

***United States v. Bhagat Singh Thind:* Dual Legacies of a Forgotten Supreme Court Case**

By: Daksha Pillai

Introduction

The history that is not known reveals more than the history that is. Amongst the obscure rubble of the past is a Supreme Court decision from 1923, in which a common South Asian immigrant had his citizenship revoked because he was not white, a fate both lamentable and typical of the time. Yet despite its disappearance from textbooks and collective consciousness, *United States v. Bhagat Singh Thind* left dual legacies: that of South-Asian Americans trying to gain acceptance through proximity to whiteness and that of the U.S. government using the label of whiteness to otherize South-Asian Americans.

The Diaspora

The first significant wave of immigration from South Asia occurred in the late 1800s, sparked by the prospect of employment in lumber and agriculture as well as an escape from the yoke of British colonialism¹. This wave continued into the early 1900s, causing fear of a “Hindu Invasion”², a double misnomer. First, the tide of immigrants was relatively few, with only 8,055 new immigrants admitted between 1910 and 1932, far less than other ethnicities³. Second, few of these immigrants practiced Hinduism; the majority were Sikhs from Punjab, India⁴. The lack of knowledge about the immigrants did not dissuade white hostility. South-Asian Americans were frequently discriminated against, derisively called “ragheads”⁵, and even murdered⁶. The most well-known instance of anti-South Asian behavior was the Bellingham Riot of 1907, in which a mob of around 500 white men attacked Sikh lumber mill laborers⁷, resulting in 6 hospitalizations⁸ and a mass exodus until “a Hindu was considered a rarity on the streets of Bellingham.”⁹. Newspapers warned of a “Dusky Peril”¹⁰, an echo of the “Yellow Peril”¹¹ that referred to East-Asian Americans. Fear of these dual “perils” eventually culminated in the 1917 Immigration Act, which along with other restrictions, banned immigrants¹² from the “Asiatic barred zone”, including South Asians¹³. Isolated, the South-Asian Americans already present in the country clustered into ethnic enclaves, established businesses, and pursued a political voice. The Ghadar Party, based in California, advocated for Indian independence from Britain and

¹ Erika Lee. “South Asian Immigrants and the ‘Hindu Invasion.’” *The Making of Asian America: A History*, Simon & Schuster, 2015.

² “‘What the World Is Doing: A Record of Current Events’.” *Collier's Weekly*, 26 Mar. 1910.

³ Erika Lee. “South Asian Immigrants and the ‘Hindu Invasion.’” *The Making of Asian America: A History*, Simon & Schuster, 2015. p. 151

⁴ *Ibid.* 153

⁵ “Discrimination: The ‘Ragheads.’” *The Pluralism Project*, ”

⁶ “Begin Hindu Murder Trial.” *The Oregonian*, 23 Apr. 1908.

⁷ “MOB DRIVES OUT HINDUS.” *The New York Times*, 6 Sept. 1907.

⁸ *Ibid.*

⁹ Dodd, Werter D. “The Hindu in the Northwest.” *World Today*, 1907.

¹⁰ “Have We A Dusky Peril?” *Puget Sound American*, 16 Sept. 1906, p. 16.

¹¹ Erika Lee. “South Asian Immigrants and the ‘Hindu Invasion.’” *The Making of Asian America: A History*, Simon & Schuster, 2015. p.130

¹² *The 1917 Immigration Act did continue to allow immigration for certain classes such as students.*

¹³ *Immigration Laws (Act of February 5, 1917) Rules of May 1, 1917, Govt. Print. Off., 1920.*

sought allies in the United States.¹⁴ Many of these immigrants came anticipating a land of freedom. Vaishno Bagai, Ghadar Party member and general store owner, had said before immigrating, “I don’t want to stay in this slave country¹⁵, I want to go to America.”¹⁶ Bagai and his family had a rude awakening when on arrival in California, their white neighbors barred them from the house they had bought there.¹⁷

The Defendant

Bhagat Singh Thind was born in 1892 in Kambhoj, Punjab¹⁸ and immigrated to the United States in 1913, seeking enrollment in an American university¹⁹. In 1918, Thind enlisted in the United States Army and was honorably discharged at the end of World War I, with his superiors commending his “excellent character”²⁰. After the war, Thind applied and was granted citizenship²¹ by the United States District Court for the District of Oregon in 1920²². This status would be short-lived. The Bureau of Naturalization, which had previously objected to Thind’s citizenship due to his involvement in the Ghadar Party²³, appealed the District Court’s decision to the Ninth Circuit of Appeals. From there, the case was sent to the Supreme Court of the United States, where Bhagat Singh Thind would have to advocate for his American citizenship.

The Case

Central to Bhagat Singh Thind’s case would be the Naturalization Act of 1906, which restricted citizenship through naturalization to “free white persons”²⁴ as well as “aliens of African nativity and persons of African descent”²⁵. Thind was not the first Asian-American to present such a case. In 1922, a mere three months before Thind’s ruling, the Supreme Court presided over *Ozawa v. United States*, in which the plaintiff defended himself as a “free white person” under the Naturalization Act, and therefore eligible for citizenship²⁶. Takao Ozawa was an immigrant from Japan who had converted to Christianity²⁷, raised his family in the United States²⁸, and spoke fluent English²⁹; the defense touted these qualities as well as Ozawa’s light skin tone to prove Ozawa as a white person³⁰. Despite these arguments, the Supreme Court ruled unanimously against Ozawa as, “A Japanese, born in Japan, being clearly not Caucasian, cannot

¹⁴ Samip. “An Introduction to South Asian American History.” *South Asian American Digital Archive (SAADA)*, 30 July 2015

¹⁵ Referring to India under control of the British Raj

¹⁶ Bagai , Rani, and Kala Bagai Chandra . “Oral History Interview with Kala Bagai Chandra.” 26 Nov. 1982.

¹⁷ *Ibid.*

¹⁸ “Family In India.” Dr. Bhagat Singh Thind, 28 Sept. 2018,

¹⁹ Chakravorty, Sanjoy, et al. *The Other One Percent: Indians in America*. Oxford University Press, 2019. p.12

²⁰ *Ibid.*

²¹ Thind had also applied for citizenship during the war, but was rejected on account of his race. *Ibid.*

²² *Ibid.*

²³ Coulson, Doug. *Race, Nation, and Refuge: The Rhetoric of Race in Asian American Citizenship Cases*. State UNIV OF NEW YORK PR, 2018.

²⁴ United States Congress. *The Naturalization Act of 1906*

²⁵ *Ibid.*

²⁶ Supreme Court of the United States, *Ozawa v. United States*, *United States Reports*, vol. 260, 13 November 1922, p.178-197

²⁷ “Ozawa v. United States.” *Ozawa v. United States | Densho Encyclopedia*,

²⁸ *Ibid.*

²⁹ Supreme Court of the United States, *Ozawa v. United States*, *United States Reports*, vol. 260, 13 November 1922, p.178-197

³⁰ *Ibid.*

be made a citizen of the United States”³¹, thereby equating “white” with “Caucasian”. This precedent would become the main impact of *Ozawa v. United States* and gave Sakharam Pandit³², Thind’s lawyer, grounds to argue for his client’s citizenship.

U.S. v. Thind was framed around two questions:

"1. Is a high caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, a white person within the meaning of section 2169, Revised Statutes?"

*2. Does the act of February 5, 1917, (39 Stat. L. 875, section 3) disqualify from naturalization as citizens those Hindus, now barred by that act, who had lawfully entered the United States prior to the passage of said act?"*³³

Pandit argued that while Thind was not pale in complexion, Thind was racially Caucasian, making him a white person under the precedent of *Ozawa v. United States* and therefore eligible for naturalization³⁴. This argument had significant grounds at the time; it was why most South-Asian Americans were awarded citizenship prior³⁵. As earlier mentioned, Thind immigrated from Punjab, a region in Northern India that had historically been invaded by Aryans³⁶, one branch of the Caucasian race³⁷. Earlier anthropologists had established the dogma that, “the Aryan invaders were ‘White Men’ and that the High Caste Hindus are what they are in virtue of Aryan blood which they have inherited.”³⁸

Pandit noted anthropologists, the precedent set by *Ozawa v. United States*, and Thind’s military service before resting his case.³⁹ A month later, on February 19, 1923, the Supreme Court handed down its decision.

In the case of *United States v. Bhagat Singh Thind*, the Supreme Court of the United States unanimously ruled against Bhagat Singh Thind.⁴⁰ In its opinion, the Court acknowledged the argument of Thind as Caucasian, but asserted:

*“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”.*⁴¹

This directly went against the precedent recently set by *Ozawa v. U.S. Ozawa*, despite being paler than the average white person, was denied citizenship as he was “clearly not

³¹ *Ibid.* p.178

³² Chakravorty, Sanjoy, et al. *The Other One Percent: Indians in America*. Oxford University Press, 2019. p.12

³³ Supreme Court of the United States, *United States v. Thind*, *United States Reports*, vol. 261, 19 February 1923, p. 204

³⁴ *Ibid.*

³⁵ Williams, John P. “Journey to America: South Asian Diaspora Migration to the United States.” *Indigenous, Aboriginal, Fugitive and Ethnic Groups Around the Globe*, 11 Sept. 2019

³⁶ Thomas Henry Huxley. *Man's Place in Nature*. 1863

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Supreme Court of the United States, *United States v. Thind*, *United States Reports*, vol. 261, 19 February 1923, p. 204

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

Caucasian”⁴². Yet, Bhagat Singh Thind who proved he was Caucasian under the science of the time, did not qualify for citizenship either. The deeper reason for this contradiction is hinted at later in the Court’s opinion:

*“The children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry.”*⁴³

The Naturalization Act of 1906 makes no mention of assimilability as a requirement of naturalization⁴⁴. The Supreme Court’s choice to add these remarks to their opinion indicates what the U.S. government truly defined as white: conformity. Thind and his children and their children would, in the U.S. government’s eyes, retain unacceptable reminders of a world outside of whiteness.

Curiously, the Court also remarked in its opinion, “It is very far from our thought to suggest the slightest question of racial superiority or inferiority.”⁴⁵ Yet, by declaring him not white, the Supreme Court declared Thind, and by extension South-Asian Americans, unworthy of U.S citizenship. Through its justification of the *U.S. v. Thind* decision, the Supreme Court showed that it viewed whiteness not as a scientific classification, but as an ideal that could be altered to suppress those not deemed fit.

The Fallout

U.S. v. Thind revolved around two questions and likewise had two legacies.

The first was the effect on South-Asian American communities. Following the Supreme Court’s decision, Bhagat Singh Thind’s American citizenship was revoked by the Bureau of Naturalization.⁴⁶ Not only were new citizenships not granted, 65 South-Asian Americans who possessed citizenship before the Thind decision had their citizenship revoked between 1923 and 1927^{47,48}. South-Asian Americans became targets under the California Alien Land Law, which prohibited “aliens ineligible for citizenship” from having long-term land leases⁴⁹; after the ruling, Ulysses Webb, Attorney General of California, declared, “the menacing spread of Hindus holding our land will cease”⁵⁰.

⁴² *Supreme Court of the United States, Ozawa v. United States, United States Reports, vol. 260, 13 November 1922, p.178*

⁴³ *Supreme Court of the United States, United States v. Thind, United States Reports, vol. 261, 19 February 1923, p. 204*

⁴⁴ *United States Congress. The Naturalization Act of 1906*

⁴⁵ *Supreme Court of the United States, United States v. Thind, United States Reports, vol. 261, 19 February 1923, p. 204*

⁴⁶ Vinay Harpalani. “To Be White, Black, Or Brown? South Asian Americans and the Race-Color Distinction .”

⁴⁷ *Ibid.*

⁴⁸ *The stream of revoked citizenships ceased only after Sakharan Pandit, Bhagat Singh Thind’s lawyer, argued against his own denaturalization in court. His citizenship was retained largely because under the Cable Act of 1922, if he lost his U.S. citizenship, so would his white wife. Source: Chakravorty, Sanjoy, et al. The Other One Percent: Indians in America. Oxford University Press, 2019.*

⁴⁹ *California State Legislature. California Alien Land Law of 1920.*

⁵⁰ “Hindus Too Brunette to Vote Here .” *The Literary Digest* , 10 Mar. 1923.

For many South-Asian Americans, returning to India was not an option, either due to lack of funds or persecution by Britain upon arrival. Vaishno Bagai, the aforementioned general store owner, was forced to hand over his store and the profits to a white acquaintance⁵¹. Due to Bagai's involvement in the Ghadar Party, returning to India would have meant arrest by the British Raj for treason⁵². Unable to escape this difficult situation, which was compounded by the shame of being stripped of his citizenship, Vaishno Bagai committed suicide in 1928⁵³. In his suicide note, Bagai wrote:

*"They now come to me and say, I am no longer an American citizen. They will not permit me to buy my home and lo, they even shall not issue me a passport to go back to India. Now what am I? What have I made of myself and my children? We cannot exercise our rights, we cannot leave this country. Humility and insults, who is responsible for all this? Myself and [the] American government. I do not choose to live the life of an interned person: yes, I am in a free country and can move about where and when I wish inside the country. Is life worth living in a gilded cage? Obstacles this way, blockades that way, and the bridges burnt behind."*⁵⁴

The *U.S. v. Thind* decision was not a ruling without consequence. By using the label of "white" to retroactively strip South-Asian Americans of their citizenship, the Supreme Court upended, and in some cases cut short, the lives of ordinary people who had long considered the United States of America a land of the free.

The second legacy of *U.S. v. Bhagat Singh Thind* stems not from the Supreme Court's ruling, but the arguments Thind made in his defense. Like Ozawa, Thind never questioned the existing racial statutes that restricted naturalization primarily to "free white persons". Instead, both Thind and Ozawa argued that their ethnicities should be considered white, condoning the racial statutes as long as their respective communities could be included. Thind, however, goes even further than Ozawa in this argument, using more than just ancestry to prove himself white. In the last part of his defense, Thind states,

*"The high-class Hindu regards the aboriginal Indian Mongoloid in the same manner as the American regards the negro, speaking from a matrimonial standpoint. The caste system prevails in India to a degree unsurpassed elsewhere."*⁵⁵

To construe South-Asian Americans as white, Thind resorted to parroting the discriminatory principles of many white Americans at the time⁵⁶. Thind was not an outlier, however; South-Asian Americans, caught in a middle ground between white and Black communities, often appealed to the former by denigrating the latter. The pamphlets of the Ghadar Party promoted equality, yet the backpages contained excerpts from anthropologists attesting to

⁵¹ "Bridges Burnt Behind: The Story of Vaishno Das Bagai and Kala Bagai ." Angel Island Immigration Station Foundation

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Bagai , Vaishno Das. "Here's Letter to the World From Suicide ." *San Francisco Examiner*, 17 Mar. 1928.

⁵⁵ Supreme Court of the United States, *United States v. Thind*, *United States Reports*, vol. 261, 19 February 1923, p. 204

⁵⁶ Anti-miscegenation laws were commonplace in the 1920's and would be until *Loving v. Virginia* in 1967
Source: "Eugenics, Race, and Marriage." *Facing History and Ourselves*

the Aryan superiority of Indian-Americans⁵⁷. In a 1911 column about his travels in the South, Indian-American writer Sudhindra Bose documents an account by his white seatmate of a Black man lynched earlier that day⁵⁸; Bose's tone is distanced and impersonal, indicative of the larger South Asian-American community's relation to the Black community. There were exceptions to this behavior, for example, H.G. Mugdal, an Indian-American journalist known for his activism work with Marcus Garvey.⁵⁹ However, the rhetoric used by Thind in *U.S. v. Thind* was symptomatic of a larger tendency in the South-Asian American community to distance themselves from Black and other minority communities to appeal to white Americans.

It is worth noting that Thind was limited in the arguments he could make; if either Thind or Ozawa had tried to gain citizenship by challenging the preexisting racial statutes, their cases would likely have never made it to the Supreme Court in the first place. Asian-Americans, then and now, have rarely had the luxury of questioning the limited terms of their acceptance in the United States.

The Diaspora, Continued

After the *U.S. v. Thind* decision, the South-Asian American community dwindled in the United States, halving in numbers by 1940⁶⁰. However, support for South-Asians increased during World War Two due to the region's military contributions to the Allies⁶¹. This led to the Luce-Celler Act of 1946⁶², which allowed Indian-Americans to become citizens and set an annual quota of 100 immigrants from India⁶³. After William Petersen's infamous article concerning the success of post-internment Japanese-Americans⁶⁴, the perception of Asian-Americans as a whole shifted from "dusky" and "yellow" perils to model minorities⁶⁵. As Dalip Singh Saund, the first Asian-American Congressman, shook hands with Edward Kennedy⁶⁶, South-Asian Americans were leaving the primarily Black inner cities for the white suburbs, a phenomenon known as "brown flight"⁶⁷. The U.S. Immigration and Naturalization Act of 1965 revamped the quota system into a skill-based system⁶⁸, increasing South-Asian immigration and shifting their place in the United States. New immigrants were no longer agricultural laborers but doctors, engineers, or other highly skilled professionals⁶⁹; critics quipped that "Give me your tired, your hungry, your poor" had shifted to "Give me your

⁵⁷Bharadwaj, Ram Chandra. *Exclusion of Hindus from America Due to British Influence*, Ghadar Party, 1916.

⁵⁸ Bose, Sudhindra. "Traveling through the Country in America." *Modern Review*, Mar. 1911.

⁵⁹ Manan Desai, Tizarat Gill. H.G. Mugdal, Harlem Editor. *South Asian American Digital Archive (SAADA)*, 22 Oct. 2018

⁶⁰ Chakravorty, Sanjoy, et al. *The Other One Percent: Indians in America*. Oxford University Press, 2019.

⁶¹ *Today In History: Luce-Celler Act Signed in 1946*. *South Asian American Digital Archive (SAADA)*, 2 Aug. 2014,

⁶² Bhagat Singh Thind did receive citizenship eventually, not under the Luce-Celler Act but under the Nye-Lea act which granted American citizenship for WWI veterans regardless of race.

⁶³ United States Congress. *Luce-Celler Act of 1946*.

⁶⁴ Petersen, William. "Success Story, Japanese-American Style." *The New York Times*, 9 Jan. 1966.

⁶⁵ Venugopal, Arun. "The Making of a Model Minority." *The Atlantic*, 19 Dec. 2020.

⁶⁶ Chandler, Stacey Flores. "Asian/Pacific American Heritage Month: Dalip Singh Saund." *National Archives and Records Administration*

⁶⁷ Quraishi, Uzma. *Redefining the Immigrant South: Indian and Pakistani Immigration to Houston during the Cold War*.

⁶⁸ United States Congress. *U.S. Immigration and Naturalization Act of 1965*

⁶⁹ Williams, John P. "Journey to America: South Asian Diaspora Migration to the United States." *Indigenous, Aboriginal, Fugitive and Ethnic Groups Around the Globe*, 11 Sept. 2019

brightest and best”⁷⁰. Today, there are approximately 5.4 million South Asians in the United States⁷¹, living lives far different from their predecessors in the early 20th century.

Conclusion

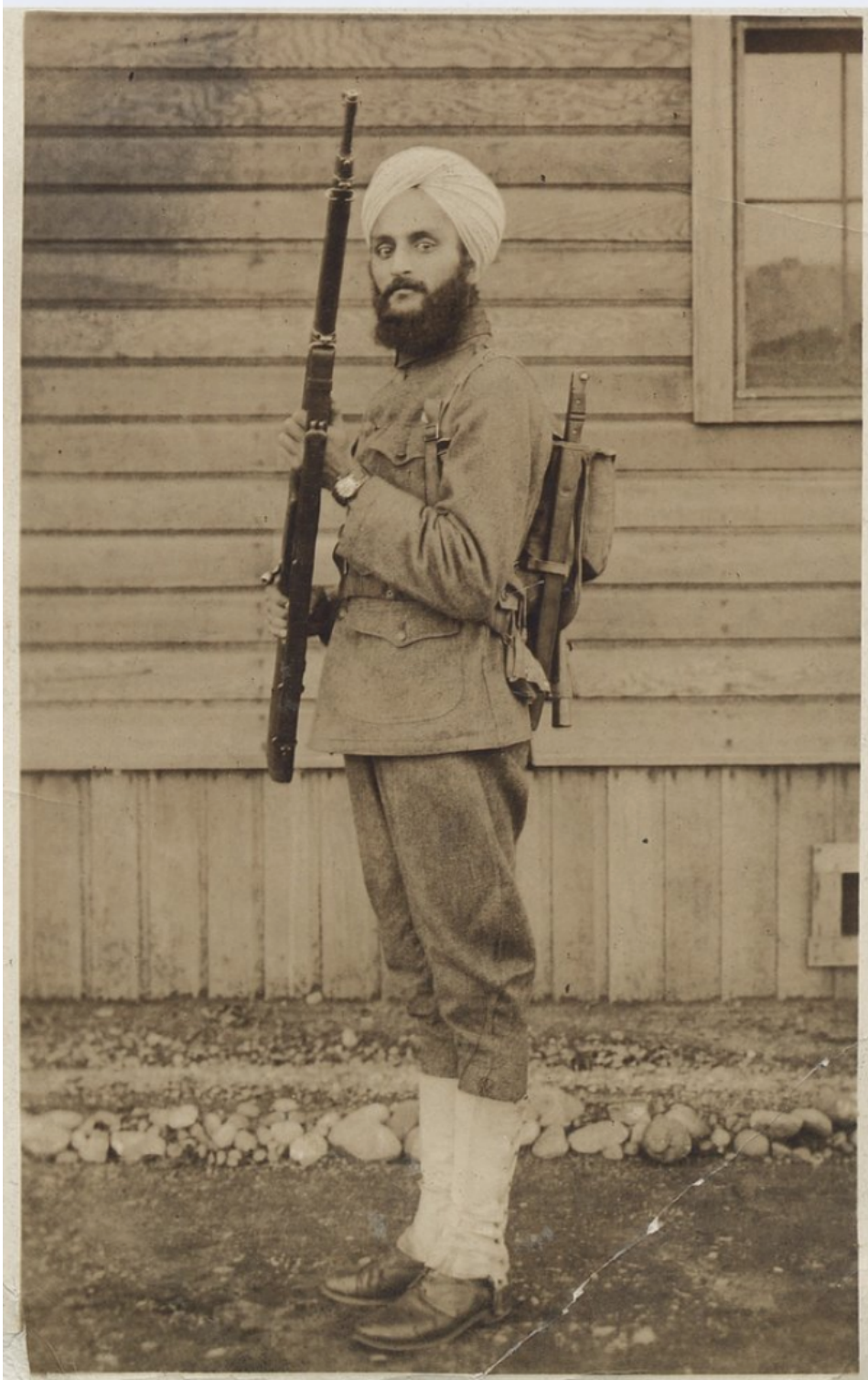
It has been nearly a century since the *U.S. v. Thind* decision, a Supreme Court case rarely discussed now, swept under the rug as a double embarrassment: for the United States government which wielded the label of whiteness to exclude South-Asian Americans, and for South-Asian Americans who tried to gain that label at the expense of other minorities. The echoes of this case are still felt in the South-Asian American community and the United States as a whole. Every day, progress is made. In September 2020, Kala Bagai, wife of the late Vaishno Bagai, had a street named after her in Berkeley⁷², not far from the neighborhood her family was once excluded from. Yet, every day it becomes more apparent how much the U.S. has stayed the same. When Kamala Harris, who has Indian and Black heritage, became the Vice President, the discussion surrounding her identity exposed the distance still present between South-Asian Americans and the Black community⁷³. It is essential that *United States v. Bhagat Singh Thind* is not forgotten, no matter how uncomfortable it is for both the U.S. government and the South-Asian American community; to do otherwise is to risk leaving the consequences of our present buried in the rubble of unknown history.

⁷⁰ *Ibid.*

⁷¹ “Demographic Information .” *SAALT (South Asian Americans Leading Together)*

⁷² Sarah, Lakshmi. “Berkeley Renames Downtown Street 'Kala Bagai Way' After South Asian Immigrant Activist.” *KQED*, 15 Sept. 2020

⁷³ Venkatraman, Sakshi. “‘Kamala Auntie’ Prompts Examination of Anti-Blackness for South Asians .” *NBC*, 19 Aug. 2020.



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⁷⁴ Bhagat Singh Thind in U.S. Army Uniform . Camp Lewis, Washington. 1918.



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⁷⁵ *Vaishno Das Bagai in His General Store . San Francisco , 1923.*



⁷⁶ Photograph of Kala Bagai . 1929.

⁷⁷ Arreguin , Jesse. Kala Bagai Way Street Sign Unveiling . 11 Feb. 2021.

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Manan Desai, Tizarat Gill. H.G. Mudgal, Harlem Editor. South Asian American Digital Archive (SAADA), 22 Oct. 2018, www.saada.org/tides/article/hg-mudgal-harlem-editor.

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Appendix

43 S.Ct. 338
67 L.Ed. 616
UNITED STATES

v.

BHAGAT SINGH THIND.

No. 202.

Argued Jan. 11, 12, 1923.

Decided Feb. 19, 1923.

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

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

[Argument of Counsel from page 205-206 intentionally omitted]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

1

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

2

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

'2. Does the Act of February 5, 1917 (39 Stat. 875, §

3

3), disqualify from naturalization as citizens those Hindus now barred by that act, who had lawfully entered the United States prior to the passage of said act?'

4

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

5

Section 2169, Revised Statutes (Comp. St. § 4358), provides that the provisions of the Naturalization Act 'shall apply to aliens being free white persons and to aliens of af ican nativity and to persons of African descent.'

6

If the applicant is a white person, within the meaning of this section, he is entitled to naturalization; otherwise not. In Ozawa v. United States, 260 U. S. 178, 43 Sup. Ct. 65, 67 L. Ed. , decided November 13, 1922, we had occasion to consider the application of these words to the case of a cultivated Japanese and were constrained to hold that he was not within their meaning. As there pointed out, the provision is not that any particular class of persons shall be excluded, but it is, in effect, that only white persons shall be included within the privilege of the statute. 'The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act

would have been so varied as to include them within its privileges'—citing *Dartmouth College v. Woodward*, 4 Wheat. 518, 644, 4 L. Ed. 629. Following a long line of decisions of the lower Federal courts, we held that the words imported a racial and not an individual test and were meant to indicate only persons of what is popularly known as the Caucasian race. But, as there pointed out, the conclusion that the phrase 'white persons' and the word 'Caucasian' are synonymous does not end the matter. It enabled us to dispose of the problem as it was there presented, since the applicant for citizenship clearly fell outside the zone of debatable ground on the negative side; but the decision still left the question to be dealt with, in doubtful and different cases, by the 'process of judicial inclusion and exclusion.' Mere ability on the part of an applicant for naturalization to establish a line of descent from a Caucasian ancestor will not ipso facto to and necessarily conclude the inquiry. 'Caucasian' is a conventional word of much flexibility, as a study of the literature dealing with racial questions will disclose, and while it and the words 'white persons' are treated as synonymous for the purposes of that case, they are not of identical meaning—*idem per idem*.

7

In the endeavor to ascertain the meaning of the statute we must not fail to keep in mind that it does not employ the word 'Caucasian,' but the words 'white persons,' and these are words of common speech and not of scientific origin. The word 'Caucasian,' not means clear, and the use of it in its scientific probably wholly unfamiliar to the original framers of the statute in 1790. When we employ it, we do so as an aid to the ascertainment of the legislative intent and not as an invariable substitute for the statutory words. Indeed, as used in the science of ethnology, the connotation of the word is by no means clear, and the use of it in its scientific sense as an equivalent for the words of the statute, other considerations aside, would simply mean the substitution of one perplexity for another. But in this country, during the last half century especially, the word by common usage has acquired a popular meaning, not clearly defined to be sure, but sufficiently so to enable us to say that its popular as distinguished from its scientific application is of appreciably narrower scope. It is in the popular sense of the word, therefore, that we employ it as an aid to the construction of the statute, for it would be obviously illogical to convert words of common speech used in a statute into words of scientific terminology when neither the latter nor the science for whose purposes they were coined was within the contemplation of the framers of the statute or of the people for whom it was framed. The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken. See *Maillard v. Lawrence*, 16 How. 251, 261, 14 L. Ed. 925.

8

They imply, as we have said, a racial test; but the term 'race' is one which, for the practical purposes of the statute, must be applied to a group of living persons now possessing in common the requisite characteristics, not to groups of persons who are supposed to be or really are descended from some remote, common ancestor, but who, whether they both resemble him to a greater or less extent, have, at any rate, ceased altogether to resemble one another. It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them to-day; and it is not impossible, if that common ancestor could be materialized in the flesh, we should discover that he was himself sufficiently differentiated from both of his descendants to preclude his racial classification with either. The question for determination is not, therefore, whether by the speculative processes of ethnological reasoning we may present a probability to the scientific mind that they have the same origin, but

whether we can satisfy the common understanding that they are now the same or sufficiently the same to justify the interpreters of a statute written in the words of common speech, for common understanding, by unscientific men—in classifying them together in the statutory category as white persons. In 1790 the Adamite theory of creation which gave a common ancestor to all mankind—was generally accepted, and it is not at all probable that it was intended by the legislators of that day to submit the question of the application of the words 'white persons' to the mere test of an indefinitely remote common ancestry, without regard to the extent of the subsequent divergence of the various branches from such common ancestry or from one another.

9

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

10

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

11

*The word 'Caucasian' is in scarcely better repute. It is at best a conventional term, with an altogether fortuitous origin, which under scientific manipulation, has come to include far more than the unscientific mind suspects. According to Keane, for example (*The World's Peoples*, 24, 28, 307, et seq.), it includes not only the Hindu, but some of the Polynesians 3 (that is, the Maori, Tahitians, Samoans, Hawaiians, and others), the Hamites of Africa, upon the ground of the Caucasoid cast of their features, though in color they range from brown to black. We venture to think that the average well informed white American would learn with some degree of astonishment that the race to which he belongs is made up of such heterogeneous elements.*

12

The various authorities are in irreconcilable disagreement as to what constitutes a proper racial division. For instance, Blumenbach has 5 races; Keane following Linnaeus, 4; Deniker, 29.5. The explanation probably is that 'the innumerable varieties of mankind run into one another by insensible degrees,' and to arrange them in sharply bounded divisions is an undertaking of such uncertainty that common agreement is practically impossible.

13

It may be, therefore, that a given group cannot be properly assigned to any of the enumerated grand racial divisions. The type may have been so changed by intermixture of blood as to justify an intermediate classification. Something very like this has actually taken place in India. Thus,

in Hindustan and Berar there was such an intermixture of the 'Aryan' invader with the darkskinned Dravidian.

14

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

15

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

16

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

17

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 and used, whatever may be the speculations of the ethnologist, it does not include the body of people to whom the

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

18

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

19

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

20

Answer to question No. 1, No.

1

Dictionary of Races, supra, p. 31.

2

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

3

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

4

Keane himself says that the Caucasic division of the human family is 'in point of fact the most debatable field in the whole range of anthropological studies.' Man: Past and Present, p. 444 And again: 'Hence it seems to require a strong mental effort to sweep into a single category, however elastic, so many different peoples—Europeans, North Africans, West Asiatics, Iranians, and others all the way to the Indo-Gangetic plains and uplands, whose complexion presents every shade of color, except yellow, from white to the deepest brown or even black.

*'But they are grouped together in a single division, because their essential properties are one, * * * their substantial uniformity speaks to the eye that sees below the surface * * * we recognize a common racial stamp in the facial expression, the structure of the hair, partly also the bodily*

proportions, in all of which points they agree more with each other than with the other main divisions. Even in the case of certain black or very dark races, such as the Bejas, Somali, and a few other Eastern Hamites, we are reminded instinctively more of Europeans or Berbers than of thanks to their more regular features and brighter expression.' *Id.* 448.

5

Dictionary of Races, supra, p. 6. See, generally, 2 *Encyclopedia Britannica* (11th Ed.) p. 113.

6

2 *Encyclopedia Britannica* (11th Ed.) p. 113.

7

13 *Encyclopedia Britannica* (11th Ed.) p. 502.

8

Id.

9

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

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