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Between Muslim and White: The Legal Construction of Arab American Identity

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BETWEEN MUSLIM AND WHITE: THE LEGAL CONSTRUCTION OF ARAB AMERICAN IDENTITY

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ABSTRACT

This Article examines the legal origins of Arab American identity during the racially restrictive Naturalization Era (1790 through 1952), when "whiteness" was a prerequisite for American citizenship. Ten of the fifty-three naturalization hearings during this era involved a petitioner from the "Arab World." Judges during the Naturalization Era viewed "Arab" as synonymous with "Muslim" identity. Because Muslims were presumed to be non-white, and Arabs were presumed to be Muslims, Arabs were presumptively ineligible for citizenship. This presumption, however, could be rebutted. Arab Christians could—and did—invoke the fact of their Christianity to argue that they were white. These arguments sometimes secured citizenship for Christian petitioners, but did not always rebut the presumption that every immigrant from the Arab World was Muslim.

Legal scholars have paid insufficient attention to the Arab naturalization cases. These cases reveal not only how judges viewed religion as a proxy for race, but also the ways in which they conflated Arab identity with Muslim identity to do so. This conflation persists today in that many people continue to believe that Arab is synonymous with Muslim, a conflation that is especially salient following the September 11th terrorist attacks. Almost all of the current literature on Arab Americans centers on how the government's response to 9/11 made people perceived to be Arabs, Muslims, or Middle Eastern vulnerable to legalized forms of racial surveillance, subordination, and violence.

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While this body of work is important, this Article introduces a preface to the post-9/11 racialization of Arab Americans—the racial conflation of Arab and Muslim identity during the Naturalization Era. The courts during this era rendered Arab Muslim immigrants presumptively non-white and inassimilable, while sometimes finding Arab Christians eligible for citizenship and white by law. The legal construction of Arab American identity in that earlier period helped shape contemporary understandings and misunderstandings of both Arab and Muslim American identity today.

INTRODUCTION

"[E]ach time the concept of the Arab national character is evoked, the myth is being employed."

—Edward Said, Orientalism[1]

Judge George H. Hutton peered across his bench in the direction of George Shishim. Shishim, a longtime resident of California and native of the Mount Lebanon Province of the Ottoman Empire, had entered Hutton's court to petition for American citizenship.[2] An immigrant from Canada, Hutton was elected to preside over the Los Angeles Superior Court in 1906. Judges like Hutton held unfettered discretion to decide which immigrants fit within the statutory scope of "whiteness" from the period 1790 through 1952 (Naturalization Era).[3] The Naturalization Act of 1790 made whiteness a prerequisite for American citizenship during the 160-year period before it was repealed.[4]

Shishim had lived in California for twenty-five years.[5] He had served as an officer in the Los Angeles Police Department, and had donned his uniform, cap, and regalia for his naturalization hearing.[6] Shishim's appearance defied the caricature common of Arabs in early Twentieth Century America, while his testimony that Venice was his longtime home highlighted a degree of assimilability unbecoming of a native from the "Arab World."[7] This evidence clearly

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1. Edward W. Said, Orientalism 307 (Random House LLC 1979).

2. *See* Sarah M. A. Gualtieri, Between Arab and White: Race and Ethnicity in the Early Syrian American Diaspora 58 (2009) [hereinafter Race and Ethnicity in the Early Syrian American Diaspora].

3. Naturalization Act of 1790, ch. 3, 1 Stat. 103, 103, *repealed by* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66. Stat. 163 ("[A]ny alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least . . . .").

4. *Id.* The Naturalization Act of 1870, which followed the abolition of slavery, extended naturalization eligibility to "aliens of African nativity and to persons of African descent." Naturalization Act of 1870, ch. 254, 16 Stat. 254, 256.

5. Randa A. Kayyali, The Arab Americans 49 (2006).

6. Sarah Gualtieri, *Syrian Immigrants and Debates on Racial Belonging in Los Angeles, 1875–1945*, Syrian Stud. Ass'n Newsl., (Syrian Stud. Ass'n, Bos., Mass.), Winter 2009–2010, at 5 [hereinafter *Syrian Immigrants and Debates on Racial Belonging*].

7. The "Arab World" is a social and political construction. It presently encompasses nations in the Middle East and North and East Africa where Arabic is commonly spoken. In addition to its use as a fluid linguistic identification, the Arab World is also a designation that refers to the twenty-three states that are members of the Arab League. For more information on the Arab League, see Krister Ander-

revealed that Shishim had conformed to mainstream Los Angelino society, a factor that judges presiding over the petitions of immigrants from the Arab World, and elsewhere, considered in determining whether they fit within the statutory definition of whiteness. However, the level of assimilability required for an Arab petitioner to access citizenship generally turned on his religious identity.

Although an established resident and servant of the State of California, the odds were stacked against Shishim becoming an American citizen on November 4, 1909. Weeks before his appearance before Judge Hutton, a Naturalization Examiner moved to quash Shishim's citizenship petition on the grounds that his "Arab identity" disqualified him from being white within the meaning of the statute.[8] Judge Hutton initially seemed persuaded by the Naturalization Examiner's position, which deemed immigrants from the region Shishim originated from hostile to both American democracy and Christianity, and thus, a class of inassimilable aliens.[9]

Short on persuasive rebuttals, Shishim closed with the lone argument that could potentially resonate with Hutton and redeem the prospect of citizenship. The petitioner rose from his seat, stood firmly with his police badge glistening on his jacket, and declared:

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son, *Going Major: Reforming the League of Arab States*, 25 HARV. INT'L R. 7 (2004). Furthermore, the region referred to as the Arab World has experienced considerable reform since the first sizeable wave of immigrants from the region traveled to America. Much of the region, particularly the Levant (which encompasses present-day Lebanon, Syria, Jordan, and Palestine/Israel) was colonized by the Ottoman Empire until the end of World War I. Following its loss, the "sick old man of Europe's" spoils in the Middle East were claimed, shared, and divided by the French and the United Kingdom under the Sykes-Picot Act of 1916. Old Ottoman territories were formed into nation-states with neatly drawn boundaries that accorded with the interests of France, the United Kingdom, and their arbiters. For more discussion of the post-World War I era and subsequent periods, see generally WILLIAM L. CLEVELAND & MARTIN BUNTON, A HISTORY OF THE MODERN MIDDLE EAST (4th ed., 2009). For a general history of Arab Americans, see generally KAYYALI, *supra* note 5 ("[T]oday, there are approximately 270 million Arabic-speaking people."). *See also* GREGORY ORFALEA, THE ARAB AMERICANS: A HISTORY VII (2005); Michael W. Suleiman, *Introduction: The Arab Immigrant Experience*, *in* ARABS IN AMERICA: BUILDING A NEW FUTURE 1 (Michael W. Suleiman ed., 1999).

8. *See Syrian Immigrants and Debates on Racial Belonging*, *supra* note 6 (citing Oath of Allegiance for George Sulayman Shishim, Nov. 4 1909, Naturalization Records of the Superior Court of Los Angeles, 1876–1915, NARA M1614) (indicating that Shishim's petition was initially denied on the grounds that he "did not come under the provisions of Section 2169 of the Revised Stat[ut]es of the United States," namely the provision that allowed naturalization for "aliens, being free white persons and . . . aliens of African nativity and persons of African descent.").

9. *Id.* (discussing hand-written notations at the bottom of Shishim's Oath of Allegiance indicating that it had caused judicial conflict).

"If I am a Mongolian, then so was Jesus, because we came from the same land."[10] Christianity ranked among the primary hallmarks of whiteness in the United States in 1909,[11] and Shishim's spirited appeal insisted that, although from the Arab World, he was not a Muslim and, in fact, a Christian.[12] Hutton was finally convinced that Shishim's Christian identity was authentic. As a result, Shishim became the first immigrant from the Arab World to be naturalized as an American and judicially ruled white by law.[13]

Significantly, the conflation of Arab and Muslim identity was deeply entrenched within the courts during the Naturalization Era. Islam was treated as an ethno-racial identity,[14] as was Christianity, which functioned as a hallmark of whiteness and a prospective gateway toward citizenship for immigrants from the Arab World. Judges who performed these religiously determined racial associations were not doing so within a vacuum. They relied upon other discourses, including those from eugenicists who classified Christian immigrants from the Arab World as a racial group distinct from "Arabs" solely on account of their Christianity.[15]

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10. Joseph R. Haiek, *Dept. of Justice Affirms Arab Race in 1909*, *in* Arab American Almanac (News Circle Publ'g House 6th ed. 2010) (1972), *available at* http://www.arabamericanhistory.org/archives/dept-of-justice-affirms-arab-race-in-1909/; *see also* Kayyali, *supra* note 5; Khaled A. Beydoun, *The Business of Remaking Arab-American Identity*, Al Jazeera (June 15, 2012, 7:05 PM), http://www.aljazeera.com/indepth/opinion/2012/06/20126101142578139 21.html.

11. Edward J. Blum & Paul Harvey, The Color of Christ: The Son of God & the Saga of Race in America 9 (2012) ("Whiteness became a crucial symbol of national identity and citizenship.").

12. *See* Race and Ethnicity in the Early Syrian American Diaspora, *supra* note 2, at 69. Hutton ruled that Shishim fit within the statutory definition of whiteness. It was not merely Shishim's Christian faith that delivered American citizenship, but also his plea that his Christianity was grounded in both faith and racial lineage. Shishim persuaded Hutton that although a native from the Arab World, he was not an inassimilable Muslim. Rather, Shishim showcased his Christian identity to carve a portal toward whiteness, and the American citizenship that followed. *Id.* at 58, 69.

13. *See Syrian Immigrants and Debates on Racial Belonging*, *supra* note 6.

14. Considering the scope of this Article, the discussion of Muslim as a racial identity will focus exclusively on Arab, and specifically on Arab American, identity.

15. Alixa Naff, Becoming American: The Early Arab Immigrant Experience 2 (Teresa White ed., S. Ill. Univ. Press 1993) (1985) ("Because they migrated from the Ottoman province of Syria which, until the end of the Ottoman Empire in 1917, included Mount Lebanon, they all called themselves Syrian. In the 1920s the term 'Lebanese' as a national label or identity was given political legitimacy and was adopted by most immigrants originating in Mount Lebanon."). This Article also refers to the first wave of immigrants from the "Levant," the region encompassing present-day Syria, Lebanon, Israel and the Palestinian territories, as Syrian.

Hutton's analysis in *Shishim* illustrated the conflations and distinctions that mobilized religion to make some Arab petitioners non-white, while designating others as potentially white. The initial conflation of Arab with Muslim functioned as a racial designation through the association of Muslim and its alignment with non-whiteness, while Christianity's association with whiteness extended a racial juncture away from Muslim identity and toward (American) whiteness. An examination of the ten "Arab Naturalization Cases" reveals that:[16]

1) Presiding judges conflated Arab identity with Muslim identity;
2) A rule that Arab Muslims were per se non-white and therefore ineligible for citizenship was in place until 1944, only eight years before the end of the Naturalization Era;[17]
3) Presiding judges presumed that immigrant petitioners from the Arab World (whether Christian or Muslim) were Muslims and thus non-white, as a consequence of the conflation; and
4) This presumption could only be overcome if the immigrant-petitioner could persuade the presiding judge that he was a bona fide Christian.

This Article contends that every Arab immigrant, both Muslim and Christian, was perceived to be Muslim because of the entrenched belief that Arab and Muslim identity was one and the same. Christian petitioners that persuaded presiding judges that their religious identity was authentic could sometimes overcome the conflation and claim citizenship, while Muslim petitioners were categorically ineligible for citizenship until *Ex parte Mohriez* lifted that bar in 1944.[18]

The Shishim hearing, and the broader set of Arab Naturalization Cases of which it is a part, figures only marginally in the legal literature on Arab and Muslim "racialization"[19] and the law. That

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See Suleiman, *supra* note 7, at 7 ("Before World War II, the primary or most acceptable designation for the group was 'Syrian.'").

16. This is the title given to the ten cases, all of which are examined in this Article, that involve an immigrant petitioner from the Arab World. *See infra* Tables of Cases.

17. *Ex parte* Mohriez, 54 F. Supp. 941 (D. Mass. 1944).

18. *See id.*

19. Michael Omi & Howard A. Winant, Racial Formation in the United States: From the 1960s to the 1990s 55 (1994) (describing race as "an unstable and 'decentered' complex of social meanings constantly being transformed by political struggle" and racialization as use of race as a basis for distinguishing among human groups).

literature is constituted almost entirely by articles that examine the ways in which the government's response to the September 11th terrorist attacks (9/11) conflated Arabs, Muslims, and people of Middle Eastern descent, rendering them or anyone perceived to be a member of those groups vulnerable to legalized forms of racial surveillance and violence.

This Article offers a preface to that body of post-9/11 scholarship. It highlights an earlier historical moment in which the law—specifically naturalization for citizenship proceedings—conflated Arab and Muslim identity. Because Arab identity was presumptively Muslim, and Muslims were presumptively non-white, naturalization judges presumed that Arabs were non-whites. At the same time, because of the presumed nexus between Christianity and whiteness, Arabs who could demonstrate that they were Christians could sometimes overcome the presumption of non-whiteness that attached to their Arab identity.

Furthermore, this Article explains the precise ways in which the naturalization cases produced these results. In so doing, it also builds upon the existing literature concerned with the Naturalization Era at large, and fills four important gaps. First, most of the literature on the naturalization cases focuses on two Supreme Court opinions, *Ozawa v. United States*[20] and *United States v. Thind*.[21] This Article transcends these cases to include important lower federal court cases in which Arab claims to citizenship were adjudicated. Second, examination of these lower court opinions broadens the identity categories scholars employ to discuss the Naturalization Era beyond people of East and South Asian ancestry. Third, the Article expands the terrain on which scholars discuss Arab and Muslims and the law. It is crucial that legal scholars explore how the aftermath of 9/11 has impacted the lives of people perceived to be Arab or Muslim or Middle Eastern. But it is also important to understand that the racialization of these identities has an earlier legal history in the Naturalization Era. Finally, this Article helps bring into sharp relief the ways in which the law employs religion to racialize social groups. The remainder of the Article is developed as follows.

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20. 260 U.S. 178 (1922) (involving an immigrant petitioner from Japan who converted to Christianity, earned his college education from the University of California, Berkeley, and was ultimately ruled ineligible for naturalization on account of his inassimilable physical appearance).

21. 261 U.S. 204 (1923) (involving a Sikh native of India who was denied naturalization because his appearance, religion, and culture did not comport with the judge's conception of whiteness).

Parts I and II of this Article provide important background information for understanding the conflation of Arab and Muslim identity that the Naturalization Era judges performed. Part I describes the modern-day demographic character of the Arab American and Muslim American communities. Being Arab American is not in fact synonymous with being Muslim American, and never has been. Having a clear understanding of how Arabs and Muslims are and are not demographically synonymous helps to reveal just how much racialization work the conflated racial construct—Arab/Muslim— performed in the naturalization cases.

Part II highlights the ideological and judicial expression of Orientalism that preceded the Arab Naturalization Cases. Importantly, the Arab Naturalization Cases did not emerge from an ideological and juridical vacuum. They traded on ideas about American political culture and national identity that found expression in a number of cases, including Supreme Court opinions.

Section III analyzes how the distorted conception of Arab identity complicated the citizenship claims of the first eight petitioners from the Arab World, all of whom were Syrian Christians. Because of the presumption that all immigrants from the region were Muslims, the burden shifted onto Syrian Christians to prove the authenticity of their Christianity in order to attain whiteness and citizenship.

The disqualification of Muslims from citizenship persisted as late as 1942. In *In re Ahmed Hassan*, the court denied the citizenship petition of a native of Yemen on the ground that he was Muslim and, hence, non-white. Two years later another court, in *Ex Parte Mohriez*, held that a Muslim from Saudi Arabia was eligible for citizenship. Section IV contends that despite the decision in *Mohriez*, which held that Arab Muslims fit within the statutory definition of whiteness, certain misconceptions of Arab identity that prevailed throughout the Naturalization Era lingered in the logic of the case. Moreover, a close reading of the context and reasoning of the *Mohriez* ruling suggests that U.S. foreign policy interests in the Arab World, particularly Saudi Arabia, facilitated a reversal of *Hassan* and lifted the naturalization bar against Muslims that prevailed for the vast duration of the Naturalization Era. Thus, despite the formal identification of Arab Americans as white, the conflation of Arabs as inassimilable Muslims continues to limit the "substantive

citizenship" held by Arab American Muslims today, nearly seventy years after the *Mohriez* ruling.[22]

I.
DISTINGUISHING ARAB AMERICANS FROM MUSLIM AMERICANS

There is little doubt today that many Americans still conflate Arab American and Muslim American identity. The stereotype that "all Arabs [are] Muslims—[and] all Muslims [are] Arabs," is a pervasive one in the United States today.[23] "[D]espite deep demographic, religious, and other differences between the two groups, both Arabs and Muslims have become the target of popular suspicion, resulting in the 'Arabification' of Muslims, and the 'Muslification' of Arabs."[24] 9/11 intensified this conflation, and converted Muslim American identity into a racial classification understood in the narrow image of Arab Americans.[25]

This conflation of Arab America and Muslim America obscures the fact that the two form distinct communities with only a slight demographic overlap.[26] The Arab American population has always

22. *See* Caroline R. Nagel & Lynn A. Staeheli, *Citizenship, Identity, and Transnational Migration: Arab Immigrants to the United States*, 8 SPACE & POLITY 3, 5 (2004) ("It therefore becomes necessary to distinguish between formal citizenship and substantive citizenship—that is, between one's legal status and one's ability to realize the rights and privileges of societal membership.").

23. Debra Merskin, *The Construction of Arabs as Enemies: Post-September 11th Discourse of George Bush*, 7 MASS COMMC'N & SOC'Y 157, 165 (2004).

24. Reem Bahdi, *No Exit: Racial Profiling and Canada's War Against Terrorism*, 41 OSGOODE HALL L.J. 293, 296 (2003).

25. *Id.*

26. On the ground and within the ivory tower, Islam has been inextricably submerged with Arab American identity. At the extreme, both have been entirely conflated, reduced to synonyms, and treated as interchangeable identities. Suad Joseph, *Against the Grain of the Nation—The Arab*, *in* ARABS IN AMERICA: BUILDING A NEW FUTURE 257, 259–60 (Michael W. Suleiman ed., 1999). The entrenchment of the Arab Muslim caricature derives from an obsession with a negligible overlap between Arab and Muslim American identity. This obsession came to shape the understanding of both Arab and Muslim Americans, despite the fact that Christians comprise a decided majority of the Arab American community, *see infra* note 27, and Arabs a decided minority of the Muslim American population, PEW RES. CENTER, MUSLIM AMERICANS: NO SIGNS OF GROWTH IN ALIENATION OR SUPPORT FOR EXTREMISM 14 (Aug. 30, 2011), http://www.people-press.org/files/legacy-pdf/Muslim%20American%20Report%2010-02-12%20fix.pdf ("In terms of regional origins, however, the largest group is from Arab countries in the Middle East and North Africa, representing 41% of foreign-born Muslims, or 26% of all Muslim Americans.").

contained a Christian supermajority.[27] Even today, only approximately one-fourth (24%) of Arab Americans are Muslim.[28] Below, I sketch the demographic contours of these communities as a prelude to showing how the naturalization judges constructed a legal presumption that Arabs were non-white.

A. Who Are Arab Americans?

Arab Americans have been defined as citizens who derive their ancestry from the region known as the Arab World.[29] Immigration from the Arab World commenced in the mid-Nineteenth Century; the first eight petitioners for U.S. citizenship during the Naturalization Era were Christian immigrants, hailing from what then was officially known as the Syrian Province of the Ottoman Empire.[30] These early immigrants framed their identities in relation to the provincial and religious terms mandated by Ottoman rule.[31]

Arab identity took on a different meaning after the close of Ottoman rule and the emergence of "Pan-Arabism."[32] Pan-Arabism was a political ideology formed in Syria during the early 1930s, while the former Ottoman province was under French rule.[33] Pan-Arabism framed a new brand of Arab identity along linguistic, cultural, political, and economic lines.[34]

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27. ARAB AM. NAT'L MUSEUM, ARAB AMERICANS: AN INTEGRAL PART OF AMERICAN SOCIETY 15–16, http://www.arabamericanmuseum.org/umages/pdfs/resource_booklets/AANM-ArabAmericansBooklet-web.pdf (last visited Nov. 20, 2012) (noting that the Christian Arab American population is significantly larger than the Muslim Arab American population, because Christian Arabs have been coming to the United States for a longer period of time). 63% of Arab Americans today identify as Christians. *Id.* at 13. *See also* ARAB AMERICAN ENCYCLOPEDIA 97 (Anan Ameri & Dawn Ramey eds., 2000).

28. ARAB AM. NAT'L MUSEUM, *supra* note 27, at 13.

29. *See supra* note 7.

30. Therefore, although the eight petitioners hailed from the modern states of Syria, Lebanon, Israel, and the Palestinian Territories, this Article will refer to them according to their Ottoman designation as "Syrians."

31. *See* NAFF, *supra* note 15, at 86–87.

32. *Id.* at 88 ("Arab nationalist sentiment had, during the war, developed an ideology based on Syrian unity and independence, reinforced by the collapse of the Ottoman Empire. It was hardened by French and British mandatory rule . . . ."); *see* ALBERT HOURANI, A HISTORY OF THE ARAB PEOPLES 316 (1992). *See generally* HASAN KAYALI, ARABS AND YOUNG TURKS: OTTOMANISM, ARABISM, AND ISLAMISM IN THE OTTOMAN EMPIRE, 1908–1918 (1997).

33. See YOUSSEF M. CHOUERRI, PAN ARABISM: A HISTORY: NATION AND STATE IN THE ARAB WORLD 82–92 (2001)

34. *Id.* at 82. *See also* MALIK MUFTI, SOVEREIGN CREATIONS: PAN-ARABISM AND POLITICAL ORDER IN SYRIA AND IRAQ 43 (1996). The rising Arab nationalist spirit, birthed by the *Ba'ath* Movement in Syria and championed by Egypt's charismatic

Pan-Arabism birthed the contours of modern Arab American identity.[35] In line with this Article's central thesis, the emergence of Pan-Arabism and its broadening of Arab identity also highlights how "Arab" itself was a fluid and political construction.[36] While masses in the region, and the Diaspora, embraced the reformed brand of Arab identity brought forth by Pan-Arabism, a range of indigenous communities in the region faced persecution as a result of rebuffing it.[37] Today, many Americans trace their ancestry to the modern Arab World and frame their identities in accord with Pan-Arabism, while others reject it and identify in alternative terms.

The United States Census places the current population of Arab Americans at 3,665,789—a figure believed to be much smaller

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Gamel Abdel-Nasser, galvanized a growing sense of unity, and Pan-Arabism, within the Arab World. This bolstered the Arab identity of the bulk of the immigrants from the region that settled in the United States circa the 1930s through 1967, which unlike European colonialism pre-World War I, served as a blockade against assimilation upon arrival in the United States. Immigrants who subscribed to Arabism made it a core dimension of their identity, which conflicted with prevailing notions of American identity. The experience of Ottoman rule combined with the common struggle against European colonialism offered newly independent Arab states a unifying narrative, and at the time, made the prospect of political and economic integration promising.

35. CHOUERRI, *supra* note 33, at 82.

36. The vast majority of the Arab World's inhabitants, as well as a majority of those in the Diaspora, adopted the readapted form of Arab identity espoused by Pan-Arabism after its emergence. However, the first eight immigrants from the region that petitioned for citizenship, as discussed in Section III, migrated to the United States before the emergence of Pan-Arabism, were accordingly identified by the courts as Ottoman subjects, and thus were presumed to be Muslims. Finally, as explained in Section IV, the final two immigrants, Muslim immigrants from Yemen and Saudi Arabia, petitioned for American citizenship during the expansion of Pan-Arabism inside and outside of the region.

37. *See, e.g.*, BRUCE MADDY-WEITZMAN, THE BERBER IDENTITY MOVEMENT AND THE CHALLENGE TO NORTH AFRICAN STATES 92, 140 (2011). While Pan-Arabism birthed a modern form of Arab identity, built upon the baselines of secularism, common culture and language, it also threatened precedent nationalisms in the Arab World and marginalized those that chose not to accede to it. Despite its traction with a considerable segment of the people of the Arab World, a number of indigenous populations in the region rejected Pan-Arabism as another colonial movement. Opponents viewed Pan-Arabism as "Arabization," an imposed political, cultural, and ethnic identity that threatened how they publicly asserted their identities. *Id.* at 14. Indeed, many indigenous populations in the Arab World, including Kurds in the Levant and Gulf, Berbers in the "Maghreb," Copts and Nubians in Egypt and the Sudan, Jews throughout the Middle East and North Africa, and segments of the Maronite Catholic community in Lebanon, resisted Pan-Arabism because it threatened other modes of ethnic, tribal, or sectarian nationalism. In many places, such as Algeria or Egypt, minority communities that rejected Arab nationalism were persecuted.

than the actual number of citizens of Arab heritage living in the United States today.[38] Although stereotypically understood to be a Muslim-majority community,[39] 63% of Arab Americans today identify as Christians.[40] In fact, since the first immigrant waves from the region came to the United States in the mid-Nineteenth Century, Christians have always been a considerable majority of the Arab American population. Arabs Muslims, on the hand, began to migrate to the United States in large numbers after 1965, and perpetually held the position of a minority within the Arab American population.

B. Who Are Muslim Americans?

Islam is the third of the three Abrahamic religions. Followers of Islam—Muslims—constitute a pan-racial community, or *Ummah*, of 1.7 billion people.[41] Islam was "revealed to the Arabian trader Muhammad between 609 and 632."[42] Islam's origin in the Arabian Peninsula is a principal reason it has been closely linked, and conflated, with Arab identity.

Following its founding, Islam spread beyond the Arabian Peninsula and into distant corners of Europe, Asia, and Africa. Islam's expansion and interaction with new cultures and peoples immediately transformed its formative identity as an Arab religion. Although Islam began in Arabia, the vast majority of Muslims today are not Arabs,[43] and the faith's multiracial following disproves the

38. Arab Am. Inst. Found. National Arab American Demographics (2012), http://b.3cdn.net/aai/44b17815d8b386bf16_v0m6iv4b5.pdf ("The population who identified as having Arabic-speaking ancestry in the U.S. Census grew by more than 72% between 2000 and 2010."). The Arab population in the United States, despite differences and debate regarding its exact figure, is believed to be rising. Maryam Asi & Daniel Beaulieu, United States Census Bureau, Arab Households in the United States: 2006–2010, at 1 (2013), *available at* http://www.census.gov/prod/2013pubs/acsbr10-20.pdf ("The number of Arab households has also grown over time, increasing from 268,000 in 1990 to 427,000 in 2000. Data from the 2006–2010 [American Community Survey] 5-year estimates reveal that there were 511,000 Arab households in the United States, representing a 91.0 percent increase since 1990.").

39. *See supra* note 26 and accompanying text.

40. Arab Am. Nat'l Museum, *supra* note 27, at 13.

41. Kayyali, *supra* note 5, at 2.

42. Sylviane A. Diouf, Servants of Allah: African Muslims Enslaved in the Americas 4 (1998).

43. Rachel Saloom, *I Know You Are, But What Am I? Arab-American Experiences Through the Critical Race Theory Lens*, 27 Hamline J. Pub. L. & Pol'y 55, 57 (2005) (reporting that although Arab identity is still stereotyped as being synonymous with Islam, Arabs only comprise 12% of the global Muslim population).

simple narrative that the religion is monoracial or monoethnic.[44] Islam's broad expansion led to the development of an array of sects, offshoots, and competing schools of thought, which gradually transformed the religion into a spiritually pluralistic faith that mirrors its diverse following.[45]

At no point in American history have Arabs constituted a majority, or even a plurality, of the Muslim American population. Nor were Arabs the first Muslims to arrive in North America. The first Muslims in North America were natives of West Africa, who arrived in the Sixteenth Century as slaves.[46] Beginning in the Ninth Century, Islam had spread through much of the African continent, and gained its strongest foothold in West Africa[47]—the source of 46.3% of the individuals kidnapped and sold as slaves in North America.[48] Some estimate that between 15% and 30% of North American slaves were Muslim.[49] This forgotten African Muslim diaspora existed in North America before the formation of the modern-day United States, and predated the arrival of the first Arab immigrants by nearly three hundred years.[50]

Racially restrictive naturalization and immigration legislation stifled the influx of Muslim immigrants from the Arab World until

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44. The *Qur'an* repeatedly reaffirms its abhorrence of racial or ethnic discrimination. One section illustrates this baseline of Islamic colorblindness, holding that, "Piety does not lie in turning your face to East or West: Piety lies in believing in God, the Last Day and the angels, the Scriptures and the prophets, and disbursing your wealth out of love for God among your kin and the orphans . . . ." AHMED ALI, AL-QUR'AN: A CONTEMPORARY TRANSLATION 2:177 (2001). The Prophet Mohammed also disavowed racial and ethnic discrimination among Muslims, declaring: "[L]et people stop boasting about their ancestors. One is only a pious believer or a miserable sinner. All men are sons of Adam, and Adam came from dust." Sunnah, Abu Dawud, Tirmidhi.

45. *Cf.* Khaled Ali Beydoun, Comment, *Dar al-Islam Meets "Islam as Civilization": An Alignment of Politico-Theoretical Fundamentalisms and the Geopolitical Realism of this Worldview*, 4 UCLA J. ISLAMIC & NEAR E.L. 143, 159 (2005).

46. KAMBIZ GHANEA BASSIRI, A HISTORY OF ISLAM IN AMERICA: FROM THE NEW WORLD TO THE NEW WORLD ORDER 10, 15 (2010); *see also* Marie A. Failinger, *Islam in the Mind of American Courts: 1800 to 1960*, 32 B.C. J.L. & SOC. JUST. 1, 4–5 (2012); Khaled A. Beydoun, *Antebellum Islam*, 58 HOW. L.J. (forthcoming 2014). See generally EDWARD W. BLYDEN, CHRISTIANITY, ISLAM AND THE NEGRO RACE (Black Classic Press, 2d ed., 1994) (1888), for a foundational discussion of the prominence of Islam in African nations that sourced slaves into the Antebellum South.

47. DIOUF, *supra* note 42, at 4–5.

48. *Id.* at 47.

49. *Id.* at 48.

50. *Id.* at 4. For more detail about African Muslim immigration to North America, see *id.* at 49–106.

1965.[51] Prior to that time, the Nation of Islam (NOI), founded by W.D. Fard in 1930,[52] was the most visible and populous Muslim community in the United States. Only after the dissolution of the Immigration Act of 1924 and the abolition of the Nationality Quota Regime in 1965 were the barriers to Muslim immigration lifted.[53] Muslim immigration from the Arab World, Asia, Africa, and Europe gradually usurped the NOI's position as the "major voice for Islam in America."[54]

The Muslim American population today is a racially and ethnically diverse mosaic.[55] As of a 2011 study, White Americans comprise 30% and Black Americans 24%[56] of the total Muslim American population.[57] Asian Americans follow at 21%.[58] The remaining population is rounded out by a rapidly rising community of Hispanics (6%)[59] and those who self-describe as "other/

51. Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153.

52. *See* RICHARD BRENT TURNER, ISLAM IN THE AFRICAN-AMERICAN EXPERIENCE 148 (2d ed., 2003).

53. Immigration and Nationality Act, Pub. L. No. 89-236, 79 Stat. 911. *See also* KAYYALI, *supra* note 5, at 33 ("Between 1965 and 1992, more than 400,000 Arab immigrants arrived in the United States because of the changes in the immigration law and quotas . . . .").

54. TURNER, *supra* note 52, at 169–70.

55. *See* PEW RES. CENTER, *supra* note 26, at 16 ("No single racial or ethnic group makes up more than 30% of the total [Muslim American population]."); *see also* Hilal Elver, *Racializing Islam Before and After 9/11: From Melting Pot to Islamophobia*, 21 TRANSNAT'L L. & CONTEMP. PROBS. 119, 124 (2012) ("The Muslim minority comes from diverse national origins and cultural backgrounds comprising as many as sixty-five countries. 'They speak a wide variety of languages and represent a range of cultural, economic, educational, sectarian, and ideological positions.'").

56. One commentator claimed, "42 percent of [Muslims Americans in 2005] were said to be Blackamericans." SHERMAN A. JACKSON, ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION 23 (2005).

57. PEW RES. CENTER, *supra* note 26, at 16. The official estimate of the Muslim American population is believed to be grossly underestimated. Part of this underestimation is a consequence of the formal designation of Arab Americans as white, in addition to the phenomenon of Arab Americans dis-identifying themselves as Arab following 9/11. The Pew Research Center places the Muslim American population at 2.75 million. *Id.* at 20. However, other accounts place the population as high as 8 million. Jerry Kang, Comment, *Thinking Through Internment: 12/7 and 9/11*, 9 BERKELEY ASIAN L.J. 195, 197 (2002). Carol L. Stone states, "Estimates of 1.2 million to 3 million have been reported. To date, no systematic, statistically valid survey of Muslims in America has been conducted. This is largely because of a lack of reliable information about Muslims in this country." Carol L. Stone, *Estimate of Muslims Living in America, in* THE MUSLIMS OF AMERICA 25, 25 (Yvonne Yazbeck Haddad ed., 1991).

58. PEW RES. CENTER, *supra* note 26, at 16.

59. *Id.*

mixed."[60] Today Islam ranks as the "fastest growing religion in the United States," and the United States boasts the most racially diverse Muslim community in the world.[61]

Considering that Muslim American and Arab American are distinct entities, one wonders how they came to be conflated in American political history. The next part answers that question with reference to Edward Said's theory of Orientalism. It shows how Orientalist ideas about Arabs and Muslims found expression both in American political ideology and subsequently, the courts.

II.
THE ORIENTALIST CONFLATION OF ARAB & MUSLIM IDENTITIES

The legal conflation of Arab and Muslim identities emanates from Orientalist baselines. To understand what this might mean, it is helpful invoke Edward Said's theory of *Orientalism.*[62] According to Said, Orientalism is,

> Not an airy European fantasy about the Orient, but a created body of theory and practice in which, for many generations, there has been a considerable material investment. Continued investment made Orientalism, as a system of knowledge about the Orient, an accepted grid for filtering through the Orient into Western consciousness, just as that same investment multiplied—indeed, made truly productive—the statements proliferating out from Orientalism into the general culture.[63]

Central to this system of knowledge is the oppositional relationship between the Occident (roughly, the white "West") and the Orient (roughly, the non-white "East"). Under Orientalism, the Occident is positioned as a site of enlightenment and civilization; the Orient is positioned as a site of despotism and barbarism.[64] The two

60. *Id; see also* GHANEA BASSIRI, *supra* note 46, at 327.

61. Stone, *supra* note 57; *see also* John Esposito, *Introduction: Muslims in America or American Muslims*, *in* MUSLIMS ON THE AMERICANIZATION PATH? 3, 3 (Yvonne Yazbeck Haddad & John Esposito eds., 1998).

62. *See* SAID, *supra* note 1, at 1–4. The legal distortion of Arab identity is not to be confused with "Legal Orientalism," an adoption of Said's theoretical framework to illustrate the United States' political and propaganda-based orientation of China as its antithesis with regard to rule of law mechanisms. *See generally* TEEMU RUSKOLA, LEGAL ORIENTALISM: CHINA, THE UNITED STATES, AND MODERN LAW (2013).

63. SAID, *supra* note 1, at 6.

64. *Id.* at 2. This discourse is based on a civilizational binary whereby the Occidental sees the Oriental as its diametric foil. This Article adopts the theoretical framework established in Said's Orientalism to illuminate how Naturalization Era

spheres are interlocked in a "[r]elationship of power, of domination, of varying degrees of a complex hegemony," which favors the former.[65]

Significantly for our purposes, Orientalist discourses did not draw a distinction between the Arab and the Muslim. The crucial distinction was between the "East" and the "West." In this respect, the Arab/Muslim conflation was part of a broader East-West dichotomy. This Part discusses how this ideology manifested in American political discourses and the courts.

A. Orientalism and American Political Ideology

Orientalist discourses in America are directly linked to America's formative years as a nation state. War with a Muslim entity soon after the United States gained independence shaped a distinct brand of "American Orientalism."[66] In 1785, the U.S. government found itself on the brink of war with the Barbary States.[67] The war was incited by the interception of an American ship off the coast of Algiers.[68] The 124 American citizens on board were subsequently enslaved, which sparked public and political support for the United States to declare war against the Barbary States.[69]

Only a few years after the United States gained independence from England, the young nation was well on its way to its first war, with the Barbary States.[70] Consequently, the conflict sparked political rhetoric and propaganda that vilified the Barbary States, and positioned them as the principal enemy of the United States on the world stage. Particularly important here is the fact that tense rela-

judges framed the identity of immigrant petitioners from the Oriental Arab Muslim world.

65. *Id.* at 7.

66. Here, I use "American Orientalism" to refer to the Unites States' view of Islam and the "Muslim World" that began to take shape in the Eighteenth Century. This is not to be mistaken with how the term has been deployed more recently by other scholars, most notably Douglas Little, who uses "American Orientalism" as a governmental view of the Middle East that began to take shape after 1945. *See generally* DOUGLAS LITTLE, AMERICAN ORIENTALISM: THE UNITED STATES AND THE MIDDLE EAST SINCE 1945 (3d ed. 2008).

67. ROBERT J. ALLISON, THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD, 1776–1815, at xiv–xv (1995). The Barbary States encompassed present-day Morocco, Algeria, and Tunisia, in North Africa.

68. *Id.* at xv.

69. *Id.* at 87. In 1793, at the very same time that the United States declared war on Algeria for enslaving its white citizens, it was funneling scores of West Africans to work as slaves in the Antebellum South. *See id.* at 102–07.

70. *Id.* at 9–10.

tions between the United States and the Barbary States began five years before the passage of the 1790 Naturalization Act.

American political propaganda against the Barbary States focused largely on their Muslim identity.[71] In line with Orientalist baselines, Congress classified the people from the Barbary States as "Arabs" on account of their Muslim identity.[72] Again, the mainstreaming of Orientalist thought in the United States engendered the political and popular belief that Arab and Muslim identity were one and the same. This prevented people from seeing the Barbary States for what they really were: first, a political entity acting in its own self interest; and second, a group of nations not populated exclusively by Arabs, but by a wide range of indigenous Berber tribes.[73]

Part of the project of mobilizing popular and political support for war against the Barbary States was achieved through vilifying Islam as an age-old adversary of Christianity.[74] Islam was often maligned through the vilification of its seminal figure, the Prophet Mohammed.[75] Propaganda aimed at the government and people of the Barbary States illustrated the Prophet "Mahomet" as the very personification of tyranny. Popular discourse conveyed Islam's most important figure as a hedonist, a demagogue, and a "charismatic charlatan."[76]

By vilifying the Prophet, popular discourse constructed Islam as the inassimilable foil to American progress, democracy, and liberty.[77] These political images trickled down to the American people, forming a national and popular perception of Arabs as not only exclusively Muslims, but also a civilizational or cultural menace that threatened American democracy and citizens.[78]

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71. *Id.* at 112.

72. BLUM & HARVEY, *supra* note 11, at 260.

73. *See, e.g.*, MADDY-WEITZMAN, *supra* note 37, at 34–36.

74. Again, Christianity during the late Eighteenth Century ranked as a core component of American national and individual identity.

75. ALLISON, *supra* note 67, at 39–46.

76. *Id.*

77. *Id.* at 45–46 ("Americans regarded Muhammad as a dangerous false prophet and as the creator of an evil and religious political system . . . Islam, as the Americans saw it, was against liberty, and being against liberty, it stopped progress. Both Republicans like Mathew Lyon and Thomas Jefferson, who welcomed the progressive libertarianism of the French Revolution, and Federalists like John Adams, who feared the consequences of unchecked democracy, agreed that liberty and human progress were good things and the unbridled despotism of the Muslim world was a bad thing for preventing it.").

78. *Id.* at 46.

Furthermore, the Barbary States' enslavement of white Americans bolstered the belief that Islam drove slavery. State rhetoric framed the wars with the Barbary States as a religious struggle between American Christendom and Islam, instead of a dispute between two nations. First, this framing further entrenched the racial antebellum belief that Islam was exclusively Arab (this time embodied by the Barbary States), second, it deployed Christianity as synonymous with American citizenship,[79] and third, it indicated that "Muslim slavery" was arbitrary, capricious, and prone to subjugate any race of people that stood in its way—including whites.

Political propaganda that maligned the Arab Muslim Orient branded immigrants from this sphere as hostile to American ideals and society, and thus inassimilable.[80] The political indictment of the Barbary States affected far more than its population. Rather, political propaganda oriented the Barbary States as an ideological and ethno-racial microcosm of the broader Arab Muslim Orient.[81] This entrenched the presumption that anybody and everybody from this (imagined) sphere was hostile to American ideals and society, was an age-old adversary of Christianity, and ultimately, was presumptively inassimilable and ineligible for American citizenship.

B. Orientalism in American Courts

The discourses about Arabs that circulated during the United States' conflict with the Barbary States also appeared in the courts. In fact, judges regularly referred to Orientalist secondary sources to shore up their negative perceptions of the Arab World, and the immigrants that hailed from it.[82] George Sale's translation of the *Qur'an*, Islam's holy book, served as a commonly cited source for judges presiding over hearings involving Arabs or Muslims.[83] Sale's problematic translation engendered shallow "[f]amiliarity with Islamic law or the Muslim faith," and its presentation perpetuated a

79. *See* BLUM & HARVEY, *supra* note 11, at 149.

80. SAID, *supra* note 1, at 27.

81. THOMAS S. KIDD, AMERICAN CHRISTIANS AND ISLAM: EVANGELICAL CULTURE AND MUSLIMS FROM THE COLONIAL PERIOD TO THE AGE OF TERRORISM 19–36 (2009).

82. *Cf.* Suzan Jameel Fakahani, *Islamic Influences on Emerson's Thought: The Fascination of a Nineteenth Century American Writer*, 18 J. MUSLIM MINORITY AFF. 291, 300 (1998).

83. George Sale's problematic translation of the *Qur'an*, THE KORAN, COMMONLY CALLED THE ALCORAN OF MOHAMMED (George Sale, trans., 9th ed. 1923) (1734), served as one of the courts' most referenced texts throughout the Naturalization Era. *See* Clay v. United States, 403 U.S. 698, 708 (1971). Thomas Jefferson's famous *Qur'an* was Sale's translation. *See* DENISE A. SPELLBERG, THOMAS JEFFERSON'S QUR'AN: ISLAM AND THE FOUNDERS 26 (2013).

range of harmful representations of both Islam and Muslims.[84] Sale's work did not provide a neutral translation of the Qur'an, but a politicized iteration that reinforced the Orientalist binary and reified Islam's perceived hostility and tyranny. Reliance on these Orientalist texts not only entrenched the view of Arab identity as oppositional to everything that stands in for the "West," but also stamped these representations with judicial approval.

The judicial narrative that natives from the Arab World were antagonistic and inassimilable began to take shape well before the first immigrant from the region petitioned for citizenship. In *Ross v. McIntyre*, for example, the Supreme Court highlighted what it perceived to be "[t]he intense hostility of the people of Moslem faith [toward Christian civilization]."[85] Decided eighteen years before the first native from the Arab World petitioned for citizenship in court, *McIntyre* represented Muslims, and those perceived to be Muslims, as a people who could not be integrated into American society.[86] This ruling, coming during a period of en masse immigration from the Arab World,[87] signaled to immigrants from the region, and judges presiding over their naturalization hearings, that Arab identity (which was then synonymous with Muslim identity) did not fit within the statutory definition of whiteness required to obtain American citizenship.

U.S. courts not only institutionalized an image and understanding of Islam as an irreducibly foreign and inassimilable religion, but also as one that was bent on threatening the Christian character of the United States. Judges echoed the maligned view of Islam affirmed by the Supreme Court in *McIntyre*. Judge Bradley, speaking for the Supreme Court in *Dainese v. Hale*, intimated that Islam was a "pagan" faith.[88] Other judges focused more squarely on the Prophet Mohammed, who they demonized as a "false

84. Failinger, *supra* note 46, at 13; *see also* SAID, *supra* note 1, at 6 ("[C]ontinued investment made Orientalism, as a system of knowledge about the Orient, an accepted grid for filtering through the Orient into Western consciousness, just as that same investment multiplied—indeed, made truly productive—the statements proliferating out from Orientalism into the general culture.").

85. 140 U.S. 453, 463 (1891) ("The intense hostility of the people of Moslem faith to all other sects, and particularly to Christians, affected all their intercourse."). *Ross v. McIntyre* addressed the applicability of U.S. law to foreign sailors on U.S. ships while in the territory of another country. *Id.* at 454.

86. *Id.* at 463–64.

87. *See infra* text accompanying note 99.

88. 91 U.S. 13, 15 (1875).

prophet."[89] Still others framed Islam as a heathen foil,[90] a persecutor and forcible convertor of Christians,[91] a war-mongering creed,[92] and Christianity's longtime Crusades era rival.[93] These Supreme Court decisions did not involve an immigration or naturalization claim, but helped mainstream a maligned image of Arab and Muslim identity that carried into the Arab Naturalization Cases that followed.

The foregoing suggests that the Orientalist views of Arabs as inassimilable people who would threaten Christianity and undermine American civilization were firmly established before the first immigrant from the Arab World petitioned for citizenship. The logic of this racialized discourse, accompanied by the language of race itself, featured prominently in the Arab Naturalization Cases. This is because underwriting the naturalization cases was a fundamental question about race: Does the litigant seeking citizenship fit within the statutory definition of whiteness? To the extent that Arabs were perceived to be Muslims, the answer was presumptively no. A per se restriction was placed against Muslim petitioners from the Arab World.

But what if Arabs were Christians? How would that affect their ability to claim whiteness? The short answer is that Christianity provided a potential route to whiteness and citizenship. But as illustrated in the following section, Christianity did not always

89. SAID, *supra* note 1, at 59 ("[I]slam is judged to be a fraudulent new version of some previous experience, in this case Christianity."); *see also* ALLISON, *supra* note 67, at 38.

90. Nagwa Ibrahim, Comment, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. ISLAMIC & NEAR E. L. 121, 125 (2008).

91. *See In re* Halladjian, 174 F. 834, 839 (C.C.D. Mass. 1909) ("The Turks and the Saracens did not exterminate the people they conquered. Conversion to Mohammedanism and tribute were usually offered as alternatives to the sword."); *see also* United States *ex rel.* Karamian v. Curran, 16 F.2d 958, 959 (2d. Cir. 1927) ("[H]e [Yerwand Karamian] and other boys of his race were most cruelly treated by the Turks, and he himself 'burned from the hip to the knee with a hot steel rod, because they wanted [him] to be a Mohammedan."); Reid v. Covert, 354 U.S. 1, 58 n.8 (1957).

92. President John Quincy Adams contrasted the Christian view of the state of nature as "a state of peace" with the view that the "Mahometan law of nations . . . considered the state of nature as a state of war." *Reid*, 354 U.S. at 58 n.8.

93. Dainese v. Hale, 91 U.S. 13, 15 (1875); Mahoney v. United States, 77 U.S. 62, 68 (1869); *Ex parte* Caldwell v. State, 118 N.W. 133, 135 (Neb. 1908). *See* TURNER, *supra* note 52, at 172 ("The European was the enemy, and this was a primal reaction that came from Islamic tradition which divided the world into the land of Islamic rule (*dar al-Islam*) and the land of warfare (*dar al-harb*). In the land of warfare (European dominance), Islamic resistance was manifested in jihad, which could mean either a struggle of arms or a struggle of words and the soul.").

guarantee citizenship for Christian immigrants from the Arab World—in the first eight of the Arab Naturalization Cases, all of which involved a Syrian Christian petitioner, presiding judges employed different methodologies to assess the authenticity of Christian identity, resulting in a number of conflicting rulings.

III.
MADE IN OUR IMAGE: CHRISTIANITY AS PASSAGE INTO WHITENESS

Emigration from the Arab World commenced before the formation of the modern Arab World. The first immigrant waves from the region traveled to the United States in the 1820s.[94] However, the first major waves from the Levant did not set course for "Amreeka"[95] or "Nay Yark,"[96] as Syrians in the homeland called them, until the 1870s.[97]

Between 1870 and the early 1930's, roughly 130,000 Arab immigrants came to the United States, many because they were pushed there by marginalization under Ottoman rule.[98] Others flocked to the United States for opportunities made available by rapid industrialization and economic growth.[99] The vast majority of these early immigrant waves identified as Christians,[100] and a majority of them practiced "Eastern-rite sects" indigenous to the Le-

94. Louise Cainkar, *The Deteriorating Ethnic Safety Net Among Arab Immigrants in Chicago*, *in* ARABS IN AMERICA: BUILDING A NEW FUTURE 192, 193 (Michael W. Suleiman ed., 1999).

95. *See generally* ALIA MALEK, A COUNTRY CALLED AMREEKA: ARAB ROOTS, AMERICAN STORIES, at ix (2009).

96. NAFF, *supra* note 15, at 118.

97. *See* Suleiman, *supra* note 7; *see also* Samir Khalaf, *The Background and Causes of Lebanese/Syrian Immigration to the United States Before World War I*, *in* CROSSING THE WATERS 18 (Eric J. Hooglund ed., 1987) ("[O]nly two Syrian immigrants entered the United States in 1869. In the following decade, between 1871 and 1880, another sixty-seven persons . . . were recorded.").

98. Suleiman, *supra* note 7, at 2 ("Many Lebanese Christians, who constituted most of the early Arab arrivals in North America, emphasized religious persecution and the lack of political and civil freedom as the main causes of their emigration from lands ruled by an oppressive Ottoman regime."). Alixa Naff offers a countering view on Christian persecution under Ottoman rule: "That persecution in Syria drove Christians from their homeland before World War I was a myth found mainly in the post-World War II studies on Arabs in America—a myth that tended to distort the immigration motivations as well as the social and political realities of late nineteenth-century Syria." NAFF, *supra* note 15, at 86.

99. AMIR MARVASTI & KARYN D. MCKINNEY, MIDDLE EASTERN LIVES IN AMERICA 4–6 (2004); *see also* NAFF, *supra* note 15.

100. LUCIUS HOPKINS MILLER, A STUDY OF THE SYRIAN POPULATION OF GREATER NEW YORK 5 (1904); *see also* NAFF, *supra* note 15.

vant.[101] Arab Muslims traveled to the United States in far smaller numbers, as a consequence of comparatively better living conditions, relative to Arab Christians, under Ottoman rule, and fear that the possibility of naturalization was slim.

A. Syrian Christians: The First Wave of Immigrants from the Arab World

103 Washington Street, New York, NY 10006: the once-proud address of St. Joseph's Maronite Catholic Church in Lower Manhattan.[102] The Church was "Little Syria's" spiritual, social, and cultural nucleus during the 1880s.[103] Little Syria was a living and lurid ballad of the *bilaad*—the home country—on American soil.[104] Settlers from Damascus, Mount Lebanon, Baskinta,[105] and remote and central corners of the Levant,[106] could be seen walking through nearby Battery Park. These early settlers claimed a small parcel of America in the heart of its biggest city, setting the foundation for what would evolve into the first Arab American community.

Social science research indicates that fewer than 3% of these first wave immigrants from the region identified as Muslims.[107] During the height of migration from the Levant (1899–1921), approximately "3,000 to 8,000 Levantine Arabs migrated to the United

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101. NAFF, *supra* note 15 ("[T]he immigrants were overwhelmingly Christians of the Eastern-rite sects—mainly Maronite, Melkite, and Eastern Orthodox . . . ."); *see also* RACE AND ETHNICITY IN THE EARLY SYRIAN AMERICAN DIASPORA, *supra* note 2, at 6–7. These sects bred a "distinctive Christian culture expressed in Arabic." HOURANI, *supra* note 32, at 242.

102. KAYYALI, *supra* note 5, at 18. Maronites were Catholic natives of present-day Lebanon, named after "a fifth-century saint called Maron." *Id.* at 19. They comprised a considerable percentage of early migration from the Arab World to the United States. *Id.* at 88.

103. Lawrence Davidson, *Debating Palestine: Arab-American Challenges to Zionism 1917–1932*, *in* ARABS IN AMERICA: BUILDING A NEW FUTURE 227, 227 (Michael W. Suleiman ed., 1999).

104. ORFALEA, *supra* note 7, at 2.

105. David W. Dunlap, *Little Syria (Now Tiny Syria) Finds New Advocates*, CITY ROOM, N.Y. TIMES (Jan. 1, 2010, 12:00 PM), http://cityroom.blogs.nytimes.com/2012/01/01/little-syria-now-tiny-syria-finds-new-advocates ("In 1891, Yusuf Sadallah arrived in Lower Manhattan from the town of Baskinta, in the part of the Ottoman Empire that is now Lebanon. Going by the name of Joseph Sadallah, he set up a trading shop on Washington Street . . . .").

106. The Levant was the region that encompasses present-day Syria, Lebanon, Jordan, Israel, and the Palestinian Occupied Territories; it was also referred to as "Greater Syria."

107. *See* NAFF, *supra* note 15, at 112.

States annually."[108] In 1924, the Syrian Christian population in the United States was 95.5% Christian, and only 4% of the settlers from the Levant identified as Muslim.[109] These demographical figures clashed with the judicial and broader distortion of Arab identity as synonymous with Muslim identity.

Since Arab identity, having been conflated with Islam, was branded inassimilable, Christianity offered the lone pathway toward citizenship for Syrian Christian immigrants during the Naturalization Era. While the majority of these Syrian Christians identified themselves as Arab,[110] many of the judges presiding over their naturalization proceedings viewed Arab identity as Muslim, and Syrian Christian identity as a wholly distinct ethno-racial classification. Following *Shishim*, Syrian Christian petitioners came to understand that invoking their Christian identity provided the only escape from the conflation of Arab with Muslim identity, which was vital to accessing whiteness.

The view that Syrian Christian identity was distinct from Arab identity was based on the eugenic research of Johan Friedrich Blumenbach, who initially classified Syrian Christians as white in the late Eighteenth Century.[111] A.H. Keane, Joseph Deniker, and Daniel Brinton echoed Blumenbach's contention that Syrian Christians were white. These theories significantly influenced judicial reasoning in the naturalization cases. Although Syrian Christian identity was established by eugenics research as an ethno-racial classification separate from Arab (Muslim) identity, the rulings of judges presiding over naturalization proceedings often hinged on the determination of the purity of the "Syrian Christian" identity of the petitioners that came before them. Christianity as religion was less relevant to the judges' determination than Christianity as racial marker.

B. Christian Purity and Its Nexus to American Citizenship

Eugenic research popularized the idea among judges that Syrian Christians were a group of people racially distinct from Arabs. Again, religion formed the basis of this ethno-racial distinction. The Christian identity of Syrian Christians was a route toward whiteness

108. Cainkar, *supra* note 94, at 193 ("The 1910 U.S. Census recorded 55,102 foreign-born Syrians (including Lebanese) and Palestinians in the United States . . . Arab American scholar Philip Hitti estimated that there were about 200,000 'Syrians' in the United States in 1924.").

109. Khalaf, *supra* note 97 at 21.

110. *See* Suleiman, *supra*, note 7, at 4–6.

111. Dow v. United States, 226 F. 145, 146 (4th Cir. 1915).

not available to Syrian Muslims or to Muslims from the Arab World at large. As discussed above, the vast majority of immigrants that came to the United States in the Nineteenth and early Twentieth Centuries from the Arab World were Syrian Christians. In accordance with the demographics of these initial immigrant waves, the first eight immigrants from the Arab World that petitioned for citizenship in court were Syrian Christians.

However, Naturalization Era judges did not simply grant these petitioners citizenship based on their subjective identification as Syrian Christians. Since these immigrants hailed from the Arab World, judges examined them through an Orientalist prism that conflated Arab with Muslim identity. Therefore, judges approached the citizenship petitions of Syrian Christians with great skepticism, often debating whether the "Syrian Christian" (racial) purity of the petitioners was diluted by ancestral intermixing with Muslims, or even whether the petitioners were covert Muslims who performed Christian identity to get citizenship.

1. Miscegenation with Muslims

Syrian Christian petitioners emigrated from a region judges perceived to be populated exclusively by Muslims. This view shifted the burden onto the Syrian Christian petitioners to prove that they were, in fact, Christians, and that their Syrian Christian purity was not jeopardized by conquest and miscegenation with the Muslim majority population in the region.

Eugenic science drove early rulings that the Syrian Christian petitioners were "white by law."[112] Consistent with the court's ruling in *Shishim*, many judges positioned Syrian Christian purity as the determinant metric for racial belonging.[113] While presiding over *In re* Najour, Judge Newman relied on Dr. A.H. Keane's "The World's People" to find that the statutory definition of whiteness,

> Refers to race, rather than to color, and fair or dark complexion should not be allowed to control, provided the person seeking naturalization comes within the classification of the white or Caucasian race, and I consider the Syrians as belong-

112. *See* IAN F. HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 67–68 (1996).

113. *See In re* Najour, 174 F. 735 (C.C.N.D. Ga. 1909). Costa Najour was a Maronite Syrian from Mt. Lebanon. *Id.* Najour immigrated to the United States in 1902, and subsequently traveled south to Atlanta, where he opened up a dry goods shop. *Id.*

ing to what we recognize, and what the world recognizes, as the white race.[114]

In line with the eugenic classification of Syrian Christians as white,[115] Judge Newman concluded that Costa George Najour—a Christian from Mount Lebanon—fit within the statutory bounds of whiteness.[116] Less than one year after *Najour*, Keane's findings were again cited as the basis for a federal court in Oregon to rule in *In re Ellis* that a Syrian Catholic (Maronite) was white by law, and could be naturalized as a citizen.[117]

Armenians also procured whiteness by means of their Christianity. The courts identified how Christianity set Armenians apart from their regional, Arab neighbors.[118] This distinction persuaded the same court that singled out the petitioner's Catholicism in *In re Ellis*[119] to echo that Christianity isolated Armenians from the Muslim ocean that encircled their nation.[120] In *United States v. Cartozian*, Judge Wolverton quoted a eugenic finding that "it would be utterly impossible to classify them [Armenians] as not belonging to the white race."[121] Armenia remained a homogenously Christian nation, while Syria, even long before Ottoman rule, was the most religiously diverse part of the region. Christian homogeneity in Armenia evidenced that its people "held themselves aloof from the Turks, the Kurds," and, in other words, Muslims, which delivered them whiteness free of the skepticism that encumbered Syrian Christians.[122]

Syrian Christian identity as white was more tenuous mainly because of the risk that they had intermingled with Muslims. In *In re*

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114. *Id.* at 735.

115. *Id.* at 735–36.

116. *Id.* at 736.

117. *In re* Ellis, 179 F. 1002, 1002–04 (D. Or. 1910).

118. *See, e.g.*, United States v. Cartozian, 6 F.2d 919, 920 (1925) (explaining that because Armenians were almost all Christians, and their neighbor states Muslim or heterogeneous, they were distinct).

119. Both cases were decided by the Oregon District Court. *Ellis*, 179 F. at 1002; *Cartozian*, 6 F.2d at 919.

120. *Cartozian*, 6 F.2d at 920.

121. *Id.* at 921 (internal quotation marks omitted). Judge Wolverton scrolls through contemporary ethnological research and accords with the conclusion of Dr. Frans Boas, a Columbia University professor of anthropology, whose expert testimony concludes that Armenians are undeniably white. *Id.*

122. *See id.* at 920 ("[T]he [Armenian] people . . . have always held themselves aloof from the Turks, the Kurds, and allied peoples, principally . . . on account of their religion . . . . The Armenians . . . very early, about the fourth century, espoused the Christian religion, and have ever since consistently adhered to their belief, and practiced it.").

Mudarri, the court stated that "[t]hose who call themselves Syrians by race are probably of a blood more mixed than those who call themselves Armenians."[123] Here, Judge Lowell marked the perceived difference between the religious heterogeneity of Syria (still an Ottoman province in 1910)[124] and the Christian population of Armenia.[125] Lowell noted that unlike Armenian Christians, who lived apart from their Muslim neighbors, Syrian Christians not only lived in close proximity to Muslims, but also likely had intermixed with them for centuries. As a consequence, the judge refused to defer to the eugenic classification of Syrian Christians as white and denied Mudarri's petition for citizenship.[126]

To resolve the uncertainty surrounding whether Syrian Christian identity was "white," some Naturalization Era judges reached for the familiar marker of phenotype to ascertain Syrian Christian racial purity. One particularly salient example is in *Shahid*.[127] A Christian from Zahle, in modern-day Lebanon, Shahid petitioned for citizenship in South Carolina, asserting that he was a Christian native of the Syrian province of the Ottoman Empire.[128] Shahid did not expressly identify himself as an Arab. Although Judge Smith cited eugenic science in *Shahid*, his ruling was driven by an in-court examination of the petitioner's physical characteristics. Engaging in his own brand of in-court eugenics, Judge Smith described Shahid to be "about [the color] of walnut, or somewhat darker than is the usual mulatto of one-half mixed blood between the white and the negro races."[129] Thus, according to Smith, Shahid's dark skin signaled a degree of racial miscegenation with Muslims that diluted his Syrian Christian purity and ultimately undermined his petition for American citizenship.[130]

Shahid reveals that suspected miscegenation with Muslims could foil a Syrian Christian's petition for citizenship. Christianity,

123. *In re* Mudarri, 176 F. 465, 466 (C.C.D. Mass. 1910).

124. *See* Khalaf, *supra* note 97, at 24–25 (referring to the period between 1861 and 1915 as the "last four decades of Ottoman Rule").

125. *In re* Halladjian 174 F. 834, 835 (C.C.D. Mass. 1909); *see also Cartozian*, 6 F.2d at 920–22 ("[I]t would be utterly impossible to classify them [Armenians] as not belonging to the white race . . . . [T]hey amalgamate readily with the white races, including the white people of the United States.").

126. *Mudarri*, 176 F. at 467 (C.C.D. Mass. 1910).

127. *Ex parte* Shahid, 205 F. 812, 813 (E.D.S.C. 1913).

128. *Id.* at 812.

129. *Id.* at 813.

130. *Id.* In addition, it is possible that Smith disagreed with the eugenicist consensus that Syrian Christians were white, and devised a rationale that sidestepped it. However, what is significant is that he relied on a decidedly racialized logic to resist the conclusion that the petitioner was white.

again, did not invariably provide a clear pathway toward citizenship for Syrian immigrant-petitioners. Judge Smith argued,

> What is the race or color of the modern inhabitant of Syria it is impossible to say. No geographical area of the world has been more mixed since history began. Originally of Hittite or non-Semitic races, for a time at least under Egyptian domination, then apparently taken possession of largely, and possibly almost exclusively, by the Semitic peoples, then overlaid with immigration from European races, then again followed by another Semitic conquest in the shape of the Arabian Mahometan eruption. . . .[131]

The *Shahid* ruling illustrated how deeply maligned Arab Muslim (racial) identity was during the Naturalization Era. It also highlighted the inextricable conflation of Muslim identity with Arab identity.

Judge Smith adopted the racial logic of the one-drop rule and its variations to determine that the petitioner's Christian purity was sullied by Muslim blood.[132] Judge Smith compared the petitioner's complexion to the phenotype of African Americans in South Carolina, the seat of his courthouse, and observed that Shahid was "somewhat darker than is the usual mulatto of one-half mixed blood between the white and the negro races."[133] Thus, the "Mahometan" stain evident in the petitioner's phenotype foiled his petition for naturalization.[134] Other rational explanations, such as exposure to the sun or the arbitrary decisionmaking of the judge, were not even considered during the proceeding.[135]

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131. *Id.* at 816.

132. *See id.* at 813–14. It should be noted that there are different variations to the one-drop rule: "[I]t is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different states; some holding that any visible admixture of black blood stamps the person as belonging to the colored race (State v. Chaver, 5 Jones [N.C.] 1, p. 11); others that it depends upon the preponderance of blood (Gray v. State, 4 Ohio 354; Monroe v. Collins, 17 Ohio St. 665); and still others, that the predominance of white blood must only be in the proportion of three-fourths. (People v. Dean, 4 Michigan 406; Jones v. Commonwealth, 80 Virginia 538 (1885)." Plessy v. Ferguson, 163 U.S. 537, 552 (1896).

133. *Shahid*, 205 F. at 813.

134. *See id.* at 817.

135. In *Shahid*, the court's determination of Muslim miscegenation made the presumption of non-whiteness irrefutable, and extinguished the relevance and resonance of Shahid's Christianity in court.

2. Real Christians or Covert Muslims?

The judicial interpretation of whiteness barred Muslims from being naturalized as citizens.[136] Muslims in the Arab World were aware of the negative attitudes toward their faith in the United States, which preempted many of them from emigrating during the Naturalization Era. For those who did migrate, many chose not to pursue naturalization. Indeed, the very fact that 95% of the first immigrant waves from the region were Christian indicates how animus toward Islam preempted and suppressed Muslims from migrating to the United States.[137] Not a single Muslim immigrant from the Arab World petitioned for American citizenship before 1942. Muslim settlers from the Arab World clearly appreciated that their religion precluded American citizenship.

Muslim immigrants from the Arab World sometimes converted to Christianity and changed their names to counter the judicial and societal hostility toward Islam.[138] Other Muslim immigrants who refused to convert to Christianity as a prospective means toward citizenship accepted a subjugated status as "non-intending citizens."[139] This was in contrast to the preferred status of immigrants who intended to naturalize, those Hiroshi Motomura has characterized as "Americans in Waiting."[140] Muslim immigrants from the Arab World, like immigrant communities from China or Japan, occupied a position of legal purgatory as non-desirables during the Naturalization Era, realizing that their religion would not be judicially rec-

136. Khalaf, *supra* note 97, at 21. ("[Muslim immigrants] faced psychological, religious, and cultural obstacles, and hence initially displayed considerable reluctance to immigrate to the West.").

137. NAFF, *supra* note 15, at 2, 112.

138. One Mohammed Asa Abu-Howah, who emigrated from Syria to New York in 1903, changed his name to A. Joseph Howar, because "people [he] met on the boat told [him he'd] better change [his] name. They said it labeled [him] as a Muslim, and no immigration officer would allow a Muslim to enter the United States." GHANEA BASSIRI, *supra* note 46, at 141.

139. HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 8–9 (2006) ("For more than a century and a half—from 1795 to 1952—every applicant for naturalization had to file a declaration of intent several years in advance. This declaration gave any noncitizen who was eligible to naturalize a precitizenship status that elevated him, even from his first day in America, well above those who had not filed declarations and therefore were not seen as on the citizenship track. Many statutes throughout this period expressly preferred intending citizens.").

140. *Id.*

onciled with whiteness.[141] Therefore, the vast majority of Arab Muslim immigrants did not exercise the option of petitioning for citizenship, but simply *waited* for a reformation of the naturalization regime.

C. White by Religion: Dow v. United States

Up until 1915, the first seven cases involving a Syrian Christian petitioner had failed to establish judicial consensus as to whether Syrian Christians fit within the statutory definition of whiteness. In fact, the courts were split on this very question. The petitioners in *Shishim*, *Najour*, and *Ellis* were ruled white by law and granted citizenship. The *Mudarri* court was stumped and rendered no ruling, which had the effect of denying the petitioner's claim.[142] In *Shahid* and *Ex parte Dow*, Judge Smith found that the Christian identities of the petitioners were impure and illegitimate, respectively.[143]

In *Ex parte Dow*, Judge Smith wanted to know whether George Dow, a Syrian Christian, was a "real" Christian. Smith's answer was an emphatic no—the petitioner's Arabic fluency was prima facie evidence of Muslim identity. Although Arabic was spoken across religious lines in the Arab World, Judge Smith interpreted the petitioner's fluency as a marker of Muslim identity,[144] and evidence of the "Islamic conquest" that overtook the Levant, the region from which the petitioner came.[145] While Judge Smith did not take issue with Dow's phenotype reflecting Christian (racial) impurity, as he did in *Shahid*, he remained skeptical of Dow's Christian *bona fides*. Ultimately, Smith was unconvinced that Dow was authentically Christian, and denied his petition.

George Dow appealed the decision. Judge Woods reversed, ruling that George Dow and the Syrian Christian population he represented fit within the statutory definition of whiteness.[146] Persuaded by the decisions in *Shishim*, *Najour*, and *Ellis*,[147] Woods deferred to

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141. Many Muslim settlers opted to avoid naturalization, fearing the risk of a negative judicial determination. Therefore, flying under the radar as non-intending citizens was a better option, they believed.

142. *In re* Mudarri, 176 F. 465, 465, 467 (C.C.D. Mass. 1910).

143. "[A]n enraged Syrian community" appealed the *Ex parte Dow* decision. GHANEA BASSIRI, *supra* note 46, at 154.

144. *Ex parte* Dow, 211 F. 486, 488 (E.D.S.C. 1914); *Ex parte* Shahid, 205 F. 812, 813.

145. *Ex parte* Dow, 211 F. at 488; *see also* SAID, *supra* note 1, at 58–59, 61, 71, 74–75, 91, 205, 268, 303–04.

146. Dow v. United States, 226 F. 145, 148 (4th. Cir. 1915).

147. *Id.* ("And it seems that in accordance with this construction of the statute a large number of Syrians have been naturalized without question. It is significant

the eugenic conclusion that Syrians "were to be classed as white people."[148] He acknowledged that "modern Syrians are of mixed Syrian, Arabian, and even Jewish blood," with "Arabian" used as a proxy for Muslim.[149]

However, Woods did not engage in the phenotypic or ancestral scrutiny of Dow's Christian purity as did Judge Smith in *Shahid* and *Ex parte Dow*.[150] Rather, Judge Woods' ruling restored the primacy of eugenics science in naturalization proceedings involving immigrants from the Arab World. With the categorization of Christian Syrians thus established, the petitioner's self-identification as Christian seemed enough to place him within the category of whites.[151]

Dow v. United States capped the Syrian Naturalization Cases, establishing the narrow rule that Syrian Christians were white by law and collectively eligible for American citizenship. Furthermore, the status of Syrians Christians as a white minority (in the Arab World) surrounded by Muslims signaled to many Naturalization Era judges, particularly Woods in *Dow v. United States*, that Syrian Christians needed safe harbor from Muslim conquest, compelled conversion, and persecution.[152] Thus, *Dow v. United States* can be understood as a judicial declaration that called for the rescue of Christian minorities in the Arab World at a time when the Ottoman Empire—the primary political manifestation of Islam in 1915—was at war with the European allied powers in World War I.

D. After Dow*: Nascent "Arab American" Identity as Christian and White*

The *Dow v. United States* ruling marked a highpoint for Christian immigrants from the Arab World. The decision preceded xeno-

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that, in view of these decisions and this practice of the courts, the Congress has not seen fit to change the law.").

148. *Id.* at 146.

149. *Id.*

150. *Id.* ("They belong to the Semitic branch of the Caucasian race, thus widely differing from their rulers, the Turks, who are in origin Mongolian.").

151. *Dow v. United States* signaled a moment when Naturalization Era courts finally accepted that Syrians were authentically Christian, and therefore, could be assimilated into whiteness and citizenship. The court finally came to this conclusion after six years, and eight naturalization proceedings.

152. *See In re* Halladjian, 174 F. 834, 839 (C.C.D. Mass. 1909) ("The Turks and the Saracens did not exterminate the people they conquered. Conversion to Mohammedanism and tribute were usually offered as alternatives to the sword."); *see also* Karamian v. Curran, 16 F.2d 958, 959 (2d. Cir. 1927) ("[H]e [Yerwand Karamian] and other boys of his race were most cruelly treated by the Turks, and he himself 'burned from the hip to the knee with a hot steel rod, because they wanted [him] to be a 'Mohammeddan'."); Reid v. Covert, 354 U.S. 1, 58 (1957).

phobic legislation that categorically restricted immigration into the "American Eden" by only nine years.[153] Entry into the United States for immigrants from the Arab World proved increasingly difficult after the passage of the Immigration Act of 1924.[154]

The Immigration Act of 1924, heralded as the "greatest triumph of the eugenics movement," stifled immigration.[155] This included immigration from the Levant, home of the vast majority of immigrants from the Arab World.[156] The Act was in large part made possible by "judges in the prerequisite cases [who] were unable to develop a freestanding definition of Whiteness."[157] The Act aimed to accomplish what Naturalization Era judges could not, which was to restore the statutory definition of whiteness and the composition of the nation's citizenry to its more narrow European form.[158]

Dow v. United States had an immense impact on the identities of Syrian immigrants in the United States. First, the decision was rendered three years before the fall of the Ottoman Empire in 1918. Therefore, the political and existential shift toward Arabism that took place after the fall of the Ottoman Empire came two decades after Judge Woods ruled that Syrian Christians fit within the statu-

153. *See* DAVID JACOBSON, PLACE AND BELONGING IN AMERICA 27–58 (2002).

154. The Immigration Act of 1924 based its quotas on the U.S. Census of 1890. The Syrian population skyrocketed between 1890 and 1919, with the former year being the chronological beginning of considerable migration from the Levant. The population of individuals born in the Arab World residing in the United States in 1890 was 1,126, and was overwhelmingly Syrian and Christian. Khalaf, *supra* note 97, at 20–21. By 1910, the U.S. Census "recorded 55,102 foreign-born Syrians (including Lebanese) and Palestinians in the United States." Cainkar, *supra* note 94, at 193. In order to further suppress migration from the Levant, and other undesirable origin points, Congress selected the paltry, pre-immigration boom 1890 Census numbers instead of the 1910 Census figures that boasted a considerably larger Syrian presence in the United States.

155. *See* RICHARD LYNN, EUGENICS: A REASSESSMENT 35–36 (2001).

156. *Cf.* HANEY LOPEZ, *supra* note 112, at 11 ("From 1924 [to] 1952, persons ineligible for citizenship could not enter the United States.").

157. *Id.* at 109.

158. CHRISTIAN JOPPKE, SELECTING BY ORIGIN: ETHNIC MIGRATION IN THE LIBERAL STATE 40 (2005) ("The prominent role of eugenics experts in the crafting of the 1924 National Origin Quota Act brought to a peak the prominent role that 'science' (or rather what passed as that at the time) had played all along the post-1880s restriction movement . . . . The prankish antics of race theory should not distract from the fact that turn-of-the-century immigration restriction was part of a larger project of designing society *more geometrico*, projecting the mastery of nature that had been achieved through modern physics and biology into the realm of human affairs, and thus perversely realizing the 'absolute perfection of the human race' . . . .").

tory definition of whiteness.[159] This meant that George Dow and every Syrian immigrant who petitioned for citizenship before him identified themselves according to the religious and regional parameters mandated by Ottoman rule.[160] "Arab," as a modern identity born out of Pan-Arabism, had yet to be established.[161]

Second, *Dow v. United States* narrowly established that Syrian Christians were white by law, and thus eligible for citizenship.[162] Judge Smith in *Dow* was swayed by the eugenic conclusion that Syrian Christians were racially distinct from Arab Muslims.[163] Consequently, the *Dow* decision did not impact Muslim, Druze,[164] and Jewish settlers from the Arab World, who continued to live in the

159. Therefore, the Syrian Christian petitioners in the first eight Arab Naturalization Cases did not identify themselves as "Arab," in its modern sense, when they petitioned for citizenship. Many of the Syrian settlers before and after the *Dow v. United States* decision assimilated into mainstream whiteness and adopted new identities that did not include remnants of the old country. Other Syrian Christians identified with the old modality of Arab identity, which was framed along common cultural and linguistic lines. However, a considerable number of naturalized citizens adopted the modern mode of Arab identity that sprouted in the region in the 1930s. Pan-Arabism "re-signified" the identities of the naturalized Syrians, which ushered in a formative brand of Arab Americanism soon after they claimed citizenship.

160. *See* HOURANI, *supra* note 32, at 220, 235.

161. *See supra* note 36.

162. Dow v. United States, 226 F. 145, 147 (4th. Cir. 1915). One commentator claimed *Dow v. United States* to be a victory for Arab Americans at large. However, this perspective neglects the anti-Muslim rhetoric of the court and the decisions that came before it. *Dow v. United States* was, indeed, a victory of Syrian American Christians, but not for the few Muslim settlers among them or the subsequent Muslim immigrants that followed from a broader host of nations. *See, e.g.*, Helen Hatab Samhan, *Not Quite White*, *in* ARABS IN AMERICA: BUILDING A NEW FUTURE 209, 217 (Michael W. Suleiman ed., 1999).

163. *Dow*, 226 F. at 147.

164. The Druze faith is an offshoot of Islam with followers in Lebanon, Syria, Israel, and the Palestinian Territories. "The faith of the Druzes sprang from the teaching of Hamza ibn 'Ali; he carried further the Isma'ili idea that the *imams* were embodiments of the Intelligences which emanated from the One God, and maintained that the One Himself was present to human beings, and had been finally embodied in the Fatimid Caliph al-Hakim (996–1021), who had disappeared from human sight but would return." HOURANI, *supra* note 32, at 185. "A group of the faithful believed that al-Hakim was divine, and had not died but gone into occultation. Refusing to recognize his successors on the Fatimid throne, they seceded from the main body of the sect. They had some success in winning support among the Ismailis of Syria, where groups of them still survive, in the present-day states of Syria, Lebanon, and Israel. One of the founders of the sect was a da'i of Central Asian origin called Muhammad ibn Isma'il al-Darazi. They are still known, after him, as Druzes." BERNARD LEWIS, THE ASSASSINS: A RADICAL SECT IN ISLAM 33 (1968).

United States without the prospect of becoming naturalized citizens. It is important to note that the first Arabs to be naturalized were not considered "Arabs" by presiding judges, who leveraged eugenic science to resolve that Syrians Christians were white by law, and as a result, an insular minority in the region distinct from Arab Muslims.

Third, the fall of the Ottoman Empire and the shifting political landscape in the Arab World, in part, undid the court's formation of a distinct Syrian-American identity. The birth of independent states in Lebanon and Syria moved many immigrants to realign their identities in line with the nation-states that they came from.[165] Pan-Arabism subsequently galvanized many settlers and naturalized citizens in the United States across religious and national lines, which led to their embrace of modern brand of Arab identity in the United States.[166] However, competing modalities of identity, which encompassed full-fledged assimilation into whiteness, nation-state identification, and Arabism, splintered how Arab Americans identified during the early Twentieth Century.

Fourth, *Dow v. United States* did not undo the conflation of Arab with Muslim identity, which judges continually redeployed to restrict Arab Muslim immigrants from accessing citizenship. The following section illustrates how judges saw Muslim immigrants from the Arab World, whose religion formed the core of the animus toward such immigrants during the Naturalization Era, as undesirable, antagonistic, and inassimilable.

IV.
BETWEEN ARABISM AND INTEREST CONVERGENCE

> "How long are the Cross and the Crescent to remain apart before the eyes of God?"
>
> —Gibran Khalil Gibran, The Prophet[167]

165. For instance, the creation of the modern state of Lebanon moved Lebanese citizens and settlers in the United States to re-identity as Lebanese Americans, and Syrians and Palestinians to follow suit.

166. Many naturalized Syrian Americans identified with Arabism as a political and secular movement, and accordingly adopted it to reframe their identities. However, the courts were still gripped by a disoriented view of Arab identity and held Syrian Christians to be a distinct race of people that fit within the statutory definition of whiteness, while Arab Muslims did not.

167. Kahlil Gibran, The Prophet 48–49 (Knopf, 1952).

After *Dow v. United States*, twenty-seven years passed before another petitioner from the Arab World brought a petition for citizenship. This span was marked by considerable political volatility and reform in the Arab World, which included: World War I and the fall of Ottoman rule over Arab lands; the subsequent period of European colonialism; and World War II and the emergence of independent nation states in the region. Most critically, the development of Pan-Arabism as a political and existential movement took shape between 1915 and 1942, which reconfigured how immigrants from the region framed their Arab identities moving forward.[168]

Despite these shifts in the ways immigrants from the Levant perceived their Arab identity, courts during the latter end of the Naturalization Era remained wedded to the entrenched understanding of Arab and Muslim identity as one and the same. This section will examine two naturalization hearings involving Muslim immigrants from the Arab World to illustrate how judges continued to conflate Arab with Muslim identity. In addition, although the emergence of Pan-Arabism led much of the naturalized Syrian Christian community to reframe their identities as Arab American, the courts continued to project a view of Arab identity that perceived Muslim immigrants and Syrian Christians from the Arab World as racially distinct.

A. Arabism and Its Impact on Formative Arab American Identity

Pan-Arabism introduced a postcolonial alternative to the regional and religious factionalism in the Arab World. The philosophy, which reached its highpoint during the 1940s, inspired a new mode of Arab identity that resonated throughout the region and among the growing Diaspora in the United States.[169] The spreading "motif of transformation" toward Arabism was most ripe among Syrian settlers in the United States, who generally infused this revitalized brand of Arab identity with their newfound status as not simply Americans, but Arab Americans.[170]

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168. CHOUERRI, *supra* note 33.

169. *See supra* note 36.

170. RACE AND ETHNICITY IN THE EARLY SYRIAN AMERICAN DIASPORA, *supra* note 2, at 95. "The motif of transformation was a recurring one in the writings of Syrian immigrants. It was captured visually in a full-page advertisement placed in *al-Hoda* [a Syrian American newspaper] by the Moshy Brothers in New York . . . [The author of the article] argued . . . that emigrants were responsible for the reformist awakening . . . in Syria and cited their efforts at the Arab Congress in Paris as proof of their commitment to the struggle for change." *Id.* "As the manifesto of the First

The American citizenship afforded to Syrian Christians by the ruling in *Dow v. United States* sowed the seeds for a fledgling Arab American community.[171] However, Muslim immigrants were also important participants in the burgeoning Arab American community even though they occupied the liminal status of "citizens in waiting."[172] Again, the rise of Pan-Arabism in the Arab World in the 1930s united Arab immigrants from across religions and national lines under the common banner of modern Arab identity:

> Even if they were unaccustomed to identifying themselves as "Arabs" those immigrants, in fact, clung tenaciously to their Arabness. Christians, Muslims, and Druze alike proudly acknowledged common Arab cultural roots . . . "We are all *awlad* Arab (children or sons of Arabs)," they characteristically responded to anyone who encountered them in an Arab gathering.[173]

However, the expansion of modern Pan-Arab identity[174] as a foreign and domestic phenomenon did not erode the judicial construction of Arab identity within the courts, which conflated Arabs and Muslims while excluding Syrian Christians. The last of the two Arab Naturalization hearings illustrates that despite modern Arabism's resonance with the growing diaspora in the United States, judges still identified Arabs exclusively as Muslims and dis-identified Syrian Christians, who could access citizenship as whites by law, as Arabs.

B. American Citizenship Barred to Arab Muslim Immigrants

The judicial construction of Arab identity that prevailed in the first eight Arab Naturalization Cases was still firmly in place in 1942, when the first Muslim from the region petitioned for U.S. citizenship. Ahmed Hassan, a native of Yemen, filed his citizenship application in a Michigan court.[175] Michigan, particularly the metropolitan Detroit area, was rapidly becoming a hub for the Arab Diaspora.[176] Despite the reformed brand of secular Arab identity

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Arab Congress claimed, the entire Arab nation was 'spread across the world.'" *Id.* at 99.

171. *See id.* at 79–80.

172. MOTOMURA, *supra* note 139, at 8.

173. NAFF, *supra* note 15, at 15.

174. *See* CHOUERRI, *supra* note 33, at 82.

175. *In re* Ahmed Hassan, 48 F. Supp. 843, 845 (E.D. Mich. 1942).

176. May Seikaly, *Attachment and Identity: The Palestinian Community of Detroit*, *in* ARABS IN AMERICA: BUILDING A NEW FUTURE 25, 26–27 (Michael W. Suleiman ed., 1999) ("Detroit was the destination of many because it offered the largest concentration of ethnic Arabs, providing family and friends and a familiar way of life.").

taken on by immigrants and naturalized citizens from the Arab World, Judge Tuttle reasoned that,

> It cannot be expected that as a class [Arabs] would readily intermarry with our population and be assimilated into our civilization. The small amount of immigration of these peoples to the United States is in itself evidence of that fact. Arabia, moreover, is not immediately contiguous to Europe or even to the Mediterranean.[177]

Tuttle's understanding of Arab identity conformed to the views of the judges presiding over the eight naturalization cases that preceded *Hassan*, and he echoed the baseline that Syrian Christians were a people distinct from Arab Muslims.[178] Furthermore, Judge Tuttle removed the Levant from what he felt to be the geographic makeup of the Arab World, seemingly because of the *Dow v. United States* holding that Syrian Christians fit within the statutory definition of whiteness (due to eugenic conclusions that they were part of the white race).[179] Tuttle's geographic orientation of "Arabia" excluded the Levant, a sad irony given that the Levant was not only home to a considerable population of Arab Muslims, but also the very place where Pan-Arabism was founded.

Hassan illustrates that the Orientalist construction of Arab identity was still deeply entrenched in 1942, only ten years before the dissolution of the Naturalization Act. The ruling exemplifies how the disorientation of Arab identity blinded judges from taking into consideration transformative political events in the Arab World that reshaped Arab identity. Despite the fact that Pan-Arabism shifted how both Arab immigrants and naturalized Arab Americans were identified, naturalization judges continued to perceive Arab identity in fixed and arcane terms.[180]

Hassan also vividly illustrates the gulf between Judge Tuttle and the proliferating community of Arabs in the metropolitan Detroit area, which became the most conspicuous and concentrated population of Arabs in the 1930s. Most importantly, *Hassan* proves that Arab Muslim identity still clashed with the prevailing judicial conception of whiteness in 1942.

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177. *Hassan*, 48 F. Supp. at 845.

178. *See id.*

179. *Id.*

180. *Id.*

C. Reversing the Restriction Against Muslim Immigrants

While *Hassan* demonstrates how the failure to recognize modern Arab identity extended the Naturalization Era cases' rationale into mid-Twentieth Century immigration, even the recognition of modern Arab identity and the extension of citizenship to a Muslim petitioner did not quite reorient the judicial conflation of Arab with Muslim identity. *Ex parte Mohriez*, although marking a critical crossroads with regard to extending naturalization eligibility to Arab Muslim immigrants from the Arab World, did not disrupt the ideological status quo of conflation of Arab and Muslim identity.

Mohriez is a watershed case that not only granted citizenship to an Arab Muslim, but also reflects a moment when the judicial orientation toward Arab identity was turned on its head. Two years after *Hassan*, Mohammed Mohriez, a native of Saudi Arabia, came before the Massachusetts District Court on April 13, 1944 seeking to be naturalized as an American citizen. By ruling that Mohriez was white and eligible for citizenship, Judge Charles Wyzanksi lifted the bar restricting Muslim immigrants from the Arab World from accessing citizenship.[181] Unlike Judge Tuttle in *Hassan*, Wyzanski demonstrated fluency of the political changes taking place in the Arab World. Moreover, Wyzanski praised Arab Muslims in a fashion unprecedented in the Naturalization Era.[182] This praise, however, did not challenge, much less undo, Orientalist baselines, but rather, redeployed them. Like Tuttle and the judges presiding over the set of Arab Naturalization Cases involving Christian petitioners, Wyzanski's opinion is still informed by a view of Arab identity that conflated it with Muslim identity:

> As every schoolboy knows, the Arabs have at various times inhabited parts of Europe, lived along the Mediterranean, been contiguous to European nations and been assimilated culturally and otherwise, by them . . . . The names of Avicenna and Averroes, the sciences of algebra and medicine, the population and the architecture of Spain and Sicily, the very words of the English language, remind us as they would have reminded the Founding Fathers of the action and interaction of Arabic and non-Arabic elements of our culture . . . . [T]he Arab people stand as one of the chief channels by which the traditions of

181. *Ex parte* Mohriez, 54 F. Supp. 941, 942 (D. Mass. 1944).

182. SAID, *supra* note 1, at 7 ("[O]rientalism depends for its strategy on this flexible positional superiority, which puts the Westerner in a whole series of possible relationships with the Orient without ever losing him the relative upper hand.").

> white Europe, especially the ancient Greek traditions, have been carried into the present.[183]

Despite Wyzanski's holding that Mohamed Mohriez fit the statutory definition of whiteness and was eligible for citizenship, his rationale rested entirely on a construction of Arab identity that was fixed, arcane, and religiously monolithic.[184] While he shifted to highlight Arab identity in positive terms, Wyzanski did not desert the disoriented view of Arab identity that steered the nine decisions before *Mohriez*.

The domestic impact of the ruling in *Mohriez* established that Arab immigrants, Christians, and Muslims alike, met the statutory definition of whiteness and could be naturalized as American citizens. However, the decision did not challenge the prevailing eugenic baseline that Syrian Christians were a racial group distinct from Arab Muslims.[185] Therefore, although *Mohriez* set the precedent that a Muslim immigrant from the Arab World fit within the statutory decision of whiteness, the decision did not retroactively recognize naturalized Syrian Christians as Arabs, or formally acknowledge them as Arab Americans. The courts still viewed both as separate racial groups, bringing about a segregated view of Arab American identity that clashed with the gradually galvanizing mode of Arab identity brought forth by Pan-Arabism.

Wyzanksi was the first Naturalization Era judge to rule that an Arab Muslim fit within the statutory definition of whiteness. Yet, Wyzanksi did not repudiate the long-standing conflation that framed Arab and Muslim as co-extensive terms. This raises a question: What brought about this shift only two years after *Hassan* reaffirmed that Muslim identity was inassimilable within American citizenship?

Decided only two years after *Hassan*, *Mohriez* is cited by scholars as evidence of the arbitrary nature of procedural rulings during the Naturalization Era. This position only partially explains why *Mohriez* departs from the analysis in *Hassan*, and the Arab Naturalization Cases decided before it. Moustafa Bayoumi notes that,

> Hassan and Mohriez are both Muslim (at least by name). What makes their cases noteworthy is not just their faith community but the short span of time between when an Arab Muslim is considered nonwhite (Hassan) and when an Arab Muslim is officially considered white (Mohriez). It is this abrupt

183. *Mohriez*, 54 F. Supp. at 942.
184. *See id.*
185. *See id.*

> shift . . . [that] illustrates not just the capricious nature of racial formation but also the depth to which contemporary American politics creates race, rather than race always creating politics.[186]

John Tehranian echoes Bayoumi, arguing that the conflicting decisions rendered in *Hassan* and *Mohriez* were the product of "internal contradictions and dadaistic logic that find Arabs to qualify as white in some situations and nonwhite in others."[187] Haney Lopez also identifies a theory of racial ideology that could describe the conflicting decisions in the two cases as borne out of the distinct racial methodologies adopted by the Judges Tuttle and Wyzanski in *Hassan* and *Mohriez*, respectively.[188]

Bayoumi, Tehranian and Haney Lopez effectively expose how these clashing rulings are, in large part, the result of a hodgepodge of methodologies employed by naturalization judges. However, factors outside of arbitrary judicial determinations, most specifically, "self-interest leverage" helped deliver citizenship to the petitioner in *Mohriez*, and formal whiteness to Arab Muslim immigrants. Reading *Hassan* and *Mohriez* from a purely domestic lens, absent knowledge of the broader regional and geopolitical developments in a postcolonial Arab World, renders an incomplete examination of these two cases. Assessed more broadly, the ruling in *Mohriez* might be seen as a judicial declaration formulated with the primary aim of advancing U.S. interests in Saudi Arabia and the Arab World at large.[189]

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186. Moustafa Bayoumi, *Racing Religion*, 6 CR: New Centennial Rev. 267, 283 (2006).

187. John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 Yale L.J. 817, 839 (2000).

188. *Cf.* Haney Lopez, *supra* note 112, at 13.

189. Jacobson, *supra* note 153, at 179 ("In so far as the Nationality Act of 1940 is still open to interpretation, it is highly desirable that it should be interpreted so as to promote friendlier relations between the United States and other nations and so as to fulfill the promise that we shall treat all men as created equal.").

V.
EX PARTE MOHRIEZ: NATURALIZATION OR NATURAL RESOURCES?

> "The United States is trying to prove to the people of the world . . . that a free democracy is the most civilized and most secure government yet devised by man."
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> —Amicus Brief from the U.S. Department of Justice, *Brown v. Board of Education*[190]

Ten years before *Brown v. Board of Education*, the United States' postwar foreign policy designs in the Arab World reflected a range of interests that were potentially out of step with the ruling in *Hassan*.[191] Geopolitical factors as well as industrialization set a new template for engaging the Arab World in a manner that eroded the notion of Arabs as threats to American interests. Together, these interests formed both material and ideological factors that contributed to a reassessment of the presumptions that had shaped the earlier approach to Arab naturalization.

American foreign policy interests in Saudi Arabia, and the Arab World at large, set an important backdrop for Wyzanski's ruling in *Mohriez*. Indeed, Wyzanski may well have affirmed the ruling in *Hassan* if not for the development of American interests in Saudi Arabia, and the United States' broader political and economic interests in the region. A key factor in the United States' sociopolitical engagement with the region was the increased demand for oil. Industrialization fueled the global search for the natural resource, which ultimately led U.S. speculators and oil companies into the Arabian Peninsula.[192]

Europe's stranglehold on Middle Eastern oil spurred Herbert Hoover—then Secretary of Commerce—to convene a consortium

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190. Brief for the United States as Amicus Curiae at 6, Brown v. Board of Education, 347 U.S. 483 (1954).

191. *In re* Ahmed Hassan, 48 F. Supp. 843 (E.D. Mich. 1942). This decision exposed how the courts' "racial logic" was not only in flux, but could be manipulated to serve the interests of the ruling elite. *Mohriez* sounded a superficial alarm to Muslim natives of the Arab World that whiteness and citizenship were attainable. However, as *Brown* did not materially alter the reality of segregated schools in the United States, *Mohriez* did not genuinely advance the lives of Arab Muslim immigrants during, or after, the Naturalization Era.

192. MICHAEL B. OREN, POWER, FAITH, AND FANTASY: AMERICA IN THE MIDDLE EAST, 1776 TO THE PRESENT, at 409–10 (2007) ("By the early 1920's, accelerated industrialization, the mass production of automobiles, and electrification of households had propelled the demands for petroleum in the United States well beyond its production capacity.").

of the United States' seven leading petroleum companies.[193] This consortium broke the European monopoly and secured a pathway toward accessing Saudi Arabian oil.[194] Four years later, in 1935, phenomenal reserves of oil were found in Dammam, in the Eastern Province of Saudi Arabia.[195] This was miles away from the future headquarters of the Arabian American Oil Company (Aramco) in Dhahran.[196] During the same year that Hoover's consortium of American oil companies and the Saudi government formed Aramco, the Prophet Mohammed was honored by the U.S. Supreme Court as "one of the greatest lawgivers in the world."[197] This was the very figure U.S. courts maligned up through the beginning of the Twentieth Century.[198]

The shifting backdrop of American interests was also ideological. In 1944, the year Mohriez came to court seeking naturalization, "democracy was, to many Americans, much more than an abstract idea. It was a principle Americans were dying for . . . . [P]art of the meaning of the democracy they fought for was its incompatibility with Nazi racism and anti-Semitism."[199] *Mohriez* offered a strategic springboard toward advancing American interests in the Arab World, which benefitted from a juridical declaration that would resonate among the region's leaders and people.

In line with renewed post-World War II foreign policy interests in the Arab World, the naturalization of Arab Muslim immigrants promoted the broader project of enhancing the United States' profile in the Arab World.[200] Extending citizenship to Muslim immi-

193. *Id.* at 410.

194. *Id.* at 413–14. Hoover's strategy proved effective and formed the first step toward accessing the Arab oil for which a rapidly industrializing United States thirsted. *Id.* Ibn Saud, the King of Saudi Arabia, was skeptical of European countries and Britain in particular, which, in combination with the United States' offer to pay the Saudis in gold and to provide the competing bidder's consultant a thousand-pound annuity, led to a binding bilateral agreement with the U.S. consortium. *Id.*

195. *Id.* at 415.

196. *Contact Us*, SAUDIARAMCO.COM, http://www.saudiaramco.com/en/home/top-footer/contact-us.html (last visited Apr. 4, 2013).

197. See *Prophet Muhammad Honored by U.S. Supreme Court as One of the Greatest Lawgivers of the World in 1935*, SHARIA, http://www.sharia101.org/resources/Prophet%20honored%20by%20Supreme%20Court.pdf (last visited Apr. 4, 2014) for information about the Supreme Court plaque honoring the Prophet Mohammed.

198. *See, e.g.*, Dainese v. Hale, 91 U.S. 13, 15 (1875); Ross v. McIntyre, 140 U.S. 453 (1891).

199. Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61, 68 (1989).

200. *See* Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518, 524 ("In many countries, where

grants from the Arab World, particularly those hailing from nations with considerable value, made the United States a more attractive superpower with whom governments of these countries could align during the Cold War.[201] Wyzanksi's plea for better relations between the United States and other nations suggests that a reversal of *Hassan*, and an unprecedented expansion of whiteness to include Arab Muslims, would facilitate stronger ties with newly independent Arab countries.[202]

In the same way that *Brown*'s[203] call for integration was framed as an endorsement of American democracy,[204] the *Mohriez* decision can be understood as a judicial means to "provide immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world peoples."[205] Judge Wyzanski rationalized that overruling *Hassan* was vital to "promot[ing] friendlier relations between the United States and other nations and so as to fulfill the promise that we shall treat all men as created equal."[206] Thus, Wyzanski's ruling was part of a broader governmental project of "promoting friendlier relations" with states that, like Saudi Arabia, had significant value to the United States during the war.

The sudden shift from *Hassan* in light of increasing American investments in the region suggests that greater interests were at play in *Mohriez*. Echoing Derrick A. Bell, Jr.'s observations that policy shifts benefitting non-whites "cannot be understood without some consideration of the decision's . . . value to whites in policymaking positions able to see the economic and political advances at home and abroad that would follow abandonment of segregation," the *Mohriez* decision must be viewed in light of the value to whites following abandonment of the bar against the naturalization of Muslim immigrants from the Arab World.[207] Sarah Gualtieri contends

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U.S. prestige and leadership have been damaged by the fact of U.S. segregation, it will come as a timely reassertion of the basic American principle that 'all men are created equal.'") (citing Derrick A. Bell, Jr., *Racial Remediation: An Historical Perspective on Current Conditions*, 52 NOTRE DAME L. REV. 5, 12 n.31 (1976)).

201. Dudziak, *supra* note 199, at 62–63 ("U.S. government officials realized that their ability to sell democracy in the Third World was seriously hampered by continuing racial injustice at home.").

202. *Ex parte* Mohriez, 54 F. Supp. 941, 943 (D. Mass. 1944).

203. Brown v. Board of Education, 347 U.S. 483 (1954).

204. *Id.* at 493.

205. *Compare Mohriez*, 54 F. Supp. at 943 *with* Bell, *supra* note 200.

206. *Mohriez*, 54 F. Supp. at 943.

207. *See* Bell, *supra* note 200. In short, *Mohriez* was an exception, not the rule. The decision must be contextualized with the shifting geopolitical events at the

that *Mohriez* extended Arab Muslims a conditional or "honorary" whiteness that, in part, reflects that Wyzanski's ruling may have placed policy interests over a genuine belief that Muslim immigrants from the Arab World fit within the statutory definition of whiteness so long as "they were cast as players in the march of Christian, Western civilization. In other words, Muslim Arabs were deemed white when their religious identity was effaced. In this way they became 'honorary whites,' those accepted into the nation but under suspicion that they did not quite deserve it."[208]

The "honorary whiteness" Muslim immigrants gained as a result of the *Mohriez* ruling is best understood as a judicial compromise that traded the formal assimilation of Arab Muslims for the advancement of U.S. interests in Saudi Arabia, and in the broader Arab World. Immediately after *Mohriez*, and still today, Arab American Muslims occupy the status of "second class citizens," or, in the words of Laura Gomez, "off whites,"[209] on account of both their ethnic and religious identity and the compounded animus both attract.[210] Arab Muslims did not enjoy the substantive benefits of whiteness the *Mohriez* decision promised to extend. Nearly seventy years later, *Mohriez* has yet to deliver the privileges associated with whiteness to Arab American Muslims.[211]

CONCLUSION

"[O], my greatest enemy and benefactor in the whole world is this dumb-hearted mother, this America, in whose iron loins I

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time, and the United States' claim as global power with broadened interests in the Arab World.

208. RACE AND ETHNICITY IN THE EARLY SYRIAN AMERICAN DIASPORA, *supra* note 2, at 160–61.

209. Laura B. Gomez, *Off-White in an Age of White Supremacy: Mexican Elites and the Rights of Indians and Blacks in Nineteenth Century New Mexico*, 25 CHICANO LATINO L.R. 9, 11 (2005).

210. LINDA BOSNIAK, THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP 30–31 (2006) ("[T]here is often a gap between possession of [formal] citizenship status and the enjoyment or performance of citizenship in substantive terms.").

211. Sixty-seven years after *Mohriez* symbolically extended formal citizenship across the Oriental divide, Arab American Muslims have yet to enjoy the real fruits of that promise. However, international incidents and turbulent events in the Arab World still have an immense impact on the imposed identity of Arab citizens. *See generally* Yvonne Yazbeck Haddad, *American Foreign Policy in the Middle East and Its Impact on the Identity of Arab Muslims in the United States*, *in* THE MUSLIMS OF AMERICA 217 (Yvonne Yazbeck Haddad ed., 1991). Arab American identity, more than any other segment of the populace, is acutely sensitive to political events that take place outside of the U.S.'s borders and foreign policy responses to them.

> have been spiritually conceived . . . . But alas, our spiritual mother devours, like a cat, her own children."
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> —Ameen Rihani, The Book of Khalid[212]'

Arab identity was inextricably linked to Muslim identity during the Naturalization Era. Although a religious identity, the mainstreaming of Orientalist baselines combined with political propaganda in the late Eighteenth Century converted Islam into an ethno-racial identity in the image of Arabs. Following the Barbary Wars, the United States positioned Arabs as a menace hostile to American society and values, which aligned with the Orientalist discourse that established this position. The Arab Naturalization Cases, beginning in 1909, illustrate how Arab identity was framed as exclusively Muslim and invariably hostile.

The judges presiding over the ten Arab Naturalization Cases adopted this orientation toward Arab identity. Early judicial decisions positioned Islam as hostile to the United States and Muslims inassimilable with American society, an orientation that established a de facto bar against the naturalization of Muslim immigrants from the Arab World and elsewhere.

Christianity was the lone portal toward whiteness and naturalization for Arab immigrants during the Naturalization Era. The first waves of immigrants from the region were overwhelmingly Christian, and the judicial orientation toward Arab identity created a burden for Christian petitioners, who were forced to prove in court that they were not Muslim. As demonstrated by the first eight of the Arab Naturalization Cases, however, the possibility of whiteness through its association with Christianity did not guarantee citizenship to Christian Syrians. *Dow v. United States* ended that debate, narrowly holding that Syrian Christians—a group distinct from Arabs—could be naturalized. Naturalization Era judges continued to apply a distorted understanding of Arab as synonymous with Muslim identity even after 1944, when American interests in Saudi Arabia and the transitioning Arab World occasioned the naturalization of the first Arab Muslim immigrant.

In addition to providing a legal history of the origins of Arab American identity, this Article also highlights the entrenched legal

212. AMEEN RIHANI, THE BOOK OF KHALID 124–25 (Melville House Publ'g 2012) (1911). The Book of Khalid is considered the first Arab American novel. Rihani was a contemporary of the iconic Lebanese poet, Khalil Gibran and collaborated with him as part of the "Pen League." The collective was comprised of Arab writers who migrated to America.

roots of the most salient tropes applied against Arabs today. A close reading of the Arab Naturalization Cases vividly reveals how distorted images and ideas that were judicially executed to stifle the naturalization of immigrants nearly a century ago are redeployed today against Arabs,[213] Muslims,[214] and communities perceived to be Arab or Muslim. Furthermore, this Article contends that religion generally determined whether a judge would deem an immigrant-petitioner from the Arab World to be "white" and to extend naturalization as an American citizen. This Article also traces the earliest legal catalysts of the present-day classification of Arab Americans as white by law. *Dow v. United States* narrowly extended citizenship to Syrian Christians based on the judicial (and eugenic) view that they were non-Arabs on account of their religion, and *Mohriez* broke the barrier that restricted citizenship to Arab Muslims. Jointly, these decisions form the legal foundation for the prevailing formal designation of Arab Americans as white.

Much of the legal scholarship focusing on Arab and Muslim Americans has fallen victim to the distortion of Arab identity rooted in the Naturalization Era. In an attempt to articulate post-9/11 victimization and marginalization, many legal commentators have reinforced the Orientalist conflation of Arab and Muslim Americans and caricatured them as similarly situated victims and villains. Natsu Saito aptly observes that,

> Arab Americans and Muslims have been "raced" as "terrorists": foreign, disloyal, and imminently threatening. Although Arabs trace their roots to the Middle East and claim many different religious backgrounds, and Muslims come from all over the world . . . these distinctions are blurred and negative images about either Arabs or Muslims are often attributed to both.[215]

Saito's disentanglement of Arab from Muslim identity is the first step toward undoing the conflation of both.

The second step is adopting an "intersectional analysis," which closely considers the distinct markers of Arab American identity

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213. *See* Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); Amaney Jamal, *Civil Liberties and the Otherization of Arab and Muslim Americans*, *in* RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS 114, 117–18 (Amaney Jamal & Nadine Naber eds., 2008).

214. *See* Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV 1259, 1264 (2004).

215. Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the "Racing" of Arab Americans as "Terrorists,"* 8 ASIAN L.J. 1, 12 (2001).

and neatly looks at historical variations and situated differences within its boundaries.[216] Arab Americans today are more heterogeneous than ever before. Recent immigrant waves from Iraq, Yemen, Morocco, and Somalia (considered Arabs by some accounts)[217] illustrate how phenotype, socioeconomic status, religion, and state relations with their home state, intensify the marginalization of some, and facilitate greater access to important resources—including whiteness—for others.[218] While this brand of intersectional scholarship is rare,[219] this Article offers a much needed preface to the robust and still developing body of post-9/11 scholarship that has failed to disentangle, and rearticulate the relationship between, Arab and Muslim identity.[220]

The Arab Naturalization Cases are the very legal grounds from which today's misrepresentations and misunderstandings of Arab and Muslim identity emanate. Without a historical preface, these contemporary issues may appear to be new, and older dynamics that characterized the Naturalization Era may be understood as a distinct chapter of a distant past. Yet, reading the Arab Naturalization Cases in conjunction with the post-9/11 profiling of Arab Americans as "foreign," "disloyal," and "suspected terrorists" should reorient that view[221] and unveil that the legal construction of Arab American identity was *naturalized* nearly one-hundred years before 9/11.[222]

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216. *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1282–83 (1991).

217. RANDY CAPPS, KRISTEN MCCABE & MICHAEL FIX, NEW STREAMS: BLACK AFRICAN MIGRATION TO THE UNITED STATES 4–5 (2011), *available at* http://www.migrationpolicy.org/pubs/africanmigrationus.pdf.

218. *See* ASI & BEAULIEU, *supra* note 38, at 4–5.

219. See generally Jen'nan Ghazal Read, *Discrimination and Identity Formation in a Post-9/11 Era: A Comparison of Muslim and Christian Arab Americans*, *in* RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS 305 (Amaney Jamal & Nadine Naber eds., 2008), for a discussion of the distinct experiences of Arab American Christian and Muslim citizens following 9/11.

220. *See, e.g.*, Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

221. *See also* Akram & Johnson, *supra* note 213, at 341.

222. Reem Bahdi provides a particularly effective definition of profiling, which "involves separating a subsection of the population from the larger whole on the basis of specific criteria that purportedly correlates to risk and subjecting the subgroup to special scrutiny for the purposes of preventing violence, crime, or some other undesirable activity." Bahdi, *supra* note 24, at 295.

TABLE OF CASES: ARAB NATURALIZATION CASES

Case	*Petitioner's Identity & Holding*
George Shishim v. United States, (1909) Los Angeles Superior Court.[223]	Syrian Christian resident of Los Angeles ruled white by law.
In re Najour, 174 F. 735 (1909), Circuit Court for the Northern District Georgia.	Lebanese Maronite that resided in Georgia, Costa George Najour granted citizenship and ruled white.
In re Mudarri, 176 F. 465 (1910), Circuit Court, D. Massachusetts.	Syrian Christian born in Damascus who settled in Massachusetts. Court found Mudarri to be white and thus a citizen.
In re Ellis, 179 F. 1002 (1910), District Court, D. Oregon.	A Christian (Maronite) from near Beirut (Lebanon) who resided in Oregon. Court found Ellis to be white and a citizen.
Ex Parte Shahid, 205 F. 812 (1913), District Court, E.D. South Carolina.	Maronite from Zahle, Lebanon. South Carolina Court denied Shahid petition, and found him non-white.
Ex Parte Dow, 211 F. 486 (1914), District Court, E.D. South Carolina.	A Maronite (Christian) from Batroun (Lebanon) who settled in South Carolina. Dow denied citizenship and ruled non-white.
In re Dow, 213 F. 355 (1914), District Court, E.D. South Carolina.	Dow denied citizenship for second time by South Carolina Court.
Dow v. United States, 226 F. 145 (1915), Circuit Court of Appeals, Fourth Circuit.	Dow wins appeal in 4th District Court, establishing rule that Syrian Christians fit within the statutory definition of whiteness.

223. No court transcripts available.

In re Ahmed Hassan, 48 F. Supp. 843 (1942), District Court, E.D. Michigan, Southern Division.	Native from Yemen denied citizenship, found to be non-white on account of his Muslim identity.
Ex Parte Mohriez, 54 F. Supp. 941 (1944), District Court, D. Massachusetts.	A Muslim from Saudi Arabia the court found to be within the statutory definition of whiteness. Decision was driven by interest to promote, "[f]riendlier relations between the U.S . . . and other nations."