10-1976

Fiallo v. Bell

Lewis F. Powell Jr.

SG motion to affirm points out Congress' broad powers over immigration. Also, that Congress made a conscious decision to exclude these classes — as well as several other classes of "children" and "parents" as those terms are commonly used. Finally, SG claims there is a rational basis for the discrimination — avoidance of substantial administrative problems, and cutting down chances for fraud (less chance with mothers of illegitimates, because their names are on birth certificate).

Appellants have filed an opposition to the SG's motion, adding nothing new.

My thinking is no longer quite so strongly on appellants' side — perhaps Congress' power over immigration, plus need to avoid fraud, is enough to justify it. But I still believe it should be argued. Not to argue it wd. indicate that Congress has a carte blanche in immigration matters. Phil

CFR — Probably a Note

PRELIMINARY MEMO

May 20, 1976 Conference
List 2, Sheet 1

No. 75-6207

FIALLO, et al.

v.

LEVY, Att'y General, et al.

Appeal from ED NY (3-judge court; Moore, Bramwell; Weinstein dissenting)

Federal/civil

Timely

The Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq., exempts from immigration quotas the mothers of children who are permanent residents or citizens of the United States, even if the children are illegitimate; the Act likewise exempts from the quotas even the illegitimate children of mothers who are citizens or permanent residents. The Act, however, contains no similar exemption for the fathers of illegitimate children or their offspring. The three-judge court, with one judge dissenting, upheld the scheme against appellants' constitutional attack.

CFR, then note it. This is a totally arbitrary sex discrimination. Note that the equal protection analysis in this case will be the one that Stevens, based on New Sum wong, wd. eschew. Phil

1. FACTS: 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 Indies and also an appellant, officially declared his "child" under the Act so that the son could reside permanently in the U.S. with his father. Two appellants are permanent residents of the U.S. who sought to have their appellant father, a Jamaican who had not married 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 have been turned 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 immigration 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.

2. THREE-JUDGE COURT DECISION: 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, e.g., Loza-Bedoya v. INS, 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 Kleindienst v. Mandel, 408 U.S. 753 (1972).

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. A, 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 father.

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 joining one's closest family in the United States is a privilege granted by statute, not a right given by the Constitution." J.S., app. A, p. 10. As to the citizen or resident whose relative is excluded, "the burden 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 family 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 United States all of her illegitimate children, each of whom could bring over his or her biological father; each father could then bring over all of the children he has ever fathered, and thereafter each of those children could bring over his or her mother, who could then bring over all of her illegitimate children, etc., etc., etc." J.S., app. A at pp. iii-iv, n. 15.

This is a bunch of crap!

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 affected 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 impermissibly 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. Wiesenfeld, 420 U.S. 636 (1975); Frontiero v. Richardson, 411 U.S. 677 (1973) on gender.

Judge Weinstein found no evidence that the special rules for unwed fathers were enacted to prevent spurious claims, and in any event they 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 claiming 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 father 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 father-child 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 thought appellants could, that they really were a family unit that should be reunited.

3. CONTENTIONS: 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. DISCUSSION: The statute permits an 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. It 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.

Rossiter Ops in U.S.

5/10/76

DK

Conference 6-3-76

Court USDC, E.D. N.Y.

Argued ....., 19...

Submitted ....., 19...

Voted on ....., 19...

Assigned ....., 19...

Announced ....., 19.

No. 75-6297

RAMON MARTIN FIALLO, ETC., ET AL.

vs.

EDWARD H. LEVI, ET AL.

3/1/76 - Appeal

Noted

—

(Set for argument with Trimble v Gordon 75-5952 - although Gordon was noted

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT PJS	MERITS AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	MISC.
Stevens, J				Note: Hold for Trimble v Gordon								
Rehnquist, J							✓					
Powell, J							✓					
Blackmun, J							✓					
Marshall, J				✓								
White, J				✓								
Stewart, J							✓					
Brennan, J				✓								
Burger, Ch. J							✓					

lfp/ss 11/17/76

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.

Effect is to exclude unwed fathers and illegitimate children of unwed fathers

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." Kliendienst v. Mandel, 408 U.S. 753, 766. As stated in Mandel, 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

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. Cf. Faustino v. INS, supra. 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

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 paternity [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 SG'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.

L.F.P., Jr.

ss

12/6/76 ec//

TO: Mr. Justice Powell

FROM: Gene 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" claim in the immigration context is reviewable. The second question, assuming reviewability, is whether there is a rational basis to 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 admission of aliens. But this in itself does not mean that the exercise of that power is always unreviewable. Just last Term several decisions of this Court indicated that review in the immigration area is "narrow"; those decisions did not suggest that judicial review was nonexistent. "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 aliens is of a political character and 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." Matthews v. Diaz, 96 S.Ct., at 1891 (1976). But the judicial [redacted] branch is authorized to intervene where "the paramount law of the constitution" so requires. Fong Yue Ting v. United States, 149 U.S. 698, 713, cited in Hampton v. Mow Sun Wong, 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.

I think the answer is yes, and I rely on primarily on two factors. First, note that the nature of the immigration regulation in the instant case is not squarely within that "political character" of the immigration regulation. The instant rule does not involve exclusion of a class of people based on 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 on the fact that Congress has made access to this country dependent 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 families, and part of the congressional concern was focused on "citizens and permanent 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 distinctions that 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 substantive claim to reviewable, and I agree with them.

On the merits, 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 applied a standard of review which I think is perhaps appropriate, and which appears to require somewhat less justification than the regular rational basis

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 treatment rational. The SG 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 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 said with respect to illegitimacy in the context of domestic regulation. We have been moving to a position where legitimate and illegitimate familes are generally 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 when 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, especially when the child has been born, perhaps many years earlier, in a

foreign country. There is a legitimate governmental concern with the problem of fraud in the immigration area. Whatever may be the Court's willingness to accept administrative convenience as a basis for distinction in treatment for illegitimates in domestic regulation, that factor should be sufficient in the immigration context where our review of the decisions of the congress and the executive is narrow and limited.

It seems to me that you have the following options: I think review is appropriate

FIRST: you could conclude that there can be no judicial review of the equal protection claim. That position is not inconsistent with broad language in immigration cases, though I do not think it is the most appropriate way to resolve this case.

SECOND: you could conclude that there is very limited 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, I would avoid reliance on the degree of intimacy between fathers and their illegitimate children, and would rely exlcuively on the administrative convenience--opportunity for fraud basis.

Gone.

75-6297 FIALLO v. LEVI Argued 12/7/76

Appeal from N.Y. 3J/Ct that sustained the Immigration law attacked by appellants.

The Act (§ 1101) defines "parent" & "child". Effect of definitions is to exclude from certain preferential admissions (alone quotas):

(i) unwed fathers (aliens) of illegitimate children who are U.S. citizens or legally here

(ii) illegitimate children (aliens) of or of unwed fathers who are U.S. citizens or legally here.

X X X

Gov't argues that Court does not have to allow any aliens or any exceptions or preferences.

Scope of review of Congressional action as to Immigration is narrow & heavy burden is on one who attacks such legislation.

Gov't's interests are substantial: (i) in limiting preference admissions, (ii) in managing fraudulent admissions. (laws of other countries as to legitimacy vary; also difficulty of dependable proof)

Miss Calvo (Appellants)

Involves rights of citizens - not aliens. Discriminates vs. fundamental rights of citizens to live with their families.

Wages the statutory exclusion is over-broad. Should be individualized determination in each case.

Deputy A. G. Harold Tyler (for U.S.)

Illegitimacy alone does not exclude.

Congressional scheme is rational.

Preferences go only to mother & her illegitimate child.

No. 75-6297 Fiallo v. Levi Conf. 12/10/76

Affirm 9-0

The Chief Justice Affirm

Power of Congress w/respect to immigration is one of broadest of all powers.

Stevens, J.

Affirm

The statute is not entirely irrational. A different rule would invite fraudulent entry. Some hardship result

Brennan, J. Affirm

Power of Congress leave little latitude.

Stewart, J. Affirm

This case deals with action at the core of Congressional power over immigration. Congress' power, in this area, is virtually unlimited.

Even tho this statute would be irrational under E/P standards, Congress has exceptional authority

White, J.

Reversed

Marshall, J.

Affirm

Congress can exclude anyone it wishes.

Blackmun, J. Affirm

Powell, J. Affirm

Not like Waudell where there were substantive Constr. rights involved.

See my notes

Rehnquist, J. Affirm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 13, 1976

Dear Chief:

You have assigned me the opinion in No. 75-6293, Fiallo v. Levi. I am sorry but it will be impossible for me to take this one. You will remember my vote was that "the most I can do is join in the judgment." Obviously I 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,

T. M.

The Chief Justice

cc: The Conference

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 fraudulent visa applications and the problems of proof and perhaps increased immigration that likely would result many from a more generous drawing 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 ~~nonjusticiable~~ nonjusticiable.

lfp/as 2/12/77

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", 19 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 seems a bit discursive, and can be tightened up.

(3) The same should be attempted with respect to the discussion of Mandel (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.

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.

ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS 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,

P.S.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 22, 1977

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

Dear Lewis:

Please join me.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 22, 1977

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

Dear Lewis:

I shall try my hand at a dissent "with all deliberate speed."

Sincerely,

T.M.

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 24, 1977

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

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 7, 1977

Re: 75-6297 - Fiallo v. Bell

Dear Lewis:

Please join me.

Respectfully,

Mr. Justice Powell

Copies to the Conference

Page proof of syllabus as approved.

— Lineup included.

✓ Lineup still to be added. Please send lineup to Print Shop when available and a copy to me.

Another copy of page proof of syllabus as approved to show—

— Lineup which has now been added.

— Additional changes in syllabus.

Henry Putzel, Jr.
Reporter of Decisions

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

No. 75–6297. Argued December 7, 1976—Decided March —, 1977

Sections 101 (b)(1)(D) and 101 (b)(2) of the Immigration and Nationality Act of 1952, which have the effect of excluding the relationship between an illegitimate child and his natural father (as opposed to his natural mother) from the special preference immigration status accorded by the Act to the "child" or "parent" of a United States citizen or lawful permanent resident *held* not to be unconstitutional. Pp. 5–12

(a) The Court's cases have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from political control. *Shaughnessy* v. *Mezei*, 345 U. S. 206, 210; *see also Kleindienst* v. *Mandel*, 408 U. S. 753; *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589, and no factors exist in the instant case warranting a more searching judicial scrutiny than has generally been applied in immigration cases. Pp. 5–9

(b) In enacting the challenged statutory provisions Congress was specifically concerned with clarifying the process for so that the illegitimate child in relation to his mother would have the same status as a legitimate child and the legislative history of those provisions reflects an overall effort to provide preferential immigration status by virtue of the relationship between an illegitimate child and his natural father. The distinctions drawn by Congress (which are those based on age) drawn in Congress' pursuit of its determination to provide some—but not all—families with relief from certain immigration restrictions that would otherwise hinder reunification of the family in this country. The decision as to where to draw the line is a policy question within Congress' exclusive province. Pp. 9–10

(c) Whether Congress' determination that preferential status is not warranted for illegitimate children and their natural fathers results

Syllabus

from a perceived absence in most cases of close family ties or a concern with the serious problem of proof that usually lurks in paternity determinations. It is not for the courts to probe and test the justifications for the legislative decision. *Kleindienst* v. *Mandel*, supra, at 770. Pp. 10-11.

406 F. Supp. 162, affirmed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1977

Re: 75-6297 Fiallo v. Bell

Dear Lewis:

I join.

Regards,

Mr. Justice Powell

cc: The Conference

Dissent is based on theory that Act created a "fundamental right" in children who are citizens to bring in alien biological father - but not illegitimate only if legitimate; and a similar "right" in father who are citizens but only as to legitimate children.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: MAR 21 1977

Recirculated: _____

Arguer the "rights" are accorded American citizens; not the alien. - 7

1st DRAFT

Reversed

SUPREME COURT OF THE UNITED STATES

No. 75-6207

Ramon Martin Fiallo, etc., et al., Appellants, v. Griffin 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.

[April —, 1977]

This view misconceives the Immigration Laws. The "entitlement" - where it exists - is to enter the U.S. The citizen has the petition "in behalf of" the alien - See §1154(a)(1)(A)(i) The Immigration Laws create - certainly in this context - no "rights" enforceable by citizens except on behalf of aliens who usually are not in position to initiate action here.

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 comports with Fifth Amendment principles of due process and equal protection. Today, however, in upholding legislation that provides relief from the hardships of immigration requirements the Court appears to hold that such discrimination among citizens, however invidious and irrational, must be tolerated. Since I cannot agree that Congress has license to deny fundamental rights to citizens according to the most disfavored criteria simply because the Immigration and Nationality Act is involved, I dissent.

I

The Immigration and Nationality Act of 1952, 8 U. S. C. § 1101 *et seq.*, establishes the terms and conditions for entry into the United States. Among its various conditions, the Act requires that an alien seeking to enter the United States as a legal permanent resident must come within a restrictive numerical quota and must satisfy certain labor certification requirements. INA §§ 201, 202, 212 (a)(14), 8 U. S. C. §§ 1151, 1152, 1182 (a)(14) as amended by the Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571,

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 families: spouse, parents, children. INA §§ 201 (a) (b), 212 (a)(14), 8 U. S. C. §§ 1151 (a), (b), 1182 (a)(14).[1]

[1] Title 8 U. S. C. § 1151 (a) and (b) (1970) provide:

"§ 1151. Numerical limitations on total lawful admissions—Quarterly and yearly limitations

"(a) Exclusive of special immigrants defined in section 1101 (a) (27) of this title, and of the immediate relatives of United States citizens specified in subsection (b) of this section, the number of aliens who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 1153 (a)(7) of this title enter conditionally, (i) shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and (ii) shall not in any fiscal year exceed a total of 170,000.

"Immediate relatives defined

"(b) The 'immediate relatives' referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this chapter."

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

Title 8 U. S. C. § 1182 (a)(14) (1970) provides:

"§ 1182. Excludable aliens—General classes

"(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

. . . . . .

"(14) Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the

The privilege is accorded only to those parents and children who satisfy the statute's definitions. Under INA § 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 by whom or on whose behalf a privilege is sought by virtue of the relationship of the child to its biological mother. 8 U. S. C. § 1101 (b)(1)[*]. A "parent" is defined under INA § 101 (b)(2) solely

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alien is destined to perform such skilled or unskilled labor and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 101 (a) (27) (A) of this title *(other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence)*, to preference immigrant aliens described in section 1153 (a) (3) and 1153 (a) (6) of this title, and to nonpreference immigrant aliens described in section 1153 (a) (8) of this title (emphasis added).

For the significance of the 1976 Amendments on this section, see n. 5, *infra*.

[*] Title 8 U. S. C. § 1101 (b)(1) provides:

"The term 'child' means an unmarried person under twenty one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile or under the law of the father's residence or domicile whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

"(D) an illegitimate child, by, through whom or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has thereafter resided in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of

on the basis of the individual's relationship with a "child" as defined by § 101 (b)(1). 8 U. S. C. § 1101 (b)(2).[2] The definitions cover virtually all parent-child relationships except that of biological father-illegitimate child. Thus while all American citizens are entitled to bring in their alien children without regard to either the numerical 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 citizen is over 21, also without regard to the quota. Illegitimate children, however, are denied such preferences for their fathers.

The unfortunate consequences of these omissions are graphically illustrated by the case of appellant Cleophus Warner,[3]

such parentage, be accorded any right, privilege, or status under this chapter.

"(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 2151 (b) of this title, who is an orphan, because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter."

[2] The 8 U. S. C. § 1101 (b)(2) provides:

"The terms 'parent,' 'father,' or 'mother' mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection."

[3] Sustaining this suit with Warner were Ramon Fiallo and Trevor and Earl Wilson. Both Fiallo, a fully-assimilated American citizen, and the Wilsons, teen-aged permanent resident aliens, seek the waiver of the labor

Mr. Warner is a naturalized citizen of the United States who, pursuant to 8 U. S. C. § 1154,[1] 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 since 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 abandoned Serge to his father and has, by marrying another man, apparently rendered impossible, under French West Indies law, Mr. Warner's ever legitimating Serge. Mr. Warner is simply not Serge's "parent."

II

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

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certification requirements for their respective fathers. Although the 1976 Amendments removed the exemptions from the labor certification requirement for the parent-child relationship, nevertheless, such cases are not moot. There is a savings clause providing "The amendments made by this Act shall not operate to affect the entitlement to immigrant status of the alien spouse of any immigrant who was issued a visa or was lawfully admitted to the United States for permanent residence, or the alien child of such alien spouse if accompanying or following to join such spouse, prior to the effective date of this Act." Pub. L. 94-571, § 9, 90 Stat. 2703. Since these circumstances cannot occur, however, I will focus on Mr. Warner, whose plight, unfortunately, can be repeated.

[1] The citizen seeking "immediate relatives," visas for his or her spouse, parent, or child must file a so-called Form I-130 petition with the Attorney General. See text accompanying n. 7, infra, for a description of the procedure.

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 judicial concern." Appellees' brief, at 22.

The Court rightly 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. It points out, however, that the scrutiny is circumscribed. 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 I observed in *Kleindienst* v. *Mandel*, 408 U. S. 753, 781 (MARSHALL, 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 am pleased 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. *Gordon*, — U. S. —, — (1977). After observing the effects of the denial of preferential status to appellants, the majority concludes: "[B]ut the decision nonetheless remains one 'solely for the responsibility of the Congress and wholly outside the power of this Court to control.'" *Ante*, at 11. Such "review" reflects more than due deference; it is abdication.[*] Assuming, *arguendo*, that such deference might

[*] The majority does not even engage in the modest degree of scrutiny

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 come before the Court, directly involves the rights of citizens, not aliens. Congress extended to American citizens the right to choose to be reunited in the United States with their immediate families. The focus was on citizens and their need for relief from 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. § 1154.[7] If the citizen does not petition the Attorney General for the special "immediate relative" status for his parent or child, the alien, despite his relationship, can receive no preference. 8 U. S. C. § 1153 (d). It is irrelevant that aliens have no constitutional right to immigrate and that Americans have no constitutional right to compel the ad-

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mitted by *Kleindienst* v. *Mandel*, 408 U. S. 753 (1972). See discussion *infra*. That failure, I submit, is due to the fact that the statute could not even pass that standard of review. See Part III, *infra*.

[7] Under 8 U. S. C. § 1154 (a), "[a]ny citizen of the United States claiming that an alien is entitled to . . . an immediate relative status under section 1151 (b) of this title . . . may file a petition with the Attorney General for such classification." 8 U. S. C. § 1151 (b) prescribes the procedure after a petition is filed.

"Investigation; consultation; approval; authorization to grant preference status

"(b) After an investigation of the facts in each case and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 1154 (a) (3) or 1153 (a) (6) of this title, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 1151 (b) of this title or is eligible for a preference status under section 1153 (a) of this title, approve the petition, and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status."

Title 8 U. S. C. § 1155 (b) precludes a consular officer from granting preferential status as an "immediate relative" until he has been authorized to do so as provided by section 1154."

Right given only to citizens — not to aliens

} Why irrelevant?

The entitlement — i.e. the "right" is the alien's

alien's right

mission of their families. The essential fact here is that Congress did 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 invidious abridgement of citizens' fundamental interests.

The majority responds that in *Kleindienst* 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 scrutinizing usually required in First Amendment 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 statutory prohibition of visas to "aliens who advocate the economic, international, and governmental doctrines of world communism." 8 U. S. C. § 1182 (a)(28). The Attorney General denied the waiver and suit was brought by Mandel and several citizens who claimed their First Amendment right to hear Mandel in person was abridged by the denial. Rejecting the government's contention that it had "unfettered discretion, and any reason or no reason for [denying a waiver] may be 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 chose not to scrutinize more closely and accepted the reason without weighing against it the claimed First Amendment interest. It feared becoming embroiled in the "dangerous and undesirable" task of considering, every time an alien was denied a waiver, such factors as the projected number of people wishing to speak with the alien and the probity of his ideas. 408 U. S., at 753.

Whatever the merits of the Court's fears in *Mandel*, cf. 408 U. S., at 774 (MARSHALL, J., dissenting) the present case is clearly distinguishable in two essential respects. First, in *Mandel*, Congress had not focused on citizens and their need for relief. Rather the governmental action was concerned with keeping out "undesirables." The impact on the citizens' right to hear was an incidental and unavoidable consequence of that political judgment. This case presents a qualitatively different situation. Here, the purpose of the legislation is to accord rights, not to aliens, but to United States citizens. In so doing Congress deliberately chose, for reasons unrelated to foreign policy concerns or threats to national security, to deny those rights to a class of citizens traditionally subject to discrimination. Second, in *Mandel*, unlike the present case, appellees conceded 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 courts in second-guessing countless individual determinations by the Attorney General as to the merits of a particular alien's entrance.

III

A

Once it is established that this discrimination among citizens cannot escape traditional constitutional scrutiny simply because it is set in immigration legislation, the result is vir-

[*] The Court noted: "[Appellees] concede that Congress could enact a blanket prohibition against entry of all aliens falling into the class defined by §§ 212 (a) (28) (D) and (G) (v), and that First Amendment rights could not override that decision." 408 U. S., at 767. But see *id.*, at 779 n. 4 (MARSHALL, J., dissenting).

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

The class of citizens denied the special privilege of reunification in this county is defined on the basis of two traditionally disfavored classifications—gender and legitimacy. Fathers cannot obtain preferred status for their illegitimate children; mothers can. Conversely, every child except the illegitimate—legitimate, 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." *Califano* v. *Webster*, — U. S. — (1977); *Califano* v. *Goldfarb*, — U. S. —, — (1977); *Craig* v. *Boren*, — U. S. —, — (1976); see also *Weinberger* v. *Wiesenfeld*, 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. 677 (1973); *Reed* v. *Reed*, 404 U. S. 71 (1971). We are similarly hostile to legislation excluding illegitimates from governmental beneficence, finding it "illogical and unjust" to deprive a child "simply because its natural father has not married its mother." *Gomez* v. *Perez*, 409 U. S. 535, 538 (1973). *See also Trimble* v. *Gordon*, — U. S. — (1976); *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974); *Beaty* v. *Weinberger*, 478 F. 2d 309 (CA5 1973), aff'd, 418 U. S. 901 (1974); *New Jersey Welfare Rights Organization* v. *Cahill*, 411 U. S. 619 (1973); *Weber* v. *Aetna Casualty and Surety Co.*, 406 U. S. 164 (1972); *Davis* v. *Richardson*, 342 F. Supp. 588 (Conn. 1972) aff'd 409 U. S. 1069 (1972); *Griffin* v. *Richardson*, 346 F. Supp. 1126 (Md., 1972), aff'd, 409 U. S. 1069 (1972); *Glona* v. *American Guaranty and Liability Insurance Co.*, 391 U. S. 73 (1968); *Levy* v. *Louisiana*, 391 U. S. 68 (1968); cf. *Mathews* v. *Lucas*, 427 U. S. — (1976); *Labine* v. *Vincent*, 401 U. S. 532 (1971).

But it is not simply the invidious classifications that make

the statute so vulnerable to constitutional attack. In addition, the right infringed is the constitutionally protected "right to live together as a family," *Moore v. City of East Cleveland*, — U. S. —, — (1977) (POWELL, J., dissenting). The right belongs to both the father who seeks to bring his child in and the child who seeks the entrance of his or her father.

> "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. Illinois*, 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 "[t]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 citizens and immigrants united." H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7. It is also clear that when Congress extended the privilege to cover the illegitimate-mother relationship in 1957, it did so to alleviate hardships it found in several cases denying preferential status to illegitimate children and their mothers. *Id.*, at 7-8; S. Rep. No. 1057, 85th Cong., 1st Sess., 4.

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

and their fathers.[9] 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 parent-child relationships and mother-illegitimate child relationships that are not close and yet are accorded the preferential status. Indeed, the most dramatic illustration of the overinclusiveness 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 stepparent, entitled to obtain for Serge the preferential status that Mr. Warner cannot obtain. *Andrade* v. *Esperdy*, 270 F. Supp. 516 (SDNY 1967); *Nation* v. *Esperdy*, 239 F. Supp. 531 (SDNY 1965).[10] Similarly, a man who, in an adulterous affair, fathers a child outside his marriage cannot be the "parent" of that child, but his wife may petition as stepparent. *Matter of Stultz*, Interim Dec. 2401 (A. G. June 30, 1975).

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

[9] This decree should alert us to the danger, ever present in legislation denying rights along gender and legitimacy lines, that it was very likely [illegible] rather than analysis or actual reflection, *Califano* v. *Goldfarb*, — U. S. —, — (1977) (STEVENS, J., concurring), that led Congress to assume [illegible] to their illegitimate children.

[10] The INS seeks to add a gloss, in such cases, requiring, in addition to the marriage between the petitioner and the father of the illegitimate, some evidence of a close family unit." *Matter of Harris*, Interim Dec. No. 2046 (1970). The [illegible] has not been defined, but we know that it includes a situation where the father, stepmother, and child have lived together at some time, *Matter of The*, 11 I&N Dec. 449 (1965), and excludes the case where neither father nor stepmother ever lived with or cared for the child. *Matter of Harris*, *supra*; *Matter of Amado and Monteiro*, 13 I&N Dec. 179 (1969); *Matter of Soares*, 12 I&N Dec. 653 (1968); *Matter of Morris*, 11 I&N Dec. 537 (1966). The only court to review this interpretation has rejected it. *Andrade* v. *Esperdy*, 270 F. Supp. 516 (SDNY 1967).

not disputed in view of the close relationships exhibited in appellants' cases recognized in our previous cases, see, e. g., *Trimble v. Gordon*, — U. S. — (1977); *Weber v. Aetna Casualty and Surety Co.*, 406 U. S. 164, 169 (1972); *Stanley v. Illinois*, 405 U. S. 645 (1972), and established in numerous studies.[11]

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 paternity not worth the administrative costs. This attempted justification is plainly inadequate. In *Stanley v. Illinois*, *supra*, we expressed our low regard for the use of "administrative convenience" as the rationale for interfering with a father's right to care for his illegitimate child.

"Straw man"

We don't rely on adm. costs

> "Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand." 405 U. S., at 657.

See also *Grona v. American Guarantee and Liability Insurance Company*, 391 U. S. 73 (1968).

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

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11 Clothier, Changing Patterns of Services for Unmarried Parents, 49 Social Casework 3 (1968); Crockett, "Unmarried Mother—Is She Different?" 46 Child Welfare 68, 72 (1967); Herzog, Some Notes About Unmarried Fathers, 45 Child Welfare 194 (April 1966); Sauber, The Role of The Unmarried Father, 4 Welfare in Review 15, 16 (1966); Wessel, A Physician Looks at Services for Unmarried Parents, 49 Social Casework 12 (1958).

of paternity." *Trimble* v. *Gordon*, — U. S. —, — quoting *Gomez* v. *Perez*, 409 U. S. 535, 538 (1973), we are careful not to allow them to be "made into impenetrable barriers that work to shield otherwise invidious discrimination." *Id.*, at —. We require, at a minimum, that the "statute [be] carefully tuned to alternative considerations." *id.*, *quoting Mathews* v. *Lucas*, 427 U. S., at —, and not exclude all illegitimates simply because some situations involve difficulties of proof. *Ibid.*

Given such hostility to the administrative convenience argument 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 considerably by the comprehensive and elaborate administrative procedures already established and employed by the Immigration and Naturalization Service (INS) in passing on claims 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. Moreover, 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.[7] Indeed, it is ironic that if Mr. Warner

[7] The usual proof is a birth certificate that names the father. Review of Immigration Problems: Hearings on H. R. 10982 before the Subcomm. on Immigration, Citizenship, and International Law of the House Comm. on the Judiciary, 91 Cong., 1st and 2d Sess., 150–152, 254 (1975–1976). Alternatively, the INS obtains affidavits from the natural mother or other people familiar with the relationship, looks at school documents which name the father, and considers facts of custody or support. *Ibid.* The Service also is to look for local judicial determinations if they exist, but it does not require them because "alternative administrative recognition procedures . . . normally available to the natural father . . . are less

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 entitled to an opportunity to prove those facts; he is not.

Nor is a fear of involvement 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 render the child legitimate and the Service has become expert in such matters.[18] I note, in this connection, that where a child was born in a country in which all children are legitimate,[19] proof of paternity is the critical issue and the proof problems are identical to those involved with an illegitimate child.

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cumbersome and time-consuming and are regarded by consular officers as equally reliable with court determinations in eliminating fraudulent claims to the parental relationship." *Id.*, at 151.

[18] "The variations are many. In some countries legitimation may be accomplished only by marriage of the natural parents, *Matter of Hernandez*, 14 I&N Dec. 427 (1973) (Philippines); *Matter of P.*, 7 I&N Dec. 448 (1957) (Portugal); *Matter of W.*, 9 I&N Dec. 223 (1961) (Surinam); *Matter of J.*, 9 I&N Dec. 240 (1961) (British Guiana); *Matter of C.*, 9 I&N Dec. 597 (1962) (Spain); by court decree, *Matter of J and Y.*, 3 I&N Dec. 857 (1949) *Matter of Donegan*, 15 I&N Dec. — (I. D. 2373, 1975) (Liberia); or by formal recognition, *Matter of K.*, 8 I&N Dec. 73 (1958) (Poland); *Matter of Isaacs*, 11 I&N Dec. 365 (1966) (Yugoslavia); *Matter of G.*, 9 I&N Dec. 518 (1961) (Hungary); *Matter of Peters*, 11 I&N Dec. 691 (1966) (Virgin Islands); *Matter of Sinclair*, 13 I&N Dec. 613 (1970) (Panama); *Matter of Kubicka*, 14 I&N Dec. 303 (I. D. 2180, 1972) (Poland); *Matter of Coker*, 14 I&N 521 (1974) (Nigeria); *Matter of Kim*, 14 I&N 561 (1974) (Korea). In some countries a child born out of wedlock is deemed the legitimate child of both parents. *Matter of G.*, 9 I&N 518 (1961) (Hungary); cf. *Matter of Lo*, 14 I&N Dec. 379 (1973) (People's Republic of China).

[19] See, e. g., *Matter of G.*, 9 I&N Dec. 518 (1961) (Hungary); *Matter of Lo*, 14 I&N Dec. 379 (1973) (People's Republic of China).

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 concerns 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 has "failed to consider the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, — U. S., at —. Mr. Warner is a classic example of someone 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 peradventure that Congress has failed to "carefully tune [the statute] to alternative considerations." *Id.*, at 10, quoting *Mathews* v. *Lucas*, 427 U. S., at —. That failure is fatal to the statute.[1] *Trimble*, — U. S., at —.

IV

When Congress grants a fundamental right to all but an invidiously selected class of citizens, and it is abundantly clear that such discrimination would be intolerable 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.

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[1] Since no-fault claims are not to be arbitrarily denied privileges on the basis of gender and legitimacy, *Hampton* v. *Mow Sun Wong*, — U. S. — (1976); *Sugarman* v. *Dougall*, 413 U. S. 634 (1973); *Graham* v. *Richardson*, 403 U. S. 365 (1971), it is clear that appellants Fiallo and Oscar Wilson, if they meet the terms of the savings clause of the 1976 Amendments, should also be entitled to relief. See n. 3, *supra*.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 5, 1977

Re: No. 75-6297 -- Ramon Martin Fiallo, et al.
v. Griffin B. Bell

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,

Mr. Justice Marshall

Copies to the Conference

ec/// 4/9/77

To: Justice Powell

From: Gene Comey

Re: Fiallo v. Bell

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 [illegible] "child" or "parent" (as defined) of a United States citizen or lawful permanent resident alien. No right is conferred upon the citizen or resident alien. . . . Congress intended to create a preference status for certain nonresident aliens, not to create enforceable rights for American citizens. (Emphasis in your draft).

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, I 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 the definition to include natural 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 allowing entrance by the child of the mother it knew this to be a fact whereas [illegible] — whereas the presumption that a child born during marriage accompanies [illegible] — is one of the most difficult of all "facts" to prove or verify.

lfp/ss 4/9/77 Possible footnote in Fiallo

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. Post, 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 right 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 replete 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

lfp/ss 4/9/77 Possible footnote in Fiallo

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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 citizens a right of constitutional dimensions. The right ~~asserted~~ advanced 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 references to "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 immigration fraud. We cannot say that the classifications in this case, made solely to determine immigration status, are wholly irrational.

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 Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 14, 1977

RE: No. 75-6297 Fiallo v. Bell

Dear Thurgood:

Please join me.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

lfp/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 rather sharp distinctions based solely on legitimacy.~~

For reasons stated in an opinion ~~filed today with~~ the Clerk, 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 aliens - is a fundamental attribute of sovereignty, subject only to the most limited judicial review. ~~In short,~~ quite different standards are applicable ~~as~~ to the classification at issue. In this case/from those appropriate when reviewing ~~a state classification as~~ statute in Trimble v. Gordon.

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 has filed a dissenting statement.

Court. Although we recognize the relevance of Labine, we think its rationale has been substantially undercut by more recent cases.

The Chief Justice and Justices Stewart, Blackmun and Rehnquist have filed dissenting statements. MR Justice Rehnquist filed a dissenting opinion.

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join TM 4/14/77

join L+P 2/18/77

dissents for the reasons of TM 4/15/77

will dissent 2/17/77

1st draft 3/31/77 2nd draft 4/15/77

join L+P 2/22/77

1st draft 2/11/77

2nd draft ~~OT~~ 4/13/77

join L+P 2/24/77

join L+P 3/7/77

Bill

75-6297 Fiallo v. ~~Levi~~

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SUPREME COURT OF THE UNITED STATES

No. 75–6297

Ramon Martin Faillo, etc., et al., Appellants, v. Griffin 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.

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), 8 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.

I

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

[1] The 8 U. S. C. § 1182 (a)(14); see 2 Gordon and Rosenfield, Immigration Law and Procedure, § 2.40, at 2-195. Effective January 1, 1977, the parent-child relationship no longer triggers an exemption from the labor certification requirement. Immigration and Nationality Act Amendments of

space

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.[2] The definition does

1976 Pub. L. No. 94-571, § 5, 90 Stat. 2706 (Oct. 29, 1976). The 1976 Amendments contain a savings clause, however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status under section 203 (a) (1) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 9.

[2] Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child has not passed the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

"(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter by virtue of such parentage be accorded any right, privilege or status under this Act; or

"(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United

not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1201 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 States citizen or permanent resident alien is not entitled 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 immigrant's relative is a United States citizen 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. 8 U. S. C. §§ 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. 8 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 immigration 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 ineligible for an immigrant visa unless he qualified for admission

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States and who has in writing irrevocably released the child for emigration and adoption, who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings, or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the pre-adoption requirements of any of the child's proposed residence: *Provided*, That the natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under the chapter."

under the general numerical limitations and, in the case of the alien parents, received the requisite labor certification.[2] But see n. 1, *supra*.

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 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 "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 burden[ed] and in-

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[2] Appellant Romeo Martin Fiallo, a United States citizen by birth, currently resides in the Dominican Republic with his natural father, appellee Romeo Fiallo-Soto, a citizen of that country. The father initiated procedures to obtain an immigrant visa as the "parent" of his illegitimate son but the United States Consul for the Dominican Republic informed appellee Fiallo-Soto that he could not qualify for the preferential status accorded to "parents" unless he legitimated Romeo Fiallo.

Appellant Cleophus Warner, a naturalized United States citizen is the natural father of appellant Serge Warner, who was born in 1971 in the French West Indies. In 1972, appellant Cleophus Warner petitioned the Immigration and Naturalization Service to classify Serge as Warner's "child" for purposes of obtaining an immigrant visa for the petition was denied on the ground that there was no evidence that Serge was Warner's legitimate or legitimated offspring.

Appellants Trevor Wilson and Earl Wilson, permanent resident aliens, are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1974, Trevor and Earl sought to obtain an immigrant visa for their father. We are informed by the Government that although the application has not yet been rejected, denial is certain since the children are neither legitimate nor legitimated offspring of Arthur Wilson.

fringe[d] upon the rights of natural fathers and their children, born out of wedlock 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 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 broad," the District Court held, with one judge dissenting, that the statutory provisions at issue were neither "wholly devoid of [all] conceivable rational purpose" nor "fundamentally aimed at achieving goals unrelated to the regulation of immigration." *Fiallo* v. *Levi*, 406 F. Supp. 162, 165, 166 (1975). The court therefore granted judgment for the Government and dismissed the action.

We noted probable jurisdiction, 420 U. S. 919 (1976), and for the reasons set forth below we affirm.

II

At the outset, it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens. *Oceanic Navigation Co.* v. *Stranahan*, 214 U. S. 320, 339 (1909); see, e. g., *Kleindienst* v. *Mandel*, 408 U. S. 753, 765 (1972). Our cases "have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control," *Shaughnessy* v. *Mezei*, 345 U. S. 206, 210 (1953); see, e. g., *Harisiades* v. *Shaughnessy*, 342 U. S. 580 (1952); *Lem Moon Sing* v. *United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting* v. *United States*, 149 U. S. 698 (1893); *The Chinese Ex-*

clusion Case, 130 U. S. 581 (1889). Our recent adjudications 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 judicial review." *Hampton* v. *Mow Sun Wong*, 96 S. Ct. 1895, 1904–1905, n. 21, citing *Fong Yue Ting* v. *United States*, 149 U. S., at 713; see *Mathews* v. *Diaz*, 96 S. Ct. 1883, 1892 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews* v. *Diaz*, 96 S. Ct., at 1891.[5]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[6] but instead suggest that "a unique con-

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[5] Mr. Justice Frankfurter noted that although "much could be said for the view" that due process places some limitations on congressional power in the immigration area "were we writing on a clean slate," *Galvan* v. *Press*, 347 U. S. 522, 530 (1954), — but (?)

"the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 531-532.

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 767 (1972).

[6] The Government argues that the challenged sections of the Act, embodying as they do "a substantive policy regulating the admission of aliens

lescing of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 52-55. Appellants first observe that since the statutory provisions were designed to reunite families wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border search decisions in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973) and *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 government procedures designed to stem the illegal entry of aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. See 413 U. S., at 272; 422 U. S., at 883-884.

The second distinguishing factor highlighted by appellants is that none of our prior immigration cases involved "double-barreled" discrimination based on sex and illegitimacy, infringed upon the due process rights of citizens and legal permanent residents, or implicated "the fundamental constitutional interests of United States citizens and permanent residents in a familial relationship." Brief, at 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 search-

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into the United States . . . [is] not an appropriate subject for judicial review." Brief, at 15-24. Our cases reflect acceptance of a limited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there may be actions of the Congress with respect to aliens that are so essentially political in character as to be nonjusticiable.

ing judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a)(28)(D) absent a waiver by the Attorney General. The citizen-appellees in that case conceded Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a)(28)(D), but contended that the Attorney General's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abridged 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 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 issue here under a more exacting standard than was applied to the First Amendment challenge of the Attorney General's decision in *Kleindienst* v. *Mandel*.

Finally, appellants characterize our prior immigration 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. *Shaughnessy*, 342 U. S. 580 (1952), "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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

light of changing political and economic circumstances, such decisions are frequently of a political character" and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Matthews* v. *Lucas*, 96 S. Ct. 1883, 1892; see *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952). As Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*:

> "The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality toward aliens, the grounds upon which such determinations 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 596.

III

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential nonquota status both the illegitimate alien child of a citizen mother, Matter of A—, 5 I. & N. Dec. 272, 283–284 (A. G.) and the alien mother of a citizen born out of wedlock, Matter of P—, 7 I. & N. Dec. 448 (B. I. A.). The Attorney General recommended that the matter be brought to the attention of Congress, Matter of A—, 5 I. & N. Dec. at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 101 (b)(1)(D). See n. 3, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[9]

This distinction is just one of many drawn by Congress pursuant to its determination to provide some—but not all—families with relief from various immigration 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 married or are over 21 years of age. 8 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 legal custody of the legitimating 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 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 U. 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 drawn at a different point and that the statutory definitions deny pref-

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[9] See S. Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957) (One purpose was designed "to clarify the law so that the illegitimate child would in relation to his mother enjoy the same status under the immigration laws as a legitimate child . . ." (emphasis added). H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to eliminate the hardship and provide a fair and humanitarian adjudication of immigration cases involving children born out of wedlock and *the mothers of such children*." (emphasis added); 103 Cong. Rec. 13650 (1957) (remarks of S. Kennedy) (the amendment "would clarify the law so that an illegitimate child would, in relation to *his mother*, enjoy the same status under the immigration laws as a legitimate child." (emphasis added)

erential status to parents and children who share strong family ties. Cf. *Matthews* v. *Diaz*, 96 S. Ct. 1883, 1893 (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 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 legitimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their natural fathers to be reunited 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 family relationship. Those 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." *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, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations.[4] In any event, it is not the judicial

[4] The inherent difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that may have occurred in foreign countries many years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to these

role in cases of this sort to probe and test the justifications for the legislative decision." *Kleindienst* 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 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 citizen or lawful permanent resident.

Affirmed.

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problems of proof and the potential for fraudulent visa applications that would have resulted from a more generous drawing of the line.

Appellants insist that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children and that existing administrative procedures, which had been developed to deal with the problems of proving paternity, maternity, and legitimation with respect to statutorily recognized "parents" and "children," could easily handle the problems of proof involved in determining the paternity of an illegitimate child. We simply note that this argument should be addressed to the Congress rather than the courts. Indeed, in this regard it is worth noting that a bill introduced in the 94th Congress would have eliminated the challenged distinction. H. R. 10993, 94th Cong., —— Sess. (1975).

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CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6207

Tr. Ramon Martin Fiallo, (etc.) et al., Appellants, v. Griffin 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 us a constitutional challenge to

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), 8 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.

(It's not just due process - see p. 4)

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

covered in 2nd ¶ below

move to p. 3

[illegible] Effective January 1, 1977, the parent-child relationship no longer triggers an exception from the labor certification requirement. Immigration and Nationality Act Amendments of

deferred 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.[2] The definition does

1976, Pub. L. No. 94-571, § 5, 90 Stat. 2703 (Oct. 20, 1976). The 1976 Amendments contain a savings clause however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status or the order of consideration for a visa of an immigrant visa of an alien entitled to a preference status under section 203 (a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 9.

[2] Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether on or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation; or

"(D) an illegitimate child by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother; or

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under the Act; or

"(F) a child, under the age of fourteen at the time a petition is filed in its behalf to accord a classification as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole surviving parent is incapable of providing the proper care which will be provided the child if adopted in the United

not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 States citizen or permanent resident alien is not entitled 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 immigrant's relative is a United States citizen 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. 8 U. S. C. §§ 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. 8 U. S. C. § 1182 (a)(14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40[c], p. 18.

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 immigration 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 ineligible for an immigrant visa unless he qualified for admission

States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall, thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter."

under the general numerical limitations and in the case of the alien parents, received the requisite labor certification.[3]

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 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 "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 burden[ed] and in-

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[3] Appellant Reason Martin Fiallo, a United States citizen by birth, currently resides in the Dominican Republic with his natural father appellant Ramon Fiallo-Sosa, a citizen of that country. The father took the proceedings necessary to obtain an immigrant visa as the "parent" of his illegitimate son, but the United States Consul in the Dominican Republic informed appellant Fiallo-Sosa that he could not qualify for the preferential status accorded to "parents" unless he legitimated Reason Fiallo.

Appellant Cleophis Warner, a naturalized United States citizen, is the natural father of appellant Serge Warner, who was born in 1971 in the French West Indies. In 1972 [appellant] Cleophis Warner petitioned the Immigration and Naturalization Service to classify Serge as Warner's "child" for purposes of obtaining an immigrant visa, but the petition was denied on the ground that there was no evidence that Serge was Warner's legitimate or legitimated offspring.

Appellants Trevor Wilson and Earl Wilson, permanent resident aliens, are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1974, Trevor and Earl sought to obtain an immigrant visa for their father. We are informed by the Government that although the application has not yet been rejected, denial is certain since the children are neither legitimate nor legitimated offspring of Arthur Wilson.

fringe[d] upon the rights of natural fathers and their children, born out of wedlock and not legitimated, to marital association, to privacy, to establish a home, to raise natural children and to be raised by the natural father." Appellants sought to obtain 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 broad," the District Court held, with one judge dissenting, that the statutory provisions at issue were neither "wholly devoid of any conceivable rational purpose" nor "fundamentally aimed at achieving goals unrelated to the regulation of immigration." *Fiallo v. Levi*, 406 F. Supp. 102, 105–106 (1975). The court therefore granted judgment for the Government and dismissed the action.

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

At the outset it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U. S. 320, 339 (1909); see, *e. g.*, *Kleindienst v. Mandel*, 408 U. S. 753, 765 (1972). Our cases "have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy v. United States ex rel. Mezei*, 345 U. S. 206, 210 (1953); see, *e. g.*, *Harisiades v. Shaughnessy*, 342 U. S. 580, 588–589 (1952); *Lem Moon Sing v. United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting v. United States*, 149 U. S. 698, 711 (1893); *The Chinese Ex-*

clusion Case, 130 U. S. 581 (1889). Our recent ~~adjudications~~ decisions 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 judicial review." *Hampton* v. *Mow Sun Wong*, 96 S. Ct. 1895, 1904–1905, n. 21, citing *Fong Yue Ting* v. *United States*, 149 U. S., at 713; see *Mathews* v. *Diaz*, 96 S. Ct. 1883, 1892 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews* v. *Diaz*, 96 S. Ct., at 1891.[4]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[5] but instead suggest that "a unique coas-

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[4] Mr. Justice Frankfurter noted that "[much] much could be said for the view" that due process places some limitations on congressional power in the immigration area, "were we writing on a clean slate." *Galvan* v. *Press*, 347 U. S. 522, 530 (1954).

[But] "The slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history,' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 531–532. 530/

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 767 (1972).

[5] The Government argues that the challenged sections of the Act embodying as they do "a substantive policy regulating the admission of aliens

Writing for the Court [Concurring?] in Galvan v. Press, 347 U.S. 522 (1954),

lessing of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 52-55. Appellants first observe that since the statutory provisions were designed to reunite families wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border search decisions in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973) and *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 government procedures designed to stem the illegal entry of aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. See 413 U. S., at 272; 422 U. S., at 883-884.

The second distinguishing factor highlighted by appellants is that none of our prior immigration cases involved "double-barreled" discrimination based on sex and illegitimacy, infringed upon the due process rights of citizens and legal permanent residents, or implicated "the fundamental constitutional interests of United States citizens and permanent residents in a familial relationship." Brief, at 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 search-

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into the United States . . . [are] not an emergent subject for judicial review." Brief at 15-25. Our cases reflect acceptance of a limited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there may be actions of the Congress with respect to aliens that are so essentially political in character as to be nonjusticiable.

ing judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a)(28)(D) absent a waiver by the Attorney General. The citizen-appellees in that case conceded Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a)(28)(D), but contended that the Attorney General's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abridged 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 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 issue here under a more exacting standard than was applied ~~to the First Amendment challenge of the Attorney General's decision~~ in *Kleindienst* v. *Mandel*.

Finally, appellants characterize our prior immigration 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. *Shaughnessy*, 342 U. S. 580 (1952), "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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 framed as

light of changing political and economic circumstances, such decisions are frequently of a political character," and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Matthews* v. *Lucas*, 96 S. Ct. 1884, 1892; see *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952). As Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*:

> "The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, 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 596.

II

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential nonquota status both the illegitimate alien child of a citizen mother, Matter of A—, 5 I. & N. Dec. 272, 283–284 (A. G.), and the alien mother of a citizen born 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 Congress, Matter of A—, 5 I. & N. Dec. at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 101 (b)(1)(D). See n. 8, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[3]

This distinction is just one of many drawn by Congress pursuant to its determination to provide some—but not all—families with relief from various immigration restrictions 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 married or are over 21 years of age. 8 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 were in the legal custody of the legitimating 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 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 U. 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 drawn at a different point and that the statutory definitions deny pref-

do these really reflect the intentional choices Congress made in terms of descriptive Sen. or Senator

[3] Senate Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957) (the amendment was designed "to clarify the law so that the illegitimate child would, in relation to *his mother* enjoy the same status under the immigration laws as a legitimate child") (emphasis added); H. R. Rep. No. 2199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to alleviate the hardship and provide a fair and humanitarian adjudication of immigration cases involving children born out of wedlock and *the mothers of such children*") (emphasis added); 103 Cong. Rec. 14459 (1957) (remarks of Sen. Kennedy) ("the amendment would clarify the law so that an illegitimate child would, in relation to *his mother* enjoy the same status under the immigration laws as a legitimate child") (emphasis added)

cential status to parents and children who share strong family ties. Cf. *Matthews* v. *Diaz*, 96 S. Ct. 1883, 1893 (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 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 nonconstitutional 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 children and their natural fathers to be reunited 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 family relationship. Those are admittedly the consequences of the congressional decision not to accord preferential status to this 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." *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, perhaps because often perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations.[1] In any event, it is not the judicial

[1] The inherent difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that may have occurred in foreign countries many years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to these

rule in cases of this sort to probe and test the justifications for the legislative decision." *Kleindienst 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 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 citizen or lawful permanent resident.

Affirmed.

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problems of proof and the potential for fraud that this application that would have resulted from a more generous drawing of the line.

* Appellees apply that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children, and that existing administrative procedures, which had been developed to deal with the problems of proving paternity, maternity, and legitimation with respect to customarily recognized "parents" and "children," could easily handle the problems of proof involved in determining the paternity of an illegitimate child. We simply note that this argument should be addressed to the Congress rather than to the courts. Indeed, in that regard it is worth noting that a bill introduced in the 94th Congress would have eliminated the challenged distinction. H. R. 10995, 94th Cong., 2d Sess. (1976).

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~~CHAMBERS~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al., Appellants, v. Griffin 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.

1st / 2X

[February —, 1977]

Mr. Justice Powell delivered the opinion of the Court.

This case brings before us a constitutional challenge to ~~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), 8 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.~~

I

The Act grants special preference immigration status to aliens who qualify as the "children" or "parents" of United States citizens ~~and~~ or lawful permanent residents. ~~Aliens who qualify under the statutory definition of "child" or "parent" may be exempt from any applicable immigration quota or numerical limitation, and may secure an immigrant visa without obtaining a labor certification.[1]~~ Under § 101 (b)(1), a "child" is

~~[1] See 8 U. S. C. § 1182 (a)(14) and Gordon and Rosenfield, Immigration Law and Procedure, [illegible]~~ Effective January 1, 1977, the parent-child relationship no longer triggers an exemption from the labor certification requirement. Immigration and Nationality Act Amendments of

move to page 3 as footnote 2.

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.[1] The definition does

Move to page 3 as remainder of footnote 2.

1976, Pub. L. No. 94-571, § 8, 90 Stat. 2706 (Oct. 20, 1976). The 1976 Amendments contain a savings clause, however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203 (a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 10.

[1] Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

"(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother.

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

"(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United

not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 States citizen or permanent resident alien is not entitled 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 immigrant's relative is a United States citizen 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. 8 U. S. C. §§ 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. 8 U. S. C. § 1182 (a)(14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40 n. 18.

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 immigration 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 ineligible for an immigrant visa unless he qualified for admission

States or who has in writing irrevocably accepted the child for naturalization and citizenship, who has been adopted abroad by a United States citizen and his spouse who personally has seen and observed the child prior to or during the adoption proceedings, or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the pre-adoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parenthood, be accorded any right, privilege, or status under this chapter."

2] Insert old footnote 1 from pages 1-2

under the general numerical limitations and, in the case of the alien parents received the requisite labor certification.[2]

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 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 other compelling or rational justification"; (ii) denied 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[3]" and "(iii) 'seriously hinder[s] and in-

[2] Appellant Ramon Martin Fiallo a United States citizen by birth, currently resides in the Dominican Republic with his natural father, appellee Ramon Fiallo-Sanz, a citizen of that country. The father initiated proceedings to obtain an immigrant visa as the "parent" of his illegitimate son, but the United States Consul for the Dominican Republic informed appellee Fiallo-Sanz that he could not qualify for the preference status accorded to "parents" unless he legitimated Ramon Fiallo.

Appellant Cleopha Warner a citizen of United States Virgin Islands, is the natural father of appellant Serge Warner, who was born in 1971 in the French West Indies. In 1972 appellant Cleopha Warner petitioned the Immigration and Naturalization Service on behalf of his son Serge. Warner's visit was for the purpose of obtaining an immigrant visa, but the petition was denied on the ground that there was no evidence that Serge was Warner's lawful son or legitimated offspring.

Appellants Teresa Wilson and Earl Wilson, permanent resident aliens are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1974, Teresa and Earl sought to obtain an immigrant visa for their father. They were informed by the Government that although the application has not yet been rejected, denial is certain since the children are neither legitimate nor legitimated offspring of Arthur Wilson.

fringe[d] upon the rights of natural fathers and their children born out of wedlock 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 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 broad," the District Court held, with one judge dissenting, that the statutory provisions at issue were neither "wholly devoid of any conceivable rational purpose" nor "fundamentally aimed at achieving goals unrelated to the regulation of immigration." *Fiallo v. Levi*, 406 F. Supp. 162, 165, 166 (1975). The court therefore granted judgment for the Government and dismissed the action.

We noted probable jurisdiction, 426 U. S. 929 (1976), and for the reasons set forth below, we affirm.

II

At the outset, it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens." *Oceanic Navigation Co. v. Stranahan*, 214 U. S. 320, 339 (1909); *Kleindienst v. Mandel*, 408 U. S. 753, 765 (1972). Our cases "have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy v. Mezei*, 345 U. S. 206, 210 (1953); see, *e. g.*, *Harisiades v. Shaughnessy*, 342 U. S. 580 (1952); *Lem Moon Sing v. United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting v. United States*, 149 U. S. 698 (1893); *The Chinese Ex-*

Chinese Case, 130 U. S. 581 (1889). Our recent adjudications 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 only to narrow judicial review." *Hampton* v. *Mow Sun Wong*, 96 S. Ct. 1895, 1904 n. 21, citing *Fong Yue Ting* v. *United States*, 149 U. S., at 713; *Mathews* v. *Diaz*, 96 S. Ct. 1883, 1892 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews* v. *Diaz*, 96 S. Ct., at 1891.[4]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[5] but instead suggest that "a unique coa-

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[4] Mr. Justice Frankfurter noted that although "much could be said for the view" that due process places some limitations on congressional power in the immigration area, "were we writing on a clean slate," *Galvan* v. *Press*, 347 U. S. 522, 530 (1954):

"The slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history,' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 531-532.

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 766-767 (1972).

[5] The Government argues that the challenged sections of the Act, embodying as they do a substantive policy regulating the admission of aliens

leasing of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 52-56. Appellants first observe that since the statutory provisions were designed to reunite families wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border search decisions in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973) and *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 government procedures designed to stem the illegal entry of aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. See 413 U. S., at 272; 422 U. S., at 883-884.

The second distinguishing factor highlighted by appellants is that none of our prior immigration cases involved "double-barreled" discrimination based on sex and illegitimacy, infringed upon the due process rights of citizens and legal permanent residents, or implicated "the fundamental constitutional interests of United States citizens and permanent residents in a familial relationship." Brief, at 54; see id., at 16-18. But this [illegible] has resolved similar challenges to immigration legislation based on other constitutional rights of citizens, and has rejected the suggestion that more search-

[illegible] into the United States [illegible] and [illegible] relief [illegible]. Brief, at 15-25. [illegible] judicial responsibility under the Constitution [illegible] power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there may be actions of the Congress with respect to aliens [illegible] judicial [illegible] to be responsible.

ing judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a)(28)(D) absent a waiver by the Attorney General. The citizen-appellees in that case conceded Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a)(28)(D), but contended that the Attorney General's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abridged 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 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 issue here under a more exacting standard than was applied ~~in the First Amendment challenge of the Attorney General's decision~~ in *Kleindienst* v. *Mandel*.

Finally, appellants characterize our prior immigration 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. *Shaughnessy*, 342 U. S. 580 (1952), "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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 drafted in

light of changing political and economic circumstances, such decisions are frequently of a political character and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Matthews* v. [illegible], see *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952). As Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*:

> "The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, 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 596.

III

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential immigrant status both the illegitimate alien child of a citizen mother, Matter of A—, 5 I. & N. Dec. 272, 283, 284 (A. G.) and the alien mother of a citizen born out of wedlock, Matter of P—, 7 I. & N. Dec. 448 (B. I. A.). The Attorney General recommended that the matter be brought to the attention of Congress, Matter of A—, 5 I. & N. Dec., at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 201 (b)(2)(D). See n. 1, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[4]

This distinction is just one of many drawn by Congress pursuant to its determination to provide some—but not all—families with relief from various immigration restrictions 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 married or are over 21 years of age. 8 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 were in the legal custody of the legitimating parent or parents. 8 U. S. C. § 1101 (b)(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. 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 U. 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 drawn at a different point and that the statutory definitions deny pref-

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[4] Senate Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957) (the amendment was designed "to clarify the law so that the illegitimate child would be related to his mother upon the same status under the immigration laws as a legitimate child" (emphasis added)); H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to relieve the hardship and provide a fair and humane interpretation of immigration laws involving children born out of wedlock and *the mothers of such children*" (emphasis added)); 103 Cong. Rec. 14130 (1957) (remarks of Rep. Kennedy) (the amendment "would clarify the law so that an illegitimate child would, *in relation to his mother* enjoy the same status under the immigration laws as a legitimate child") (emphasis added).

(426 U.S. 67, 83-84.)

special status to parents and children who share strong family ties. Cf. *Mathews* v. *Diaz*, 426 U. S. 67, 83-84 (1976). But it is clear from our cases, see Part II, *supra*, that those 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 distinctions 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 difficult for illegitimate children and their natural fathers to be reunited 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 family relationship. Those are admittedly the consequences of the congressional decision not to accord preferential status to this 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." *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, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations.[1] In any event, it is not the judicial

[1] The inherent difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that may have occurred in foreign countries many years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to these

prove

this

See Trimble v. Gordon, slip opinion, at 8-10.

role in cases of this sort to probe and test the justifications for the legislative decision. *Kleindienst* 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 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 citizen or lawful permanent resident.

Affirmed.

Moreover, our cases clearly indicate that legislative distinctions in the immigration area need not be as "carefully tuned to alternative considerations" Trimble v. Gordon, slip opinion at 10, as those in the domestic area.

problems of proof and the potential for fraudulent visa applications that would have resulted from a more generous drawing of the line. Appellants argue that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children, and that existing administrative procedures which could have been developed to deal with the problems of proving paternity, maternity, and legitimation with respect to so-called "recognized parents" and "children" could easily handle the problems of proof involved in determining the paternity of an illegitimate child. We simply note that this argument should be addressed to the Congress rather than the courts. Indeed, in this regard it is worth noting that a bill introduced in the 94th Congress would have eliminated the challenged distinction. H. R. 10965, 94th Cong., 2d Sess. (1976).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: 2/17/77

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SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo etc., et al., Appellants, v. Griffin 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 us a constitutional challenge to §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 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.[1]

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[1] Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child, or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred, or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether

The definition does not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 citizen or permanent resident alien is not entitled 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 immigrant'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 such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

"(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

"(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 2151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege or status under this chapter."

is allowed the entry of his "parent" or "child" without regard to *either* an applicable numerical quota or the labor certification requirement. 8 U. S. C. §§ 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. 8 U. S. C. § 1182 (a)(14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40 n. 18.[2]

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 immigration 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 ineligible for an immigrant visa unless he qualified for admission under the general numerical limitations and, in the case of the alien parents, received the requisite labor certification.[3]

[2] Effective January 1, 1977 the parent-child relationship no longer triggers an exemption from the labor certification requirement. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, § 5, 90 Stat. 2706 (Oct. 20, 1976). The 1976 Amendments contain a saving clause, however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status of the *alien* for issuance of an immigrant visa of an alien entitled to a preference status, under section 203 (a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 9.

[3] Appellant Ramon Morris Fiallo, a United States citizen by birth, currently resides in the Dominican Republic with his natural father, appellant Ramon Fiallo-Soto, a citizen of that country. The father initiated procedures to obtain an immigrant visa as the "parent" of his illegitimate son, but the United States Consul for the Dominican Republic informed appellant Fiallo-Soto that he could not qualify for the preferential status accorded to "parents" unless he legitimated Ramon Fiallo.

Appellant Cleophus Warner, a naturalized United States citizen, is the natural father of appellant Serge Warner, who was born in 1971 in the French West Indies. In 1972 Cleophus Warner petitioned the Immigra-

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)(D) and 101 (b)(2) of the Act 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 "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 burden[ed] and infringe[d] upon the rights of natural fathers and their children, born out of wedlock 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 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

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tion and Naturalization Service to classify Serge as Warren's 'child' for purposes of obtaining an immigrant visa. But the petition was denied on the ground that there was no evidence that Serge was Warren's legitimate or legitimated offspring.

Appellants Trevor Wilson and Earl Wilson, permanent resident aliens, are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1974, Trevor and Earl sought to obtain an immigrant visa for their father. We are informed by the Government that although the application has not yet been rejected, denial is certain since the children are neither legitimate nor legitimated offspring of Arthur Wilson.

broad," the District Court held, with one judge dissenting, that the statutory provisions at issue were neither "wholly devoid of any conceivable rational purpose" nor "fundamentally aimed at achieving goals unrelated to the regulation of immigration." *Fiallo* v. *Levi*, 406 F. Supp. 102, 105, 116 (1975). The court therefore granted judgment for the Government and dismissed the action.

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

II

At the outset, it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens. *Oceanic Navigation Co.* v. *Stranahan*, 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 fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy* v. *Mezei*, 345 U. S. 206, 210 (1953); see, *e. g.*, *Harisiades* v. *Shaughnessy*, 342 U. S. 580 (1952); *Lem Moon Sing* v. *United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting* v. *United States*, 149 U. S. 698 (1893); *The Chinese Exclusion Case*, 130 U. S. 581 (1889). Our recent decisions have not departed from this long-established rule. 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 judicial review." *Hampton* v. *Mow Sun Wong*, 426 U. S. 88, 101 n. 21 (1976) (citing *Fong Yue Ting* v. *United States*, 149 U. S., at 713; accord, *Matthews* v. *Diaz*, 426 U. S. 67, 81–82 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unac-

ceptable if applied to citizens.' " *Matthews* v. *Diaz*, 426 U. S., at 80.[4]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[5] but instead suggest that "a unique coalescing of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 52–55. Appellants first observe that since the statutory provisions were designed to reunite families

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[4] Writing for the Court in *Galvan* v. *Press*, 347 U. S. 522 (1954), Mr. Justice Frankfurter noted that "much could be said for the view" that due process places some limitations on congressional power in this immigration area "were we writing on a clean slate."

"[But] the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history,' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 530–532.

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 767 (1972).

[5] 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 . . . [are] not an appropriate subject for judicial review." Brief, at 15–24. Our cases reflect acceptance of a limited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there may be actions of the Congress with respect to aliens that are so essentially political in character as to be nonjusticiable.

wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border search decisions in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973), and *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. *See* 413 U. S., at 272; 422 U. S., at 883–884.

Appellants suggest a second distinguishing factor. They argue that none of the prior immigration cases of this Court involved "double-barreled" discrimination based on sex and illegitimacy, 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." Brief, at 33–34; *see id.*, at 16–18. But this Court has resolved scores of challenges to immigration legislation based on other constitutional rights of citizens, and has rejected the suggestion that more searching judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a)(28)(D) absent a waiver by the Attorney General. The citizen-appellees in that case asserted that Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a)(28)(D). They contended, however, that the Attorney Gen-

eral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abridged 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 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 issue here under a more exacting standard than was applied in *Kleindienst* v. *Mandel*, a First Amendment case.

Finally, appellants characterize our prior immigration 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. *Shaughnessy*, 342 U. S. 580 (1952), "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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 light of changing political and economic circumstances, such decisions are frequently of a political character," and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Matthews* v. *Diaz*, 426 U. S. 67, 81–82 (1976). See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952). As Mr. Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*:

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

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 596.

III

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential nonquota status both the illegitimate alien child of a citizen mother, Matter of A—, 5 I. & N. Dec. 272, 283–284 (A. G.), and the alien mother of a citizen born 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 Congress, Matter of A—, 5 I. & N. Dec., at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 1101 (b)(1)(D). See n. 1, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[6]

[6] Senate Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957) (the amendment was designed "to clarify the law so that the illegitimate child would, in relation to *his mother*, enjoy the same status under the immigration laws as a legitimate child or stepchild"); H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to alleviate the hardship and provide for a fair and humane disposition of immigration cases involving children born out of wedlock *and the mothers of such children*") (emphasis added); 103 Cong. Rec. 15489 (1957) (remarks of Sen.

This distinction is just one of many drawn by Congress pursuant to its determination to provide some—but not all—families with relief from various immigration restrictions 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 married or are over 21 years of age. 8 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 were in the legal custody of the legitimating parent or parents. 8 U. S. C. § 1101 (b)(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. 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 U. 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 drawn at a different point and that the statutory definitions deny preferential status to parents and children who share strong family ties. Cf. *Matthews* v. *Diaz*, 426 U. S. 67, 83–84 (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 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

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Kennedy) (the amendment 'would clarify the law so that an illegitimate child would, *in relation to his mother*, enjoy the same status under the immigration laws as a legitimate child'") (emphasis added).

legal permanent residents without furthering legitimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their natural fathers to be reunited 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 prove the existence and strength of their family relationship. These are admittedly the consequences of the congressional decision not to accord preferential status to this 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." *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, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations.[7] See *Trimble* v. *Gordon*, Slip op., at 8–10. In any event, it is not the judicial role in cases of this sort to probe and test the justifications for the legislative decisions." *Kleindienst* v. *Mandel*, 408 U. S. 753, 770 (1972).

[7] The inherent difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that may have occurred in foreign countries many years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to these problems of proof, and the potential for fraudulent circumventions that would have resulted from a more generous mode of decision. Moreover, one could clearly anticipate that legislative determinations in the immigration area would not be carefully tuned to alternative considerations. *Trimble* v. *Gordon*, Slip op., at 10 as these in the dissents are.

[8] Appellants insist that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children, and that existing administrative procedures

IV

We hold that §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 citizen or lawful permanent resident.

Affirmed.

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which had been developed to deal with the problems of proving paternity, namely, illegitimation with respect to statutorily recognized "parents" and "children" could easily invite the problems of proof involved in determining the paternity of an illegitimate child. We simply note that this concern should be addressed to the Congress rather than the courts. Indeed, in that regard it is worth noting that a bill introduced in the 95th Congress would have eliminated the 24-month requirement. H. R. 3963, 95th Cong., 1st Sess. (1977).

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2d DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6207

Ruppo Martin Fialko, etc. et al., Appellants, v. Griffin 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 us a constitutional challenge to §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 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[1] seeking preference by virtue of his relationship with his natural mother.[2]

[1] See n. 102 (b)(1) provides

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child, or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild was entered into, or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether

The definition does not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 citizen or permanent resident alien is not entitled 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 immigrant'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 such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

"(D) an illegitimate child by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

"(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter."

is allowed the entry of his "parent" or "child" without regard to either an applicable numerical quota or the labor certification requirement. 8 U. S. C. §§ 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. 8 U. S. C. § 1182 (a)(14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40 n. 18.[2]

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 immigration 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 ineligible for an immigrant visa unless he qualified for admission under the general numerical limitations and, in the case of the alien parents, received the requisite labor certification.[3]

[2] Effective January 1, 1977, the parent-child relationship no longer triggers an exemption from the labor certification requirement. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, § 5, 90 Stat. 2705 (Oct. 20, 1976). The 1976 Amendments contain a savings clause, however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status under section 204 (a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 9.

[3] Appellant Ramon Martin Fiallo, a United States citizen by birth, currently resides in the Dominican Republic with his natural father, appellant Ramon Fiallo-Soto, a citizen of that country. The father initiated procedures to obtain an immigrant visa as the "parent" of his illegitimate son, but the United States Consul for the Dominican Republic informed appellant Fiallo-Soto that he could not qualify for the preferential status accorded to "parents" unless he legitimated Ramon Fiallo.

Appellant Cleophus Wariner, a naturalized United States citizen, is the unwed father of appellant Serge Wariner who was born in 1971 in the French West Indies. In 1972 Cleophus Wariner petitioned the Immigra-

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)(D) and 101 (b)(2) of the Act 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 "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 burden[ed] and infringe[d] upon the rights of natural fathers and their children, born out of wedlock 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 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

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tion and Naturalization Service to classify Sergeant Warner's "child" for purposes of obtaining an immigrant visa, for the petition was denied on the ground that there was no evidence that Sergeant Warner's legitimate or legitimated off-spring.

Appellants Trevor Wilson and Earl Wilson, permanent resident aliens, are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1974, Trevor and Earl sought to obtain an immigrant visa for their father. We are informed by the Government that although the application has not yet been rejected, denial is certain since the children are neither legitimate nor legitimated offspring of Arthur Wilson.

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

We noted probable jurisdiction, 426 U. S. 910 (1976), and for the reasons set forth below we affirm.

II

At the outset, it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U. S. 320, 339 (1909); accord, *Kleindienst v. Mandel*, 408 U. S. 753, 766 (1972). Our cases "have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy v. Mezei*, 345 U. S. 206, 210 (1953); see, e. g., *Harisiades v. Shaughnessy*, 342 U. S. 580 (1952); *Lem Moon Sing v. United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting v. United States*, 149 U. S. 698 (1893); *The Chinese Exclusion Case*, 130 U. S. 581 (1889). Our recent decisions 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 judicial review." *Hampton v. Mow Sun Wong*, 426 U. S. 88, 101 n. 21 (1976), citing *Fong Yue Ting v. United States*, 149 U. S. at 713; accord, *Matthews v. Diaz*, 426 U. S. 67, 81–82 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unac-

ceptable if applied to citizens." *Matthews* v. *Diaz*, 426 U. S., at 80.[5]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[6] but instead suggest that "a unique confluence of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 52–56. Appellants first observe that since the statutory provisions were designed to reunite families

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[5] Writing for the Court in *Galvan* v. *Press*, 347 U. S. 522 (1954), Mr. Justice Frankfurter noted that "much could be said for the view" that the process places some limitations on congressional power in the immigration area. "were we writing on a clean slate."

"[But] the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are largely entrusted by our political branches of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process . . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government . . . .

"We are not prepared to draw ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and have therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 530–532.

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 767 (1972).

[6] 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 . . . [are] not an appropriate subject for judicial review." Brief, at 15–24. Our cases reflect acceptance of a limited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there may be actions of the Congress with respect to aliens that are so essentially political in character as to be nonjusticiable.

wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants also rely on our border search decisions in *Almeida-Sanchez v. United States*, 413 U. S. 266 (1973); and *United States v. Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. See 413 U. S., at 272; 422 U. S., at 883–884.

Appellants suggest a second distinguishing factor. They argue that none of the prior immigration cases of this Court involved "double barreled" discrimination based on sex and illegitimacy, 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." 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 judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a)(28)(D) absent a waiver by the Attorney General. The citizen-appellees in that case conceded that Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a)(28)(D). They contended, however, that the Attorney Gen-

eral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abridged 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 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 issue here under a more exacting standard than was applied in *Kleindienst* v. *Mandel*, a First Amendment case.

Finally, appellants characterize our prior immigration 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. *Shaughnessy*, 342 U. S. 580 (1952), "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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 light of changing political and economic circumstances, such decisions are frequently of a political character," and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Matthews* v. *Diaz*, 426 U. S. 67, 81–82 (1976). *See Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952). As Mr. Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*:

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

6] [See attached sheet]

~~[illegible]~~ ~~[illegible]~~

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6/ The thoughtful 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. Post, 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 as generous as 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. It is true that the legislative history of the provision at issue here

1st 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 [illegible] share relationships with [illegible] 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 aliens . . . is entrusted exclusively to Congress." Galvan v. Press, 347 U.S., at 532. This is not to say, as we make clear in n. 5, supra, that the Government's power in this area is never subject to

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 590.

III

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential immigrant status both the illegitimate alien child of a citizen mother, Matter of A—, 5 I. & N. Dec. 272, 283–284 (A. G.) and the alien mother of a citizen born 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 Congress, Matter of A—, 5 I. & N. Dec., at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 101 (b)(1)(D). *See* n. 1, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[7]

[7] Senate Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957) (the amendment was designed "to clarify the law so that the illegitimate child will be in relation to his *mother* enjoy the same status under the immigration laws as a legitimate child") (emphasis added); H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to alleviate the hardship and provide a fair and humane rule of application of immigration laws involving children born out of wedlock . . . of *the mothers of such children*") (emphasis added); 103 Cong. Rec. 14024 (1957) (remarks of Sen.

This distinction is just one of many drawn by Congress pursuant to its determination to provide some—but not all—families with relief from various immigration restrictions 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 married or are over 21 years of age. 8 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 were in the legal custody of the legitimating parent or parents. 8 U. S. C. § 1201 (b)(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. 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 U. 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 drawn at a different point and that the statutory definitions deny preferential status to parents and children who share strong family ties. Cf. *Matthews* v. *Diaz*, 426 U. S. 67, 83-84 (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 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

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legal permanent residents without furthering legitimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their natural fathers to be reunited 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 prove the existence and strength of their family relationship. These are admittedly the consequences of the congressional decision not to accord preferential status to this 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." *Harisiades v. Shaughnessy*, 342 U. S. 580, 597 (1952) (Frankfurter, J., concurring).[8] 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 ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations.[9] See *Trimble v. Gordon*, Slip op., at 8–10. In any event, it is not *the* judicial role in cases of this sort to probe and test the justifications for the legislative decision. *Kleindienst v. Mandel*, 408 U. S. 753, 770 (1972).

[8] The inherent difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that may have occurred in foreign countries many years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to these problems of proof and the potential for fraudulent visa applications that would have resulted from a more generous drawing of the line. "Moreover our cases clearly indicate that legislative determinations in the immigration area need not be as carefully tuned to alternative considerations." *Trimble v. Gordon*, Slip op., at 10, as those in the domestic area.

[9] Appellants insist that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children, and that existing administrative procedures

IV

We hold that §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 citizen or lawful permanent resident.

Affirmed.

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which had been developed to deal with the problems of proving paternity, maternity, and legitimation with respect to "culturally recognized 'parents'" and "children," could easily handle the problems of proof involved in determining the paternity of an illegitimate child. We simply note that this argument should be addressed to the Congress rather than the courts. Indeed, in that regard it is worth noting that a bill introduced in the 94th Congress would have eliminated the challenged distinction. H. R. 1090, 94th Cong., 1st Sess. (1975).

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2nd DRAFT
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SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al., Appellants, v. Griffin 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 us a constitutional challenge to §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 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.[1]

[1] Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether

The definition does not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 citizen or permanent resident alien is not entitled 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 immigrant'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 such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

"(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

"(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who is coming to a specific person or agency recognized for this purpose by the Attorney General for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the pre-adoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter."

is allowed the entry of his "parent" or "child" without regard to *either* an applicable numerical quota or the labor certification requirement. 8 U. S. C. §§ 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. 8 U. S. C. § 1182 (a)(14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40 n. 18.[2]

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 immigration 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 ineligible for an immigrant visa unless he qualified for admission under the general numerical limitations and, in the case of the alien parents, received the requisite labor certification.[3]

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[2] Effective January 1, 1977, the parent-child relationship no longer triggers an exemption from the labor certification requirement. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, § 5, 90 Stat. 2703 (Oct. 20, 1976). The 1976 Amendments contain a savings clause, however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of a person entitled to a preference status under section 203 (a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 9.

[3] Appellant Ramon Martin Fiallo, a United States citizen by birth, currently resides in the Dominican Republic with his natural father appellant Ramon Fiallo Sanz, a citizen of that country. The father has not yet undertaken to obtain an immigrant visa as the "parent" of his illegitimate son but the United States Consul for the Dominican Republic informed appellant Fiallo Sanz that he could not qualify for the preference status accorded to "parents" unless he legitimated Ramon Fiallo.

Appellant Chophne Warner, a naturalized United States citizen, is the unwed father of appellant Serge Warner, who was born in 1971 in the French West Indies. In 1972 Chophne Warner petitioned the Immigra-

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 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 "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 burden[ed] and infringe[d] upon the rights of natural fathers and their children, born out of wedlock 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 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

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tion and Naturalization Service to classify Serge as Warne's "child" for purposes of obtaining an immigrant visa, but the petition was denied on the ground that there was no evidence that Serge was Warne's legitimate or legitimated off-spring.

Appellants Trevor Wilson and Earl Wilson, permanent resident aliens, are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1974, Trevor and Earl sought to obtain an immigrant visa for their father. We are informed by the Government that although the application has not yet been rejected, it appears certain that the children are neither legitimate nor legitimated offspring of Arthur Wilson.

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

We noted probable jurisdiction, 426 U. S. 910 (1976), and for the reasons set forth below we affirm.

II

At the outset, it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens. *Oceanic Navigation Co.* v. *Stranahan*, 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 fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy* v. *Mezei*, 345 U. S. 206, 210 (1953); see, e. g., *Harisiades* v. *Shaughnessy*, 342 U. S. 580 (1952); *Lem Moon Sing* v. *United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting* v. *United States*, 149 U. S. 698 (1893); *The Chinese Exclusion Case*, 130 U. S. 581 (1889). Our recent decisions have not departed from this long-established rule. Just last Term, for example, this Court 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 Sun Wong*, 426 U. S. 88, 101 n. 21 (1976), citing *Fong Yue Ting* v. *United States*, 149 U. S., at 713; accord, *Matthews* v. *Diaz*, 426 U. S. 67, 81–82 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unac-

ceptable if applied to citizens." *Matthews* v. *Diaz*, 426 U. S., at 80.[4]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[5] but instead suggest that "a unique coalescing of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 52–55. Appellants first observe that since the statutory provisions were designed to reunite families

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[4] Writing for the Court in *Galvan* v. *Press*, 347 U. S. 522 (1954), Mr. Justice Frankfurter noted that "much could be said for the view" that due process places some limitations on congressional power in the immigration area, "were we writing on a clean slate."

"[But] the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 530–532.

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 767 (1972).

[5] 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 . . . [are] not an appropriate subject for judicial review." Brief, at 15–24. Our cases reflect acceptance of a limited judicial responsibility under the Constitution even with respect to the power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there are limitations on the power of Congress with respect to aliens that are so essentially political in character as to be nonjusticiable.

wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border search decisions in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973) and *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. See 413 U. S., at 272; 422 U. S., at 883–884.

Appellants suggest a second distinguishing factor. They argue that none of the prior immigration cases 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 fundamental constitutional interests of United States citizens and permanent 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 judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a)(28)(D) absent a waiver by the Attorney General. The citizen-appellees in that case conceded that Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a)(28)(D). They contended, however, that the Attorney Gen-

cral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment 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 Amendment interests of those who seek personal communication with the applicant." 408 U. S., at 769–770.*

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*The thoughtful dissenting opinion of our Brother Marshall would be persuasive if its basic premise were accepted. The dissent is grounded on the assumption that the selective purpose of the Act grants a "fundamental right" to American citizens, a right "given only to the citizen" and not to the putative immigrant. *Post*, at 7, 9–10. The assumption is facially plausible in that the families of prospective 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 as generous as the United States in extending the privilege to immigrate or in providing sanctuary to the oppressed, jurists and classifiers as to who shall be granted any privilege and permissible elements of legislation in this area. It is true that the legislative history of the provision at issue here establishes that congressional concern was directed to "the problem of keeping families of United States citizens and immigrants united." H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957). *See also* H. R. Rep. No. 1365, 85th Cong., 2d Sess., 29 (1958) (stated amendments "The underlying purposes of our immigration laws regarding the preservation of the family and "[t]o accommodate this goal Congress has accorded a special 'preference status'" to certain close relatives [of citizens with whom a permanent relationship exists]. But there are widely varying relationships and degrees of kinship, and it 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 closely than others to citizens, knowledge [was] without undue cost, and it has granted preferential status only to those classes.

As Mr. Justice Frankfurter wrote years ago, "the form of most of these

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 immigration 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. *Shaughnessy*, 342 U. S. 580 (1952) "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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 light of changing political and economic circumstances, such decisions are frequently of a political character," and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Matthews* v. *Diaz*, 426 U. S. 67, 81–82 (1976). See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588–589 (1952). As Mr. Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*:

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

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policies pertaining to the entry of aliens . . . is committed exclusively to Congress." *Galvan* v. *Press*, 347 U. S. at 531. This is not to say, to make clear once again, that the Government's power in this area is never subject to judicial review. But our cases do make clear that despite the exigent nature of its classifications or the interests of those already within our borders, congressional determinations such as this are subject only to limited judicial review.

ognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control." *Id.*, at 596.

III

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential nonquota status both the illegitimate alien child of a citizen mother, Matter of A—, 5 I. & N. Dec. 272, 283–284 (A. G.) and the alien mother of a citizen born 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 Congress, Matter of A—, 5 I. & N. Dec., at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 101 (b)(1)(D). See n. 1, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[1]

This distinction is just one of many drawn by Congress

[1] Senate Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957) (the amendment was designed "to clarify the law so that the illegitimate child would in relation to his mother enjoy the same status under the immigration laws as a legitimate child") (emphasis added); H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to alleviate the hardship and provide a fair and humanitarian adjudication of immigration cases involving children born out of wedlock *and the mothers of such children*") (emphasis added); 103 Cong. Rec. 14034 (1957) (remarks of Sen. Kennedy) (the amendment "would clarify the law so that an illegitimate child would, in relation to his mother enjoy the same status under the immigration laws as a legitimate child") (emphasis added).

pursuant to its determination to provide some—but not all—families with relief from various immigration restrictions 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 married or are over 21 years of age. 8 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 were in the legal custody of the legitimating parent or parents. 8 U. S. C. § 1101 (b)(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. 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 U. 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 drawn at a different point and that the statutory definitions deny preferential status to parents and children who share strong family ties. Cf. *Matthews* v. *Diaz*, 426 U. S. 67, 83-84 (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 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 legitimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their natural fathers to be reunited 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 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 decision nonetheless 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, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations.[*] *See Trimble* v. *Gordon*, *Slip op.*, at 8–10. In any event, it is not the judicial role in cases of this sort to probe and test the justifications for the legislative decision." *Kleindienst* v. *Mandel*, 408 U. S. 753, 770 (1972).

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[*] The administrative difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that now have occurred in foreign countries many years earlier. Congress may well have given substantial weight in adopting the classification here challenged, to these problems of proof and the potential for fraudulent visa applications that would have resulted from a more generous drawing of the line. Moreover, our cases clearly indicate that legislative distinctions in the immigration area need not be as "carefully tuned to alternative considerations," *Trimble* v. *Gordon*, *Slip op.*, at 10, as those in the domestic area.

[†] Appellants insist that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children and that existing administrative procedures which had been developed to deal with the problems of proving paternity, maternity, and legitimation with respect to "normally recognized 'parents' and 'children,'" could easily handle the problems of proof involved in determining the paternity of an illegitimate child. We simply note that

IV

We hold that §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 citizen or lawful permanent resident.

Affirmed.

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this argument should be addressed to the Congress rather than the courts. Indeed, in that regard it is worth noting that a bill introduced in the 94th Congress would have eliminated the challenged distinction. H. R. 10903, 94th Cong., 1st Sess. (1975).

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SUPREME COURT OF THE UNITED STATES

No. 75-6207

Ramon Martin Fiallo, etc., et al., Appellants, v. Griffin 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 us a constitutional challenge to §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration 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 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.[1]

[1] Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child, or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether

The definition does not extend to an illegitimate child seeking preference by virtue of his relationship with his natural father. Moreover, under § 101 (b)(2), 8 U. S. C. § 1101 (b)(2), a person qualifies as a "parent" for purposes of the Act solely 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 citizen or permanent resident alien is not entitled 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 immigrant'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 such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

"(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be entitled to any right, privilege, or status under this chapter.

"(F) a child, under the age of fourteen at the time a petition is filed in its behalf to accord a classification as an immediate relative under section 151 (b) of this title who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption, who has been adopted abroad by a United States citizen or his spouse who personally saw and observed the child prior to or during the adoption proceedings, or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be entitled to any right, privilege, or status under the chapter."

is allowed the entry of his "parent" or "child" without regard to either an applicable numerical quota or the labor certification requirement. 8 U. S. C. §§ 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. 8 U. S. C. § 1182 (a)(14); see 1 Gordon & Rosenfield, Immigration Law and Procedure, at § 2.40 n. 18.[5]

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 immigration 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 ineligible for an immigrant visa unless he qualified for admission under the general numerical limitations and, in the case of the alien parents, received the requisite labor certification.[6]

[5] Effective January 1, 1977, the parent-child relationship no longer triggers an exemption from the labor certification requirement. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, § 5, 90 Stat. 2705 (Oct. 20, 1976). The 1976 Amendments contain a savings clause, however, which provides that the amendments

"shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203 (a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date." Immigration and Nationality Act Amendments of 1976, § 9.

[6] Appellant Ramon Martin Fiallo, a United States citizen by birth, presently resides in the Dominican Republic with his natural father, appellant Ramon Fiallo-Sone, a citizen of that country. The father initiated procedures to obtain an immigrant visa as the "parent" of his illegitimate son, but the United States Consul for the Dominican Republic informed appellant Fiallo-Sone that he could not qualify for the preferential status accorded to "parents" unless he legitimated Ramon Fiallo.

Appellant Cleophus Warner, a naturalized United States citizen, is the natural father of appellant Serge Warner, who was born in 1960 in the French West Indies. In 1972 Cleophus Warner petitioned the Immigra-

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 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 "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 burden[ed] and infringe[d] upon the rights of natural fathers and their children, born out of wedlock and not legitimated, to marital association, to privacy, to establish a home, to raise natural children and to be raised by the natural 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 "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

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Appellants Trevor Wilson and Earl Wilson, permanent resident aliens, are the illegitimate children of appellant Arthur Wilson, a citizen of Jamaica. Following the death of their mother in 1971, Trevor and Earl sought to obtain an immigrant visa for their father. We are informed by the Government that although the application was approved, that is not so as to the children, who are neither legitimate nor legitimated offspring of Arthur Wilson.

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

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

II

At the outset it is important to underscore the limited scope of judicial inquiry into immigration 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 aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U. S. 320, 339 (1909); accord, *Kleindienst v. Mandel*, 408 U. S. 753, 766 (1972). Our cases have long recognized the power to expel or exclude aliens as a fundamental, sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy v. Mezei*, 345 U. S. 206, 210 (1953); *see, e. g., Harisiades v. Shaughnessy*, 342 U. S. 580 (1952); *Lem Moon Sing v. United States*, 158 U. S. 538, 547 (1895); *Fong Yue Ting v. United States*, 149 U. S. 698 (1893); *The Chinese Exclusion Case*, 130 U. S. 581 (1889). Our recent decisions 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 judicial review." *Hampton v. Mow Sun Wong*, 426 U. S. 88, 101 n. 21 (1976) (citing *Fong Yue Ting v. United States*, 149 U. S., at 713; accord, *Matthews v. Diaz*, 426 U. S. 67, 81–82 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unac-

reputable if applied to citizens." *Matthews* v. *Diaz*, 426 U. S., at 80.[4]

Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context,[5] but instead suggest that "a unique coalescing of factors" makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. Brief, at 32–35. Appellants first observe that since the statutory provisions were designed to reunite families

[4] Writing for the Court in *Galvan* v. *Press*, 347 U. S. 522 (1954), Mr. Justice Frankfurter noted that "much could be said for the view" that due process places some limitations on congressional power in the immigration area, "were we writing on a clean slate."

"But the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history' . . . but a whole volume. Policies pertinent to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly rooted in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens." *Id.*, at 530–532.

We are no more inclined to reconsider this line of cases today than we were five years ago when we decided *Kleindienst* v. *Mandel*, 408 U. S. 753, 767 (1972).

[5] The Government argues that the challenged sections of the Act, embodying as they do "substantive policy regulating the admission of aliens into the United States," are not an appropriate subject for judicial review." Brief, at 16–24. Our cases reflect acceptance of a limited judicial responsibility under the Constitution, even with respect to the power of Congress to regulate the admission and exclusion of aliens, and there is no occasion to consider in this case whether there may be actions of the Congress with respect to aliens that are so essentially political in character as to be nonjusticiable.

wherever possible, the purpose of the statute was to afford rights not to aliens but to United States citizens and legal permanent residents. Appellants then rely on our border search decisions in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973) and *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975), for the proposition that the courts must scrutinize 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 aliens. Nothing in the opinions in those cases suggests that Congress has anything but exceptionally broad power to determine which classes of aliens may lawfully enter the country. See 413 U. S., at 272; 422 U. S., at 883–884.

Appellants suggest a second distinguishing factor. They argue that none of the prior immigration cases 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 fundamental constitutional interests of United States citizens and permanent 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 judicial scrutiny 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 visa to an alien who, as a proponent of "the economic, international, and governmental doctrines of world communism," was ineligible to receive a visa under 8 U. S. C. § 1182 (a) (28) (D) absent a waiver by the Attorney General. The citizen-appellees in that case asserted that Congress could prohibit entry of all aliens falling into the class defined by § 1182 (a) (28) (D). They contended, however, that the Attorney Gen-

eral's statutory discretion to approve a waiver was limited by the Constitution and that their First Amendment rights were abridged 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 Amendment interests of those who seek personal communication with the applicant." 408 U. S., at ~~769~~ 770.

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[6] The thoughtful 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. *Post*, at 7, 8, 10. 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 deeper 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 as generous as 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. It is true that the legislative history of the provision at issue here establishes that congressional concern was directed at "the problem of keeping families of United States citizens and immigrants united." H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957). See also H. R. Rep. No. 1365, 82d Cong., 2d Sess., 29 (1952) (act implements "the underlying intention 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 share relationships with citizens or permanent resident aliens. But there are many varying relationships and degrees of kinship, and it 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

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 immigration 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. *Shaughnessy*, 342 U. S. 580 (1952), "or to the general welfare of the country," citing *Boutilier* v. *Immigration 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 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 light of changing political and economic circumstances, such decisions are frequently of a political character," and "[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization." *Mathews* v. *Diaz*, 426 U. S. 67, 81-82 (1976). See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 588-589 (1952). As Mr. Justice Frankfurter observed in his concurrence in *Harisiades* v. *Shaughnessy*,

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

[illegible] pertaining to the entry of aliens [illegible] is entrusted exclusively to Congress.'" *Galvan* v. *Press*, 347 U. S. at 531. [illegible] the Government's power [illegible] subject to judicial review. [illegible] the scope of these classifications on the interests of those aliens [illegible] congressional [illegible] judicial review.

quized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control." *Id.*, at 306.

III

As originally enacted in 1952, § 101 (b)(1) of the Act defined a "child" as an unmarried legitimate 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 illegitimate children rendered ineligible for preferential nonquota status both the illegitimate alien child of a citizen mother, Matter of A——, 5 I. & N. Dec. 272, 283–284 (A. G.) and the alien mother of a citizen born 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 Congress, Matter of A——, 5 I. & N. Dec., at 284, and the Act was amended in 1957 to include what is now 8 U. S. C. § 101 (b)(1)(D). See n. 1, *supra*. Congress was specifically concerned with the relationship between a child born out of wedlock 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 her natural father.[7]

This distinction is just one of many drawn by Congress

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[7] Senate Rep. No. 1057, 85th Cong., 2d Sess., 1 (1957) (the amendment was designed "to clarify the law so that the illegitimate child is relative to his *mother* enjoy the same status under the immigration laws as a legitimate child") (emphasis added); H. R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (the amendment was designed "to alleviate hardship and provide a fair and humanitarian adjudication of immigration cases involving children born out of wedlock and *the mothers of such children*") (emphasis added); 103 Cong. Rec. 11870, 11957 (remarks of Sen. Kennedy) ("the amendment would clarify the law so that an illegitimate child would, in relation to *his mother*, enjoy the same status under the immigration laws as a legitimate child") (emphasis added).

pursuant to its determination to provide some– but not all—families with relief from various immigration restrictions 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 married or are over 21 years of age. 8 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 were in the legal custody of the legitimating parent or parents. 8 U. S. C. § 1101 (b)(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. 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 U. 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 drawn at a different point and that the statutory definitions deny preferential status to parents and children who share strong family ties. Cf. *Mathews* v. *Diaz*, 426 U. S. 67, 83–84 (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 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 legitimate governmental interests. Appellants note in this regard that the statute makes it more difficult for illegitimate children and their natural fathers to be reunited 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 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 decision nonetheless 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, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk in paternity determinations. See *Trimble* v. *Gordon*, ~~supra, at 10~~ — U. S. —, (1977). In any event, it is not the judicial role in cases of this sort to probe and test the justifications for the legislative decision. *Kleindienst* v. *Mandel*, 408 U. S. 753, 770 (1972).

The inherent difficulty of determining the paternity of an illegitimate child is compounded when it depends upon events that may have occurred in foreign countries many years earlier. Congress may well have given substantial weight, in adopting the classification here challenged, to these problems of proof and the potential for fraudulent visa applications that would have resulted from a more generous drawing of the line. Moreover, our cases clearly indicate that legislative distinctions in the immigration area need not be as "carefully tuned to alternative considerations," *Trimble* v. *Gordon*, ~~supra, at 10~~ — U. S. —, (1977), as those in the domestic area.

Appellants insist that the statutory distinction is based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children, and that existing administrative procedures which had been developed to deal with the problems of proving paternity, maternity, and legitimation with respect to statutorily recognized "parents" and "children," could easily handle the problems of proof involved in determining the paternity of an illegitimate child. We simply note that

IV

We hold that §§ 101(b)(1)(D) and 101(b)(2) of the Immigration 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 citizen or lawful permanent resident.

Affirmed.

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this argument should be addressed to the Congress rather than the courts. Indeed, in that regard it is worth noting that a bill introduced in the 94th Congress would have eliminated the challenged distinction. H. R. 10993, 94th Cong., 1st Sess. (1975).