Asserting Whiteness, South Asian And Arab Participation In The American Legal System In The Early 20th Century

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Since 1790, "free white persons" and therefore, whiteness, was a legal category used to grant or deny citizenship to immigrants. Therefore, immigrants to the United States asserted they were white in order to become naturalized. However, who was to be classified within this category was less than clear. Whiteness was an ever-evolving category, expanded and contracted at the will of justices. Ultimately, it was used as a tool to naturalize "desirables" and denaturalize "undesirables." South Asians were unsuccessful in asserting whiteness as the Supreme Court's decision in United States v. Bhagat Singh Thind definitively held that South Asians were not white. In contrast, Arab Americans were successful and continue to be classified as white today on the US Census.

A goal of this essay is to engage in a comparative approach between the legal strategies and judicial reasoning in South Asian naturalization case law and Arab naturalization case law. Since both led to entirely different outcomes, it allows for uncovering what factors are really doing the work in concluding who fits the category of whiteness in the eyes of the law. Christianity, the ability to assimilate, and the use of a Semitic language appear to have helped early Arab immigrants secure their classification as white. Another goal of this essay is to engage with histories of migration, immigration laws, and violence against South Asians. When did Arab and South Asian immigrants begin coming to the United States? What jobs did they work? How were they treated by the communities they lived in? The discussion of the history of immigration law reveals how immigration law went from an outright ban, to a quota system, to a skills-based and family reunification model.

INTRODUCTION 3

PART I: BACKGROUND ON IMMIGRATION LAW AND RACIAL VIOLENCE AGAINST SOUTH ASIANS.....8

PART II: SOUTH ASIAN CLAIMS TO WHITENESS IN NATURALIZATION CASE LAW.....19

PART III: THIND FAMILY AS A REPRESENTATION OF THE LARGER SOUTH ASIAN STRUGGLE FOR EQUALITY.....28

PART IV: ARAB CLAIMS TO WHITENESS IN NATURALIZATION CASE LAW.....30

CONCLUSION.....36

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Introduction

Citizenship for immigrants to the United States was neither enshrined nor inevitable. It was incredibly obscure for non-European immigrants who had to fight for legal recognition and the protections that come with being a citizen as Congress passed increasingly hostile immigration legislation. This Paper will examine the legal strategies brought by two such groups, South Asians and Arabs, to be naturalized before the passing of the Immigration Act of 1965, which led to very different results.

South Asian immigration to the United States began in the early 1900s after the migration of South Asian laborers to Canada trickled down to the United States.[1] They found work as railroad workers, in lumber mills, and as farm laborers, especially after Chinese and Japanese immigration numbers were restricted.[2] Arab migration to the United States began in 1878, and this "first wave" of immigration consisted of Christian Syrians.[3] Historian Gregory Orfalea argues that there are five factors leading to the initial immigration from Syria and Lebanon.[4]

> "My own studies indicate five areas of importance, some neglected and some oft-cited: the wooing and salubrious role of American missionaries in Syria; the shattering of the religious mosaic in 1860; economic uncertainties exacerbated by overpopulation and the land squeeze; the death throes of the Ottoman Turkish empire and ensuring lawlessness, taxation, and conscription; and the starvation of one-quarter of Lebanon's population during the Great War."[5]

My Paper supports existing scholarship on South Asian and Arab naturalization in America but adds to existing scholarship by engaging in a comparative approach. For instance, scholarship exists on Arab migration and the arguments brought by Arab applicants for

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[1] Erika Lee, *The "Yellow Peril" and Asian Exclusion in the Americas*, 76 PAC. HIST. REV. 537, 542 (2007).
[2] RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 302 (1989).
[3] SARAH GUALTIERI, BETWEEN ARAB AND WHITE: RACE AND ETHNICITY IN THE EARLY SYRIAN AMERICAN DIASPORA 168 (2009).
[4] GREGORY ORFALEA, THE ARAB AMERICANS: A HISTORY 52 (2006).
[5] *Id*.

naturalization. Greg Orfalea and Alixa Naff's works laid a foundation in Arab migration history, particularly regarding the first wave of Arab immigration to the United States.[6]

Key historians in the area of Arab naturalization law include Sarah Gualtieri and Elizabeth Boosahda. Sarah Gualtieri's book, *Between Arab and White: Race and Ethnicity in the Early Syrian American Diaspora*, examines how Syrian immigrants claimed whiteness to become naturalized in the United States. She writes that Syrians had to "construct and make sense of their whiteness in relation to others who were nonwhite, for historically whiteness had little meaning unless it stood in direct opposition to a racialized Other."[7] This Paper supports her scholarship by examining Arab naturalization case law but also directly compares the judicial reasoning in both Arab and South Asian naturalization case law, especially its direct intersection in *United States v. Ali*.

This Paper also supports Elizabeth Boosahda's work in *Arab-American Faces and Voices: The Origins of an Immigrant Community*, principally "Chapter Six: Americanization."[8] Boosahda uses personal interviews to center the Arab American experience. In contrast, this Paper focuses on the legal strategies employed by Arabs as plaintiffs and defendants to explore their strategic use of legal advocacy. Both Sarah Gualtieri and Elizabeth Boosahda mention the Asian immigration question. However, by centering this Paper on the South Asian experience, I am able to look more in-depth at the violence against South Asians, the trajectory of the case law, and the Supreme Court's decision in *United States v. Bhagat Singh Thind*.

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[6] ORFALEA, *supra* note 4, at 52; ALIX NAFF, BECOMING AMERICAN: THE EARLY ARAB IMMIGRANT EXPERIENCE (1993).
[7] GUALTIERI, *supra* note 3, at 78.
[8] ELIZABETH BOOSAHDA, ARAB-AMERICAN FACES AND VOICES: THE ORIGINS OF AN IMMIGRANT COMMUNITY 131 (2003).

My Paper also supports existing scholarship on Asian (especially South Asian) migration and naturalization, particularly *Entangling Migration History: Borderlands and Transnationalism in the United States and Canada*, edited by Benjamin Bryce and Alexander Freund,[9] and Ronald Takaki's *Strangers from a Different Shore: A History of Asian Americans*.[10] Both works discussed the migration history of South Asians in the United States, emphasizing their employment in the lumber industry. Takaki's work also examined the events leading up to *U.S. v. Bhagat Singh Thind* and the events that occurred afterward, including miscegenation and loss of property rights. My Paper utilizes these works in examining the social history relevant to my argument and the legal ramifications of that history.

Johanna Ogden's work on the violence South Asians faced was instrumental to Part I of my Paper.[11] While the Bellingham Riot has been discussed in many works, discussions of the Everett Riot and St. Johns Riot are not prevalent. Ogden's scholarship, which centered on Oregon state's history, was critical to filling in the gaps and shedding light on less well-known instances of violence against South Asians.

Finally, this Paper would not have been possible without the groundbreaking work of Ian Haney Lopez in *White by Law: The Legal Construction of Race*.[12] Lopez's work scrutinizes the legal category of whiteness, writing that "whether one is White therefore depends in part on other elements of identity-for example, on whether one is wealthy or poor, Protestant or Muslim, male or female" and therefore understands "Whiteness as a complex, falsely homogenizing

[9] ENTANGLING MIGRATION HISTORY: BORDERLANDS AND TRANSNATIONALISM IN THE UNITED STATES AND CANADA, 124 (Benjamin Bryce & Alexander Freund, eds. 2015).
[10] TAKAKI, *supra* note 2, at 300.
[11] Johanna Ogden, *White Right and Labor Organizing in Oregon's "Hindu" City,* 120(4) Or. Hist. Q. 488, 490 (2019).
[12] IAN HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 85 (1996).

term."[13] While Lopez focuses almost exclusively on law, I discuss the social history that emphasizes the xenophobia underlying immigration and naturalization law.

I argue that although courts attempted to make a bright-line rule for who was a "white person" under the law, naturalization case law of South Asians and Arabs show how arbitrarily that line was drawn to include those who justices thought were of "good" moral character. Skin color, religion, education, and language were used as markers of race and morality. However, the judicial reasoning makes evident that the category of "white" was not clear or objective as they moved away from a "scientific" definition of race[14] to a subjective notion of how the term white was commonly used, an impossible task as the common usage of white also fluctuated.

Rather than focusing on the broader class of Asian immigrants who petitioned for naturalization, this Paper will focus explicitly on the South Asian immigrants who petitioned for naturalization. Such a focus allows for uncovering unique arguments as employed by South Asians. For instance, caste, a social hierarchy rooted in religion with origins in race, was a distinct strategy used by South Asian immigrants.

Furthermore, focusing on a specific group counters the myth of a monolithic Asian American experience. The term "Asian American" was created by students Emma Gee and Yuji Ichioka at U.C. Berkeley in 1968 to establish solidarity and encourage a political identity.[15] They also founded the Asian American Political Alliance (AAPA).[16] Writer Jay Kang states that "Ichioka and Gee had noticed that the Asian students at Berkeley tended to protest as individuals and not as a group with its own outlook, demands, and support, which in turn oftentimes left them

[13] *Id.* at xxi.
[14] Please note that any mention of "racial science" in this paper treats the concept as it was used in the time period, rather than as a pseudoscience today to avoid any anachronism.
[15] JAY CASPIAN KANG, THE LONELIEST AMERICANS 47 (2022).
[16] *Id.*

without a voice or perspective."[17] However, while useful for internal solidarity, today the term is used ubiquitously without much reflection on the vast array of experiences and geography that term encompasses.

Kang argues that Asian Americans need to support "the forgotten Asian America," writing "upwardly mobile Asian Americans must drop our neuroses about microaggressions and the bamboo ceiling, and fully align ourselves with the forgotten Asian American: the refugees, the undocumented, and the working class."[18] The Asian American monolith obscures the plight of the marginalized, such as refugees and undocumented immigrants. For instance, Asian Americans have "not only the largest income gap of any racial group but also massive health care, education, and economic disparities that rarely get addressed."[19] This myth of a monolithic experience erases inequities within the group and results in effective or nonexistent policies.[20]

Part I of this paper will lay a foundation in U.S. immigration and naturalization law of the late 18th century to the mid-20th century, and the foundation of violence against South Asians. Part II will examine how South Asians participated in the American legal system by asserting whiteness in hopes of being naturalized. It will follow the case law that led to the Supreme Court's holding in *U.S. v. Bhagat Singh Thind*, finding that "Hindus" are not white. Part III will examine how Dr. Bhagat Singh Thind's family was representative of the larger struggle for equality by South Asians. Part IV will contrast the experience of South Asian immigrants in naturalization case law to that of Arab immigrants, who successfully claimed whiteness. Christianity, ability to assimilate, and use of a Semitic language appear to be some of the

[17] *Id.* at 48.
[18] *Id.* at 203.
[19] Li Zhou, *The Inadequacy of the Term "Asian American,"* VOX (May 5, 2021), https://www.vox.com/identities/22380197/asian-american-pacific-islander-aapi-heritage-anti-asian-hate-attacks.
[20] *Id.*

deciding factors between Arabs and South Asians that allows for Arabs to be victorious in their claim. Finally, Part V will conclude this Paper and offer further discussion of the current consequences of these decisions.

I. Background on Immigration Law and Racial Violence against South Asians

The Naturalization Act of 1790 stated that "any alien...being a free white person...may be admitted to become a citizen."[21] While this Act allowed for citizenship through naturalization, its restriction of this privilege to "free white persons" created a legal category and ignited debates on who should be classified within it. In 1870, after the Reconstruction Amendments were passed, the Naturalization Act was amended to include that "persons of African nativity, or African descent" could become naturalized, creating a binary with two legal categories for citizenship.[22] Notably, Asian immigrants continued to be excluded from naturalization.

At that time, the legal ability of Asian immigrants to testify in courts was also unclear. However, a case in 1882, *Territory of New Mexico v. Yee Shun*, came to stand for the ability of non-Christian Chinese people to testify in courts.[23] On February 24, 1882, Yee Shun was a witness to the murder of Jim Lee but was instead charged with the offense.[24] He took the stand in his own defense at trial.[25] However, he was found guilty by a jury and sentenced to life in prison.[26] On appeal, Yee Shun's attorney, T.A. Green, attempted to call into question Yee Shun's

[21] An Act to Establish an Uniform Rule of Naturalization, ch. 3, § 1, 1 Stat. 103, 103 (1790), https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=226.
[22] An Act to Amend the Naturalization Laws and to Punish Crimes Against the Same, and for Other Purposes, ch. 255, § 7, 16 Stat. 254, 256 (1870), https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/16/STATUTE-16-Pg254a.pdf.
[23] Territory v. Yee Shun, 3 N.M. 82, 83, https://cite.case.law/pdf/3282517/Territory%20v.%20Yee%20Shun,%203%20N.M.%2082%20(1884).pdf; JOHN R. WUNDER, GOLD MOUNTAIN TURNED TO DUST: ESSAYS ON THE LEGAL HISTORY OF THE CHINESE IN THE NINETEENTH-CENTURY AMERICAN WEST 199 (2018).
[24] Wunder, *supra* note 23, at 202.
[25] *Id.* at 207.
[26] *Id.*

testimony by arguing that taking an oath in court demanded a Christian belief.[27] Justice Bell found that a non-Christian religious belief was not an automatic barrier to taking an oath and found the witness to be competent.[28] Yee Shun, then twenty-two years, committed suicide after his appeal failed.[29] His case came to stand for the ability of non-Christian Chinese and later non-Christian Asians as a whole to testify in American courts, creating a way for increased participation of Asian people in American courts.

The Chinese Exclusion Act of 1882 soon followed the Naturalization Act of 1790 and cemented restrictions on Asian immigration, stating that "the coming of Chinese laborers to the United States...is hereby suspended."[30] In addition, the Act unambiguously prevented citizenship. It stated, "hereafter no State court or court of the United States shall admit Chinese to citizenship and all laws in conflict with this act are hereby repealed."[31] The Act and its subsequent versions were extremely strict and applied even to those that had been in America before it was passed by Congress but had tried to re-enter the country after.[32]

Ping v. United States is emblematic of the harshness of the Chinese Exclusion Act.[33] Chae Chan Ping, a laborer living in San Francisco, left the U.S. for China in 1887 to say goodbye to his father, who had passed away.[34] He secured a reentry certificate before his departure.[35] In 1888, however, the law was tightened, he was denied reentry, and was detained on a steam-ship, regardless of his certificate.[36] The Supreme Court stated that "the government of the United

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[27] *Id.*
[28] Territory v. Yee Shun, 3 N.M. at 83.
[29] Wunder, *supra* note 23, at 208.
[30] An Act to Execute Certain Treaty Stipulations Relating to Chinese, ch. 126, § 1, 22 Stat. 58, 58 (1882), https://catalog.archives.gov/id/5752153.
[31] *Id.* at 64.
[32] YELLOW PERIL!: AN ARCHIVE OF ANTI-ASIAN FEAR 233 (John Kuo Wei Tchen & Dylan Yeats eds. 2014).
[33] Ping v. U.S., 130 U.S. 581 (1889).
[34] *Id.* at 582; YELLOW PERIL!, *supra* note 32, at 233.
[35] Ping v. U.S., 130 U.S. at 582.
[36] *Id.*

States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy."[37] The Supreme Court therefore upheld his detention, stating congressional power over immigration as a matter of independence.[38]

The Geary Act of 1892 extended the Chinese Exclusion Act for yet another ten years.[39] Section 6 of the Act also imposed further requirements on Chinese immigrants already living within the United States. Chinese immigrants were to get "a certificate of residence" to be carried with them at all times or risk deportation unless "one credible white witness" could attest the person was a resident.[40]

As with the Chinese Exclusion Act of 1882, a legal challenge to the constitutionality of the Geary Act, particularly Section 6, was brought by Chinese petitioners. *Fong Yue Ting v. United States* consisted of three denied writs of habeas corpus appealed by Chinese petitioners.[41] All three petitioners had been arrested for not carrying a certificate of residence and argued that the Geary Act violated their due process.[42] The Supreme Court, consistent with its ruling in *Ping v. U.S.,* found that the Act did not violate the constitution as it was within Congress's powers to exclude aliens.[43] Justice Gray's opinion further stated, "the requirement of proof 'by at least one credible white witness that he was a resident of the United States at the time of the passage of this act,' is within the acknowledged power of every legislature to prescribe the evidence which shall be received."[44] The Court found that Congress could find that the testimony of Chinese witnesses were of a "suspicious nature" as they could be found to be more willing to lie about the

[37] *Id.* at 603.
[38] *Id.* at 611.
[39] An Act to Prohibit the Coming of Chinese Persons into the United States, ch. 60 § 1 (1892).
[40] *Id.* at § 6.
[41] Fong Yue Ting v. U.S., 140 U.S. 698, 731 (1893).
[42] *Id.* at 730.
[43] *Id.* at 728.
[44] *Id*. at 729.

petitioner's residential status.[45] In turn, this was deemed to justify the requirement for having a white witness testify, rather than a Chinese witness. While the Act explicitly stated restrictions on Chinese immigration and citizenship, discrimination against Asians was not limited to Chinese laborers. This Act only helped fuel anti-Asian sentiment overall and served as a starting point for Asian exclusion.

By 1907, anti-Asian sentiment soared with the creation of the Asiatic Exclusion League. The Asiatic Exclusion League, a xenophobic group instituted in both the U.S. and Canada, advocated and lobbied for the curtailment of Japanese and Korean immigrants to limit Asian immigration. Their purpose statement included, "The introduction of this incongruous and non-assimilable element into our national life will inevitably impair and degrade, if not effectively destroy, our cherished institutions and our American life. These Asiatics are alien to our ideas of patriotism, morality, loyalty, and the highest conception of Christian civilization."[46] Their statement revealed that they questioned the ability of Asian immigrants to assimilate and saw them as a threat to Christianity and national identity. The League even threatened violence and disorder if Asian immigration was not restricted stating, "The white people will not stand idly by and see themselves ruined and driven out of the country by Asiatic aliens, and serious riots are sure to follow if the influx of Japanese is not prevented."[47]

The Asiatic Exclusion League's fear of an influx of Asian immigrants "invading" the West was deemed the "Yellow Peril."

> "The American public sentiment against the immigration of Chinese labor, as expressed and crystallized in the enactment of the Chinese Exclusion Act, finds still stronger justification in demanding prompt and adequate measures of protection against the immigration of Japanese and Korean laborers on the

[45] *Id*. at 730.
[46] PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE, 1907-1913, 8 (Gerald N. Grob ed. 1977).
[47] PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE. JAN-FEB 1913, 293 (1913), https://babel.hathitrust.org/cgi/pt?id=uc1.b003004098&view=1up&seq=17.

> grounds (1) that the wage and living standards of such labor are dangerous to and must, if granted recognition in the United States, prove destructive to the American standards in these essential respects; (2) that the racial incompatibility as between the people of the Orient and the United States presents a problem of race preservation."[48]

"Yellow Peril" reflected fears of job loss to foreigners and a threat to white national identity. Japanese immigrants, particularly women, were condemned for their perceived immorality and their "taking" of white women's jobs.[49] One set of Asiatic Exclusion League meeting notes stated, "5,000 white girls have been robbed of their employment as waitresses and domestic servants by the invasion of the Japanese."[50] White workers, across gender lines, became united in their fears of job loss.

Interestingly, historians John Kuo Wei Tchen and Dylan Yeats explored the origins of the term "Yellow Peril" and found that "yellow," now synonymous with East Asians, was first used to describe South Asians as early as 1684. [51] However, over time, "yellow" became associated with Eastern Asia, and "brown" became associated with the people between Eastern Asia and Europe.[52] Just as the definition of whiteness was ever-changing, so was the definition of "yellow" as people struggled and failed to define race as a natural concept outside of a social construct.

By the late 1880s, South Asians began to immigrate to the U.S. from Canada.[53] Around 1,000 South Asians immigrated to the United States by 1906.[54] The influx of their immigration, like the "Yellow Peril," was dubbed the "Hindu Peril," "Dusky Peril," and "Tide of Turbans,"

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[48] PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE, 1907-1913, 8 (Gerald N. Grob ed. 1977).
[49] PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE. JAN-FEB 1913, 285 (1913), https://babel.hathitrust.org/cgi/pt?id=uc1.b003004098&view=1up&seq=17.
[50] PROCEEDINGS OF THE ASIATIC EXCLUSION LEAGUE, 1907-1913, 17 (Gerald N. Grob ed. 1977).
[51] YELLOW PERIL!, *supra* note 32, at 11.
[52] *Id.*
[53] ENTANGLING MIGRATION HISTORY, supra note 9, at 124.
[54] *Id.* at 129.

also relaying fears of white citizens that Asian immigrants would take their opportunities of employment.[55] Note that here the use of the word "Hindu" does not refer only to religious faith. The majority of Indian immigrants at the time were actually Sikhs and a distinct portion were Muslim, not Hindus.[56] It was a term used to denote Indians and South Asians at large after incorrectly stereotyping all of India as Hindu. Ian Haney Lopez astutely points out that "this language betrays entrenched beliefs about the racial significance of class and caste, blood and birthplace, and even religion in establishing racial identity."[57] Religion was as much a part of racial identity to society and judges as was nationality.

Along the West Coast of North America, including Oregon, Washington, and Vancouver, which served as centers for the lumber industry, violence against South Asians increased as labor tensions grew in 1907. The most well-known riot of this period is the Bellingham Anti-Hindu Riot in the state of Washington.[58] Sikhs, by virtue of their turbans worn as religious symbols, stood out in the community at Bellingham, Washington, and were targeted with slurs like "rag-heads."[59] White union members, fearful of their jobs being "stolen," threatened mill owners that South Asians should no longer work in Bellingham after Labor Day.[60] On September 4, 1907, after employers continued to employ South Asian workers, six hundred white workers destroyed the property of South Asians and forced two hundred of them into small rooms within City Hall or the local jail.[61] By September 17, all of the South Asian population in Bellingham had left, driven out by the violence and a lack of governmental support, as perpetrators escaped

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[55] G. Perinet, *Have We a Dusky Peril?,* PUGET SOUND AM., Sept. 16, 1906, https://www.saada.org/item/20111215-549.
[56] TAKAKI, *supra* note 2, at 295.
[57] LOPEZ, *supra* note 12, at 85.
[58] John R. Wunder, *South Asians, Civil Rights, and the Pacific Northwest: The 1907 Bellingham Anti-Indian Riot and Subsequent Citizenship and Deportation Struggles*, 4 W. LEGAL HIST. 59, 60 (1991).
[59] *Id.* at 61.
[60] *Id.* at 61–62.
[61] *Id.* at 63.

prosecution.[62] Newspapers at the time, such as *The American* and *Bellingham Herald*, published photos depicting the men crowded tightly together in a room and lauded the driving out of "Hindus," reflecting views of the community that they had been successful in their attempts at driving out South Asians.[63]

Only a few months later, on November 2, 1907, Sikhs in Everett, Washington were placed in jail for their protection after the beginnings of a riot.[64] Around fifty South Asian workers were employed at three mills in Everett including Clark-Nickerson Lumber, Robinson Manufacturing, and Weidauer-Landsdown.[65] Five hundred white workers wanting to push out South Asian workers began demonstrating in the streets, and the chaos later escalated to throwing rocks at their bunkhouse residences.[66] In response, Chief Scott M. Marshall held South Asians in city jail for their own safety.[67] They settled their affairs and left Everett soon after. Unlike in Bellingham, newspapers in Everett claimed they did not want a repeat of violence but did support "driving all aliens" from the city.[68] The Everett Riot indicates how powerful a tool intimidation is. The threat of Bellingham loomed after September 4, instilling fear in South Asians along the West Coast. Even when the press refused to laud the violence committed against South Asians, their support of the outcome condoned the actions of the mob.

Full-scale riots against South Asians continued, and in 1910 a riot erupted in St. Johns near Portland, Oregon, where South Asians worked at The Monarch Lumber Mill and St. Johns

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[62] *Id.*
[63] Mary Lane Gallagher, *1907 Bellingham mob forced East Indian mill workers out of town*, BELLINGHAM HERALD (Oct. 19, 2019), https://www.bellinghamherald.com/news/local/article22195713.html.
[64] ENTANGLING MIGRATION HISTORY, supra note 9, at 125.
[65] Lisa Labovitch, *White mob gathers to expel Asian Indian Laborers from Everett on November 2, 1907*, HISTORYLINK (June 4, 2021), https://www.historylink.org/File/21247.
[66] Herald Staff, *Looking back: Everett mob terrorizes immigrant mill workers*, THE DAILY HERALD (Nov. 30, 2019), https://www.heraldnet.com/news/looking-back-everett-mob-terrorizes-immigrant-mill-workers/.
[67] *Id.*
[68] *Id.*

Lumber Co.[69] On the night of March 21, a mob of two hundred, including white laborers, police, the police chief, and the mayor, used violence to attempt to push South Asians out of St. Johns.[70] The mob dragged them out of bed and beat them.[71] They destroyed their residences by shattering windows and tearing doors off their hinges.[72] The workers' belongings and money were also stolen at gunpoint, despite the mob's attempt to claim the contrary.[73] Unlike with the Bellingham Riot, the perpetrators were prosecuted. Prosecutors indicted the mayor and eight police officers.[74] However, most, including the mayor and police, had the charges against them dropped or their sentences suspended, leading to effectively the same result as no prosecution of perpetrators.[75]

By 1917, as fears of the "Yellow Peril" and "Hindu Peril" continued to grow, the Immigration Act of 1917, known as the Asiatic Barred Zone Act, was passed.[76] Unlike the Chinese Exclusion Act, it was an explicit ban on almost all Asian and Middle Eastern immigration, not just Chinese immigration. It banned outright "natives of any country, province or dependency situate on the Continent of Asia" within a specific coordinate zone, encompassing much of Asia and the Middle East.[77] This was consistent with a stricter approach to immigration

[69] Johanna Ogden, *White Right and Labor Organizing in Oregon's "Hindu" City,* 120(4) OR. HIST. Q. 488, 490 (2019).
[70] *Id.* at 493.
[71] *Id.*
[72] *Id.* at 494.
[73] *Id.*
[74] *Id.* at 497.
[75] *Id.*
[76] An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States, ch. 29, § 3, 39 Stat. 874, 876 (1917), https://aadha.binghamton.edu/items/show/240#?c=0&m=0&s=0&cv=0). *See* Suzanne Enzerink, *The 1917 Immigration Act That Presaged Trump's Muslim Ban*, JSTOR DAILY (April 12, 2017), https://daily.jstor.org/1917-immigration-law-presaged-trumps-muslim-ban/, for a comparison of the Immigration Act of 1917 to President Trump's Muslim Ban. *See also* Ray Sanchez, *Immigration ban? We were there exactly 100 years ago today*, CNN, (Feb. 5, 2017), https://www.cnn.com/2017/02/05/politics/trump-ban-1917-immigration-act-trnd/index.html.
[77] An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States, *supra* note 76, at 876-77.

being adopted at the time. However, unlike Asians and Middle Easterners, European immigrants only faced increased hurdles to immigration, like literacy tests, rather than a total ban.[78]

By 1924, the Immigration Act instituted a racial quota for European immigrants but continued to ban all Asian immigrants.[79] However, immigration legislation moved away from a near-total ban of Asian immigration and instituted a racial quota "within the Asia-Pacific triangle" with the Immigration and Nationality Act of 1952, where "the minimum quota for any quota area shall be one hundred."[80] Finally, as a direct result of the Civil Rights Movement, Asian immigration quotas were overturned with the Immigration Act of 1965.[81] This Act instead focused on skills-based immigration, restricting the immigration of the indigent and uneducated.[82]

The Immigration Act of 1965 also directly contributed to the "model-minority" stereotype and myth. A skills-based system gave preference to educated Asian immigrants who worked white-collar jobs, also known as the US "brain gain."[83] Historia Ellen Wu argues that this process of cherry-picking applicants "led to a marked shift in the socioeconomic composition of Asian American communities, tilting away from their historical roots in agriculture and labor" that fueled the "model-minority" myth.[84] The "model-minority" myth proposes that the attainment of college education, low divorce rates, and high-income levels by Asians indicates the ability of minorities to succeed. This myth has been a tool used by

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[78] *Id.*
[79] An Act to Limit the Immigration of Aliens into the United States, and for Other Purposes, ch. 190, 43 Stat. 153, 153 (1924).
[80] An Act to Review the Laws Relating to Immigration, Naturalization, and Nationality, ch. 477, § 311, 66 Stat. 163, 175 (1952), https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf.
[81] Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911, 913.
[82] *Id.*
[83] See ELLEN D. WU, THE COLOR OF SUCCESS: ASIAN AMERICANS AND THE ORIGINS OF THE MODEL MINORITY 252 (2014).
[84] *Id.*

conservatives to argue that since the Asian "model minority" exists, Black Americans can also achieve similar "success" and overcome racism through sheer hard work and the implementation of strong family values.[85] It contributes to false narratives of who is "deserving" and who is not, while blaming Black Americans.[86]

Historian Daniel Tichenor argues that although economic interests have been a significant motivating factor in immigration policy, family reunification has also been an important factor.[87] He points to the seven-category preference of the Hart-Celler Act, which prioritizes family reunification and refugee status along with employment, calling it a "rebirth of American immigration."[88] Four of the seven categories prioritized family reunification, two prioritized skills-based immigration, and one prioritized refugees.[89] The Hart-Celler Act stated, "Any citizens of the United States claiming that an alien is entitled to a preference status by reason of the relationships described in paragraphs (1), (4), or (5) of Section 203(a), or to an immediate relative status...may file a petition with the Attorney General for such classification."[90] As a result, the Hart-Celler Act is synonymous with the "chain migration" of families due to the family reunification priority. One successful immigrant could bring their family members due to their familial relationship. This Act also changed the demographics of

[85] Kat Chow, *'Model Minority' Myth Again Used As A Racial Wedge Between Asians and Blacks*, NPR (Apr. 19, 2017), https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks. See also, Viet Thanh Nguyen, *Asian Americans Are Still Caught in the Trap of the 'Model Minority' Stereotype. And it Creates Inequality for All,* TIME (July 26, 2020), https://time.com/5859206/anti-asian-racism-america/.
[86] JOE R. FEAGIN, MYTH OF THE MODEL MINORITY: ASIAN AMERICANS FACING RACISM 58 (2010).
[87] DANIEL J. TICHENOR, DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA 41 (2002).
[88] *Id*. at 4, 219.
[89] *Id.* at 215.
[90] To amend the Immigration and Nationality Act, and for other purposes, P.L.88-236 § 4, 79 Stat. 911, 915 (1952), https://www.govinfo.gov/content/pkg/STATUTE-79/pdf/STATUTE-79-Pg911.pdf.

immigration as "Asian and Latin American arrivals would comprise three-quarters of legal alien admissions in the 1970s and 1980s, and currently represent 80 percent of all new arrivals."[91]

Despite the violence and exclusion immigrants faced, this did not dissuade them from becoming legal participants and asserting whiteness to be categorized as "free white persons" under the law. Initial South Asian petitioners found some luck, as courts used an examination of physical attributes (like a skin color test) and "racial science" arguments created by anthropologic definitions. However, as courts began to define more narrowly what a "white person" was, backing away from an anthropological "scientific" definition and looking at the popular usage of the term white instead, South Asian immigrants ultimately lost the battle of being classified as "free white persons." Arab immigrants were successful in their claim, however. They relied on distancing themselves from Black and Asian people, as well as emphasizing their Christianity.

It is important to highlight that rooted in the South Asian and Arab claim of whiteness is the clear rejection of Blackness. Two legal categories existed for naturalization after Reconstruction: "free white persons" and "persons of African nativity, or African descent." However, all applicants attempted to claim whiteness. Perhaps it is that South Asians and Arabs, seeing how Black Americans were systemically discriminated against and segregated, wanted to create as much distance as they could to avoid such discrimination. In the black-white paradigm of America, claiming Blackness would mean they would be labeled as second-class citizens. Having a binary for naturalization where the only options are to be labeled white or Black, lends itself to limited options for those that do not conform to the binary. However, it is also likely that the root of such assertions was anti-blackness itself.[92] As will be discussed in Section III, legal

[91] *Id.* at 218.
[92] GUALTIERI, *supra* note 3, at 73.

strategy included distancing oneself from Blackness and being insulted at Courts declaring them to the "no better than blacks."[93]

II. South Asian Claims to Whiteness in Naturalization Case Law

Between the period of 1910 and 1923, South Asians petitioned American courts to be naturalized as citizens.[94] One of the initial suits in this line of case law was *U.S. v. Abba Dolla*, a 1910 case heard in the Fifth Circuit.[95] Abdul Hamid, an Indian immigrant born and raised in Calcutta, used a skin color test to argue that he was a white person and prevailed in his claim.[96] Evidence used to classify him as white included his physical features, "racial science," and character witnesses. Applying a skin color test, the lower court stated that "the skin of his arm where it had been protected from the sun and weather by his clothing was found to be several shades lighter than that of his face and hands, and was sufficiently transparent for the blue color of the veins to show very clearly."[97] The Fifth Circuit, agreeing with the reasoning of the lower court, found him to pass the skin color test.

Hamid also had people who were deemed reputable to testify to his character, including a white physician, Dr. E. R. Corson, who was willing to testify that Hamid "was of pure Caucasian blood."[98] This, in addition to serving as character evidence, also served as "scientific" racial evidence. Anthropologists at the time classified Asian Indians, regardless of skin color, as Caucasians.[99] Finally, Hamid's purchase of a cemetery plot in a white-only cemetery in

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[93] *Id.* at 72.
[94] This was part of a larger movement of naturalization cases being brought by immigrants. Around fifty-two cases were brought before U.S. federal courts from 1878 to 1952 by immigrants arguing to be categorized as white. *See* Hardheep Dhillon, *The Making of Modern US Citizenship and Alienage: The History of Asian Immigration, Racial Capital, and US Law*, LAW AND HIST. REV., Feb. 2023, at 2.
[95] United States v. Abba Dolla, 177 F. 101, 101 (5th Cir. 1910).
[96] *Id.* at 102.
[97] *Id*.
[98] *Id.*
[99] *Id.*

Savannah, Georgia also served as evidence of his "whiteness."[100] After considering all of this "evidence," the court agreed with Hamid that he was a white person within the meaning of naturalization laws. It is worth noting that Hamid's parents were both from Afghanistan. However, the court's ultimate decision-making was based on his nationality.[101]

In the same year, the Second Circuit held in favor of applicant Bhicaji Franyi Belsara, in *U.S. v. Balsara*, focusing on legislative intent.[102] The Second Circuit held that "Parsees do belong to the white race,"[103] as Congress in 1790 "probably had principally in mind the exclusion of Africans, whether slave or free, and Indians [Native Americans]."[104] Since the legal category of "free white persons" was first instituted by Congress in naturalization law with the Naturalization Act of 1790 and persisted in subsequent naturalization acts, it was the legislative intent in 1790 that was examined.[105]

Courts continued to classify South Asians as belonging within the category of white persons as can be seen in *In re Akhay Kumzar Mozumdar*.[106] However, here the Eastern District Court of Washington followed a caste argument rather than a skin color test. Mozumdar testified:

> "I am a high-caste Hindu of pure blood, belonging to what is known as the warrior caste, or ruling caste... The high-caste Hindus are of Brahmin faith, and in India are clearly distinguished from all of the other inhabitants, including the aborigines of the country, or the hill tribes... The high-caste Hindus always consider themselves to be members of the Aryan race, and their native term for Hindustan is Arya-vartha, which means country or land of the Aryans."[107]

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[100] *Id.*
[101] *Id.*
[102] United States v. Balsara, 180 F. 694, 696 (2d Cir. 1910).
[103] *Id.*
[104] *Id.* at 698.
[105] *Id.* at 695.
[106] In re Akhay Kumzar Mozumdar, 207 F. 115 (E.D. Wash. 1913).
[107] *Id.* at 116–17.

Therefore, by virtue of his high-caste status, Mozumdar argued that he was Aryan and consequently white, an argument unique to South Asians. Mozumdar's argument, like Abdul Hamid's, was successful and the court ruled in his favor.

This argument that high-caste Hindus are Aryan, in other words of Indo-European origin, and therefore, white would continue to be a prominent legal argument in subsequent cases for citizenship. The genealogical origins of the caste system, as argued by its proponents, are that a race of white people, who spoke an Indo-European language, known as Aryans invaded India.[108] They "conquered" the dark-skinned indigenous people of the land known as Dasas, subjugating them and creating a caste system.[109] The descendants of Aryans were to be the high caste, while the lowest caste was said to be descendants of Dasas.[110] Therefore, the caste system embraces the notion of white supremacy, arguing that high caste individuals by being descendants of a white race, were superior. Today, the caste system in India consists of five castes: Brahmin, Kshatriya, Vaisya, Sudras, and Dalits, and it continues to limit upward mobility.[111] Interestingly, this means that applicants like Mozumdar were not only fighting racism by arguing for citizenship but using racism as the very tool to do so.

In re Sadar Bhagwab Singh the Eastern District Court of Pennsylvania explicitly stated that the issue in the case was "whether Congress has as yet made any provision for the naturalization of men of his race."[112] The court began its inquiry of whether South Asians were white persons by conducting a historical interpretation of the term "white," arguing that the term was used more broadly in modernity than when it was originally written into the Naturalization

[108] Romila Thapar, *The Theory of Aryan Race and India: History and* Politics, 24 SOC. SCIENTIST 3, 5 (1996).
[109] *Id.* at 6.
[110] *Id.*
[111] *Id.* at 7.
[112] In re Sadar Bhagwab Singh, 246 F. 496, 497 (E.D. Pa. 1917).

Act of 1790.[113] The court summarized that the French were included as white persons after assisting with the American Revolution and that "the desire to be consistent forced us to include the Spaniards and Portuguese, and later the Italian peoples, and broadly the Latin race."[114] The court found that "the immigration of persons from Southern and Southeastern Europe [were] brought within the meaning of the phrase which we are construing, Hungarians, Poles, Russians, and many divisions of the Slavic race."[115] Here, the Pennsylvania court explicitly noted how the term white was expanded from its traditional notion to include Europeans that were not previously included, like Eastern and Southern Europeans. White was clearly not a stagnant category. It could change over time and be expanded. It was a constructed notion rather than a true category.

However, while the court was willing to find that the term "white person" should not be construed too narrowly or the formerly mentioned European races would not be included, it nonetheless held that white and Caucasian are synonymous and therefore does not include South Asians, denying Mr. Singh citizenship.[116] While courts had previously expanded the legal category of white, it denied doing so here.

In re Mohan Singh, however, the Southern District Court of California disagreed with the *Balsara* decision and instead followed an anthropologic "scientific" definition to find that high caste Hindus were white persons under the law, following the argument previously used by Mozumdar in *In re Akhay Kumzar Mozumdar*.[117]

> "I have been cited to no anthropological authorities which include the Hindus in any of the other races of mankind. They belong to the Aryan stock, and therefore to the Caucasian or white race, because of certain

[113] *Id.* at 499.
[114] *Id.*
[115] *Id.*
[116] *Id.* at 500.
[117] In re Mohan Singh, 257 F. 209 (S.D. Ca. 1919).

> physical and other peculiarities possessed by them and which indubitably mark their descent."[118]

The court not only found Mohan Singh to be white, but also explicitly stated that it would be an injustice to find otherwise.

> "It would seem a travesty on justice that a refined and enlightened high caste Hindu should be denied admission on the ground that his skin is dark, and therefore he is not a 'white person,' and at the same time a Hottentot should be admitted merely because he is 'of African nativity.'"[119]

Here, it is clear that while the "scientific" anthropologic definition does most of the work, anti-Blackness was also a reason for finding Mohan Singh to be white. The court is appalled at the thought of a "high caste Hindu" being denied citizenship, while an indigenous African is granted citizenship, indicating a belief in a false racial hierarchy that places Blackness at the bottom.

In 1923, however, the Supreme Court of the United States accepted cert and definitively heard the issue of whether South Asians were white in *U.S. v. Bhagat Singh Thind*,[120] settling the split that had arisen in lower state and circuit courts. Dr. Bhagat Singh Thind immigrated to Seattle, Washington on July 4, 1913, where he worked in lumber mills, as was common for South Asians at the time.[121] He later began his doctorate at the University of Berkeley in philosophy, where he attended from 1915 to 1916, paying his way through school by continuing to work at lumber mills in Oregon in the summer.[122] Aside from availing himself of educational and employment opportunities in America, Dr. Thind also joined the U.S. Army in July 22, 1918 to assist in World War I war efforts.[123] He also was one of the first to serve in the army while

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[118] *Id.* at 212.
[119] *Id.*
[120] U.S. v. Bhagat Singh Thind, 261 U.S. 204, 206 (1923).
[121] Johanna Ogden, *The Telling Case of Doctor Bhagat Singh Thind: Indian Nationalist, Citizen, and Spiritual Teacher,* 124 OR. HIST. Q. 6, 6 (2023).
[122] *Id.* at 20. It would not be until after the resolution of his case that he would complete his doctorate degree.
[123] *Id.* at 13.

wearing a turban.[124] Dr. Thind was promoted to Acting Sergeant during his time in the army, and he was honorably discharged on December 16, 1918 after the end of World War I.[125]

Upon this first glance, Dr. Thind, the respondent, fits the "all-American" patriotic archetype of an educated, employed, veteran, but upon closer inspection his story is also reflective of the larger struggle for equality by South Asians. He was involved in efforts for India's independence from British rule as part of the Ghadar ("Revolution") Movement in the U.S., where expatriate Sikhs, Hindus, and Muslims organized for independence.[126] In 1923, Dr. Thind found himself in front of the Supreme Court of the United States arguing for his citizenship, after the United States brought a suit against him to cancel the certificate of citizenship he received in Oregon.[127]

Dr. Thind's claim to naturalization in *U.S. v. Bhagat Singh Thind* was rooted in the "sole fact that he [is] of high-caste Hindu stock, born in Punjab... and classified by certain scientific authorities as of the Caucasian or Aryan race."[128] Ethnologists like A. H. Keane in his book *The World's Peoples* argued that Hindus (South Asians) fell under the categorization of Caucasian.[129] A. H. Keane argued that there were four races: Black, Yellow, Amerinds, and Caucasians.[130] Keane wrote, "This term Caucasian, it should be explained, is not here to be taken as merely indicating a native of the Caucasus, but as the collective conventional name of the White division."[131] He further divided Caucasian into four "chief sub-divisions," including Hamites,

[124] *Id.*
[125] *Id.* at 12.
[126] *Id.* at 7; *See also*, TAKAKI, supra note 2, at 301.
[127] Thind, 261 U.S. at 207.
[128] *Id.* at 211.
[129] *Id*.
[130] A. H. KEANE, THE WORLD'S PEOPLES: A POPULAR ACCOUNT OF THEIR BODILY & MENTAL CHARACTERS, BELIEFS, TRADITIONS, POLITICAL AND SOCIAL INSTITUTIONS 12 (1908).
[131] *Id.*

Semites, Aryans, and Polynesians.[132] Keane listed Hindus under the Aryan subdivision of Caucasian.[133]

However, the Court formally retreated from a "scientifically" informed notion of whiteness contributed to by anthropologists and ethnologists, instead focusing on the popular meaning of "white person" among laypeople.[134] In doing so, the Court held that Hindus, Aryans of Indo-European descent, were not white.[135] The Court argued that the terminology of free white persons and Caucasian are "words of common speech and not of scientific origin" and that "the words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken."[136]

Despite the Court finding that "it may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity," it held that high-caste Hindus are not white.[137] The Court stated the popular use of the word Caucasian doesn't include Hindus, since the "physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white."[138] Dr. Thind's citizenship was revoked.[139] Therefore, the Court used the popular usage of the term white when the racial science definition of white was overly inclusive in the Court's eyes. Employing popular usage allowed for the courts to return to an examination of physical attributes to restrict the legal category of white.

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[132] *Id.* at 28.
[133] *Id.*
[134] Thind, 261 U.S. at 214-15.
[135] *Id.* at 215.
[136] *Id.* at 208-09.
[137] *Id*. at 215.
[138] *Id*.
[139] Dr. Thind would later be granted citizenship in 1936 when military members could be naturalized.

U.S. v. Bhagat Singh Thind had broader implications than just Dr. Thind's citizenship being revoked. Only four years after the decision, the U.S. government denaturalized more than sixty-five people.[140] Denaturalization was an incredibly grievous process that was utilized primarily in the 20th century.[141] Patrick Weil argues that denaturalization was a "tool for ridding the American citizenry of 'undesirables'" and "it originated in 1907 as part of restrictive and racist immigration policy."[142] Scholar Amanda Frost disagrees and sees it as a process that has been implemented over two hundred years, from the time of *Dred Scott v. Sandford*.[143]

In *Dred Scott v. Sandford*, Dred Scott, who was held as an enslaved person in Missouri but had traveled to a free state, argued he was free.[144] The Supreme Court found it had no jurisdiction to hear the case as Scott was not an American citizen.[145] The Court further elaborated that "a free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States."[146] In other words, whether free or enslaved, Scott was not a citizen. Frost writes that the outcome in *Dred Scott* "stripped national citizenship from half a million free blacks living in the United States and barred four million enslaved blacks from any hope of joining the polity, even if they bought or won their freedom."[147] However, she concurs with Weil's essential point, arguing "laws and practices *revoking* US citizenship are overt evidence of a nation struggling with its conflicted identity—snatching back a status that, some conclude, had been given away too lightly."[148]

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[140] LOPEZ, *supra* note 12, at 64.
[141] PATRICK WEIL, THE SOVEREIGN CITIZEN: DENATURALIZATION AND THE ORIGINS OF THE AMERICAN REPUBLIC 7 (2013).
[142] *Id.* at 7.
[143] AMANDA FROST, YOU ARE NOT AMERICAN: CITIZENSHIP STRIPPING FROM DRED SCOTT TO THE DREAMERS 5 (2021).
[144] Dred Scott v. Sandford, 60 U.S. 393, 393 (1857).
[145] *Id.* at 396.
[146] *Id.* at 393.
[147] Frost, *supra* note 143, at 22.
[148] *Id.* at 8.

Denaturalization was a tool to shape the identity of a nation and people of color were not deemed to be desirable.

Vaishno Das Bagai, a South Asian man who was denaturalized after *Thind*, even committed suicide as a result of losing his rights.[149] Vaishno Das Bagai immigrated to the United States in 1915 and became a profitable merchant, receiving his citizenship in 1921.[150] He married and had three children, who were all naturalized as well.[151] However, only four years later he was denaturalized.[152] His suicide letter revealed the injustice he felt.[153] He wrote, "I came to America thinking, dreaming and hoping to make this land my home."[154] Bagai wrote about the difficulty of owning property and the state of limbo in which he lived after being denaturalized. "They will not permit me to buy my home and, lo, they even shall not issue me a passport to go back to India...I do not choose to live the life on an interned person."[155] His death was viewed as a protest against the government.[156] Frost's scholarship notes that this was not the plight of Das Bagai alone but the plight of anyone denaturalized by the United States. "For tens of thousands of others, the loss of US citizenship meant the loss of civil and political rights: the right to vote, to own property, to criticize the government without fear of reprisal, to be reunited with family."[157]

Furthermore, the *Thind* decision became the grounds for anti-miscegenation laws in states like California to prevent the marriage of white women to South Asian men.[158] Clerks argued

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[149] WEIL, *supra* note 141, at 81.
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Here's Letter to the World from Suicide*, S.F. EXAM'R (March 17, 1928), https://www.saada.org/item/20130513-2748.
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] Frost, *supra* note 143, at 6.
[158] TAKAKI, supra note 2, at 300.

that since South Asians weren't white under the law, as established in *Thind*, their marriage to white women was prohibited.[159] Couples traveled to states like Arizona, which did not have anti-miscegenation laws to be able to enter interracial marriages.[160] Some partners, like Sandar Din and Berilla M. Nutter, even married at sea to be outside of the state limits and therefore escape miscegenation laws.[161] Dr. Thind himself later married Vivian Davies, a white woman, in Toledo, Ohio in 1940.[162]

Asian land ownership was also restricted with the passing of the 1920 Alien Land Law in California and was further exacerbated by the Court's decision in *Thind*.[163] South Asian farmers and landowners often resorted to putting the land in the name of their children who became citizens at birth, in the names of their non-Asian wives, or used a white "frontman," such as their attorney, who would put the land under his name in exchange for part of the crop yield to protect their land.[164]

III. Thind Family as a Representation of the Larger South Asian Struggle for Equality

Dr. Thind and his family represent the larger South Asian struggle for equality in both North America and India. His father, Boota Singh, was an advocate for Indian independence and was incarcerated for his stance against British policies.[165] Boota Singh was a major in the British Indian Army and was arrested and the government withheld his military pension for his advocacy.[166] Furthermore, not only was Dr. Thind's ability to become a citizen limited by discriminatory laws but so was his brother's ability to migrate to Canada.

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[159] *Id.*
[160] *Id.* at 309.
[161] *Id.*
[162] *Throughline: The Whiteness Myth*, NPR (Feb. 9, 2023) https://www.npr.org/transcripts/1155489235.
[163] TAKAKI, *supra* note 2, at 307.
[164] *Id.* at 307.
[165] Ogden, *supra* note 121, at 9.
[166] *Id.*

Before his own fight for citizenship, Dr. Thind's youngest brother, Jagat Singh Thind, sailed aboard the *Komagata Maru*.[167] In 1908, the Immigration Act in Canada was amended to include the continuous journey regulation after an increase in anti-Asian ideology, which "prohibit[ed] the landing in Canada of any specified class of immigrants or of any immigrants who have come to Canada otherwise than by continuous journey from the country of which they are natives or citizens."[168] This regulation effectively prohibited Indians from entering Canada, as Canada and other imperial governments ordered steamship companies to stop the direct Calcutta-Vancouver route.[169] Although the continuous journey regulation was struck down by the British Columbia Court in 1913, it was quickly resurrected.[170] In 1914, Baba Gurdit Singh chartered the *SS Komagata Maru* and transported 376 Indian migrants, consisting of predominantly Sikhs on a voyage to Vancouver.[171] However, the passengers were detained on the ship for two months in Vancouver Harbour and prevented from entering Canada.[172]

The passengers of the Komagata Maru soon brought suit and argued that they were entitled to enter since they were British Subjects and Canada was a British Dominion.[173] After selecting a test passenger, Munshi Singh, they filed a writ of habeas, which was denied and was then appealed to the British Columbia Court of Appeal.[174] In *Re Munshi Singh*, Justice McPhillips held that the Dominion had the authority under the British North America Act to protect its territorial borders from "aliens" and "undesirables," including British subjects.[175]

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[167] ANJALI GERA ROY, IMPERIALISM AND SIKH MIGRATION: THE KOMAGATA MARU INCIDENT 144 (2018).
[168] An Act to Amend the Immigration Act, S.C. 7-8 1908, c 30 (Can.) https://pier21.ca/research/immigration-history/continuous-journey-regulation-1908.
[169] RENISA MAWANI, ACROSS OCEANS OF LAW: THE KOMAGATU MARU AND JURISDICTION IN THE TIME OF EMPIRE 123 (2018).
[170] *Id.* at 4.
[171] *Id.* at 2-3.
[172] *Id.* at 4.
[173] *Id.* at 144.
[174] *Id.* at 131.
[175] *Id.* at 136.

Furthermore, he too engaged in an inquiry of whether South Asians were Caucasians and found that the "Hindu race, as well as the Asiatic race in general in their conception of life and ideas of society [are] fundamentally different to the Anglo-Saxon and Celtic races, and European races in general," even if he thought them to be superior to "natives of Africa or America."[176] Here, again, we can see this view of a racial hierarchy in the eyes of the court emerge that places South Asians in the middle of a racial hierarchy, much like in the *In re Mohan Singh* case, as a result of anti-Blackness. The Komagata Maru continues to stand for the limited mobility and containment of South Asians by imperial powers and was a key moment in the fight for Indian independence from British rule.[177]

IV. Arab Claims to Whiteness in Naturalization Case Law

While South Asians, and Asians more generally, were unsuccessful in asserting their claim to whiteness, one immigrant group was successful in their claim, Arab immigrants. Historian Sarah Gualtieri emphasizes that such classification "was by no means obvious to the applicants for citizenship, or to the officials who heard their cases," but rather that Arabs "became white only after they successfully claimed whiteness, and when law and custom confirmed it."[178] Christianity within Arab groups, such as Syrians and Armenians, appears to be the "pillar" of legal argument,[179] in contrast to the arguments made on the basis of caste by South Asians.

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[176] *Id.* at 140.
[177] Roy, *supra* note 113, at 202. *See also*, Ishaan Tharoor, *Canada's Trudeau Makes Formal Apology for Racist Komagata Maru Incident*, WASH. POST (May 18, 2016), https://www.washingtonpost.com/news/worldviews/wp/2016/05/18/the-tragic-story-behind-justin-trudeaus-apology-in-canadas-parliament/ (Prime Minister Justin Trudeau apologizes for Komagata Maru incident).
[178] Sarah Gualtieri, *Becoming "White": Race, Religion and the Foundations of Syrian/Lebanese Ethnicity in the United States*, 20 J. OF AM. ETHNIC HIST. 29, 30 (2001).
[179] *Id.* at 42.

In 1909, the Circuit Court in the Northern District of Georgia held that a Syrian is a "free white person" under naturalization law in *In re Najour*.[180] Judge Newman centered his opinion on three justifications found in South Asian case law as well. Firstly, he focused on the popular usage of the term white. He wrote, "I consider the Syrians as belonging to what we recognize, and what the world recognizes, as the white race."[181] Unlike in *Thind*, the court here argued that Syrians fall under the popular usage of the term white. Second, Judge Newman focused on the physical appearance of the Syrian petitioner, Costa George Najour. Focusing on his skin color and features, Judge Newman wrote, "He is not particularly dark, and has none of the characteristics or appearance of the Mongolian race, but, so far as I can see and judge, has the appearance and characteristics of the Caucasian race."[182] Finally, the court relied on "racial science," citing A.H. Keane again. "Discussing the various nationalities and subdivisions of these four general divisions, [Keane] unhesitatingly places the Syrians in the Caucasian or white division."[183] Syrians were further subcategorized under the Semitic subdivision due to their use of a Semitic language.[184] Here, the strategy employed was to explicitly show similarity between Syrians and Jews, who also used a Semitic language and were deemed to be white for the purposes of naturalization. For a court to find Jews as Semitic and therefore white, while holding the opposite for Syrians would appear highly inconsistent.

The Oregon District Court similarly held that a Syrian was a "free white person" in 1910.[185] Tom Ellis, a Syrian applicant is granted naturalization in *In re Ellis*.[186] Here, the Court stated that since "free white persons" is not a technical term, it "should be taken in their ordinary

[180] In re Najour, 174 F. 735, 735 (N.D. Ga. 1909).
[181] *Id.* at 735.
[182] *Id.*
[183] *Id.* at 735-36.
[184] Keane, *supra* note 130, at 12.
[185] In re Ellis, 179 F. 1002, 1002 (D. Or. 1910).
[186] *Id.*

sense" as used in "common popular speech."[187] What is unique to this case, however, is how strongly the court's balancing came out in favor of the applicant. Judge Wolverton wrote, "If there be ambiguity and doubt, it is better to resolve that doubt in favor of the Caucasian possessed of the highest qualities which go to make an excellent citizen, as the applicant appears to be."[188] In other words, the court held that even if the court's holding of Syrians as Caucasian was not unambiguously supported by the statute, it was still better to grant naturalization here with a risk of error rather than to deny it. The court firmly supported the applicant. The court further stated that Tom Ellis would make an excellent citizen because he "is of good morals, sober and industrious, speaks and writes the English language, has a fair understanding of our institutions...being a good and highly respected citizens in the community in which he lives...[and] was reared a Catholic, and is still of that faith."[189] Speaking English and being Christian were emphasized as traits making a good citizen.

Syrians were not the only Arab group to be categorized as white. In 1909, the Circuit Court in Massachusetts held that Armenians were "free white persons" under naturalization law.[190] *In re Halladjian*, four Armenians, Halladjian, Ekmakjian, Mouradian, and Bayentz, petitioned to be naturalized.[191] All four were born in "Asiatic Turkey," but were "Armenians by race."[192] The United States opposed, arguing that "the words 'white persons' should be construed to mean Europeans and persons of European descent."[193] They argued that Armenians should be categorized under the "Asiatic or yellow race."[194]

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[187] *Id.* at 1003.
[188] *Id.* at 1004.
[189] *Id.* at 1003.
[190] In re Halladjian et al., 174 F. 834, 834 (D. Mass. 1909).
[191] *Id.* at 835.
[192] *Id.*
[193] *Id.* at 836.
[194] *Id.* at 838.

While the court used tests common in naturalization cases at the time, like skin color,[195] Judge Lowell, however, relied primarily on religion, along with other factors like commingling and adaptability to rule that Armenians were white under the law. Lowell wrote, "their refugees set up an independent state in Cilicia, 'Streaming the ensign of the Christian cross Against black pagans, Turks and Saracens.'"[196] In this quote alone one can see the alignment of Christianity with whiteness and Paganism with blackness. Since they followed the Christian faith, they were to be considered white. Later in the opinion, Judge Lowell stated, "history has shown that Christianity in the near East has generally manifested a sympathy with Europe rather than with Asia as a whole."[197] Here, Christianity is associated with being European rather than with being Asian.

The court continuously invoked notions of commingling and adaptability as well to argue that Armenians were to fall under the legal category of white. Judge Lowell wrote that "the Turks, indeed, both socially and sexually, commingled with Europeans to an unusual degree. European mothers bore their children."[198] By commingling with Europeans, Armenians were to be categorized as white. The court also presumed that Armenians would be "readily adaptable to European standards."[199] Naturalization required immigrants to assimilate and take on a European way of life in the eyes of the court. Through religion and commingling, the court believed Armenians were well suited to do so, unlike South Asians.

Dow v. United States saw the mobilization of Syrians in America and the strategic employment of key legal arguments.[200] This case was viewed as a hard-fought victory by Syrians

[195] *Id*. "They are no darker than many western Europeans and they resemble the Chinese in feature no more than they resemble the American aborigines."
[196] *Id.* at 841.
[197] *Id.*
[198] *Id.* at 839.
[199] *Id.* at 841.
[200] Dow v. United States, 226 F. 145, 145 (4th Cir. 1915).

in claiming whiteness.[201] The District Court of the United States for the Eastern District of South Carolina held that Syrians were not "free white persons" under the naturalization statute, but the Fourth Circuit Court of Appeals reversed in 1915.[202] The applicant George Dow was Syrian and the Syrian American Associations backed his case for naturalization. The involvement of the Syrian American Associations shows how "Syrian immigrants mobilized to a degree that was unprecedented."[203] There were around 150,000 Syrians in the United States at the time.[204] After the initial loss in the district court, a letter-writing campaign by the Syrian Society for National Defense began.[205] They began implementing a strategy of not only using Christianity to assert whiteness, but they began "distancing Syrians from blacks and Asians in the discourse on race."[206] They began a racial argument based on distinguishing themselves from Black citizens and Asian applicants. This was ultimately successful and the Fourth Circuit held Syrians were "free white persons."[207]

The distancing strategy used by Arab immigrants was most clear in *U.S. v. Ali*, where the Arab and South Asian case law intersects.[208] In 1925, John Mohammad Ali defended his naturalization, two years after the *Thind* case was decided by the Supreme Court. Ali was born in Punjab, India, just like Dr. Thind, and as a result, a case was brought against him to revoke his citizenship.[209] With *Thind* solidifying that South Asians were not white persons under the law, Ali's citizenship was endangered.[210] Ali, argued, however, that was not "of full Indian blood, but

[201] Gualtieri, *supra* note 178, at 29.
[202] In re Dow, 213 F. 355, 355 (E.D. S.C. 1914); Dow, 226 F. at 145.
[203] Gualtieri, *supra* note 178, at 29.
[204] *Id.*
[205] *Id.* at 44.
[206] *Id.* at 45.
[207] Dow, 226 F. at 145.
[208] United States v. Ali, 7 F.2d 728, 728 (E.D. Michigan 1925).
[209] *Id.* at 729.
[210] *Id.* at 731.

is an Arabian of full Arabian blood."[211] He stated that his ancestry was Arabian and that they had been "careful not to intermarry with 'the native stock of India,' and have 'kept their Arabian blood line clear and pure by intermarriage within the family.'"[212] The court found however that the fact pattern was not distinguishable from *Thind* since Ali was born in Punjab.[213] He was denaturalized as a result. However, Arab immigrants were still ultimately successful in their claim of whiteness.

In 1944, the question of whether Arabs were white was finally settled, with *Ex parte Mohriez.*[214] The deciding factor here was an article published by the Immigration and Naturalization Service that stated the practice was to regard Arabs as white persons.[215] This was an official declaration by the federal government in support of the whiteness of Arabs. Judge Wyzanski also wrote that it is "in the understanding of the common man the Arab people belong to that division of the white race speaking the Semitic languages."[216] This opinion also reflects the begin of a shift in attitude towards naturalization.

> "And finally it may not be out of place to say that, as is shown by our recent changes in the laws respecting Chinese nationality and of the yellow race, we as a country have learned that policies of rigid exclusion are not only false to our professions of democratic liberalism but repugnant to our vital interests as a world power. In so far as the Nationality Act of 1940 is still open to interpretation, it is highly desirable that it should be interpreted so as to promote friendlier relations between the United States and other nations and so as to fulfill the promise that we shall treat all mean as created equal."[217]

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[211] *Id.* at 732.
[212] *Id.*
[213] *Id.* at 733.
[214] Ex parte Mohriez, 54 F. Supp. 941, 941 (D. Mass. 1944).
[215] *Eligibility of Arabs to Naturalization,* 13 INS MONTHLY REV. 1 (October 1943).
[216] Mohriez, 54 F. Supp. at 942.
[217] *Id.* at 943.

V. Conclusion

The South Asian and Arab naturalization case law shows courts attempting to grapple with whiteness and what it means as an identity. With the South Asian case law, the courts first began by examining physical features, such as skin color and visibly blue veins, in cases like *U.S. v. Abba Dolla.*[218] South Asians themselves asserted whiteness based on caste in cases like *In re Akhay Kumzar Mozumdar*.[219] Courts later turned to a "racial science" inquiry based on the anthropological work at the time which categorized South Asians as Caucasian in cases like *In re Mohan Singh*.[220] However, when the "racial science" category was seen as overly inclusive and broad, the Supreme Court in *Thind* turned to the popular usage of the term white to find that South Asians were not "free white persons," denaturalizing South Asians as a result.[221] Whiteness was an arbitrary category construed as broadly or narrowly as desired by judges to keep out those deemed "undesirable."

Arab Americans, however, were successful in claiming whiteness. While courts cited racial science arguments classifying Arabs as white in cases such as *In re Najour*,[222] as they did in South Asian case law, the distinction seems to be rooted in religion and notions of their ability to assimilate and intermingle. In both *In re Ellis* and *In re Halladjian* the court focused on the applicants Christian faith.[223] Finally, Arab applicants began using distancing strategies to distinguish themselves from South Asian applicants that had already lost in their claim by 1923 and from Black citizens in an attempt to be categorized as white in cases such as *U.S. v. Ali*.[224]

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[218] Dolla, 177 F. at 102.
[219] Mozumdar, 207 F. at 116-17.
[220] Singh, 257 F. at 212.
[221] Thind, 261 U.S. at 208.
[222] Najour, 174 F. at 735-36.
[223] Ellis, 179 F. at 1003; Halladjian, 174 F. at 841.
[224] Ali, 7 F.2d at 732.

However, while the classification of Arabs as white was useful for their naturalization before the Immigration Act of 1965, their continued classification as white has led to detrimental effects. For instance, Arab Americans are an invisible group on the U.S. Census since they check the "white" box, one of only five categories offered on the Census.[225] This obscures information about language barriers and discrimination they may face, especially for Muslim Arab Americans post 9/11. For instance, making poll booths accessible with bilingual Arabic options becomes more difficult. A new Census category of Middle Eastern and North African (MENA) was proposed by the Obama administration as a solution but postponed by the Trump administration.[226]

This negative impacts of having been classified as white also extends to health disparities and research surrounding health disparities. Medical scholars argue that "decades of research with Arabs in the United States provides consistent evidence that their health does not fit the health profile of White Americans and that Arabs do not benefit from Whiteness."[227] For instance, Arab women are less likely to have received a flu vaccine or undergo cancer screenings, partly due to language barriers.[228] Discrimination post 9/11 has also affected mental health and even birth outcomes. Studies note that "Arabic-named women were 34% more likely to have a low birth weight infant in the six-month period after 9/11 compared with the period

[225] Abdallah Fayyad, *When it Comes to the Census, Arab Americans are an invisible* Minority, BOSTON GLOBE (Sept. 17, 2021), https://www.bostonglobe.com/2021/09/17/opinion/when-it-comes-census-arab-americans-are-an-invisible-minority/.
[226] *Id.*
[227] Sarah Abboud, Perla Chebli & Em Rabelais, *The Contested Whiteness of Arab Identity in the United States: Implications for Health Disparities Research*, 109(11) AJPH 1580, 1580 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6775909/pdf/AJPH.2019.305285.pdf.
[228] *Id.* at 1581.

before."[229] This information is not easy to track due to the classification of Arabs as white. As a result, medical scholars also recommend the creation of the MENA category on the Census.[230]

The creation of "invisible groups" indicates that while race itself is a constructed notion, the varied treatment of different races by society and government leading to unequitable allocation of resources to people of different races is actual and consequential. Therefore, any attempts at racial classification need to reflect the purpose in doing so: gathering demographic data to better distribute resources and address historical oppression, not engaging in notions of white supremacy. Similarly, as discussed in the introduction, research concerning Asian Americans also needs to challenge the monolith myth to better understand the diversity present among Asian Americans.

[229] *Id.* at 1582.
[230] *Id.*