

American Islamophobia

*Understanding the Roots
and Rise of Fear*

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AMERICA'S FIRST MUSLIM BAN

Judge George H. Hutton peered across his bench in the direction of George Shishim. Shishim, a longtime resident of California and native of the Mount Lebanon Province (modern-day Lebanon) of the Ottoman Empire, had come to Hutton's court to petition for American citizenship. After living in Los Angeles as a resident alien and serving as a policeman for the LAPD, he was poised to finally become a naturalized citizen and a formal member of the country he served and for which he felt a great affinity.

An immigrant from Canada, Hutton was elected to preside over the Los Angeles Superior Court in 1906. During the naturalization era, judges like Hutton held unfettered discretion over deciding which immigrants fit within the statutory definition of whiteness mandated by law, and therefore, authority over deciding whether petitioners like Shishim could become citizens. In 1909, when Shishim filed his petition, it was impossible to become a naturalized citizen unless you were white. From 1790 until 1952, whiteness stood as the legal dividing line between inclusion and

exclusion from the range of privileges and benefits that came with formal citizenship. *Whiteness* and *citizen* were made synonymous by law, and the courts were the enforcers and the final gatekeepers.

Weeks before his appearance in Los Angeles Superior Court, a naturalization and immigration agent had moved to deny Shishim's citizenship petition on the grounds that his "Arab identity," synonymous with Muslim identity, did not meet the legal mandate of whiteness. Judge Hutton seemed persuaded by the immigration examiner's position, which deemed immigrants from the region Shishim originated from as hostile to American democracy and values, unassimilable, and Muslim unless proven otherwise. However, although Shishim was an Arab, he was also a Christian. In fact, the overwhelming majority of Arabs in the United States in 1909 were Christians.

Short on rebuttals, Shishim closed with the lone argument that he hoped would resonate with Judge Hutton and save his petition. It was a Hail Mary, a final plea. He rose from his seat, stood firmly with his LAPD badge glistening from his jacket, and testified, "If I am Mongolian, then so was Jesus, because we came from the same land."³² Shishim was effectively stating that if Jesus were white, the court would also have to find him to be white, or render an admission that Jesus was not white—an admission that would undermine the construction of Jesus as a white man and of Christianity as a portal toward whiteness. Christianity was one of the primary hallmarks of whiteness in the United States in the early twentieth century, and Shishim's spirited appeal insisted that although he was from the Muslim world, he was not a Muslim but in fact a Christian, and therefore white.

Hutton, conditioned to believe that anybody who hailed from the Middle East was Muslim, struggled with this dissonance. But Shishim's brilliant appeal to Christianity managed to persuade

Hutton, and Shishim became the first immigrant from the Middle East to be naturalized as an American citizen and judicially ruled white by law.³³ "When the court finally determined Shishim to be a white person, thus allowing for his acquisition of citizenship," a *Los Angeles Times* reporter wrote that "it made every feature of his dark, swarthy countenance radiate with pleasure and hope."³⁴

Civil judges like Hutton were responsible for interpreting the statutory meaning of whiteness during the naturalization era. In *White by Law*, law scholar Ian Haney López observes:

The individuals who petitioned for naturalization forced the courts into a case-by-case struggle to define who was a "white person." More importantly, the courts were required in these prerequisite cases to articulate rationales for the divisions they were creating. Beyond simply issuing declarations in favor of or against a particular applicant, the courts . . . had to explain the basis on which they drew the boundaries of Whiteness. The courts had to establish by law whether, for example, a petitioner's race was to be measured by skin color, facial features, national origin, language, culture, ancestry, the specialization of scientist, [or] popular opinion.³⁵

Most saliently for immigrants from the Middle East, the courts could also determine whiteness on the basis of religion. American whiteness, therefore, was very much a social construction, endorsed by law and subject to revision. In the words of James Baldwin, "No one was white before s/he came to America. It took generations, and a vast amount of coercion, before this became a white country."³⁶ And just because race is a social construction does not mean that racism is not real, a tenet as true during the naturalization era as it is today.

Whiteness was not merely a race during the naturalization era, but a "material concept imbued with rights and privileges."³⁷ The greatest right, citizenship, was inscribed into it. Thanks to

the deeply embedded narrative of a rivalry between Orient and Occident, Muslims and Christians, this brought forth the functional enactment of a Muslim naturalization ban that stood in place for 154 years. In other words, Muslims have been banned from becoming citizens for the bulk of the existence of the United States as a sovereign nation. What can be labeled as the structural Orientalism that prevailed during the naturalization era is akin to the structural Islamophobia reflected in today's laws, programs, and policies targeting Muslims; indeed, those early institutional roots shaped how law understands Muslim identity, as well as how Muslims are policed by the state.

The Muslim naturalization ban that prevailed during this era also impacted Christians and Jews from the Middle East. Although George Shishim successfully petitioned for his naturalization, not all Christian Middle Eastern petitioners overcame the suspicion that hailing from the Middle East made them Muslim. A 1913 case involving an immigrant petitioner from modern-day Lebanon, *Ex parte Shahid*, illustrates how Muslim identity was acutely racialized and deeply institutionalized during this time. Following George Shishim's lead, Faras Shahid, a Maronite Christian, asserted his Christian faith to rebut the presumption that he was a Muslim. Judge Henry Smith engaged in his own brand of in-court eugenics, describing Shahid to be "about [the color] of a walnut, or somewhat darker than is the usual mulatto of one-half mixed blood between the white and the negro races."³⁸ According to Judge Smith, Shahid's dark skin signaled that he was either Muslim or the product of racial miscegenation with Muslims that diluted his Christianity and ultimately undermined his petition for American citizenship. The appeal to miscegenation demonstrates that Judge Smith understood Muslim identity in pointedly racial terms, and as in the infamous *Plessy v.*

Ferguson "separate but equal" case, used the language of the "one-drop rule" to hold that any modicum of Muslim blood made Shahid, before the eyes of the court, a Muslim.

Before denying Shahid's petition, Judge Smith drilled home the Orientalist baseline that Muslim identity was indeed a racial one. In his opinion, he wrote, "What is the race or color of the modern inhabitant of Syria it is impossible to say. No geographical area of the world has been more mixed since history began. Originally of Hittite or non-Semitic races ... then again followed by another Semitic conquest in the shape of the Arabian Mahometan [Muslim] eruption."³⁹ Smith's framing of Ottoman rule as the "Mahometan eruption" illustrates his aversion to Islam, which today would be characterized as an example of structural Islamophobia. More than a century before immigration officials, politicians, and pundits would view with suspicion and fear the Muslim identity of Syrian refugees fleeing civil war and persecution from ISIS, the South Carolina court viewed Islam the same way.

In the early twentieth century, the vast majority of immigrants coming to the United States from modern-day Syria and Lebanon were Christians, not Muslims, who were nevertheless suspected to be Muslims. Some Christian immigrants, like George Shishim, were able to overcome that presumption, while others, like Faras Shahid, were not (see table). Then, in 1915, the fate of Christians from the Middle East, and specifically the Levant (modern-day Lebanon, Syria, Jordan, Israel, and Palestine) would be resolved once and for all.

In *Dow v. United States*, the Fourth Circuit Court of Appeals established that "Syrian Christians fit within the statutory definition of whiteness"⁴⁰ and as a class of immigrants could be naturalized as American citizens. Muslim immigrants from the same region, however, were still prohibited from citizenship, as were

Naturalization-Era Cases Involving Immigrant Petitioners from the Middle East

Case	Petitioner Identity and Court Ruling
<i>George Shisbim v. United States</i> (1909), Los Angeles Superior Court	A Lebanese (Maronite) Christian resident of Los Angeles, California, was granted citizenship on grounds of religious identity.
<i>In re Najour</i> (1909), Circuit Court for the Northern District of Georgia	A Lebanese (Maronite) Christian, Costa George Najour, who resided in Georgia, was granted citizenship on grounds of religious identity.
<i>In re Mudarri</i> (1910), Massachusetts Circuit Court	A Syrian Christian born in Damascus who settled in Massachusetts was granted citizenship on the grounds of physical appearance and religious identity.
<i>In re Ellis</i> (1910), District Court of Oregon	Ellis (who likely changed his name from the Arabic Elias to enhance his naturalization petition) was a (Maronite) Christian from Beirut who settled in Oregon. He was granted citizenship on the grounds of religious identity and physical appearance.
<i>Ex parte Shabid</i> (1913), Eastern District Court of South Carolina	A (Maronite) Christian from Lebanon who settled in South Carolina was denied his petition for citizenship on the grounds of physical appearance, specifically, his dark complexion.
<i>Ex parte Dow</i> (1914), Eastern District Court of South Carolina	George Dow was a (Maronite) Christian from Batroun (Lebanon) who settled in South Carolina. His petition for naturalization was denied on the grounds of his Middle Eastern origins.
<i>In re Dow</i> (1914), Eastern District Court of South Carolina (Appeal)	Dow's appeal was denied by the South Carolina court, which affirmed that he was not white and could not become a naturalized citizen.

<i>Dow v. United States</i> (1915), Fourth Circuit Court of Appeals	Dow won his appeal in the Fourth Circuit Court, establishing the precedent that Syrian Christians as a class fit the statutory definition of whiteness and could become naturalized American citizens.
<i>In re Ahmed Hassan</i> (1942), Eastern District Court of Michigan	A Muslim petitioner from Yemen was found to be non-white on account of his religious identity and his petition for naturalization was rejected.
<i>Ex parte Mohriez</i> (1944), District Court of Massachusetts	Mohriez was a Muslim from Saudi Arabia who filed his petition for naturalization after the United States brokered strong economic/political relations with his country of origin. The court granted Mohriez citizenship in the interest of not disrupting "friendlier relations between the U.S. . . . and other nations."

Muslims from throughout the rest of the region that Orientalists dubbed the Middle East. *Dow* was a landmark decision because it emphatically held that as long as they were Christians, immigrants from the Levant were white by law, thus broadening the parameters of whiteness in the same way that earlier developments had assimilated Jewish, Irish, and Italian people. In addition, it established an early rule that Christians from the Arab world were racially different from Muslims from the very same lands, further illustrating how deeply conflated religion and race were during the naturalization era, and more specifically, how closely tethered Christianity was to whiteness and Islam was to otherness.

The Muslim naturalization ban continued until 1944.⁴¹ This had the effect of suppressing Muslim migration into the United States and of encouraging religious conversion or "passing as

Christian” on the part of many who did migrate.⁴² In 1924, approximately 95 percent of the immigrants who resettled in the United States from the Arab world were Christians, while only 4 percent identified as Muslims.⁴³ This illustrates the immense impact of the Muslim naturalization ban not only on who could and could not become a citizen, but also on who did and did not emigrate to the United States. Many Muslim immigrants, aware of the judicial animus toward their faith, chose not to migrate to the United States. Others likely converted or passed as Christians in order to stave off anti-Muslim animus and enhance their prospects of assimilation and naturalization.

Muslim immigrants who confirmed their religious identity, like Ahmed Hassan of Yemen, were denied naturalization when they sought it.⁴⁴ In Hassan’s case, litigated in Michigan, Judge Arthur J. Tuttle’s opinion centered on the belief that Muslims “as a class would [not] readily intermarry with our population and be assimilated into our civilization.”⁴⁵ Marriage was a proxy for assimilability, and for Judge Tuttle, the belief that Muslims would not intermarry with Christians, or should not intermarry with Christians, confirmed the Orientalist baseline that Muslims could not be integrated. Although Muslim immigrants began to trickle into the United States at a higher clip in 1942, the Michigan court rejected Ahmed’s petition. In addition to Hassan’s religion, Yemen’s distance from Europe and Hassan’s “darkness of skin”⁴⁶ were arguments Judge Tuttle cited in rejecting Ahmed’s petition for citizenship.

Anticipating Ben Carson’s 2015 claim that “Islam is inconsistent with the Constitution”⁴⁷ and Louisiana governor Bobby Jindal’s statement, that same year, that Muslim immigration is part of an attempt to “overtake the culture” of the West,⁴⁸ the *Hassan* court’s framing of Islam as threatening to American values and

society carried the Muslim naturalization ban forward. Indeed, the very stereotypes instrumental to the courts’ understanding of Islam have been echoed, in virtually identical terms, by today’s Islamophobia-peddling politicians.