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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 Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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MILLER *v.* ALBRIGHT, SECRETARY OF STATE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96–1060. Argued November 4, 1997– Decided April 22, 1998

Petitioner was born out of wedlock in 1970 in the Philippines. Her mother is a Filipino national. Her father, Charlie Miller, is an American citizen residing in Texas who served in the United States military in the Philippines at the time of petitioner's conception. He never married petitioner's mother, and there is no evidence that he was in the Philippines at the time of her birth or that he ever returned there after completing his tour of duty. In 1992, the State Department denied petitioner's application for registration as a United States citizen. After a Texas court granted Mr. Miller's petition for a paternity decree finding him to be her father, petitioner reapplied for citizenship status, which was again denied on the ground that the Texas decree did not satisfy 8 U. S. C. §1409(a)(4)'s requirement that a child born out of wedlock and outside the United States to an alien mother and an American father be legitimated before age 18 in order to acquire citizenship. Petitioner and Mr. Miller then sued the Secretary of State in Federal District Court in Texas, seeking a judgment declaring her to be a United States citizen. They emphasized that the citizenship of an out-of-wedlock, foreign-born child of an alien father and an American mother is established at birth under §1409(c), and alleged that §1409's different treatment of citizen fathers and citizen mothers violated Mr. Miller's Fifth Amendment equal protection right by utilizing the suspect classification of gender without justification. Concluding that Mr. Miller did not have standing, the court dismissed him as a party and transferred venue to the District Court for the District of Columbia. That court dismissed the suit on the ground that federal courts do not have power to grant citizenship. The Court of Appeals affirmed, holding that petitioner had standing to sue, but concluding that the §1409 require-

ments imposed on a child like her, but not on the foreign-born, out-of-wedlock child of an American mother, were justified by governmental interests in fostering the child's ties with this country and with her citizen parent.

Held: The judgment is affirmed.

96 F. 3d 1467, affirmed.

JUSTICE STEVENS, joined by THE CHIEF JUSTICE, concluded that §1409(a)(4)'s requirement that children born abroad and out of wedlock to citizen fathers, but not to citizen mothers, obtain formal proof of paternity by age 18 does not violate the Fifth Amendment. Pp. 6–24.

(a) The foregoing is the only issue presented by this case's facts. Certain other issues need not be resolved: Whether *Fiallo* v. *Bell*, 430 U. S. 787, dictates the outcome here; the validity of the distinction drawn by §§1401(g) and 1409(c) between residency requirements for unmarried citizen fathers and unmarried citizen mothers wishing to transmit citizenship at birth to their foreign-born, out-of-wedlock children; and the validity of §§1409(a)(1) and (a)(3), which impose additional requirements on citizen fathers wishing to transmit such citizenship. Because petitioner is contesting the Government's refusal to register and treat her as a citizen, a judgment in her favor would confirm her pre-existing citizenship rather than grant her rights that she does not now possess. The Court of Appeals was therefore correct that she has standing to invoke the federal courts' jurisdiction. Moreover, because her claim relies heavily on the proposition that her citizen father should have the same right to transmit citizenship as would a citizen mother, the Court should evaluate the alleged discrimination against him, as well as its impact on her. See, *e.g.*, *Craig* v. *Boren*, 429 U. S. 190, 193–197. Pp. 6–11.

(b) The §1409(a)(4) rule applicable to each class of out-of-wedlock children born abroad is eminently reasonable and justified by important Government interests: ensuring reliable proof that a person born out of wedlock who claims citizenship by birth actually shares a blood relationship with an American citizen; encouraging the development of a healthy relationship between the citizen parent and the child while the child is a minor; and fostering ties between the child and the United States. Male and female parents of foreign-born, out-of-wedlock children are differently situated in several pertinent respects. The child's blood relationship to its birth mother is immediately obvious and is typically established by hospital records and birth certificates, but the relationship to the unmarried father may often be undisclosed and unrecorded in any contemporary public record. Similarly, the child's birth mother certainly knows of the child's existence and typically will have immediate custody, whereas, due to the normal inter-

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val of nine months between conception and birth, an unmarried father may not even know that his child exists, and the child may not know the father's identity. Section 1409(a)(4)'s requirement– that children born out of wedlock to citizen fathers obtain formal proof of paternity by age 18, either through legitimation, written acknowledgment by the father under oath, or adjudication by a competent court– is well tailored to address these concerns. The conclusion that Congress may require an affirmative act by unmarried fathers and their children, but not mothers and their children, is directly supported by *Lehr* v. *Robertson*, 463 U. S. 248. Pp. 11–20.

(c) The argument that §1409(a)(4) is unconstitutional because it is a stereotypical "gender-based classification" must be rejected. None of the governmental interests underlying §1409(a)(4) can be fairly characterized as an accidental byproduct of a traditional way of thinking about the members of either sex. The biological differences between single men and single women provide a relevant basis for differing rules governing their ability to confer citizenship on children born out of wedlock in foreign lands, and an impartial analysis of those differences rebuts the strong presumption that gender-based legal distinctions are suspect. Pp. 20–24.

JUSTICE O'CONNOR, joined by JUSTICE KENNEDY, concluded that petitioner should not be accorded standing to raise her father's gender discrimination claim. This Court applies a presumption against third-party standing as a prudential limitation on the exercise of federal jurisdiction, see, *e.g.*, *Singleton* v. *Wulff*, 428 U. S. 106, 113, and that presumption may only be rebutted in particular circumstances: where a litigant has suffered injury in fact and has a close relation to a third party, and where some hindrance to the third party's ability to protect his or her own interests exists, see *Powers* v. *Ohio*, 499 U. S. 400, 411. Petitioner has not demonstrated a genuine obstacle to her father's ability to assert his own rights that rises to the level of a hindrance. Accordingly, she is precluded from raising his equal protection claims in this case. Although petitioner may still assert her own rights, she cannot invoke a gender discrimination claim that would trigger heightened scrutiny. Section 1409 draws a distinction based on the gender of the parent, not the child, and any claim of discrimination based on differential treatment of illegitimate versus legitimate children is not presented in the question on which certiorari was granted. Thus, petitioner's own constitutional challenge is subject only to rational basis scrutiny. Even though §1409 could not withstand heightened scrutiny, it is sustainable under the lower standard. Pp. 1–8.

JUSTICE SCALIA, joined by JUSTICE THOMAS, agreed with the outcome of this case on the ground that the complaint must be dismissed be-

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cause the Court has no power to provide the relief requested: conferral of citizenship on a basis other than that prescribed by Congress. Petitioner, having been born outside United States territory, can only become a citizen by naturalization under congressional authority. See, *e.g.*, *United States* v. *Wong Kim Ark*, 169 U. S. 649, 702–703. If there is no congressional enactment granting her citizenship, she remains an alien. By its plain language, 8 U. S. C. §1409 sets forth a precondition to the acquisition of citizenship that petitioner admittedly has not met. Thus, even if the Court were to agree that the difference in treatment between the illegitimate children of citizen-fathers and citizen-mothers is unconstitutional, it could not, consistent with the extremely limited judicial power in this area, see, *e.g.*, *Fiallo* v. *Bell*, 430 U. S. 787, 792, remedy that constitutional infirmity by declaring petitioner to be a citizen or ordering the State Department to approve her application for citizenship, see *INS* v. *Pangilinan*, 486 U. S. 875, 884. This is not a case in which the Court may remedy an alleged equal-protection violation by either expanding or limiting the benefits conferred so as to deny or grant them equally to all. Pp. 1–8.

STEVENS, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C. J., joined. O'CONNOR, J., filed an opinion concurring in the judgment, in which KENNEDY, J., joined. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. GINSBURG, J., filed a dissenting opinion, in which SOUTER and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined.