems of proof that usually luck in patermity determinations? See Triadde v. Gordon, Slip op., at S-10. In any event, it is not the judicial role in cases of this set (to broke and test the justifications for the legislative decisions.^{*} Kleindnenst v. Mundel, 408 U. S. 753, 770 (1972).

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The informat difficulty of determining the paternary of an illegitimate child is comparated when a depends approximate that near have excerned in foreign countries many years of the Congress may well by excernasubstantial weight, to adopting the clusteration here challenged, to these problems of proof their the patential for fractident visual-projections that would have resulted from a more generated wave go the day. Moreover, our cases clearly defined that here the definitions in the integrations are need for here catefully thus to cheracity contradict time. The by a first here a superfully thus to cheracity contradict time. The by a first here a superfully thus to cheracity catefully the start.

^{*} Appellates easist that the station wilds perpet is later; a approved coal and outplated stereotype isotoerung the selphop-hip of name) for a prove (neir allogupous chektren, and plat existing parameters).

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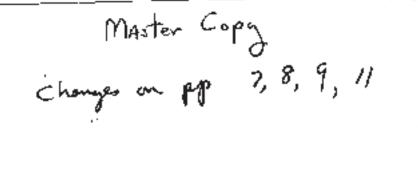
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We hold that \$\$101(b)(1)(D) and 101(b)(2) of the funnigration and Nationality Act of 1952 are not unconstitutional by virtue of the exclusion of the relationship between an illegitimate child and his natural father from the preferences accorded by the Act to the "child" or "parent" of a United States criticen or lawful permanent resident.

Affirmed,

which had been developed to doil with the predships of proving parentice, materially, and legitimation with respect to stateority period (parents) and the had been barried with the problems of proof the barries of the date that the date that we should not be a date mixed with the date that we should not the the date that the date the date that the date the dat





FEB 17 1977 Contract DRAPT SUPREME COURT OF THE UNITED STATES

No. 75 6297

 Riopon Martin Fiallo, etc. et al. Appellants.
 Griffin B. Bell, Individually and as Attorney General of the United States, et al.
 On Appeal from the United States District of 1/2 the Eastern District of 1/2

[February --- , 1977]

Ms. Justice Powers, delivered the opniion of the Court.

This case brings before us a constitutional choicege to \$\$ (0) (b)(1)(D) and 101 (b)(2) of the beamigration and Nationality Act of 1952 (the Act: 8 U, §, C, \$\$ (D) (b)(1) (D) and 1101 (b)(2).

The Act grants' special preference immigration states to alicas who qualify as the "children" or "parents" of United States extincts or leavful permanent residents. Under i 101(0i)(1), a "coild" is defined as an unmarried person under 21 years of age who is a legitimate or legitimated child, a stepchild, an adopted child, or an illegitimate child seeking preference by virtue of his relationship with his ratio of mother 1

(11) The term [dub] means an ione ruled periods useful twee systems of age when $p \rightarrow \infty$

"(A) a legitimate right or -

(48) a step-dubl, whether or not bare out of weatherk, provided the child had not revealed the sign of eighteen scores of the time fluctuation contract the status of step-duble contracts or.

(C) to obtain texton and shades the law of the dolds, remines or formally, or makes the farmal the futber's readering or domine whether

Section (01)(6)(1) provides

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The definition does not extend to an illegitimate child seeking preference by viztue of his relationship with his natural father. Moreover, under ± 101 (b)(2), ± 101 (b) (2), a person qualifies as a "parent" for purposes of the Actsolely on the basis of the person's relationship with a "child." As a result, the natural father of an illegitimate child who is either a United States either or permanent resident align is not entitled to preferential treatment as a "parent."

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(1)E) a child adopted while under the age of function years if the shidd has thereafter incoming the legal costody of and has resided with, the adopting parent of parents for at least two vectors. *Provided* That renatural parent of any such shorted shift shall thereafter, by sirtue of such parentage, be accorded any right, physicise, or starms and in this chapter.

 $\Gamma(F)$ is clobel under the age of tearteen at the time a paritien is filed in his behalf to accord a closelfunction as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandometric or describen by, or separation of loss from, both (its refer when the sole of structure defined adapted to the United States and which will be provided the defined adapted to the United States and which is in acting structure defined the clobe for energiation and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States entires and adoption; who has been adopted alternal by a United States for adoption by a United States entirem and observed the clobel proof in or during the adoption proceedings, or who is easing to the United States for adoption by a United States entirem and sponse who have complied with the precident to instand purset or prior adoption portant of any such child shell thereafter, by virtue of such parentize, be accorded any right, phydieg, or states independ this children "

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 $^{^{\}circ}(D)$ an idegleprize child by, through above, or on whose belief a status, providege, or lowefit is sought by virtue of the relationship of the child (b) is natural mother:

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FIALLO D. BELL

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³Appellant Ramon Martin Fiallo, a United States action by birth, currently resolve in the Dominican Republic with his natural lather, sypciliant frammer Yullo-Sore, a cutato of that essentry. The further initiated procedures to obtain ap inpringrant eise as the "parent" of his illightimate son, but the United States Could for the Dominican Republic informed appellant Fields-Sore shot he could not qualify for the preferentiel status averaged to "parents" esless be legitimated Ramon Fiello

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³ Effective Johnary 1, 1977, the parent-child relationship no longer triggets an exemption from the labor vertification requirement. [Demogration and Nationality 3s1 Amendments of 1976. Pub. 1. No. (14-571, §.5, 90, Stat. 2765. (Oct. 20, 1976). The 1970 Attendiments contain a savings choose, because which provides that the attendiments.

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Appellants filed this action in July of 1974 in the United States District Court for the Eastern District of New York challenging the constitutionality of \$\$ 101 (b)(1) and 103 (b). (2) of the Art under the First, Fifth, and Ninth Amendments. Appellants alleged that the statutory provisions (i) denied them equal protection by discriminating against natural fathers and their illegitimate children "on the basis of the father's marital status, the illegitimacy of the child and the sex of the parent without either compelling or rational justification"; (ii) denied them due process of law to the extent that there was established had utwarranted conclusive presumption of the absence of strong psychological and emotional tire between natural fathers and their children form out of wellock and not legitimated"; and (iii) "seriously burden[ed] and infringe[d] upon the rights of natural fathers and their children, born out of wellock and not legitimated, to mutual association, to privacy, to establish a bome, to raise natural children and to be raised by the initial father." Appellants sought to enjoin permanently enforcement of the challenged statutory provisions to the extent that the statute precluded them from qualifying for the special preference accorded other "parents" and "tchildron."

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Appellants Treves Wilson and Earl Wolow, petitionent resident aliens, are the illegeomete elideree at appellant Arthur Wilson, a critical of Jamaica – Following the death of their moder in 2014, Theory and Earl smalle to obtain an incomprise way for their father – We are informed by the Coverance that alabatigh the application has not yet been rejected, decist is certain an to the elideree are existed (globate nor legitigrated offspring of Arthur Wilson,

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broad." the District Court held, with one judge dissenting, that the statutory provisions at easile were neither "wholly devoid of any conceivable rational purpose" nor "fundamentally aimed at achieving goals unrelated to the regulation of immigration." Faillo v. Lett. 406 F. Supp. 162, 165, 166 (1975). The court therefore granted judgment for the Govermonant and dismissed the action.

We noted probable jurisdiction, 426 U.S. 949 (1976), and for the reasons set forth below we affirm.

At the outset, it is important to and escare the limited scope of judicial inquiry into inmigration legislation. This Court has repeatedly emphasized that "over no coexcivable subject is the logislative power of Congress more complete than it is over" the admission of places. Decame Nurgement Co. v. Stranahan, 214 U. S. 320, 339 (1902); accord. Kleindienst v. Mandel 408 C. S. 753, 765 (1972). Our cases "have long recognized the power to expel or exclude idiens as a fundamental sovereign attribute exercised by the Government's political departments largely innoune from judicial control." Shanaphaessa v. Mezer, 345 U. S. 206, 210 (1953); see, c. g., Harisjades v. Shaughnessy, 342 U. S. 580 (1952); Lem Moon Sing v. United States [158/10] S. 538, 547 (1895). Fong Yue Ting v. United States, 149 U. S. 698 (1893). The Universe Exclasion Case, 130 U/S/581 (1889) — Our prent decisions havé not departed from this long-established rule. Just last Term, for example, the Court had occusion to note that "the power over aliens is of a political character and therefore subject to only variow judicial review" Hampton v. Mow Sun Wrong 426 U. S. 88, R1 n. 21 (1976), citing Floor Fue Tang v. United States, 149 U. S. at 713; arourd, Mattheacs v. Duaz, 426 U. S. 67, 81-82 (1976). And we observed recently that in the exercise of its bread power over impogration and outpralization, "Congress regularly makes rules that would be upged

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⁵ The Government argues that the challenged so time of the Act embedgeing as they do a solutionities gold energial ring the admission of alieneinto the United States . . . [4.58] not an accompting subject for judicial review 1. Brief, of 15–24. Car more reflect acceptance of a junited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and evelocian of almost and there is no occasion to consider mathematics there may be actions of the Congress with respect to allow that are so escaptically pointed in character as to be mapping tables.

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¹ Writing for the Centrine Gelensev, Press, 347–31–5, 522 (2004); Mr. Justice Frankforter normal that franch could be said for the view " theo deepress: places some familiations on congressional power in the intrigration area. "Were we writing to a close slate."

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Appellants suggest a second distinguishing factor. They argue that none of the prior immigration ruses of this Court involved "double barreled" discrimination based on sex and illegitimacy, infringed upon the due process rights of citizens and legal permanent residents, - de implicated "the fundamental constitutional interests of United States citizens and permanent residents in a familial relationship?" Britf. at 53. 54; see *id.*, at 16–18. But this Court has resolved similar chilllenges to immigration legislation based on other constitutional rights of citizens, and has rejected the suggestion that more searching judicial soluting is required. In Kleindand v. Mandel, 408 U. S. 753 (1972) for example, finited States citizens challenged the power of the Attorney General to deny a yisa to an alien who, as a proponent of "the economic justernational, and governmental doctrines of world communists " was itseligible to receive a visa under 8 U. S. C. § 1182 (a)(28). (D) absent a waiver by the Attorney General. The current appellets in that case conceded that Congress could prohibit erary of all altens falling into the class defined by \$1182 (a). (28) (D5). They contended, however, that the Astorney Gen-

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eral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendation rights were abriged by the domal of Micodel's request for a visa. The Court held that "when the Executive exercises this [delegated] power negatively on the basis of a facially bejitionate and book fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant." 408 U.S. at 769-770. We can see no reason to review the broad congressional policy choice at asite here under a more exacting statelard then was applied in *Kleinductor* v. Mandel, a First Amendment case.

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Finally, appelluturs characterize that prior joundgration cases as involving foreign policy matters and congressional choices to exclude or expel groups of aliens that were "specifically and clearly perceived to pose a grave threat to national security," citing Harisiades v. Shanghuessy, 342 U. S. 580 (1952), "or to the general welfare of the country," esting Bautilier v. Intarigration and Networkization Service, 387 U.S. 118 (1967). We find no indication in our prior cases that the scope of judicial review is a function of the nature of the policy choice at issue. To the contrary "[s]ince decisions in these taatters may implacate our relations with foreign powers and since a wide variety of classifications must be defined in light of changing political and economic encurostances, such decisions are frequently of a political character." and "[t]he reasons that produce judicial rocies of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of intuigration and [000070][zation," Multheors v. Diaz, 420 [17] S [67] [81-82] (1976). See Harisiodes v. Shaughnessy, 342 U. S. 580, 588.

"The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altagther.

589 (1952). As Mr. Justice Frankfurter observed in his gou-

[See attached sheet]

corrected in Harisindes v. Shangharssy:



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6 The thoughtEul dissenting opinion of our Brother Marshall would be persuasive if its basic premise were accepted. The dissent is grounded on the assumption that the relevant portions of the Act grant a "fundamental right" to American citizens, a right "given only to the citizen" and not to the putative immigrant. <u>Post</u>, at 7, 9, 16. The assumption is facially plausible in that the families of putative immigrants certainly have an interest in their admission. But the fallacy of the assumption is rooted deeply in fundamental principles of sovereignty.

We are dealing here with an exercise of the nation's sovereign power to admit or exclude foreigners in accordance with perceived national interests. Although few, if any, countries have been an generous as the United States in extending the privilege to immigrate, or in provide sabetuary to the oppressed, limits and classifications as to who shall be admitted are traditional and necessary elements of legislation in this area.

Ist Sess., 7 (1957). See also H.R. Rep. No. 1365, 82d Cong., 2d Sess., 29 (1952)(statute implements "the underlying intentions of our immigration laws regarding the preservation of the family unit."). To accommodate this goal, Congress has accorded a special "preference status" to certain aliens who $\pm r^{-1}$ share relationships with introductions age for citizens or permanent resident aliens. But there are widely varying relationships and degrees of Kinship, and is appropriate for Congress to consider not only the nature of these relationships but also problems of identification, administration, and the potential for fraud. In the inevitable process of "line-drawing" Congress has determined that certain classes of aliens are more likely than others to satisfy national objectives without undue cost, and it has granted preferential status only to those classes.

As Mr. Justice Frankfurter wrote years ago, the formulation of these "policies pertaining to the entry of alicus . . . is entrusted exclusively to Congress." <u>Galvan</u> v. <u>Press</u>, 347 U.S., at 532. This is not to say, as we make clear in n. 5, <u>supra</u>, that the Covernment's nower in this area is never subject to

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the basis for determining such classification, the right to terminate hospitality toward aliens, the grounds upon which such determination shall be based, have been recognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control." Id., at 595.

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As originally enabled in 1952, \$400 (b)(1) of the Act defined a "child" as so encorried legitimate or legitimated child or stepelald under 21 years of age. The Brard of Inmigration Appeals and the Attorney General subsequently concluded that the follow of this definition to refer to illegitimate children tendered meligible for preferential marguota status both the illegitimate alter child of a citizer mother. Matter of A+, 5 1 & N. Dec, 272, 283-284 (A, G.) and the alien mother of a citizen born out of wedlock. Motter of F-- . 7 I. & N. Dec. 448 (B. I. A.). The Attorney General records. mended that the metter be brought to the attention of Congross, Matter of A [1, 5 I, & N. Dec., at 284, and the Act was amended in 1957 to include what is now S U, S C, \$101 (b) (1)(D). See o. I. supra. Congress was specifically concerned with the relationship between a child born out of wedlock and his or her natural mother, and the legislative bistory of the 1957 accordment reflects an intentional choice not to provide preferential immigration status by virtue of the relationship between an illegitimate child and his or her natural father**7**

Senate Rep. No. 1687, 35th Gauga 1-3 Sess 4 (1957) (the's construction was designed "to cherify the law so that the frightphane child was (d h. achition to his mathematic) the law so that the input part of the input grante child () templotes added). If R. Rey, No. (196, 85c) (reg. (c. Sess, 7 (1957)) (the surrendment was designed (to all where the lead-hip and provide), four and boundary rule adjudication of entropy of the cases involving children here are of westhed, and the neithers of such children") (resplayer addition for Sec. (1975) (remarks of Sec.

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This distinction is just one of many drawn by Congress pursuant to its determination to provide some-bas not alffamilies with relief from various immigration restrictions that would otherwise hinder reunification of the family is this country. In addition to the distinction at issue here. Congress has decided that children, whether legitimate or not, cannot qualify for preferential status if they are married or are over 21 years of age, S.U.S.C. § H01 (b)(1). Legitimated children are ineligible for preferential status unless their legitimation occurred prior to their 18th birthday and at a time when they were in the legal eastedy of the legitimating parent or parents, [8] U. S. C. §11017b)(1)(C). Adopted children are not entitled to preferential status unless they were adopted before the age of 14 and have thereafter lived in the custody of their adopting or adopted parents for at least two years, 8 U, 8, C, § 1101 (b)(1)(E). And stepchildren cannot qualify unless they were under 18 at the time of the marriage creating the stepchild relationship. 8 U. S. C. § 1101 (1a)(1)(B).

With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions dony prefcrential status to patents and children who share strong family ties. Cf. Matchews v. Deaz. 426 U. S. 67, 83-84 (1976). But it is clear from our cases, see Part II, sapen, that these are policy questions corrusted exclusively to the political branches of our Government, and we have no judicial authority to substitute our political indgment for that of the Congress.

Appellants suggest that the distinction drawn in \$100 (b) (1)(D) is unconstitutional under any standard of review since it infringes upon the constitutional rights of ritizens and

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Kennedy) (the assendment "would durify the two or flottum illegioneaus shall would, in relation to be worker, enjoy the sum status under the inneignation low- as a legiturity epilog") templosis addship

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FIALLO v. BELL

legal permanent residents without furthering legitimate govcruccental interests. Appellature note in this regard that the statute makes it more difficult for illegitimate children sudtheir natural fathers to be remitted in this country than for legitimate or legitimated children and their parents, or for illegitituate children and their natural mothers. And appellands also note that the statute fails to establish a procedure under which illegitimate children and their natural fathers would prove the existence and strongth of their family relationship. These are adminifedly the consequences of the congressional decision not to accord preferential status to this particular class of alicas, but the decision nonetheters remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Harisiades v. Shanghuessy, 342 U. S. 580 (597) (1952) (Frankfurter, J., concurring) Congress obviously has determined that preferential status is not warranted for illegitimate childres and their natural fathers, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the sectors problems of proof that usually link in paternity determinations S See Tripoble v. Gordon, Shp. op., at 8-10. In any event, it is not the judicial role in cases of this sort to probe and test face justifications for the legislative docision Kleindienst v. Mandel, 408 U. S. 753, 770 (1972).

The inherent deficulty of detensions the parriary of an illegrin dechild is compared when a depends upon grouts that pay have example in foreign construction many years earlier. Congress and well have even substantial weight, in adopting the classification here globledged, by these problems of pressioned the presential for frondulent visa applications that would have resulted from a more generous drawing of the later. Moreover our cases clearly induce that legislative destinctions to the annigration are a most not be as transfer to adverse considerations." Transfer v. Gradov, Ship eq. (a) 10 as these in the demests area.

9 Appellants insist that the statutory distinction is based on an overbroad and outblated stendary perconcerning the relationship of nuwed forbers and their allegitances chaldren, and that existing administrative providuous.

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We hold that \$\$ 101 (b)(1)(D) and 101 (b)(2) of the Immigration and Nationality Act of 1052 are not unconstitutional by virtue of the exclusion of the relationship between an illegitimate child and his natural fielder from the preferences accorded by the Act to the "child" or "parent" of a United States citizen or fawful permanent resident.

Affirmed.

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which had been developed to deal with the problems of proving potenticy, indernate and legarination with respect to statistic recognized (potents) and "which and the problems of proof involves in determining the potential data and the problems of proof involves in determining the potential of independent could be written the couple note that the anguant should be addressed to the Congress rather than the couple, fadered in that regard it is worth noting that a fall introduced in the Query data (independent) of the couples, would have characted the coupled discinction - R. R. (1976). Such Congression (1975)

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7,8,9,12 footnotes remembered

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2nd PRAFT 4//3 SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al., Appellants, v. Griffan B. Bell, Individually and as Attorney General of the United States, et al.

On Appeal from the United States District Court for the Eastern District of New York.

[February ---, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case brings before os a constitutional challenge to \$\$101(b)(1)(D) and 101(b)(2) of the homigration and Nationality Act of 1952 (the Act), 8 U. S. C. \$\$1101(b)(1) (D) and 1101(b)(2).

I

The Act grants special preference immigration status to aliens who qualify as the "children" or "parents" of United States citizens or lawful perturbation residents. Under § 101 (b)(1), a "child" is defined as an unmurried person under 21 years of age who is a legitimate or legitimated child, a stepchild, an adopted child, or an illegitimate child seeking preference by virtue of his relationship with his natural mother.³

"(C) a third regitizented under the law of the chald's peridence of dominile, or under the faw of the father's peridence or dominate, whether

^{*} Section 101 (b) (1) provides:

[&]quot;(1) The term 'child means an unmarried person under twenty-one proces of age who is---

[&]quot;(A) a legitimate child; or

[&]quot;(B) a stepchild, whether or not bern out of wellock, provided the rhold had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurrence or

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The definition does not extern to an illegitimate child seeking preference by victur of his relationship with his natural father. Moreover, under \$ 101 (b)(2), \$ U, \$, C, \$ 1101 (b)(2), \$ u, \$, S, C, \$ 1101 (b)(2), \$ u, \$ 1000 (c)(2), \$ u, \$ u, \$ 1000 (c)(2), \$ u, \$ u, \$ 1000 (c)(2), \$ u, 1000 (c)(2), \$ u, 1000 (c)(2), \$ u, 1000 (c)(2), 1000 (c)(2)), 1000 (c)(2), 1000 (c)(2)), 1000 (c)(2))

The special preference immigration status provided for those who satisfy the statutory "parent-child" relationship depends on whether the immigrant's relative is a United States citizen or permagent resident alien. A United States citizen

in or accords the Group Stores, if such legitimation takes place before the child conclusively against eightness years and the child is in the legitimation of the legitimating properties particular the time of such legitimation.

(D) an ellegiturate child, by, through about, or an aclose behalf a status, gravilage, or hepefit is sought by write of the relationship of the child to its nature it mother;

(F) a child adopted while ender the accord fourtees years if the child has there free been in the logal custody of, and has respired with, the deping potent or parents for at least two years. *Proceeded*, That no notices) parent of any web adopted child shall thereafter, by virtue of such perentage, he accorded any right privilege, in static under the efspire.

 $\mathcal{O}(\mathbf{F})$ a which model the age of fourier at the time a petition is field at his behalf to be set a classification as an innucleur relative under vertice 11(1)(b) of this table, which an explain lestance of the delth or disappearzion of a bradeministic of description between of the delth or disappearzion of a bradeministic of description between of the delth or disappearzion of a bradeministic of description between the mapping of her black parents, or for whom the sole of surviving parent is mapping of her black parents, or for whom the sole of surviving parent is mapping of her black parents, or for whom the sole of surviving parent is mapping of her black of proper time which will be provided the child if which for emigration and adoption; which has been independ abread by a functed States entire in the space which per nonly sole and observed the child prior to an identify the adoption per reality sole and observed the third States entire adoption from a United state z dimension space who there compliant with the pre-doption requirements, if any, if the child proposed read-near *Provided*. This is a much prior adoption provided to the proposed read-near that the instant or much per nonly with the child proposed read-near *Provided*. This is a much per nonly of prior adoptive parent of any such which doll thermafter, is vertice of such parentage, be arounded any right, provideg, or stative under the simpler."

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is allowed the entry of his "parent" or "child" without regard to *either* on applicable numerical quota or the labor certification requirement. S U. S. C. §3 1151 (a), (b), 1182 (c) (14). On the other hand, a United States permonent resideet alien is allowed the entry of the "parent" or "chibil" subject to numerical limitations but without regard to the labor certification requirement. S U. S. C. § 1182 (a) (14); see I Gordon & Rosenfield, limitation Law and Procedure, at § 2.40 n. 18.7

Appellouts are three sets of anweil natural fathers and their (Regitimate offspring who sought, either as an alten father or an alten child, a special inturgration preference by virtue of a relationship to a citizen or resident alien child or parent. In each instance the applicant was informed that he was meligible for an inturgrant visa unless he qualified for admission under the general contential incitations and, in the case of the alien parents, received the requisite labor certification.⁴

Fold not oper to to offset the cutificment its immigrant states of the order of consideration for resume of an emoigrant visa of a picket splitled to a problem cutors cutoer section 203 (a) of the Immigration and Nation day. Act, as in effect on the day before the effective data of this Act, on the bran of a perturbation field with the Attorney General prior to the effective data." Interpreting and Nationality Act, Americanets of 1376, $\frac{1}{2}$ 9.

Aspellant Ruman Martin Fullo, a United States ration by highcorrectly which in the Dependent Republic with his outstall father appellant Ruman Full's Same is citized of their country. The father half ted providence to obtain an immediate discuss the sparset i of his ideptimate out but the United States Consult for the Dominicum Republic information appellant Fullo Same Cold his could not spatially for the preferanted states at order to "parents" unless he legitimeted Ramos Fullo.

Appellon: Choplus Warner, a campalized times. States entryed as the travel fitter of appellum Serge Warner, acto was been in 1971 in the French West Sades. In 1972 Choples W. rate percent data have sta-

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[•] Offective January 1, 1977. If a priorit child relationship as longer tragier, so excouption from the (duer confidential requirement). Integra (on and N consilier Act Anti-adments of 1976. Pub. 1, No. 91 571 § 5 50 stat. JSCA (Oct. 20, 1976). The 1976. Amendments matter a savings of the langevet, which counsels that the amendments.

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Appellants filed this action in July of 1974 in the United States District Court for the Eastern District of New York challenging the constitutionality of \$\$ 101 (b)(1) and 101 (b) (2) of the Act under the First, Fifth, and Ninth Amendments. Appellants alloged that the statutory provisions (i) denied them equal protection by discriminating against natural fathers and their illegitimate children "on the basis of the father's matital status, the illegitioney of the child and the sex of the parent without either compelling or rational justification"; (ii) depiced them due process of law to the extent that there was established "an unwarranted conclusive presumption of the absence of strong psychological and emotional ties between natural fathers and their children born out of wedlock and not legitimated"; and (iii) "seriously burdea[ed] and infringe [d] upon the rights of natural fathers and their children. born out of wedlock and not legitimated to metual association, to privacy, to establish a home, to raise natural children and to be raised by the natural father." Appellants sought to cujoin permanently inforcement of the challenged statutory provisions to the extent that the statute preclaied them from qualifying for the special preference accorded other "narenzs" ami "children."

A three-judge District Court was convened to consider the constitutional issues. After noting that Congress' power to foshion rules for the admission of aliens was "exceptionally

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tion and Naturebulerum Service reaches dy Serge as W rate's "whe'd" (are purposed of the many on immigrant was, but the petition was derived on the ground that there was no evidence that Serge was Warant's legitimate or legitimated off-pring

Appellative Turner Wilcon and Earl Wilcon, permanent method about the of gitmette challene of appellant Arphon Wilcon is entired of Josefield. Following the death of their mother in 1974. Theory and Earl swith to obtain an unnegred via for their ficher. We are interned by the Government that although the application has not yet been operfect, it must be better since the Indian are availant legitimate not legitimated softpung of Arthur Wilcon.

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"[But] the slate is not clean. As to the extent of the power of Congresunder review, there is not merely in page of history". For a whole volume. Polynes pertoining to the entry of these and their right to is angle here are powering concerned with the polynesh conduct of generalized in the the enforcement of these polynes, the Executive Branch of the G optimized must respect the procedural safeguents of due process, But that the formation of these polynes is estimated exclusively to Congress has been about as firmly embedded in the legislative and polynesh to your of part body polyne as any aspect of our government.

"We are not prepared to dream curselves wiser or more specifice to human rights than our preferences, especially those who have been toost zealings in protecting rivil (bherties under the Constitution, and coast (berefore under our constitutional system measure congressional power in dealing with shore " M_{\odot} of \$30-532.

We are no more inclined to reconsider this line of cases today than we write five years againstant we decoded Klewakiewst v. Mandel, 408 U S. 753, 767 (1972).

³ The Government argues that the challenged sections of the Act, embedging as they do "a substantive policy regulating the addression of allowinto the United States . . . [ate] not an appropriate subject for judical review." Brief, at 15-24. Our cases reflect acceptance of a funited judical responsibility under the Constitution even with respect to the powerfol Congress to regulate the adaption and explosion of allots, and there is no occuried to consider in this case whether there any locations of the Congress with respect to allow that are so essentially points i precharacter as to be regulated.

^{*} Writing for the Coart in Galzan v. Press, 347 U.S. 522 (1951). Mr. Justice Frankfurter actisf that "tratch coaffi he wild for the view" that due process plance some luminitions on congrustional power in the intelligibility area, "were we writing on a clean sizer."

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eral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amondment rights were abriged by the denial of Mandel's request for a visa. The Court held that "when the Executive exercises this [delegated] power negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amondment interests of those who seek personal communication with the applicant." 408 U.S. at 769-770.">

We conclude here with an owness of the Nation's score an powerto adopt or earbeld foregreers, a accordinate with performed particulations, interests. Although few if the constructions have been as processing the Princed States in extending the problem to mangride, or in providing substances in the quites of parts and closefultions as to which he againsted are traditional and measures reviewed of feedbal on in the area . It is true that the legislative listency of the provision at issued the switch's less that source-read concern was directed in the problem of keeping families of brated SUSS of sus and manigrarity unred," H. R. Rep. Nu. 1187. 8301 Cond. 1st Serv. 7 (1987) Secular H W Rep. No. 1965 824 Cond. 24 Sees. 20 (1952) (stard) incolements (the underlying monitous of varincongration laws regarding the preservation of the Londy and "). To interprotection first goal. Congress buy to conded a special operations status? the estimation of the subscription relation bigs, with entry as a reperior and revident mension. But there are well-warying relationships and degrees of Varsiap, and at is appropriate for Congress to zero for may only the nature (3) these objects is possible problems of identification, administration. and the presented for fracial in the meantable process of this obrawing? Congress Uni determined that certain dasses of also as any many insets than when show the by continuous objections without underse or strained of low granited preferenced status and y to that we have

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We can see no reason to review the broad rongressional policy choice at issue here under a more exacting statulard then was applied in *Klowdievet* v. Mondel, a First Amendment case, λ

Finally, appellants characterize our prior pumigration cases as involving foreign policy matters and congressional choices to exclude or expel groups of aliens that were "specifically and charly perceived to pose a grave threat to muticipal secucity," citing Haribiades v. Shaughnessy, 342–10, Sr 580 (1952) "or to the general welfare of the country." citing Boothlier v. Inonigration and Naturalization Service, 387 U: S. 118 (1967). We find no indication in our prior cases that the scope of judicial review is a function of the nattire of the policy choice at issue. To the contrary, "[s]ince decisions in these matters may implicate our relations with foreign powers and since a wide variety of classifications must be defined in light of changing political and economic circumstances, such decisions are frequently of a political character," and "[t]be reasons that preclaib judicial review of political questions also dictate a norrow standard of review of decisions made by Congress or the President in the area of immigration and (astandjusting)" Matthews v. Daiz, 426 U. S. 67 81-82 (1976), Sov Harbiades v. Shauqhurasy, 342 U. S. 580, 588-589 (1952). As Mr. Justice Frankfurter observed in his enncurrence in Harisiades v. Shaughnessy

"The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altograc, the basis for determining such classification, the right to terminate hospitality foward aliens, the grounds upon which such determination shall be based, have been rec-

policies pertaining in the entry of alters $\pi_{1,2}$, is intersted exclusively to Congress 1. Galaxies, Poiss 247, U.S. 50, 552. The reaction say, as we make clear or $\pi_{1,2}$ where the Gave magnetic protection this agrais inversibility to preliminate wave. But our cases do to be clear the two spectrates are the matrix state distribution with a matrix of the other alter dy without our forders, congressed determinations such as this one are subpart of the other congresses of determinations such as the other are subpart of the other congresses of determinations such as the other are subpart of the other and polarized determinations.

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agnized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control." Id_{co} at 506.

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As originally enacted in 1952, § 101 (b) (1) of the Act defined a "child" as an unmarried legitionate or legitimated child or stepcaild under 21 years of age. The Board of Immigration Appeals and the Attorney Cicceral subsequently concluded that the failure of this definition to refer to flegitimate children rendered ineligible for preferential computastatus both the illegitimate alon child of a citizen motion, Matter of A-, 5 1, & N. Dec. 272, 283-284 (A. G.) and the alien mother of a citizen born out of wedlock. Matter of F----, 7 1, & N. Dec. 448 (B. I. A.). The Attorney General recommended that the matter he brought to the attention of Congress, Matter of A---, 54, & N. Dec., at 284, and the Act was aniended in 1957 to include what is now 8 U.S. C. 8 101 (b) (1)(D). See n. 1. supra. Congress was specifically conceraed with the relationship between a child horn out of wedlock and his or her natural mother, and the legislative history of the 1957 amendment reflects an intrational choice not to provide preferential immigration status by virtue of the relationship between an illegitimate child and his or her natural father."

This distinction is just one of many drawn by Congress.

Sense Rep. No. (657, 85% Corg. 1) Sec. 4 (1957) (the coordinant was designed "to clarify the law so that the displatative shift would in relation to his mathemetry the same status under the uppergration laws as a togetimate child") (the amendment was designed "to allocate the bardship and provide a fair and humanitation adjudication of linearize the bardship and provide a fair and humanitation adjudication of linearize the cardship and provide a fair and humanitation adjudication of linearize the cardship and provide a fair and humanitation adjudication of linearize the cardship and provide a fair and humanitation adjudication of linearize the cardship and provide a fair and humanitation of the mathematication should be abled to be according to a line (4009) (1964) (provides of Sam Kennedy) (the amendation "would clarify the law so that an identificate shift would, to relative to his mathematication of some sister ander the immegration two as a legitimate child") (emphasis added):

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pursuant to its determination to provide some—but not all families with relief from various manigration restrictions that would otherwise binder reunification of the family in the country. In addition to the distinction at issue here, Congross has decided that children, whether legitimate or not. cannot qualify for preferential status if they are married or are over 21 years of age. S U S, C, \$1001(b)(1). Legitiingred diddress are ineligible for preferential status poless their legitimation occurred prior to their 18th birthday and at a time when they were in the legal custody of the legitimating parent or parents. S. U. S. C. §1101 (b)(1)(C). Adopted children are not entitled to prefree tial status tailess they were adopted before the age of 14 and have thereafter fived in the costody of their adapting or adopted parents for at least two years, S U, S. C. § 1101 (b)(1)(E). And stepchildren causor qualify unless they were under 18 at the time of the marriage creating the stepchild relationship. 8 U. S. C. § 1101 (5)(1)(B).

With respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions deny prefcreatial status to parents and children who share strong family ties. Cf. Matthews v. Diaz. 426 U. S. 67, S3 S4 (1976). But it is clear from our cases, see Part II supra, that these are policy questions entrusted exclusively to the political branches of our Government, and we have no indicial authority to substitute our political judgment for that of the Congress.

Appellants suggest that the distinction drawn in § 101 (b) (1) (D) is unconstitutional under any standard of review since it infringes upon the constitutional rights of citizens and legal permanent residents without furthering legitimate governmental interests. Appellants note in this regard that the statute makes it more deficult for illegitimate children and their natural fathers to be reunited in this country than for

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legitimate or legitimated children and their parents, or for illegitimate children and their natural mothers. And appellants also note that the statute fails to establish a procedure. under which illegitimate children and their instaral fathers could prove the existence and strength of their family relationship. Those are admittedly the consequences of the congressional devision not to neveral preferential status to this particular class of aliens, but the decision numetholess remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Horisudes v. Shaughnessy, 342 U. S. 580, 597 (1952) (Frankfarter, J., concurring). Congress obviously has determined that preferential status is not warranted for illegitimate children and their natural fathers, perhaps because of a perceived absence in most cases of close family tics as well as a concern with the serious problems of proof that usually luck in paternity determinations." See Trinuble v. Gordon, Slip op., at S 10. In any event, it is not the judicial role in cases of this sort to probe and test the justifications for the legislative decision." Kteindienst v. Mambel, 498 U. S. 753, 770 (1972).

[•] The advocant defined v of determining the potentials of an displanate child is compared of when it depends upon words that now have elemented as foreign countries many years earlier. Congress may well have given probates of project and the potential for fraction here challenged, to these probates of project and the potential for fractioner was applications that would have related from a more generous drawing of the line. Moreover, our cases clearly uniform that legislative distributions in the congrest method as more generous drawing of the line. Moreover, our cases clearly uniform that legislative distributions in the congrest on area need not be as "carefully unred to observe oreal equations," Travitie v. Garcian dip optical 10, as there in the demestic area.

² Appellants must that the state tory down top is lossed on an overhead and note ded strengtype concerning the relationship of towed fathers and their all gitmate reading and that existing administrative procedures which had been developed to doal with the problems of proving patientity, insternity, call legitmation with respect to stratisticly tempoized (precise) and "children," could easily bundle the problems of proof boolsed on the problems of proof boolsed on the problems of proof boolsed on

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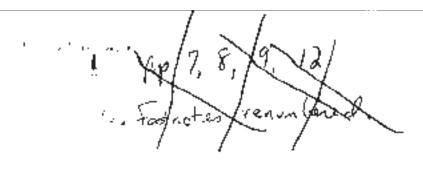
IV.

We hold that \$\$ 101(h)(1)(D) and 104(b)(2) of the Immigrative and Nationality Act of 1952 are not unconstitutional by virtue of the exclusion of the relationship between an illegitimate child and his natural father from the preferences are orded by the Act to the "child" or "primit" of a United States citizes or headal permanent resident.

Affirmed.

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this argument should be addressed to the Congress rother than the ownes. Andered, in that regard it is worth outing that a bill introduced at the 94th Congress would have eliminated the challenged distinction. II. II. 10993, (90); Cong., 1-(Sec., [1975]).



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35 DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al.,	
Appellants,	On Appeal from the United
્ર શ.	States District Court for
Griffin B. Bell, Individually and	
as Attorney General of the	New York
United States, et al.	
(February —, 1977)	

Mn. JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a constitutional challenge to $\$\$ 101 (b)(1)(\dot{D})$ and 101 (b)(2) of the immigration and Nationality Act of 1952 (the Act), S U. S. C. \$\$ 1101 (b)(1) (D) and 1101 (b)(2).

Ι

The Act grants special preference immigration status to aliens who qualify as the "children" or "parents" of United States citizens or lawful permanent residents. Under 101(b)(1), a "child" is defined as an unmarried person under 21 years of age who is a legitimate or legitimated child, a stepchild, an adopted child, or an illegitimate child seeking preference by virtue of his relationship with his natural mother.⁴

Section 101 (b) (1) provides;

"(4) The team which means an unmarried person under twenty-and years of one when s---

"1 V) a legitimate child. or

"(1b) a step-hald, whether or not born out of wedlack, provided the child had not peaked of the age of eighteen years at the time the matriage creating the states of step-hild as arrest; or

"(C) a clubb location and upplet the law of the clubb's residence or domaths, or upplet the law of the father's residence or domaide, whether

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The definition does and extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), S U, S C, § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Art solely on the basis of the person's relationship with a "child". As a result, the natural father of an illegiticate child who is easier a United States citizen or permanent resident alien is related to preferential treatment as a "parent."

The special preference immigration status provided for those who satisfy the statutory "parent-child" relationship depends on whether the intergrant's relative is a United States citizen or permanent resident alien. A United States citizen

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in or outside the United States, if each legenmature takes place before the stall reaches the arguest explanent verts and the sludd is in the legal custody of the legitimizing garrant or properts of the time of such legitimization.

¹⁽D) an elegatimate rhild, by, through when, or or whose beliefs a status, privilege, or benefit is sought by strute of the relationship of the state instance mathematical products.

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is allowed the entry of his "parent" or "child" without regard to r(b) r an applicable numerical quota or the labor certification requirement. (S. F. S. C. §§ 1151 (a), (b), 1182 (a)(14). On the other hand, a United States permanent resident allowis allowed the entry of the "parent" or "child" subject to numerical figurations but without regard to the labor certification requirement. (S. F. S. C. § 1182 (a)(14)) see 1 Gordon & Resenfield, Introduction Law and Procedure, at § 2.40 n. 18.5

Appellants are three sets of unwed natural fathers and their Begitimate offspring who sought, either as an alion father or an alion child, a special immigration preference by virtue of srelationship to a citizen or resident alion child or parent. In each instance the applicant was beformed that he was inclugible for an immegrant visa unless he qualified for admission under the general numerical limitations and, in the case of the aben parents, received the requisite labor certification."

The hast operate to affect the entitlement to nanoproximation the solution operate to affect the entitlement to nanoproximation of the solution of an intensign of view of an align entitled to a preference state and the restrict OG (a) of the Integration and N theory is not align the first on the book of a perturbation and with the Attention Control press to the first operation of the solution of the first operation of the Integration and the State of the State operation of the State operation of the Integration operation of the State operation of the Integration operation operation. Support operation operati

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⁴ File time diamase 1, 1977, the generatorlable set translap no longer trigging a sequence of an end of the labor solution requirement. Introduction of Nation law Act. Amendments of 1976, Publ. 1, No. 93, 571, § 5, 90, Stat. 2000, 1087, 20, 2076). The 1976 Amendments contain a saving scheme how one winds provides that the amendments.

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Appellants filed this action in July of 1974 in the United States District Court for the Eastern District of New York challenging the constitutionality of \$\$ 101 (b)(1) and 101 (b) (2) of the Act under the First, Fifth, and Nuclh Amendments. Apprilants alleged that the statutory provisions (i) denied them equal protection by discriminating against natural fathers and their illegitimate children "on the basis of the father's monthal status, the illigitimacy of the child and the sex of the parent without either compelling or rational justification"; (ii) desired then: due process of law to the extent that there was established "an unwarracted conclusive presumption of the absence of strong psychological and emotyped ties between natural fathers and their children burn out of wellbek and not legitimated"; and (iii) "seriously burder(ed) and infringe[d] upon the rights of natural fathers and their children. born out of wellock and not legitimated, to morizal association, to privacy, to establish a home, to raise natural children and to be tailed by the national father." Appellants single to enjoin permanently enforcement of the challenged statutory provisions to the extent that the statute procluded them from qualifying for the special preference accorded other "parents" and "childrer.,"

A three-judge District Court was convened to consider the constitutional issues. After noting that Congress' power to fashion rules for the admission of aliens was "exceptionally, S. CON DOM IC

tion and Naturalization Service to classify Berge as Warmer's which is particules of that during an integrate way, but the petition was denoted an the ground that there was no occulated that Serge was Warmer's legitimate or featurated off-pring.

Appellants Trever Wilson and Firl Wilson permanent resultant alians, are the direction to elikited of appellant. Afthur Wilson, a core is of function. Following the dath of their proflect in 1974. They are calculated by the Generation that although the lepton test for their factor. We are calculated by the Generation that although the application are not yet been related, don't be each an encoder the dathers are neglect legitimate and legitimated effecting of Arghur Wilson.

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broad." the District Court hold, with one judge dissenting, that the statutory provisions at issue were neither "wholly devoid of any concervable rational purpose" nor "fundamenbilly aloged at achieving goal, corelated to the regulation of immigration." Fields v. Levi, 406 F. Supp. 162, 165, 166 (1975). The court therefore granted judgment for the Govcrument and dismissed the action.

We noted probable jurisdiction, 426 U. S. 019 (1976), and for the reasons set forth below we affirm,

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At the outset it is important to underscore the limited scope of judacal inquiry into annigration legislation. This Court has repeatedly emphasized that "over no conceivable subject is the legislative power of Congress more complete than it is over "the admission of gliges." Oceanic Navigation Co. v. Stranddan, 214 U. S. 320, 339 (1969); accord, N¹/indienst v. Mundel, 408 U. S. 753, 705 (1972). Our cases thave long recognized the power to experior exclude aliens as a fundomental sovereign attribute exercised by the Government's political departments largely munuue from indical control." Shanqhuesay v. Mewl. 345 U. S. 206, 210 (1953); set. v. g. Harnondes A. Shruuhnessa, 342 U. S. 580 (1952); Lem Mone Sing N. United States 158 U. S. 538, 5457(1895); Fong Yue Ting v. United States, 149 U. S. 698 (1893); The Chinese Exclusion Case, 13047/8/581 (4889). Our record durisions have not departed from this long-established rule. Just last Term, for example, the Court had accusion to note that "the power over allow is of a pulitical character and therefore scheet to onlymarow judical review?" Humpton v. Mow Sur Word, 426 U. S. 88, 101 (c. 21) (1976) riting Fong Yue Trop v. United States 449 U.S., at 713; accord, Mathetes v. Diaz, 426 U.S. 67 [\$1,82] [1976]. And we observed recently that in the exercise of its broad power over junnigration and exturalization. "Congress regularly makes rules that would be unac-

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republe if applied to citizens." Matthews v. Diaz, 426 U. S., at 80."

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context." but instead suggest that "a unique coalescing of factors," makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial secutiny. Brief, at 52–55. Appellants first observe that since the starentory provisions were designed to remain families

*Writing for the Court in Golmon v. Press, 347–6, S. 522 (1951). Mr. Justice Frankforter neted that "much could be soal for the view" that fitte price-s places some limit atoes an empression 1 power at the introgration area, "were we writing on a clear slate."

"Harf the slare is not clean. As to the extent of the power of Coogress ander review, there is not merely is gape of history's ... but and devolume. Policies pertaining to the entry of alices and their right to transithere are predicate concerned with the political conduct of powermanic. The the enforcement of these policies, the Excensive Branch of the Genetianical anist respect the procedural safeguards of the process But that the formulation of these policies is estimated exclusionly to Coogress has become about as firmly enhedded in the legislative and policied "excert sol our body politie as any aspect of our government.

"We are not prepared to deem ourselves wave or more solution to human rights then our predecestors, especially these who have been most realized in protocoling civil likerities under the Constitution, and must therefore earlier our constitutional system recognize congressions, power in $\overline{controls}$ with size $\underline{\gamma}^{\alpha}$. Id. at 530-532.

We are no more inclined to reconsider this line of cases 30(a), that we were five years ago when we derided K-bundlenst V. Mondel, 405 U.S. 753, 767 (1972).

The Government argues that the challenged sectors of the Act, embodying as they do the substantive policy regulating the admission of almosinto the United States, "[are] not an appropriate subject for (referal review." Brief, at the States, "Curr eases reflect acceptions of a finited judical responsibility under the Constitution, even with respect to the power of Congress to regulate the admission and evolution of almos, and there is no occasion to consider in this case whether there way he action of the Congress with respect to align that are so recentially political of charveter as to be nonprotectable.

at 95, 19-19

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wherever possible, the purpose of the statute was to afferd rights not to aliens but to United States entitiens and legal permanent residents. Appellants then rely on our border search decisions in *Abueida Souchez* v. United States, 413– U. S. 266 (1973) and United States v. Brigoni-Power, 422– U. S. 873 (1975), for the proposition that the courts must scrutiaize congressional legislation in the immigration area to protect against violations of the rights of citizens. At issue in the border search cases, however, was the nature of the protections mandated by the Fourth Amendment with respect to government procedures designed to stem the illegal entry of affens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawiatly enter the country. See 413 U. S. at 272; 422 U. S. at 853-884.

Appellants suggest a second distinguishing factor. They argue that none of the prior immigration rases of this Court involved "double-barreled" discrimination based on sex and illegitimacy, infringed upon the due process rights of citizens and legal permanent residents, or implicated "the funda- [mental constitutional interests of United States citizens and permatient residents in a familial relationship," Brief, at 53-54; see id., at 16-18. But this Court has resolved similar challenges to immigration legislation based on other constitutional rights of citizens, and has rejected the suggestion that more searching indicial seruticy is required. In Klowdoorst v. Mandel, 408 U. S. 753 (1972). for example, United States 655. zens challenged the power of the Attorney General to deav a visa to an alion who, as a propound of "the economic, international, and governmental doctrines of world communism." was moligible to receive a visa under S V. S. C. § 1182 (a) (28). (D) absent a waiver by the Attorney General. The ritheory appelleys in that case controlled that Congress could probibit rutry of all alieus falling into the class defined by \$ U82 (a). (28) (D). They contended, however, that the Attorney Ges-

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eral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abright by the denial of Mandel's request for a visa. The Court held that "when the Exceptive exercises this [delegated] power negatively on the basis of a facially legitimate and hone fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant "- 408 1", S., at 765, 770."

The thangliful disserting optimum of our Brother Man-yau, would be per-massed has a care promise were accepted. The dissert is grounded in the asympton that the relevant performs of the Act grant a transmission under the American relations a right figure only to the set x of and not to the participation of Poste = 7/5, 10^{-1} . The asymptotic is foundly glave ble in the the formules of parative intengrants certainly have an information of the formules of parative intengrants certainly have an information of the formules of solution for the connection is reacted deeper in function read principles of solveregity.

We are dealing here with an exercise of the Nation's covereign power two-data or exclude to regners in a conducter work perceived autorial referconstructions of the provide provide the press of the press of the control of the States in estending the prior of the immegrate or in providing startbard to the opposed, carts and classifications is to who shall be admitted personal and more stary of futurity of feighteen of the starter. It is true Jon In 17 that the load days for the opportunity of the opportunity of the sole berr establishes that cougress and concern was directed at 1000 problem at 800 pag faterlass of Guiled Stress closus and configurate and of "TR. R. Rep. No. 1199 Side Cong., Int. Soc., 7 (1997) Sciences B. R. Hep. Nuc. B55 824 Cond. 23 Sec. 20 (2022) activity asperants Trive addriving intentions of our anners can issue operating the process take of the family point, build constrainships the goal of angless two constrained a special operation status? to contain the cash, there informations approximation performance of serie there. But there are **refer** saying relationships and degrees of Ritship, and it is appropriate are consider to ensure the order by the patter of these relationships from a supported with of administration administration. oil the converses for frackly include meyodole process of three drawing." Congress has determined the Correct relations of theme we show likely thus ethers to search material responsives without induscent, and this granted projectements of attack analysis with a second weak

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We can see no reason to review the broad congressional policy choice at issue here under a more exacting stationed that; was applied in *Kh*-indicast v. Mandel, a First Amendment rass

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Congress or the President in the area of immigration and pathralization.' Matthews v. Datz. 426 U. S. 67, 81-82 (1976); See Harisiades v. Shanghnessy, 342 U. S. 580–588-589 (1952). As Mr. Justice Frankfurter observed in his concurrence in Harisiades v. Shanghnessy.

"The conditions of entry for every alies, the particular classes of aliens that shall be denied entry altogether the basis for determining such classification, the right to terminate bosnitality toward aliens, the grounds which which such determination shall be based, have been rec-

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equized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to (-597. control." Id., at 596

III

As originally enacted in 1052, § 101 (b)(4) of the Act penced a "child" as an unnarried legitituate or legitimated child or stepchild under 21 years of age. The Board of Immigration Appeals and the Attorney General subsequently concluded that the failure of this definition to refer to illegitintate children rendered meligible for preferential nonquota status both the illegitimate alten whild of a citizen mother, Matter of A 1, 5 1 & N. Dec. 272, 283-284 (A. G.) and the align mother of a citizen burn out of wedlock, Matter of F---. 7 I. & N. Dec. 448 (B. I. A.) The Attorney General recommended that the matter be brought to the attention of Congeess, Matter of A+++, 54, & N. Dre., at 284, and the Act was arounded in 1957 to include what is now 8 U. S. C. § 101 (b) (1)(T) See a. I. supra. Congress was specifically concorned with the relationship between a child born out of weallock and his or her natural mother, and the legislative lustory of the 1957 amendment reflects an intentional choice pot to provide preferential immigration status by virtue of the relationship between an illegitimate child and has or her meteral fationé

This distinction is just one of many drawn by Congress

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i Senare Rep. No. 2657 8506 Cong. 18, Sees. 1 (1957) (the monodored was designed the charge the low so that the elegitation child would be trive to be matched in outputs added). K. N. Jiep. No. 1100, 8556 Cong. 185 Sees. 7 (1957) (the consideration of K. N. Jiep. No. 1100, 8556 Cong. 185 Sees. 7 (1957)) (the consideration of the signal of the added) in K. N. Jiep. No. 1100, 8556 Cong. 185 Sees. 7 (1957) (the consideration of the signal of the added) (the K. N. Jiep. No. 1100, 8556 Cong. 185 Sees. 7 (1957)) (the consideration of the signal of the added) (the signal of the signal of t

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pursuant to its determination to provide some- but not allfamilies with relief from various inmigration restrictions that would otherwise bioder requification of the family in this country. In addition to the distinction at issue here, Congress has decided that children, whether legitimate or justcannot qualify for preferential status if they are coarried or are over 21 years of age. [8 U. S. C. § 1101 (b)(1). Legitimated children are meligible for preferential status unless their legitimation occurred prior to their 18th birthday and at a time when they were in the legal custody of the legitimating parent or parents. 8 U.S. C. \$ 1101 (b)(4)(C), Adopted children are not ontitled to preferential status unless they were adopted before the age of 14 and have thereafter lived in the custody of their adopting or adopted parents for at least two years, 8 U. S. C. § 1101 (b)(1)(E) And stepchildren cannot qualify unless they were under 18 at the time of the marriage creating the stepchild relationship. 8/17/S. C. §1101 (b)(1)(B).

With respect to each of these legislative policy distinctions it could be argued that the line should have been drawe at a different point and that the statutury definitions dony prefcreatial status to parents and children who share strong family tire. Cf. Matthetes v. Diaz, 426 U, S. 67, 83-84 (1976). But it is clear from our cases, see Part II, superthat these are policy questions entrusted exclusively to the political branches of our Government, and we have no judicial authority to substitute our political judgment for that of the Congress.

Appellants suggest that the distinction drawn in 101 (b) (1)(D) is unconstitutional under any standard of review since it infringes upon the constitutional rights of citizens and legal permanent residents without furthering legalimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegalimate children and their natural fathers to be reunited in this country than for

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legitimate or legitimated children and their parents, or for illegitimate children and their natural mothers. And appellants also note that the statute fails to establish a procedure. under which illegitienate children and their astural fathers could prove the existence and strength of their family relationship. Those are admittedly the consequences of the congressional decision not to accord preferential status to this particular class of aliens, but the derivion non-theless remains our "solely for the responsibility of the Congress and wholly outside the power of this Court to control." Harbindes v. Shaughnessy, 342 U. S. 580, 597 (1952) (Frankfurter, J., concurring). Congress obviously has determined that preferencial status is not warranted for illegitimate chils drep and their natural fathers, perhaps because of a period ved absence in most cases of close family ties as well as a concernwith the serious problems of proof that usually lurk in paterinty determinations." See Trimble v. Gotdon, Slivery at \$10r. In any event, it is not the judicial role in ruses of this sort to probe and test the justifications for the legislative dorisant? Kb indicast v. Mandel, 408 U.S. 753, 770 (1972).

U.A

*The inferent difficulty of decirations the partition of an displace to the foreign contrains many years earlier. Congress that well have excerned in ferrigin contrains many years earlier. Congress that well have earlier earlier is congress that well have earlier problems of provinted the parential for franchient men appliest me that would have resulted from a more geptions drawing of the line. Moreover, our cases devely indicate that legislative definitions in the momentation of providents that legislative definitions in the momentation of the line. Moreover, our cases devely indicate that legislative definitions in the momentation of provide the structure is alternative resulted. Transfer that is alternative resulted from a more gravity definitions in the momentation of the line. Structure that legislative definitions in the momentation of the line of the line of the line of the line of the line. Transfer that the definition is alternative resulted for the line of the li

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We hold $0:at \le 101 (b)(1)(D)$ and 101 (b)(2) of the humigration and Nationality Act of 1952 are not unconstatational by virtue of the exclusion of the relationship between an illegitimate child and his natural father from the preferences accorded by the Act to the "child" or "parent" of a United States entitien or lawful permanent resident.

Affirmed.

tais argument should be addressed to the Congress rather than the routes, indeed, in that regard at is worth noting that a fail introduced in the 94th Congress would have elaborated the chattenged distinction. H. R. 10923, 2005 Cong., 150 Sec., (1975).