

Opinion of STEVENS, J.

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SUPREME COURT OF THE UNITED STATES

No. 96–1060

LORELYN PENERO MILLER, PETITIONER
v. MADELEINE K. ALBRIGHT,
SECRETARY OF STATE

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

[April 22, 1998]

JUSTICE STEVENS announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE joined.

There are “two sources of citizenship, and two only: birth and naturalization.” *United States v. Wong Kim Ark*, 169 U. S. 649, 702 (1898). Within the former category, the Fourteenth Amendment of the Constitution guarantees that every person “born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization.” 169 U. S., at 702. Persons not born in the United States acquire citizenship by birth only as provided by Acts of Congress. *Id.*, at 703.

The petitioner in this case challenges the constitutionality of the statutory provisions governing the acquisition of citizenship at birth by children born out of wedlock and outside of the United States. The specific challenge is to the distinction drawn by §309 of the Immigration and Nationality Act (INA), 66 Stat. 238, as amended, 8 U. S. C.

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§1409, between the child of an alien father and a citizen mother, on the one hand, and the child of an alien mother and a citizen father, on the other. Subject to residence requirements for the citizen parent, the citizenship of the former is established at birth; the citizenship of the latter is not established unless and until either the father or his child takes certain affirmative steps to create or confirm their relationship. Petitioner contends that the statutory requirement that those steps be taken while the child is a minor violates the Fifth Amendment because the statute contains no limitation on the time within which the child of a citizen mother may prove that she became a citizen at birth.

We find no merit in the challenge because the statute does not impose any limitation on the time within which the members of either class of children may prove that they qualify for citizenship. It does establish different qualifications for citizenship for the two classes of children, but we are persuaded that the qualifications for the members of each of those classes, so far as they are implicated by the facts of this case, are well supported by valid governmental interests. We therefore conclude that the statutory distinction is neither arbitrary nor invidious.

I

Petitioner was born on June 20, 1970, in Angeles City, Republic of the Philippines. The records of the Local Civil Registrar disclose that her birth was registered 10 days later, that she was named Lorena Peñero, that her mother was Luz Peñero, a Filipino national, and that her birth was “illegitimate.” Spaces on the form referring to the name and the nationality of the father are blank.

Petitioner grew up and received her high school and college education in the Philippines. At least until after her 21st birthday, she never lived in the United States. App. 19. There is no evidence that either she or her

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mother ever resided outside of the Philippines.¹

Petitioner's father, Charlie Miller, is an American citizen residing in Texas.² He apparently served in the United States Air Force and was stationed in the Philippines at the time of petitioner's conception. *Id.*, at 21. He never married petitioner's mother, and there is no evidence that he was in the Philippines at the time of petitioner's birth or that he ever returned there after completing his tour of duty. In 1992, Miller filed a petition in a Texas court to establish his relationship with petitioner. The petition was unopposed and the court entered a "Voluntary Paternity Decree" finding him "to be the biological and legal father of Lorelyn Penero Miller." The decree provided that "[t]he parent-child relationship is created between the father and the child as if the child were born to the father and mother during marriage." App. to Pet. for Cert. 38.

In November 1991, petitioner filed an application for registration as a United States citizen with the State Department. The application was denied in March 1992, and petitioner reapplied after her father obtained the paternity decree in Texas in July 1992. The reapplication was also denied on the ground that the Texas decree did not satisfy "the requirements of Section 309(a)(4) INA, which requires that a child born out of wedlock be legitimated

¹Her mother was born in Leyte. Several years after petitioner's birth, her mother married a man named Frank Raspotnik and raised a family in Angeles City. App. 22.

²Although there is no formal finding that his paternity has been established by clear and convincing evidence, it is undisputed. In a letter to petitioner's attorney, the State Department acknowledged that it was "satisfied that Mr. Charlie R. Miller, the putative father, is a U. S. citizen, that he possesses sufficient physical presence in the United States to transmit citizenship, and that there is sufficient evidence that he had access to the applicant's mother at the probable time of conception." App. to Pet. for Cert. 32–33.

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before age eighteen in order to acquire U. S. citizenship under Section 301(g) INA (formerly Section 301(a)(7) INA).” *Id.*, at 33. In further explanation of its reliance on §309(a)(4), the denial letter added: “Without such legitimation before age eighteen, there is no legally recognized relationship under the INA and the child acquires no rights of citizenship through an American citizen parent.”³ *Ibid.*

II

In 1993, petitioner and her father filed an amended complaint against the Secretary of State in the United States District Court for the Eastern District of Texas, seeking a judgment declaring that petitioner is a citizen of the United States and that she therefore has the right to possess an American passport. They alleged that the INA’s different treatment of citizen mothers and citizen fathers violated Mr. Miller’s “right to equal protection under the laws by utilizing the suspect classification of gender without justification.” App. 11. In response to a motion to dismiss filed by the Government, the District Court concluded that Mr. Miller did not have standing and dismissed him as a party. Because venue in Texas was therefore improper, see 28 U. S. C. §1391(e), the court transferred the case to the District Court for the District of Columbia, the site of the Secretary’s residence. The

³The comment, of course, related only to cases in which the child born out of wedlock claims citizenship through her father. Moreover, the reference to age 18 was inaccurate; petitioner was born prior to 1986, when §309(a) was amended to change the relevant age from 21 to 18, see Pub. L. 99–653, §13, 100 Stat. 3657, and she falls within a narrow age bracket whose members may elect to have the pre-amendment law apply, see note following 8 U. S. C. §1409 (Effective Date of 1986 Amendment) (quoting §23(e), as added, Pub L. 100–525, §8(r), 102 Stat. 2619). This oversight does not affect her case, however, because she was over 21 when the Texas decree was entered.

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Government renewed its motion in that forum, and that court concluded that even though petitioner had suffered an injury caused by the Secretary's refusal to register her as a citizen, the injury was not "redressable" because federal courts do not have the power to "grant citizenship." 870 F. Supp. 1, 3 (1994) (citing *INS v. Pangilinan*, 486 U. S. 875, 884 (1988)).

The Court of Appeals for the District of Columbia Circuit affirmed, but on different grounds. It first held that petitioner does have standing to challenge the constitutionality of 8 U. S. C. §1409(a). If her challenge should succeed, the court could enter a judgment declaring that she was already a citizen pursuant to other provisions of the INA. 96 F. 3d 1467, 1470 (CA DC 1996). On the merits, however, the court concluded that the requirements imposed on the "illegitimate" child of an American citizen father, but not on the child of a citizen mother, were justified by the interest in fostering the child's ties with this country. It explained:

"[W]e conclude, as did the Ninth Circuit, that 'a desire to promote early ties to this country and to those relatives who are citizens of this country is not a[n] ir[r]ational basis for the requirements made by' sections 1409(a)(3) and (4). *Ablang v. Reno*, 52 F. 3d at 806. Furthermore, we find it entirely reasonable for Congress to require special evidence of such ties between an illegitimate child and its father. A mother is far less likely to ignore the child she has carried in her womb than is the natural father, who may not even be aware of its existence. As the Court has recognized, 'mothers and fathers of illegitimate children are not similarly situated.' *Parham v. Hughes*, 441 U. S. 347, 355 (1979). The putative father often goes his way unconscious of the birth of the child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother.' *Id.* at 355 n. 7

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(internal quotation marks and citation omitted). This sex-based distinction seems especially warranted where, as here, the applicant for citizenship was fathered by a U. S. serviceman while serving a tour of duty overseas.” *Id.*, at 1472.

Judge Wald concurred in the judgment despite her opinion that there is “no rational basis for a law that requires a U. S. citizen father, but not a U. S. citizen mother, to formally legitimate a child before she reaches majority as well as agree in writing to provide financial support until that date or forever forfeit the right to transmit citizenship.” *Id.*, at 1473. While she agreed that “requiring some sort of minimal family ties’ between parent and child, as well as fostering an early connection between child and country, is rational government policy,” she did not agree that those goals justify “a set of procedural hurdles for men— and only men— who wish to confer citizenship on their children.” *Id.*, at 1474. She nevertheless regretfully concurred in the judgment because she believed that our decision in *Fiallo v. Bell*, 430 U. S. 787 (1977), required the court to uphold the constitutionality of §1409. 96 F. 3d, at 1473.

We granted certiorari to address the following question:

“Is the distinction in 8 U. S. C. §1409 between illegitimate’ children of United States citizen mothers and illegitimate’ children of United States citizen fathers a violation of the Fifth Amendment to the United States Constitution?” 520 U. S. ____ (1997).

III

Before explaining our answer to the single question that we agreed to address, it is useful to put to one side certain issues that need not be resolved. First, we need not decide whether *Fiallo v. Bell* dictates the outcome of this case, because that case involved the claims of several aliens to a special immigration preference, whereas here the peti-

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tioner claims that she is, and for years has been, an American citizen.⁴ Additionally, *Fiallo* involved challenges to the statutory distinctions between “illegitimate” and “legitimate” children, which are not encompassed in the question presented in this case and which we therefore do not consider.

The statutory provision at issue in this case, 8 U. S. C. §1409, draws two types of distinctions between citizen fathers and citizen mothers of children born out of wedlock. The first relates to the class of unmarried persons who may transmit citizenship at birth to their offspring, and the second defines the affirmative steps that are required to transmit such citizenship.

With respect to the eligible class of parents, an unmarried father may not transmit his citizenship to a child born abroad to an alien mother unless he satisfies the residency requirement in §1401(g) that applies to a citizen parent who is married to an alien.⁵ Under that provision, the

⁴The sections of the INA challenged in *Fiallo* defined the terms “child” and “parent,” which determine eligibility for the special preference immigration status accorded to the “children” and “parents” of United States citizens and lawful permanent residents. *Fiallo v. Bell*, 430 U. S. 787, 788–789 (1977). “Child” was defined to include “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.” *Id.*, at 788–789, n. 1 (quoting 8 U. S. C. §1101(b)(1)(D) (1976 ed.)). Thus, the statute did not permit an illegitimate child to seek preference by virtue of relationship with its citizen or resident father, nor could an alien father seek preference based on his illegitimate child’s citizenship or residence. 430 U. S., at 789. Following this Court’s decision in *Fiallo* upholding those provisions, in 1986 Congress amended the INA to recognize “child” and “parent” status where the preference is sought based on the relationship of a child born out of wedlock to its natural father “if the father has or had a bona fide parent-child relationship with the person.” Pub. L. 99–603, §315(a), 100 Stat. 3439, as amended, 8 U. S. C. §1101(b)(1)(D) (1982 ed., Supp. IV).

⁵See 8 U. S. C. §1409(a) (directing that §§1401(c), (d), (e), (g) and

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citizen parent must have resided in the United States for a total of at least five years, at least two of which were after attaining the age of 14 years.⁶ If the citizen parent is an unmarried mother, however, §1409(c) rather than §1401(g) applies; under that subsection she need only have had one year of continuous residence in the United States in order to confer citizenship on her offspring.⁷ Since petitioner's father satisfied the residency requirement in §1401(g), the validity of the distinction between that requirement and the unusually generous provision in §1409(c) is not at issue.⁸

1408(2) "shall apply" if the specified conditions of §1409(a) are met).

⁶Title 8 U. S. C. §1401 provides:

"The following shall be nationals and citizens of the United States at birth:

"(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years"

Prior to its amendment in 1986, the section had required residence of 10 total years, at least 5 of which were after attaining the age of 14. See §301(a)(7), 66 Stat. 236.

⁷ Section 309(c) of the INA, codified in 8 U. S. C. §1409(c), provides: "(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."

⁸The Government has offered two explanations for the special rule applicable to unmarried citizen mothers who give birth abroad: first, an assumption that the citizen mother would probably have custody, and second, that in most foreign countries the nationality of an illegitimate child is that of the mother unless paternity has been established. The Government submits that the special rule would minimize the risk that

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As for affirmative steps, §1409(a), as amended in 1986, imposes four requirements concerning unmarried citizen fathers that must be satisfied to confer citizenship “as of the date of birth” on a person born out of wedlock to an alien mother in another country. Citizenship for such persons is established if:

“(1) a blood relationship between the person and the father is established by clear and convincing evidence,

“(2) the father had the nationality of the United States at the time of the person’s birth,

“(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

“(4) while the person is under the age of 18 years—

“(A) the person is legitimated under the law of the person’s residence or domicile,

“(B) the father acknowledges paternity of the person in writing under oath, or

“(C) the paternity of the person is established by adjudication of a competent court.” 8 U. S. C. §1409(a).

Only the second of these four requirements is expressly included in §1409(c), the provision applicable to unwed citizen mothers. See n. 7, *supra*. Petitioner, relying heavily on Judge Wald’s separate opinion below, argues that there is no rational basis for imposing the other three requirements on children of citizen fathers but not citizen mothers. The first requirement is not at issue here, however, because the Government does not question Mr. Miller’s blood relationship with petitioner.

Moreover, even though the parties have disputed the

such a child might otherwise be stateless. See Brief for Respondent 32–34.

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validity of the third condition⁹— and even though that condition is repeatedly targeted in JUSTICE BREYER’s dissent— we need not resolve that debate because it is unclear whether the requirement even applies in petitioner’s case; it was added in 1986, after her birth, and she falls within a special interim provision that allows her to elect application of the pre-amendment §1409(a), which required only legitimation before age 21. See n. 3, *supra*. And even if the condition did apply to her claim of citizenship, the State Department’s refusal to register petitioner as a citizen was expressly based on §1409(a)(4). Indeed, since that subsection is written in the disjunctive, it is only necessary to uphold the least onerous of the three alternative methods of compliance to sustain the Government’s position. Thus, the only issue presented by the facts of this case is whether the requirement in §1409(a)(4)— that children born out of wedlock to citizen fathers, but not citizen mothers, obtain formal proof of paternity by age 18, either through legitimation, written acknowledgment by the father under oath, or adjudication by a competent court— violates the Fifth Amendment.

It is of significance that the petitioner in this case, unlike the petitioners in *Fiallo*, see 430 U. S., at 790, and n. 3, is not challenging the denial of an application for special status. She is contesting the Government’s refusal to register and treat her as a citizen. If she were to prevail, the judgment in her favor would confirm her pre-existing citizenship rather than grant her rights that she

⁹The Government asserts that the purpose of §1409(a)(3) is “to facilitate the enforcement of a child support order and, thus, lessen the chance that the child could become a financial burden to the states.” Brief for Respondent 25–26, n. 13 (quoting Hearings on H. R. 4823 et al. before the Subcommittee on Immigration, Refugees, and International Law of the House Committee on the Judiciary, 99th Cong., 2d Sess., 150 (1986) (statement of Joan M. Clark, Assistant Secretary of State for Consular Affairs) (hereinafter Hearings)).

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does not now possess. We therefore agree with the Court of Appeals that she has standing to invoke the jurisdiction of the federal courts. See 96 F. 3d, at 1469–1470 (distinguishing *INS v. Pangilinan*, 486 U. S. 875 (1988)). 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, we shall 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 (1976).¹⁰

IV

Under the terms of the INA, the joint conduct of a citizen and an alien that results in conception is not sufficient to produce an American citizen, regardless of whether the citizen parent is the male or the female partner. If the two parties engage in a second joint act— if they agree to marry one another— citizenship will follow. The provision at issue in this case, however, deals only with cases in which no relevant joint conduct occurs after conception; it determines the ability of each of those parties, acting separately, to confer citizenship on a child born outside of the United States.

If the citizen is the unmarried female, she must first choose to carry the pregnancy to term and reject the alter-

¹⁰As a threshold matter, the Government now argues— though it never asserted this position below or in opposition to certiorari— that an alien outside the territory of the United States “has no substantive rights cognizable under the Fifth Amendment.” Brief for Respondent 11–12. Even if that is so, the question to be decided is whether petitioner is such an alien or whether, as she claims, she is a citizen. Thus, we must address the merits to determine whether the predicate for this argument is accurate. In the cases on which the Government relies, *Johnson v. Eisentrager*, 339 U. S. 763 (1950), and *United States v. Verdugo-Urquidez*, 494 U. S. 259 (1990), it was perfectly clear that the complaining aliens were not citizens or nationals of the United States.

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native of abortion— an alternative that is available by law to many, and in reality to most, women around the world. She must then actually give birth to the child. Section 1409(c) rewards that choice and that labor by conferring citizenship on her child.

If the citizen is the unmarried male, he need not participate in the decision to give birth rather than to choose an abortion; he need not be present at the birth; and for at least 17 years thereafter he need not provide any parental support, either moral or financial, to either the mother or the child, in order to preserve his right to confer citizenship on the child pursuant to §1409(a). In order retroactively to transmit his citizenship to the child as of the date of the child's birth, all that §1409(a)(4) requires is that he be willing and able to acknowledge his paternity in writing under oath while the child is still a minor. 8 U. S. C. §1409(a)(4)(B). In fact, §1409(a)(4) requires even less of the unmarried father— that provision is alternatively satisfied if, before the child turns 18, its paternity “is established by adjudication of a competent court.” §1409(a)(4)(C). It would appear that the child could obtain such an adjudication absent any affirmative act by the father, and perhaps even over his express objection.

There is thus a vast difference between the burdens imposed on the respective parents of potential citizens born out of wedlock in a foreign land. It seems obvious that the burdens imposed on the female citizen are more severe than those imposed on the male citizen by §1409(a)(4), the only provision at issue in this case. It is nevertheless argued that the male citizen and his offspring are the victims of irrational discrimination because §1409(a)(4) is the product of “overbroad stereotypes about the relative abilities of men and women.” Brief for Peti-

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tioner 8. We find the argument singularly unpersuasive.¹¹

Insofar as the argument rests on the fact that the male citizen parent will “forever forfeit the right to transmit citizenship” if he does not come forward while the child is a minor, whereas there is no limit on the time within which the citizen mother may prove her blood relationship, the argument overlooks the difference between a substantive condition and a procedural limitation. The substantive conduct of the unmarried citizen mother that qualifies her child for citizenship is completed at the moment of birth; the relevant conduct of the unmarried citizen father or his child may occur at any time within 18 years thereafter. There is, however, no procedural hurdle that limits the time or the method by which either parent (or the child) may provide the State Department with evidence that the necessary steps were taken to transmit citizenship to the child.

The substantive requirement embodied in §1409(a)(4) serves, at least in part, to ensure that a person born out of wedlock who claims citizenship by birth actually shares a blood relationship with an American citizen. As originally enacted in 1952, §1409(a) required simply that “the paternity of such child [born out of wedlock] is established while

¹¹Though petitioner claims to be a citizen from birth, rather than claiming an immigration preference, citizenship does not pass by descent. *Rogers v. Bellei*, 401 U. S. 815, 830 (1971). Thus she must still meet the statutory requirements set by Congress for citizenship. *Id.*, at 828–830; *United States v. Ginsberg*, 243 U. S. 472, 474 (1917). Deference to the political branches dictates “a narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization.” *Mathews v. Diaz*, 426 U. S. 67, 82 (1976). Even if, as petitioner and her *amici* argue, the heightened scrutiny that normally governs gender discrimination claims applied in this context, see *United States v. Virginia*, 518 U. S. ___, ___ (1996) (slip op., at 15), we are persuaded that the requirement imposed by §1409(a)(4) on children of unmarried male, but not female, citizens is substantially related to important governmental objectives.

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such child is under the age of twenty-one years by legitimation.” 66 Stat. 238. The section offered no other means of proving a biological relationship. In 1986, at the same time that it modified the INA provisions at issue in *Fiallo* in favor of unmarried fathers and their out-of-wedlock children, see n. 4, *supra*, Congress expanded §1409(a) to allow the two other alternatives now found in subsections (4)(B) and (4)(C). Pub. L. 99–653, §13, 100 Stat. 3657. The purpose of the amendment was to “simplify and facilitate determinations of acquisition of citizenship by children born out of wedlock to an American citizen father, by eliminating the necessity of determining the father’s residence or domicile and establishing satisfaction of the legitimation provisions of the jurisdiction.” Hearings, at 150. The 1986 amendment also added §1409(a)(1), which requires paternity to be established by clear and convincing evidence, in order to deter fraudulent claims; but that standard of proof was viewed as an ancillary measure, not a replacement for proof of paternity by legitimation or a formal alternative. See *id.*, at 150, 155.

There is no doubt that ensuring reliable proof of a biological relationship between the potential citizen and its citizen parent is an important governmental objective. See *Trimble v. Gordon*, 430 U. S. 762, 770–771 (1977); *Fiallo*, 430 U. S., at 799, n. 8. Nor can it be denied that the male and female parents are differently situated in this respect. The blood relationship to the birth mother is immediately obvious and is typically established by hospital records and birth certificates; the relationship to the unmarried father may often be undisclosed and unrecorded in any contemporary public record. Thus, the requirement that the father make a timely written acknowledgment under oath, or that the child obtain a court adjudication of paternity, produces the rough equivalent of the documentation that is already available to evidence the blood relationship between the mother and the child. If the statute

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had required the citizen parent, whether male or female, to obtain appropriate formal documentation within 30 days after birth, it would have been “gender-neutral” on its face, even though in practical operation it would disfavor unmarried males because in virtually every case such a requirement would be superfluous for the mother. Surely the fact that the statute allows 18 years in which to provide evidence that is comparable to what the mother provides immediately after birth cannot be viewed as discriminating against the father or his child.

Nevertheless, petitioner reiterates the suggestion that it is irrational to require a formal act such as a written acknowledgment or a court adjudication because the advent of reliable genetic testing fully addresses the problem of proving paternity, and subsection (a)(1) already requires proof of paternity by clear and convincing evidence. See 96 F. 3d, at 1474. We respectfully disagree. Nothing in subsection (a)(1) requires the citizen father or his child to obtain a genetic paternity test. It is difficult, moreover, to understand why signing a paternity acknowledgment under oath prior to the child’s 18th birthday is more burdensome than obtaining a genetic test, which is relatively expensive,¹² normally requires physical intrusion for both the putative father and child,¹³ and often is not available

¹² See 7 U. S. Dept. of State, Foreign Affairs Manual §1131.5–4(c) (1996) (hereinafter Foreign Affairs Manual). Commercially available testing in the United States presently appears to cost between about \$450 to \$600 per test. See Hotaling, *Is He or Isn’t He?*, Los Angeles Times Magazine, Sept. 7, 1997, pp. 36, 54 (hereinafter Hotaling); Mirabella, *Lab’s Tests Give Answers to Genetic Questions*, Baltimore Sun, Nov. 25, 1997, pp. 1C, 8C, cols. 2, 4 (hereinafter Mirabella).

¹³ Laboratories that conduct genetic paternity testing typically use either blood samples or cells scraped from the inside of the cheek of the putative father, the child, and often the mother as well. See, *e.g.*, 1 D. Faigman, D. Kaye, M. Saks, & J. Sanders, *Modern Scientific Evidence* §§19–2.2, 19–2.7.1, pp. 761, 763, 775 (1997); Hotaling, pp. 36, 54; Mirabella, p. 8C, cols. 2, 4.

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in foreign countries.¹⁴ Congress could fairly conclude that despite recent scientific advances, it still remains preferable to require some formal legal act to establish paternity, coupled with a clear-and-convincing evidence standard to deter fraud. The time limitation, in turn, provides assurance that the formal act is based upon reliable evidence, and also deters fraud.¹⁵ Congress is of course free to revise its collective judgment and permit genetic proof of paternity rather than requiring some formal legal act by the father or a court,¹⁶ but the Constitution does not now require any such change.

Section 1409 also serves two other important purposes that are unrelated to the determination of paternity: the interest in encouraging the development of a healthy relationship between the citizen parent and the child while the child is a minor; and the related interest in fostering ties between the foreign-born child and the United States. When a child is born out of wedlock outside of the United States, the citizen mother, unlike the citizen father, certainly knows of her child's existence and typically will have custody of the child immediately after the birth. Such a child thus has the opportunity to develop ties with its citizen mother at an early age, and may even grow up in the United States if the mother returns. By contrast,

¹⁴The State Department has observed that "the competence, integrity, and availability of blood testing physicians and facilities vary around the world." 7 Foreign Affairs Manual §1131.5-4(c). There are presently about 75 DNA testing laboratories in the United States, 51 of which are accredited by the American Association of Blood Banks. Hotaling, p. 36.

¹⁵Once a child reaches the legal age of majority, a male citizen could make a fraudulent claim of paternity on the person's behalf without any risk of liability for child support.

¹⁶In a different context Congress has already recognized the value of genetic paternity testing. See 96 F. 3d 1467, 1474-1475 (CADCA 1996) (discussing Child Support Enforcement Amendments of 1984).

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due to the normal interval of nine months between conception and birth, the unmarried father may not even know that his child exists, and the child may not know the father's identity. Section 1409(a)(4) requires a relatively easy, formal step by either the citizen father or his child that shows beyond doubt that at least one of the two knows of their blood relationship, thus assuring at least the opportunity for them to develop a personal relationship.

The facts of this very case provide a ready example of the concern. Mr. Miller and petitioner both failed to take any steps to establish a legal relationship with each other before petitioner's 21st birthday, and there is no indication in the record that they had any contact whatsoever before she applied for a United States passport. Given the size of the American military establishment that has been stationed in various parts of the world for the past half century, it is reasonable to assume that this case is not unusual. In 1970, when petitioner was born, about 683,000 service personnel were stationed in the Far East, 24,000 of whom were in the Philippines. U. S. Dept. of Commerce, Statistical Abstract of the United States 381 (99th ed. 1978). Of all Americans in the military at that time, only one percent were female.¹⁷ These figures, coupled with the interval between conception and birth and the fact that military personnel regularly return to the United States when a tour of duty ends, suggest that Congress had legitimate concerns about a class of children born abroad out of wedlock to alien mothers and to American service-

¹⁷Office of the Assistant Secretary of Defense, Background Study, Use of Women in the Military 5 (2d ed. 1978). The proportion of military personnel who were female in 1970 had dropped from a high of 2.2% in 1945. *Id.*, at 3. Since 1970, the proportion has steadily increased to its present level of about 13 percent. See Dept. of Defense, Selected Manpower Statistics 23 (1996).

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men who would not necessarily know about, or be known by, their children. It was surely reasonable when the INA was enacted in 1952, and remains equally reasonable today, for Congress to condition the award of citizenship to such children on an act that demonstrates, at a minimum, the possibility that those who become citizens will develop ties with this country— a requirement that performs a meaningful purpose for citizen fathers but normally would be superfluous for citizen mothers.

It is of course possible that any child born in a foreign country may ultimately fail to establish ties with its citizen parent and with this country, even though the child's citizen parent has engaged in the conduct that qualifies the child for citizenship. A citizen mother may abandon her child before returning to the States, and a citizen father, even after acknowledging paternity, may die or abscond before his child has an opportunity to bond with him or visit this country. The fact that the interest in fostering ties with this country may not be fully achieved for either class of children does not qualify the legitimacy or the importance of that interest. If, as Congress reasonably may have assumed, the formal requirements in §1409(a)(4) tend to make it just as likely that fathers will have the opportunity to develop a meaningful relationship with their children as does the fact that the mother knows of her baby's existence and often has custody at birth, the statute's effect will reduce, rather than aggravate, the disparity between the two classes of children.

We are convinced not only that strong governmental interests justify the additional requirement imposed on children of citizen fathers, but also that the particular means used in §1409(a)(4) are well tailored to serve those interests. It is perfectly appropriate to require some formal act, not just any evidence that the father or his child know of the other's existence. Such a formal act, whether legitimation, written acknowledgment by the father, or a

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court adjudication, lessens the risk of fraudulent claims made years after the relevant conduct was required. As for the requirement that the formal act take place while the child is a minor, Congress obviously has a powerful interest in fostering ties with the child's citizen parent and the United States during his or her formative years. If there is no reliable, contemporaneous proof that the child and the citizen father had the opportunity to form familial bonds before the child turned 18, Congress reasonably may demand that the child show sufficient ties to this country on its own rather than through its citizen parent in order to be a citizen.¹⁸

Our conclusion that Congress may require an affirmative act by unmarried fathers and their children, but not mothers and their children, is directly supported by our decision in *Lehr v. Robertson*, 463 U. S. 248 (1983). That case involved a New York law that automatically provided mothers of "illegitimate" children with prior notice of an adoption proceeding and the right to veto an adoption, but only extended those rights to unmarried fathers whose claim of paternity was supported by some formal public act, such as a court adjudication, the filing of a notice of intent to claim paternity, or written acknowledgment by the mother. *Id.*, at 251–252, n. 5, 266. The petitioner in *Lehr*, an unmarried putative father, need only have mailed a postcard to the State's "putative father registry" to enjoy the same rights as the child's undisputed mother, *id.*, at 264, yet he argued that this gender-based requirement violated the Equal Protection Clause. We rejected that argument, and we find the comparable claim in this case, if anything, even

¹⁸The same policy presently applies to foreign-born persons not eligible for citizenship at birth: A child may obtain special immigration preference and the immediate issuance of a visa based on a parent's citizenship or lawful residence, but only until age 21. 8 U. S. C. §§1101(b)(1), 1153(d).

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less persuasive. Whereas the putative father in *Lehr* was deprived of certain rights because he failed to take some affirmative step within about two years of the child's birth (when the adoption proceeding took place), here the unfavorable gender-based treatment was attributable to Mr. Miller's failure to take appropriate action within 21 years of petitioner's birth *and* petitioner's own failure to obtain a paternity adjudication by a "competent court" before she turned 18.¹⁹

Even though the rule applicable to each class of children born abroad is eminently reasonable and justified by important Government policies, petitioner and her *amici* argue that §1409 is unconstitutional because it is a "gender-based classification." We shall comment briefly on that argument.

V

The words "stereotype," "stereotyping," and "stereotypical" are used repeatedly in petitioner's and her *amici*'s briefs. They note that we have condemned statutory classifications that rest on the assumption that gender may serve as a proxy for relevant qualifications to serve as the administrator of an estate, *Reed v. Reed*, 404 U. S. 71 (1971), to engage in professional nursing, *Mississippi Univ. for Women v. Hogan*, 458 U. S. 718 (1982), or to train for military service, *United States v. Virginia*, 518 U. S. ____ (1996), to name a few examples. Moreover, we have expressly repudiated cases that rested on the assumption that only the members of one sex could suitably practice law or tend bar. See *Hogan*, 458 U. S., at 725, n. 10 (commenting

¹⁹ JUSTICE BREYER questions the relevance of *Lehr* because it was decided before advances in genetic testing, see *post*, at 18; there was, however, no question about the paternity of the father in that case. As in this case, the father there failed to act promptly to establish a relationship with his child.

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on *Bradwell v. State*, 16 Wall. 130 (1873) and *Goesaert v. Cleary*, 335 U. S. 464 (1948)). Discrimination that “is merely the accidental byproduct of a traditional way of thinking about females” is unacceptable. *Califano v. Goldfarb*, 430 U. S. 199, 223 (1977) (STEVENS, J., concurring in judgment).

The gender equality principle that was implicated in those cases is only indirectly involved in this case for two reasons.²⁰ First, the conclusion that petitioner is not a citizen rests on several coinciding factors, not just the gender of her citizen parent. On the facts of this case, even if petitioner’s mother had been a citizen²¹ and her father had been the alien, petitioner would not qualify for citizenship because her mother has never been to the United States. Alternatively, if her citizen parent had been a female member of the Air Force and, like Mr. Miller, had returned to the States at the end of her tour of duty, §1409 quite probably would have been irrelevant and petitioner would have become a citizen at birth by force of the Constitution itself.²² Second, it is not merely the sex of the citizen parent that determines whether the child is a citizen under the terms of the statute; rather, it is an event creating a legal relationship between parent and child— the birth itself for citizen mothers, but post-birth conduct for citizen fathers and their offspring. Nevertheless, we may assume that if the classification in §1409 were merely the product of an outmoded stereotype, it would be invalid.

²⁰ Of course, the sex of the person claiming citizenship is irrelevant; if she were a male, petitioner’s case would be no stronger.

²¹ Theoretically she might have been the child of an American soldier stationed in the Philippines during World War II. See *Ablang v. Reno*, 52 F. 3d 801, 802 (CA9 1995), cert. denied, 516 U. S. 1043 (1996).

²² “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” U. S. Const., Amdt. 14, §1.

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The “gender stereotypes” on which §1409 is supposedly premised are (1) “that the American father is never anything more than the proverbial breadwinner who remains aloof from day-to-day child rearing duties,”²³ and (2) “that a mother will be closer to her child born out of wedlock than a father will be to his.”²⁴ Even disregarding the statute’s separate, non-stereotypical purpose of ensuring reliable proof of a blood relationship, neither of those propositions fairly reflects the justifications for the classification actually at issue.

Section 1409(a)(4) is not concerned with either the average father or even the average father of a child born out of wedlock. It is concerned with a father (a) whose child was born in a foreign country, and (b) who is unwilling or unable to acknowledge his paternity, and whose child is unable or unwilling to obtain a court paternity adjudication. A congressional assumption that such a father and his child are especially unlikely to develop a relationship, and thus to foster the child’s ties with this country, has a solid basis even if we assume that all fathers who have made some effort to become acquainted with their children are as good, if not better, parents than members of the opposite sex.

Nor does the statute assume that all mothers of illegitimate children will necessarily have a closer relationship with their children than will fathers. It does assume that all of them will be present at the event that transmits their citizenship to the child, that hospital records and birth certificates will normally make a further acknowledgment and formal proof of parentage unnecessary, and that their initial custody will at least give them the opportunity to develop a caring relationship with the child. Section 1409(a)(4)— the only provision that we need con-

²³Brief for American Civil Liberties Union et al. as *Amici Curiae* 8.

²⁴96 F. 3d, at 1473 (Wald, J., concurring in judgment).

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sider— is therefore supported by the undisputed assumption that fathers are less likely than mothers to have the *opportunity* to develop relationships, not simply, as JUSTICE BREYER contends, *post*, at 13, that they are less likely to take advantage of that opportunity when it exists.²⁵ These assumptions are firmly grounded and adequately explain why Congress found it unnecessary to impose requirements on the mother that were entirely appropriate for the father.

None of the premises on which the statutory classification is grounded 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 in foreign lands. Indeed, it is the suggestion that simply because Congress has authorized citizenship at birth for children born abroad to unmarried mothers, it cannot impose any post-birth conditions upon the granting of citizenship to the foreign-born children of citi-

²⁵ JUSTICE BREYER does not dispute the fact that the unmarried father of a child born abroad is less likely than the unmarried mother to have the opportunity to develop a relationship with the child. He nevertheless would replace the gender-based distinction with either a “knowledge-of-birth” requirement or a distinction between “caretaker and non-caretaker parents.” *Post*, at 17. Neither substitute seems a likely candidate for serious congressional consideration. The former in practice would be just as gender-based as the present requirement, for surely every mother has knowledge of the birth when it occurs; nor would that option eliminate the need for formal steps and time limits to ensure that the parent truly had knowledge during the child’s youth. The latter would be confusing at best, for JUSTICE BREYER does not tell us how he would decide whether a father like Mr. Miller would qualify as a “caretaker” or a “non-caretaker”; and it would also be far less protective of families than the present statute, for it would deny citizenship to out-of-wedlock children who have relationships with their citizen parents but are not in the primary care or custody of those parents.

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zen fathers, that might be characterized as merely a by-product of the strong presumption that gender-based legal distinctions are suspect. An impartial analysis of the relevant differences between citizen mothers and citizen fathers plainly rebuts that presumption.²⁶

The judgment of the Court of Appeals is affirmed.

It is so ordered.

²⁶See *Michael M. v. Superior Court, Sonoma Cty.*, 450 U. S. 464, 497–498, n. 4 (1981) (STEVENS, J., dissenting). JUSTICE SCALIA argues that petitioner’s suit must be dismissed because the courts have “no power to provide the relief requested.” *Post*, at 1. Because we conclude that there is no constitutional violation to remedy, we express no opinion on this question.