SUPREME COURT OF THE UNITED STATES

No. 99–2071

TUAN ANH NGUYEN AND JOSEPH BOULAIS, PETITIONERS *v.* IMMIGRATION AND NATURALIZATION SERVICE

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

[June 11, 2001]

JUSTICE KENNEDY delivered the opinion of the Court.

This case presents a question not resolved by a majority of the Court in a case before us three Terms ago. See *Miller* v. *Albright,* 523 U. S. 420 (1998). Title 8 U. S. C. §1409 governs the acquisition of United States citizenship by persons born to one United States citizen parent and one noncitizen parent when the parents are unmarried and the child is born outside of the United States or its possessions. The statute imposes different requirements for the child's acquisition of citizenship depending upon whether the citizen parent is the mother or the father. The question before us is whether the statutory distinction is consistent with the equal protection guarantee embedded in the Due Process Clause of the Fifth Amendment.

I

Petitioner Tuan Ahn Nguyen was born in Saigon, Vietnam, on September 11, 1969, to copetitioner Joseph Boulais and a Vietnamese citizen. Boulais and Nguyen's mother were not married. Boulais always has been a citizen of the United States, and he was in Vietnam under

the employ of a corporation. After he and Nguyen's mother ended their relationship, Nguyen lived for a time with the family of Boulais' new Vietnamese girlfriend. In June 1975, Nguyen, then almost six years of age, came to the United States. He became a lawful permanent resident and was raised in Texas by Boulais.

In 1992, when Nguyen was 22, he pleaded guilty in a Texas state court to two counts of sexual assault on a child. He was sentenced to eight years in prison on each count. Three years later, the United States Immigration and Naturalization Service (INS) initiated deportation proceedings against Nguyen as an alien who had been convicted of two crimes involving moral turpitude, as well as an aggravated felony. See 8 U. S. C. §§1227(a)(2)(A)(ii) and (iii) (1994 ed., Supp. IV). Though later he would change his position and argue he was a United States citizen, Nguyen testified at his deportation hearing that he was a citizen of Vietnam. The Immigration Judge found him deportable.

Nguyen appealed to the Board of Immigration of Appeals and, in 1998, while the matter was pending, his father obtained an order of parentage from a state court, based on DNA testing. By this time, Nguyen was 28 years old. The Board dismissed Nguyen's appeal, rejecting his claim to United States citizenship because he had failed to establish compliance with 8 U. S. C. §1409(a), which sets forth the requirements for one who was born out of wedlock and abroad to a citizen father and a noncitizen mother.

Nguyen and Boulais appealed to the Court of Appeals for the Fifth Circuit, arguing that §1409 violates equal protection by providing different rules for attainment of citizenship by children born abroad and out of wedlock depending upon whether the one parent with American citizenship is the mother or the father. The court rejected

the constitutional challenge to §1409(a). 208 F. 3d 528, 535 (2000).

The constitutionality of the distinction between unwed fathers and mothers was argued in *Miller,* but a majority of the Court did not resolve the issue. Four Justices, in two different opinions, rejected the challenge to the gender-based distinction, two finding the statute consistent with the Fifth Amendment, see 523 U. S., at 423 (opinion of STEVENS, J., joined by REHNQUIST, C. J.), and two concluding that the court could not confer citizenship as a remedy even if the statute violated equal protection, see *id.*, at 452 (SCALIA, J., joined by THOMAS, J., concurring in judgment). Three Justices reached a contrary result, and would have found the statue violative of equal protection. *Id.,* at 460 (GINSBURG J., joined by SOUTER and BREYER, JJ., dissenting); *id.* at 471 (BREYER, J., joined by SOUTER and GINSBURG, JJ., dissenting). Finally, two Justices did not reach the issue as to the father, having determined that the child, the only petitioner in *Miller*, lacked standing to raise the equal protection rights of his father. *Id.*, at 445 (O'CONNOR, J., joined by KENNEDY, J., concurring in judgment).

Since *Miller*, the Courts of Appeal have divided over the constitutionality of §1409. Compare 208 F. 3d 528 (CA5 2000) (case below), with *Lake* v. *Reno*, 226 F. 3d 141 (CA2 2000), and *United States* v. *Ahumada-Aguilar*, 189 F. 3d 1121 (CA9 1999). We granted certiorari to resolve the conflict. 530 U. S. 1305 (2000). The father is before the Court in this case; and, as all agree he has standing to raise the constitutional claim, we now resolve it. We hold that §1409(a) is consistent with the constitutional guarantee of equal protection.

II

The general requirement for acquisition of citizenship by a child born outside the United States and its outlying

possessions and to parents who are married, one of whom is a citizen and the other of whom is an alien, is set forth in 8 U. S. C. §1401(g). The statute provides that the child is also a citizen if, before the birth, the citizen parent had been physically present in the United States for a total of five years, at least two of which were after the parent turned 14 years of age.

As to an individual born under the same circumstances, save that the parents are unwed, §1409(a) sets forth the following requirements where the father is the citizen parent and the mother is an alien:

> "(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."

In addition, §1409(a) incorporates by reference, as to the citizen parent, the residency requirement of §1401(g).

When the citizen parent of the child born abroad and out of wedlock is the child's mother, the requirements for the transmittal of citizenship are described in §1409(c):

> "(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."

Section 1409(a) thus imposes a set of requirements on the children of citizen fathers born abroad and out of wedlock to a noncitizen mother that are not imposed under like circumstances when the citizen parent is the mother. All concede the requirements of §§1409(a)(3) and (a)(4), relating to a citizen father's acknowledgment of a child while he is under 18, were not satisfied in this case. We need not discuss §1409(a)(3), however. It was added in 1986, after Nguyen's birth; and Nguyen falls within a transitional rule which allows him to elect application of either the current version of the statute, or the pre-1986 version, which contained no parallel to §1409(a)(3). See Immigration and Nationality Act Amendments of 1986, 100 Stat. 3655; note following 8 U. S. C. §1409; *Miller, supra,* at 426, n. 3, 432 (opinion of STEVENS, J.). And in any event, our ruling respecting §1409(a)(4) is dispositive of the case. As an individual seeking citizenship under §1409(a) must meet all of its preconditions, the failure to satisfy §1409(a)(4) renders Nguyen ineligible for citizeship.

III

For a gender-based classification to withstand equal protection scrutiny, it must be established "'at least that the [challenged] classification serves "important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives."'" *United States* v. *Virginia,* 518 U. S. 515, 533 (1996) (quoting *Mississippi Univ. for Women* v. *Hogan,* 458 U. S. 718, 724 (1982) in turn quoting *Wengler* v. *Druggists Mut. Ins. Co.,* 446 U. S. 142, 150 (1980)). For

reasons to follow, we conclude §1409 satisfies this standard. Given that determination, we need not decide whether some lesser degree of scrutiny pertains because the statute implicates Congress' immigration and naturalization power. See *Miller,* 523 U. S., at 434, n. 11 (explaining that the statute must be subjected to a standard more deferential to the congressional exercise of the immigration and naturalization power, but that "[e]ven if . . . the heightened scrutiny that normally governs gender discrimination claims applied in this context," the statute would be sustained (citations omitted)).

Before considering the important governmental interests advanced by the statute, two observations concerning the operation of the provision are in order. First, a citizen mother expecting a child and living abroad has the right to re-enter the United States so the child can be born here and be a 14th Amendment citizen. From one perspective, then, the statute simply ensures equivalence between two expectant mothers who are citizens abroad if one chooses to reenter for the child's birth and the other chooses not to return, or does not have the means to do so. This equivalence is not a factor if the single citizen parent living abroad is the father. For, unlike the unmarried mother, the unmarried father as a general rule cannot control where the child will be born.

Second, although §1409(a)(4) requires certain conduct to occur before the child of a citizen father, born out of wedlock and abroad, reaches 18 years of age, it imposes no limitations on when an individual who qualifies under the statute can claim citizenship. The statutory treatment of citizenship is identical in this respect whether the citizen parent is the mother or the father. A person born to a citizen parent of either gender may assert citizenship, assuming compliance with statutory preconditions, regardless of his or her age. And while the conditions necessary for a citizen mother to transmit citizenship under

§1409(c) exist at birth, citizen fathers and/or their children have 18 years to satisfy the requirements of §1409(a)(4). See *Miller, supra,* at 435 (opinion of STEVENS, J.).

The statutory distinction relevant in this case, then, is that §1409(a)(4) requires one of three affirmative steps to be taken if the citizen parent is the father, but not if the citizen parent is the mother: legitimation; a declaration of paternity under oath by the father; or a court order of paternity. Congress' decision to impose requirements on unmarried fathers that differ from those on unmarried mothers is based on the significant difference between their respective relationships to the potential citizen at the time of birth. Specifically, the imposition of the requirement for a paternal relationship, but not a maternal one, is justified by two important governmental objectives. We discuss each in turn.

A

The first governmental interest to be served is the importance of assuring that a biological parent-child relationship exists. In the case of the mother, the relation is verifiable from the birth itself. The mother's status is documented in most instances by the birth certificate or hospital records and the witnesses who attest to her having given birth.

In the case of the father, the uncontestable fact is that he need not be present at the birth. If he is present, furthermore, that circumstance is not incontrovertible proof of fatherhood. See *Lehr* v. *Robertson,* 463 U. S. 248, 260, n. 16 (1983) ("'The mother carries and bears the child, and in this sense her parental relationship is clear. The validity of the father's parental claims must be gauged by other measures'" (quoting *Caban* v. *Mohammed,* 441 U. S. 380, 397 (1979) (Stewart, J., dissenting))); *Trimble* v. *Gordon,* 430 U. S. 762, 770 (1977) ("The more serious problems of proving paternity might justify a more demanding standard

for illegitimate children claiming under their fathers' estates than that required . . . under their mothers' estates . . .'"). Fathers and mothers are not similarly situated with regard to the proof of biological parenthood. The imposition of a different set of rules for making that legal determination with respect to fathers and mothers is neither surprising nor troublesome from a constitutional perspective. Cf. *Cleburne* v. *Cleburne Living Center, Inc.,* 473 U. S. 432, 439 (1985) (explaining that the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike"); *F. S. Royster Guano Co.* v. *Virginia,* 253 U. S. 412, 415 (1920). Section 1409(a)(4)'s provision of three options for a father seeking to establish paternity– legitimation, paternity oath, and court order of paternity– is designed to ensure an acceptable documentation of paternity.

Petitioners argue that the requirement of §1409(a)(1), 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. Brief for Petitioners 21–24. Section 1409(a)(1) does not actually mandate a DNA test, however. The Constitution, moreover, does not require that Congress elect one particular mechanism from among many possible methods of establishing paternity, even if that mechanism arguably might be the most scientifically advanced method. With respect to DNA testing, the expense, reliability, and availability of such testing in various parts of the world may have been of particular concern to Congress. See *Miller, supra,* at 437 (opinion of STEVENS, J.). The requirement of §1409(a)(4) represents a reasonable conclusion by the legislature that the satisfaction of one of several alternatives will suffice to establish the blood link between father and child required as a predicate to the child's acquisition of citizenship. Cf. *Lehr, supra,* at 267–268 (upholding New York statutory requirement that gave mothers of

children born out of wedlock notice of an adoption hearing, but only extended that right to fathers who mailed a postcard to a "putative fathers registry"). Given the proof of motherhood that is inherent in birth itself, it is unremarkable that Congress did not require the same affirmative steps of mothers.

Finally, to require Congress to speak without reference to the gender of the parent with regard to its objective of ensuring a blood tie between parent and child would be to insist on a hollow neutrality. As JUSTICE STEVENS pointed out in *Miller,* Congress could have required both mothers and fathers to prove parenthood within 30 days or, for that matter, 18 years, of the child's birth. 523 U. S., at 436. Given that the mother is always present at birth, but that the father need not be, the facially neutral rule would sometimes require fathers to take additional affirmative steps which would not be required of mothers, whose names will appear 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. The issue is not the use of gender specific terms instead of neutral ones. Just as neutral terms can mask discrimination that is unlawful, gender specific terms can mark a permissible distinction. The equal protection question is whether the distinction is lawful. Here, the use of gender specific terms takes into account a biological difference between the parents. The differential treatment is inherent in a sensible statutory scheme, given the unique relationship of the mother to the event of birth.

B

1

The second important governmental interest furthered in a substantial manner by §1409(a)(4) is the determination to ensure that the child and the citizen parent have some demonstrated opportunity or potential to develop not just a relationship that is recognized, as a formal matter,

by the law, but one that consists of the real, everyday ties that provide a connection between child and citizen parent and, in turn, the United States. See *id.,* at 438–440 (opinion of STEVENS, J.). In the case of a citizen mother and a child born overseas, the opportunity for a meaningful relationship between citizen parent and child inheres in the very event of birth, an event so often critical to our constitutional and statutory understandings of citizenship. The mother knows that the child is in being and is hers and has an initial point of contact with him. There is at least an opportunity for mother and child to develop a real, meaningful relationship.

The same opportunity does not result from the event of birth, as a matter of biological inevitability, in the case of the unwed father. Given the 9-month interval between conception and birth, it is not always certain that a father will know that a child was conceived, nor is it always clear that even the mother will be sure of the father's identity. This fact takes on particular significance in the case of a child born overseas and out of wedlock. One concern in this context has always been with young people, men for the most part, who are on duty with the Armed Forces in foreign countries. See Department of Defense, Selected Manpower Statistics 48, 74 (1999) (reporting that in 1969, the year in which Nguyen was born, there were 3,458,072 active duty military personnel, 39,506 of whom were female); Department of Defense, Selected Manpower Statistics 29 (1970) (noting that 1,041,094 military personnel were stationed in foreign countries in 1969); Department of Defense, Selected Manpower Statistics 49, 76 (1999) (reporting that in 1999 there were 1,385,703 active duty military personnel, 200,287 of whom were female); *id.,* at 33 (noting that 252,763 military personnel were stationed in foreign countries in 1999).

When we turn to the conditions which prevail today, we find that the passage of time has produced additional and

even more substantial grounds to justify the statutory distinction. The ease of travel and the willingness of Americans to visit foreign countries have resulted in numbers of trips abroad that must be of real concern when we contemplate the prospect of accepting petitioners' argument, which would mandate, contrary to Congress' wishes, citizenship by male parentage subject to no condition save the father's previous length of residence in this country. In 1999 alone, Americans made almost 25 million trips abroad, excluding trips to Canada and Mexico. See U. S. Dept. of Commerce, 1999 Profile of U. S. Travelers to Overseas Destinations 1 (Oct. 2000). Visits to Canada and Mexico add to this figure almost 34 million additional visits. See U. S. Dept. of Commerce, U. S. Resident Travel to Overseas Countries, Historical Visitation 1989–1999, p. 1 (Oct. 2000). And the average American overseas traveler spent 15.1 nights out of the United States in 1999. 1999 Profile of U. S. Travelers to Overseas Destinations, *supra,* at 4.

Principles of equal protection do not require Congress to ignore this reality. To the contrary, these facts demonstrate the critical importance of the Government's interest in ensuring some opportunity for a tie between citizen father and foreign born child which is a reasonable substitute for the opportunity manifest between mother and child at the time of birth. Indeed, especially in light of the number of Americans who take short sojourns abroad, the prospect that a father might not even know of the conception is a realistic possibility. See *Miller, supra,* at 439 (opinion of STEVENS, J.). Even if a father knows of the fact of conception, moreover, it does not follow that he will be present at the birth of the child. Thus, unlike the case of the mother, there is no assurance that the father and his biological child will ever meet. Without an initial point of contact with the child by a father who knows the child is his own, there is no opportunity for father and child to begin a

relationship. Section 1409 takes the unremarkable step of ensuring that such an 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.

The importance of the governmental interest at issue here is too profound to be satisfied merely by conducting a DNA test. The fact of paternity can be established even without the father's knowledge, not to say his presence. Paternity can be established by taking DNA samples even from a few strands of hair, years after the birth. See Federal Judicial Center, Reference Manual on Scientific Evidence 497 (2d ed. 2000). Yet scientific proof of biological paternity does nothing, by itself, to ensure contact between father and child during the child's minority.

Congress is well within its authority in refusing, absent proof of at least the opportunity for the development of a relationship between citizen parent and child, to commit this country to embracing a child as a citizen entitled as of birth to the full protection of the United States, to the absolute right to enter its borders, and to full participation in the political process. If citizenship is to be conferred by the unwitting means petitioners urge, so that its acquisition abroad bears little relation to the realities of the child's own ties and allegiances, it is for Congress, not this Court, to make that determination. Congress has not taken that path but has instead chosen, by means of §1409, to ensure in the case of father and child the opportunity for a relationship to develop, an opportunity which the event of birth itself provides for the mother and child. It should be unobjectionable for Congress to require some evidence of a minimal opportunity for the development of a relationship with the child in terms the male can fulfill.

While the INS's brief contains statements indicating the governmental interest we here describe, see Brief for Respondent 38, 41, it suggests other interests as well.

Statements from the government's brief are not conclusive as to the objects of the statute, however, as we are concerned with the objectives of Congress, not those of the INS. We ascertain the purpose of a statute by drawing logical conclusions from its text, structure, and operation.

Petitioners and their *amici* argue in addition that, rather than fulfilling an important governmental interest, §1409 merely embodies a gender-based stereotype. Although the above discussion should illustrate that, contrary to petitioners' assertions, §1409 addresses an undeniable difference in the circumstance of the parents at the time a child is born, it should be noted, furthermore, that the difference does not result from some stereotype, defined as a frame of mind resulting from irrational or uncritical analysis. There is nothing irrational or improper in the recognition that at the moment of birth— a critical event in the statutory scheme and in the whole tradition of citizenship law— the mother's knowledge of the child and the fact of parenthood have been established in a way not guaranteed in the case of the unwed father. This is not a stereotype. See *Virginia,* 518 U. S., at 533 ("The heightened review standard our precedent establishes does not make sex a proscribed classification. . . . Physical differences between men and women . . . are enduring").

2

Having concluded that facilitation of a relationship between parent and child is an important governmental interest, the question remains whether the means Congress chose to further its objective— the imposition of certain additional requirements upon an unwed father— substantially relate to that end. Under this test, the means Congress adopted must be sustained.

First, it should be unsurprising that Congress decided to require that an opportunity for a parent-child relationship occur during the formative years of the child's minority.

In furtherance of the desire to ensure some tie between this country and one who seeks citizenship, various other statutory provisions concerning citizenship and naturalization require some act linking the child to the United States to occur before the child reaches 18 years of age. See, *e.g.*, 8 U. S. C. §1431 (child born abroad to one citizen parent and one noncitizen parent shall become a citizen if, *inter alia*, the noncitizen parent is naturalized before the child reaches 18 years of age and the child begins to reside in the United States before he or she turns 18); §1432 (imposing same conditions in the case of a child born abroad to two alien parents who are naturalized).

Second, petitioners argue that §1409(a)(4) is not effective. In particular, petitioners assert that, although a mother will know of her child's birth, "knowledge that one is a parent, no matter how it is acquired, does not guarantee a relationship with one's child." Brief for Petitioners 16. They thus maintain that the imposition of the additional requirements of §1409(a)(4) only on the children of citizen fathers must reflect a stereotype that women are more likely than men to actually establish a relationship with their children. *Id.*, at 17.

This line of argument misconceives the nature of both the governmental interest at issue and the manner in which we examine statutes alleged to violate equal protection. As to the former, Congress would of course be entitled to advance the interest of ensuring an actual, meaningful relationship in every case before citizenship is conferred. Or Congress could excuse compliance with the formal requirements when an actual father-child relationship is proved. It did neither here, perhaps because of the subjectivity, intrusiveness, and difficulties of proof that might attend an inquiry into any particular bond or tie. Instead, Congress enacted an easily administered scheme to promote the different but still substantial interest

of ensuring at least an opportunity for a parent-child relationship to develop. Petitioners' argument confuses the means and ends of the equal protection inquiry; §1409(a)(4) should not be invalidated because Congress elected to advance an interest that is less demanding to satisfy than some other alternative.

Even if one conceives of the interest Congress pursues as the establishment of a real, practical relationship of considerable substance between parent and child in every case, as opposed simply to ensuring the potential for the relationship to begin, petitioners' misconception of the nature of the equal protection inquiry is fatal to their argument. A statute meets the equal protection standard we here apply so long as it is "'"substantially related to the achievement of"'" the governmental objective in question. *Virginia, supra,* at 533 (quoting *Hogan,* 458 U. S., at 724 (in turn quoting *Wengler,* 446 U. S., at 150)). It is almost axiomatic that a policy which seeks to foster the opportunity for meaningful parent-child bonds to develop has a close and substantial bearing on the governmental interest in the actual formation of that bond. None of our gender-based classification equal protection cases have required that the statute under consideration must be capable of achieving its ultimate objective in every instance.

In this difficult context of conferring citizenship on vast numbers of persons, the means adopted by Congress are in substantial furtherance of important governmental objectives. The fit between the means and the important end is "exceedingly persuasive." See *Virginia,* 518 U. S., at 533. We have explained that an "exceedingly persuasive justification" is established "'by showing at least that the classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'" *Hogan, supra,* at 724 (citations omitted). Section 1409 meets this

standard.

C

In analyzing §1409(a)(4), we are mindful that the obligation it imposes with respect to the acquisition of citizenship by the child of a citizen father is minimal. This circumstance shows that Congress has not erected inordinate and unnecessary hurdles to the conferral of citizenship on the children of citizen fathers in furthering its important objectives. Only the least onerous of the three options provided for in §1409(a)(4) must be satisfied. If the child has been legitimated under the law of the relevant jurisdiction, that will be the end of the matter. See §1409(a)(4)(A). In the alternative, a father who has not legitimated his child by formal means need only make a written acknowledgement of paternity under oath in order to transmit citizenship to his child, hardly a substantial burden. See §1409(a)(4)(B). Or, the father could choose to obtain a court order of paternity. See §1409(a)(4)(C). The statute can be satisfied on the day of birth, or the next day, or for the next 18 years. In this case, the unfortunate, even tragic, circumstance is that Boulais did not pursue, or perhaps did not know of, these simple steps and alternatives. Any omission, however, does not nullify the statutory scheme.

Section 1409(a), moreover, is not the sole means by which the child of a citizen father can attain citizenship. An individual who fails to comply with §1409(a), but who has substantial ties to the United States, can seek citizenship in his or her own right, rather than via reliance on ties to a citizen parent. See, *e.g.,* 8 U. S. C. §§1423, 1427. This option now may be foreclosed to Nguyen, but any bar is due to the serious nature of his criminal offenses not to an equal protection denial or to any supposed rigidity or harshness in the citizenship laws.

IV

The statutory scheme's satisfaction of the equal protection scrutiny we apply to gender-based classifications constitutes a sufficient basis for upholding it. It should be noted, however, that, even were we to conclude that the statute did not meet this standard of review, petitioners would face additional obstacles before they could prevail.

The INS urges that, irrespective of whether §1409(a) is constitutional, the Court cannot grant the relief petitioners request: the conferral of citizenship on terms other than those specified by Congress. There may well be "potential problems with fashioning a remedy" were we to find the statute unconstitutional. See *Miller,* 523 U. S., at 451 (O'CONNOR, J., concurring in judgment); cf. *id.*, at 445, n. 26 (opinion of STEVENS, J.) (declining to address the question whether the Court could confer the sought-after remedy). Two Members of today's majority said in *Miller* that this argument was dispositive. See *id.*, at 452–459 (SCALIA, J., joined by THOMAS, J., concurring in judgment). Petitioners ask us to invalidate and sever §§1409(a)(3) and (a)(4), but it must be remembered that severance is based on the assumption that Congress would have intended the result. See *id.,* at 457 (SCALIA, J., concurring in judgment) (citing *New York* v. *United States,* 505 U. S. 144 (1992)). In this regard, it is significant that, although the Immigration and Nationality Act contains a general severability provision, Congress expressly provided with respect to the very subchapter of the United States Code at issue and in a provision entitled "Sole procedure," that "[a] person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this subchapter and not otherwise." 8 U. S. C. §1421(d); see also *Miller, supra,* at 457–458 (SCALIA, J., concurring in judgment). Section 1421(d) refers to naturalization, which in turn is defined as "conferring of nationality of a state upon a person after birth." 8 U. S. C. §1101(a)(23).

Citizenship under section §1409(a) is retroactive to the date of birth, but it is a naturalization under section §1421(d) nevertheless. The conditions specified by section §1409(a) for conferral of citizenship, as a matter of definition, must take place after the child is born, in some instances taking as long as 18 years. Section 1409(a), then, is subject to the limitation imposed by §1421(d).

In light of our holding that there is no equal protection violation, we need not rely on this argument. For the same reason, we need not assess the implications of statements in our earlier cases regarding the wide deference afforded to Congress in the exercise of its immigration and naturalization power. See, *e.g., Fiallo* v. *Bell,* 430 U. S. 787, 792–793, and n. 4 (1977) (quoting *Galvan* v. *Press,* 347 U. S. 522, 531 (1954)); 430 U. S., at 792 (quoting *Oceanic Steam Nav. Co.* v. *Stranahan,* 214 U. S. 320, 339 (1909)). These arguments would have to be considered, however, were it to be determined that §1409 did not withstand conventional equal protection scrutiny.

V

To fail to acknowledge even our most basic biological differences– such as the fact that a mother must be present at birth but the father need not be– risks making the guarantee of equal protection superficial, and so disserving it. Mechanistic classification of all our differences as stereotypes would operate to obscure those misconceptions and prejudices that are real. The distinction embodied in the statutory scheme here at issue is not marked by misconception and prejudice, nor does it show disrespect for either class. The difference between men and women in relation to the birth process is a real one, and the principle of equal protection does not forbid Congress to address the problem at hand in a manner specific to each gender.

The judgment of the Court of Appeals is

Affirmed.