

Supreme Court Rejects Gender-Based Differentiation In Immigration Law

19 Jun 2017

The Immigration and Naturalization Act provided that a child born abroad to a father who was a U.S. citizen and a mother who was not was eligible for U.S. citizenship if the father had spent ten years in the U.S., with at least five of those years after turning 14. If the mother was the U.S. citizen, however, the mother need only reside in the U.S. for one year after turning 14 to garner the same result. The Court, in an 8-0 opinion by Justice Ginsburg, held that this gender-based difference violated the Fifth Amendment's guarantee of equal protection, and was based on rationales that did not meet heightened scrutiny. The Act's antiquated and stereotypical assumptions about unwed citizen fathers being presumptively out of the picture no longer carried any weight, and rejected the Government's alternative arguments in support of treating fathers differently than mothers in this regard. However, Luis Ramon Morales-Santana, whose U.S. citizen father left the country just days short of turning 19, thus failing to meet the five-year period, did not get the result he wanted: the Court held that the remedial course Congress would have taken if it knew of the constitutional infirmity would be to enforce the five-year period on citizen fathers and mother alike. Justice Thomas, joined by Justice Alito, concurred in the judgment, arguing that since Morales-Santana could not get the relief he wanted, there was no need to rule on the constitutional issue. [A link to the opinion in *Sessions v. Morales-Santana* is here.](#)

Supreme Court Rejects Gender-Based Differentiation In Immigration Law

19 Jun 2017

The Immigration and Naturalization Act provided that a child born abroad to a father who was a U.S. citizen and a mother who was not was eligible for U.S. citizenship if the father had spent ten years in the U.S., with at least five of those years after turning 14. If the mother was the U.S. citizen, however, the mother need only reside in the U.S. for one year after turning 14 to garner the same result. The Court, in an 8-0 opinion by Justice Ginsburg, held that this gender-based difference violated the Fifth Amendment's guarantee of equal protection, and was based on rationales that did not meet heightened scrutiny. The Act's antiquated and stereotypical assumptions about unwed citizen fathers being presumptively out of the picture no longer carried any weight, and rejected the Government's alternative arguments in support of treating fathers differently than mothers in this regard. However, Luis Ramon Morales-Santana, whose U.S. citizen father left the country just days short of turning 19, thus failing to meet the five-year period, did not get the result he wanted: the Court held that the remedial course Congress would have taken if it knew of the constitutional infirmity would be to enforce the five-year period on citizen fathers and mother alike. Justice Thomas, joined by Justice Alito, concurred in the judgment, arguing that since Morales-Santana could not get the relief he wanted, there was no need to rule on the constitutional issue. [A link to the opinion in *Sessions v. Morales-Santana* is here.](#)

(CONTINUED)

SUPREME COURT REJECTS GENDER-BASED DIFFERENTIATION IN IMMIGRATION LAW