

09-27-2025

Race, Color, and Citizenship: Ozawa and Thind in the 1920s



OZAWA V. UNITED STATES

- and -

UNITED STATES V. BHAGAT SINGH THIND

Presented at the 2025 AABANY Fall Conference

PLENARY LUNCH - TRIAL REENACTMENT

NEW YORK LAW SCHOOL
185 West Broadway
New York, NY 10013

AABANY 2025 Fall Conference

**AABANY Trial Reenactment – Race, Color, and Citizenship: Ozawa and Thind In the
1920s**

New York Law School

Saturday, September 27th, 2025

12:30 PM – 2:15 PM

Speakers

Hon. Pamela Chen, Hon. Karen M.C. Cortes, Hon. Judy Kim, Hon. Peggy Kuo, Hon. Karen Lin,
Hon. Soma Syed, Hon. Lillian Wan, Hon. Frances Wang, Hon. Ona T. Wang, Vishal Chander,
Becky Chen, Francis Chin, Rose Cuison-Villazor, Gracie Iwersen, Hassan Jamil, Eliana Yuna
Jeong, Emily Kam, Charlotte Kim, Mirai Kim, Emily Lai, Margaret Ling, Kwok Kei Ng,
Jameson Xu, Cecilia Yang, Gary Yeung, Ariel Zhang

Moderator

Albert Tong, Student, Brooklyn Law School

SPECIAL THANKS TO OUR JUDICIAL PARTICIPANTS

Presented at the 2025 AABANY Fall Conference

(listed in alphabetical order)

Hon. Pamela K. Chen

United States District Court Judge for the Eastern District of New York

Hon. Karen Cortes

Judge, Family Court, Bronx County

Hon. Judy Kim

Justice, New York State Supreme Court, New York County

Hon. Peggy Kuo

United States Magistrate Judge for the Eastern District of New York

Hon. Karen Lin

Justice, New York State Supreme Court, Queens County

Hon. Soma Syed

Judge, Civil Court of the City of New York

Hon. Lillian Wan

Associate Justice, New York State Appellate Division, Second Judicial Department

Hon. Ona T. Wang

United States Magistrate Judge for the Southern District of New York

Hon. Frances Wang

Justice, New York State Supreme Court, Queens County

We appreciate their contributions to today's program.

Cast of Characters

Judge Charles Clemons	Hon. Pamela K. Chen
Justice D	Hon. Karen Cortes
Justice A	Hon. Judy Kim
Justice George Sutherland	Hon. Peggy Kuo
Chief Justice William H. Taft	Hon. Karen Lin
Justice C	Hon. Soma Syed
Narrator 1	Hon. Lillian Wan
Justice B	Hon. Frances Wang
Judge Charles E. Wolverton	Hon. Ona T. Wang
Vaishno Das Bagai (Indian immigrant whose citizenship was stripped)	Vishal Chandler
Edith Sachiko Ozawa (Ozawa's daughter)	Becky Chen
V.W. Tomlinson (Naturalization Examiner)	Francis Chin
Ambassador Viscount Ishii Kikujiro (Japanese Ambassador)	Gracie Iwersen
Bhagat Singh Thind (Petitioner)	Hassan Jamil
Albert Henry Young (Mixed Descent Petitioner)	Eliana Jeong
George Wickersham (Counsel for Ozawa)	Emily Kam
Takao Ozawa (Petitioner)	Charlotte Kim
Marshal of the Court	Charlotte Kim
Buntaro Kumagai (Japanese Petitioner)	Mirai Kim
Solicitor General James. M. Beck (Gov't Counsel)	Emily Lai
Frank English (CA Deputy Attorney General)	Margaret Ling
Benjamin Clarke (Ozawa's character witness)	Kwok Ng
Narrator 2	Albert Tong
Secretary of State Robert Lansing	Jameson Xu
Will R. King (Counsel for Thind)	Jameson Xu
William Knight (Mixed Descent Petitioner)	Cecilia Yang
Solicitor General John W. Davis (Gov't Counsel)	Gary Yeung
Senator Daniel Inouye	Gary Yeung
Ototaka Yamaoka (Head of Japanese Committee)	Ariel Zhang

Timed Agenda

	<u>Minutes</u>
The Reenactment	
I. Introduction	4
II. <i>Ozawa</i> : Background and District Court Proceedings	5
III. <i>Ozawa</i> : Supreme Court	12
IV. Oral Arguments in <i>Ozawa</i> and <i>Yamashita</i>	17
V. <i>Thind</i> : Background	5
VI. <i>Thind</i> : Supreme Court	13
VII. Aftermath	4
Total	60
Discussion and Q&A with Professor Rose Cuison-Villazor	30
Program Total	90

NY CLE Credit

1.5 Diversity, Inclusion and Elimination of Bias
(Non-transitional ONLY)

RACE, COLOR, AND CITIZENSHIP: OZAWA AND *THIND*

ROLES (IN ORDER OF APPEARANCE)

NARRATOR 1

TAKAO OZAWA..... *A Japanese man who sought to be naturalized*
BHAGAT SINGH THIND..... *An Indian American man who sought to be naturalized*

NARRATOR 2

BUNTARO KUMAGAI..... *A Japanese man who sought to be naturalized*
WILLIAM KNIGHT..... *A man of English, Japanese and Chinese descent who sought to be naturalized*
ALBERT HENRY YOUNG..... *A Japanese-born man of German and Japanese who sought to be naturalized*
BENJAMIN CLARKE..... *Petitioner's witness in district court; testified regarding Ozawa's good moral character and U.S. residence*
JUDGE CHARLES CLEMONS..... *U.S. District Judge, District and Territory of Hawaii*
EDITH SACHIKO..... *Daughter of Takao Ozawa*
OTOTAKA YAMAOKA..... *Head of a committee appointed by Japanese Association Deliberative Council to assist Ozawa*
AMBASSADOR VISCOUNT ISHII KIKUJIRO..... *Ambassador Extraordinary and Plenipotentiary from Japan*
GEORGE WICKERSHAM..... *Counsel for Ozawa in the U.S. Supreme Court*
SECRETARY OF STATE ROBERT LANSING..... *U.S. Secretary of State, 1915 to 1920*
SOLICITOR GENERAL JOHN W. DAVIS..... *U.S. Solicitor General, 1913 to 1918*
FRANK ENGLISH..... *Deputy Attorney General of the State of California*
JUSTICE GEORGE SUTHERLAND..... *Associate Justice, U.S. Supreme Court*
MARSHAL OF THE COURT..... *U.S. Supreme Court*
CHIEF JUSTICE WILLIAM H. TAFT..... *Chief Justice, U.S. Supreme Court*
JUSTICES A, B, C, & D..... *Associate Justices, U.S. Supreme Court*
SOLICITOR GENERAL JAMES M. BECK.... *U.S. Solicitor General who argued Ozawa and Thind before the U.S. Supreme Court*
JUDGE CHARLES E. WOLVERTON..... *U.S. District Judge for the District of Oregon*

* During the 2011 presentation of the Race, Color, and Citizenship: Ozawa and Thind, the presenters used a slideshow to accompany the re-enactment. The slideshow was prepared by Jury Group, <http://www.jurygroup.com>, which is on file with the authors and available at <http://lawreview.aabany.org/>.

V.W. TOMLINSON	<i>A Naturalization Examiner in the Department of Labor who conducted the investigation of Thind's 1919 citizen petition</i>
WILL R. KING	<i>Counsel for Thind at in the U.S. Supreme Court</i>
VAISHNO DAS BAGAI	<i>An Indian American man whose U.S. citizenship was revoked in the aftermath of the Thind case</i>
SENATOR DANIEL INOUE	<i>U.S. senator from Hawaii, 1964 to present</i>

TIMELINE OF EVENTS IN OZAWA

Jun. 15, 1875	Takao Ozawa is born in Sakureimura, Japan.
Jul. 29, 1894	Ozawa arrives at the port of San Francisco aboard the S.S. Galic as an immigrant from Yokohama, Japan. He is 19.
Aug. 1, 1902	Ozawa files a declaration of intention to apply for citizenship in the Superior Court of Alameda County, California.
Summer 1903	Ozawa graduates from Berkeley High School.
Fall 1903 - Apr. 1906	Ozawa attends the University of California until the university closes after the Great Earthquake of April 18, 1906.
May 1906	Ozawa leaves San Francisco to live in Honolulu.
1906-1912	In Hawaii, Ozawa marries Masako, who was born in Yamakuchi, Japan. They have two children, both born in Honolulu.
Oct. 16, 1914	Ozawa files a petition for naturalization in the U.S. District Court, Territory of Hawaii. Hearings take place throughout 1915.
Mar. 26, 1916	Ozawa's petition for naturalization is denied by Judge Clemons.
Aug. 17, 1916	Ozawa files a bill of exception.
Sept. 25, 1916	An order permitting the appeal to the Ninth Circuit is signed by Judge Horace W. Vaughan.
May 1917	Both parties file briefs for the appeal.
Jun. 4, 1917	A certificate of the Ninth Circuit certifying questions for the U.S. Supreme Court is granted.
Jun. 1918	Secretary of State Robert Lansing asks Solicitor General John W. Davis to delay proceedings in <i>Ozawa</i> until the end of World War I because Japan is an ally of the U.S.
Nov. 11, 1918	World War I ends. However, delays are occasioned by communications between the U.S. government and Ozawa's attorney, G. Wickersham, regarding postponements due to continuing foreign relations sensitivities with the Japanese government

Oct. 3-4, 1922	The court hears oral argument on the matter.
Nov. 13, 1922	The Supreme Court reaches a decision holding that a person born in Japan is not eligible for naturalization as a U.S. citizen.
Nov. 16, 1936	Takao Ozawa dies in Honolulu.

TIMELINE OF EVENTS IN *THIND*

Oct. 3, 1892	Thind is born in the Village of Taragarh, in Punjab, India.
Jul. 4, 1913	Thind arrives in Seattle, WA. He is 20 years old.
Jan. 17, 1917	Thind petitions for citizenship in the U.S. District Court of Oregon.
Jul. 22, 1918	Thind petitions for citizenship in U.S. District Court of Washington. He enlists in the U.S. Army on the same day.
Dec. 9, 1918	Thind is granted U.S. citizenship, but it is voided by the INS just four days later. Shortly after, he is honorably discharged from the U.S. Army.
May 6, 1919	Thind once again petitions for citizenship in the U.S. District Court of Oregon.
Oct. 19, 1919	The U.S. District Court in Oregon rules in favor of granting Thind citizenship
Nov. 18, 1920	Thind is granted citizenship by the U.S. District Court of Oregon.
Oct. 17, 1921	The Ninth Circuit sends the case to the U.S. Supreme Court.
Feb. 19, 1923	The Supreme Court rescinds Thind's citizenship on the grounds that Thind is not a white person within the meaning of Section 2169, Revised Statutes.
Jun. 24, 1935	Congress enacts a statute that allows U.S. citizenship for U.S. Veteran Aliens.
Sept. 27, 1935	Thind files again for citizenship.
Mar. 2, 1936	Thind is granted citizenship.

Faculty Biography

Hon. Pamela Chen

Eastern District of New York

Pamela Chen is a federal district court judge in the Eastern District of New York. Since her appointment to the bench in March 2013, Judge Chen has presided over a wide array of civil and criminal cases, including a civil lawsuit challenging New York's ban on the possession of nunchuks, the tax fraud prosecution of former U.S. Congressman Michael Grimm, and the RICO prosecution of FIFA soccer officials. Between September 1998 and March 2013, Judge Chen was an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's Office for the Eastern District of New York, except for a brief period in 2008, when she served as Deputy Commissioner for Enforcement in the New York State Division of Human Rights. During her tenure in the U.S. Attorney's Office, Judge Chen investigated and prosecuted cases involving terrorism, gang violence, drug trafficking, human trafficking, official misconduct, and civil rights crimes. Prior to joining the U.S. Attorney's Office, Judge Chen was a trial attorney in the U.S. Department of Justice's Civil Rights Division, where she litigated matters relating to conditions of confinement for individuals in state and local institutions, as well as cases involving the enforcement of the Freedom of Access to Clinic Entrances of 1994. Judge Chen began her legal career at the law firm of Arnold & Porter in Washington, D.C., and also worked at Asbill, Junkin, Myers and Buffone in Washington, D.C. Judge Chen is a 1986 graduate of the Georgetown University Law Center and obtained her undergraduate degree from the University of Michigan.

Hon. Karen M. C. Cortes

Bronx County Family Court

Honorable Karen M.C. Cortes was appointed to the bench by Mayor Bill de Blasio as a New York City Family Court Judge in January of 2019. Judge Cortes is the first Filipino American Judge appointed to the New York City Family Court. Judge Cortes currently presides over child abuse and neglect, custody, visitation, guardianship, and family offense proceedings in Bronx County Family Court.

Prior to becoming a judge, Judge Cortes served in the New York City Family Court as a Court Attorney Referee for four years presiding over custody, visitation, guardianship, and family offense proceedings and a Court Attorney for six years where she conducted compliance and settlement conferences on child abuse and neglect, custody, guardianship, visitation, family offense, juvenile delinquency, and PINS cases. Judge Cortes also served for five years as a trial attorney in the Family Court Legal Services Division at the Administration for Children's Services, where she tried and supervised hundreds of abuse and neglect trials and was a recipient of the Administration for Children's Services Division of Family Court Legal Services Permanency Advocate Award.

Judge Cortes serves as a member of the Unified Court System of the State of New York Statewide Permanent Commission on Justice for Families, Vice President for the New York City Family Court Judges Association, Board of Directors - First Department for the New York State Family Court Judges Association, Board Member for the Asian American Judges Association of New York State, Committee Co-Chair for the Bronx County Family Court Early Engagement Group, Committee Co-Chair for the Bronx County Family Court Gender Fairness Committee, member of the Bronx County Family Court Equal Justice Committee, member of the Appellate Division Second Judicial Department Mental Health Professionals Certification Committee, and a member of the Franklin H. Williams Judicial Commission Judicial Mentor Program. In addition, Judge Cortes serves as the Assistant Presiding Member of the New York State Bar Association Judicial Section.

Judge Cortes is currently a member of the Asian American Judges Association of New York, New York City Family Court Judges Association, New York State Family Court Judges Association, and the New York State Women's Bar Association - Bronx Chapter. Judge Cortes has been honored by the Bronx County Family Court Bar Association and the Asian American Bar Association of New York.

Judge Cortes previously served as a member of the Franklin H. Williams Judicial Commission Advisory Group to the Twelfth Judicial District, New York City Family Court Custody, Visitation, and Family Offense Operations Advisory Committee to the Administrative Judge, Bronx County Family Court Strategic Plan Implementation Team for Custody, Visitation, and Family Offense, New York City Bar Association Family Court and Family Law Committee, and Kings County Family Court Disproportionate Minority Representation Committee.

Judge Cortes earned her undergraduate degree from New York University and her law degree from Brooklyn Law School, where she was a recipient of the Judge Doris A. Thompson and Judge Edward Thompson Award for Excellence in Trial Advocacy.

Hon. Judy Kim

New York State Supreme Court

Hon. Judy H. Kim, Acting Justice of the Supreme Court, New York County, was born and raised in Manhattan, New York. She is the daughter of immigrants who left South Korea and came to the United States in the mid-1960s. She attended The Spence School and then went on to receive her Bachelor of Arts degree in American History and Political Science from the University of Pennsylvania. She received her Juris Doctorate from Tulane School of Law where she served as Notes and Comments Editor of the *Tulane Journal of International & Comparative Law*. In November 2016, Justice Kim became the first Korean American elected judge in New York State. As an elected Civil Court judge, she served in the Manhattan Criminal Court for two years and then served for three years in New York County Civil Court. In January 2022, she was

promoted to Acting Justice of the Supreme Court in the New York State Supreme Court, New York County. In September 2024, Justice Kim was appointed to the Advisory Committee on Judicial Ethics for a five-year term by the Chief Administrative Judge. She also serves on the Supreme Court, New York County-Civil Term Equal Justice in the Courts and the Gender Fairness committees.

Prior to joining the judiciary, she served as an associate counsel and interim Section Chief in the Bureau & Estates Litigation Section of the New York Liquidation Bureau's Legal Division from 2008- 2016. She also spent several years in private practice, first at Kennedy Lillis Schmidt & English – a boutique law firm – and then at Snitow Kanfer Holtzer & Millus LLP, where she specialized in commercial litigation, employment discrimination, and matrimonial and family law matters.

Justice Kim currently serves as the immediate past president of the Judges and Lawyers Breast Cancer Alert (JALBCA) and is a member of the New York City Bar Association's Minorities in the Courts and Diversity Pipeline Initiative committees. She also serves as a trustee of The Historical Society of New York Courts. She previously served on the executive boards of the Asian American Bar Association of New York (AABANY), the Korean American Lawyers Association of Greater New York (KALAGNY) and the National Asian Pacific American Bar Association (NAPABA). Justice Kim is the recipient of KALAGNY's 2017 Trailblazer Award and The Spence School's 2024 Judith Joseph Jenkins '91 Distinguished Alumna Award. In 2025, she was recognized as a trailblazer in City and State New York's inaugural Asian Trailblazer list.

Justice Kim continues to be an active member of the community. She serves as a member of the Alumnae Diversity Committee and as a Board of Trustee of The Spence School and as a board member of the Korean American Community Foundation (KACF), which provides grants and organizational development support to nonprofit groups working to address the most pressing needs in the Korean American community and beyond.

Hon. Peggy Kuo
Eastern District of New York

Peggy Kuo was appointed U.S. Magistrate Judge in the Eastern District of New York on October 9, 2015. She received a B.A. *summa cum laude* in history from Yale University and a J.D. *cum laude* from Harvard Law School.

Judge Kuo clerked for the Honorable Judith W. Rogers, Chief Judge of the D.C. Court of Appeals. She served as an Assistant United States Attorney in the District of Columbia, then trial attorney and Acting Deputy Chief of the Civil Rights Division Criminal Section at the U.S. Department of Justice, where she investigated and prosecuted hate crimes and allegations of police misconduct throughout the United States. From 1998 to 2002, Judge Kuo prosecuted war

crimes and crimes against humanity at the United Nations International Criminal Tribunal for the former Yugoslavia in The Hague, Netherlands, including mass rape in Bosnia.

Thereafter, Judge Kuo was litigation counsel at Wilmer Hale, LLP, Chief Hearing Officer at the New York Stock Exchange, and Deputy Commissioner and General Counsel of the New York City Office of Administrative Trials and Hearings.

Hon. Karen Lin

New York State Supreme Court

Justice Karen Lin currently serves on the Supreme Court of the State of New York, Civil Term. In 2022, she became the first East Asian woman elected to the bench in Queens County, following her election to the New York City Civil Court. She previously served as a Judge of the New York City Housing Court, appointed by then-Chief Administrative Judge Jonathan Lippman; Principal Court Attorney in New York County Supreme Court to the Honorable Marilyn Shafer, and Court Attorney-Referee in Kings County Surrogate's Court to Surrogate Margarita Lopez-Tórres. Justice Lin began her legal career as a civil rights and family law attorney, litigating in both state and federal courts.

Justice Lin is a graduate of the New York City public school system. She attended Hunter College High School before transferring to the Bronx High School of Science. As an undergraduate at the State University of New York at Buffalo, she co-developed and co-instructed the university's first seminar on Asian American history and co-founded the Asian American Student Union. She also served as the university's International Affairs Coordinator and president of Delta Phi Omega. Justice Lin earned her law degree from Brooklyn Law School, where she interned at the New York City Commission on Human Rights and the Center for Constitutional Rights.

Justice Lin has served as an adjunct faculty member at St. John's University School of Law and CUNY Queens College. She previously co-chaired the Pro Bono and Community Service Committee of the Asian American Bar Association of New York and currently serves on the boards of the Asian American Law Fund of New York (AALFNY) and the Asian American Judges Association of New York (AAJANY).

Hon. Soma Syed

Queens County Civil Court

Judge Soma Syed is the first Bangladeshi American elected judge in New York State and the United States. Upon election on November 4, 2025, Judge Syed will become a New York State Justice. In 2021, Judge Syed was elected to the New York City Civil Court from Queens County. From 2022 to 2023, Judge Syed was assigned to the New York County Criminal Court

in Manhattan, where she presided over busy arraignment, felony, and misdemeanor parts. Since January 2024, she has been assigned to the Queens County Civil Court. Judge Syed is a former special prosecutor and a private practitioner with a vast community and *pro bono* experience. Judge Syed obtained her J.D. from the Albany Law School of Union University and B.A. from the City College of the City University of New York. Judge Syed is a product of New York City public schools.

Judge Syed was born in Bangladesh to an educator and a freedom fighter and grew up in Queens, where she is currently living with her husband and family. Judge Syed immigrated to the United States with her family when she was twelve years old. At a young age, Judge Syed decided to pursue law as a profession and devoted her time and limited resources to achieving her dreams with the help from her parents, teachers, and guidance counselor who believed in her, despite all the challenges she faced as a first-generation immigrant.

After passing the New York State bar examination, Judge Syed soon started a legal practice in Queens County to provide effective and competent legal services to the minority communities of New York City. For many years, she wrote legal articles for Bangla newspapers on immigration and other legal issues that affected the community. She appeared at numerous community events, seminars, and television shows to discuss legal issues that the communities faced. For Judge Syed, it was important that immigrants and members of the public that she represented received competent representation when they navigated through the complex legal system in this country.

In addition to Judge Syed's legal work, she is passionate about serving the community. During the Covid-19 pandemic, she helped communities with mask and food distribution. Judge Syed is devoted to building pipelines for next generation of legal practitioners. She values her mentorship with students from high schools, colleges, and law schools and runs a robust internship program in her chambers.

Judge Syed values diversity and representation. She has held leadership roles and maintained membership in various bar associations. Judge Syed currently serves as the Co-Chair of the Queens Chapter of the NYC Equal Justice Implementation Committee (NYC EJIC) in Queens County Civil Court, and a member of the NYC Access to Justice Committee of NYC Civil Court. Judge Syed is a board member of the Asian American Judges Association of New York (AAJANY). Judge Syed was the first South Asian and Muslim president of the Queens County Women's Bar Association.

Judge Syed believes that law can be a powerful vehicle to achieve, ensure, and provide justice, fairness, and equality in our society. She has brought her years of life and professional experiences to the bench with the goal of delivering justice to the community. Judge Syed looks forward to continuing being a jurist and serving the people with distinction and honor.

Hon. Lillian Wan

Associate Justice, Appellate Division, Second Department

Justice Wan is the daughter of Chinese immigrants and has lived in Brooklyn for the last 25 years. On May 25, 2022, Governor Kathy Hochul appointed Justice Wan to the Appellate Division, Second Department. Justice Wan is the first Asian American woman to be appointed to the Appellate Division in New York State. In November 2021, Justice Wan also became the first Asian American to be elected to the Supreme Court in Brooklyn. Justice Wan was originally appointed to the bench by Mayor Michael R. Bloomberg in 2012, and served in both Bronx County Family Court and Kings County Family Court hearing cases involving child abuse and neglect, custody, visitation, family offenses and juvenile delinquency. Justice Wan was appointed to the New York State Court of Claims by Governor Andrew Cuomo on June 20, 2018. Justice Wan was designated to preside over an Integrated Guardianship and Landlord/Tenant Part in New York County Supreme Court, where she heard cases involving tenants who were the subject of both Article 81 guardianship and eviction proceedings. From January 2020 until her appointment to the Appellate Division, Justice Wan sat in Kings County Supreme Court, where she presided over jury and non-jury trials, Mental Hygiene Law Article 9 hospital proceedings, and handled motions on a wide variety of civil matters.

Prior to taking the bench, Justice Wan was a Court Attorney-Referee in Kings County Surrogate's Court where she handled adoption, guardianship, and trusts and estates matters. In this capacity, Justice Wan conducted pre-trial and settlement conferences with attorneys and self-represented litigants and presided over guardianship hearings involving developmentally disabled adults and kinship hearings to determine who inherits an estate. Justice Wan also served for nine years as a trial attorney at the Administration for Children's Services (ACS) in the Family Court Legal Services Division, where she tried and supervised hundreds of abuse and neglect trials.

Justice Wan previously served as the President of the Asian American Judges Association of New York for three years and currently serves as a board member. Justice Wan currently co-chairs the statewide Advisory Committee on Judicial Ethics for the NYS Unified Court System. Justice Wan serves on the Board of the Brooklyn Women's Bar Association and is a member of the Brooklyn Bar Association's Diversity Committee. Justice Wan is a member of the New York State Bench Book Committee. Justice Wan is also a member of the Columbian Lawyers Association of Brooklyn.

Justice Wan served as a Vice President for the New York City Bar Association. Justice Wan formerly chaired the Family Court and Family Law Committee at the City Bar, served on the City Bar's Nominating Committee, and served as the chair of the Judiciary Subcommittee on the Diversity, Equity, and Inclusion Committee. Justice Wan previously served on the board of the NYS Family Court Judges Association and was the past Vice President and Secretary of the New York City Family Court Judges Association. Justice Wan also served on the Unified Court System's Advisory Committee on Court Interpreting and the Appellate Division Second

Department Mental Health Professionals Certification Committee. Justice Wan is the former co-chair of the Government and Public Sector Committee for the Asian American Bar Association of New York. Justice Wan was previously an Adjunct Professor at the Benjamin N. Cardozo School of Law where she taught Lawyering and Legal Writing to first year law students.

Justice Wan regularly participates in various “Meet the Judges” and mentorship events in the community and has presented on career panels at various NYC schools. Justice Wan earned her undergraduate degree from Binghamton University and her law degree from Albany Law School, where she served on the Albany Law Review.

Hon. Frances Y. Wang
Queens Supreme Court

Judge Frances Y. Wang was first appointed as an Interim Civil Court Judge in December 2016, and was assigned to serve in Bronx Criminal Court. She is the first Taiwanese to be appointed by a Mayor to sit in New York City Criminal Court. In December 2017, Judge Wang was appointed as a Criminal Court Judge, and had been serving in Bronx Criminal Court until January, 2021. Thereafter, Judge Wang was transferred to Queens Criminal Court. In December, 2021, she was promoted to sit in Queens Supreme Court, Criminal Term as an Acting Justice. Judge Wang presides in a hearing and trial part.

Judge Wang graduated magna cum laude from St. John’s University, and received her J.D. from Hofstra University School of Law. Upon graduating from law school, Judge Wang served as an Assistant District Attorney in the Bronx for eight years. Prior to her appointment as a judge, Judge Wang was a Principal Court Attorney in Supreme Court, Criminal Term, Bronx County for six years.

Judge Wang was President of the Bronx District Attorney’s Alumni Association and Secretary of the Asian American Judges Association of New York (“AAJANY”). She is currently the Vice-President of AAJANY. She has served on various panels to discuss the pathway to the bench. Through the Equal Justice Committee of Queens Supreme Court, Criminal Term, Judge Wang chairs the summer law school internship program. She also co-chairs several committees that plan cultural celebrations including Lunar New Year and Asian American Native Hawaiian Pacific Islander heritage month. She currently co-chairs the New York State Unified Court System’s Working Group on Anti-Asian Hate. Judge Wang also trains judges at the New York State Judicial Institute.

Judge Wang has been honored by the Taipei Economic and Cultural Office in New York and the Asian American Bar Association of New York for her contributions to the legal community. Most recently, in May 2024, she was honored as Person of the Year by the Society of Asian Federal Officers.

Judge Wang's family is from Taiwan. She was born in Singapore and lived in several countries, including Iran, Taiwan and Saudi Arabia, before migrating to the United States and settling in Queens when she was eight years old. Judge Wang is the product of New York City public schools.

Hon. Ona T. Wang
Southern District of New York

Ona T. Wang is a magistrate judge in the Southern District of New York. Before taking the bench in 2018, she was a litigation partner at Baker Hostetler LLP. She is a member and past President of the Federal Bar Council American Inn of Court, a Life Fellow of the American Bar Foundation, and has served previously on the Executive and Nominating Committees and as Secretary of the New York City Bar Association.

Since 2021, she has served on the Federal Judicial Center's Magistrate Judge Education Advisory Committee, which plans all of the initial and mid-career training and national workshops for federal magistrate judges across the country.

In 2014, the New York Law Journal named Judge Wang one of its "Lawyers Who Lead by Example" for her pro bono work. In 2016, the NYU Public Interest Law Center awarded Judge Wang its inaugural Public Service Award.

Judge Wang received her A.B. in biology from Harvard-Radcliffe Colleges, her Ph. D. in zoology from Duke University, and her J.D. from New York University School of Law. Immediately after law school, she clerked for the Honorable Deborah A. Batts in the Southern District of New York.

Vishal Chander
The Chander Law Firm

Vishal Chander is Managing Attorney of The Chander Law Firm, where he focuses on the needs of multinational companies, foreign investors, persons of extraordinary ability and other priority workers. Vishal advises companies and individuals on immigration issues related to foreign investment and expansion of operations into the United States. He is experienced in all areas of immigration practice, including employment-based immigration matters, foreign investment, complex family-based immigration, removal, naturalization and humanitarian matters. Vishal's clients include Fortune 500 companies, technology startups, oil and gas companies, maritime organizations, athletes and entertainers, health care providers, as well as educational and research institutions.

Vishal has provided pro bono assistance on asylum, human trafficking, and domestic violence issues for organizations like the Southern Poverty Law Center, Human Rights Initiative of Dallas, Catholic Charities of Dallas, and domestic violence advocacy organizations. Vishal is a

graduate of Southern Methodist University School of Law. He is admitted to practice law in the states of Texas and New York. He is admitted before the United States District Court for the Northern District of Texas, U.S. 5th Circuit Court of Appeals, and the United States Supreme Court.

Vishal currently serves as co-chair of the AABANY Issues Committee and Director on the AABANY Board.

Becky Chen

Appellate Division, Second Department

Becky Chen is the assistant law clerk to the Hon. Lillian Wan of the Appellate Division, Second Department. Becky graduated Cardozo Law School in 2022, where she served as a Notes Editor on *Cardozo Law Review* and the President of APALSA. Becky has served as assistant law clerk to the Hon. Lillian Wan since graduating from law school.

Francis Chin

Senior Systems Engineer at K2 Services

Francis H. Chin is currently a Senior Systems Engineer at K2 Services, which is a spin-off department from HBR Consulting. Mr. Chin was former Asian American Bar Association of NY (AABANY)'s Director of Technology, as well as co-chair of the Professional Development Committee, coordinating AABANY's CLE programs. He is still actively involved in guiding members of AABANY and volunteering at the pro bono legal clinics. Mr. Chin is also on the boards of the Asian American Law Fund of New York and the NYU College of Arts and Science Alumni Association. He helps organize the Hon. Thomas Tang Moot Court Competition at the national and regional levels. Mr. Chin joins in producing APA historical trial reenactments led by Hon. Denny Chin.

While attending law school, Mr. Chin co-authored the McGraw-Hill computer text HTML Publishing on the Internet, one of the first commercial website manuals. After graduation, he was of counsel to Llorens and Meneses in New Jersey, practicing real estate, business formation, and immigration. He was technology counsel at Netmatrix (now part of Epiq Systems), focused on e-discovery and knowledge management. Mr. Chin received a bachelor's in computer science from New York University, a JD from Brooklyn Law School, and a certificate in transnational law from Duke University School of Law at the University of Hong Kong Faculty of Law. He is admitted to practice law in New York and New Jersey. He was honored with the Community Service Award by Brooklyn Law School in 2022, and Member of the Year at AABANY.

Rose Cuison-Villazor

Rutgers Law School

Rose Cuison-Villazor is a Professor of Law and Chancellor's Social Justice Scholar at Rutgers Law School where she previously served as Interim Co-Dean (2021-2023) and Vice Dean (2019-2021). Professor Cuison-Villazor is also Director of the Center for Immigrant Justice, which conducts publicly engaged research and policy work on behalf of noncitizens and their families.

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In addition, she is co-author of three casebooks, including *Immigration And Citizenship, Process And Policy* (10th Ed.) (with T. Alexander Aleinikoff, David A. Martin, Hiroshi Motomura, Maryellen Fullerton, Juliet Stumpf, and Pratheepan Gulasekaram) (forthcoming 2026); *Integrating Spaces: Property, Race, And Identity* (with Al Brophy and Kali Murray) (2023); and *Race And Races, Cases And Resources For A Diverse America* (4 th Ed.) (with Juan Perea, Richard Delgado, and Osamudia James) (2022).

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Hassan Jamil is the Alumni Advisor, Founder, and former President of the Asian American Law Students Association at Touro Law Center. He earned his Juris Doctor from Touro Law in 2023 and began his legal career with Wilson Elser's Defense Litigation Team following graduation. Hassan is currently with Malapero Prisco & Klauber LLP, a defense litigation firm in New York City.

Originally from Brooklyn, New York, Hassan spent much of his adolescence in South Florida before earning a Bachelor's degree in International Affairs from Florida State University in Tallahassee. Before attending law school, he worked in the Office of the Mayor of Florida's capital city and served as a Deputy Clerk with the Division of Administrative Hearings for the State of Florida.

While in law school, Hassan gained litigation experience through internships with the New York State Division of Human Rights, a specialized litigation firm, and Touro Law Center's Immigration Law Clinic. He also served as Vice President of the Black Law Students Association and as Managing Editor of the Journal of Race, Gender, and Ethnicity.

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Margaret T. Ling has been a real estate attorney since 1986. Her real estate experience commenced with a private real estate practice for almost a decade. Prior to practicing as a real estate attorney, Margaret was a Deputy Court Clerk for Chief Judge Constance Baker Motley of the United States District Court –Southern District of New York. Following her clerkship, Margaret focused on the area of immigration law before transitioning into real estate law.

Currently, Margaret is in the role of NYS Agency Underwriting Counsel, Education Director and Agency Business Development for the New York State Agency Division of Amtrust Title Insurance Company.

For over the past twenty years, Margaret has been in house title underwriting counsel in the title insurance industry. She has been responsible for all legal title underwriting for both residential and commercial real estate. She has held positions as Agency Counsel at Titleserv; Instracoastal Abstract; Summit Associates; Skyline TRG Title Agency; First Nationwide Title Insurance Company (now known as Amtrust Title Insurance Company). She also held positions at the Underwriter Level as New York State Agency Underwriting Counsel at Stewart Title Insurance Company; Ticor-Fidelity National Title Group. Margaret was also employed as New York State Claims Counsel at First American Title Insurance Company.

Margaret received her Bachelor of Arts degree in History, Cum Laude and Dean's List from Barnard College – Columbia University and her Juris Doctor degree from New York Law School. She is admitted to practice law in the State of New York, Appellate Division, and Second Department.

Margaret currently serves as the Co-Chairperson of the Real Estate Committee of the Asian American Bar Association of New York (“AABANY”); Former Business Development Director and Board of Director of AABANY; Board of Director of the New York County Lawyers Association where Margaret is also a Board of Director of the NYCLA Foundation ; Member of the NYCLA Nominations Committee; Co-Chairperson of the NYCLA Real Property Committee and Co-Chairperson of the NYCLA Asian Practice Committee; Vice President and Member of the Executive Council of the New York State Network of Bar Leaders; Member of the Steering Committee of the Collaborative Bar Leadership Academy of the American Bar Association;; Program Chair and Member of the Diversity, Equity and Inclusion Committee of the New York State Bar Association; Vice-Chair of the Diversity, Equity and Inclusion Committee of the New York State Land Title Association and Member of the Career Development Committee of the New York State Land Title Association. Margaret also represents Amtrust Title Insurance Company at TIRSA: Title Insurance Rate Service Association. Margaret has recently become a member of the Asian American Insurance Network. Margaret was also appointed to be a NYCLA Representative to the New York State Bar Association House of Delegates.

Further, Margaret is a Board of Director of the New York Law School Alumni Association; Board of Director of the Asian Columbia Alumni Association; Board of Director of the Asian Real Estate Professional Association; Past Board of Director of the Asian Real Estate Association-Manhattan Chapter; Board of Director of the Brooklyn Real Estate Board; Mentor for the World Journal Press : “Dollars for Scholars” Scholarship Program for High School and College Students. Former Board of Director of the Queens Chamber of Commerce Foundation; Former Co-Chair of the Queens Chamber of Commerce Banking and Law Committee.

When Margaret is not busy being an Attorney, she is dedicated to her volunteer golf and tennis activities. Since 2008, Margaret has been an active PGA Tour Volunteer Tournament Division Director and Chair of the Pro Am-Special Events for the PGA Tour – The Northern Trust –FedEx Cup Golf Tournament. Since 2013, Margaret has also been an active with the LPGA Tour and is the Co-Chair of the Pro Am Committee at the LPGA Shoprite Acer Tournament in Galloway, New Jersey. Margaret is also a Certified Golf Coach with the First Tee and spends her weekends with the First Tee of Raritan Valley Chapter in New Jersey. She teaches young golfers ranging in age from 7-9- years old and is very proud of them. Margaret is also member of the United States Golf Association and the United State Tennis Association. She also participates and assists with the United State Tennis Foundation which is the charitable arm of the United States Tennis Association.

Kwok Kei Ng
New York State Unified Court System

Kwok Kei Ng serves as a Court Attorney in the New York State Unified Court System. He began his career as a Court Interpreter before being admitted to the bar. He later served as an Assistant Law Clerk in New York State Supreme Court, a Court Attorney in New York City Civil Court, and now works in New York City Family Court. He has also been a Small Claims Court Arbitrator since 2019.

Kwok is a Co-Chair of AABANY's Pro Bono and Community Service Committee, overseeing the operations and coordination of the Brooklyn branch of AABANY's award-winning pro bono clinics. He also serves on the board of the Asian American Law Fund of New York (AALFNY), which provides scholarships and initiates projects to support community-driven initiatives.

Kwok is the Deputy Vice President of the High School Division of the Sonia and Celina Sotomayor Judicial Internship Program (SCSJIP), which places students with federal and state court judges to foster their professional development.

A strong advocate for language accessibility in the courts, he was appointed by the Chief Administrative Judge to the court's Advisory Committee on Language Access. He is also an active member of the Brooklyn Bar Association, where he serves as the Vice-Chair of the Diversity Committee.

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Jameson Xu is a real estate attorney and the founder of the Law Offices of Jameson Xu PLLC. Before launching his own practice, he served as an Assistant Law Clerk in the New York State Supreme Court.

A proud Queens native by way of Brooklyn, Jameson is deeply committed to giving back to the communities that shaped him. He regularly volunteers at AABANY's pro bono clinics, offering legal consultations to community residents in need.

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Cecilia Yang represents businesses in corporate and commercial matters, including contract disputes, restrictive covenants, and partnership issues. She also advises on compliance and negotiates commercial agreements, providing practical solutions through both litigation and dispute resolution.

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Gary L. Yeung is an Associate in McDermott Will & Schulte's New York office who specializes in complex commercial litigation, representing investment managers, private funds, financial institutions, corporations, and individuals in disputes ranging from breach of contract and fraud, to fiduciary duty and insurance-related matters. He has extensive courtroom and arbitration experience across all litigation phases, as well as leading mediation and settlement negotiations. A devoted advocate for justice, Gary maintains a robust pro bono practice, advocating for civil and constitutional rights, asylum seekers, tenants' rights, human trafficking victims, and other underserved communities. A Cornell Law School graduate (JD, Managing Editor of the *Cornell International Law Journal*) with a BA from University of California, San Diego. Gary also co-chairs the Mentorship Committee and the Pro Bono & Community Service Committee at the Asian American Bar Association of New York.

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INTRODUCTION¹

NARRATOR 1: What does it mean to be “white?” And what does it take to be an American?

These questions were presented to the United States Supreme Court in the 1920s, in a pair of cases brought by two Asian Americans seeking to be naturalized as United States citizens: Takao Ozawa² and Bhagat Singh Thind.³ In their court papers, they argued:⁴

[OZAWA and THIND take center stage]

OZAWA: I, Takao Ozawa, may not be an American “in name,” but in reality, I am a true American already. . . . I have always lived like an American, trying my best to qualify myself to become a good and useful citizen of the United States, to whom I am so attached that the desire to go back to Japan has entirely left from my head. So I sincerely hope that the United States will admit me.

THIND: I, Bhagat Singh Thind, am a high class man in every respect, a veteran of the late war and a volunteer, who received high commendation from my superior officers for my distinguished services. My personal desirability is therefore apparent, and as a general proposition a man who fights for the flag should be entitled to come under the flag. My love for America is evidenced by my conduct.

NARRATOR 2: Ozawa and Thind were qualified to be citizens; the only question was their race.

In 1790, when Congress enacted this country’s first naturalization statute, it permitted only aliens who were “free white persons” to be naturalized as U.S. citizens.⁵ After the Civil War, Congress extended the privilege of naturalization to persons of African descent, to recognize the efforts of the many slaves who had fought for the North.⁶ Hence, by law only “free white persons” and persons of African descent could be naturalized.

¹ The background information in this script is largely drawn from Yuji Ichioka, *The Early Japanese Immigrant Quest for Citizenship: The Background of the 1922 Ozawa Case*, 4 AMERASIA J. 1 (1977); Deveau W. Carbado, *Yellow by Law*, 97 CALIF. L. REV. 633 (2009); M. Browning Carrott, *Prejudice Goes to Court: The Japanese & the Supreme Court in the 1920s*, 62 CAL. HIST. 122 (1983); IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 56-61 (10th Ann. Ed. 2006) (1996).

² *Ozawa v. United States*, 260 U.S. 178 (1922).

³ *United States v. Thind*, 261 U.S. 204 (1923).

⁴ The following section is derived from Second Brief of Petitioner at 3, In the Matter of Takao Ozawa, No. 274 (D. Haw. 1915) and Brief of Respondent at 1-2, 4-5, In the Matter of the Petition of Bhagat Singh Thind, No. 998 (D. Or. Oct. 18, 1920).

⁵ John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817, 818 (2000) (citing to Act of Mar. 26, 1790, ch. 3, 1 Stat. 103, *repealed by* Act of Jan. 29, 1795, ch. 20, 1 Stat. 414).

⁶ *Id.* (citing to Act of Mar. 26, 1790, ch. 3, 1 Stat. 103, *repealed by* Act of Jan. 29, 1795, ch. 20, 1 Stat. 414). In 1856, the U.S. Supreme Court held in *Dred Scott v. Sandford* that people of African descent brought into the United States and held as slaves or their descendants, whether or not they were slaves were not protected by the Constitution and were not U.S. citizens. See 60 U.S. 393 (1856). In response to the *Dred Scott* decision, Congress extended the right of naturalization to “aliens of African Nativity and to persons of African descent.” Tehranian, *supra* note 5, at 818-19 (quoting Act of July 14, 1870, ch. 255, § 7, 16 Stat. 254).

NARRATOR 1:⁷ Where did that leave Asians? The number of Chinese, Japanese, and other Asian immigrants in the United States had been growing steadily throughout the 1800s. Many wanted to become American citizens, and in fact a few were naturalized. But in time the immigration authorities stopped granting these applications.

The situation was quickly clarified with respect to the Chinese. As a result of growing hostility toward the Chinese, Congress passed the Chinese Exclusion Act of 1882, which barred the Chinese from entering the United States. It also declared the Chinese already in the country ineligible for naturalization.⁸

NARRATOR 2: As for the Japanese, clearly they were not of African descent. Nor were they Chinese. But were they “white?”

And what about South Asians? There was a wave of immigrants from India at the turn of the century, and by 1910 there were between 5,000 and 10,000 Asian Indians in the United States. At the time, anthropologists generally regarded Asian Indians not as Mongolian but as Caucasian.⁹ Accordingly, were they “white” for purposes of the naturalization laws?

NARRATOR 1: In their quest to become citizens, scores of these Asian immigrants -- including some who had fought for their adopted country and some who were part white because they were of mixed blood -- argued in the courts that they were “white.” More than 50 of these so-called racial prerequisite cases worked their way through the court system,¹⁰ including cases brought by Buntaro Kumagai in 1908; William Knight in 1909; and Albert Henry Young in 1912.¹¹

[KUMAGAI, KNIGHT, and YOUNG take center stage]

KUMAGAI: I’m Buntaro Kumagai. When I applied to be a U.S. citizen, the court described me as “an educated Japanese gentleman.” I enlisted in the regular army of the United States, and I served honorably. The court found that there was no objection to my becoming a citizen on “personal grounds.”

⁷ In the late eighteenth and early nineteenth centuries, the ethnic makeup of the United States was almost exclusively black and white; thus, no litigation resulted from the naturalization requirements. Tehranian, *supra* note 5, at 819. “However, in the latter part of the nineteenth century, as a new wave of immigrants began to enter the country, the law was forced to deal with the influx of individuals who did not fit so neatly into the constructed [black and white] racial categories of the time.” *Id.* See also Ichioka, *supra* note 1, at 2; Carbado, *supra* note 1, at 656; Carrott, *supra* note 1, at 125.

⁸ Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, ch. 344, 57 Stat. 600.

⁹ Jasmine K. Singh, *Everything I'm Not Made Me Everything I Am: The Racialization of Sikhs in the United States*, 14 ASIAN PAC. AM. L.J. 54 (2008-2009). See also Carbado, *supra* note 1, at 689 (discussing Justice Sutherland’s analysis of the racial-classification “[b]ecause Asian Indians were formally categorized as Caucasian”).

¹⁰ Between 1878 and 1952, fifty-two cases were reportedly brought over the naturalization law’s racial prerequisite. Tehranian, *supra* note 5, at 818-19.

¹¹ The following is derived from the Supreme Court opinions of their respective cases. See *In re Kumagai*, 163 F. 922 (W.D. Wash. 1908); *In re Knight*, 171 F. 299 (E.D.N.Y. 1909); *In re Young*, 198 F. 715 (W.D. Wash. 1912).

KNIGHT: My name is William Knight. I was born in 1866, on a schooner flying the British flag, in the Yellow Sea, off the Coast of China. My father was English, my mother half Chinese and half Japanese. I served honorably in the U.S. Navy for 27 years. I was even given a medal for my service. The court was entirely satisfied as to my intelligence and character.

YOUNG: And I'm Albert Henry Young. I was born in Yokohama, Japan. My father was German, and my mother Japanese. When I petitioned to be a citizen, the court noted that I had fully complied with all the requirements to be admitted as a citizen of the United States. The only question was whether I was a white person.

NARRATOR 2: All three petitions were denied, solely based on race. In *Kumagai*, the court held that by using the words “white persons” in the statute, Congress clearly intended to extend the privilege of naturalization only to those of the predominant race in this country. In *Knight*, the court held: “A person, one-half white and one-half of some other race, belongs to neither of these races, but is literally a half-breed.” And in *Young*, the court ruled that “the Japanese . . . are not included in what are commonly understood as ‘white persons.’ . . . [I]t cannot be said that one who is half white and half brown is a white person, as commonly understood.”

NARRATOR 1: These were among the early cases, decided by the lower courts. Eventually, two cases would reach the Supreme Court -- *Ozawa v. United States*¹² and *United States v. Thind*.¹³

NARRATOR 2: Today we will explore these two cases and their place in American legal history, using where possible excerpts from the briefs of the parties, contemporary correspondence, and excerpts from the decisions to tell the stories of Takao Ozawa and Bhagat Singh Thind.

OZAWA: BACKGROUND AND DISTRICT COURT PROCEEDINGS¹⁴

NARRATOR 1: Takao Ozawa was born in Japan on June 15, 1875. On July 17, 1894, at the age of 19, he relocated to San Francisco. He graduated from Berkeley High School, studied at the University of California and then moved to Hawaii. There he worked as a sales clerk at one of the Big Five sugar companies in Honolulu for 23 years.

At the time of Ozawa's birth, there were only 55 Japanese living in the United States. By 1900, the number of Japanese had risen to 25,000. By the time Ozawa moved to Hawaii, anti-Japanese sentiment was regularly featured in the press in California, with story after story claiming that the Japanese were trying to take over the United States. By 1913, the number of Japanese in the United States rose to over 70,000, with more than half living in California. Japanese land ownership also increased, leading the state legislature to pass the Alien Land Act in 1913 restricting land ownership by Japanese.

¹² 260 U.S. 178.

¹³ 261 U.S. 204 (1923).

¹⁴ The facts set forth below are drawn from the First Brief of Petitioner, In the Matter of Takao Ozawa, No. 274 (D. Haw. 1915); Second Brief of Petitioner, In the Matter of Takao Ozawa, No. 274 (D. Haw. 1915); and Third Brief of Petitioner, In the Matter of Takao Ozawa, No. 274 (D. Haw. 1916). See also *Ozawa*, 260 U.S. at 189; Carbado, *supra* note 1; Carrott, *supra* note 1; Ichioka, *supra* note 1; HANEY LÓPEZ, *supra* note 1, at 56-61.

NARRATOR 2: Ozawa filed his declaration of intent to naturalize in 1902 while still a resident of California, and filed his petition for naturalization on October 16, 1914, the day his American-born daughter, Edith Sachiko Ozawa, turned two. Commentators subsequently described Ozawa as “a paragon of an assimilated Japanese immigrant,” noting that he was fully qualified for citizenship given his years of residency, his personal character, and his English fluency.¹⁵ Ozawa presented his own petition to the United States District Court for the Territory of Hawaii, writing out in composition books his legal briefs for submission to the Court.¹⁶

OZAWA:¹⁷ In name, General Benedict Arnold was an American, but at heart he was a traitor. In name, I am not an American, but at heart I am a true American. I did not report my name, my marriage, or the names of my children to the Japanese Consulate in Honolulu; notwithstanding all Japanese subjects are requested to do so. These matters were reported to the American government. I do not have any connection with any Japanese churches or schools, or any Japanese organizations here or elsewhere. I am sending my children to an American church and American school in place of a Japanese one. Most of the time I use the English language at home, so that my children cannot speak the Japanese language. I educated myself in American schools for nearly eleven years by supporting myself. I have lived continuously within the United States for over twenty-eight years. I chose as my wife one educated in American schools . . . instead of one educated in Japan. I have steadily prepared to return the kindness which our Uncle Sam has extended me . . . so it is my honest hope to do something good to the United States before I bid a farewell to this world.

NARRATOR 1:¹⁸ In terms of actual skin color, Ozawa was as white as any Caucasian -- and whiter than most. Ozawa argued, however, that skin color was not the key. Rather, he contended that the intent of Congress in using the term “free white person” was to make a person’s character, not a person’s race, relevant for purposes of naturalization.

NARRATOR 2: On Saturday, January 30, 1915, Ozawa appeared before the Court with his two witnesses. Benjamin Hornblower Clarke, a salesman, and Louis Aloysius Perry, a clerk, both residents of Honolulu, had presented sworn statements in support of Ozawa’s petition.¹⁹ Here is Clarke:

CLARKE:²⁰ I am a citizen of the United States of America. I personally know Takao Ozawa to have resided in the United States continuously immediately preceding the date of filing his petition, since the 1st day of January, 1909. I have personal knowledge that the petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and in every way qualified, in my opinion, to be admitted a citizen of the United States.

¹⁵ Ichioka, *supra* note 1, at 11, 15.

¹⁶ Copies of Ozawa’s handwritten composition book petition were located by the research team.

¹⁷ Second Brief of Petitioner at 3-4, In the Matter of Takao Ozawa, No. 274 (D. Haw. 1915).

¹⁸ First Brief of Petitioner at 4-8, In the Matter of Takao Ozawa, No. 274 (D. Haw. 1915).

¹⁹ Transcript of Record of Appeal at 10, *Ozawa v. U.S.*, No. 2888 (9th Cir. 1915) (containing minutes of Court proceedings and hearing on January 30, 1915) [hereinafter *Ozawa ROA*].

²⁰ This section is derived from *Ozawa ROA* at 8 (containing Benjamin H. Clarke’s affidavit in support of Ozawa’s petition).

NARRATOR 1: More than a year went by. Finally, on March 25, 1916, Judge Charles Clemons denied the petition. He later summarized his decision as follows:²¹

CLEMONS:²² The petition was opposed by the United States District Attorney for the District of Hawaii on the ground that the petitioner, being a person of the Japanese race and born in Japan, is not eligible for citizenship under Revised Statutes, Section 2169. The other qualifications were proved, including all the statements in that petition, and found to be fully established, and are so conceded by the government.

The applicant had for twenty years continuously resided in the United States, including the last nine years' residence in Hawaii. He presented two briefs of his own authorship, which are ample proof of his qualification, by education and character.

The court found that the contention of the United States District Attorney is correct and that, although the applicant was eligible for citizenship in every other respect, yet having been born in Japan and being of the Japanese race, as a matter of law he was not eligible to naturalization.

NARRATOR 2: The case moved on to the Ninth Circuit Court of Appeals.²³ Years later, when she was in her 90s, Ozawa's daughter Edith recalled her father's determination:²⁴

EDITH: My father wrote his own brief and everything. And he was really devoted. He wanted to become an American citizen and nothing would stop him. He was determined.

The articles would come out in the paper. I thought, "Ooh. What did he do?" You know, I thought only bad things came out in the paper and I was kind of ashamed, you know? And I was a child. And it was just the way we were brought up. I didn't have any Oriental friends. My neighbors were all Caucasian. He was so determined to get us, when the time came, to be American citizens.

OZAWA: SUPREME COURT

NARRATOR 1:²⁵ Until the District Court decision was reached, Ozawa's quest for citizenship had been intensely personal, undertaken without assistance of any political group and indeed without the assistance of any attorney. All that now changed. Ozawa hired an attorney, David L. Withington of Honolulu, to represent him on appeal. The appeal captured the attention first of Pacific Coast immigrant newspapers and then of the Pacific Coast Japanese Association Deliberative Council.

²¹ Ozawa ROA at 38-40 (containing copy of Bill of Exceptions endorsed by Judge Clemons).

²² Ozawa ROA at 18-38 (containing copy of Judge Clemons's decision denying Ozawa's petition).

²³ Ozawa v. U.S., No. 2888 (9th Cir. 1917).

²⁴ RACE: THE POWER OF AN ILLUSION, EPISODE THREE: THE HOUSE WE LIVE IN (California Newsreel 2003) (an online transcript is available at <http://www.newsreel.org/transcripts/race3.htm>) [hereinafter RACE].

²⁵ See Brief of Petitioner, Ozawa v. United States, 260 U.S. 178 (1922) (No. 1).

The right to naturalization had become an issue of paramount importance since the passage by California of the Alien Land Law of 1913.²⁶ That law, which prevented “aliens ineligible to citizenship” from purchasing land, was openly acknowledged to be aimed at Japanese immigrants.²⁷ Under its terms, real property acquired by aliens would escheat to the State upon a successful action by the State Attorney General. To save their land, the Japanese immigrants had to acquire the right to naturalize.

NARRATOR 2:²⁸ Determined to fight the Alien Land Law, the Japanese Association sought the assistance of the Japanese government and considered lobbying Congress. Neither option proved viable, and they began the search for a test case. When Ozawa’s appeal to the Ninth Circuit ended not in a decision, but in a certification of questions to the Supreme Court, the Japanese Association Deliberative Council voted unanimously to assist Ozawa and appointed a committee to plan strategy.²⁹

The head of the Committee, Ototaka Yamaoka of Seattle, conferred with Viscount Ishii Kikujiro, Ambassador Extraordinary and Plenipotentiary from Japan, in 1917. The Japanese diplomat asked the Committee, and later Ozawa himself, not to pursue the matter.³⁰

YAMAOKA: Mr. Ambassador, this ineligibility for citizenship has been the root of harmful and discriminatory legislation and moreover is in itself insulting and degrading treatment. This case is heading for the highest tribunal in the land, and will affect every Japanese in the United States. We ask for the support of the Japanese government as we pursue this matter.

ISHII:³¹ Mr. Yamaoka, I am sorry, but the Japanese government cannot help the Committee. All eminent persons in the executive branch of the American government and in every political party and faction believe that the Japanese should be allowed to naturalize as a matter of justice and humaneness. But public opinion at large is not ready so no one will come out and take a public stand on the question. Thus it is better to postpone the case until the right time comes. Indeed, I must ask you to suspend support of the Ozawa matter.

NARRATOR 1: Ambassador Ishii spoke directly with Ozawa on his way back to Japan.

²⁶ See Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CALIF. L. REV. 61 (1947).

²⁷ The California Attorney General even stated, “It is unimportant and foreign to the question, whether a particular race is inferior. The simple and single question is, is the race desirable. . . . It [the law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land.” See Frank F. Chuman, *THE BAMBOO PEOPLE: THE LAW AND JAPANESE AMERICANS* 161–63 (1976) (quoting a speech made by the California attorney general about the Alien Land Law of 1913). For more on the passage of the Alien Land Laws, see Rose Cuison Villazor, *Rediscovering Oyama v. California: At the Intersection of Property, Race and Citizenship*, 87 WASH. UNIV. L. REV. 979 (2010).

²⁸ Carbado, *supra* note 1, at 676.

²⁹ The Pacific Coast Japanese Association Deliberative Council met for two days on July 26-27, 1917 in Los Angeles, carefully weighed the implications, and voted unanimously to support Ozawa. See Ichioka, *supra* note 1, at 11-13. The Council appointed four individuals to the committee. *Id.*

³⁰ See Ichioka, *supra* note 1, at 14.

³¹ Conversation as recalled by Yamaoka. See *id.*

ISHII: Mr. Ozawa, I have conferred with officials of Japan and of the United States. The time is not right. You must discontinue this appeal.

OZAWA: Mr. Ambassador, I thank you for the visit. But I am an American, and I believe that the Supreme Court will recognize that fact. I will neither postpone nor withdraw my case under any circumstance, even in the face of death.

NARRATOR 2:³² The Committee rejected the Ambassador's request and pushed forward. It augmented Ozawa's legal team by seeking out George W. Wickersham, a former U.S. Attorney General with significant Supreme Court experience who had served as the Chairman of the National Committee on American-Japanese relations. On April 22, 1918, Wickersham wrote to respond to the Committee's inquiry as follows:

WICKERSHAM:³³ My fee for services in this case would depend upon what is expected of me. You ask me if I will consent to act as associate counsel with Mr. Withington in representing Ozawa. If this means that Mr. Withington is to prepare the brief and participate with me in the argument at Washington, I should be willing to undertake to prepare and conduct the argument for a fee of \$1,000. On the other hand, if Mr. Withington does not contemplate coming to Washington for the purpose, and I am to conduct the argument alone, which would involve the entire responsibility for preparation of the brief, my fee would be \$2,500.

Very truly yours,

Geo W. Wickersham

NARRATOR 2: Wickersham, after speaking with Withington, revised the fee proposal to \$2,500, whether Withington came to Washington or not. The Committee nevertheless considered the fee to be "so low" as not to be an issue. Wickersham was hired.

NARRATOR 1:³⁴ However, the delays continued. The U.S. government was as unwilling as the Japanese government for the matter to proceed. It valued Japan's assistance in the First World War, and feared the reaction from Japan if the Supreme Court ruled against Ozawa. The U.S. Secretary of State corresponded with the U.S. Solicitor General regarding his concern.

SECRETARY OF STATE LANSING: Japan and the United States are co-belligerents in the present war, in which, as you know, Japan has given and is giving consistent and essential assistance to the common cause. The Japanese land question in California, which aroused considerable feeling in Japan, has not been definitely settled and would, I fear, be opened, or at least a public discussion of it renewed, if the Takao Ozawa case were argued in the Supreme Court.

³² Ichioka, *supra* note 1, at 14. *See also* Brief of Petitioner, *Ozawa v. United States*, 260 U.S. 178 (1922) (No. 1).

³³ Carbado, *supra* note 1, at 674.

³⁴ *Id.* at 675 (summarizing the political friction between Japan and the United States at the time and the roles of Secretary of State Robert Lansing and Solicitor General James M. Beck in delaying Ozawa's case before the U.S. Supreme Court).

SOLICITOR GENERAL: I understand that it is not the desire of the State Department nor the Japanese Embassy to have the case argued during the approaching term of the Supreme Court. I also understand that the Embassy has endeavored to bring some pressure upon the applicant to delay or abandon the case but that this has been unsuccessful. I would be glad to be advised whether the State Department still thinks the argument of this to the Supreme Court and a decision from that tribunal undesirable under existing circumstances. I do not know that a postponement can be obtained, but it will be my desire to endeavor to carry out the wishes of your Department in this matter as far as I properly can.

NARRATOR 2: At the same time, a procedural issue arose in Ozawa's case. A case decided by the Supreme Court in 1918 suggested that Ozawa's case might be moot.³⁵ Over Ozawa and Withington's protests, Wickersham took the procedural issue seriously and suggested to the Japanese Association that Ozawa's case be delayed while a companion test case was sought. The Association found such a case in *Yamashita v. Hinkle*³⁶ and with Wickersham appearing as counsel in that matter as well, both cases were finally scheduled for oral argument in October 1922.

NARRATOR 1: Although Ozawa's opening brief was filed in December 1918, the Government's brief was not filed until September 1922. Wickersham submitted a single reply brief for both the *Ozawa* and *Yamashita* cases. A day later, an amicus brief was filed by the State of California. It was 125 pages long and it gives some idea of the public sentiment at the time.

MR. ENGLISH:³⁷ It is true that California in 1913 adopted an alien land law and amended that act in 1920. Justification for the adoption of that law is found in the fact that ineligible aliens, including Japanese in large numbers, have taken up their abode and residence in this state.

In an agricultural country such as our Western States there cannot continue to exist the American farm home life as America has known it if that life is to be placed in competition with the Oriental farmer. One or the other must survive and the inevitable result would be the survival of the Oriental farmer when his method of intensive agricultural development is opposed to that of the American farmer. The American family reared along the lines of American traditions with the father managing the farm, the mother presiding in the home and the children during their younger years attending school, cannot compete with the Oriental farm life wherein children and mother join with the father in the actual farm labor, and in addition do not enjoy conditions of life which are demanded by the American standard of living.

³⁵ *Id.* at 676. A Supreme Court decision in *United States v. Morena*, 245 U.S. 392 (1918), handed down after the Council took over Ozawa's case, upheld the constitutionality of a procedural provision of the 1906 Act requiring that a petition of intent to naturalize be filed no less than two years, but no more than seven years, prior to the official petition to naturalize. Because Ozawa had waited twelve years, the Act presented a potential procedural obstacle to his cases. *See id.*

³⁶ *Yamashita v. Hinkle*, 260 U.S. 199 (1922), involved two previously naturalized Japanese men, Takuji Yamashita and Hyosaburo Kono, whose filing of articles of incorporation to form a real estate company was refused by the Secretary of State on the grounds that the two men had not been naturalized legally. The Washington Supreme Court declined to issue a writ of mandate to compel the acceptance of the articles of incorporation, and Yamashita and Kono appealed to the U.S. Supreme Court. *See* Ichioka, *supra* note 1, at 16.

³⁷ At the time, the Deputy Attorney General of the State of California was Frank English. *See* Brief for Attorney General of the State of California as Amicus Curiae Supporting Appellee, *Ozawa v. United States*, 260 U.S. 178 (1922) (No. 1); Carrott, *supra* note 1, at 127.

It is perfectly obvious that the average American man, woman or child if asked the question as to the race of the Japanese would without any hesitation answer that Japanese are yellow, brown, or possibly a mixture of those two races. Any one would be astounded on asking such a question to receive the answer that the Japanese are of the white race. They are popularly referred to over the world as the “little brown men” and such popular appellation bespeaks an understanding of our American people and of the civilized world that the Japanese are not of the white race.

ORAL ARGUMENTS IN *OZAWA* AND *YAMASHITA*

NARRATOR 2: Oral argument before the Supreme Court was held on October 3 and 4, 1922. William Howard Taft was Chief Justice, and the Court’s newest member was George Sutherland, an immigrant from England who had won Utah’s single congressional seat in 1900. He gave an interview shortly after this victory.³⁸

JUSTICE SUTHERLAND: The Chinese laborers, who had naturally come to this country, will be brought into unhealthy competition with our own laborers. We already have one race problem in the South with the negroes, and to open our doors to the unrestricted immigration of Mongolians would be to invite another and more serious race problem into the West.

NARRATOR 1: After losing his seat in 1916, Sutherland maintained his ties with the conservative Republican majority, and was nominated to the Supreme Court by President Harding and confirmed by the Senate on the same day, September 5, 1922.³⁹ Less than a month later, he heard oral argument in the *Ozawa* case with the other members of the Court. No transcript of the argument exists, but based on the briefs and the Court’s decision, we have created one possible version of what happened before the Court.⁴⁰

[JUSTICE SUTHERLAND, FOUR OTHER ASSOCIATE JUSTICES, and CHIEF JUSTICE TAFT enter from stage right]⁴¹

MARSHAL OF THE COURT: The Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States. Oyez, Oyez, Oyez. All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court.

CHIEF JUSTICE TAFT: We will hear argument this morning in *Ozawa v. United States*. Mr. Wickersham.

³⁸ See Carbado, *supra* note 1, at 678.

³⁹ *Id.* at 679. See also JOEL FRANCIS PASCHAL, MR. JUSTICE SUTHERLAND: A MAN AGAINST THE STATE (1951).

⁴⁰ The following mock oral argument is derived from Brief of Petitioner, *Ozawa v. United States*, 260 U.S. 178 (1922) (No. 1); Brief of Respondent, *Ozawa v. United States*, 260 U.S. 178 (1922) (No. 1); Reply Brief of Petitioner, *Ozawa v. United States*, 260 U.S. 178 (1922) (No. 1); *Ozawa*, 260 U.S. 178.

⁴¹ The script provides for four associate justices in addition to Associate Justice Sutherland (the author of the opinion) and Chief Justice Taft. The four additional justices are designated as Justices A, B, C, and D. Of course, the number could be reduced or increased. The sight of six (or more) justices entering wearing black robes is visually powerful.

WICKERSHAM: Mr. Chief Justice, and may it please the Court. The District Court of Hawaii found that Takao Ozawa meets all the qualifications for citizenship other than race. The government takes the position that all Africans and Europeans, white, black, brown or yellow in color, educated or not, may qualify as free white persons, but even the most loyal and cultured and white-skinned Japanese are categorically excluded from naturalization simply by virtue of their nation of origin. Mr. Ozawa has lived in this country for 20 years. He was educated here, went to high school and college here. He and his family go to church here. He has never attended a Japanese school or church. Petitioner is Japanese in origin only and otherwise is as American as anyone else to whom our country has extended the great right and privilege of naturalization.

NARRATOR 2:⁴² One threshold issue that was surely discussed was a matter of statutory construction. The governing statute at the time was the Immigration Act of 1906. It did not contain a racial restriction on naturalization, and the question was whether it superseded section 2169 of Title XXX of the Revised Federal Statutes of 1875, which did limit naturalization to “free white persons” and aliens of African descent.

JUSTICE A: Counsel, I am highly sympathetic to your argument as a public policy matter, and were I a legislator with the unfettered power to act, I might have a different view. But is not the starting point of this Court’s calculus the intendment of the statute, as expressed by its plain language and inescapable implication?

WICKERSHAM: No doubt, Your Honor. But the plain language of the Act of 1906 shows that it overrides Section 2169. The Act states explicitly that it is designed to “provide for an uniform rule for the naturalization of aliens throughout the United States.” Every naturalization law that was previously enacted in the history of this Great Nation has contained similar language, which derives from our Constitution. Notably, the Act of 1906 does not purport to engraft or preserve any part of Section 2169 or any other prior law from our venerable past, but instead is complete and self-contained.

NARRATOR 1: The Court must also have explored the question of whether Ozawa was entitled to naturalization as a “free white person” in the event that Section 2169 was applicable. As Ozawa had argued in his hand-written briefs, Wickersham noted that Congress had barred the Chinese -- but not the Japanese -- from being naturalized. Because the Japanese were neither black nor Chinese, he argued, they had to be white -- and therefore eligible to be naturalized.

WICKERSHAM: Your Honors, petitioner is eligible for naturalization because he falls within the meaning of “free white persons.” “Free white persons” means nothing more than one who is not black, not a Negro. It is the greatness of our nation that it has extended a welcoming hand to immigrants of all ethnicities and for this reason, we exclude only Chinese and also those morally, mentally and physically unfit for citizenship, but we have imposed no restrictions against the

⁴² See Ichioka, *supra* note 1, at 2. Section 2169, Title XXX specified that racially, only two types of aliens -- persons of white or black descent -- were eligible to become American citizens. All Asian immigrants, being neither white nor black, were classified as “aliens ineligible to citizenship.” See Sect. 141, 18 Stat. 477, 1873 (March 1875). The Immigration Act of 1906 framed the rules for naturalization, standardized naturalization forms, encouraged state and local courts to relinquish their naturalization jurisdiction to Federal courts, required immigrants to learn English in order to become naturalized, and expanded the Bureau of Immigration into the Bureau of Immigration and Naturalization. See Naturalization Act of 1906, ch. 3592, § 4, 34 Stat. 596 (repealed in part 1940).

Japanese race. Numerous Chinese Exclusion Acts have been passed; but there is no line in any statute before or since 1875 which indicates any intention to classify the Japanese with those excluded or to discriminate against them in any way. Indeed, if Section 2169 excludes the Chinese from naturalization, why did Congress believe there was a need to promulgate a Chinese Exclusion Act?

CHIEF JUSTICE TAFT: Counsel, is it not the case that we should depart from the words of the legislation if the literal meaning of those words leads to an unreasonable result plainly at variance with the policy of the legislation as a whole?

WICKERSHAM: Mr. Chief Justice, of course, this Court's construction of the legislation should avoid absurd results. But petitioner submits that the absurd result here would be to draw unyielding lines based upon place of origin, rather than upon factors relating to the individual in question, such as the extent to which that individual has assimilated into our great nation.

JUSTICE B: But in determining the policy underlying the legislation, abstractions do not matter as much as the antecedent legislative history. And isn't that history clear, right or wrong, in stating that "Asiatics" should not be naturalized?

WICKERSHAM: Section 2169 traces its origin back to 1790. There is no indication that the framers of our government in 1790 contemplated the immigration of Asians and thus there was at that momentous time in our nation's history no intention to exclude Asians. To the contrary, in 1790, the framers intended "white" to simply mean a person without negro blood.

JUSTICE C: But is that analysis misplaced? The question is not whom the framers intended to exclude. The question is whom the framers intended to *include*. And their intent to *include* only free whites is unmistakable, is it not?

WICKERSHAM: Where is the line drawn, Your Honor, as to who is white and who is not? Our courts have ruled that Parsees, Armenians, Syrians, and Hindoos have qualified for naturalization as "white." Our laws have demarcated Puerto Ricans, aliens in the military, and Filipinos as white. Judge Lowell in the *Halladjian* case stated that the term "white" is a broad term which he described as encompassing "substantially all of the people of Asia."⁴³ I would submit to you that there is no reason why Japanese fall on the other side of the line, particularly when the skin color of some Japanese is as white as yours or mine.

⁴³ *In re Halladjian*, 174 F. 834, 845 (D. Mass. 1909) ("We find, then, that there is no European or white race, as the United States contends, and no Asiatic or yellow race which includes substantially all the people of Asia; that the mixture of races in western Asia for the last 25 centuries raises doubt if its individual inhabitants can be classified by race; that, if the ordinary classification is nevertheless followed, Armenians have always been reckoned as Caucasians and white persons; that the outlook of their civilization has been toward Europe. We find, further, that the word 'white' has generally been used in the federal and in the state statutes, in the publications of the United States, and in its classification of its inhabitants, to include all persons not otherwise classified; that Armenians, as well as Syrians and Turks, have been freely naturalized in this court until now, although the statutes in this respect have stood substantially unchanged since the First Congress that the word 'white,' as used in the statutes, publications, and classification above referred to, though its meaning has been narrowed so as to exclude Chinese and Japanese in some instances, yet still includes Armenians.").

NARRATOR 2: When the government argued its case, it is likely that the Solicitor General spent little time on statutory construction but proceeded directly to the definition of “free white persons,” believing that the decision would turn on that issue.

BECK: Since 1790, our laws have specifically limited naturalization to “free white persons.” As Judge Sawyer explained in *In re Ah Yup* in 1878, the common meaning of white person is a person of the Caucasian race.⁴⁴ Indeed, even so basic a resource as the Webster Dictionary states that there are five racial classifications, of which Caucasians are one and of which the Mongol or yellow race is another. And never in the common parlance or in the science of ethnology do we find anyone who will aver that the white race encompasses the yellow one.

Now, my learned adversary tries to confuse the issue by stating that Syrians and others fall on the border line. Our courts of course draw lines all the time and it is well within their competence to do so. However, this is no such hard case. Mr. Ozawa is, by his own admission, of Japanese extraction and thus unassailably of the Asiatic race and not the white race.

JUSTICE D: If Chinese were already excluded from the naturalization statutes prior to passage of the first Chinese Exclusion Act, why were the Chinese Exclusion Acts necessary? And is it not a source of concern for you that the Chinese Exclusion Act makes no mention of excluding Japanese?

BECK: The court cases prior to the Chinese Exclusion Act clearly excluded Chinese from the purview of “free white persons.” The Chinese Exclusion Act was enacted to recognize the growth of the Chinese population and the legislative need for targeted legislation dealing with that group. The Japanese were not included in the Exclusion Act because until recently the Japanese could boast no such numerosity and thus there was no perceived legislative exigency with respect to the Japanese race.

JUSTICE A: By not defining the words “white person,” Congress left the subject in great uncertainty. What is our practical recourse? Can we draw any better line than simply visually inspecting the applicant and determining whether he is a “white person?”

BECK: Your Honor, it is precisely because an individual accounting is unworkable that the Congress, the President and our Courts have all urged a categorical definition of “white person,” a definition applicable to entire races without regard to what may well be exemplary individual characteristics which arguably render some applicants assimilable into white society.

NARRATOR 1: A little more than a month after oral argument, Justice Sutherland delivered the opinion of the unanimous court. The Court rejected the statutory construction argued by Wickersham, refusing to hold that the Act of 1906 superseded Section 2169, and proceeded to the issue of whether Ozawa was white.

⁴⁴ *In re Ah Yup*, 1 F. Cas. 223 (D. Cal. 1878) (“Whiteness has acquired a well-settled meaning in common parlance. Language, literature, and scientific nomenclature do not define Mongolians as white. Also, all classifications of races do not include Mongolians within the definition of the white race. It is clear from Congressional proceedings and recent legislation that naturalization laws exclude Chinese.”).

SUTHERLAND:⁴⁵ The question then is: Who are comprehended within the phrase “free white persons?” 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.

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. With the conclusion reached in these several decisions we see no reason to differ. . . .

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 appellant in this case, however, is clearly of a race which is not Caucasian. A large number of the federal and state courts have so decided. . . . 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. . . .

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.

NARRATOR 2: Only two months later, the reasoning of the *Ozawa* decision would be tested in the *Thind* case.

⁴⁵ *Ozawa*, 260 U.S. at 196-98.

THIND: BACKGROUND⁴⁶

NARRATOR 1: Thind was born in 1892, in northern India in Amritsar, Punjab, “the holy city” of the Sikh religion. He attended Khalsa College, but moved to the United States at the age of 21 to pursue an education in an American university.

THIND: At Khalsa, I studied Emerson, Thoreau, and Whitman. From their writings I became fascinated with America and its people. I remember this about Thoreau: When Thoreau was dying, a priest asked him, “have you made your peace with the Lord?” Thoreau replied, “we are on the best of terms.”⁴⁷ I dreamed of going to America, where I could study more, and become a spiritual leader.

NARRATOR 2: Thind followed his dream, arriving in the United States in Seattle, Washington in 1913, and worked in the lumber mills of Astoria, Oregon. On July 22, 1918, while still a citizen of India, he joined the U.S. Army to fight in World War I. A few months later, he was promoted to Acting Sergeant.

THIND: I was idealistic, but I always told my disciples that “it is the daring, vital, vigorous, high souled men and women with the courage to face and experience the world who become conquerors of their minds and of the world.”⁴⁸ My father was a high ranking military official in the British Indian Army; actually my entire family was respected in Amritsar as a warrior family. So though I was in the United States, and not Amritsar, I felt the responsibility to fight for my country, the United States, as my father did for his.

NARRATOR 1: Thind filed a petition to be an American citizen, in part because he wanted to be a lawyer and could not become a lawyer unless he was a citizen. On December 9, 1918, in the district court in Washington, his petition was granted. He was sworn in as a U.S. citizen, while wearing his uniform as a soldier in the U.S. Army. But just four days later, his citizenship was revoked, as the Immigration and Naturalization Service disagreed with the court’s decision.

Undeterred, Thind tried again. In May 1919, he petitioned for citizenship in Oregon District Court. In November 1920, Judge Wolverton ruled.⁴⁹

JUDGE WOLVERTON: Since his entry into this country, Thind’s deportment has been that of a good citizen, attached to the Constitution of the United States.

Bhagat Singh did not enter unlawfully. The Immigration Act does not require him to depart the country. I find nothing in the Act that evinces an intendment that it should render Thind’s lawful entry presently unlawful. Shall such Hindus remain here as they please, without the privilege of

⁴⁶ The facts set forth below are drawn from Singh, *supra* note 9, at 66; Brief for Appellant, United States v. Thind, No. 3745 (9th Cir. Sept. 28, 1921); Brief for Respondent, United States v. Thind, No. 3745 (9th Cir. Oct. 6, 1921); *In re Bhagat Singh Thind*, 268 Fed. 683 (D. Or. 1920); Carbado, *supra* note 1, at 682-85; HANEY LÓPEZ, *supra* note 1, at 61-65, 84-88.

⁴⁷ See SIMON CRITCHLEY, *THE BOOK OF DEAD PHILOSOPHERS* 181 (2009) (“When asked if he had made his peace with God, [Thoreau] replied, ‘I did not know we had ever quarreled.’”).

⁴⁸ Bhagat Singh Thind, *SANSAR ROGI NAM DARU OR THE LIVING WORD OF GOD* 7-8 (2009).

⁴⁹ *In re Bhagat Singh Thind*, 268 Fed. 683 (D. Or. 1920).

becoming citizens or shall they be deported whence they came? As to these questions, the law is silent.

As the present act does not require such Hindus as are here to depart, and, there being no manifest repugnancy between this and the naturalization laws, it must be concluded that Bhagat Singh is entitled to his naturalization.

I am not disposed to discuss the question as one of first impression whether a high-class Hindu, coming from Punjab, is ethnologically a white person, within the meaning of Section 2169. I am content to rest my decision of the question upon a line of cases that have explored this issue and held that Hindus of India are members of the Aryan branch of the Caucasian race.

NARRATOR 1: Following Judge Wolverton's decision, Thind was naturalized. One month later, the U.S. government filed a bill in equity to cancel Thind's citizenship, supported by the affidavit of V.W. Tomlinson, a Naturalization Examiner in the Department of Labor.⁵⁰

TOMLINSON: I am acquainted with Bhagat Singh Thind, who was admitted to citizenship as a citizen of the United States and I conducted an investigation and examination of his qualifications to become a citizen. He is a native of India and to the best of my information and belief he is not a free white person within the meaning of Section 2169 and is not thereby entitled to become a citizen of the United States by naturalization. In my opinion, there is good cause for cancelling the certificate of naturalization issued to Bhagat Singh Thind.

NARRATOR 2: The Oregon District Court disagreed with the government, once again affirming Thind's lawful entitlement to naturalization and dismissing the bill. The government appealed to the Ninth Circuit, which turned directly to the Supreme Court with the question whether a high caste Hindu of full Indian blood was a white person within the meaning of Section 2169.⁵¹

THIND IN THE SUPREME COURT⁵²

NARRATOR 1: In January 1923, the U.S. Supreme Court heard oral argument. Again, we have imagined how the argument proceeded.

**[JUSTICE SUTHERLAND, FOUR ANONYMOUS JUSTICES,
And CHIEF JUSTICE TAFT enter from stage right]**

CHIEF JUSTICE TAFT: We will hear argument this morning in *United States v. Thind*. Mr. King, on behalf of Mr. Thind?

⁵⁰ Transcript of Record on Appeal at 7-8, *United States v. Thind*, No. 3745 (9th Cir. Aug. 5, 1921) (containing Tomlinson Affidavit as Exhibit A attached to the Bill of Complaint in Equity filed by the U.S. Attorney in the U.S. District Court for the District of Oregon) [hereinafter Thind ROA]. See Singh, *supra* note 9, at 66.

⁵¹ See Carbado, *supra* note 1, at 682.

⁵² No transcript of the argument exists, but based on the briefs and the Court's decision, the authors created one possible version of what happened before the Court. The following mock oral argument is derived from *United States v. Thind*, 261 U.S. 204 (1923) (No. 202); Brief for Respondent, *United States v. Thind*, 261 U.S. 204 (1923) (No. 202); *United States v. Thind*, 261 U.S. 204 (1923); Carbado, *supra* note 1, at 682.

KING: Mr. Chief Justice, and may it please the Court: Mr. Thind became a lawful citizen of the United States on November 18, 1920. From well before that date until the present, Mr. Thind has faithfully served our country. He spent many summers stacking lumber in the Oregon mills, and volunteered to protect America as a serviceman in our armed forces during the Great War. Mr. Thind was granted an honorable discharge from the U.S. military in December of 1918. He has remained a law-abiding citizen since that day.

Under this country's law, Mr. Thind meets all of the requirements of citizenship. The District Court decision should be upheld.

JUSTICE B: Counselor, the question before us, of course, is not whether your client faithfully served this country or whether he is a good person or whether he stacked lumber in Oregon. Rather, the question, as you well know, is whether Mr. Thind is a "white person" within the meaning of the statute.

KING: Your Honor, Mr. Thind is a "white person," for he is, unequivocally, Caucasian and therefore white.

JUSTICE C: Is he not "brown?"

KING: Respectfully, Your Honor, Mr. Thind was born a member of a high Hindu caste, a caste well known to be descendants of the Aryan race. Aryans, as your Honors are aware, are of the Caucasian -- the "white" -- race. Accordingly, the naturalization law permits Mr. Thind, a white person, to be a citizen, as held in *Ozawa*.

JUSTICE SUTHERLAND: Mr. King, I do have some familiarity with the *Ozawa* decision. Did I not write in *Ozawa* that the determination that the words "white person" means a Caucasian did not end the matter? Did this Court not conclude that there was not to be a sharp line of demarcation between those who are entitled to be naturalized and those who are not?

KING: Justice Sutherland, Mr. Thind falls well within the zone of those entitled to be naturalized. Various renowned scholars have proven to us that Hindus are Caucasians. Professor Blumenbach's research and studies compared many important racial factors such as skull shape and complexion which demonstrate that Hindus are Caucasian, the highest type of white race.

NARRATOR 2: King argued not only that Thind was white, but he went to great lengths to argue that Thind was of pure blood, and that there was no possibility that he was a person of mixed blood. While *Ozawa* had argued that being "white" for these purposes should turn more on a person's character and worthiness, Thind's lawyer emphasized blood and race.

JUSTICE D: You cannot be saying that a man with brown skin and black hair is the same race as a blond Scandinavian with fair skin.

KING: Your Honor, color alone cannot determine race. While color is some evidence of race, the *true* test of race is blood or descent. It is well-settled among scientists that Indians hail from

the Aryan race, specifically those in the north and northwest, including Punjab, where Mr. Thind was born.

JUSTICE A: Everyone knows -- even a child could recognize -- that the physical group characteristics of Hindus are readily distinguishable from the whites.

KING: The reason Aryans of India are darker than Aryans of Germany is due to environmental factors such as the sun. Natural selection has shown us that dark-skinned people have a better chance of survival in warmer climates. Thus, those Aryans in India have evolved to be more adapted for the climate of India, but they are still Caucasian.

JUSTICE B: Even so, we could not be sure of his origin. Mr. Thind's blood might not be pure. After hundreds of years, there is certain to be mixing of races.

KING: Your Honor, the caste system in India is strictly regimented. It is guaranteed that there is no intermixing of castes or races and thus the Aryan blood is pure. In the caste system, it is disgraceful for a high-class Hindu to marry someone of a lower caste. This would be like an American gentleman marrying a member of the Negro race -- the offspring is subject to the same social denigration.

NARRATOR 1: The argument would have included exploration of a second question certified to the Court: the effect of the Immigration Act of 1917. This statute, also known as the "Asiatic Barred Zone Act," created a zone across much of Asia, including India and the Pacific Islands, from which individuals were banned from entering the country. Hence, Hindus, other Asians, and Pacific Islanders joined a list that included the "feeble-minded," "idiots," "criminals," "epileptics," and "professional beggars."⁵³

JUSTICE C: Isn't it the case that the 1917 Act disqualifies Hindus who lawfully entered before that date from being naturalized as citizens?

KING: No, Your Honor, it does not. The 1917 Act was meant to apply prospectively only -- from that point forward.

JUSTICE D: Doesn't the 1917 Act evidence an intent to exclude natives of Asian countries, including India?

KING: Your Honor, the 1917 Act does not amend the Naturalization Act by implication or otherwise. The 1917 Act only affects Hindus who attempt to come to the United States after that time.

Mr. Thind entered the country lawfully and was a lawful citizen before the enactment of the Immigration Act of 1917. The Act therefore cannot affect him.

We ask the Court to affirm the district court's decision.

⁵³ Immigration Act of 1917, H.R. 10384; Pub.L. 301, 39 Stat. 874 (Feb. 5, 1917).

CHIEF JUSTICE TAFT: We'll hear from the Government.

BECK: Honorable Justices, may it please the Court, quite simply, Mr. Thind is a Hindu. He is not a white person and, therefore, he is not eligible for naturalization.

JUSTICE A: Is Mr. Thind not Caucasian?

BECK: Apparently so, your Honor. We acknowledge the consensus amongst ethnologists that high-caste Hindus, such as Mr. Thind, would be considered a member of the Aryan family and therefore Caucasian.

JUSTICE B: That being the case, why is he not a white person for purposes of Section 2169?

BECK: In *Ozawa*, this Court noted that defining a “white person” as a Caucasian simplified but did not entirely dispose of the issue, because controversies would arise with respect to the proper classification of individuals in borderline cases, individuals falling within a zone of debatable ground. Here, we have such a borderline case, at least when considered ethnologically.

JUSTICE C: What about the cases holding that “white” means Caucasian? There is even language in *Ozawa* to that effect.

BECK: Your Honors, it's not that simple. As a matter of statutory construction, this Court must consider what the drafters intended, in 1790, when they first wrote the words “free white persons,” and what they had in mind in 1870, when the naturalization laws were extended to aliens of African descent, and what they had in mind in 1875, when the words “free white persons” were restored after they had been inadvertently omitted. It is necessary to determine who the drafters intended to include, not who they intended to exclude. And they intended to include men of a combination of color, race, and social institutions, men like themselves, men who developed and maintained a civilization of which the drafters were a part – the civilization of white men.

JUSTICE D: Counsel, petitioner Thind is a Caucasian who has clearly adopted Western culture, habits and customs, is he not?

BECK: Perhaps so, Your Honor, but that is not the test here. Even though his Caucasian or Aryan stock in India may have kept their blood pure for centuries, even though Mr. Thind himself may strive to adopt Western ways, those eligible for naturalization must be representatives of a white civilization. The people of India are removed from political fellowship with the white men of the Western World. The term “white man” has never been used as appropriate to describe the Hindu, who are classified as the “brown” race. To call a Hindu a white man would be to give a judicial interpretation contrary to the universal acceptance of the term.

NARRATOR 1: Just over a month later, Justice George Sutherland delivered the opinion for what was again a unanimous court:

JUSTICE SUTHERLAND:⁵⁴ Mere ability on the part of an applicant for naturalization to establish a line of descent from a Caucasian ancestor will not necessarily conclude the inquiry. We must not fail to keep in mind that the statute does not employ the word “Caucasian” but the words “white persons,” and these words are of common speech and not of scientific origin. The word Caucasian not only was not employed in the law but was probably wholly unfamiliar to the original framers of the statute in 1790.

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, almost exclusively from the British Isles and Northwestern Europe. 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.

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 word is popularly understood. As so understood, it does not include the body of people to whom the appellee belongs.

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.

AFTERMATH⁵⁵

NARRATOR 1: What was the impact of the Supreme Court’s decisions in *Ozawa* and *Thind*?

As a result of *Ozawa*, Japanese immigrants gave up their dream of becoming U.S. citizens. Some called the decision a “national humiliation,”⁵⁶ as the message was sent that the Japanese were too different, too undesirable to become a part of American society. Without the rights of citizenship, the Japanese would never have the full protection of the law.

Nevertheless, immigrant leaders hoped that they could win their separate cases challenging the California and Washington alien land laws. But they suffered total defeat in these cases as well.⁵⁷ As a consequence, Japanese immigrants were unable to own or even lease land, and thousands of acres of land were seized from Japanese immigrants.

⁵⁴ *Thind*, 261 U.S. at 208, 213-15 (1923).

⁵⁵ See generally HANEY LÓPEZ, *supra* note 1; Carbado, *supra* note 1; Carrott, *supra* note 1; Ichioka, *supra* note 1.

⁵⁶ Ichioka, *supra* note 1, at 17.

⁵⁷ In November 1923, the U.S. Supreme Court handed down four decisions on California and Washington’s alien land laws, all detrimental to the Japanese. See *Terrace v. Thompson*, 263 U.S. 197 (1923) (involving a white American that sought to lease his agricultural property to a Japanese alien; the Supreme Court held that the state had the authority to forbid aliens from holding land and that Washington state had followed the federal policy of discriminating only against certain aliens); *Porterfield v. Webb*, 263 U.S. 225 (1924) (citing *Terrace v. Thompson* and finding that a Japanese alien was not permitted to rent farm land from American under the Alien Land Act of California); *Webb v. O’Brien*, 263 U.S. 313 (1923) (stating that sanctioning cropping arrangements between an Japanese alien and American would cause aliens ineligible for citizenship to threaten the security of the state by controlling much of the US’s farm land); *Frick v. Webb*, 263 U.S. 326 (1923) (involving a white American selling stock in company that owned farm land to a Japanese alien; the Supreme Court refused to issue an restraining order on the basis that any ownership of stock in a farm was the same as holding an interest in the land).

In the longer term, the Supreme Court's ruling in *Ozawa* surely paved the way for the United States government's decision during World War II to intern people of Japanese ancestry and the Supreme Court's acquiescence in that internment.

NARRATOR 2: For Asian Indians, the Supreme Court decision in *Thind* was perhaps even more devastating: Asian Indians who had previously been naturalized, and had believed their status to be secure, were stripped of their citizenship. More than 65 Asian Indians were denaturalized between 1923 and 1927 in the wake of *Thind*. Among them was Vaishno Das Bagai, who had lived with his family in the United States since 1915, and had become a citizen. He committed suicide, and in his suicide note, he wrote as follows:

DAS BAGAI:⁵⁸ “But now they come to me and say, I am no longer an American citizen. . . . What have I made of myself and my children? We cannot exercise our rights, we cannot leave this country. Humility and insults, who are responsible for all of this? . . . Obstacles this way, stockades that way, and the bridges burnt behind.”

NARRATOR 1:⁵⁹ As for Thind, his U.S. citizenship was revoked. In 1935, however, Congress passed a law allowing citizenship to U.S. veterans of World War I. Thind was eligible under the new law and he took the oath of citizenship in 1936 in New York. By that time, he had completed his PhD and was delivering lectures in Metaphysics.

Soon after, he was ordained a minister, then met and married Vivian (Davies) Thind, in Ohio in 1940. He went on to become a revered spiritual leader and wrote many religious books. He died on September 15, 1967.

NARRATOR 2: Judge Clemons, the judge who felt constrained by the law to rule against *Ozawa*, offered these views in an op-ed published in the *Honolulu Star-Bulletin*, some years later.⁶⁰ He wrote:

CLEMONS: It is absurd . . . that a man must be either ‘white’ or ‘of African nativity’ . . . to become a naturalized citizen The remedy for this anomaly lies with Congress, which should not further delay the radical cure for this international ill. How hypocritical so much prating about the ‘international mind,’ while retaining so much prejudice against mere radical ‘color’ as such!

NARRATOR 1: Congress, however, did not act to remove racial restrictions on naturalization generally until 1952.⁶¹

NARRATOR 2: We do not know how Takao Ozawa reacted to the Supreme Court decision. We do know that in 1926, he opened Kaimuki Dry Goods, a store that today is run by his grand-

⁵⁸ See RACE at 1:19:15; HANEY LÓPEZ, *supra* note 1, at 64-65.

⁵⁹ See Amin Vafa, *The Fight To Be American: Military Naturalization And Asian Citizenship*, 17 ASIAN AM. L.J. 119, 145-46 (2010).

⁶⁰ See Carbado, *supra* note 1, at 671

⁶¹ In 1952, Congress passed the McCarran-Walter Act eliminating race as a basis for naturalization. McCarran-Walter Act, 8 U.S.C. § 1422 (1952).

daughter, Dee Dee Miyashiro.⁶² We do know that Ozawa lived out his days in Hawaii, raising four daughters and one son, and that he died in 1936. We also know that his son served in the U.S. military as a U.S. citizen in World War II and that George Yoshio Ozawa died near Leonardo, Italy, fighting for the country his father had so proudly adopted as his own. George is interred at the National Memorial Cemetery of the Pacific in Honolulu, known as Punchbowl. He was awarded the Purple Heart and many other medals for his service to his country.⁶³

NARRATOR 1: On November 2, 2011, members of Congress gathered to award the Congressional Gold Medal, the highest civilian award given by Congress, to World War II Japanese-American veterans in the 442nd Regimental Combat Team, the Military Intelligence Service and George's unit, the 100th Infantry Battalion.⁶⁴ The members of Congress recognized that what separated these veterans from others was not only that many of them had family members in internment camps, but that they were exempt from the draft. They *chose* to serve. Senator Inouye, himself a member of the 442nd, stated as follows:⁶⁵

SENATOR INOUE: After Pearl Harbor, Japanese-Americans were declared by the government as being enemy agents. . . and, as such, unfit to put on the uniform of this land. But we didn't sit by and do nothing about it. We petitioned the government to give us an opportunity to demonstrate our love of country and our patriotism, which was granted to us.

NARRATOR 2: Takao Ozawa would have been proud of his son. And both Takao Ozawa and Bhagat Thind would have understood and applauded the spirit behind the petition described by Senator Inouye, for they shared that same spirit.

⁶² See KAIMUKI DRY GOODS, <http://www.kaimukidrygoods.com/aboutus.shtml> (last visited Aug. 29, 2012); Carbado, *supra* note 1, at 646 ("By the time Ozawa died in 1936, he had made Hawai'i his home.").

⁶³ See Obituary of George Yoshio Ozawa (October 24, 1917- October 21, 1943) (on file with authors).

⁶⁴ See C. Todd Lopez, *Japanese-American Vets Earn Nation's Highest Civilian Honor*, THE OFFICIAL HOMEPAGE OF THE UNITED STATES ARMY (Nov. 2, 2011), <http://www.army.mil/article/68563>.

⁶⁵ *Going for Broke: Japanese-American Veterans Honored with Congressional Gold Medal*, ABC NEWS (Nov. 2, 2011), <http://abcnews.go.com/blogs/politics/2011/11/going-for-broke-japanese-american-veterans-honored-with-congressional-gold-medal>.