A "Vital Question of Self-Preservation": Chinese Wives, Merchants, and American Citizens Caught in the 1924 Immigration Act

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INTRODUCTION

Citizens typically have more rights than noncitizens. But in two 1925 cases, *Chang Chan v. Nagle* and *Cheung Sum Shee v. Nagle*, the Supreme Court gave noncitizens more rights than citizens.[1] Specifically, noncitizen Chinese merchants were allowed to bring their wives over from China while citizens were not. In this Note, I argue that the anomalous decisions granting greater rights to the wives of noncitizens than citizens were rooted in resentment over the Fourteenth Amendment's guarantee of birthright citizenship to the U.S.-born children of Chinese laborers. Congress had completely blocked immigration by Chinese manual laborers since 1888, and allowed immigration only by

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1. Chang Chan v. Nagle, 268 U.S. 346 (1925); Cheung Sum Shee v. Nagle, 268 U.S. 336 (1925).

higher-class Chinese merchants.[2] But despite Congress's power to ban immigration of Chinese laborers, it was powerless to stem the growing presence of citizen children born to Chinese laborers already present in the country. So Congress and the Supreme Court did what they could to prevent male citizens of Chinese descent from being able to bring their spouses to the United States.

Scholars have written about the ban on immigration of citizen's wives from China,[3] but they have not considered the other half of the equation: the lenient approach taken with respect to wives of noncitizen merchants. The history of *Chang Chan v. Nagle* and *Cheung Sum Shee v. Nagle* reveals that both cases began with the same small group of immigrant women. Using documents available at the National Archives at San Francisco—the immigration files of the plaintiffs, the briefs and letters written by these women's lawyers, and the responses of the United States government—this Note tells the history of both groups' challenges to their exclusion. Through these documents, this Note follows the lives and litigation history of these women who set sail from China before the 1924 Immigration Act was in force, but arrived after.

While the results of their Supreme Court cases would distinguish the women, the nine Chinese wives who sailed on the *Lincoln* and arrived on Angel Island on July 11, 1924 were initially in a similar situation. They were mostly young, newlywed, and from villages in rural China. Of course, there were differences between the women that mattered to officials at the time—only some were literate, only some had bound feet.[4] Immigration authorities noted these differences while denying entry to all the women. But the officials largely ignored the difference that would become the most significant legally: some of the women were married to noncitizen merchants, while others were married to U.S. citizens. Ten months after the *Lincoln's* arrival, its passengers had become plaintiffs in two cases challenging the Immigration Act of 1924. In its counter-

2. Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952); Scott Act, ch. 1015, 25 Stat. 476 (1888) (repealed 1943).

3. *See, e.g.*, ERIKA LEE, AT AMERICA'S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882-1943 (2003); Rose Cuison Villazor, *The Other* Loving*: Uncovering the Federal Government's Racial Regulation of Marriage*, 86 N.Y.U. L. REV. 1361, 1385-86 (2011); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 453-57 (2005); Todd Stevens, *Tender Ties: Husbands' Rights and Racial Exclusion in Chinese Marriage Cases*, *1882-1924*, 27 LAW & SOC. INQUIRY 271, 276-77 (2002).

4. *See, e.g.*, *Ex parte* Kon Shee, Transcript of U.S. Department of Labor Immigration Service Board of Special Inquiry Hearing, Angel Island (Angel Island Hearing Transcript), July 15, 1924, Case File 23517/6-16, Immigration Arrival Investigation Case Files, 1884-1944 (Immigration Case Files), Records of the Immigration and Naturalization Service, 1787-2004, Record Group 85 (RG 85), National Archives and Records Administration–Pacific Region (San Francisco) (NARA–Pacific Region (SF)), at 1 [hereinafter Kon Shee Hearing Transcript] ("I can speak Chinese. Do not write or read."); *Ex parte* Wong Shee, Angel Island Hearing Transcript, July 15, 1924, Case File 23517/6-18, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 11 [hereinafter Wong Shee Hearing Transcript] (noting that petitioner "[h]as bound feet").

intuitive pair of decisions, the Supreme Court ruled in 1925 that the Chinese wives of U.S. citizens were to be deported back to China while the wives of noncitizen Chinese merchants would be granted legal residence.[5]

Favoring noncitizen merchant husbands over U.S. citizen husbands is doctrinally surprising. By doing so, the Supreme Court went against its long history of privileging citizens over noncitizens.[6] Just two years prior, for example, the Court had upheld Washington State's prohibition of land ownership by some noncitizens, explaining that the "rights, privileges and duties of aliens differ widely from those of citizens."[7] And privileging citizens was—and is—especially established in the immigration context, where Congress has plenary power over immigration. For example, in upholding the deportation of longtime U.S. residents, the Court explained that the residents "having taken no steps towards becoming citizens, and incapable of becoming such under the naturalization laws . . . remain subject to the power of Congress to expel them . . . whenever in its judgment, their removal is necessary or expedient for the public interest."[8] As noncitizens, Chinese resident merchants had very few rights. In light of this history, the reasons behind the Court's decision to privilege the noncitizen merchants are quite interesting. They shed light on the fervent suspicion that existed around Chinese immigration generally, and Chinese-American citizens in particular.

In a final irony, despite the Court's decision that the Chinese wives of U.S. citizens must be refused admission to the United States regardless of the "hardships" that refusal would cause,[9] all but one of those wives stayed permanently in the United States.[10] Their lives took different directions. For example, Yee Shee spent her life running Sunrise Grocery with her husband in Phoenix,[11] while Haw Shee was under continued suspicion from the immigration authorities for possibly practicing prostitution in San Francisco.[12] Together, the stories

5. *Compare Chang Chan*, 268 U.S. at 346 (barring entry by Chinese wives of U.S. citizens), *with Cheung Sum Shee*, 268 U.S. at 336 (granting entry to Chinese wives of Chinese noncitizen merchants).

6. For more on the history of privileging citizens in the immigration context, see Hiroshi Motomura, Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States 118-25 (2006).

7. Terrace v. Thompson, 263 U.S. 197, 218 (1923).

8. Fong Yue Ting v. United States, 149 U.S. 698, 724 (1893).

9. *Chang Chan*, 268 U.S. at 353.

10. *See, e.g.*, Edward L. Haff, Acting Commissioner of Immigration, Angel Island, to Inspector in Charge, Immigration Service, Tuscon, Arizona, Aug. 23, 1927, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF) [hereinafter Haff Letter]; Loyd L. Netherlin, Officer in Charge, Phoenix, Arizona, to District Director, San Francisco, Dec. 9, 1953, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF) [hereinafter Netherlin Letter].

11. *Ex parte* Yee Shee, Angel Island Hearing Transcript, Aug. 10, 1925, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 1 [hereinafter Yee Shee Hearing Transcript].

12. Phillip B. Jones, Inspector in Charge, Oriental Division, to Commissioner of Immi-

of the plaintiffs who stayed in the United States regardless of victories or losses in the Supreme Court reveal a reality of immigration in the 1920s that was undeterred by seemingly final Supreme Court decisions.

This Note looks at the wives' exclusion from the United States, the laws that led to that exclusion, and the legal strategy that challenged that exclusion. It begins by telling the story of the wives' detention on Angel Island in the San Francisco Bay, describing the uncertainty they faced upon arriving from China. Next, it explains how the history of U.S. laws concerning Chinese immigration led Chinese immigrant wives to be in such a vulnerable position in 1924. The Note then analyzes the legal challenge that both the wives of citizens and merchants brought to their exclusion from the United States. Finally, it discusses possible explanations for why the Supreme Court ultimately privileged noncitizens over citizens, including policy concerns about birthright citizenship, miscegenation, assimilation, and social class.

Stepping away from the court battles, the Note next examines how all the women managed to avoid deportation despite the Supreme Court's decision to bar the wives of citizens from entering. In the short term, those wives' continued presence in the United States was due to the decisions of local immigration officials whose power over the women's individual cases rivaled that of the Supreme Court. In the long term, the women were all able to stay in the United States because Chinese advocates and their allies in Congress succeeded in passing a narrowly tailored amendment to the Immigration Act of 1924.

Ultimately, the immigration experiences and legal battles of the *Lincoln* passengers illuminate the competing tensions that existed in the 1920s around immigration and birthright citizenship. These tensions resulted in the Supreme Court making the unusual decision in *Chang Chan v. Nagle* and *Cheung Sum Shee v. Nagle* to give noncitizens more rights than citizens.[13] The fact that such an unprecedented outcome emerged from these cases suggests the extent to which the issues surrounding Chinese wives in the 1920s challenged the established immigration doctrine.

These tensions went beyond the ideological. The interactions among the Supreme Court, local immigration officials, and the legislature illustrate the era's uncertainty about where authority over immigration matters rested and how that authority would be asserted or subverted. Moreover, the women's personal stories from the period, which ranged from enduring pregnancy on Angel Island to suing a street car company following a husband's accidental death, reveal the real experiences of Chinese women immigrants that the era's ideological debates obscure.

I. LEGAL AND HUMAN LIMBO: EXCLUSION FROM THE UNITED STATES AND

gration, Sept. 2, 1930, Case File 23550/6-13, Immigration Case Files, RG 85, NARA–Pacific Region (SF) [hereinafter Haw Shee Letter].

13. *Chang Chan*, 268 U.S. at 346; *Cheung Sum Shee*, 268 U.S. at 336.

DETENTION ON ANGEL ISLAND

On July 1, 1924, while the *Lincoln*'s passengers were en route from Hong Kong to San Francisco, the Immigration Act of 1924 went into effect. That Act stated that, with few exceptions, "[n]o alien ineligible to citizenship shall be admitted to the United States."[14] The term "ineligible to citizenship" was code for, among other things, the Chinese.[15] In 1924, Chinese people could not naturalize and consequently would be found inadmissible by Angel Island officials. Nevertheless, when the Act first passed, there was much uncertainty about to whom it applied. In fact, the United States Consulate in China originally thought that the Act barred the wives of merchants from immigrating, but permitted the wives of citizens to do so.[16] The Consulate did not know how the 1924 Act would affect Chinese women and received nothing in response to the telegram it sent to Washington asking how to apply the law. As a result, the Consulate gave the Oriental Steamship Company, owner of the *Lincoln*, incorrect advice, telling it that "in [the] absence of instructions from Washington" they could continue to carry Chinese wives to San Francisco.[17] Consequently, Chinese wives sailed from Hong Kong in June of 1924 believing that paperwork their husbands had given them would ease their entry into the United States.[18]

Upon arrival in the United States, however, each woman aboard the *Lincoln* was deemed "not admissible under . . . the Immigration Act of 1924 for the reason that she is an alien ineligible to citizenship."[19] Unlike their predecessors at Angel Island, these women would not be admitted upon proving that their marriages were genuine. Through interpreters, the immigration officials asked each woman whether she wished to appeal the decision. Some said that they would leave that decision up to their husbands and others responded that they would like to appeal.[20] In the interim, the women were detained on Angel

14. Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924) (repealed 1952).

15. MOTOMURA, *supra* note 6, at 75.

16. Y. Tsutsumi, Manager, Oriental Steamship Co., to T. Komatsu, Manager, San Francisco Branch Office, July 11, 1924, Case File 23550/6-13, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

17. Y. Tsutsumi, Manager, Oriental Steamship Co., to T. Komatsu, Manger, San Francisco Branch Office, Aug. 5, 1924, Case File 23550/6-13, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 1 [hereinafter Tsutsumi Letter]; *see also* Kon Shee Hearing Transcript, *supra* note 4, at 1.

18. Chinese men who left the United States to bring over their wives would arrange for identification papers to be sent before departure that would ease their wives' admission to the United States. Often, these papers would indicate that the man had not yet found a wife, and the papers would be completed in China once she was chosen. *See, e.g.*, *Ex parte* Yee Shee, Entry Certificate, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

19. *See, e.g.*, Kon Shee Hearing Transcript, *supra* note 4, at 2; Wong Shee Hearing Transcript, *supra* note 4, at 12.

20. Wong Shee Hearing Transcript, *supra* note 4, at 12.

Island.

Once the *Lincoln* passengers had been excluded, the Oriental Steamship Company in San Francisco sent an urgent telegram to its office in Hong Kong: "Do not accept Chinese wives of natives or citizens or family of merchants unless they are coming [to the] United States of America [for a] temporary stay not exceeding 6 months."[21] However, the telegram arrived too late to stop the *Shinyo Maru's* passengers, who arrived at Angel Island on July 23, 1924. Like the *Lincoln*, the *Shinyo Maru* transported Chinese women who sought admission to the United States based on their marriages to husbands who were either U.S. citizens or noncitizen merchants.[22] As a result, the Oriental Steamship Company faced $30,000 in fines for transporting ten wives of citizens, six wives of merchants, and fourteen children of merchants on the *Shinyo Maru*.[23]

Upon arriving at Angel Island, Lum Shee, the nineteen-year-old wife of a citizen, was told that she was excludable from the United States and had forty-eight hours to appeal. Otherwise, she would be deported. "Do you wish to appeal?" asked the immigration official. She replied, "I wish to appeal through my husband."[24] Her husband wasted no time; that same day he sent a letter to the Angel Island Commissioner of Immigration informing him that he had employed Charles Trumbly as his representative.[25] While the letter did not arrive until a week later,[26] immigration officials knew immediately that Trumbly would represent Lum Shee, and began directing their letters to him.[27] Trumbly was also representing all of the other women who had arrived on the *Shinyo Maru*; he had an active practice on Angel Island and was known to the authorities there.[28] The women and their lawyers had cause for optimism. There was a long history of Chinese men and women hiring local lawyers to challenge their exclusion, and previously many of these lawyers had won their cases.[29]

However, the 1924 Act, with its apparent blanket exclusion of Chinese persons because of their ineligibility to naturalize, posed new hurdles for these lawyers and their clients. All the women on the *Lincoln* and *Shinyo Maru* lost

21. Tsutsumi Letter, *supra* note 17, at 1.

22. *See, e.g.*, *Ex parte* Lum Shee, Angel Island Hearing Transcript, July 30, 1924, Case File 23550/4-8, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 1 [hereinafter Lum Shee Hearing Transcript].

23. Tsutsumi Letter, *supra* note 17, at 1.

24. Lum Shee Hearing Transcript, *supra* note 22, at 4.

25. Jow Chung, to Commissioner of Immigration, Angel Island, July 30, 1924, Case File 23550/4-8, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

26. *Id*. The handwriting on the document says, "Rec'd Aug 7, 1924."

27. John D. Nagle, Commissioner of Immigration, Angel Island, to Charles A. Trumbly, July 31, 1924, Case File 23550/4-8, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

28. See *id.*

29. Lucy E. Salyer, *"Laws Harsh as Tigers": Enforcement of the Chinese Exclusion Laws, 1891-1924*, *in* ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882-1943, at 57, 62-63 (Sucheng Chan ed., 1991).

their appeals to the Secretary of Labor Review Board, which concluded that the applicants were inadmissible as a matter of law.[30] In August of 1924, each woman was "scheduled for deportation on the next available steamer of the line on which [she] arrived."[31] A group of lawyers filed a writ of habeas corpus on the women's behalf in federal district court, asserting that immigration officials had misconstrued the Immigration Act of 1924.[32]

While their appeals worked through the system, the women were detained on Angel Island, where many suffered hardships. Eighteen-year-old Yee Shee had recently married her husband, a noncitizen merchant who owned a grocery store in Arizona. He had traveled the year before to China to find a wife.[33] Yee Shee was pregnant when she landed on Angel Island. After three months of detention, immigration officials decided that they would release her, but only when labor was imminent:

[T]his alien is approximately eight months advanced in pregnancy. The facilities in the Angel Island Hospital are limited and insufficient for the care of obstetrical cases. That Public Health official recommends that the alien receive modern care during her lying in period. Accordingly, this notification is supplied you in order that arrangements can be made by your [steamship] company to have the alien removed from Angel Island and furnished proper treatment when parturition becomes imminent . . . .[34]

Evidently, it was hard to get released from Angel Island—a woman who was eight months pregnant had to wait until she was even closer to giving birth.

Sometimes, this rigidity had tragic results. Historians Erika Lee and Judy Yung chronicle the story of Soto Shee, another woman who had traveled on the *Shinyo Maru*. Soto Shee, the wife of a U.S. citizen, arrived at Angel Island two months pregnant and with a seven-month-old son. While detained on the island, her son died of a stomach infection and was taken to San Francisco for burial. Soto Shee desperately wanted to be released from Angel Island to join her citizen husband in San Francisco, but her request was refused. She was only released on bond after hanging herself from a rope in an attempt at suicide. After

30. *Ex parte* Cheung Sum Shee, Opening Brief for Petitioners, Case File 18416, Admiralty Case Files, 1851-1966 (Admiralty Files), Records of the District Courts of the United States, 1685-2004, Record Group 21 (RG 21), NARA–Pacific Region (SF), at 4 [hereinafter Opening Brief of Petitioners] ("Inasmuch as it is believed that the applicants are mandatorily excluded by law, the Board of Review has no alternative than to recommend exclusion." (internal quotation marks omitted)).

31. John D. Nagle, Commissioner of Immigration, Angel Island, to J.P. Fallon, Aug. 13, 1924, Case File 23517/2-3, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

32. *Ex parte* Chang Chan, Petition for Writ of Habeas Corpus, Case File 18417, Admiralty Files, RG 21, NARA–Pacific Region (SF), at 12 [hereinafter Chang Chan Petition for Writ].

33. *Ex parte* Yee Shee, Entry Certificate, *supra* note 18.

34. Edward L. Haff, Acting Commissioner of Immigration, Angel Island, to Toyo Kisen Kaisha SS Co., San Francisco, Oct. 21, 1924, Case File 23550/4-5, RG 85, NARA–Pacific Region (SF).

her release from Angel Island, Soto Shee gave birth to a daughter whom she named May Ho, meaning America Good, hoping that everything would be good for them now in America.[35]

Most of the other women from the *Shinyo Maru* and the *Lincoln* waited on Angel Island, hoping that the courts would release them. Those courts were charged with figuring out how fifty years of laws and treaties restricting the immigration and naturalization of Chinese people applied to the women now held in detention.

II. CONGRESS'S INCREASINGLY RESTRICTIVE CHINESE IMMIGRATION POLICY: 1868-1924

Between 1868 and 1924 Congress tightened immigration policy towards China but established exceptions for U.S. citizens, merchants, and their families. U.S. policy toward Chinese immigration changed dramatically between 1868, the year the United States established free migration with China, and 1888, when the United States banned the entry of all Chinese laborers. In sweeping language, the Burlingame Treaty of 1868 had established free migration between China and the United States, declaring "the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other."[36] Nevertheless, against a background of growing anti-Chinese sentiment, subsequent laws and treaties restricted immigration from China to the United States.[37] Notably, the Burlingame Treaty of 1868 was revised in 1880 to limit new immigration from China, allowing immigration only of "teachers, students, merchants . . . with their body and household servants, and Chinese laborers who are now in the United States."[38] The restrictive laws culminated in the Chinese Exclusion Act of 1882[39] and the Scott Act of 1888,[40] which together completely banned the entry of Chinese laborers, regardless of whether they had previously lived in the United States.

The Scott Act, however, did not end all immigration from China. To begin with, it specifically exempted Chinese merchants from its restrictions.[41] Addi-

35. ERIKA LEE & JUDY YUNG, Angel Island: Immigrant Gateway to America 101-02 (2010).

36. Treaty with China, U.S.-China, July 28, 1868, 16 Stat. 739, 740 [hereinafter Burlingame Treaty].

37. *See* MOTOMURA, *supra* note 6, at 15-17, 25-26.

38. Treaty between the United States and China Concerning Immigration, U.S.-China, Nov. 17, 1880, 22 Stat. 826, 827 [hereinafter Angell Treaty].

39. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-59 ("[T]he coming of Chinese laborers to the United States . . . is hereby, suspended . . . . "). In 1904, the Act was extended indefinitely; it remained in effect until 1943. MOTOMURA, *supra* note 6, at 25.

40. Scott Act, ch. 1015, 25 Stat. 476 (1888) (repealed 1943).

41. *Id.*

tionally, litigation kept doors to immigration open for some Chinese wives. Both laborers and merchants already in the country fought in the courts for the admission of their wives who were arriving from China. Ultimately, the courts held that merchants' wives were allowed entry, though wives of laborers were not.[42] However, distinctions between the immigration status of merchants and laborers would last only one generation: following the Supreme Court's 1898 ruling in *United States v. Wong Kim Ark*, the U.S.-born children of both laborers and merchants were U.S. citizens.[43]

Initially, the courts had held that the Constitution privileged citizens, and that U.S citizens of Chinese ancestry thus had at least as many rights as noncitizen Chinese merchants. In 1902, having previously found the wives of merchants admissible, the Ninth Circuit determined that the Chinese wife of a U.S. citizen could not be deported. The court reasoned that if the wives of merchants were admissible, the wives of citizens must be as well because "the native born, by virtue of his birth, becomes a citizen of the United States, and is entitled to greater rights and privileges than the alien merchant."[44] While the assertion that citizens were entitled to more rights than noncitizen merchants would be put into question by the Supreme Court's subsequent 1925 decisions,[45] both Chinese merchants and U.S. citizens initially had good reason to believe that their wives would be admitted to the United States following arrival at Angel Island.

Even while restrictions against Chinese immigration tightened in the first decades of the twentieth century through the Chinese Exclusion laws,[46] the wives of both Chinese merchants and native-born citizens had been allowed entry. Of course, admission was not easy. Upon arrival, women claiming to be married to merchants or U.S. citizens were detained at Angel Island for months, or even years.[47] Alleged wives had to prove the authenticity of their relationship with their husband by answering, in interview after interview, questions on the details of their husbands' villages in China.[48] Stating that one's wedding

42. United States v. Gue Lim, 176 U.S. 459, 468 (1900) (holding wives of merchants admissible); Case of the Chinese Wife, 21 F. 785, 786 (C.C.D. Cal. 1884) (holding wives of laborers inadmissible, and stating that that the laborer "can return with and protect his child-wife in the celestial empire.").

43. *See* United States v. Wong Kim Ark, 169 U.S. 649 (1898).

44. Tsoi Sim v. United States, 116 F. 920, 925 (9th Cir. 1902).

45. Chang Chan v. Nagle, 268 U.S. 346 (1925); Cheung Sum Shee v. Nagle, 268 U.S. 336 (1925).

46. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58.

47. ROBERT ERIC BARDE, IMMIGRATION AT THE GOLDEN GATE: PASSENGER SHIPS, EXCLUSION, AND ANGEL ISLAND 21 (2008); Roger Daniels, *No Lamps Were Lit for Them: Angel Island and the Historiography of Asian American Immigration*, J. AM. ETHNIC HIST., Fall 1997, at 3, 8 ("[T]he longest individual confinement is said to have been two years . . . . ").

48. *See e.g.*, Tsui Shee v. Backus, Transcript of Record, Case File 2784, Appeals Case Files, 1891-1985, Records of the U.S. Courts of Appeals, 1891-1992, Record Group 276, NARA–Pacific Region (SF), at 48-49 (containing a transcript of the questioning the woman faced).

veil was red, when one's husband had told authorities it was black, demonstrated to the authorities that the claimed relationship was fraudulent. Such a finding could result in immediate deportation.[49] Nevertheless, once the authorities believed the veracity of a woman's claimed relationship, they released her from Angel Island to live with her husband. On average, 400 Chinese wives were admitted yearly into the United States between 1910 and 1924.[50]

These numbers plummeted following enactment of the Immigration Act of 1924.[51] In passing its most comprehensive immigration restrictions to date, Congress set quotas for how many immigrants could come from various countries.[52] Moreover, Congress leveraged the already racially restrictive naturalization laws, which allowed only whites and blacks to naturalize, to entirely prevent Asians from legally immigrating. The 1924 Act made the eligibility to naturalize a criterion for entering the United States as an immigrant.[53] Asians were not allowed to naturalize.[54] By restricting entry visas to those who could naturalize, Congress thus barred Asians from immigrating to the United States and living here even as noncitizen residents.

The fact that Asians were "ineligible to naturalize" was well known, and Congress consciously targeted Asian immigrants when it restricted entry to those who could naturalize. The Immigration Act of 1924 was one in a string of laws that implicitly targeted Asians by relying on explicitly discriminatory naturalization laws. Chinese wives were ineligible for citizenship because of longstanding legislation that racially restricted naturalization; these restrictions long predated the first federal restrictions on immigration.[55] Even while enabling free migration between China and the United States, the Burlingame Treaty was clear that migrants would not become citizens.[56] In 1790, the first Congress passed a law providing for naturalization but limiting it to whites. That Act established that "any alien *being a free white person* . . . may be admitted to become a citizen thereof."[57] After the Civil War, naturalization was extended in 1870 to "aliens of African nativity and to persons of African descent."[58] At this time, Congress considered opening citizenship to all, regard-

49. *Id.* at 40.

50. *See* LEE, *supra* note 3, at 98.

51. Daniels, *supra* note 47, at 8-9.

52. Immigration Act of 1924, ch. 190, 43 Stat. 153, 159.

53. *Id.* at 162.

54. *See e.g.*, Ozawa v. United States, 260 U.S. 178, 198 (1922).

55. The Page Law of 1875, banning the immigration of Chinese prostitutes, "was the first restrictive federal immigration statute." Kerry Abrams, *Polygamy Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 641 (2005).

56. Burlingame Treaty, *supra* note 36, at 740 ("[N]othing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States.").

57. Act of Mar. 26, 1790, ch. 3, 1 Stat. 103, 103 (emphasis added).

58. Act of July 14, 1870, ch. 254, 16 Stat. 254, 256 (amending the Naturalization Laws).

less of race or nationality, but it rejected this proposal.[59] Aversion to Chinese naturalization motivated the proposal's rejection.[60]

In baring Chinese immigrants from naturalizing, politicians had argued that the unworthy Chinese could not be trusted with the rights of American citizenship and lacked the "brain capacity" to comprehend self-governance.[61] The courts enforced this restrictive naturalization policy, holding that the 1870 legislation barred Chinese from naturalizing.[62] Moreover, the Chinese Exclusion Act of 1882 explicitly prohibited all courts from admitting Chinese persons to citizenship.[63] Racially restrictive laws still prevented Asians from naturalizing in 1924, the year that Congress made eligibility to naturalize a prerequisite to enter the United States as an immigrant.[64] In fact, Chinese people comprised the only group of citizens ever statutorily banned from naturalizing,[65] and they would not be permitted to naturalize until 1943.[66]

During this period, laws that applied to those "ineligible to citizenship" intentionally targeted Asians while appearing to be race-neutral.[67] For example, in 1913 California passed the Alien Land Law, barring those ineligible to citizenship from inheriting or bequeathing property.[68] The 1922 Cable Act used the same language to continue the denaturalization of wives of Asian men even as it ended denaturalization for wives of white and black foreigners.[69] Nevertheless, despite the fact that lawmakers knew that the term "people ineligible to citizenship" was a veiled reference to Asians, it appears that Chinese wives were not the intended targets of the Immigration Act of 1924.

The Immigration Act of 1924 expressly exempted wives of citizens from

59. MOTOMURA, *supra* note 6, at 73.

60. *Id.*

61. LEE, *supra* note 3, at 100.

62. MOTOMURA, *supra* note 6, at 74.

63. *See* Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 59 (executing certain treaty stipulations relating to Chinese); Fong Yue Ting v. United States, 149 U.S. 698, 716 (1893) ("Chinese persons, not born in this country, have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws."). For further discussion of naturalization by Chinese residents, see MOTOMURA, *supra* note 6, at 74.

64. *See, e.g.*, Ozawa v. United States, 260 U.S. 178, 194-98 (1922) (holding that naturalization was available only to white persons and persons of African descent, and that a Japanese man could not fall into either of these categories).

65. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 ("That hereafter no State court or court of the United States shall admit Chinese to citizenship . . . .").

66. Magnuson Act, ch. 344, 57 Stat. 600 (1943) (repealing Chinese Exclusion Acts); *see also* IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 44-45 (1996) (noting that the 1943 Act was spurred in part by China's alliance with the U.S. during World War II).

67. MOTOMURA, *supra* note 6, at 75.

68. Alien Land Law, ch. 113, 1913 Cal. Stat. 206.

69. Cable Act of 1922, ch. 411, 42 Stat. 1021, 1022 (relative to the naturalization and citizenship of married women) ("[A]ny woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States."); *see* Volpp, *supra* note 3, at 407.

its restrictions. In congressional debates around whether to pass the Act, representatives repeatedly highlighted that the Act created an exception for the "husband or wife of a citizen of the United States."[70] This exception clearly applied to Eastern and Southern European wives, despite the strict quotas imposed on immigrants from those regions. But the exception conflicted with the widely supported proposal to ban immigration from China. One representative explained that it was "imperative that we do not admit those who would make undesirable citizens or those who are ineligible to become citizens or those who could not be assimilated."[71] However, the desire to racially limit immigration was not unanimous. To applause, another representative stated: "I can not stultify myself by voting for the present bill and overwhelm my country with racial hatreds and racial lines and antagonisms drawn even tighter than they are today."[72] Congress ultimately decided to simultaneously ban immigration by those ineligible to naturalize and exempted citizens' wives from its restrictions.[73]

No one in the congressional debates discussed whether the exception for spouses of citizens would apply to Chinese wives. As a result, the women on the *Lincoln* and the *Shinyo Maru* found themselves in the gray area between two conflicting goals of the Immigration Act of 1924: privileging immigration by citizens' wives on the one hand, and banning Asian immigration on the other. Did this contradiction stem from either an oversight or intent to ban Chinese women? This question became central to the briefs that both the government and the women's lawyers would submit to the Supreme Court.[74]

III. LEGAL BATTLES TO PROTECT IMMIGRATION BY CHINESE WIVES, AND THE SUPREME COURT'S ANOMALOUS 1925 DECISIONS

Through their lawyers, the *Lincoln* passengers argued that the wives of merchants and citizens had long been allowed entry, and that Congress had not intended to counter this history. Their initial habeas petition claimed that the 1924 Act must allow wives to immigrate because previous treaties and court decisions allowed for the entry of wives, regardless of their inability to naturalize. The 1924 Act was "in addition to, and not in substitution of" previous court decisions and immigration treaties, such as the Burlingame treaty, which had announced that wives of citizens and merchants were admissible. Additionally, the petition on behalf of the citizens' wives argued that Congress had explicitly exempted them from the 1924 Act's restrictions, and that barring the entry of citizens' wives based only on the fact that the wives were Chinese would vio-

70. 65 CONG. REC. 5834 (1924).

71. *Id.* at 5835.

72. *Id*. at 5932.

73. Immigration Act of 1924, ch. 190, 43 Stat. 153, 162.

74. Brief for Petitioners at 10, Chang Chan v. Nagle, 268 U.S. 346 (1925) (No. 770); Brief for Appellee at 3, Chang Chan v. Nagle, 268 U.S. 346 (1925) (No. 770).

late constitutional equal protection.[75]

Like citizens' wives, noncitizen merchants' wives also had another argument available to them. Briefs written on their behalf argued that those women were exempt from the 1924 Act's restrictions because they were entering "solely to carry on trade under . . . [an] existing treaty of commerce."[76] The 1924 Act provided an express exception for aliens entering solely to pursue trade under an existing treaty.[77] However, unlike the prior treaties with China and the Chinese Exclusion Act, the 1924 Act did not provide a general exception to Chinese immigrants who fell into the merchant category but planned to settle permanently in the United States.[78] The wives of merchants who arrived on the *Lincoln* and the *Shinyo Maru* planned to do just that. These plans were not hidden; they were plainly there in the record. For example, all of the women had told the immigration authorities that they intended to stay permanently in the United States.[79] Nevertheless, this formalistic distinction between the wives of merchants and the wives of citizens would ultimately be crucial to the 1925 Supreme Court decision favoring the merchants' wives.

Above all, the women's attorneys emphasized that these women were coming as wives of a Chinese population that relied on spousal immigration from China. If Chinese men in America could not marry Chinese women, they would find some other outlet—one that would trouble supporters of the ban on so-called miscegenation. "The consequences of these rulings of the Immigration Service" wrote the women's lawyers, "would simply be to dam up at the source and prevent all replenishment of Chinese people in the United States." Moreover, the consequences would be dire, and "subject people of that race within our midst to die out by the slow process of race strangulation though lack of a source of replenishment." As the final clincher, the lawyers explained that in light of anti-miscegenation laws, the Chinese American population had no other options but to marry in China: "Most of our state laws prohibit intermarriage of the Chinese with other races and our citizens and merchants of that race who do not at the present time happen to have a wife in this country apparently will be consigned to a celibate existence."[80]

While the briefs for the women emphasized the long history of Chinese spousal immigration and the need to avoid "strangulation," the government's

75. Chang Chan Petition for Writ, *supra* note 32, at 9 ("[T]hey being citizens of the United States and within the protection of the Constitution of the United States, and the denial to them of the right of having their respective wives admitted to them to the United States is to deprive them of the equal protection of the law, all in violation of the guarantees of the Constitution of the United States.").

76. *Id.*

77. Immigration Act of 1924, ch. 190, 43 Stat. 153, 155.

78. *Id*. at 154-55.

79. *See, e.g.*, *Ex parte* Cheung Sum Shee, Angel Island Hearing Transcript, July 15, 1924, Case File 23517/2-2/2-3, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 2 [hereinafter Cheung Sum Shee Hearing Transcript].

80. Opening Brief of Petitioners, *supra* note 30, at 11.

brief struck an alarmist note. It discussed the threat of the growing Chinese population in light of their insularity and non-assimilationist tendencies and warned of snowballing immigration:

We feel the time has arrived when we must either stop the influx of nationals who are ineligible to citizenship or we will soon reach a stage where it will be too late to act. . . . [I]t is not meant that they [the Chinese] are inferior people, nor undesirable because of their race, but since it is apparent that they do not intermarry and mix into the blood of the whites as other nationalities, and since they cling to the characteristics and habits of the mother country, their entrance should be clearly restricted.[81]

What did the Government intend to communicate through its vague threat that it may soon be "too late to act?" The implication was likely that the non-assimilationist Chinese would become politically and demographically powerful, electing their own representatives and shaping the laws to their benefit. Prior congressional debates indicate a fear that growing Asian populations would gain political power.[82] In 1920, Senator James D. Phelan from California opposed a resolution in the League of Nations "granting racial equality as a principle between nations." He worried about the growing political strength of "oriental people" and what would happen if the League of Nations had jurisdiction over "immigration, naturalization, elective franchise, land ownership, and intermarriage."[83] Phelan sent the Secretary of State a telegram warning that "western Senators and others will oppose any loophole by which oriental people will possess such equality with white race in United States. *It is vital question of self-preservation*."[84] This race survivalist sentiment foreshadowed the subtler argument in the government's 1924 brief that it would soon be "too late to act" to stop Chinese immigration, given the growing demographic and resultant political strength of the Chinese-American community.

In light of anti-miscegenation laws, immigration by Chinese wives was also a "vital question of self-preservation"[85] to the Chinese-American community. Together, anti-miscegenation laws and the greater number of Chinese men than Chinese women in the United States made Chinese-American men reliant on brides from China. The 1920 United States Census counted 53,891 Chinese males but only 7,748 Chinese females.[86] Nevertheless, California prohibited

81. *Ex parte* Cheung Sum Shee, Brief of Respondent, Case File 18416, Admiralty Files, RG 21, NARA–Pacific Region (SF) at 3, 5 (case involved alien wife and children of Chinese merchant domiciled in the United States).

82. 59 CONG. REC. 1815-16 (1920) (statement of Sen. James D. Phelan).

83. *Id.* at 3182.

84. *Id.* (emphasis added).

85. *Id*.

86. *See* U.S. CENSUS BUREAU, 1920 CENSUS INFORMATION: COMPOSITION AND CHARACTERISTICS OF THE POPULATION BY STATES 15 tbl. 1, *available at* http://www2.census.gov/prod2/decennial/documents/41084484v3c.pdf; *Admission of Wives of American Citizens of Oriental Ancestry: Hearing on H.R. 6544 Before the H. Comm. on Immigration & Naturalization*, 69th Cong. 3-4 (1926) [hereinafter *Hearing on H.R. 6544*]

intermarriage between Chinese and white people until 1948.[87] Eugenicists' ideas about racial purity supported such prohibitions and arguments around the "impossibility of combining brachycephalic and dolichocephalic races" even made their way into legal briefs supporting the exclusion of Chinese women.[88] Ironically though, the government's briefs ignored anti-miscegenation laws and painted the Chinese as, themselves, anti-assimilationist by arguing that the Chinese refused to marry outside their race. Emphasizing Chinese insularity, those briefs echoed the anti-immigrant motivation behind the 1924 Act.

While the district court in California considered what to do in the case of the *Lincoln* and the *Shinyo Maru* women, a nearly identical habeas case was decided in a Massachusetts district court in favor of Chinese wives who landed in the Boston port; the *Lincoln* petitioners attempted to use that case to their advantage. In the Boston case, the district court held that the purpose of the 1924 Act "would not be furthered by prohibiting a wife from joining her husband, who is a citizen of the United States by virtue of his birth."[89] Deciding otherwise, the judge asserted, would lead to absurd results where noncitizens would be privileged over citizens; the statute, he explained, must be interpreted to avoid such absurdities.[90]

The Massachusetts district court based its decision in part on the 1924 Act's legislative history. The opinion explained that the inconsistency in the legislation between protecting wives of citizens and barring those ineligible to naturalize could be resolved only by permitting entry by the wives of citizens. Congressional intent helped the Massachusetts court reach this decision. It stated that Congress had directly dealt with the question of the wives of citizens: "[T]he report of the House Committee stated specifically that wives of American citizens were exempted, and the chairman of that committee . . . emphasized this feature of the bill."[91] Because of this congressional record, the Massachusetts court explained, the 1924 Act must be interpreted to permit entry by the wives of citizens. Lawyers for the *Lincoln* petitioners submitted the Massachusetts decision to the California district court, arguing that because of the factual similarities between the two cases, the Massachusetts case was persuasive precedent.[92] Additional persuasive precedent supporting the wives came from the decision of a district court in Washington State. That court held that the 1924 Act permitted entry by wives of both citizens and merchants because Congress had not intended to disturb the historical pattern of allowing their en-

(statement of Rep. Albert Johnson, Chairman, H. Comm. on Immigration & Naturalization).

87. *See* Perez v. Sharp, 32 Cal. 2d 711 (1948).

88. *Ex parte* Cheung Sum Shee, Supplemental Addition to Closing Brief for Petitioners, Judge Lowell's Decision, Case File 18416, Admiralty Files, RG 21, NARA–Pacific Region (SF), at 3 [hereinafter Supplemental Addition to Closing Brief].

89. *Ex parte* Chiu Shee, 1 F.2d 798, 799 (D. Mass. 1924).

90. *Id*.

91. *Id*. (citing 65 CONG. REC. 5851 (1924)).

92. Supplemental Addition to Closing Brief, *supra* note 88, at 1.

try.[93]

When the California district court announced its decision, it accepted many of the women's arguments, explicitly agreeing with the Massachusetts court that Congress had not intended to bar entry by the Chinese wives of merchants or citizens.[94] The court nonetheless found all of the women excludable, but not for the same reason that the immigration officials had. While the immigration officials found that the 1924 Act categorically barred immigration by Chinese wives, the district court held that the Act permitted immigration by those wives when the proper procedures were followed. However, the court held that the *Lincoln* passengers were inadmissible because they had not obtained the immigration visas that the 1924 Act required. As a result, the district court denied the habeas petitions.[95]

By this point in the case, the women had institutional support: their appeals were brought by counsel for the "Immigration Bar Association" and counsel for the "Grand Parlor of the Chinese Native Sons of the Golden State."[96] But rather than rule on the appeals, the Ninth Circuit certified questions to the Supreme Court: "Should the petitioners be refused admission to the United States" the Ninth Circuit asked, "either, (a) Because of the want of a visa; or (b) Because of want of right of admission . . . ?"[97] While their cases were pending before the Supreme Court, the women did experience a significant victory, albeit not a legal one. Following four months of detention, the women were released from custody on Angel Island on $1,000 bonds for "the pendancy [sic] of the appeal."[98]

The release from Angel Island must have been emotional. For some of the women, however, arrival entailed much anxiety because it was not clear who would pick them up. Peter Wong, an interpreter from Angel Island, supervised the release of the *Shinyo Maru* passengers from Angel Island. After doing so, he wrote to the commissioner and explained the uncertainty some of the women now faced in their personal lives:

I stayed to see that all the people who were landed on bond yesterday, have some one take care of them [sic]. While waiting for the U.S. Marshal, a Haw Shee . . . seems quite nervous and told me that she was worried, because of the fact that she didn't recognize any one in the group of men waiting at the pier. I assured her that in case no one showed up, I will take her to the Wah Sun Co. where she said her husband was. A short stout man came forward and said that he will take care of her, and as he stepped aside, I asked her if she knew the

93. *Ex parte* Goon Dip, 1. F.2d 811, 813 (W.D. Wash. 1924).

94. *Ex parte* Cheung Sum Shee, 2 F.2d 995, 999 (N.D. Cal. 1924).

95. *Id*.

96. *Ex parte* Chang Chan, Notice of Appeal, Case File 18417, Admiralty Files, RG 21, NARA–Pacific Region (SF), at 1.

97. Certificate of Appeal at 4, Chang Chan v. Nagle, 268 U.S. 346 (1924) (No. 770).

98. *See, e.g.*, *Ex parte* Chang Chan, Bond for Appearance, Case File 18417, Admiralty Files, RG 21, NARA–Pacific Region (SF).

man. She replied, 'Yes, [t]hat man came to see me while I was on the ship.'[99]

Some of the women were reuniting with husbands they knew well, but others were landing in San Francisco to join men they had met only briefly in China.[100]

While their release from Angel Island was a relief, the women knew that their futures in the United States depended on the Supreme Court's rulings. Their cases were now garnering national attention. For example, Henry Taft, brother of President Howard Taft, wrote an amicus brief on behalf of the women, arguing that the Immigration Act of 1924 explicitly exempted them.[101] But compared to the briefs written for the district court, the Supreme Court amicus briefs were quite sterile. Unsurprisingly, both sides argued about whether Congress had intended to bar the immigration of Chinese wives when it passed the 1924 Act.[102] Notably, however, the government's briefs revealed a crucial divergence between its position regarding the wives of citizens and the wives of noncitizen merchants—the Department of Labor and the Department of State were at odds with each other over the issue.

In the case of the citizens' wives, the government vehemently defended its assertion that Congress had intended to bar their admission. However, in the case of noncitizen merchants' wives, the government itself was divided between the Department of Labor and the Department of State. The Department of Labor, which at this time had original jurisdiction over immigration and had initially rejected the women's habeas appeals, continued to hold that the 1924 Act barred admission of merchants' wives. However, the Department of State argued that together the 1924 Act and the 1880 treaty with China required the admission of the wives of noncitizen merchants. The question before the Court thus became the extent to which treaty rights were affected by the 1924 Act.[103] As a result of this internal division within the government, merchants' wives had reason for optimism on the eve of the Supreme Court decision. But so did citizens' wives.

The district courts in Massachusetts, Washington, and California had all found that the 1924 Act permitted the entry of citizens' wives, although the California court had ruled that the *Lincoln* petitioners were barred because they had not procured visas prior to leaving China. And the brief for the citizens' wives ended by reminding the court that the rights of United States citizens

99. Peter Wong, Interpreter, to Commissioner of Immigration, Case File 23550/6-13, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

100. *See* Cheung Sum Shee Hearing Transcript, *supra* note 79, at 1.

101. Brief for Henry Taft as Amicus Curiae Supporting Petitioners at 12, 16, *Chang Chan*, 268 U.S. 346 (No. 770); *see also Pleads for Chinese Wives: H.W. Taft Presents Two Briefs to Supreme Court in California Cases*, N.Y. TIMES, Mar. 25, 1925, at 14.

102. Brief for Petitioner *passim*, *Chang Chan*, 268 U.S. 346 (No. 770).

103. Brief for Appellee at 5-6, Cheung Sum Shee v. Nagle**,** 268 U.S. 336 (1925) (No. 769).

were before the court. A citizen, it noted, had a "natural, inherent and constitutional right to reside" in the United States.[104] Denying entry to his wife would "compel him to choose between his citizenship and its obligations on the one hand, and his natural duty to his wife and to himself as a husband on the other."[105] Unfortunately for these Chinese-American citizens and their wives, the Supreme Court's decision in *Chang Chan v. Nagle*, would soon force them to contemplate that difficult choice.[106]

On May 12, 1925, the Supreme Court handed down its decisions, both written by Justice Clark McReynolds. *Chang Chan v. Nagle* barred entry by Chinese wives of U.S. citizens,[107] and *Cheung Sum Shee v. Nagle* granted entry to Chinese wives of noncitizen merchants.[108] In the case of wives of citizens, the Court held that "[t]aken in their ordinary sense the words of the statute plainly exclude petitioners' wives."[109] Holding that the plain meaning of the 1924 Act barred the wives of citizens, the Court rejected "the demand for an interpretation of the act which will avoid hardships and further a supposed rational and consistent policy."[110] In doing so, the Court overruled the Ninth Circuit's 1902 holding in *Tsoi Sim v. United States*, that in order to avoid injustice, the wives of citizens must be admissible.[111] The Court's harsh language did nothing to ameliorate what must have been a crushing decision for the citizens' wives; while the Ninth Circuit had previously stated that citizens' wives should be admitted to the United States in order to avoid hardship,[112] the Court now dismissed that goal and reasoned that the 1924 Act clearly intended to bar the wives of citizens from entering.[113]

The Court's reasoning tells us a lot about how it conceived of citizenship. The Court claimed that the case of the wives of U.S. citizens was "radically different" from that of the wives of noncitizen merchants because the former involved "no claim of right granted or guaranteed by treaty."[114] The Court's reasoning that rights granted by treaty were stronger than rights granted by citizenship is surprising. Moreover, this distinction between the cases seems unconvincing for two reasons. First, the Court obscured the fact that while the

104. Brief for Petitioner, *supra* note 102, at 32.

105. *Id.*

106. *See* 268 U.S. at 346.

107. *Id.* at 352-53.

108. 268 U.S. at 345-46.

109. *Chang Chan*, 268 U.S. at 352.

110. *Id.* at 353.

111. Tsoi Sim v. United States, 116 F. 920, 926 (9th Cir. 1902) ("General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence." (quoting United States v. Kirby, 74 U.S (7 Wall.) 482, 486 (1868))).

112. *Id.* at 925-26.

113. *Chang Chan*, 268 U.S. at 352 ("Taken in their ordinary sense the words of the statute plainly exclude petitioners' wives.")

114. *Id.* at 351.

1924 Act made citizens' wives exempt from the Act's other restrictions,[115] the Court itself held that this exception did not apply to *Chinese* wives of U.S. citizens.[116] Second, the Act exempted those entering solely to carry on trade under an existing treaty—not those who entered to settle.[117] Nevertheless, the Court held that this exception applied to the merchants' wives despite their intent to stay in the United States permanently.[118] Denying a potential exception in the citizens' wives case while granting an exception in the merchants' wives case appears especially arbitrary given that the Court knew that both citizens' wives *and* merchants' wives came to the United States to settle permanently; neither set of wives was in the United States solely to carry on trade.[119] Nevertheless, the Court held that merchants' wives were admissible because the 1880 treaty with China guaranteed that the United States would not restrict the migration of Chinese merchants.[120]

IV. UNPACKING THE SUPREME COURT'S REASONING

The Supreme Court's express reasons for its decisions were not the only factors that led it to favor merchants over citizens. The record in the case suggests that concerns about birthright citizenship, miscegenation, and class also motivated the Court's decisions. To begin with, the government and Court's focus on the 1880 treaty is peculiar considering the Court's previous holding that Congress overwrote the 1880 treaty by passing the 1888 Scott Act. In *Chae Chan Ping v. United States*, the Court held that in the immigration context, Congress abrogates prior treaties when it passes contradictory new legislation.[121] The petitioner in that case, Chae Chan Ping, was a Chinese laborer who had left the United States to visit China while resident laborers were still allowed to leave and reenter the United States. In his absence, the 1888 Scott Act was passed, and Chinese laborers were no longer allowed to enter the United States under any circumstance, even if they had previously resided in the United States legally. The Court held that despite Chae's reliance on the 1880 treaty, his entry was prohibited following passage of the new law because "the last expression of the sovereign will must control."[122] Having already held in *Chae Chan Ping* that the Scott Act abrogated the 1880 treaty, the Court took a puzzling approach by deciding that the same treaty made wives of merchants admissible, despite the 1924 Act's suggestion to the contrary.

115. Immigration Act of 1924, ch. 190, 43 Stat. 153, 155.
116. *Chang Chan*, 268 U.S. at 352-53.
117. Immigration Act of 1924, ch. 190, 43 Stat. 153, 155.
118. Cheung Sum Shee v. Nagle, 268 U.S. 336, 345-46 (1925).
119. Brief for Petitioner, *supra* note 102, at 2; Brief for Appellee, *supra* note 103, at 8-10.
120. Angell Treaty, *supra* note 38, at 826-27.
121. Chae Chan Ping v. United States, 130 U.S. 581, 604 (1889).
122. *Id.* at 600.

Moreover, as discussed above, the Court's distinction between citizens' wives and merchants' wives rested on the legal fiction that the merchants' wives were in the United States temporarily, solely to carry on trade.[123] In fact, the merchants in question were not traders living temporarily in the United States; rather, they were grocery store owners residing permanently in land-locked cities such as Phoenix.[124]

What, then, actually motivated the Court to allow wives of merchants to immigrate while barring the wives of citizens? One answer can be found deep in the government's briefs to the California district court. These briefs explain one of the crucial motivations for privileging merchants over native-born citizens: resentment of birthright citizenship.

It has always been a worrisome problem to legislators to know that by our laws the offspring of residents of this country, even though said residents were ineligible to citizenship, are *by their birth citizens of the country.* By such births the number of offspring from these ineligibles has been constantly increasing and, therefore, we have a constant increase in this country of citizens whose ascendents were ineligible for citizenship. The traits, customs, habits, characteristics, appearance, etc., being retained by the offspring, why should they in this manner obtain citizenship when our laws deny it to their parents?[125]

At this time, all U.S. citizens of Chinese descent had been born in the United States, and they were citizens only because *Wong Kim Ark* had mandated birthright citizenship for essentially all U.S. born people.[126] However, while *Wong Kim Ark* had extended birthright citizenship, that case had not ended opposition to it. Although Congress could not prevent U.S.-born Chinese from being citizens, it could still prevent that citizenship from serving as an anchor for more immigration from China. To begin with, Congress exercised power over naturalization, and it used this power to bar Chinese people from naturalizing. Prohibiting Chinese people from naturalizing made their citizen children, and the "traits, customs, habits, characteristics, appearance" those children inherited, seem more foreign.[127]

Some legislators were intent on preventing the children of Asian immigrants from being citizens. In 1920, Senator Phelan of California proposed a joint resolution amending the Fourteenth Amendment so that it would guarantee citizenship only to the children of "white persons, Africans, American Indi-

123. Chang Chan v. Nagle, 268 U.S. 346, 351 (1925); *Cheung Sum Shee*, 268 U.S. at 345.

124. *See* Haff Letter, *supra* note 10.

125. *Ex parte* Cheung Sum Shee, Brief of Respondent, Case File 18416, Admiralty Files, RG 21, NARA–Pacific Region (SF), at 5 [hereinafter Government Brief] (emphasis added).

126. United States v. Wong Kim Ark, 169 U.S. 649, 703 (1898).

127. *See* Government Brief, *supra* note 125, at 5; *see also*, Volpp, *supra* note 3, at 453-54 ("The fact that Asians could not naturalize not only reflected the racialization of Asian Americans as foreign, it helped to fix it as such in the American imagination.").

ans, or their descendants, and all persons naturalized in the United States."[128] This amendment would have undone the decision in *Wong Kim Ark* by removing the constitutional guarantee of birthright citizenship.

Phelan acknowledged that the amendment would be a radical shift and even incorrectly traced birthright citizenship's historical roots to the United States' founding, explaining that "[t]his amendment on its face may seem extraordinary to many Senators, because from the beginning of the Republic children born upon the soil are ipso facto citizens."[129] Nevertheless, his demographic argument for the amendment appealed to the fears many people had about the growing non-white voting population. Focusing on the growing Japanese population and their increasing political power, Phelan warned that "[a]t the present birth rate it is estimated that in 90 years there will be more Japanese in California than Americans."[130] The proposed amendment also targeted Chinese immigrants, which had almost certainly been Phelan's intent. His anti-Chinese sentiments were well established; for example, as mayor of San Francisco, he had proposed moving Chinatown outside the city's limits following the 1906 earthquake.[131]

The proposed amendment gained little momentum. Congress neither debated nor voted on Phelan's resolution following its introduction.[132] The Constitution thus continued to guarantee citizenship to the children of immigrants. Nevertheless, there was still a way to keep the children of Chinese immigrants from American citizenship and elective franchise: preventing their births. As a result, the government argued that it was necessary to restrict Chinese wives from entering in the first place. Otherwise, children with the same "appearance"[133] as their noncitizen parents would be citizens by birth.

The "worrisome problem"[134] of Chinese-American citizens would seem to stem from the children of both noncitizen merchants and U.S. citizens. Why then did the Court rule against U.S. citizens but in favor of noncitizen merchants? The perceived class differences between Chinese merchants and U.S.-born Chinese citizens likely played a role. Because Chinese laborers far outnumbered Chinese merchants,[135] most U.S.-born Chinese Americans were children of laborers. Laborers, the principal targets of the Chinese Exclusion Acts, were particularly abhorred, in part because of their economic impact. The completion of the transcontinental railroad in 1869 had put more than ten thousand Chinese laborers out of work; in light of the subsequent recession, these labor-

128. 59 CONG. REC. 1815 (1920) (statement of Sen. James D. Phelan).
129. *Id*.
130. *Id*. at 1816.
131. MOTOMURA, *supra* note 6, at 75.
132. 59 CONG. REC. 9590 (1920) (index).
133. Government Brief, *supra* note 125, at 5.
134. *Id*.
135. *See* LEE, *supra* note 3, at 114.

ers were seen as taking jobs from Americans and undercutting the market.[136] The economic threat laborers posed had helped to motivate the Chinese Exclusion Act of 1882.[137] Although the children of laborers were citizens, the vast majority of them continued to work in laboring positions.[138] Immigration by the wives of lower-class Chinese Americans highlighted that the Chinese Exclusion Acts had not stopped the growing population of Chinese-American laborers and their families.

In contrast, the Chinese Exclusion Acts specifically exempted merchants.[139] Erika Lee researched the role that class played in the continued admission of merchants, finding that immigration officials expected them to be "wealthy, educated, and refined gentlemen who posed no threat either to white labor or to American society in general."[140] To verify an immigrants' claimed merchant status, Angel Island officials would check that the applicant had never performed manual labor, inspecting his hands and feet for callouses and asking about past work as a farmer or tailor. If the applicant passed this test, he would next have to demonstrate his high level of literacy and business knowledge.[141] The men who had thus succeeded in entering as merchants were likely regarded as more prone to assimilate than the children of lower-class laborers.

While the Court had found attempts to exclude the native-born children of Chinese laborers unconstitutional,[142] it held that Congress's new 1924 Act unquestionably banned immigration by the Chinese wives of those native-born children.[143] By doing so, the Court prevented Chinese-American citizens from bringing wives over from China and thus deepening their roots in the United States. Noncitizen merchants, either because they were a less resented or a more powerful group, faced the opposite result even though the 1924 Act appeared to apply to them equally.[144]

For the Chinese-American citizens and their wives, the loss in the Supreme Court was crushing. Testifying before Congress, one advocate later explained that the cases were appealed to the Court "with the hope that the court would hold that an American citizen had an inherent, natural, and constitutional right to have his wife with him in the country of his citizenship, that his domicile was her domicile, and that his home was her home." Because the Court decided otherwise "on the ground that it was the intent of the Congress to exclude these women," advocates would now focus on the Court's intimation that "Congress

136. MOTOMURA, *supra* note 6, at 17; Daniels, *supra* note 47, at 11.
137. MOTOMURA, *supra* note 6, at 17.
138. *See* LEE, *supra* note 3, at 114.
139. Scott Act, ch. 1015, 25 Stat. 476, 476 (1888) (repealed 1943).
140. LEE, *supra* note 3, at 89.
141. *Id.* at 89-90.
142. United States v. Wong Kim Ark, 169 U.S. 649, 705 (1898).
143. Chang Chan v. Nagle, 268 U.S. 346, 353 (1925).
144. Cheung Sum Shee v. Nagle, 268 U.S. 336, 346 (1925).

alone can remove this hardship."[145] After the Court ruled that the 1924 legislation had intended to bar citizens' wives, advocates directed their efforts at Congress. Meanwhile, the fates of the *Lincoln* and the *Shinyo Maru* women were in flux.

V. DETERMINING THE WIVES' IMMIGRATION STATUSES AFTER THE SUPREME COURT DECISIONS

Following the Supreme Court's decision, district court judges returned all of the wives of citizens to the custody of local immigration commissioners for "deportation within thirty days."[146] Initially, the immigration officials wrote to each other that all the wives of citizens should now be deported to China since their cases depended on the decision of the "test cases . . . which were recently decided adversely to the petitioners."[147] However, despite the Supreme Court's decision, all but one of those wives remained in the United States, and they did so with permission from the local immigration officials.[148]

After the initial announcement about impending deportations, one woman decided to make her own deportation as comfortable as possible. Wong Shee's lawyer wrote to the commissioners asking if Wong Shee could be deported without having to be detained on Angel Island: "[Wong Shee] is fifty-seven years of age, under which circumstances I would like to save her from as much inconvenience as possible, and would like to deliver her at the boat . . . ."[149] Officials granted Wong Shee's request and scheduled her departure.[150] Notably, Wong Shee wound up leaving the United States voluntarily, rather than because of a deportation order. A few days before her scheduled departure, the district court granted a stay of deportation for all the Chinese wives of citizens. Nevertheless, Wong Shee did not "desire to avail herself of such extension."[151] On

145. *Wives of American Citizens of Oriental Race: Hearing on H.R. 2404, H.R. 5654, and H.R. 10524 Before the H. Comm. on Immigration & Naturalization*, 71st Cong. 548 (1930) [hereinafter *Hearing on H.R. 2404, H.R. 5654, and H.R. 10524*] (statement of Kenneth Y. Fung, Executive Secretary, Chinese American Citizens' Alliance).

146. Chase W. Pierce, Law Officer, to Commissioner of Immigration, Angel Island, Aug. 13, 1925, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF) [hereinafter Pierce Letter]; Todd Stevens, *supra* note 3, at 300.

147. Pierce Letter, *supra* note 146.

148. George J. Harris, Assistant Commissioner-General of Immigration, Washington, D.C., to Commissioner of Immigration, San Francisco, July 25, 1928, Case File 23550/6-13, Immigration Case Files, NARA–Pacific Region (SF) [hereinafter Harris Letter].

149. W.H. Wilkinson to Commissioner of Immigration, Angel Island, Aug. 24, 1925, Case File 23517/6-18, Immigration Case Files, RG 85, NARA–Pacific Region (SF) [hereinafter Wong Shee Letter].

150. Edward L. Haff, Acting Commissioner of Immigration, Angel Island, to W.H. Wilkinson, Aug. 24, 1925, Case File 23517/6-18, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

151. W.H. Wilkinson to Commissioner of Immigration, Angel Island, Sept. 3, 1925, Case File 23517/6-18, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

September 5, 1925, Wong Shee's husband accompanied her to the dock in San Francisco, delivered her into immigration custody, retrieved her $1,000 bond, and watched her sail back to China on the *President Taft*.[152]

While "Wong Shee voluntarily surrendered herself," the other wives of citizens who had been on the *Lincoln* with her "were landed under bond."[153] Why did Wong Shee leave when she could have stayed? Perhaps the loss at the Supreme Court, and the prospect of ongoing struggles over her immigration status made her want to leave. But there are more likely answers. The other women were all around twenty years old. At fifty-seven, Wong Shee was by far the oldest woman on the *Lincoln* or the *Shinyo Maru*.[154] After living so long in China, perhaps it was harder for her to adjust to life in San Francisco. Perhaps relations with her American husband were strained, or maybe she was homesick. It is impossible to know.

After Wong Shee's departure, thirty-two Chinese wives of citizens remained in limbo in the United States. Those women had landed in San Francisco, Seattle, and Boston shortly after the 1924 Act took effect. Since their arrival, at least nineteen of those women had given birth in the United States and were busy raising their citizen babies.[155] The women's lawyers argued that deporting the women would be cruel and inhumane.[156] Despite the Supreme Court's assertion that it would not interpret the 1924 law in a manner that would "avoid hardships,"[157] the local immigration commissioners stayed the women's deportations. All of the women were released on $1,000 bonds.[158] While the stated reason for staying the deportations was that legislation pending in Congress would permit the women to remain,[159] humanitarian concerns for the women and their new babies likely also motivated the commissioners' decisions.[160]

The power that local immigration officials had over the women's lives went beyond staying their deportations. Immigration officials could deport the women for a variety of reasons that were unrelated to the Immigration Act of

152. *See* W.H. Wilkinson to Commissioner of Immigration, Angel Island, Sept. 5, 1925, Case File 23517/6-18, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

153. John D. Nagle, Commissioner of Immigration, Angel Island, to Commissioner-General of Immigration, Washington, D.C., Nov. 16, 1925, Case File 23517/6-18, Immigration Case Files, RG 85, NARA–Pacific Region (SF) [hereinafter Nagle Letter].

154. Wong Shee Letter, *supra* note 149.

155. *Hearing on H.R. 6544*, *supra* note 86, at 36-38 (exhibits of Mr. Guy E. Kelly, Attorney).

156. *Id*. at 40 (pamphlet prepared by the Grand Parlor of the Chinese Native Sons of the Golden State).

157. Chang Chan v. Nagle, 268 U.S. 346, 353 (1925).

158. *See Hearing on H.R. 6544*, *supra* note 86, at 36 (exhibits of Mr. Guy E. Kelly, Attorney); Nagle Letter, *supra* note 153.

159. Harris Letter, *supra* note 148.

160. *See Hearing on H.R. 6544*, *supra* note 86, at 40 (pamphlet prepared by the Grand Parlor of the Chinese Native Sons of the Golden State).

1924, such as prostitution, poverty, or disease. For example, immigration officials actively investigated the case of Haw Shee, whom they suspected of prostitution. Haw Shee entered the United States as the wife of a U.S. citizen, Lee Quan Sing.[161] Soon after she arrived, a streetcar killed Sing, and Haw Shee sued the Market Street Railway Company.[162] When the case settled, however, a family conflict developed over the money. As a result, the children of Sing's first wife, Jew Shee, tried to use the Immigration Service as a tool to pressure Haw Shee to give them the money.[163] The Immigration Service took the allegations of prostitution levied against her so seriously that it asked the American Consulate to visit her village in China.[164]

It was not just the citizens' wives who depended on the local immigration officials. So, too, did the noncitizen children and wives of merchants. Following their victory at the Supreme Court, merchants' wives had to return to Angel Island in order to be officially admitted into the country. Their futures were now in the hands of the local immigration officials who would test the legitimacy of their marriages through interviews. These interviews required husband and wife to independently and identically answer questions about things such as their families' backgrounds and the geography of their hometowns in China.[165] The spouses' answers were scrutinized for discrepancies and inconsistencies about where, for example, the bamboo grew in a far away village.[166] Any discrepancies could lead immigration officials to conclude that the marriages were illegitimate.

Yee Shee, who had been eight months pregnant while detained on Angel Island, returned to the island and successfully proved her marriage's authenticity.[167] Nevertheless, immigration officials blocked her admission because she was afflicted with hookworm and needed treatment.[168] But Yee Shee was pregnant with twins, and the treatment would endanger her fetuses.[169] Luckily, her lawyer won her release on bond, and Yee Shee did not have to spend a second pregnancy in detention.[170] After Yee Shee gave birth and underwent treatment, Angel Island inspectors officially admitted her to the United States.[171] In 1928,

161. Haw Shee Letter, *supra* note 12.

162. *See* Harris Letter, *supra* note 148.

163. *See* Haw Shee Letter, *supra* note 12.

164. *Id.*; *see* Harris Letter, *supra* note 148.

165. Yee Shee Hearing Transcript, *supra* note 11, at 3-4, 8-9.

166. *Ex parte* Mok Ling Park, Angel Island Hearing Transcript, Oct. 1, 1925, Case File 23517/6-14, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 2.

167. John D. Nagle, Commissioner of Immigration, Angel Island, to G.A. McGowan, Mar. 10, 1926, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

168. *Id.*

169. Charles A. Trumbly to Commissioner of Immigration, Angel Island, Aug. 11, 1925, Case File 23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

170. *See id.*

171. *Ex parte* Yee Shee, Angel Island Hearing Transcript, July 20, 1926, Case File

four years after her arrival, her residency card was sent to Sunrise Grocery in Phoenix.[172] Following enactment of new legislation, many merchants' wives naturalized. And in 1953, while still living in Phoenix, Yee Shee became a U.S. citizen.[173]

VI. LEGISLATIVE ADVOCACY AND CONGRESSIONAL HEARINGS

On the heels of the loss in the Supreme Court, Chinese-American advocates highlighted for Congress the inconsistency of favoring noncitizens over citizens. Displaying photographs of the citizens' wives with their newborn American babies, these advocates proposed legislation amending the Immigration Act of 1924 to allow the wives of citizens to immigrate.[174] In 1926, one group, the Grand Parlor of the Chinese Native Sons of the Golden State, submitted to Congress a "plea for relief from a hardship imposed . . . by the [I]mmigration [A]ct of 1924."[175] The plea detailed the burden born by male citizens of Chinese descent because of their inability to bring wives into the United States. Using data from the 1920 Census, the plea illustrated that there were many more Chinese men than women in the United States and that it was difficult for Chinese men to marry. Most noticeably, it contained statements of support from university presidents, bishops, and ministers nationwide.[176] As a result of persistent advocacy, the House Committee on Immigration and Naturalization held three hearings on the proposed legislation between 1926 and 1930.[177]

The 1926 hearing discussed the recently introduced bill, which was "presented for the purpose of curing a defect in the [I]mmigration [A]ct of 1924."[178] Introduced by Representative Leonidas C. Dyer from Missouri, the bill would allow "any citizens in the United States with Asiatic ancestry to send for wives or bring wives to the United States."[179] Dyer supported the bill because of the dearth of marriage prospects for Chinese Americans in St. Louis.[180] He explained that the 1924 Act was unjust because while many of those men had served honorably in World War I, they could not live with their wives in the

23550/4-5, Immigration Case Files, RG 85, NARA–Pacific Region (SF), at 1.

172. Haff Letter, *supra* note 10.

173. *See* Netherlin Letter, *supra* note 10.

174. *Hearing on H.R. 6544*, *supra* note 86, at 20 (statement of Guy E. Kelly, Attorney).

175. *Id.* at 38 (pamphlet prepared by the Grand Parlor of the Chinese Native Sons of the Golden State).

176. *Id*. at 38, 42-47.

177. *Id.*; *Wives of American Citizens of Oriental Race: Hearing on H.R. 6974 Before the H. Comm. on Immigration & Naturalization*, 70th Cong. (1928); *Hearing on H.R. 2404, H.R. 5654, and H.R. 10524*, *supra* note 145.

178. *Hearing on H.R. 6544*, *supra* note 86, at 1 (statement of Rep. Leonidas C. Dyer).

179. *Id*. at 3 (statement of Rep. Albert Johnson, Chairman, H. Comm. on Immigration & Naturalization).

180. *Id*. at 2 (statement of Rep. Leonidas C. Dyer).

United States. Notably, he commented that allowing them to do so "is much more preferable than the intermarriage of races."[181] Dyer worried that immigration restrictions would lead to miscegenation.

The hearing highlighted the testimony of advocates from around the country who spoke of the hardships that the 1924 Act created. George H. Fong, a spokesman for Chinese Americans from Detroit, explained that, of the one thousand Chinese people in Detroit, no more than fifty were women. This made marriage prospects for a man very slim. In addition to discussing the personal harms that the 1924 Act caused, Chinese Americans highlighted the doctrinal inconsistency of favoring merchants over citizens. Fong argued that the present situation, in which wives of merchants were admissible whereas wives of citizens were not, was "a very startling thing. It can not be reconciled to the fact that the Government owes its first duty to its citizens. We can not see why an alien should enjoy more rights than a citizen should."[182]

The congressional committee was initially not very interested in the theoretical, doctrinal problem of privileging noncitizens over citizens. Rather, it honed in on the puzzling fact that the 1920 Census counted many more U.S.-born Chinese men than women, despite the fact that one would expect there to be an even split.[183] The representatives wondered how there could be so many more men than women, and suspected that immigration fraud was involved.[184] The representatives also debated the potential impact of the proposed legislation. It was unclear how many people the amendment would enable to enter, and they feared opening the floodgates to the immigration of Chinese women.[185] Conflicts emerged between the competing priorities of stemming immigration from China, respecting the rights of Chinese Americans, and preventing miscegenation. These conflicts remained unresolved, and the Dyer Bill languished in committee.

As time went on and the debates over amending the 1924 Act continued, representatives became more concerned with the inconsistency of favoring noncitizens over citizens. In the 1930 hearing, Representative Dyer explained that the Supreme Court's 1925 cases created an anomaly: "Chinese merchants born in China may bring their wives here under treaty rights. The Supreme Court says they may bring their wives here . . . but American-born Chinese . . . can not bring their wives here."[186] Representatives also emphasized the patriotism of Chinese Americans and their equality to other U.S. citizens. "A large

181. *Id.* at 3.

182. *Id.* at 7, 13 (statement of George H. Fong, Spokesman for Chinese Americans)

183. *Id.* at 3-4 (statement of Rep. Albert Johnson, Chairman, H. Comm. on Immigration & Naturalization).

184. *Id.* at 10-11 (statement of Rep. Albert Johnson, Chairman, H. Comm. on Immigration & Naturalization); *id.* at 12 (statement of Rep. Bird J. Vincent).

185. *See id.* at 42 (pamphlet prepared by the Grand Parlor of the Chinese Native Sons of the Golden State).

186. *Hearing on H.R. 2404, H.R. 5654, and H.R. 10524*, *supra* note 145, at 542.

number of these men are college graduates, professional men, highly intelligent, and patriotic," explained Congresswoman Florence P. Kahn from California. "It is astonishing to see the number of these who vote and really take an interest in Government. . . . I do not see any reason for discriminating against any class of American citizens."[187]

Kenneth Y. Fung, an advocate from the Chinese American Citizens' Alliance, argued plausibly that when Congress passed the 1924 Immigration Act, it believed that the Act permitted all citizens' wives, including Chinese-American citizens' wives, to enter the United States. "It is inconceivable," he testified, "that Congress should have intended to be more favorable to an alien merchant than to a citizen of the United States."[188] Overall, the 1930 debate highlighted favorable views of Chinese Americans and a newfound reluctance to discriminate against them in favor of noncitizens; as a result, the debate spurred Congress to amend the 1924 Act.

On June 13, 1930, Congress amended the Immigration Act of 1924 by providing an exception for "the Chinese wife of an American citizen who was married prior to the approval of the Immigration Act of 1924."[189] Applying only to marriages that predated the 1924 Act, the amendment was much narrower than the one proposed in 1926. While some women still in China would benefit from it, the amendment targeted women who were already on bond in the United States, such as the passengers of the *Lincoln* and the *Shinyo Maru*.

On January 20, 1931, Trumbly received a letter from the San Francisco Immigration Commissioner telling him that his clients were finally secure in their new homes. The letter advised Trumbly that the government would "extend[] the *temporary admission* of the aliens indefinitely."[190] This was great news for the women, but it did come with several drawbacks. The biggest practical drawback of "temporary admission" was that, if these women left the United States, they would not be automatically readmitted—their husbands would have to petition for visas for them to return.[191] But regardless of limits on future travel, the citizens' wives from the *Lincoln* and the *Shinyo Maru* knew that they were now free to build their lives in the United States.

187. *Id.* at 544 (statement of Rep. Florence P. Kahn).

188. *Id.* at 546 (statement of Kenneth Y. Fung, Executive Secretary, Chinese American Citizens' Alliance).

189. Act of June 13, 1930, ch. 476, 46 Stat. 581, 581 (internal quotation marks omitted).

190. Edward L. Haff, Acting Commissioner of Immigration, Angel Island, to Charles A. Trumbly, Jan. 20, 1931, Case File 23350/6-13, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

191. George J. Harris, Assistant Commissioner-General of Immigration, Washington, D.C., to Commissioner of Immigration, San Francisco, Jan. 10, 1931, Case File 23550/6-13, Immigration Case Files, RG 85, NARA–Pacific Region (SF).

CONCLUSION

The congressional hearings that took place between 1926 and 1930 regarding amendments to the Immigration Act of 1924 highlight one way that Chinese-American advocates shaped the law for their communities. Additionally, the hearings show how opposition to immigration and opposition to miscegenation were in conflict, given that the male, Chinese-American population was so much larger than the female one. Those concerned about the growing nonwhite population decried both immigration and miscegenation, and were not concerned with the doctrinal inconsistency of privileging noncitizens over citizens. Nevertheless, Congress ultimately voted for a revised amendment that applied only to women who had married before 1924; ironically, while some supported the amendment because they opposed discriminating against Chinese American citizens, others supported it because they realized that barring Chinese wives from immigrating would lead to miscegenation between Chinese-American men and white women.

While the amendment applied only to women who had married before passage of the Immigration Act of 1924, it profoundly affected the women who had traveled on the *Lincoln* and the *Shinyo Maru*. Soto Shee, who had initially tried to commit suicide while on Angel Island, remained close with the other women who had been on the ship with her, raised ten children, and ended up living to be ninety-six years old.[192] While wives of merchants, and wives of citizens whose marriages predated the 1924 Act, continued to enter the United States, their numbers remained significantly smaller than before the 1924 Act—falling to about one-third of their previous level. From 1906 to 1924, an average of one hundred and fifty Chinese wives were admitted each year. Between 1930 and the attack on Pearl Harbor, only about sixty Chinese wives were admitted annually.[193] In 1943 Congress finally enacted legislation that allowed Chinese people living in the United States to naturalize. Simultaneously, the law permitted the wives of Chinese-American citizens to immigrate to the United States.[194]

As the 1925 Supreme Court cases and the subsequent congressional legislation show, the fate of Chinese immigrants in the early twentieth century was an open question. The cases brought by the *Lincoln*'s passengers determined the extent to which the Immigration Act of 1924 would seal the United States border to immigration from China and circumscribe the rights of citizens to sponsor wives from China. The cases also determined whether the individual women who traveled from China to the United States in 1924 would spend their lives with their husbands or be forced to return to China, half a world away.

192. LEE & YUNG, *supra* note 35, at 102.

193. Daniels, *supra* note 47, at 8-9.

194. Magnuson Act, ch. 344, 57 Stat. 600, 601 (1943).

But these cases are largely forgotten. They are not part of the canon of Supreme Court immigration cases, nor are they widely cited.[195] Perhaps this is because some of the legal inconsistencies highlighted in the cases have been resolved. The spouses of citizens can now immigrate more easily and quickly than the spouses of noncitizens.[196] Anti-miscegenation laws have been struck down as unconstitutional.[197] Racial bars to naturalization no longer exist.[198] However, the opposition to birthright citizenship—a motivating factor for the Supreme Court's 1925 decision in *Chang Chan v. Nagle*—may be as strong as ever.[199] The legal battles fought by the *Lincoln* and the *Shinyo Maru* passengers illustrate that the deep roots of opposition to birthright citizenship reach back to the anti-Chinese laws and policies of the early twentieth century. This opposition to birthright citizenship continues to galvanize anti-immigrant sentiment today.[200] Notably, as in 1925 when the Government warned that it would soon be too late to stop immigration, contemporary anti-immigrant sentiment is partly spurred by fears of the electoral power that children of immigrants will hold.[201]

The *Lincoln* and the *Shinyo Maru* passengers fought multiple legal battles because the results of those battles would dictate the course of their lives. The Chinese-American community took on their cause because the outcome of the women's cases would have wide implications. As the *Lincoln* and the *Shinyo Maru* passengers fought to protect their own families, they and their advocates addressed the core question of who had the right to create a family in the United States. None of the women who set sail on the *Lincoln* or the *Shinyo Maru* in June of 1924 could have known the difficulties they would encounter on their way to living in America. Landing at Angel Island without understanding a word of English, the women faced prolonged detention, multiple interrogations by immigration commissioners, and court cases that went from the administrative courts to the Supreme Court and back. Personally, the women's physi-

195. A December 2012 Westlaw search revealed that ten cases have cited *Chang Chan v. Nagle* while thirty have cited *Cheung Sum Shee v. Nagle.* In contrast, 227 cases have cited *Chae Chan Ping v. United States*.

196. *See* 8 U.S.C. § 1151(b)(2)(A) (2011); *id.* § 1153(a)(2) (mandating that spouses of U.S. citizens have visas immediately available whereas spouses of permanent residents have to wait for an available visa).

197. Loving v. Virginia, 388 U.S. 1, 12 (1967).

198. Immigration and Nationality Act of 1952, ch. 477, § 311, 66 Stat. 163, 239.

199. *See 61% Oppose U.S. Citizenship for Children Born to Illegal Immigrants*, RASMUSSEN REPORTS (Apr. 19, 2011), http://www.rasmussenreports.com/public_content/politics/current_events/immigration/61_oppose_u_s_citizenship_for_children_born_to_illegal_immigrants.

200. *See* Marc Lacey, *Birthright Citizenship Looms as Next Immigration Battle*, N.Y. TIMES, Jan. 5, 2011, at A1, *available at* http://www.nytimes.com/2011/01/05/us/politics/05babies.html.

201. *See, e.g.*, Sabrina Tavernise, *Whites Account for Under Half of Births in U.S.*, N.Y. TIMES, May 17, 2012, at A1, *available at* http://www.nytimes.com/2012/05/17/us/whites-account-for-under-half-of-births-in-us.html.

cal and legal journey was frightening and emotional. But, despite the high personal stakes each woman had in her case, perhaps some of the women realized that their own struggles would help pave the way for other immigrants to build lives and families in the United States.