Syllabus

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

Syllabus

KERRY, SECRETARY OF STATE, ET AL. *v.* DIN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13–1402. Argued February 23, 2015—Decided June 15, 2015

Respondent Fauzia Din petitioned to have her husband, Kanishka Berashk, a resident citizen of Afghanistan and former civil servant in the Taliban regime, classified as an "immediate relative" entitled to priority immigration status. Din's petition was approved, but Berashk's visa application was ultimately denied. A consular officer informed Berashk that he was inadmissible under §1182(a)(3)(B), which excludes aliens who have engaged in "[t]errorist activities," but the officer provided no further information. Unable to obtain a more detailed explanation for Berashk's visa denial, Din filed suit in Federal District Court, which dismissed her complaint. The Ninth Circuit reversed, holding that Din had a protected liberty interest in her marriage that entitled her to review of the denial of Berashk's visa. It further held that the Government deprived her of that liberty interest without due process when it denied Berashk's visa application without providing a more detailed explanation of its reasons.

Held: The judgment is vacated, and the case is remanded.

718 F. 3d 856, vacated and remanded.

JUSTICE SCALIA, joined by THE CHIEF JUSTICE and JUSTICE THOMAS, concluded that the Government did not deprive Din of any constitutional right entitling her to due process of law. Pp. 3–15.

(a) Under a historical understanding of the Due Process Clause, Din cannot possibly claim that the denial of Berashk's visa application deprived her of life, liberty, or property. Pp. 4–5.

(b) Even accepting the textually unsupportable doctrine of implied fundamental rights, nothing in that line of cases establishes a free-floating and categorical liberty interest sufficient to trigger constitutional protection whenever a regulation touches upon any aspect of

Syllabus

the marital relationship. Even if those cases could be so broadly construed, the relevant question is not whether the asserted interest "is consistent with this Court's substantive-due-process line of cases," but whether it is supported by "this Nation's history and practice," *Washington* v. *Glucksberg*, 521 U. S. 702, 723–724. Here, the Government's long practice of regulating immigration, which has included erecting serious impediments to a person's ability to bring a spouse into the United States, precludes Din's claim. And this Court has consistently recognized its lack of "judicial authority to substitute [its] political judgment for that of Congress" with regard to the various distinctions in immigration policy. *Fiallo* v. *Bell*, 430 U. S. 787, 798. Pp. 5–11.

JUSTICE KENNEDY, joined by JUSTICE ALITO, concluded that there is no need to decide whether Din has a protected liberty interest, because, even assuming she does, the notice she received satisfied due process. Pp. 1–6.

(a) This conclusion is dictated by the reasoning of *Kleindienst* v. *Mandel*, 408 U. S. 753. There the Court declined to balance the asserted First Amendment interest of college professors seeking a nonimmigrant visa for a revolutionary Marxist speaker against "Congress' 'plenary power to make rules for the admission of aliens,' " *id.,* at 766, and limited its inquiry to whether the Government had provided a "facially legitimate and bona fide" reason for its action, *id.,* at 770. *Mandel*'s reasoning has particular force here, where national security is involved. Pp. 2–3.

(b) Assuming that Din's rights were burdened directly by the visa denial, the consular officer's citation of §1182(a)(3)(B) satisfies *Mandel*'s "facially legitimate and bona fide" standard. Given Congress' plenary power to "suppl[y] the conditions of the privilege of entry into the United States," *United States ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, 543, the Government's decision to exclude Berashk because he did not satisfy a statutory condition for admissibility is facially legitimate. Supporting this conclusion is the fact that, by Din's own admission, Berashk worked for the Taliban government. These considerations lend to the conclusion that there was a bona fide factual basis for exclusion, absent an affirmative showing of bad faith on the consular officer's part, which Din has not plausibly alleged. Pp. 4–6.

SCALIA, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and THOMAS, J., joined. KENNEDY, J., filed an opinion concurring in the judgment, in which ALITO, J., joined. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 13–1402

JOHN F. KERRY, SECRETARY OF STATE, ET AL., PETITIONERS *v.* FAUZIA DIN

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

[June 15, 2015]

JUSTICE SCALIA announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE and JUSTICE THOMAS join.

Fauzia Din is a citizen and resident of the United States. Her husband, Kanishka Berashk, is an Afghan citizen and former civil servant in the Taliban regime who resides in that country. When the Government declined to issue an immigrant visa to Berashk, Din sued.

The state action of which Din complains is the denial of *Berashk's* visa application. Naturally, one would expect him—not Din—to bring this suit. But because Berashk is an unadmitted and nonresident alien, he has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission. See *Kleindienst* v. *Mandel*, 408 U. S. 753, 762 (1972). So, Din attempts to bring suit on his behalf, alleging that the Government's denial of her *husband's* visa application violated *her* constitutional rights. See App. 36–37, Complaint ¶56. In particular, she claims that the Government denied her due process of law when, without adequate explanation of the reason for the visa denial, it deprived her of her constitutional right to live in the United States with her spouse. There is no such constitutional right.

What JUSTICE BREYER's dissent strangely describes as a "deprivation of her freedom to live together with her spouse in America," *post*, at 4–5, is, in any world other than the artificial world of ever-expanding constitutional rights, nothing more than a deprivation of her spouse's freedom to immigrate into America.

For the reasons given in this opinion and in the opinion concurring in the judgment, we vacate and remand.

I

A

Under the Immigration and Nationality Act (INA), 66 Stat. 163, as amended, 8 U. S. C. §1101 *et seq.*, an alien may not enter and permanently reside in the United States without a visa. §1181(a). The INA creates a special visa-application process for aliens sponsored by "immediate relatives" in the United States. §§1151(b), 1153(a). Under this process, the citizen-relative first files a petition on behalf of the alien living abroad, asking to have the alien classified as an immediate relative. See §§1153(f), 1154(a)(1). If and when a petition is approved, the alien may apply for a visa by submitting the required documents and appearing at a United States Embassy or consulate for an interview with a consular officer. See §§1201(a)(1), 1202. Before issuing a visa, the consular officer must ensure the alien is not inadmissible under any provision of the INA. §1361.

One ground for inadmissibility, §1182(a)(3)(B), covers "[t]errorist activities." In addition to the violent and destructive acts the term immediately brings to mind, the INA defines "terrorist activity" to include providing material support to a terrorist organization and serving as a terrorist organization's representative. §1182(a)(3)(B)(i), (iii)–(vi).

B

Fauzia Din came to the United States as a refugee in

2000, and became a naturalized citizen in 2007. She filed a petition to have Kanishka Berashk, whom she married in 2006, classified as her immediate relative. The petition was granted, and Berashk filed a visa application. The U. S. Embassy in Islamabad, Pakistan, interviewed Berashk and denied his application. A consular officer informed Berashk that he was inadmissible under §1182(a)(3)(B) but provided no further explanation.

Din then brought suit in Federal District Court seeking a writ of mandamus directing the United States to properly adjudicate Berashk's visa application; a declaratory judgment that 8 U. S. C. §1182(b)(2)–(3), which exempts the Government from providing notice to an alien found inadmissible under the terrorism bar, is unconstitutional as applied; and a declaratory judgment that the denial violated the Administrative Procedure Act. App. 36–39, Complaint ¶¶55–68. The District Court granted the Government's motion to dismiss, but the Ninth Circuit reversed. The Ninth Circuit concluded that Din "has a protected liberty interest in marriage that entitled [her] to review of the denial of [her] spouse's visa," 718 F. 3d 856, 860 (2013), and that the Government's citation of §1182(a)(3)(B) did not provide Din with the "limited judicial review" to which she was entitled under the Due Process Clause, *id.,* at 868. This Court granted certiorari. 573 U. S. ___ (2014).

II

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." Although the amount and quality of process that our precedents have recognized as "due" under the Clause has changed considerably since the founding, see *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 28–36 (1991) (SCALIA, J., concurring in judgment), it remains the case that *no* process is due if one is not deprived of "life, liberty, or property," *Swarthout* v. *Cooke*,

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.