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

TUAN ANH NGUYEN ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE

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

No. 99–2071. Argued January 9, 2001– Decided June 11, 2001

Petitioner Tuan Anh Nguyen was born out of wedlock in Vietnam to a Vietnamese citizen and copetitioner Joseph Boulais, a United States citizen. Nguyen became a lawful permanent United States resident at age six and was raised by Boulais. At age 22, Nguyen pleaded guilty in a Texas state court to two counts of sexual assault on a child. Subsequently, respondent Immigration and Naturalization Service initiated deportation proceedings against him based on his serious criminal offenses. The Immigration Judge ordered him deportable. Boulais obtained an order of parentage from a state court while Nguyen's appeal was pending before the Board of Immigration Appeals, but the Board dismissed the appeal, rejecting Nguyen's citizenship claim because he had not complied with 8 U. S. C. §1409(a)'s requirements for one born out of wedlock and abroad to a citizen father and a noncitizen mother. On appeal, the Fifth Circuit rejected petitioners' claim that §1409 violates equal protection by providing different citizenship rules for children born abroad and out of wedlock depending on whether the citizen parent is the mother or the father.

Held: Section 1409 is consistent with the equal protection guarantee embedded in the Fifth Amendment's Due Process Clause. Pp. 3–18.

(a) A child born abroad and out of wedlock acquires at birth the nationality status of a citizen mother who meets a specified residency requirement. §1409(c). However, when the father is the citizen parent, *inter alia,* one of three affirmative steps must be taken before the child turns 18: legitimization, a declaration of paternity under oath by the father, or a court order of paternity. §1409(a)(4). The failure to satisfy this section renders Nguyen ineligible for citizenship. Pp.

3–5.

(b) A gender-based classification withstands equal protection scrutiny if it serves important governmental objectives and the discriminatory means employed are substantially related to the achievement of those objectives. *United States* v. *Virginia,* 518 U. S. 515, 533. Congress' decision to impose different requirements on unmarried fathers and unmarried mothers is based on the significant difference between their respective relationships to the potential citizen at the time of birth and is justified by two important governmental interests. Pp. 5–16.

(1) The first such interest is the importance of assuring that a biological parent-child relationship exists. The mother's relation is verifiable from the birth itself and is documented by the birth certificate or hospital records and the witnesses to the birth. However, a father need not be present at the birth, and his presence is not incontrovertible proof of fatherhood. See *Lehr* v. *Robertson,* 463 U. S. 248, 260, n. 16. Because fathers and mothers are not similarly situated with regard to proof of biological parenthood, the imposition of different rules for each is neither surprising nor troublesome from a constitutional perspective. Section 1409(a)(4)'s provision of three options is designed to ensure acceptable documentation of paternity. Petitioners argue that §1409(a)(1)'s requirement that a father provide clear and convincing evidence of parentage is sufficient to achieve the end of establishing paternity, given the sophistication of modern DNA tests. However, that section does not mandate DNA testing. Moreover, the Constitution does not require that Congress elect one particular mechanism from among many possible methods of establishing paternity, and §1409(a)(4) represents a reasonable legislative conclusion that the satisfaction of one of several alternatives will suffice to establish the father-child blood link required as a predicate to the child's acquisition of citizenship. Finally, even a facially neutral rule would sometimes require fathers to take additional affirmative steps which would not be required of mothers, whose names will be on the birth certificate as a result of their presence at the birth, and who will have the benefit of witnesses to the birth to call upon. Pp. 7–9.

(2) The second governmental interest furthered by §1409(a)(4) is the determination to ensure that the child and citizen parent have some demonstrated opportunity to develop a relationship that consists of real, everyday ties providing a connection between child and citizen parent and, in turn, the United States. Such an opportunity inheres in the event of birth in the case of a citizen mother and her child, but does not result as a matter of biological inevitability in the case of an unwed father. He may not know that a child was conceived, and a mother may be unsure of the father's identity. One concern in this context has always been with young men on duty with the Armed Forces in foreign

countries. Today, the ease of travel and willingness of Americans to visit foreign countries have resulted in numbers of trips abroad that must be of real concern when contemplating the prospect of mandating, contrary to Congress' wishes, citizenship by male parentage subject to no condition other than the father's residence in this country. Equal protection principles do not require Congress to ignore this reality. Section 1409 takes the unremarkable step of ensuring that the opportunity inherent in the event of birth as to the mother-child relationship exists between father and child before citizenship is conferred upon the latter. That interest's importance is too profound to be satisfied by a DNA test because scientific proof of biological paternity does not, by itself, ensure father-child contact during the child's minority. Congress is well within its authority in refusing, absent proof of an opportunity for a relationship to develop, to commit this country to embracing a child as a citizen. Contrary to petitioners' argument, §1409 does not embody a gender-based stereotype. There is nothing irrational or improper in recognizing that at the moment of birth— a critical event in the statutory scheme and tradition of citizenship law— the mother's knowledge of the child and the fact of parenthood have been established in a way not guaranteed to the unwed father. Pp. 9–13.

(3) The means Congress chose substantially relate to its interest in facilitating a parent-child relationship. First, various statutory provisions, in addition to §1409(a), require that some act linking a child to the United States occur before the child turns 18. Second, petitioners' argument that §1409(a)(4) reflects a stereotype that women are more likely than men to actually establish the required relationship misconceives both the governmental interest's nature and the equal protection inquiry. As to the former, Congress could have chosen to advance the interest of ensuring a meaningful relationship in every case, but it enacted instead an easily administered scheme to promote the different but still substantial interest of ensuring an opportunity for that relationship to develop. Petitioners' argument confuses the equal protection inquiry's means and ends; §1409(a)(4) should not be invalidated because Congress elected to advance an interest that is less demanding to satisfy than some alternative. Even if one conceives of Congress' real interest as the establishment of a meaningful relationship, it is almost axiomatic that a policy seeking to foster the opportunity for meaningful parent-child bonds to develop has a close and substantial bearing on the governmental interest in that bond's formation. Here, Congress' means are in substantial furtherance of an important governmental objective, and the fit between the means and that end is exceedingly persuasive. See *Virginia, supra,* at 533. Pp. 13–16.

(c) Section 1409(a)(4) imposes a minimal obligation. Only the least onerous of its three options must be satisfied; and it can be satisfied on

the day of birth, or the next day, or for the next 18 years. Section 1409(a), moreover, is not the sole means of attaining citizenship for the child, who can seek citizenship in his or her own right, rather than via reliance on parental ties. P. 16.

(d) Because the statute satisfies the equal protection scrutiny applied to gender-based qualifications, this Court need not consider whether it can confer citizenship on terms other than those specified by Congress or assess the implications of statements in earlier cases regarding the wide deference afforded to Congress in exercising its immigration and naturalization power. Pp. 17–18.

208 F. 3d 528, affirmed.

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