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STATUS MANIPULATION IN *CHAE CHAN PING V. UNITED STATES*

Sam Erman*

Chae Chan Ping v. United States. By Rose Cuison-Villazor, in *CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND THE LAW* 74, 84. Edited by Bennett Capers, Devon W. Carbado, R.A. Lenhardt and Angela Onwuachi-Willig. Cambridge: Cambridge University Press. 2022. Pp. xxx, 694. Cloth, \$84.75; paper, \$39.19.

Rose Cuison-Villazor's¹ counterhistory reminds us that *Chae Chan Ping v. United States* (1889)² is a blight on U.S. constitutional law. Based on thin contemporary legal authority, this so-called *Chinese Exclusion Case* upheld the unfair and racist Chinese Exclusion Act of 1888.³ Today, that precedent insulates governmental discrimination against aliens at borders from meaningful constitutional scrutiny. Cuison-Villazor's alternative opinion reminds us that it did not have to be this way. This Review reflects on why it nonetheless was. Its partial answer involves what I term "status manipulation."⁴ That is when officials hide and defend illiberal, undemocratic acts by exploiting the plasticity of seemingly unchanging legal categories such as resident, alien, and sovereign.

The genesis of *Chae Chan Ping* was its namesake's decision to return to China temporarily in 1887 (p. 77). That was difficult for a Chinese national such as Chae who resided in the United States and worked as a laborer there (p. 74). If Chae simply left on his travels, the harsh immigration rules established by the virulently racist Chinese Exclusion Acts of 1882 and 1884⁵ would bar him from reentering the United States afterward. To be eligible for reentry, Chae had to secure a certificate from the United States before he departed U.S.

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2. 130 U.S. 581 (1889).

3. P. 77; Scott Act, ch. 1064, 25 Stat. 504 (1888) (repealed 1943).

4. Sam Erman, *Status Manipulation and Spectral Sovereigns*, 53 COLUM. HUM. RTS. L. REV. 813 (2022); Sam Erman, *Truer U.S. History: Race, Borders, and Status Manipulation*, 130 YALE L.J. 1188 (2021) (reviewing DANIEL IMMERWAHR, *HOW TO HIDE AN EMPIRE* (2019)).

5. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882), amended by ch. 220, 23 Stat. 115 (1884).

territory (p. 77). He did so before departing on a trip to China of just over a year (p. 77). But then, while Chae was en route on his voyage home in 1888, Congress enacted a statute voiding reentry certificates such as Chae's, effective immediately.⁶ Thus, when Chae reached California, immigration officials denied him entry (p. 77). He went to court, claiming a denial of constitutional due process.⁷ The Supreme Court disagreed: "[T]he United States, through the action of the legislative department, can exclude aliens from its territory,"⁸ and such action is "necessarily conclusive upon all its departments and officers."⁹ Here was the foundation of what would come to be known as Congress's "plenary" power to enact immigration legislation free from most constitutional constraints.¹⁰

As Cuison-Villazor deftly shows, this far-reaching doctrine contravened text, precedent, historical practice, and structural sense. Consider the focus on alienage, which is nowhere to be found in the Due Process Clause of the Fifth Amendment: "[N]o person shall . . . be deprived of life, liberty or property without due process of law" (p. 79). In *Yick Wo v. Hopkins*,¹¹ the Supreme Court had explained that nearly identical language in the Fourteenth Amendment was "not confined to the protection of citizens' but rather 'applies to all persons'" (p. 79). Similarly, the Court had "never held that the application of the Constitution is limited to the borders of the United States."¹² Nor did focusing on the combination of alienage and extraterritoriality redeem the logic. Such an argument would rest on a plenary federal "immigration power." But any such power—much less a plenary one—is notable for "its absence from the text of the Constitution" (p. 81). Historical practice actually points toward states' retention of that power: "Historically, states regulated immigration law.

6. P. 77; Scott Act, ch. 1064, 25 Stat. 504 (1888) (repealed 1943).

7. See pp. 77–78.

8. *Chae Chan Ping v. United States*, 130 U.S. 581, 603 (1889).

9. *Id.* at 606.

10. Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power over Foreign Affairs*, 81 TEX. L. REV. 1, 158, 124–34, 159–63 (2002); Nikolas Bowie & Norah Rast, *The Imaginary Immigration Clause*, 120 MICH. L. REV. 1419 (2022) (arguing that *Chae Chan Ping* was actually a rather narrow holding whose expansive language was transformed into the far-reaching plenary-immigration-power doctrine in the early twentieth century). I gratefully acknowledge my debt to Bowie and Rast for key pieces of my interpretation of *Chae Chan Ping*. I depart from their interpretation insofar as I see the inherent-powers-of-sovereignty reading of *Chae Chan Ping* less as a misreading than as an available reading.

11. 118 U.S. 356 (1886).

12. P. 80. Subsequent cases flirted with and ultimately rejected the rule that the Constitution has no application outside U.S. borders. Compare, e.g., *In re Ross*, 140 U.S. 453, 464 (1891) ("The constitution can have no operation in another country."), with *Reid v. Covert*, 354 U.S. 1, 5 (1957) (plurality opinion) ("[W]e reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights."), *id.*, at 74 (Harlan, J., concurring) ("I do not think that it can be said that these safeguards of the Constitution are never operative without the United States . . ."), and *Boumediene v. Bush*, 553 U.S. 723 (2008) (requiring a constitutional protection for a foreigner outside U.S. borders).

Indeed, for the first 100 years of this country, the federal government did not . . . regulate the admission of noncitizens to the United States” (p. 81). To the extent that the immigration power were to arise from an enumerated congressional power such as the Foreign Commerce Clause, Congress would be subject to ordinary constitutional constraints in exercising it. Its position within the constitutional structure would be such that “exercise of this immigration power [would not be] plenary or absolute” (p. 81).

The Court had better alternatives. Several bases existed for upholding Congress’s power to regulate immigration and to preempt contrary state laws: “the power to provide for the common defense and general welfare, the regulation of commerce with foreign nations, and establish a uniform rule of naturalization” (p. 81). The Court could have clearly stated that it was limiting its decision to one of those bases. All would have been subject to normal constitutional limitations, including due process requirements. Had it done so, the Court could then have used those limitations to treat Chae’s U.S. residence and right to return as “property interests and reasonable reliance and expectations” that the government could not “arbitrarily or capriciously” extinguish “because of” Chae’s race.¹³

The choice to instead introduce an exclusionary, illiberal, and inegalitarian principle to U.S. constitutional doctrine has proved enduring. For nigh a century and a half, the Court’s *Chae Chan Ping* declaration that aliens at U.S. borders exist outside the Constitution has insulated governmental racism, sexism, and islamophobia from judicial scrutiny.¹⁴ That was true, of course, in *Chae Chan Ping*, as well as the string of ensuing decisions affirming exclusions of others of Asian descent.¹⁵ Much later, *Fiallo v. Bell* (1977) confronted whether unconstitutional sex discrimination occurred when U.S. familial-immigration preferences differed depending upon whether the citizen and foreigner were a father and child or a mother and child.¹⁶ The Court cited *Chae Chan Ping* to declare this to be a question of aliens and borders “largely immune from judicial control.”¹⁷ Four decades later, President Trump tested the limits of the doctrine by demanding “a total and complete shutdown of Muslims entering the United States” and then implementing three travel bans that mostly affected Muslims.¹⁸ Rather than decide whether the third of these travel

13. P. 83; see also Rose Cuison-Villazor, *Chae Chan Ping v. United States: Immigration as Property*, 68 OKLA. L. REV. 137 (2015).

14. Bowie & Rast, *supra* note 10.

15. *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892); *Fong Yue Ting v. United States*, 149 U.S. 698, 705–07, 723, 730 (1893); *Lem Moon Sing v. United States*, 158 U.S. 538, 541–42 (1895); *Li Sing v. United States*, 180 U.S. 486, 494 (1901).

16. 430 U.S. 787, 788–90 (1977).

17. *Id.* at 792 (quoting *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953)).

18. *Trump v. Hawaii*, 138 S. Ct. 2392, 2435 (2018) (Sotomayor, J., dissenting) (quoting Joint Appendix at 158, *id.*, No. 17-965 (reproducing Press Release, Donald J. Trump for President, Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015))).

bans was unconstitutional religious discrimination, the Court repeated *Fiallo*'s gloss on *Chae Chan Ping* and demurred.¹⁹

In deciding *Trump v. Hawaii*, the Court obscured the continuities and emphasized the breaks with its own history of xenophobic jurisprudence. Though the opinion rested on *Chae Chan Ping*, the justices made nary a mention of the decision, a.k.a. the *Chinese Exclusion Case*.²⁰ Instead, the Court disavowed a xenophobic decision upon which its decision did not rest, *Korematsu v. United States*.²¹

Don't be fooled. Cuison-Villazor's recasting of the facts of *Chae Chan Ping* demonstrates that *Trump v. Hawaii* was no tragic, unintended consequence. It was a reenactment. Both cases involved relatively small populations of new arrivals.²² They both featured policies indulging a popular xenophobia exacerbated by economic anxiety.²³ Both were part of a series of illiberal and racist official acts at odds with national ideals of equality and fair play.²⁴ And both voided the permission to enter for travelers who had already begun their voyages in reliance on the then-existing permission.²⁵ Most remarkably, their similar facts resulted in similar outcomes because the racist doctrinal innovation

19. *Id.* at 2418.

20. *Trump*, 138 S. Ct. 2392 (2018).

21. *Id.* at 2423.

22. Compare pp. 74–75, with Besheer Mohamed, *Muslims Are a Growing Presence in U.S., But Still Face Negative Views from the Public*, PEW RSCH. CTR. (Sept. 1, 2021), <https://www.pewresearch.org/fact-tank/2021/09/01/muslims-are-a-growing-presence-in-u-s-but-still-face-negative-views-from-the-public/> [perma.cc/8KWA-K8SX] (reporting that between 2007 and 2017 the number of Muslims in the United States grew by just over a million people to around 1 percent of the total U.S. population).

23. See 75–76; James J. Fahey et al., *Emotional Voting, Racial Animus and Economic Anxiety in the 2016 Presidential Election*, AM. REV. POLITICS, Dec. 2020, at 29; Symposium, *The Muslim Ban Revisited: Trump v. Hawaii Two Years Later*, 44 N.Y.U. REV. L. & SOC. CHANGE HARBINGER 248 (2020).

24. Compare pp. 76–77, with *Trump*, 138 S. Ct. at 2403–06 (describing the travel ban at issue as well as the two that preceded it).

25. Compare p. 77 (noting that *Chae*'s steamship arrived stateside on October 7, 1888), with Drew Keeling, *Oceanic Travel Conditions and American Immigration, 1890-1914*, MUNICH PERS. REPEC ARCHIVE 3 n.5, <https://mpira.ub.uni-muenchen.de/47850/> [perma.cc/FYB3-JCZL] (last modified Sept. 26, 2019, 9:24 AM) (explaining that travel times of 10.5-11 days were typical for the shorter transatlantic steamship route), and Scott Act, ch. 1064, 25 Stat. 504 (1888) (repealed 1943). While pulling the rug out from under travelers en route may sound like the overwrought plot of a melodrama, the incidents were not isolated. See, e.g., SAM ERMAN, *ALMOST CITIZENS* 75 (2018) (describing how, several years after the U.S. annexation of Puerto Rico, a resident of the island boarded a steamship while able to migrate freely to New York but disembarked subject to a newly issued rule declaring Puerto Ricans to be aliens); Rebecca J. Scott, *Paper Thin: Freedom and Re-Enslavement in the Diaspora of the Haitian Revolution*, 29 LAW & HIST. REV. 1061 *passim* (2011) (describing how formerly enslaved people who had won their freedom during the Haitian Revolution and embarked to New Orleans were categorized as enslaved upon disembarking there).

of 1889 survived into 2018 untouched by the 129 intervening years of constitutional antidiscrimination law.²⁶

The history presents a puzzle. The *Chae Chan Ping* decision disregarded constitutional text, structure, history, and precedent; violated U.S. ideals of fair play and equality; and authorized future abuses. Yet, the decision was unanimous, not particularly controversial, built upon by Congress, and durable.²⁷ How did the Court do it?

A piece of the answer is a pair of complementary status manipulations that recast federal violations of American residents' rights as national self-defense. The Court disregarded Chae's status as an American resident, foregrounded his status as an alien, and conflated foreign nationals with representatives of foreign governments. The justices also iteratively collapsed the distinction between the limited federal foreign-affairs powers enumerated in the Constitution and the unlimited powers that international law accorded to sovereigns. Taken together, these moves undergirded the Court's declaration that Congress has an unlimited, unaccountable, and indivisible power to exclude aliens.

In *Chae Chan Ping*, the Court confronted a litigant whose long-term residence in the United States could make him appear to be internal to the nation and thus worthy of constitutional protection from federal abuse. In this way, Chae resembled millions of new and future Americans, most of whom hailed from Europe.²⁸ Such American residents participated in the U.S. economy, contributed to state and national fiscs, raised U.S.-born children with U.S. citizenship, and made the United States their permanent homes.²⁹ It was this aspect of Chae's dual status as an American resident and foreign national that the Court obscured.

26. It remained untouched in the sense of not having been narrowed. According to Bowie & Rast, *supra* note 10, at 1476–77, *Chae Chan Ping*'s holding that the government can exclude arriving aliens only came to be understood as a manifestation of a plenary immigration power in the decade preceding U.S. entry into World War I.

27. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); Bowie & Rast, *supra* note 10, at 1425; see Geary Act, ch. 60, 27 Stat. 25 (1892).

28. Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850-1990* tbl.2 (U.S. Census Bureau, Working Paper No. POP-WPO29, 1999), <https://www.census.gov/library/working-papers/1999/demo/POP-twps0029.html> [perma.cc/9W2L-BBEB].

29. See, e.g., OSCAR HANDLIN, *THE UPROOTED* 58–84 (2d ed. 1973); Timothy G. Conley & David W. Galenson, *Nativity and Wealth in Mid-Nineteenth Century Cities*, 58 J. ECON. HIST. 468 (1998); Sandra Sequeira, Nathan Nunn & Nancy Qian, *Immigrants and the Making of America: The Short and Long Run Effects of Immigration During the Age of Mass Migration*, 87 REV. ECON. STUD. 382 (2020); Ran Abramitzky & Leah Boustan, *Immigration in American Economic History*, 55 J. ECON. LIT. 1311, 1312, 1326–30 (2017); Campbell Gibson & Kay Jung, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850 to 2000* tbl.13 (U.S. Census Bureau, Working Paper No. 81, 2006), <https://www.census.gov/content/dam/Census/library/working-papers/2006/demo/POP-twps0081.pdf> [perma.cc/QNC5-84DN]; *United States v. Wong Kim Ark*, 169 U.S. 649 (1898); Ran Abramitzky, Leah Boustan & Katherine Eriksson, *To the New World and Back Again: Return Migrants in the Age of Mass Migration*, 72 INDUS. & LAB. RELS. REV. 300, 300 (2017); John Joseph Wallis, *American Government Finance in the Long Run*:

Instead of portraying Chinese immigrants as individuals building new lives in the United States, the Court cast them as surrogates of their native China. Specifically, the majority represented Chinese character as inconsistent with participation in U.S. life and as fundamentally foreign, political, and invasive. As to the inability to integrate, the Court declared that “differences of race” meant that Chinese nationals living in the United States would “not assimilate” or “make any change in their habits or modes of living” and so “remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country.”³⁰ The majority paired its negation of the significance of long-term American residence with fears that Chinese nationals could colonize the United States from within. Because such immigrants “retained the habits and customs of their own country, . . . without any interest in our country or its institutions,” they “constituted a Chinese settlement within the State” that was “dangerous” to American “peace and security.”³¹ Here, immigrants from China appeared almost as official emissaries seeking to spread and implant Chinese institutions. The Court further tightened the metaphorical link between Chinese nationals and the geopolitical machinations of the Chinese nation by vastly overstating Chinese immigration to the United States. Though such arrivals were a tiny portion of the total, the majority perceived “vast hordes of [China’s] people crowding in upon us[] . . . in numbers approaching the character of an Oriental invasion.”³² The judicial imagination thereby transformed laborers seeking to find work, raise families, make lives, and live out their days within the American system into enemy soldiers laying siege to national life in the United States.

The transformations of American residents into foreign adversaries brought a concomitant switch in focus from protection against domestic federal overreach to protection through federal assertions of power internationally. Sovereignty provided the means. It was a term that bore very different meanings within international and constitutional law. On classic international law accounts, sovereignty was the unlimited, unaccountable, and undivided power of the nation state within its territory and over its nationals.³³ It provided a firm basis for the power to exclude aliens from national territory as a

1790 to 1990, J. ECON. PERSPS., Winter 2000, at 62, 68; Richard Sutch, Immigrant Homeownership, Economic Assimilation, and Return Migration During the Age of Mass Migration to the United States 9–11 (Mar. 11, 2013) (paper offered for discussion, Economic History Seminar, Economics 211, University of California, Berkeley), <https://eml.berkeley.edu/~webfac/eichen-green/Sutch.pdf> [perma.cc/RV6K-28SX]; cf. Cecil E. Bohanon & T. Norman Van Cott, *Tariffs, Immigration, and Economic Insulation: A New View of the U.S. Post-Civil War Era*, 9 INDEP. REV. 529 (2005) (describing the tariffs that all U.S. consumers—including immigrants—indirectly paid and arguing that immigrants’ output resulted in lower effective tariff rates).

30. *Chae Chan Ping*, 130 U.S. at 595, 606.

31. *Id.* at 595–96, 606.

32. *Id.* at 595, 606.

33. See DON HERZOG, SOVEREIGNTY, R.I.P., at xi (2020); Cleveland, *supra* note 10.

matter of international law.³⁴ By contrast, the U.S. Constitution divided authority between the state and federal governments, then subdivided the federal power between three branches. None of the branches were unaccountable. Each checked and balanced the others. Far from unlimited, federal lawmaking was confined to enumerated subjects, according to the Court.³⁵ Sovereignty alone provided no constitutional basis upon which Congress could exclude immigrants.

And yet, sovereignty and the law of nations was everywhere in the Court's decision. Consider the following ambiguous passage:

While under our constitution . . . local matters [tend to be] controlled by local authorities, the United States, in their relation to foreign countries and their subjects or citizens, are . . . invested with powers which belong to independent nations The powers to declare war, . . . and admit subjects of other nations to citizenship[] are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations.³⁶

The claim can be read as wholly uncontroversial: The Constitution permits the United States to exercise certain, enumerated powers that happen to be among what international law recognizes as sovereign powers. Or, international law permits the United States to exercise all sovereign powers, though the Constitution may impose restrictions. But the Court could also be read to be declaring something bold—that the Constitution authorizes the federal government to exercise all the powers that international law does.³⁷ The final words in the passage suggest as much by identifying the limits that international law imposes on the exercise of the inherent powers of sovereignty with limits on the federal government's constitutional power.

The Court further hinted that the federal government wields inherent powers of sovereignty when it asserted a universal duty of national self-defense that calls forth power and sweeps away restraint:

To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. . . . The government, possessing the powers which are to be exercised for protection and

34. Cleveland, *supra* note 10, at 83.

35. *McCulloch v. Maryland*, 17 U.S. 316, 405 (1819) (“This government is acknowledged by all to be one of enumerated powers.”)

36. *Chae Chan Ping*, 130 U.S. at 604.

37. Such a claim can be squared with enumerated powers if one presumes that the federal and state governments together wield all the powers of international law sovereignty and that the Constitution's multiple grants of foreign-affairs powers to the federal government implicitly disable states from action in the field. See Brief for the Respondents, *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (No. 1345); Bowie & Rast, *supra* note 10 *passim*.

security, is clothed with authority to determine the occasion on which the powers shall be called forth . . .³⁸

Notably, the passage does not mention the Constitution, much less the Supremacy Clause. Doing so would have raised the question of whether the Constitution recognized this national sovereignty with unlimited and unaccountable power to serve itself. Instead, the Court left that conclusion to implication.

Elsewhere, the Court associated federal authority with the unlimited, unaccountable, and undivided power that was the hallmark of the classic law-of-nations model of sovereignty. Most memorably, the Court declared: “The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, the right to its exercise . . . cannot be granted away or restrained . . .”³⁹ But it also made the points separately: In “relations with foreign nations,” the government was one “possessing the powers . . . for protection and security, . . . with authority to determine” when “the powers shall be called forth” and “the occasion” of their use.⁴⁰ Congress’s decisions on such matters were “conclusive upon the judiciary” and all U.S. “departments and officers.”⁴¹ They were “not questions for judicial determination.”⁴² The powers of Congress in this area were “one power” that “cannot be abandoned or surrendered” and which were “incapable of transfer to any other parties.”⁴³

The result was a doctrine of uncertain origin and scope. Jurists variously read the federal authority to exclude aliens as flowing from powers inherent in sovereignty or as merely incident to constitutionally enumerated powers.⁴⁴ The justices substantively disagreed on the extent of federal power. Thus, in *Fong Yue Ting v. United States* (1893), the majority cited *Chae Chan Ping* and the power to exclude to uphold a congressional statute that required deportation of Chinese aliens who failed to obtain a certificate of residence.⁴⁵ Justice Stephen Field, who had authored *Chae Chan Ping*, now wrote in dissent that his brethren were overreading the decision.⁴⁶

38. *Chae Chan Ping*, 130 U.S. at 606.

39. *Id.* at 609.

40. *Id.* at 606.

41. *Id.*

42. *Id.* at 609.

43. *Id.* at 606, 609.

44. Compare Brief for the Appellants at 18–28, 53–54, *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (No. 1345) (countering—and thereby recognizing the availability of—the inherent-powers-of-sovereignty argument while contending that *Chae Chan Ping* and other immigration cases should be understood as commerce-power cases), with Brief for the Respondents at 32, *id.* (No. 1345) (expressly declining to press—and thereby implicitly recognizing the availability of—the argument that the international law of sovereignty provides constitutional authority for federal action).

45. 149 U.S. 698 (1893); Geary Act, ch. 60, § 6, 27 Stat. 25, 25–26 (1892); Bowie & Rast, *supra* note 10, at 1472.

46. See *Fong Yue Ting*, 149 U.S. at 746 (Field, J., dissenting).

Over time, the ambiguity concerning the source and scope faded from view.⁴⁷ As the justices departed the bench, so did the fractured views of the *Chae Chan Ping* majority. Only the binding authority of the justices' precedential text remained. Thus, on the eve of World War I, with a bench entirely different from the one that had decided *Chae Chan Ping*, the Supreme Court reviewed its past precedent to declare in a brief and unanimous opinion that Congress enjoyed "plenary" power over the "terms and conditions upon which they ["aliens"] may come into or remain in this country."⁴⁸ In subsequent decades, the Court increasingly explicitly declared that the plenary immigration power came from "international law as a power inherent in every sovereign."⁴⁹

47. Cf. PAMELA BRANDWEIN, *RETHINKING THE JUDICIAL SETTLEMENT OF RECONSTRUCTION* (2011) (describing the demise of the state-neglect doctrine in similar terms); ERMAN, *supra* note 25 (describing the Court's embrace of the territorial nonincorporation doctrine in similar terms).

48. *Lapina v. Williams*, 232 U.S. 78, 88 (1914); *Justices 1789 to Present*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/about/members_text.aspx [perma.cc/935A-36PY]; see also *Bugajewitz v. Adams*, 228 U.S. 585 (1913); *Bowie & Rast*, *supra* note 10, at 1476–77.

49. *Harisiades v. Shaughnessy*, 342 U.S. 580, 587 (1952); *Mahler v. Eby*, 264 U.S. 32, 39 (1924); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950); see also *Bowie & Rast*, *supra* note 10, at 1478–79.

