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

ADARAND CONSTRUCTORS, INC. *v.* PENA, SECRETARY OF TRANSPORTATION, ET AL.

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

No. 93–1841. Argued January 17, 1995—Decided June 12, 1995

Most federal agency contracts must contain a subcontractor compensation clause, which gives a prime contractor a financial incentive to hire subcontractors certified as small businesses controlled by socially and economically disadvantaged individuals, and requires the contractor to presume that such individuals include minorities or any other individuals found to be disadvantaged by the Small Business Administration (SBA). The prime contractor under a federal highway construction contract containing such a clause awarded a subcontract to a company that was certified as a small disadvantaged business. The record does not reveal how the company obtained its certification, but it could have been by any one of three routes: under one of two SBA programs—known as the 8(a) and 8(d) programs—or by a state agency under relevant Department of Transportation regulations. Petitioner Adarand Constructors, Inc., which submitted the low bid on the subcontract but was not a certified business, filed suit against respondent federal officials, claiming that the race-based presumptions used in subcontractor compensation clauses violate the equal protection component of the Fifth Amendment's Due Process Clause. The District Court granted respondents summary judgment. In affirming, the Court of Appeals assessed the constitutionality of the federal race-based action under a lenient standard, resembling intermediate scrutiny, which it determined was required by *Fullilove* v. *Klutznick,* 448 U. S. 448, and *Metro Broadcasting, Inc.* v. *FCC,* 497 U. S. 547.

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

16 F. 3d 1537, vacated and remanded.

JUSTICE O'CONNOR delivered an opinion with respect to Parts I, II, III–A, III–B, III–D, and IV, which was for the Court except

insofar as it might be inconsistent with the views expressed in JUSTICE SCALIA's concurrence, concluding that:

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1. Adarand has standing to seek forward-looking relief. It has met the requirements necessary to maintain its claim by alleging an invasion of a legally protected interest in a particularized manner, and by showing that it is very likely to bid, in the relatively near future, on another Government contract offering financial incentives to a prime contractor for hiring disadvantaged subcontractors. See *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560. Pp. 7–10.

2. All racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. Pp. 10–29; 34–37.

(a) In *Richmond* v. *J. A. Croson Co.,* 488 U. S. 469, a majority of the Court held that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments. While *Croson* did not consider what standard of review the Fifth Amendment requires for such action taken by the Federal Government, the Court's cases through *Croson* had established three general propositions with respect to governmental racial classifications. First, skepticism: ```[a]ny preference based on racial or ethnic criteria must necessarily receive a most searching examination,''' *Wygant* v. *Jackson Board of Ed.,* 476 U. S. 267, 273–274. Second, consistency: ``the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification,'' *Croson, supra,* at 494. And third, congruence: ``[e]qual protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment,'' *Buckley* v. *Valeo,* 424 U. S. 1, 93. Taken together, these propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny. Pp. 10–23.

(b) However, a year after *Croson,* the Court, in *Metro Broadcasting,* upheld two federal race-based policies against a Fifth Amendment challenge. The Court repudiated the long-held notion that ``it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government'' than it does on a State to afford equal protection of the laws, *Bolling* v. *Sharpe,* 347 U. S. 497, 500, by holding that congressionally mandated ``benign'' racial classifications need only satisfy intermediate scrutiny. By adopting that standard, *Metro Broadcasting* departed from prior cases in two significant respects. First, it turned its back on *Croson*'s explanation that strict scrutiny of governmental racial classifications is essential because it may not always be clear that a

so-called preference is in fact benign. Second, it squarely rejected one of the three propositions established by this Court's earlier cases, namely, congruence between the standards applicable to federal and state race-based action, and in doing so also undermined the other two. Pp. 23–25.

(c) The propositions undermined by *Metro Broadcasting* all derive from the basic principle that the Fifth and Fourteenth Amendments protect persons, not groups. It follows from that principle that all governmental action based on race—a group classification long recognized as in most circumstances irrelevant and therefore prohibited—should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection has not been infringed. Thus, strict scrutiny is the proper standard for analysis of all racial classifications, whether imposed by a federal, state, or local actor. To the extent that *Metro Broadcasting* is inconsistent with that holding, it is overruled. Pp. 25–29.

(d) The decision here makes explicit that federal racial classifications, like those of a State, must serve a compelling governmental interest, and must be narrowly tailored to further that interest. Thus, to the extent that *Fullilove* held federal racial classifications to be subject to a less rigorous standard, it is no longer controlling. Requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications a detailed examination, as to both ends and means. It is not true that strict scrutiny is strict in theory, but fatal in fact. Government is not disqualified from acting in response to the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country. When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the ``narrow tailoring'' test set out in this Court's previous cases. Pp. 34–36.

3. Because this decision alters the playing field in some important respects, the case is remanded to the lower courts for further consideration. The Court of Appeals did not decide whether the interests served by the use of subcontractor compensation clauses are properly described as ``compelling.'' Nor did it address the question of narrow tailoring in terms of this Court's strict scrutiny cases. Unresolved questions also remain concerning the details of the complex regulatory regimes implicated by the use of such clauses. Pp. 36–37.

JUSTICE SCALIA agreed that strict scrutiny must be applied to racial classifications imposed by all governmental actors, but concluded that government can never have a ``compelling interest'' in discriminating on the basis of race in order to ``make up'' for past racial discrimination in the opposite

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direction. Under the Constitution there can be no such thing as either a creditor or a debtor race. We are just one race in the eyes of government. Pp. 1–2.

O'CONNOR, J., announced the judgment of the Court and delivered an opinion with respect to Parts I, II, III–A, III–B, III–D, and IV, which was for the Court except insofar as it might be inconsistent with the views expressed in the concurrence of SCALIA, J., and an opinion with respect to Part III–C. Parts I, II, III–A, III–B, III–D, and IV of that opinion were joined by REHNQUIST, C. J., and KENNEDY and THOMAS, JJ., and by SCALIA, J., to the extent heretofore indicated; and Part III–C was joined by KENNEDY, J. SCALIA, J., and THOMAS, J., filed opinions concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined. SOUTER, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined.