TO THOSE WHO REFUSE THE DICHOTOMY OF CITIZEN AND ALIEN

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Calling All Denizens
Resource Book

Table of Contents

Calling all denizens,

To those who refuse the dichotomy of citizen and alien; to those who carry traditions of exile, the weight of survival, the audacity to still be tender; to those who wish to lay claim to their own boundaries of belonging; to those who embrace wandering from within and without diaspora; to those who embrace groundlessness, multiplicity, fluidity, and change; to those who *love what is not meant to be loved;* to those for whom *the entire world is a foreign land;* to those

who emerge in intersections, in-between categories of place and personhood; to those whose very being is an act of dissent and discord; to those who refuse the ideal of assimilation and embrace a politics of difference; to those for whom *poetry is not a luxury;* to those who refuse *nation-thinking;* to those who seek to liberate the boundaries placed on our capacity to act up and speak out; to those for whom *the horizon leans forward;*

How does your denizenship take form?

What if all Citizens were Denizens?

What does it mean to be an American citizen? One of the biggest threats to social, political, and cultural progress in the United States today is an already narrow and narrowing concept of what it means to be a citizen. This is one of the threats our society grapples with as deep institutional misconduct and human rights violations against immigrants, asylum seekers, refugees, and others continue to thrive in both practice and law. What are the ideologies and practices that prepared the ground for policies that permanently separate children from their families; that deny asylum and refuge from those facing deadly violence; that imprison people on account of their place of birth; that ban thousands from entering the United States based on the religion they practice or represent? By compiling a collection of court rulings and laws that surround the history of immigration and naturalization policy in the United States, this resource book attempts to illustrate the relationship between white supremacy, white American identity, and the historically constructed notion of the American citizen.

In a recent collaborative project, *Sentiments: Expressions of Cultural Passage* published by Press Press,[1] I relied on the materials compiled in the pages ahead to frame a compilation of conversations, essays, and artist projects that illustrate nuanced first-person accounts of various experiences and identities that immigrants carry. In the introduction of *Sentiments*, I share this brief history.

> Starting with the first Immigration Act of 1790, the privilege of citizenship was limited to "free white aliens."[2] This language aimed to transform northern and western

European immigrants into American citizens and exclude anyone else. At the time it was first written into law, this language specifically excluded Black and Indigenous People from citizenship. This jargon was not taken out of immigration law until 1952, when race was no longer formally named as a qualifier for obtaining citizenship. However, it was not until 1965 that racist policies that limited the number of legally permitted immigrants who originated outside of northern and western Europe were actually revoked with the passing of the Immigration and Nationality Act of 1965. This law was passed largely due to the momentum of the Civil Rights Movement that made white supremacy increasingly unacceptable in the social and legal spheres.[3] Although it was written into law, the term "free white alien" had come into legal use before the Supreme Court had fully, legally defined the category of "white person." As new waves of immigrants came into the United States, various individuals across different time periods over the last 200 years who sought citizenship rights were strategically rejected on the basis of the racial prerequisite. Through this process, the legal category of "white person" was refined and shifted.[4] For example, in a famous Supreme Court case, *United States v. Bhagat Singh Thind* in 1923, Thind, an Indian immigrant, argued that he and American whites were both of Caucasian descent, and he was thus qualified to attain citizenship. In order to reject Thind's argument, the court decided to disregard its "scientific" understanding of what determines a "white person"—i.e. previously, the word "Caucasian" had been used to determine white status based on an individual's ancestry[5]—and used a new definition of whiteness "to be interpreted in accordance with the understanding of the common man."[6] This shift not only explicitly shows that the production of laws in the United States is based on a social ideological notion of race, but also exemplifies the ways the legal system has fluctuated in order to maintain the ideology of whiteness. Instead of building up a deep cultural meaning around the idea of citizenship—as in trying to clarify what it means to be an accountable member of the public sphere, a neighbor, a resident, or a community member—the value of American citizenship was largely created through lines of race-based exclusion.[7]

This history is invoked constantly in today's popular rhetoric around immigration. In a country that is relatively new, where most white Americans are at most three or four generations removed from the experience of immigration, the notion of the "immigrant" today is often used as a substitute for the racialized Other; for those who are deemed undeserving of human rights. This ideology that perpetuates white supremacy through the notion of citizenship is predicated on stolen land, where the only rightful inhabitants are those indigenous peoples from whom it was stolen.

In response to this history of race-based exclusion to citizenship and processes of identity-erasing assimilation in the United States, *Calling All Denizens* aims to give rise to a more compassionate, ethical, and genuine vision of a liberated society. *Calling All Denizens* is a participatory research project that facilitates conversations, workshops, and programs that aim to cooperatively imagine the new political practice of denizenship as an alternative to the notion of citizenship. "Denizen," derived from Latin *deintus,* literally means "from within", but has historically been used in reference to foreign residents who are granted limited rights in the states in which they reside. Building on this historical meaning, *Calling All Denizens* partners with individuals and organizations to explore the notions of "from within" and "from without" as they pertain to the nuances of citizenship, sovereignty, migration, exile, and diaspora.

The project takes multiple fluid forms, from public displays of its Manifesto, to an archive of conversations on citizenship, distributed newspapers, and a series of participatory workshops that may be reproduced in libraries and other educational spaces. This resource book serves as a foundation for the broader project: it compiles and shares research I collected, which is largely based on *White by Law: The Legal Construction of Race* by Ian Haney Lopez. A major component of this resource book is a collection of brief summaries of the racial prerequisite naturalization court cases that took place during the years citizenship was limited to "free white aliens." These cases document the often inconsistent and contradictory attempts to ground racial categories in law. As Ian Haney Lopez explains, "Applicants from Hawaii, China, Japan, Burma, and the Philippines, as well as all mixed race applicants, failed in their arguments. Conversely, courts ruled that applicants from Mexico and Armenia were "white," but vacillated over the Whiteness of petitioners from Syria, India, and Arabia. Seen as a taxonomy of Whiteness, these cases are instructive because they reveal the

imprecisions and contradictions inherent in the establishment of racial lines between Whites and non-Whites."[8]

Calling All Denizens* and *Sentiments: Expressions of Cultural Passage* can be read congruently: while *Sentiments* adds nuance and complexity to the often over-simplified identity of the "immigrant," *Calling All Denizens* aims to complicate and re-imagine the all-too-often unexamined identity of the "American citizen." The materials gathered into this publication serve as a transparent invitation to join in this ongoing process: *What if all citizens were denizens?

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1 Press Press is a publishing initiative that aims to shift and deepen the understanding of voices identities and narratives that have been suppressed or misrepresented by the mainstream. Press Press was founded by Kimi Hanauer in 2014 and is produced in collaboration with Valentina Cabezas, Bomin Jeon, and Bilphena Yahwon.

2 Between 1790 and 1802, people applying for naturalization were required to have resided in the country for five years, have "good moral character," and be "free white persons." This language was meant to exclude Black residents and "Indians not taxed" from citizenship rights. Generally, these laws aimed to transform northern and western European immigrants into American citizens and exclude anyone else. However, the Fourteenth Amendment declared that all free persons born in the United States should be considered citizens. In 1870, Congress amended naturalization requirements and extended eligibility to "aliens being free white persons, and to aliens of African nativity and to persons of African descent." This revision led to further confusion over racial eligibility for citizenship. In 1882, Congress banned the naturalization of Chinese immigrants with The Chinese Exclusion Act, however it did not explain whether "Chinese" indicated race or nationality.

3 *How the civil rights movement opened the door to immigrants of color* by Rebekah Barber, Facing South, 2017.

4 *White by Law: The Legal Construction of Race* by Ian Haney Lopez, 1996.

5 *Ozawa v. United States*, 260 U.S. 178, 1922.

6 *United States v. Bhagat Singh Thind*, 261 U.S. 204, 1923.

7 *Race, Nationality, and Reality* by Marian L. Smith, 2002.

8 *White by Law: The Legal Construction of Race* by Ian Haney Lopez, 1996.

Court Case Summaries

The following pages feature the original language in the case summaries of three significant racial prerequisite court cases: *Takao Ozawa v. United States, Bhagat Singh Thind v. United States,* and *Cartozian v. United States.* These cases, all of which took place in the early 1920's, illustrate how the notion of a "white person" was discussed and interpreted within the legal field.

What do these defendants' arguments reveal about the construction of whiteness in the legal field? Defendants make layered arguments, often centering on several key character traits they hold for why they should be considered "white persons." These include speaking English, having an American education, being able to successfully assimilate and amalgamate [meaning, having children with "white persons"], being Christian, upholding hetero-normative family values, and being descendent of a group of people who held power over others in their place of origin. The courts typically justified their decisions based on the following set of rationales:

Common Knowledge: The "common sense" of the "common man" was often used as a way to determine if a person was "white."

Scientific Evidence: A person could also be considered "white" as it was understood in accordance with the term "Caucasian," which was used to identify persons who share a common ancestral origin.

Legal Precedent: In common law legal systems, a precedent or authority is a legal case that establishes a principle or rule.

Constitutional Intent: The immigration Act of 1790 states that any "free white alien" of "good moral character" may be naturalized. Constitutional Intent refers back to this Act, to question who was meant to be included or excluded from citizenship. What was the original intent of this phrase?


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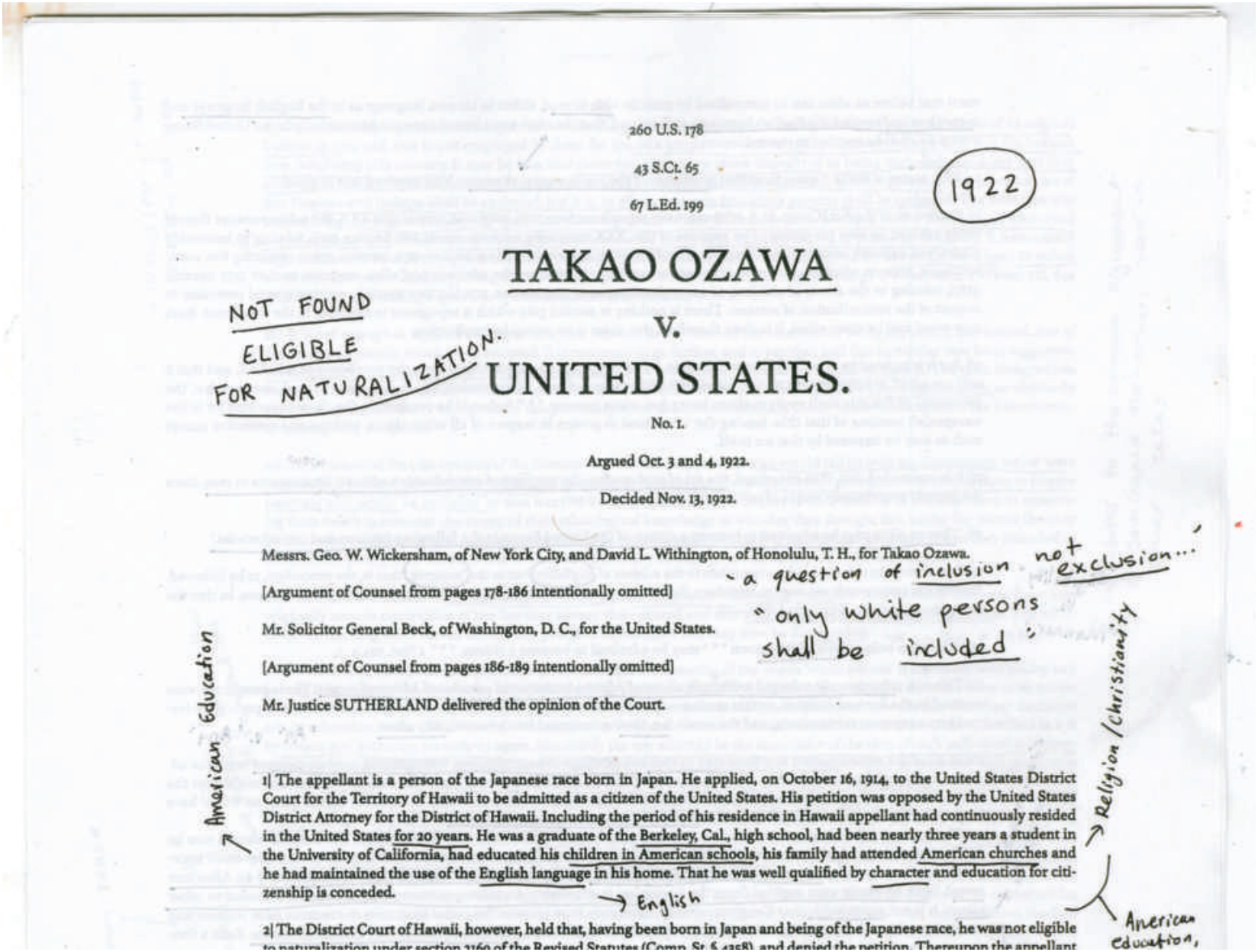


260 U.S. 178

43 S.Ct. 65

67 L.Ed. 199

1922

TAKAO OZAWA

NOT FOUND ELIGIBLE FOR NATURALIZATION.

V.

UNITED STATES.

No. 1.

Argued Oct. 3 and 4, 1922.

Decided Nov. 13, 1922.

Messrs. Geo. W. Wickersham, of New York City, and David L. Withington, of Honolulu, T. H., for Takao Ozawa.

- a question of inclusion not exclusion...

[Argument of Counsel from pages 178-186 intentionally omitted]

Mr. Solicitor General Beck, of Washington, D. C., for the United States.

- only white persons shall be included

[Argument of Counsel from pages 186-189 intentionally omitted]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

American education

Religion / Christianity

1| The appellant is a person of the Japanese race born in Japan. He applied, on October 16, 1914, to the United States District Court for the Territory of Hawaii to be admitted as a citizen of the United States. His petition was opposed by the United States District Attorney for the District of Hawaii. Including the period of his residence in Hawaii appellant had continuously resided in the United States for 20 years. He was a graduate of the Berkeley, Cal., high school, had been nearly three years a student in the University of California, had educated his children in American schools, his family had attended American churches and he had maintained the use of the English language in his home. That he was well qualified by character and education for citizenship is conceded.

→ English

American education,

2| The District Court of Hawaii, however, held that, having been born in Japan and being of the Japanese race, he was not eligible to naturalization under section 2169 of the Revised Statutes (Comp. St. § 4358), and denied the petition. Thereupon the appellant

2| The District Court of Hawaii, however, held that, having been born in Japan and being of the Japanese race, he was not eligible to naturalization under section 2169 of the Revised Statutes (Comp. St. § 4358), and denied the petition. Thereupon the appellant brought the cause to the Circuit Court of Appeals for the Ninth Circuit and that court has certified the following questions, upon which it desires to be instructed:

3| '1. Is the act of June 29, 1906 (34 Stats. at Large, pt. 1, p. 596), providing 'for a uniform rule for the naturalization of aliens' complete in itself, or is it limited by section 2169 of the Revised Statutes of the United States?

4| '2. Is one who is of the Japanese race and born in Japan eligible to citizenship under the naturalization laws?

5| '3. If said act of June 29, 1906, is limited by section 2169 and naturalization is limited to aliens being free white persons and to aliens of African nativity and to persons of African descent, is one of the Japanese race, born in Japan, under any circumstances eligible to naturalization?'

6| These questions for purposes of discussion may be briefly restated:

7| 1. Is the Naturalization Act of June 29, 1906 (Comp. St. § 4351 et seq.), limited by the provisions of section 2169 of the Revised Statutes of the United States?

8| 2. If so limited, is the appellant eligible to naturalization under that section?

9| First. Section 2169 is found in title XXX of the Revised Statutes, under the heading 'Naturalization,' and reads as follows:

10| 'The provisions of this title shall apply to aliens, being free white persons and to aliens of African nativity and to persons of African descent.'

11| The act of June 29, 1906, entitled 'An act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States,' consists of 31 sections and deals primarily with the subject of procedure. There is nothing in the circumstances leading up to or accompanying the passage of the act which suggests that any modification of section 2169, or of its application, was contemplated.

12| The report of the House Committee on Naturalization and Immigration, recommending its passage, contains this statement:

13| 'It is the opinion of your committee that the frauds and crimes which have been committed in regard to naturalization have resulted more from a lack of any uniform system of procedure in such matters than from any radical defect in the fundamental principles of existing law governing in such matters. The two changes which the committee has recommended in the principles controlling in naturalization matters and which are embodied in the bill submitted herewith are as follows: First, the require-

education, English, Christianity = 'character'

Who did the framers mean to include + exclude?
Whiteness = inherent 'freedom'
+ education, christianity, English
Caucasion = flexible zone

ment that before an alien can be naturalized he must be able to read, either in his own language or in the English language and to speak or understand the English language; and, second, that the alien must intend to reside permanently in the United States before he shall be entitled to naturalization.'

14| This seems to make it quite clear that no change of the fundamental character here involved was in mind.

15| Section 26 of the Act (Comp. St. § 4381) expressly repeals sections 2165, 2167, 2168, 2173 of title XXX, the subject-matter thereof being covered by new provisions. The sections of title XXX remaining without repeal are: Section 2166, relating to honorably discharged soldiers; section 2169 (Comp. St. § 4358), now under consideration; section 2170 (section 4360), requiring five years' residence prior to admission; section 2171 (section 4352[11]), forbidding the admission of alien enemies; section 2172 (section 4367), relating to the status of children of naturalized persons; and section 2174 (section 4352[8]), making special provision in respect of the naturalization of seamen. There is nothing in section 2169 which is repugnant to anything in the act of 1906. Both may stand and be given effect. It is clear, therefore, that there is no repeal by implication.

16| But it is insisted by appellant that section 2169, by its terms is made applicable only to the provisions of title XXX, and that it will not admit of being construed as a restriction upon the act of 1906. Since section 2169, it is in effect argued, declares that 'the provisions of this title shall apply to aliens being free white persons, * * *' it should be confined to the classes provided for in the unrepealed sections of that title, leaving the act of 1906 to govern in respect of all other aliens, without any restriction except such as may be imposed by that act itself.

17| It is contended that, thus construed, the act of 1906 confers the privilege of naturalization without limitation as to race, since the general introductory words of section 4 (Comp. St. § 4352) are:

18| 'That an alien may be admitted to become a citizen of the United States in the following manner, and not otherwise.'

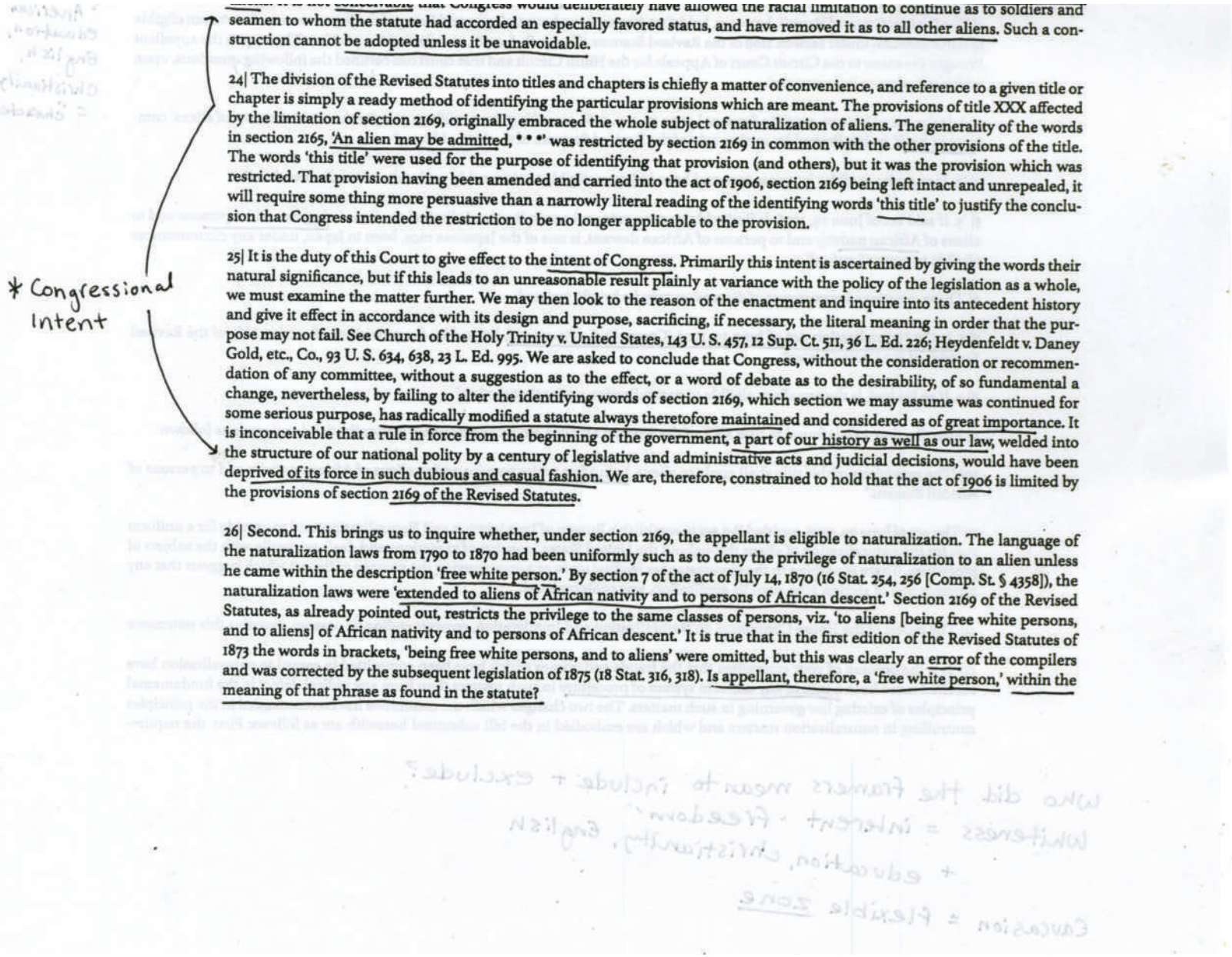
19| But, obviously, this clause does not relate to the subject of eligibility but to the 'manner,' that is, the procedure, to be followed. Exactly the same words are used to introduce the similar provisions contained in section 2165 of the Revised Statutes. In 1790 the first naturalization act provided that——

20| 'Any alien being a free white person * * * may be admitted to become a citizen. * * *' 1 Stat. 103, c. 3.

21| This was subsequently enlarged to include aliens of African nativity and persons of African descent. These provisions were restated in the Revised Statutes, so that section 2165 included only the procedural portion, while the substantive parts were carried into a separate section (2169) and the words 'An alien' substituted for the words 'Any alien.'

22| In all of the naturalization acts from 1790 to 1906 the privilege of naturalization was confined to white persons (with the addition in 1870 of those of African nativity and descent), although the exact wording of the various statutes was not always the same. If Congress in 1906 desired to alter a rule so well and so long established it may be assumed that its purpose would have been definitely disclosed and its legislation to that end put in unmistakable terms.

23| The argument that, because section 2169 is in terms made applicable only to the title in which it is found, it should now be confined to the unrepealed sections of that title, is not convincing. The persons entitled to naturalization under these unrepealed sections include only honorably discharged soldiers and seamen who have served three years on board an American vessel, both of whom were entitled from the beginning to admission on more generous terms than were accorded to other aliens. It is not conceivable that Congress would deliberately have allowed the racial limitation to continue



seamen to whom the statute had accorded an especially favored status, and have removed it as to all other aliens. Such a construction cannot be adopted unless it be unavoidable.

24| The division of the Revised Statutes into titles and chapters is chiefly a matter of convenience, and reference to a given title or chapter is simply a ready method of identifying the particular provisions which are meant. The provisions of title XXX affected by the limitation of section 2169, originally embraced the whole subject of naturalization of aliens. The generality of the words in section 2165, 'An alien may be admitted, * * *' was restricted by section 2169 in common with the other provisions of the title. The words 'this title' were used for the purpose of identifying that provision (and others), but it was the provision which was restricted. That provision having been amended and carried into the act of 1906, section 2169 being left intact and unrepealed, it will require some thing more persuasive than a narrowly literal reading of the identifying words 'this title' to justify the conclusion that Congress intended the restriction to be no longer applicable to the provision.

25| It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. See Church of the Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226; Heydenfeldt v. Daney Gold, etc., Co., 93 U. S. 634, 638, 23 L. Ed. 995. We are asked to conclude that Congress, without the consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words of section 2169, which section we may assume was continued for some serious purpose, has radically modified a statute always theretofore maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the government, a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions, would have been deprived of its force in such dubious and casual fashion. We are, therefore, constrained to hold that the act of 1906 is limited by the provisions of section 2169 of the Revised Statutes.

26| Second. This brings us to inquire whether, under section 2169, the appellant is eligible to naturalization. The language of the naturalization laws from 1790 to 1870 had been uniformly such as to deny the privilege of naturalization to an alien unless he came within the description 'free white person.' By section 7 of the act of July 14, 1870 (16 Stat. 254, 256 [Comp. St. § 4358]), the naturalization laws were 'extended to aliens of African nativity and to persons of African descent.' Section 2169 of the Revised Statutes, as already pointed out, restricts the privilege to the same classes of persons, viz. 'to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.' It is true that in the first edition of the Revised Statutes of 1873 the words in brackets, 'being free white persons, and to aliens' were omitted, but this was clearly an error of the compilers and was corrected by the subsequent legislation of 1875 (18 Stat. 316, 318). Is appellant, therefore, a 'free white person,' within the meaning of that phrase as found in the statute?

27| On behalf of the appellant it is urged that we should give to this phrase the meaning which it had in the minds of its original framers in 1790 and that it was employed by them for the sole purpose of excluding the black or African race and the Indians then inhabiting this country. It may be true that those two races were alone thought of as being excluded, but to say that they were the only ones within the intent of the statute would be to ignore the affirmative form of the legislation. The provision is not that Negroes and Indians shall be excluded, but it is, in effect, that only free white persons shall be included. The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges. As said by Chief Justice Marshall in Dartmouth College v. Woodward, 4 Wheat. 518, 644 (4 L. Ed. 629), in deciding a question of constitutional construction:

28| 'It is not enough to say that this particular case was not in the mind of the convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case, being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the Constitution in making it an exception.'

29| If it be assumed that the opinion of the framers was that the only persons who would fall outside the designation 'white' were Negroes and Indians, this would go no farther than to demonstrate their lack of sufficient information to enable them to foresee precisely who would be excluded by that term in the subsequent administration of the statute. It is not important in construing their words to consider the extent of their ethnological knowledge or whether they thought that under the statute the only persons who would be denied naturalization would be Negroes and Indians. It is sufficient to ascertain whom they intended to include and having ascertained that it follows, as a necessary corollary, that all others are to be excluded,

30| The question then is: Who are comprehended within the phrase 'free white persons'? Undoubtedly the word 'free' was originally used in recognition of the fact that slavery then existed and that some white persons occupied that status. The word, however, has long since ceased to have any practical significance and may now be disregarded.

31| We have been furnished with elaborate briefs in which the meaning of the words 'white person' is discussed with ability and at length, both from the standpoint of judicial decision and from that of the science of ethnology. It does not seem to us necessary, however, to follow counsel in their extensive researches in these fields. It is sufficient to note the fact that these decisions are, in substance, to the effect that the words import a racial and not an individual test, and with this conclusion, fortified as it is by reason and authority, we entirely agree. Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation. Beginning with the decision of Circuit Judge Sawyer, in Re Ah Yup, 5 Sawy. 155, Fed. Cas. No. 104 (1878), the federal and state courts, in an almost unbroken line, have held that the words 'white person' were meant to indicate only a person of what is popularly known as the Caucasian race. Among these decisions, see, for example: In re Camille (C. C.) 6 Fed. 256; In re Saito (C. C.) 62 Fed. 126; In re Nian, 6 Utah, 259, 21 Pac. 993, 4 L. R. A. 726; In re Kumagai (D. C.) 163 Fed. 922; In re Yamashita, 30 Wash. 234, 237, 70 Pac. 482, 94 Am. St. Rep. 860; In re Ellis (D. C.) 179 Fed. 1002; In re Mozumdar

163 Fed. 922; In re Yamashita, 30 Wash. 234, 237, 70 Pac. 482, 94 Am. St. Rep. 860; In re Ellis (D. C.) 179 Fed. 1002; In re Mozumdar (D. C.) 207 Fed. 115, 117; In re Singh (D. C.) 257 Fed. 209, 211, 212; and In re Charr (D. C.) 273 Fed. 207. With the conclusion reached in these several decisions we see no reason to differ. Moreover, that conclusion has become so well established by judicial and executive concurrence and legislative acquiescence that we should not at this late day feel at liberty to disturb it, in the absence of reasons far more cogent than any that have been suggested. United States v. Midwest Oil Co., 236 U. S. 459, 472, 35 Sup. Ct. 309, 59 L. Ed. 673.

32| The determination that the words 'white person' are synonymous with the words 'a person of the Caucasian race' simplifies the problem, although it does not entirely dispose of it. Controversies have arisen and will no doubt arise again in respect of the proper classification of individuals in border line cases. The effect of the conclusion that the words 'white person' means a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship. Individual cases falling within this zone must be determined as they arise from time to time by what this court has called, in another connection (Davidson v. New Orleans, 96 U. S. 97, 104, 24 L. Ed. 616), 'the gradual process of judicial inclusion and exclusion.'

33| The appellant, in the case now under consideration, however, is clearly of a race which is not Caucasian and therefore belongs entirely outside the zone on the negative side. A large number of the federal and state courts have so decided and we find no reported case definitely to the contrary. These decisions are sustained by numerous scientific authorities, which we do not deem it necessary to review. We think these decisions are right and so hold.

34| The briefs filed on behalf of appellant refer in complimentary terms to the culture and enlightenment of the Japanese people, and with this estimate we have no reason to disagree; but these are matters which cannot enter into our consideration of the questions here at issue. We have no function in the matter other than to ascertain the will of Congress and declare it. Of course there is not implied—either in the legislation or in our interpretation of it—any suggestion of individual unworthiness or racial inferiority. These considerations are in no manner involved.

35| The questions submitted are therefore answered as follows:

36| Question No. 1. The act of June 29, 1906, is not complete in itself, but is limited by section 2169 of the Revised Statutes of the United States.

37| Question No. 2. No.

38| Question No. 3. No.

39| It will be so certified. United States Supreme Court

NOT ELIGABLE FOR NATURALIZATION

UNITED STATES
V.
BHAGAT SINGH THIND.

1923

No. 202

Argued:

Decided: February 19, 1923

"CAUCASIAN" → "common sense" of "common man"

[261 U.S. 204, 205] Mr. Solicitor General Beck, of Washington, D. C., for the United states.

Mr. Will R. King, of Washington, D. C., for Thind.

[261 U.S. 204, 206]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

This cause is here upon a certificate from the Circuit Court of appeals requesting the instruction of this Court in respect of the following questions:

'1. Is a high-caste Hindu, of full Indian blood, born at Amritsar, Punjab, India, a white person within the meaning of section 2169, Revised Statutes? [261 U.S. 204, 207]

'2. Does the Act of February 5, 1917 (39 Stat. 875, 3), disqualify from naturalization as citizens those Hindus now barred by that act, who had lawfully entered the United States prior to the passage of said act?'

The appellee was granted a certificate of citizenship by the District Court of the United States for the District of Oregon, over the objection of the Naturalization Examiner for the United States. A bill in equity was then filed by the United States, seeking a cancellation of the certificate on the ground that the appellee was not a white person and therefore not lawfully entitled to naturalization. The District Court, on motion, dismissed the bill (In re Bhagat Singh Thind, 268 Fed. 683), and an appeal was taken to the Circuit Court of Appeals. No question is made in respect of the individual qualifications of the appellee. The sole question is whether he falls within the class designated by Congress as eligible. "CLASS"

Section 2169, Revised Statutes (Comp. St. 4358), provides that the provisions of the Naturalization Act 'shall apply to aliens being

free white persons and to aliens of af ican nativity and to persons of African descent.'

Previouse

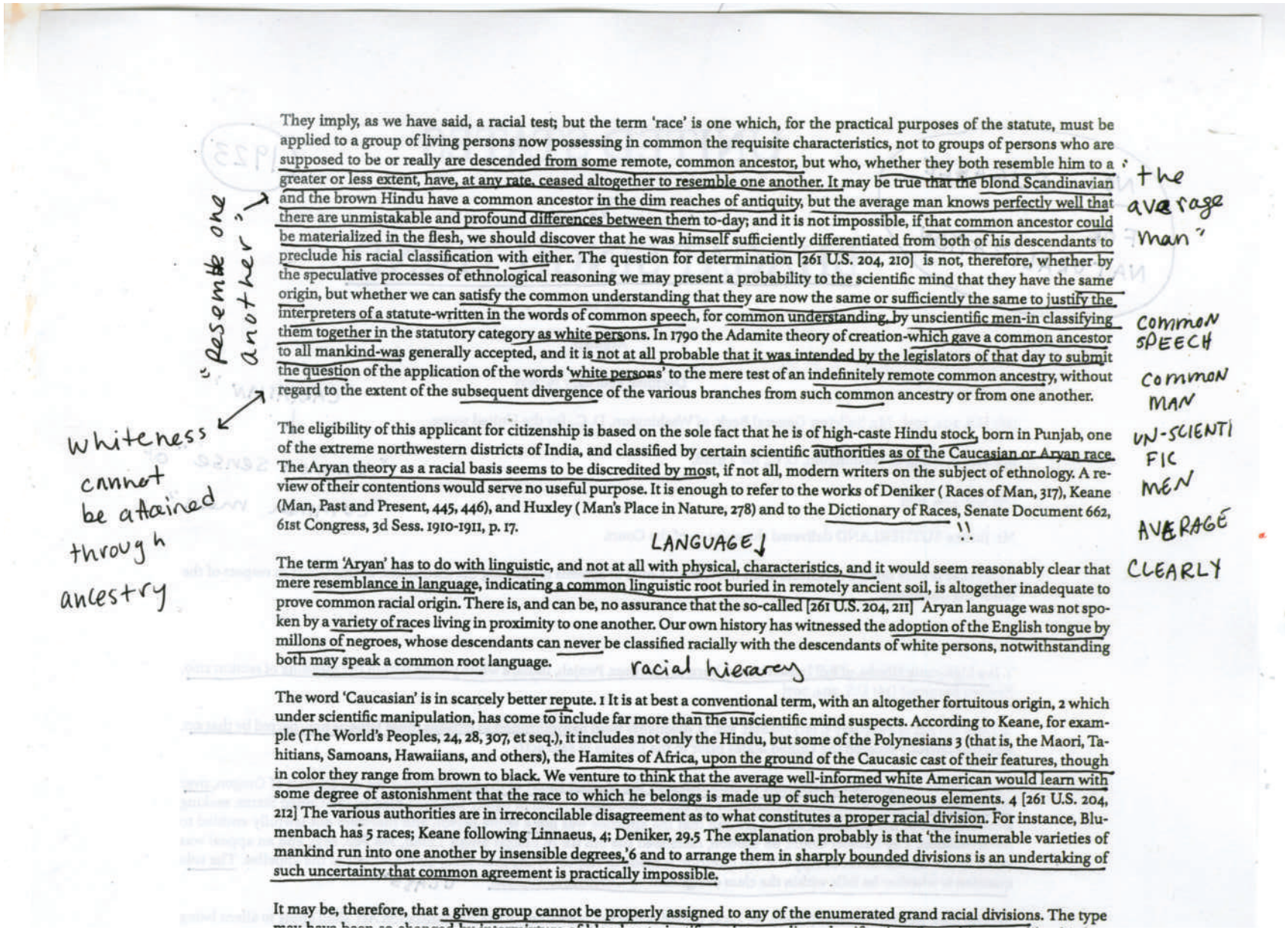
If the applicant is a white person, within the meaning of this section, he is entitled to naturalization; otherwise not. In Ozawa v. United States, 260 U.S. 178 , 43 Sup. Ct. 65, 67 L. Ed. --, decided November 13, 1922, we had occasion to consider the application of these words to the case of a cultivated Japanese and were constrained to hold that he was not within their meaning. As there pointed out, the provision is not that any particular class of persons shall be excluded, but it is, in effect, that only white persons shall be included within the privilege of the statute. 'The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular [261 U.S. 204, 208] races been suggested the language of the act would have been so varied as to include them within its privileges'-citing Dartmouth College v. Woodward, 4 Wheat. 518, 644. Following a long line of decisions of the lower Federal courts, we held that the words imported a racial and not an individual test and were meant to indicate only persons of what is popularly known as the Caucasian race. But, as there pointed out, the conclusion that the phrase 'white persons' and the word 'Caucasian' are synonymous does not end the matter. It enabled us to dispose of the problem as it was there presented, since the applicant for citizenship clearly fell outside the zone of debatable ground on the negative side; but the decision still left the question to be dealt with, in doubtful and different cases, by the 'process of judicial inclusion and exclusion.' Mere ability on the part of an applicant for naturalization to establish a line of descent from a Caucasian ancestor will not ipso facto to and necessarily conclude the inquiry. 'Caucasian' is a conventional word of much flexibility, as a study of the literature dealing with racial questions will disclose, and while it and the words 'white persons' are treated as synonymous for the purposes of that case, they are not of identical meaning-idem per idem.

Flexible zone → Ancestory does not equal "white"

'COMMON SPEECH'

In the endeavor to ascertain the meaning of the statute we must not fail to keep in mind that it does not employ the word 'Caucasian,' but the words 'white persons,' and these are words of common speech and not of scientific origin. The word 'Caucasian,' not .means clear, and the use of it in its scientific probably wholly unfamiliar to the original framers of the statute in 1790. When we employ it, we do so as an aid to the ascertainment of the legislative intent and not as an invariable substitute for the statutory words. Indeed, as used in the science of ethnology, the connotation of the word is by no means clear, and the use of it in its scientific sense as an equivalent [261 U.S. 204, 209] for the words of the statute, other considerations aside, would simply mean the substitution of one perplexity for another. But in this country, during the last half century especially, the word by common usage has acquired a popular meaning, not clearly defined to be sure, but sufficiently so to enable us to say that its popular as distinguished from its scientific application is of appreciably narrower scope. It is in the popular sense of the word, therefore, that we employ is as an aid to the construction of the statute, for it would be obviously illogical to convert words of common speech used in a statute into words of scientific terminology when neither the latter nor the science for whose purposes they were coined was within the contemplation of the framers of the statute or of the people for whom it was framed. The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken. See Maillard v. Lawrence, 16 How. 251, 261.

'TO BE INTERPRETED IN ACCORDANCE WITH THE UNDERSTANDING OF THE COMMON MAN...'



They imply, as we have said, a racial test; but the term 'race' is one which, for the practical purposes of the statute, must be applied to a group of living persons now possessing in common the requisite characteristics, not to groups of persons who are supposed to be or really are descended from some remote, common ancestor, but who, whether they both resemble him to a greater or less extent, have, at any rate, ceased altogether to resemble one another. It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them to-day; and it is not impossible, if that common ancestor could be materialized in the flesh, we should discover that he was himself sufficiently differentiated from both of his descendants to preclude his racial classification with either. The question for determination [261 U.S. 204, 210] is not, therefore, whether by the speculative processes of ethnological reasoning we may present a probability to the scientific mind that they have the same origin, but whether we can satisfy the common understanding that they are now the same or sufficiently the same to justify the interpreters of a statute-written in the words of common speech, for common understanding, by unscientific men-in classifying them together in the statutory category as white persons. In 1790 the Adamite theory of creation-which gave a common ancestor to all mankind-was generally accepted, and it is not at all probable that it was intended by the legislators of that day to submit the question of the application of the words 'white persons' to the mere test of an indefinitely remote common ancestry, without regard to the extent of the subsequent divergence of the various branches from such common ancestry or from one another.

The eligibility of this applicant for citizenship is based on the sole fact that he is of high-caste Hindu stock, born in Punjab, one of the extreme northwestern districts of India, and classified by certain scientific authorities as of the Caucasian or Aryan race. The Aryan theory as a racial basis seems to be discredited by most, if not all, modern writers on the subject of ethnology. A review of their contentions would serve no useful purpose. It is enough to refer to the works of Deniker (Races of Man, 317), Keane (Man, Past and Present, 445, 446), and Huxley (Man's Place in Nature, 278) and to the Dictionary of Races, Senate Document 662, 61st Congress, 3d Sess. 1910-1911, p. 17.

The term 'Aryan' has to do with linguistic, and not at all with physical, characteristics, and it would seem reasonably clear that mere resemblance in language, indicating a common linguistic root buried in remotely ancient soil, is altogether inadequate to prove common racial origin. There is, and can be, no assurance that the so-called [261 U.S. 204, 211] Aryan language was not spoken by a variety of races living in proximity to one another. Our own history has witnessed the adoption of the English tongue by millons of negroes, whose descendants can never be classified racially with the descendants of white persons, notwithstanding both may speak a common root language.

The word 'Caucasian' is in scarcely better repute. 1 It is at best a conventional term, with an altogether fortuitous origin, 2 which under scientific manipulation, has come to include far more than the unscientific mind suspects. According to Keane, for example (The World's Peoples, 24, 28, 307, et seq.), it includes not only the Hindu, but some of the Polynesians 3 (that is, the Maori, Tahitians, Samoans, Hawaiians, and others), the Hamites of Africa, upon the ground of the Caucasic cast of their features, though in color they range from brown to black. We venture to think that the average well-informed white American would learn with some degree of astonishment that the race to which he belongs is made up of such heterogeneous elements. 4 [261 U.S. 204, 212] The various authorities are in irreconcilable disagreement as to what constitutes a proper racial division. For instance, Blumenbach has 5 races; Keane following Linnaeus, 4; Deniker, 29.5 The explanation probably is that 'the inumerable varieties of mankind run into one another by insensible degrees,'6 and to arrange them in sharply bounded divisions is an undertaking of such uncertainty that common agreement is practically impossible.

It may be, therefore, that a given group cannot be properly assigned to any of the enumerated grand racial divisions. The type

may have been so changed by intermixture of blood as to justify an intermediate classification. Something very like this has actually taken place in India. Thus, in Hindustan and Berar there was such an intermixture of the 'Aryan' invader with the dark-skinned Dravidian. 7

In the Punjab and Rajputana, while the invaders seem to have met with more success in the effort to preserve [261 U.S. 204, 213] their racial purity,8 intermarriages did occur producing an intermingling of the two and destroying to a greater or less degree the purity of the 'Aryan' blood. The rules of caste, while calculated to prevent this intermixture, seem not to have been entirely successful. 9

"BONE OF THEIR BONE FLESH OF THEIR FLESH"

It does not seem necessary to pursue the matter of scientific classification further. We are unable to agree with the District Court, or with other lower federal courts, in the conclusion that a native Hindu is eligible for naturalization under section 2169. The words of familiar speech, which were used by the original framers of the law, were intended to include only the type of man whom they knew as white. The immigration of that day was almost exclusively from the British Isles and Northwestern Europe, whence they and their forebears had come. When they extended the privilege of American citizenship to 'any alien being a free white person' it was these immigrants-bone of their bone and flesh of their flesh-and their kind whom they must have had affirmatively in mind. The succeeding years brought immigrants from Eastern, Southern and Middle Europe, among them the Slavs and the dark-eyed, swarthy people of Alpine and Mediterranean stock, and these were received as unquestionably akin to those already here and readily amalgamated with them. It was the descendants of these, and [261 U.S. 204, 214] other immigrants of like origin, who constituted the white population of the country when section 2169, re-enacting the naturalization test of 1790, was adopted, and, there is no reason to doubt, with like intent and meaning.

What, if any, people of Primarily Asiatic stock come within the words of the section we do not deem it necessary now to decide. There is much in the origin and historic development of the statute to suggest that no Asiatic whatever was included. The debates in Congress, during the consideration of the subject in 1870 and 1875, are persuasively of this character. In 1873, for example, the words 'free white persons' were unintentionally omitted from the compilation of the Revised Statutes. This omission was supplied in 1875 by the act to correct errors and supply omissions. 18 Stat. c. 80, p. 318. When this act was under consideration by Congress efforts were made to strike out the words quoted, and it was insisted upon the one hand and conceded upon the other, that the effect of their retention was to exclude Asiatics generally from citizenship. While what was said upon that occasion, to be sure, furnishes no basis for judicial construction of the statute, it is, nevertheless, an important historic incident, which may not be altogether ignored in the search for the true meaning of words which are themselves historic. That question, however, may well be left for final determination until the details have been more completely disclosed by the consideration of particular cases, as they from time to time arise. The words of the statute, it must be conceded, do not readily yield to exact interpretation, and it is probably better to leave them as they are than to risk undue extension or undue limitation of their meaning by any general paraphrase at this time.

Common speech

What we now hold is that the words 'free white persons' are words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word 'Caucasian' only as that [261 U.S. 204, 215] word is popularly understood. As so understood and used, whatever may be the speculations of the ethnologist, it does not include the body of

Common man

AMALGAMATION: losing different features

people to whom the appellee belongs. It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation.

creating a hierarchy yet calling it difference...

It is not without significance in this connection that Congress, by the Act of February 5, 1917, 39 Stat. 874, c. 29, 3 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, 4289 1/4b), has now excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India. This not only constitutes conclusive evidence of the congressional attitude of opposition to Asiatic immigration generally, but is persuasive of a similar attitude toward Asiatic naturalization as well, since it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants.

It follows that a negative answer must be given to the first question, which disposes of the case and renders an answer to the second question unnecessary, and it will be so certified.

Answer to question No. 1, No.

Footnotes

[Footnote 1] Dictionary of Races, supra, p. 31.

[Footnote 2] 2 Encyclopaedia Britannica (11th Ed.) p. 113: 'The ill-chosen name of Caucasian, invented by Blumenbach in allusion to a South Caueasian skull of specially typical proportions, and applied by him to the so- called white races, is still current; it brings into one race peoples such as the Arabs and Swedes, although these are scarcely less different than the Americans and Malays, who are set down as two distinct races. Again, two of the best marked varieties of mankind are the Australians and the Bushmen, neither of whom, however, seems to have a natural place in Blumenbach's series.'

[Footnote 3] The United States Bureau of Immigration classifies all Pacific Islanders as belonging to the 'Mongolic grand division.' Cistionary of Races, supra, p. 102.

[Footnote 4] Keane himself says that the Caucasic division of the human family is 'in point of fact the most debatable field in the whole range of anthropological studies.' Man: Past and Present, p. 444

And again: 'Hence it seems to require a strong mental effort to sweep into a single category, however elastic, so many different peoples- Europeans, North Africans, West Asiatics, Iranians, and others all the way to the Indo-Gangetic plains and uplands, whose complexion presents every shade of color, except yellow, from white to the deepest brown or even black.

'But they are grouped together in a single division, because their essential properties are one, ... their substantial uniformity speaks to the eye that sees below the surface ... we recognize a common racial stamp in the facial expression, the structure of the hair, partly also the bodily proportions, in all of which points they agree more with each other than with the other main divisions. Even in the case of cer ain black or very dark races, such as the Bejas, Somali, and a few other Eastern Hamites, we are reminded instinctively more of Europeans or Berbers than of thanks to their more regular features and brighter expression.' Id. 448.

448.

[Footnote 5] Dictionary of Races, supra, p. 6. See, generally, 2 Encyclopedia Britannica (11th Ed.) p. 113.

[Footnote 6] 2 Encyclopedia Britannica (11th Ed.) p. 113.

[Footnote 7] 13 Encyclopedia Britannica (11th Ed.) p. 502.

[Footnote 8] Id.

[Footnote 9] 13 Encyclopedia Britannica, p. 503. 'In spite, however, of the artificial restrictions placed on the intermarrying of the castes, the mingling of the two races seems to have proceeded at a tolerably rapid rate. Indeed, the paucity of women of the Aryan stock would probably render these mixed unions almost a necessity from the very outset; and the vaunted purity of blood which the caste rules were calculated to perpetuate can scarcely have remained of more than a relative degree even in the case of the Brahman caste.'

And see the observations of Keane (Man, Past and Present, p. 561) as to the doubtful origin and effect of caste.

6 F.2d 919 (1925)

FOUND ELIGABLE FOR NATURALIZATION

1925

UNITED STATES
v.
CARTOZIAN.

District Court, D. Oregon.

July 27, 1925.

John S. Coke, V. W. Tomlinson, and J. O. Stearns, Jr., all of Portland, Or., for the United States.

McCamant & Thompson, of Portland, Or., and William D. Guthrie, of New York City, for defendant.

WOLVERTON, District Judge.

This is a suit on the part of the government to cancel defendant's certificate of naturalization, on the ground that, at the time of the issuance of his certificate, he was not, nor is he now, entitled to naturalization as a citizen of the United States.

Defendant is a native of that part of the Turkish Empire known as Turkey in Asia, or Asia Minor, having been born in Sivas, which is located in Western Armenia, towards Anatolia, and is of Armenian blood and race. It is alleged that he is not a free white person within the meaning of the naturalization laws of Congress. No charge of fraud is made, and the sole question to be determined is whether defendant is to be classed, for naturalization purposes, as a "free white person," as those words are used in section 2169, R. S. (Comp. St. § 4358).

It is now judicially determined that the mere color of the skin of the individual does not afford a practical test as to whether he is eligible to American citizenship, as that differs greatly among persons of the same race, "even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette; the latter being darker than many of the lighter hued persons of the brown or yellow races." Ozawa v. United States, 260 U.S. 178, 197, 43 S. Ct. 65, 69 (67 L. Ed. 199).

OZAWA

The test is racial, and for practical purposes of the statute must be applied to a group of living persons now possessing in common the requisite characteristics for naturalization. Nor is it one to be wholly determined by ethnological and scientific research, but it must satisfy the common understanding that the racial characteristics are now the same, or sufficiently so to

research, but it must satisfy the common understanding that the racial characteristics are now the same, or sufficiently so to justify the interpreters of the statute written in the words of common speech for common understanding by unscientific men in classifying such persons together in the statutory category as white persons. United States v. Thind, 261 U.S. 204, 209, 43 S. Ct. 338, 67 L. Ed. 616. In defining the type of person eligible to citizenship, the court uses this language:

"The words of familiar speech, which were used by the original framers of the law, were intended to include only the type of man whom they knew as white. The immigration of that day was almost exclusively from the British Isles and Northwestern Europe, whence they and their forbears had come. When they extended the privilege of American citizenship to `any alien, being a free white person,' it was these immigrants bone of their bone and flesh of their flesh and their kind whom they must have had affirmatively in mind. The succeeding years brought immigrants from Eastern, Southern, and Middle Europe, among them the Slavs and the dark-eyed, swarthy people of Alpine and Mediterranean stock, and these were received as unquestionably akin to those already here and readily amalgamated with them. It was the descendants of these, and other immigrants of like origin, who constituted the white population of the country when section 2169, re-enacting the naturalization test of 1790, was adopted; and there is no reason to doubt, with like intent and meaning."

It was not deemed necessary in the Thind Case to decide what, if any, people of primary Asiatic stock came within the words of the section. The thought of the court, speaking generally, is that each individual case must be determined upon its own peculiar *920 characteristics, to be gathered in terms of the language of common understanding in the realm at the time of the adoption of the statute.

That the Armenians are of the Alpine stock can scarcely be doubted. The earliest authorities so classify them, as well as those coming later. Herodotus, book 7, c. 73 (Rawlinson's Translation [3d Ed.] vol. 4, p. 67), classifies them as Phrygians, but during their abode in Europe they bore the name of Brigians.

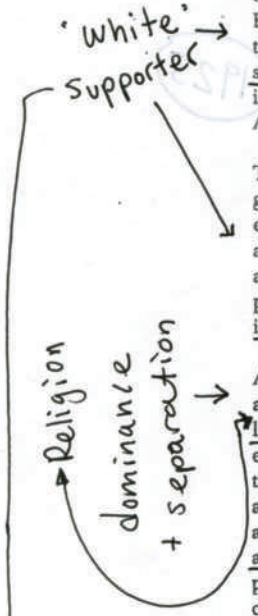
According to Strabo, book XI, § 14, there exists a sort of relationship between the Medes and the Armenians on the one hand, and the Thessalians on the other. Strabo lived about the middle of the first century B. C.

D. C. Brinton, in his work on Races and Peoples, p. 167, says: "Its latest contingent, the Armenian people, was a branch of the Thracian Briges and occupied their territory in Asia Minor about 700 B. C."

H. F. B. Lynch, Armenia, Travels and Studies, London, 1901, vol. 2, p. 67: "All the evidence points to the conclusion that they [the Armenians] entered their historical seats from the west, as a branch of a considerable immigration of Indo-European peoples, crossing the straits from Europe into Asia Minor and perhaps originally coming from their homes in the steppes north of the Black Sea."

W. Z. Ripley, in Races of Europe, p. 448, referring to Von Luschan as most competent authority, declares: "The continuity of the Alpine race across Asia Minor cannot be doubted."

The witness Roland Burrage Dixon says of Von Luschan that he "was one of the outstanding anthropologists of Germany, who



died this last year." He says also that Prof. A. C. Haddon, professor of anthropology at Cambridge University, in his work The Races of Man and their Distribution, pp. 15, 16, "classes the Armenians specifically as belonging to the Alpine race, grouping them with the Cevenoles of Central Europe and the Dinaric group in the Balkan region, which he regards as 'probably an offshoot from the Anatolian,' and which, in his understanding, is essentially synonymous with Armenian." Dixon, who himself is an author, and has written a work entitled "The Racial History of Man," classifies the Armenians as "unquestionably of the Alpine type." Many authorities are referred to by him, all confirming the foregoing declarations of the authors noted.

The witness Franz Boas, professor of anthropology, Columbia University, a lecturer and author on the subject, says: "The Alpine group is divided nowadays into the western Alpine and the Dinaric type." Dinaric "is derived from the Dinaric Alps, or the Eastern Alps, and that term is taken from the name of the highest mountain, Dinara." Those Alps are located "northeast of the Adriatic." Prof. Boas, further referring to the authors and writers mentioned by Dixon in his testimony, considers them entirely reliable, and continues: "The weight of the authority has been such, that their conclusions have been accepted without hesitation, particularly the evidence in regard to the European origin of the Armenians and their migration into Asia Minor. The evidence is so overwhelming that nobody doubts any more their early migration from Thrace across the Hellespont into Asia Minor."

Although the Armenian province is within the confines of the Turkish Empire, being in Asia Minor, the people thereof have always held themselves aloof from the Turks, the Kurds, and allied peoples, principally, it might be said, on account of their religion, though color may have had something to do with it. The Armenians, tradition has it, very early, about the fourth century, espoused the Christian religion, and have ever since consistently adhered to their belief, and practiced it. Whatever analogy there may be or may exist between the Caucasian and the white races that may be of assistance in the present controversy, the alliance of the Armenians with the Caucasians of Russia has ever been very close. Indeed, the Armenians have for many generations, possibly centuries, occupied territory in Caucasian Russia, have intermingled freely and harmoniously with that people, and the races mix and amalgamate readily and spontaneously. This is strongly evidentiary of the kinship of the two types of people, and that both are of the Alpine stock. The status of these people thus evolved would seem to be practically conclusive of their eligibility to citizenship in the United States, seeing that they are of Alpine stock, and so remain to the present time, without appreciable blending with the Mongolian or other kindred races.

Amalgamation history w/ Russians

But to pursue the inquiry further, it may be confidently affirmed that the Armenians are white persons, and moreover that they readily amalgamate with the European and white races.

(so that they lose their features over time)

*921 Dr. Paul Rohrbach of Berlin, a scholar of note, who was for eight years professor of geography and political economy in a commercial academy in Berlin, has traveled extensively in many countries, including Armenia in Asia Minor, has made a specialty of studying history, philology, and ethnology, particularly with reference to Russia, Asia Minor, and the Near East, and has written six or seven books and a number of magazine articles, gives it as his experience that the color line is not drawn against the Armenians anywhere in the world. As to amalgamation with the white races, he affirms that there are thousands and thousands of intermarriages between Russians and Armenians; there existing no prejudice between these races of people. He mentions an Armenian who became a count in Russia, marrying a Russian countess or baroness, and an Armenian missionary who married a German baroness. Broadening the scope of his reply, he found Armenians intermarrying with white people everywhere.

The witness Dixon, a profound scholar, now professor of anthropology at Harvard University, who has written extensively on anthropology and ethnology, and who attended President Wilson as a government representative on the subject of ethnography during the Peace Conferences at Versailles, gives it as his conviction that the weight of authority is overwhelmingly in favor of

the proposition that Armenians are white persons, and that Caucasian and European, as used in common speech, are practically synonymous; at least such is the case in current usage. He further affirms that the Armenians readily assimilate with the people of France, Germany, and Russia.

→ Assimilation

Dr. Barton is foreign secretary of the American Board of Commissioners for Foreign Missions. He established his home at Harpoot in September, 1885, and remained there until the summer of 1892, when he returned to this country. In 1919 he went again, as the head of the relief expedition under the Near East relief, into Turkey and Armenia, where he carried on relief work. During his early work in his mission field, he prepared an article for the Encyclopedia of Missions, on the subject of "Armenia and the Armenians." He testifies: "I never have heard it suggested that they [the Armenians] were not white. In all the conversations with Americans and foreigners, we have always regarded them as white. * * * There were occasionally colored people came through the country, but they were always marked as completely distinguishable from the Armenians, who were never referred to in any way except as white, never thought of in any other terms than white persons." When asked, "As the terms `white' and `white persons' are commonly and popularly used in the United States and Canada and Europe, would you class the Armenians in your opinion as `white persons'?" he answered, "I surely would." Later he says, "It is generally considered that they [the Armenians] are of the Alpine class of whites." The witness further affirms that they readily assimilate with the Europeans and the people of this country. Within his own information, he knows of ten or fifteen Armenians in Boston who have married American wives.

American = white

Dr. Boas affirms, after reference to many authorities on anthropology and ethnology, that "it would be utterly impossible to classify them [Armenians] as not belonging to the white race."

M. Vartan Malcolm, who was born in Sivas, Armenia, has been naturalized in this country, is an attorney of standing in New York City, and has written a work on the Armenians in America, was a witness in the case at bar. He has gathered many statistics respecting his own race in the United States. He shows that, according to the census of 1920, there were then foreign-born Armenians in the United States, 37,647; native white persons, both parents Armenian, 14,047; native white persons, one parent Armenian and the other not, 1,146 making a total of 52,840. From the same census, he finds the number of Armenians naturalized to be 10,574. He also gives a table as a result of special inquiry made of 339 persons; the object being to ascertain the extent of intermarriage among the Armenians, which discloses that of the number, 257 were married 125 to Armenian girls, and 132 to native white Americans, or, in a few instances, girls of Irish, German, Swiss, or French parentage. True, this information was gathered through means of questionnaires sent out by witness, but he states that he has personal acquaintance with by far the larger proportion of the persons of whom such inquiry was made.

Prof. Boas cites a work of Julius Drachsler, entitled "Intermarriage in New York City," compiled by the examination of about 100,000 marriage certificates issued by the clerk of the city of New York, from which it is deduced that for the first generation of immigrants the intermarriage rate is 10.4 per cent. "That," says the witness, "means that 10 per cent. of the first generation of *922 immigrants marry people not belonging to their nationality. * * * Now the rate for Armenians is practically the same as the average rate. It is 9.63."

english education

Mrs. Otis Floyd Lamson, who was born in Erzerum, Armenia, acquired her principal education at the University of Berlin, having mastered six or seven languages, has traveled extensively, has taught French and German in a girls' school in this country, has also tutored, is a member of many social and educational clubs and organizations, was naturalized in 1911, married an American citizen born in Wisconsin, and is very intellectual and highly cultivated, was called as a witness, and gave it as her testimony that "the Armenians here very readily assimilate the American home life, provided they speak English." In her experience, she has found no discrimination respecting the intermarriage of men and women of Armenian blood with native Americans; nor has she found that the question of color or race enters as an obstacle.

I have confined my investigation to the testimony found in the record, and have made no attempt at independent investigation respecting race, color, assimilation, or amalgamation. *

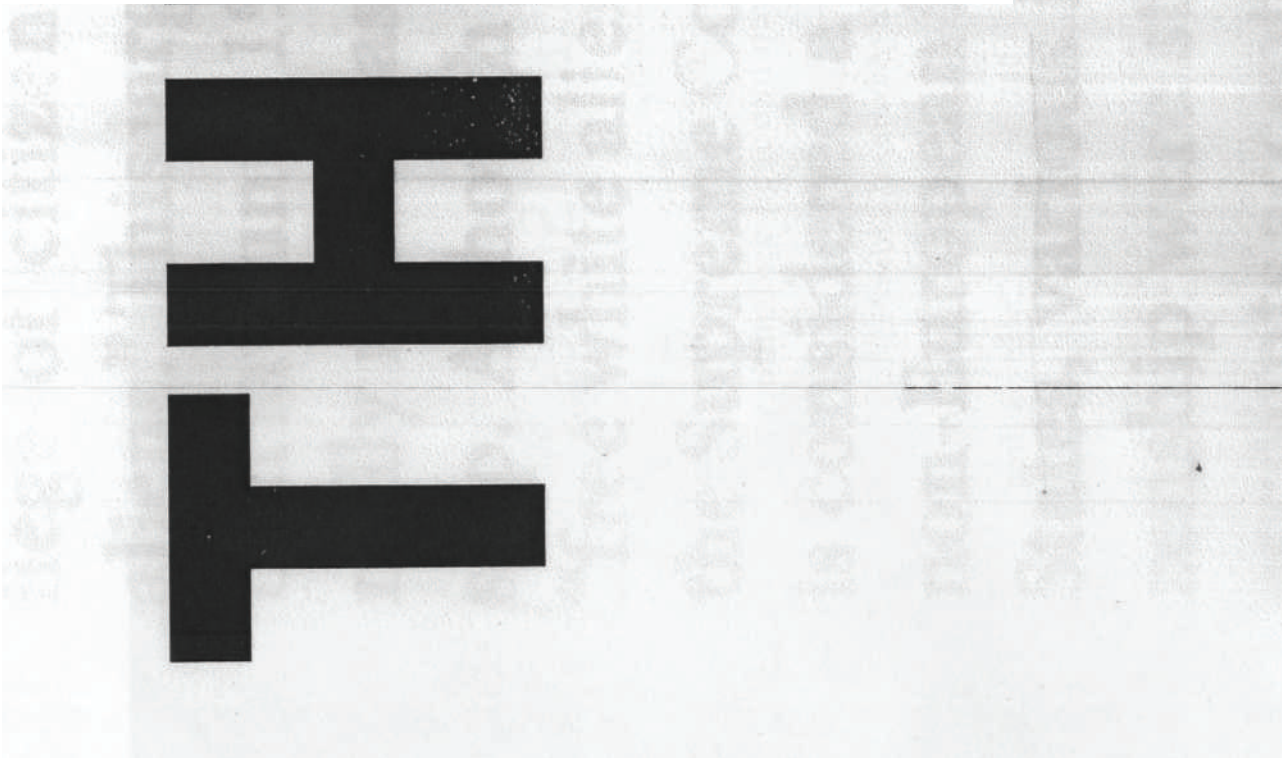
The testimony here adduced would seem to meet the concept essential to eligibility for naturalization under section 2169, R. S., first, that Armenians in Asia Minor are of the Alpine stock, of European persuasion; second, that they are white persons, as commonly recognized in speech of common usage, and as popularly understood and interpreted in this country by our forefathers, and by the community at large, when section 2169 was adopted by Congress, and later confirmed; third, that they amalgamate readily with the white races, including the white people of the United States.

As an authority of analogy respecting the eligibility of Armenians to naturalization, see In re Halladjian (C. C.) 174 F. 834.

The judgment of the court will therefore be that the bill of complaint be dismissed.

Archive of Racial Prerequisite Cases

Since the first Immigration Act of 1790 the privilege of citizenship was limited to "free white aliens." This jargon was not taken out of immigration law until 1952, when race was no longer formally named as a qualifier for obtaining citizenship. In 52 accounts, persons whose applications for naturalization were rejected on account of the racial prerequisite sued for their applications to be reconsidered. In their court cases they attempted to argue for and perform their whiteness in order to be considered eligible for naturalization. Through this process, the legal category of "white" was shifted and refined in order to specifically include some and exclude others. The following pages compile brief summaries of every recorded racial prerequisite case and its outcome.



PRE

What are you ashamed of?

Yup
1878, California

In *re Ah Yup,* Ah Yup, a person of Chinese descent, argued for why persons of Chinese descent are white persons. A federal court in California dismissed this contention with reference to then-current scientific and popular ideas about race, emphasizing that "Orientals" were unfit for participation in republican government because of the unsatisfactory political culture which existed in Asia at the time. The court determined that Ah Yup was not eligible for naturalization and persons of Chinese descent were not white persons.

Nian
1889, Utah

In *re Kanaka Nian,* the court found Kanaka Nian ineligible for naturalization in part on evidence that "it does not appear to the satisfaction of the court that the applicant understands the principles of government of the United States or its institutions sufficiently to become a citizen." The Utah Supreme Court based its decision on evidence that the petitioner could not read the U.S. Constitution in English (although he testified to having read it in translation) and could not name the U.S. president at the time (259; 6 Utah 259 [1889]). Claiming that "the man entrusted with the high, difficult, and sacred duties of an American citizen should be informed and enlightened [and] ... should possess a feeling of moral obligation sufficient to cause him to adopt the right," the Utah Supreme Court thus established moral and literacy parameters for naturalized American citizens, and by extension of "white persons," which the petitioner was found unable to meet.

Chang
1890, California

Hong Yen Chang was reportedly the first Chinese immigrant licensed to practice law in the United States. Soon after his admission to the New York State Bar, Hong Yen Chang moved to California and sought admission to the California State Bar. His motion to practice law in California reached the California Supreme Court in 1890. In support of his eligibility to practice law in California, Hong Yen Chang submitted his license to practice law in New York and "a certificate of naturalization, issued by the court of common pleas of the city of New York, November 11, 1887." The California Supreme Court denied his motion to practice law in California, finding the naturalization certificate issued by New York invalid under the Chinese Exclusion Act.

Po
1894, New York

In *re Po,* Po, a person of Burmese descent, was found to be ineligible for naturalization. The court used the rationale of Common Knowledge and Legal Precedent to determine that persons of Burmese descent are not white persons.

Saito

1894, Massachusetts

In *re Saito,* Saito, a person of Japanese descent, was found to be ineligible for naturalization. The court used the rationale of Congressional Intent, Common Knowledge, Scientific Evidence, and Legal Precedent to determine that persons of Japanese descent are not white persons.

Hop
1895, California

In *re Gee Hop,* Gee Hop, a person of Chinese descent, was found to be ineligible for naturalization. The court used the rationale of Congressional Intent and Legal Precedent to determine that persons of Chinese descent are not white persons.

Rodriguez
1897, Texas

In his testimony before the court, Ricardo Rodríguez acknowledged that his interest in becoming a citizen lay in his long residency in Texas. He claimed that he considered his cultural heritage to be "pure-blooded Mexican" but that he was a descendant neither of any of the aboriginal peoples of Mexico, nor of the Spaniards, nor of Africans. He also swore that he was not acquainted with the form of government in the United States. These latter two issues were critical, since they raised the questions of racial and educational qualifications for achieving citizenship. Judge Maxey pointed out that the Constitution of the Republic of Texas granted citizenship to Mexicans living in the republic on Independence Day, and that the congressional resolutions in 1845 had further extended citizenship to Mexicans after annexation. In addition, he recalled that Article VIII of the Treaty of Guadalupe Hidalgo allowed for the conferral of American citizenship on Mexicans who continued to live in the territory after the Mexican War if they failed to declare their desire to become Mexican citizens. Judge Maxey declared that the Fourteenth Amendment granted citizenship to all people born or naturalized in the United States, regardless of color or race.

Burton
1900, Alabama

In *re Burton,* Burton, a person of Native American descent, was found ineligible for naturalization. There was no explanation found for the court's rationale regarding its decision that Native Americans are not white persons.

Yamashita
1902, Washington

In *re Yamashita,* Yamashita, a person of Japanese descent, was found ineligible for naturalization based on the rationale that "A native of Japan is not a 'white person' or an 'alien of African nativity or of African descent' within the meaning of Rev. Stat. U. S., Sec. 2169 (U.S. Comp St 1901, p. 1333), and therefore not entitled to become a citizen of the United States by naturalization."

Kumagai
1908, Washington

In *re Buntaro Kumagai,* Buntaro Kumagai, a person of Japanese descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent and Congressional Intent to determine that persons of Japanese descent are not white persons.

Knight
1909, New York

In *re Knight*, Knight, a person of Japanese, Chinese, and European descent, was found to be ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Japanese, Chinese, and European descent are not white persons.

Balsara

1909, New York

In *re Balsara,* Balsara, a person of Asian Indian descent, was found ineligible for naturalization. The court used the rationale of Congressional Intent to determine that persons of Asian Indian descent are *probably* not white persons.

Najour
1909, Georgia

In *re Najour,* Najour, a person of Syrian descent, successfully argued for his right to naturalize by proving he was a "white person." The judge relied on the rationale of Scientific Evidence to make the ruling. Judge Newman deemed that whiteness does not depend on skin color, rather it is based in the "racial science" of the time.

Halladjiian
1909, Massachusetts

In *re Halladjiian,* Halladjiian, a person of Armenian descent, was found eligible for naturalization. The court used the rationale of Scientific Evidence and Legal Precedent to determine that persons of Armenian descent are white persons.

Dolla

1910, Court of Appeals for the Fifth Circuit

In *United States v. Dolla,* Dolla, a person of South Asian descent, was granted citizenship primarily on the ground that the "skin of his arm" was "sufficiently transparent for the blue color of the veins to show very clearly" (177 F. 101, 102, 5th Cir. 1910). The court used the rationale of ocular inspection of skin to determine that Dolla is a white person.

Mudarri
1910, Massachusetts

In *re Mudarri,* Mudarri, a person of Syrian descent, was found to be eligible for naturalization. The court used the rationale of Scientific Evidence and Legal Precedent to determine that Syrians are white persons.

Bessho

1910, Court of Appeals for the Fourth Circuit

In *Bessho v. United States,* Bessho, a person of Japanese descent, was found ineligible for naturalization. The court used the rationale of Congressional Intent to determine that persons of Japanese descent are not white persons.

Ellis
1910, Oregon

In *re Ellis,* Ellis, a person of Syrian descent, was found to be eligible for naturalization. The court used the rationale of Congressional Intent and Common Knowledge to determine that persons of Syrian descent are white persons.

Balsara

1910, Court of Appeals for the Second Circuit

In *United States v. Balsara,* Balsara, a person of Asian Indian descent was found to be eligible for naturalization. The court relied on the rationale of Scientific Evidence and Congressional Intent to determine that persons of Asian Indian descent are white persons.

Alverto

1912, Pennsylvania

In *re Alverto*, Alverto, a person of European and Filipino descent, was found to be ineligible for naturalization. The court relied on the rationale of Legal Precedent and Congressional Intent to determine that persons of mixed European and Filipino descent are not white persons.

Young
1912, Washington

In *re Young*, Young, a person of German and Japanese descent, was found to be ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of German and Japanese descent are not white persons.

Young
1912, Washington

In *re Young*, Young, a person of German and Japanese descent, was found to be ineligible for naturalization. The court used the rationale of Legal Precedent and Common Knowledge to determine that persons of German and Japanese descent are not white persons.

Shahid
1913, South Carolina

In *Ex parte Shahid,* Shahid, a person of Syrian descent, was found ineligible for natrualization. The court used the rationale of Common Knowledge to determine that persons of Syrian descent are not white persons.

Mozumdar
1913, Washington

In *re Akhay Kumar Mozumdar,* Akhay Kumar Mozumdar, a person of Asian Indian descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Asian Indian descent are not white persons.

Dow

1914, South Carolina

In *Ex parte Dow,* George Dow, a person of Syrian descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge to determine that persons of Syrians descent are not white persons.

Dow
1914, South Carolina

In *re Dow,* George Dow, a person of Syrian descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge and Congressional Intent to determine that persons of Syrians descent are not white persons.

Dow
1915, Court of Appeals for the Fourth Circuit

In *Dow v. United States,* George Dow, a person of Syrian descent, appealed two lower court decisions denying his application for naturalization as a United States citizen. Following the lower court decisions in *Ex Parte Dow* (1914) and *In re Dow* (1914), *Dow v. United States* resulted in the Circut Court's affirmation of the petitioner's right to naturalize based, in the words of Circuit Judge Woods, on "the generally received opinion . . . that the inhabitants of a portion of Asia, including Syria, [are] to be classed as white persons."

Lampitoe
1916, New York

In *re Lampitoe,* Lampitoe, a person of Filipino and European descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of European and Filipino descent are not white persons.

Mallari

1916, Massachusetts

In *re Mallari,* Mallari, a person of Filipino descent, was found ineligible for naturalization. There is no rationale listed for the court's decision in finding that persons of Filipino descent are not white persons.

Rallos

1917, New York

In *re Rallos,* Rallos, a person of Filipino descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Filipino descent are not white persons.

Singh
1917, Pennsylvania

In *Sadar Bhagwab Singh,* Sadar Bhagwab Singh, a person of Asian Indian descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge and Congressional Intent to determine that persons of Asian Indian descent are not white persons.

Singh
1919, California

In *re Mohan Singh,* Mohan Singh, a person of Asian Indian descent, was found eligible for naturalization. The court used the rationale of Scientific Evidence and Legal Precedent to determine that persons of Asian Indian descent are white persons.

Thind

1920, Oregon

In *re Thind,* Bhagat Singh Thind, a person of Asian Indian descent was found eligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Asian Indian descent are white persons.

Charr
1921, Missouri

In *re Petition of Easurk Emsen Charr,* Easurk Emsen Charr, a person of Korean descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge and Legal Precedent to determine that persons of Korean descent are not white persons.

Ozawa

1922, Supreme Court

In *Ozawa v. United States,* Takao Ozawa, a person of Japanese descent, who was born in Japan but had lived in the United States for 20 years, was found ineligible for naturalization. The court used the rationale of Legal Precedent, Congressional Intent, Common Knowledge, and Scientific Evidence to determine that persons of Japanese descent are not white persons.

Thind

1923, Supreme Court

In *United States v. Thind,* Bhagat Singh Thind, a person of Indian Sikh descent, was found to be ineligible for naturalization. The court rejected his argument, holding that while Hindi-speaking, high-caste Indians were indeed akin to white European peoples, they had intermarried too freely with the non-white pre-Indo-European people of India. Because of the uncertainty this caused for scientific classification, the court decided to use a "common sense" definition of "white" that did not allow for the "scientific arguments" Thind made, and did not classify people of Indian descent as white persons.

Sato
1923, California

In *Sato v. Hall*, Sato, a person of Japanese descent who served in the United States Army in the World War, was found to be ineligible for naturalization. After being admitted to citizenship by the United States district court of the territory of Hawaii, he was issued a certificate of citizenship. When Sato attempted to use his certificate of citizenship to vote, the clerk declined to cooperate, claiming Sato was not entitled to citizenship because of the racial prerequisite. The court used the rationale of Legal Precedent to determine that persons of Japanese descent are not entitled to naturalization by reason of service in the United States Army in the World War under subdivision 7 of section 4 of the act of Congress of May 9, 1918, which provides that 'any alien' who served in the army or navy during such war is entitled to naturalization.'

Mozumdar
1923, California

In *United States v. Akhay Kumar Mozumdar,* Akhay Kumar Mozumdar, a person of Asian Indian descent, was found to be ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Asian Indian descent are not white persons.

Cartozian
1925, Oregon

In *United States v. Cartozian,* Tatos Catozian, a person of Armenian descent, was found to be eligible for naturalization. In this case, Judge Wolverton stated that skin color was not a practical litmus test for ascertaining citizenship eligibility, but resolved that "it may be confidently affirmed" that Armenians are white persons. He based his conclusion, in part, on the belief that Armenians "readily amalgamate with the European and white races." The court relied on the rationale of Scientific Evidence, Common Knowledge, and Legal Precedent to determine that persons of Armenian descent are white persons.

Ali

1923, Michigan

In *United States v. Ali,* Ali, a person of Punjabi descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge to determine that persons of Punjabi descent, "whether Hindu or Arabian," are not white persons.

Fisher
1927, California

In *re Fisher,* Fisher, a person of Chinese and European descent, was found to be ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Chinese and European descent are not white persons.

Javier
1927, District of Columbia

In *United States v. Javier,* Javier, a person of Filipino descent, was found to be ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Filipino descent are not white persons.

Din
1928, California

In *re Feroz Din,* Feroz Din, a person of Afghani descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge to determine that persons of Afghani descent are not white persons.

Gokhale

1928, Court of Appeals for the Second Circuit

In *United States v. Gokhale,* Gokhale, a person of Asian Indian descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Asian Indian descent are not white persons.

Ysla

1935, Court of Appeals for the Second Circuit

In *re De La Ysla v. United States,* De La Ysla, a person of Filipino descent, was found ineligible for naturalization. The court used the rational of Legal Precedent to determine that persons of Filipino descent are not white persons.

Cruz

1938, New York

In *re Cruz,* Cruz, a person of Native American and African descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Native American and African descent are not "African."

Wadia

1939, Court of Appeals for the Second Circuit

In *Wadia v. United States,* Wadia, a person of Asian Indian descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge to determine that persons of Asian Indian descent are not white persons.

Cano
1941, Washington

In *De Cano v. State,* De Cano, a person of Filipino descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Filipino descent are not white persons.

Samras

1942, Court of Appeals for the Second Circuit

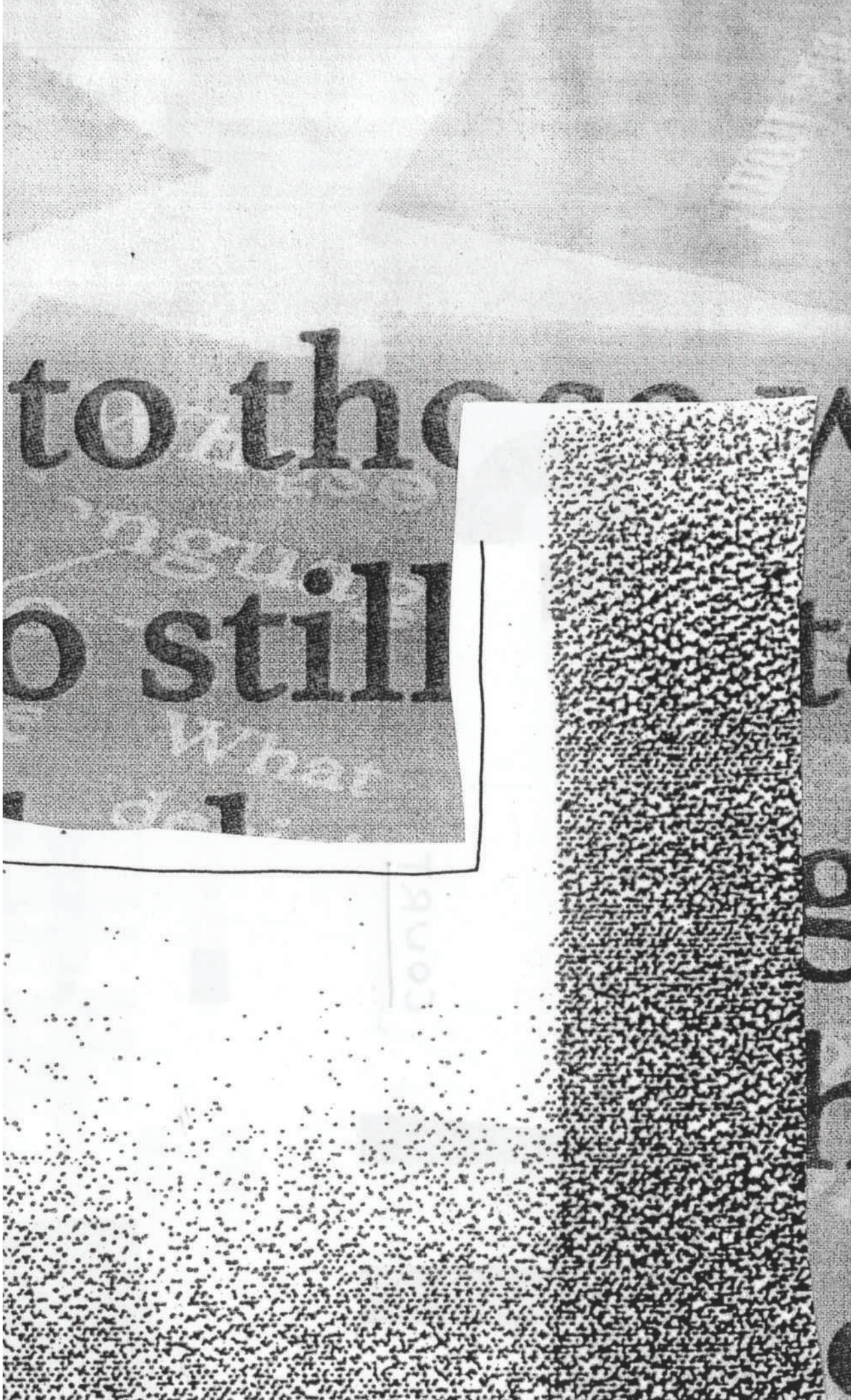
In *Kharaiti Ram Samras v. United States,* Kharaiti Ram Samras, a person of Asian Indian descent, was found ineligible for naturalization. The court used the rationale of Legal Precedent to determine that persons of Asian Indian descent are not white persons.

Hassan
1942, Michigan

In *re Ahmed Hassan,* Ahmed Hassan, a person of "Arabian" descent, was found ineligible for naturalization. The court used the rationale of Common Knowledge and Legal Precedent to determine that persons of "Arabian" descent are not white persons.

Mohriez
1944, Massachusetts

In *Ex parte Mohriez,* Mohriez, a person of "Arabian" descent, was found eligible for naturalization. The court used the rationale of Common Knowledge and Legal Precedent to determine that persons of "Arabian" descent are white persons.



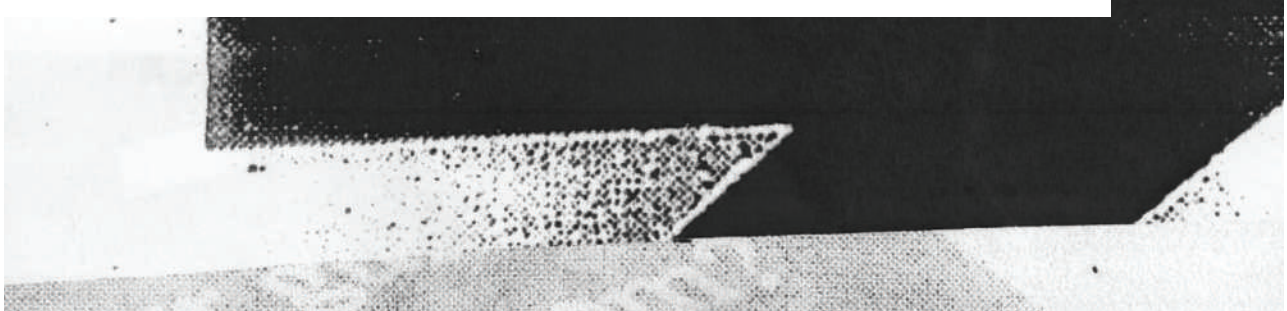
Naturalization & Immigration Acts

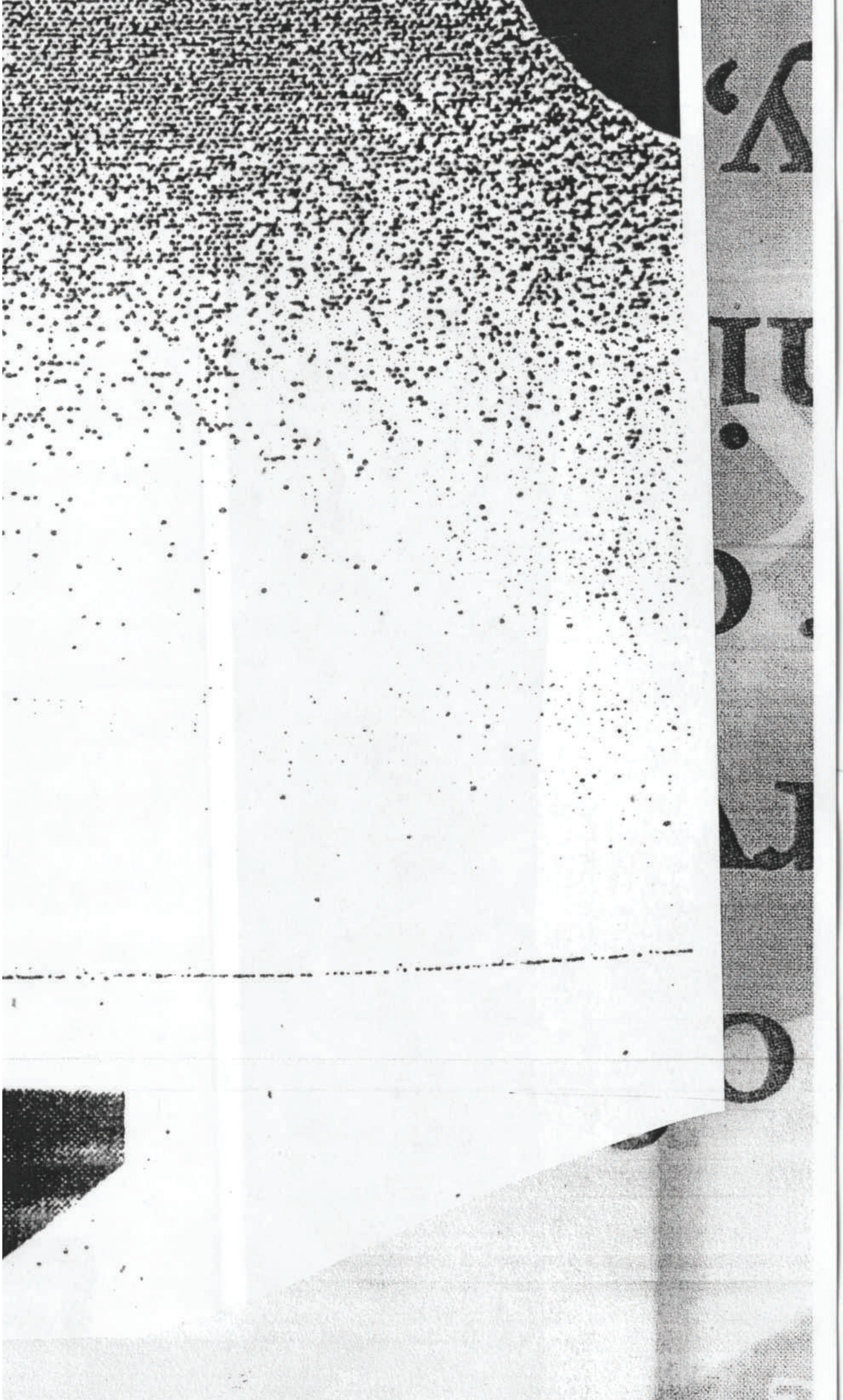
The following pages feature three significant laws on naturalization and immigration in the United States: The Naturalization Act of 1790, The Immigration and Nationality Act of 1952, and The Immigration and Nationality Act of 1965.

The Naturalization Act of 1790 was the first set of rules on who was eligible to become a naturalized American citizen. It limited eligibility to those who were considered to be "free white persons of good character." With this phrase, the law excluded Native Americans, indentured servants, slaves, African Americans, and later, any other immigrants to the United States of ethnicities not defined as "white," such as Asian immigrants.

The Immigration and Nationality Act of 1952, also known as the McCarran-Walter Act, abolished racial restrictions to naturalization that went back to the Naturalization Act of 1790. However, it kept a quota system for nationalities and regions, which eventually created a prejudicial preference system that decided which ethnic groups and nationalities were the most desirable immigrants. Ultimately, the bill enacted much more restrictive rules on immigration in the United States.

The Immigration and Nationality Act of 1965, also known as the Hart-Celler Act, abolished the National Origins Formula, thus legally removing discriminating limitations on immigration from non-northwestern European nationalities and ethnicities. The National Origins Formula, which was established with the Immigration Act of 1924, limited the number of immigrants from non-northern Europe in an effort to "preserve the ideal of American [Northwestern European] homogeneity." Through the efforts of the Civil Rights Movement, the National Origins Formula was attacked for being racially discriminatory. This Act ultimately increased the number of immigrants who came to the United States.





lars; the marshal of the district of South Carolina, three hundred dollars; the marshal of the district of Georgia, two hundred and fifty dollars. And to obviate all doubts which may arise respecting the persons to be returned, and the manner of making returns,

Rules for ascertaining residence.

ACT OF 1790.

SEC. 5. *Be it enacted*, That every person whose usual place of abode shall be in any family on the aforesaid first Monday in August next, shall be returned as of such family; and the name of every person, who shall be an inhabitant of any district, but without a settled place of residence, shall be inserted in the column of the aforesaid schedule, which is allotted for the heads of families, in that division where he or she shall be on the said first Monday in August next, and every person occasionally absent at the time of the enumeration, as belonging to that place in which he usually resides in the United States.

What person of a family shall render an account of the numbers therein,

SEC. 6. *And be it further enacted*, That each and every person more than sixteen years of age, whether heads of families or not, belonging to any family within any division of a district made or established within the United States, shall be, and hereby is, obliged to render to such assistant of the division, a true account, if required, to the best of his or her knowledge, of all and every person belonging to such family respectively, according to the several descriptions aforesaid, on pain of forfeiting twenty dollars, to be sued for and recovered by such assistant, the one half for his own use, and the other half for the use of the United States.

and penalty for refusing.

Copies of the schedule in each division to be set up at public places, and when.

SEC. 7. *And be it further enacted*, That each assistant shall, previous to making his return to the marshal, cause a correct copy, signed by himself, of the schedule, containing the number of inhabitants within his division, to be set up at two of the most public places within the same, there to remain for the inspection of all concerned; for each of which copies the said assistant shall be entitled to receive two dollars, provided proof of a copy of the schedule having been so set up and suffered to remain, shall be transmitted to the marshal, with the return of the number of persons; and in case any assistant shall fail to make such proof to the marshal, he shall forfeit the compensation by this act allowed him.

Extended to Rhode Island by act of July 5, 1790, ch. 25.

To the state of Vermont, March 2, 1791, ch. 12.

APPROVED, March 1, 1790.

STATUTE II.

March 26, 1790.

CHAP. III.—*An Act to establish an uniform Rule of Naturalization.*(a)

Repealed by act of January 29, 1795, ch. 20.

Alien whites may become citizens, and how.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the pro-

(a) This act was repealed by an act passed January 29, 1795, chap. 20.
The acts relating to naturalization subsequent to the act of March 26, 1790, have been: "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," January 29, 1795, chap. 20. Repealed April 14, 1802.
An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on the subject, passed April 14, 1802, chap. 28.
An act in addition to an act entituled, "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on the subject," passed March 26, 1804, chap. 47.
An act relative to evidence in cases of naturalization, passed March 22, 1816, chap. 32.
An act in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," passed May 26, 1824, chap. 186.
An act to amend the acts concerning naturalization, May 24, 1828, ch. 116. Act of July 30, 1813, ch. 36.

ceedings thereon; and thereupon such person shall be considered as a citizen of the United States. And the children of such persons so naturalized, dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States. And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States: *Provided also*, That no person heretofore proscribed by any state, shall be admitted a citizen as aforesaid, except by an act of the legislature of the state in which such person was proscribed.(a)

Their children residing here, deemed citizens.

Also, children of citizens born beyond sea, &c. Exceptions.

APPROVED, March 26, 1790.

STATUTE II.

March 28, 1790.

CHAP. IV.—*An Act making appropriations for the support of government for the year one thousand seven hundred and ninety.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be appropriated for the service of the year one thousand seven hundred and ninety, to be paid out of the monies arising from the duties on imports and tonnage, the following sums, to wit: A sum not exceeding one hundred and forty-one thousand, four hundred and ninety-two dollars, and seventy three cents, for defraying the expenses of the civil list, as estimated by the Secretary of the Treasury, in the statement annexed to his report made to the House of Representatives on the ninth day of January last, including therein the contingencies of the several executive offices which are hereby authorized and granted; and also, a sum not exceeding one hundred and fifty-five thousand, five hundred and thirty-seven dollars, and seventy-two cents, for defraying the expenses of the department of war; and the farther sum of ninety-six thousand, nine hundred and seventy-nine dollars, and seventy-two cents, for paying the pensions which may become due to the invalids, as estimated in the statements accompanying the aforesaid report.

Appropriations of monies arising from duties, for the civil list.

War department;

Pensions to invalids.

SEC. 2. *And be it further enacted*, That all the expenses arising from, and incident to the sessions of Congress, which may happen in the course of the aforesaid year, agreeably to laws heretofore passed, shall be defrayed out of the monies arising from the aforesaid duties on imports and tonnage.

Incidental expenses of Congress.

(a) The power of naturalization is exclusively in Congress. Chirac v. Chirac, 2 Wheat. 259; 4 Cond. Rep. 111.

A naturalized citizen, who in time of peace, returns to his native country for the purpose of trade, but with the intention of returning again to his adopted country, continuing in the former, a year after the war between the two countries, for the purpose of winding up his business, engaging in no new commercial transactions with the enemy, and then returning to his adopted country, has gained a domicil in his native country, and his goods are subject to condemnation. The Frances, 8 Cranch, 335; 3 Cond. Rep. 154.

The various acts on the subject of naturalization submit the decision upon the right of aliens to courts of record. They are to receive testimony; to compare it with the law; and to judge on both law and fact. If their judgment is entered on record in legal form, it closes all inquiry, and like other judgments, is complete evidence of its own validity. Spratt v. Spratt, 4 Peters, 393.

It need not appear by the record of naturalization, that all the requisites presented by law, for the admission of aliens to the rights of citizenship, have been complied with. Starke v. The Chesapeake Ins. Comp., 7 Cranch, 420; 2 Cond. Rep. 556.

A certificate by a competent court, that an alien has taken the oath prescribed by the act respecting naturalization, raises the presumption that the court was satisfied as to the moral character of the alien, and of his attachment to the principles of the constitution of the United States. The oath when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting him to be a citizen.

The children of persons duly naturalized before the 14th of April, 1802, being under age at the time of the naturalisation of their parent, were, if dwelling in the United States on the 14th of April, 1802, to be considered as citizens of the United States. Campbell v. Gordon, 6 Cranch, 176; 2 Cond. Rep. 342. See also ex parte Newman, 2 Gallis. C. C. R. 11; Peters' C. C. R. 457.

[United Elect., Radio, & Mach. Workers of Amer.]

SUMMARY — LEGISLATIVE HISTORY

WALTER-McCARRAN IMMIGRATION AND NATIONALITY ACT OF 1952

Public Law 414 - 66 Statute 163

The Walter-McCarran Immigration and Nationality Act of 1952 is a joint product of Congressman Francis Walter (D. Pa.) and Senator Pat McCarran (D. Nev.), of the House and Senate Judiciary Committees, and of course, of the House and Senate. The Bill was originally passed in the House under the sponsorship of Congressman Walters, the ranking Democrat on the Judiciary Committee. The House Judiciary Committee Chairman Emanuel Celler (D. N.Y.) strongly opposed the Walter Bill in his own Committee and introduced his own alternative Bill. It is important to recognize that the correct designation of the Act is Walter-McCarran Act and not the McCarran Act to avoid confusion with the McCarran Subversive Activities Control Act of 1950.

1947, 1948, 1949	In 1947 the Senate adopted Resolution 137 authorizing study of Immigration and Naturalization Laws. This "study" continued through 1947, 1948 and 1949.
1950	Senate Sub-Committee issued Senate Report 1515, a comprehensive and detailed report on the Immigration and Naturalization system.
April 20, 1950 & January 29, 1951	(S 3455) and its revision bill (S 716) introduced by Senator Pat McCarran (D. Nev.).
February 5, 1951	(HR 2379) companion bill to McCarran's (S 716) introduced by Congressman Francis Walter (D. Pa.).
March 6-21 & April 9, 1951	Joint hearings before the Sub-Committees of the Senate and House Judiciary Committees on (S 716, HR 2379 and HR 2186 [introduced Feb. 22, 1951 by Congressman Celler D. N.Y.]).
August 27, 1951	(S 2055) a revision of (S 716) and (HR 2379) introduced by Senator McCarran (D. Nev.).
October 9, 1951	(HR 5678) a substitute for (HR 2379) was introduced by Congressman Francis Walter (D. Pa.) referred to Judiciary Committee.
January 29, 1952	(S 2550) introduced by Senator Pat McCarran (D. Nev.) and placed on the Senate calendar. (Senate Report 1137, Part I) (S 2550 revised S 2055 and was a companion bill to Walter's HR 5678).
February 14,1952	(HR 5678) reported from House Committee without Amendment (House Report 1365).
March 12, 1952	(S 2842) liberal substitute bill introduced by Senators Humphrey, Lehman and 12 other Senators.
March 13, 1952	Minority report opposing McCarran Bill filed by Senators Kefauver, Kilgore, Langer and Magnuson (S Report 1137, Part II).

Apr. 23, 24, 25, 1952	(HR 5678) reported out of House Rules Committee and made a special order of business with 3 hours general debate and 5 minutes on each amendment permitted. (HR 5678) debated, amended, passed the House. A motion to re-commit was defeated on a non-roll call division vote with 62 to 195. Passed on a non-roll call division vote 206 to 68.
May 7-22, 1952	(S 2550) debated, amended and passed in the Senate on a voice vote.
June 9-10, 1952	Report of Joint Senate-House Conference Committee reported to House and passed on a non-roll call division vote 203 to 53, after a motion to re-commit was defeated on a voice vote.
June 11, 1952	Joint Senate-House Conference Report submitted to Senate and passed on a voice vote.
June 25, 1952	President Truman vetoed the Bill (House Document 520).
June 26, 1952	House overrides the veto by a vote of 278 to 113.
June 27, 1952	Senate overrides the veto by a vote of 57 to 26.

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PUBLIC LAW 89-236

H. R. 2580

Eighty-ninth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Monday, the fourth day of January, one thousand nine hundred and sixty-five

An Act

To amend the Immigration and Nationality Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201 of the Immigration and Nationality Act (66 Stat. 175; 8 U.S.C. 1151) be amended to read as follows:

"SEC. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), and of the immediate relatives of United States citizens specified in subsection (b) of this section, the number of aliens who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7) enter conditionally, (i) shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and (ii) shall not in any fiscal year exceed a total of 170,000.

"(b) The 'immediate relatives' referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this Act.

"(c) During the period from July 1, 1965, through June 30, 1968, the annual quota of any quota area shall be the same as that which existed for that area on June 30, 1965. The Secretary of State shall, not later than on the sixtieth day immediately following the date of enactment of this subsection and again on or before September 1, 1966, and September 1, 1967, determine and proclaim the amount of quota numbers which remain unused at the end of the fiscal year ending on June 30, 1965, June 30, 1966, and June 30, 1967, respectively, and are available for distribution pursuant to subsection (d) of this section.

"(d) Quota numbers not issued or otherwise used during the previous fiscal year, as determined in accordance with subsection (c) hereof, shall be transferred to an immigration pool. Allocation of numbers from the pool and from national quotas shall not together exceed in any fiscal year the numerical limitations in subsection (a) of this section. The immigration pool shall be made available to immigrants otherwise admissible under the provisions of this Act who are unable to obtain prompt issuance of a preference visa due to oversubscription of their quotas, or subquotas as determined by the Secretary of State. Visas and conditional entries shall be allocated from the immigration pool within the percentage limitations and in the order of priority specified in section 203 without regard to the quota to which the alien is chargeable.

"(e) The immigration pool and the quotas of quota areas shall terminate June 30, 1968. Thereafter immigrants admissible under the provisions of this Act who are subject to the numerical limitations of subsection (a) of this section shall be admitted in accordance with the percentage limitations and in the order of priority specified in section 203."

SEC. 2. Section 202 of the Immigration and Nationality Act (66 Stat. 175; 8 U.S.C. 1152) is amended to read as follows:

"(a) No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in section 101(a)(27), section 201(b), and section 203: *Provided*, That the total number of immigrant visas and the

(j) The title preceding section 249 is amended to read as follows: "RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY 1, 1924, OR JUNE 30, 1948".

SEC. 23. (a) The table of contents (Title II—Immigration, chapter 1) of the Immigration and Nationality Act, is amended to read as follows:

"CHAPTER 1—SELECTION SYSTEM

"Sec. 201. Numerical limitations.
"Sec. 202. Numerical limitation to any single foreign state.
"Sec. 203. Allocation of immigrant visas.
"Sec. 204. Procedure for granting immigrant status.
"Sec. 205. Revocation of approval of petitions.
"Sec. 206. Unused immigrant visas."

(b) The table of contents (Title II—Immigration, chapter 3) of the Immigration and Nationality Act, is amended by changing the designation of section 224 to read as follows:

"Sec. 224. Immediate relative and special immigrant visas."

(c) The table of contents (Title II—Immigration, chapter 5) of the Immigration and Nationality Act is amended by changing the designation of section 249 to read as follows:

"Sec. 249. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to July 1, 1924, or June 30, 1948."

SEC. 24. Paragraph (6) of section 101(b) is repealed.

John W. McCormack

Speaker of the House of Representatives.

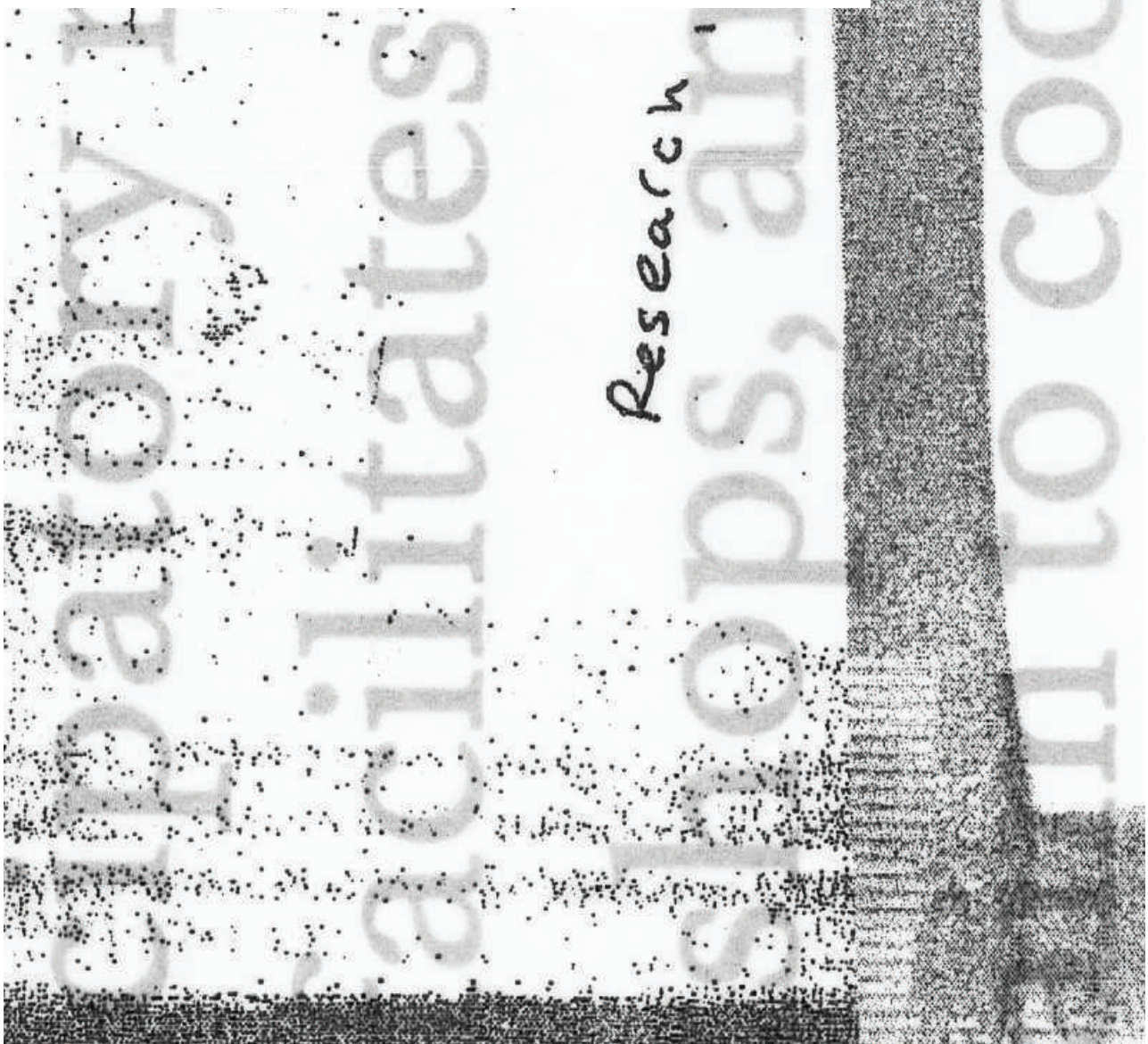
Hubert H. Humphrey

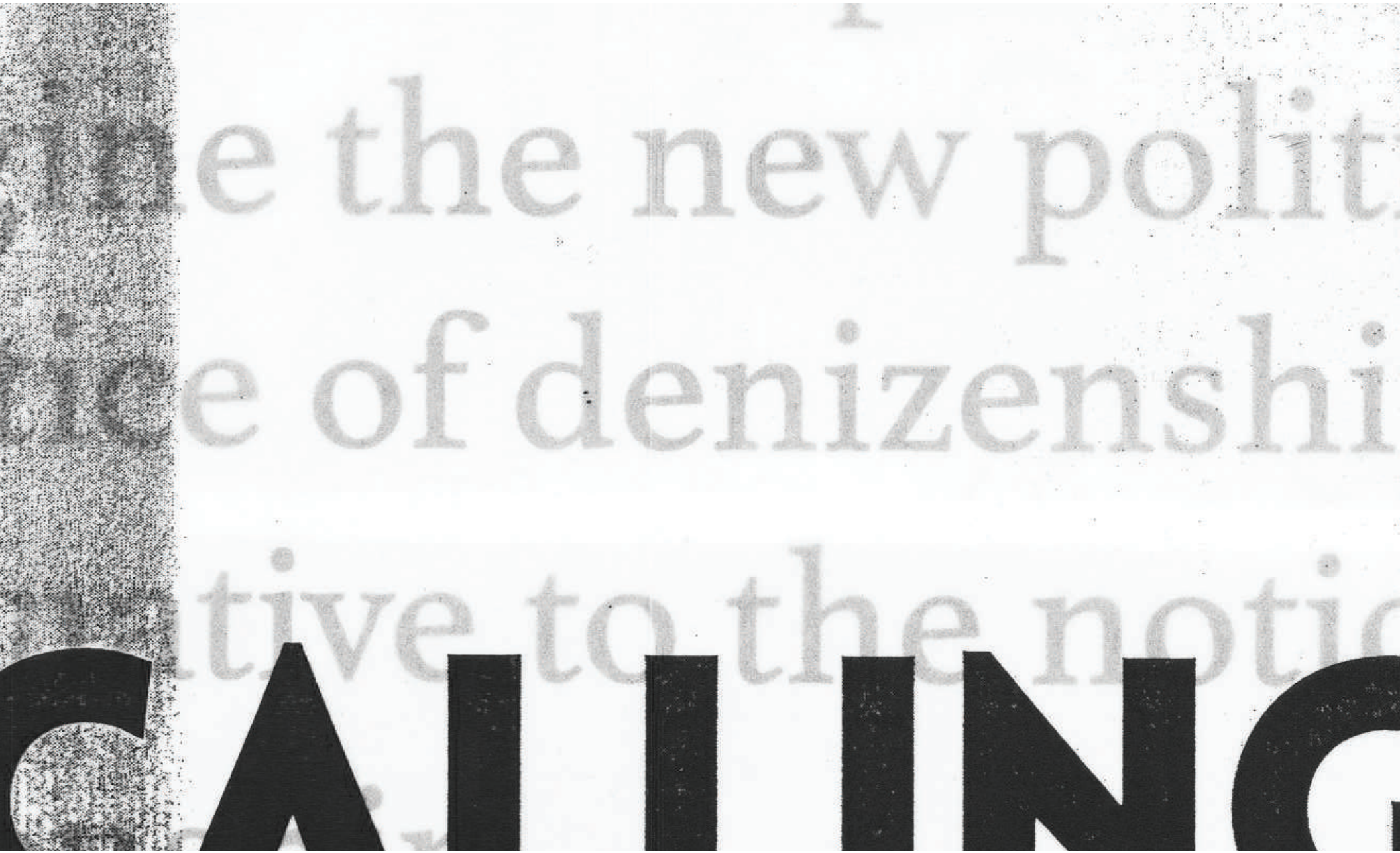
Vice President of the United States and President of the Senate.

Lyndon B. Johnson
approved 5:12 P.M. Sunday OCT 3 1965
New York City, N.Y.

Tools for Librarians & Educators

The following pages feature a workshop plan that may be helpful for librarians or educators who are interested in using this resource book as an educational tool. This workshop, titled *Re-Imagining Citizenship,* has been used to facilitate discussions on citizenship as part of *Calling All Denizens* and includes a handout that may be replicated for educational uses. The other sections of this resource book may also be used as tools within the workshop plan.

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Re-Imagining Citizenship: A Workshop

Overview:
Through reflection on the history of immigration and naturalization policy in the United States, this workshop will explore notions of "from within" and "from without" as they pertain to the nuances of citizenship, sovereignty, migration, exile, and diaspora. Using an artistic process, participants will reflect on their own experiences as they relate to the notions of belonging and community, in order to collaboratively build a shared vision of more compassionate, ethical, and genuinely liberated society that holds its denizens dear.

Objectives:
- Developing a deeper understanding of the history of immigration policy as it relates to the development of white supremacy in the social and legal fields in the United States.
- Developing a deeper understanding of participants' personal experiences and identities in the context of the history of the United States.
- Imagining futures, identities, and experiences beyond citizenship and nationality.
- Practicing cooperative-working skills, such as deep listening, communication, critical thinking, and sharing space.
- Building community, shared understanding, empathy, and respect amongst participants.

Materials:
- Big sheets of paper for shared exercises
- Individual sheets of paper
- Pens, pencils, markers, drawing and writing tools
- Books and references
- Magazines and other collage materials

Additional Notes:
- Please allow time for breaks as needed.
- This workshop was designed for groups of 10-15 people of ages 15 and older.
- This material is sensitive and has the potential to impact the emotional states of participants. Please be mindful of the group you gather together and work with an experienced facilitator.

Steps:
Group Introductions: 15-25 Minutes
- Facilitator introduces the project and goals of the workshop.
- Each participant shares their name, pronouns, and why they chose to participate.
- Facilitator proposes workshop structure to participants and asks for additional feedback.

Shared Rules of Engagement: 5-10 Minutes

- Facilitator explains the concept of shared rules of engagement and asks if any participant has done this before. If so, they may be able to help explain the process to others.
- Facilitator asks participants to propose shared rules for the space, such as "Don't interrupt while others are speaking," "Ask neutral questions," etc.
- Everytime a rule is suggested, the facilitator asks the entire group for verbal consent. If everyone agrees, the rule is written up on a large and visible piece of paper in front of the group.

Group Discussion: Immigration & Naturalization Policy History: 20-30 Minutes

- The facilitator passes out the handout on immigration policy and any other related materials.
- The facilitator shares a brief history of immigration policy in the United States in their own words. Allow participants to add in any information or ideas they want as you go through the materials.
- The facilitator asks participants: How does this history show up in today's rhetoric about immigration and citizenship? How does it relate to participants lived experiences?
- Please note that often, participants have personal anecdotes that may aid in understanding the history through a personal lens. The facilitator may encourage a group discussion to unfold.

Individual Activity: What is your relationship to citizenship?: 20-25 Minutes

- The facilitator asks the group to personally reflect on their own experiences. The facilitator may ask, "What is your relationship to citizenship? Where do you get your sense of belonging and community? What does the notion of American citizenship mean to you? If citizenship could mean anything you want, what would it be?"
- Individuals may write, draw, collage, or individual express their reflection in other ways.
- The facilitator may remind the group that they will be invited to share their reflection if they want to.

Group Sharing: 15-25 Minutes

- Facilitator invites participants to share their reflections with the group. Please be respectful to those who do not want to share.
- Allow for a group conversation.

Shared Manifesto: 25-35 Minutes

- The facilitator asks the group, "If we were to re-imagine and re-define the notion of citizenship, what would it look like?"
- The facilitator asks participants to propose ideas that relate to the personal experiences they shared.
- As participants share their responses, the facilitator asks the group if they agree. If everyone agrees, the facilitator may write the response on a visible large sheet of paper or board in front of the group.
- If the group does not agree, the facilitator may ask for revisions. If an

agreement cannot be made, save the item to come back to at the end.
• If you need to, you may translate these notes as a draft and share with participants for final edits at a later time.
• Facilitator shares final collaborative manifesto with all participants.

Closing: 10-15 Minutes
• Facilitator thanks the group for participating.
• Facilitator may ask the group if there's anything anyone wants to share as a closing.
• Share contact information between group members and leave the opportunity open to meet again.

A Brief History of Citizenship & Immigration Policy: Workshop Handout

Adapted from the introduction of *Sentiments: Expressions of Cultural Passage.*

Who is labeled an "immigrant" in the United States today? Mainstream media and politicians often imply that the identity of the "immigrant" is something simple and straightforward: An immigrant is a foreigner, a stranger, an outsider, the "Other." Relative to other geographic regions, the United States is new; many American citizens are at most only three or four generations removed from being "immigrants." Yet the social category as it is used today seems to imply that there is a deep difference between the immigrant of today and the immigrant of past generations. Someone is an immigrant not in virtue of where they've come from but in virtue of who they are. For many Americans today, "immigrant" seems to simply mean foreignness, where the quality of one's foreignness is (often) implicitly measured by one's proximity to whiteness—the less white someone is observed to be, the more of an "immigrant" they are. This contemporary conception, however, is a great oversimplification of a rich and complicated identity that intersects with a vast range of social categorizations such as race, nationality, culture, ethnicity, and so on. It is also a great oversimplification of American identity itself, as it implies that being American means being white. This is the same perspective that fuels practices of assimilation and that pressures immigrants to lean into whiteness in order to be accepted. This paradigm of "immigrant versus citizen" fuels one of the primary problems that the United States faces today and has faced throughout its history: an already-narrow, and narrowing, concept of what it means to be an American.

This characteristic of American citizenship was created by design, in order to strategically affirm a white supremacist hierarchy. Starting with the first Immigration Act of 1790, the privilege of citizenship was limited to "free white aliens."[1] This language aimed to transform northern and western European immigrants into American citizens and exclude anyone else. At the time it was first written into law, this language specifically excluded Black and Indigenous People from citizenship. This jargon was not taken out of immigration law until 1952, when race was no longer formally named as a qualifier for obtaining citizenship. However, it was not until 1965 that racist policies that limited the number of legally permitted immigrants who originated outside of northern and western Europe were actually revoked with the passing of the Immigration and Nationality Act of 1965.This law was passed largely due to the momentum of the Civil Rights Movement that made white supremacy increasingly unacceptable in the social and legal spheres.[2] Although it was written into law, the term "free white alien" had come into legal use before the Supreme Court had fully, legally defined the category of "white person." As new waves of immigrants came

into the United States, various individuals across different time periods over the last 200 years who sought citizenship rights were strategically rejected on the basis of the racial pre-requisite. Through this process, the legal category of "white person" was refined and shifted.[3] For example, in a famous Supreme Court case, *United States v. Bhagat Singh Thind* in 1923, Thind, an Indian immigrant, argued that he and American whites were both of Caucasian descent, and he was thus qualified to attain citizenship. In order to reject Thind's argument, the court decided to disregard its "scientific" understanding of what determines a "white person"—i.e. previously, the word "Caucasian" had been used to determine white status based on an individual's ancestry[4]—and used a new definition of whiteness "to be interpreted in accordance with the understanding of the common man."[5] This shift not only explicitly shows that the production of laws in the United States is based on a social ideological notion of race, but also exemplifies the ways the legal system has fluctuated in order to maintain the ideology of whiteness. Instead of building up a deep cultural meaning around the idea of citizenship—as in trying to clarify what it means to be an accountable member of the public sphere, a neighbor, a resident, or a community member—the value of American citizenship was largely created through lines of race-based exclusion.[6]

Key Court Cases:

1. *The United States V. Cartozian* (1925)

In the *United States Vs. Cartozian* suit of 1925, Cartozian, an Armenian immigrant, argued for his status as a 'free white' with the hopes of attaining his American citizenship. At the time, the privilege of citizenship was only given to 'free whites;' however, the definition of 'white' was yet to be explicitly determined by law. Through this case and others, where non-western immigrants sought citizenship and attempted to argue away their differences using specific linguistic tactics in court (asserting their 'white' status), 'whiteness' was developed and refined as a distinct legal construct. For Cartozian, using the tactic of finding a common enemy, in this case Turkey, with the American white population, asserting his people's history of assimilation and amalgamation with other 'free whites,' among other tactics, allowed him the status of whiteness.

2. *United States V. Bhagat Singh Thind* (1923)

In 1923, the Supreme Court rejected citizenship for Bhagat Singh Thind, a high-caste Hindu applicant. The Court's reasoning for rejecting Thind marks a historic shift in the legal definition of whiteness from a "scientific," meaning a definition based on fixed geographic ancestry, to a "common sense" definition deemed by the logic of the "common man." Because Thind fit into the Court's 'scientific' definition of whiteness, they shifted the definition of 'white person' so as to exclude him from citizenship. Federal prosecutors were so affirmed by this decision, that they attempted to go

after individuals who had already been naturalized, like Cartozian.

3. *United States V. Takao Ozawa* (1922)

In 1922, the U.S. Supreme Court rejected citizenship for a Japanese native who had resided in the United States for over 20 years. To quote the Court: "He [the applicant] was a graduate of the Berkeley, California, high school, had been nearly three years a student in the University of California, had educated his children in American schools, his family had attended American churches, and he had maintained the use of the English language in his home. That he was well qualified by character and education for citizenship is conceded." His citizenship application was rejected because, to quote the Court, "The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. . . . The appellant in the case now under consideration, however, is clearly of a race which is not Caucasian, and therefore belongs entirely outside the zone. . ."

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1 Between 1790 and 1802, people applying for naturalization were required to have resided in the country for five years, have "good moral character," and be "free white persons." This language was meant to exclude Black residents and "Indians not taxed" from citizenship rights. Generally, these laws aimed to transform northern and western European immigrants into American citizens and exclude anyone else. However, the Fourteenth Amendment declared that all free persons born in the United States should be considered citizens. In 1870, Congress amended naturalization requirements and extended eligibility to "aliens being free white persons, and to aliens of African nativity and to persons of African descent." This revision led to further confusion over racial eligibility for citizenship. In 1882, Congress banned the naturalization of Chinese immigrants with The Chinese Exclusion Act, however it did not explain whether "Chinese" indicated race or nationality.

2 *How the civil rights movement opened the door to immigrants of color* by Rebekah Barber, Facing South, 2017.

3 *White by Law: The Legal Construction of Race* by Ian Haney Lopez, 1996.

4 *Ozawa v. United States,* 260 U.S. 178, 1922.

5 *United States v. Bhagat Singh Thind*, 261 U.S. 204, 1923.

6 *Race, Nationality, and Reality* by Marian L. Smith, 2002.

Credits & Thank Yous

Calling All Denizens **is dedicated to Jackie & John Hanauer.**

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The text in *Calling All Denizens: Manifesto* references and quotes the following:

• Page 6: Hugh of Saint Victor speaks of a man to whom the entire world is a foreign land, "The man who finds his homeland sweet is still a tender beginner; he to whom every soil is as his native one is already strong; but he is perfect to whom the entire world is as a foreign land."

• Page 8: In Saidiya Hartman's talk at the University of California Los Angeles, hosted by the University's Gender Studies Department in March 2019, she framed her newest book, *Wayward Lives, Beautiful Experiments: Intimate Histories of Social Upheaval,* as a recognition of "those who love what is not meant to be loved."

• Page 10: In her book, *Justice and the Politics of Difference,* Iris Marion Young speaks of the importance of a politics of difference and the liberal veneer of "equality."

• Page 11: In Audre Lorde's, *Poetry Is Not A Luxury,* she speaks of the importance of being guided by emotional sensibilities.

• Page 13: In Aamir Mufti's *Forget English! Orientalisms and World Literatures,* he writes about nation-thinking, or the conception of society in national-cultural terms.

• Page 15: In Maya Angelou's poem, *On The Pulse Of Morning*, she writes, "The horizon leans forward, Offering you space to place new steps of change."

Calling All Denizens is an ongoing project that was launched in April 2019 as part of *Counterpublic*, a triennial public art exhibition scaled to a neighborhood organized by The Luminary. *Calling All Denizens* has also received generous support from the Los Angeles Contemporary Archive, where the first manifesto pamphlets were printed.

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The materials for the racial prerequisite case summaries of *Takao Ozawa v. United States* and *United States v. Bhagat Singh Thind* were adapted from The Legal Information Institute at Cornell Law School. Learn more at www.law.cornell.edu. The materials for the racial prerequisite case summary of *United States v. Cartozian* was adapted from Justia US Law. Learn more at www.law.justia.com. The layout and fonts of these materials were reformatted.

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TO THOSE FOR WHOM "THE HORIZON LEANS FORWARD"