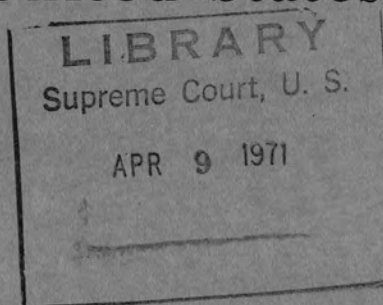


Supreme Court of the United States

OCTOBER TERM 1970



In the Matter of:

Docket No. 609

JOHN O. GRAHAM, COMMISSIONER,
DEPARTMENT OF PUBLIC WELFARE,
STATE OF ARIZONA,

Appellant

vs.

CARMEN RICHARDSON, ET AL.,

Appellees

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE
APR 9 11 35 AM '71

Duplication or copying of this transcript
by photographic, electrostatic or other
facsimile means is prohibited under the
order form agreement.

Place Washington D. C.

Date March 22, 1971

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

ORAL ARGUMENT OF:

P A G E

Michael S. Flam, Assistant Attorney General
of Arizona on behalf of Appellant

2

Rebuttal by Michael Flam

28

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

JOHN O. GRAHAM, COMMISSIONER,
DEPARTMENT OF PUBLIC WELFARE,
STATE OF ARIZONA,

Appellant

vs

No. 609

CARMEN RICHARDSON, ET AL.,

Appellees

The above-entitled matter came on for argument
at 11:10 o'clock a.m. on Monday, March 22, 1971.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

MICHAEL P. WFLAM, ESQ.
Assistant Attorney General
State of Arizona
Phoenix, Arizona
On behalf of Appellant

ANTHONY B. CHING, ESQ.
Special Counsel
Legal Aid Society of the
Pima County Bar Association
Cambridge, Massachusetts
On behalf of Appellees

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in Number 609: Graham, Commissioner of Public Welfare, against Richardson.

Mr. Flam, you may proceed whenever you are ready.

ORAL ARGUMENT BY MICHAEL S. FLAM,
ASSISTANT ATTORNEY GENERAL OF ARIZONA
ON BEHALF OF APPELLANT

MR. FLAM: Mr. Chief Justice and may it please the Court:

This case involves the validity of Arizona's legislative policy which requires a person to be a United States citizen, or in lieu of the United States citizenship, a resident of the United States for 15 years as a condition for paying welfare benefits in the State of Arizona.

There are seven other states that have similar provisions.

Briefly the facts: the named Appellee: Carmen Richardson, is an alien lawfully admitted to this country under our laws. She has been a continuous resident of the State of Arizona for 13 years. Mrs. Richardson, prior to the filing of the complaint was eligible for assistance under the Aid to the Permanently and Totally Disabled Program, but for the United States citizenship requirement or in lieu of U. S. citizenship for 15 years durational, national residency requirement.

1 Appellee filed a class action lawsuit in the
2 United States District Court for the District of Arizona,
3 attacking the constitutionality of the citizenship require-
4 ments. The claimed infirmity was that the citizenship require-
5 ments violated her right to travel and denied her equal pro-
6 tection under the law as guaranteed by the United States
7 Constitution.

8 She also alleged two statutory grounds: one that
9 the statute violated the Social Security Act and two: that the
10 statute violated 42 U.S. Code 2000(d).

11 The District Court, after hearing, enjoined the
12 Appellant from enforcing the United States citizenship re-
13 quirement as provided by Arizona law and thereafter, upon
14 motion of the Appellant, stayed the judgment from a judicial
15 review by this Court.

16 We would first like to point out that there has
17 been no invidious discrimination in this case as was found in
18 the case of Shapiro v. Thompson. All the state has done in
19 this case is to create two classes for determining who shall
20 be eligible for welfare benefits in the State of Arizona; one
21 class of citizens; the other are aliens.

22 This Court, by prior decisions, has allowed
23 states to favor citizens over aliens in the war on poverty.
24 Specifically we direct the Court's attention to the case of
25 People v. Crane where Justice Cardozo stated: "To disqualify

1 aliens is discrimination indeed, but not arbitrary discrimina-
2 tion."

3 Q That wasn't a decision of this Court.

4 A The decision of the lower court which was
5 affirmed by the United States Court -- opinion. But, his
6 opinion in the lower court is very instructive.

7 "To disqualify aliens is discrimination, indeed,
8 but not arbitrary discrimination; for the principle of ex-
9 clusion is restriction of the resources of the state to the
10 advancement or profit of members of the state. Ungenerous and
11 unwise such a discrimination may be is not for that reason
12 unlawful."

13 Further, last term this Court decided the case
14 of Dandridge v. Williams, which we feel is very instructive.
15 In that case the Court stated: in the area of economics and
16 social welfare the state did not violate equal protection merely
17 because of the classification made or its laws were
18 imperfect.

19 But if the classification has some reasonable
20 basis it does not offend the United States Constitution.

21 Q What is the reasonable basis for this one?

22 A Yes, Mr. Justice Marshall. We submit that
23 the state does have a reasonable basis for favoring U. S.
24 citizens over aliens. Funds available for welfare purposes in
25 the State of Arizona are quite limited. For example: a family

1 of four in the State of Arizona drawing ADC, the maximum
2 payment is \$167 a month. For the adult program such as the
3 one Appellee applied for --

4 Q Do you have enough money for your hospitals?

5 A No, we don't, sir.

6 Q Well, can you exclude aliens from hospitals?
7 Could you?

8 A Well, let's put it this way --

9 Q If you had anything other than lack of
10 money.

11 A As a reasonable basis? I think what I
12 would like to say to the Court, that these sums are barely
13 enough to sustain the life of the persons presently partici-
14 pating in the program.

15 Q The only reason --

16 A Now, if you further dilute the funds
17 available --

18 Q The only reason is lack of money?

19 A That is correct.

20 Q And you consider that a reasonable ground?

21 A Yes, sir; I think that's a reasonable
22 basis in light of the decision in Dandridge v. Williams.

23 Q Is there any -- what's the history of this
24 legislation in Arizona; do you know?

25 A Yes, sir; it was enacted approximately in

1 1937.

2 Q '37?

3 A Yes, at the time the states provided for
4 welfare assistance and received funds from the Federal Govern-
5 ment. At one time the residency requirement was 25 years.
6 I believe in 1956 it was lowered to the present 15-year
7 limitation.

8 Q You don't have anything in your state
9 legislature equivalent to the Congressional Record so that we
10 could --

11 A No, sir; there is no legislative history
12 or as such; that's correct.

13 Q Nothing to show the -- what the state
14 legislature had in mind in enacting that. You have told my
15 brother Marshall that the rationalization or the purpose of the
16 state is to save money.

17 A And conserve funds; right.

18 Q Conserve the necessarily finite funds. But
19 I was wondering if that's what the legislative history shows
20 and the answer --

21 A It appears that, you know, from reading
22 the statute that that's the purpose. In Arizona funds are
23 appropriated on an annual basis for welfare and they cannot
24 be increased except by an act of the legislature. So the
25 Appellants, in administering the welfare programs, must

1 divide the funds available amongst a myriad of potential
2 recipients.

3 Now, by adding aliens to the welfare rolls would
4 dilute the funds available to the persons presently partici-
5 pating. And as I pointed out to the Court, the sums are quite
6 low and to add two to 3,000 aliens who may become eligible
7 for welfare assistance in Arizona, would damage the program
8 tremendously.

9 Q Is there any showing as to how many poten-
10 tial alien recipients there are? It used to be more than
11 two or 3,000.

12 A Yes; when the Appellant moved for a stay
13 of the judgment in the lower court the Department of Public
14 Welfare submitted an affidavit by the Director of Assistance
15 Payments and I would like to refer the Court to page 53 of the
16 Appendix.

17 In the affidavit we estimate that there are
18 between 2,600 and 3,900 resident aliens eligible for welfare
19 assistance in the State of Arizona. I would like to point out
20 of course, some of those people have met the 15-year residency
21 requirement, so that's why we have the 2,600 figure and the
22 high figure of 3,900, for that variation.

23 Q Most of these in Arizona, I suppose would
24 be from Mexico?

25 A We concede that most of the resident aliens

1 living in the State of Arizona are from Mexico; however the
2 statute applies to all aliens equally --

3 Q I understand; I understand. I was just
4 asking as a matter of --

5 A That is correct.

6 Q The 15 years doesn't have to be necessarily
7 in Arizona?

8 A That is correct; it's a national residency
9 requirement. And this is distinguishable from the residency
10 requirement that was stricken by this Court in Shapiro v.
11 Thompson.

12 Recent decisions of this Court uphold the ~~special~~
13 state interest doctrine wherein states may favor citizens over
14 aliens. The 1948 case of Takahaski versus Fish and Game Com-
15 mission, which is much discussed in the briefs, uphold that
16 provision. However, in that case this Court could not find
17 that the State of California had a special state interest in
18 conserving the fish off its coast.

19 I think that one thing that's very important
20 that this Court must take notice of: that the states are
21 experiencing difficulty in the welfare programs; specifically
22 this Court's directive that the Departments in the States of
23 New York and California are having.

24 The City of New York went bankrupt several weeks
25 ago because of welfare costs. Surely the problems plagued

1 Q Why not cut off all the welfare?

2 A Well, that's a prerogative of the state
3 legislature and we do have a problem pertaining to welfare,
4 not only in the State of Arizona, but in every State of the
5 Union.

6 Q Do you see more of a problem of cutting
7 off of all welfare than cutting off of those 2,000?

8 A Well, the State --

9 Q Those 2,000 don't eat?

10 A Pardon?

11 Q The distinction is that 2,000 don't eat;
12 is that what you think?

13 A They eat, sir, but past decisions of this
14 Court have upheld the right of the State of Arizona and other
15 states -- I should say Arizona, but our doctrines who favor
16 citizens over aliens. But what we're trying to do is save
17 part of our sinking ship.

18 I think everybody is in agreement that the welfare
19 programs in the United States in every State of the Union, are
20 in serious trouble and they do not do the job.

21 Q And how many states do you happen to know
22 of have this exclusion of alien provision, either in the pure
23 form, as in the next case, or as you have got it here?

24 A Approximately seven or eight states, sir.

25 Q Seven or eight?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Where are they located?

A Florida, Texas, Pennsylvania --

Q There is another one out there --

A They are spread out. It's not specifically the Southwest or those states that border Canada.

Q Do you tax aliens and --

A Yes, sir we do. They pay sales taxes, income taxes just like citizens.

Q And if an alien lives there for ten years on a job and he pays taxes and if he loses his job and needs relief he can't get it?

A That is correct. But it is not incumbent upon the State of Arizona, once a person comes from a foreign country to live within a state, to maintain his existence. I don't think you could find that under the constitution or any statutory scheme of Congress or the State of Arizona.

Q Well, that's -- that's true for citizens, too.

A That's true for citizens.

Q The question of Equal Protection --

A That is correct. We submit, based on the special state interest doctrine which has been announced by this Court in previous decisions that the State of Arizona has the right to favor citizens over its aliens in welfare

1 programs.

2 I cannot overemphasize the importance we rely
3 upon in the case of Dandridge v. Williams, when this Court has
4 stated that the constitution does not empower this Court to
5 second-guess state officials charged with the difficult
6 responsibility of allocating limited public welfare funds
7 amongst a myriad of potential recipients.

8 Appellees rely heavily upon the right of travel;
9 however, they do not show or demonstrate to this Court that
10 that right extends to aliens. In Shapiro v. Thompson that
11 right was the reason, the primary reason why citizens who had
12 to wait one year were deprived of equal protection of the law.

13 Assuming arguendo that the right to travel does
14 extend to aliens the statutes in question, we submit, do not
15 have a chilling effect upon the exercise of that right.

16 For one thing: indigency alone severely limits
17 one's mobility. Another fact not to be overlooked is that
18 we're dealing with a national residency requirement. We do
19 not require an alien to reside in the State of Arizona. The
20 requirement is that they reside in the United States.

21 Nor, does our law impede free movement or job
22 opportunities. The flaw of the Appellees' position can be
23 shown by a logical extension of their argument. If an alien
24 is residing in one state, for example: New Mexico, and wishes
25 to move to another state; for example: my state, Arizona, where

1 Arizona's welfare benefits are less than New Mexico. Can you
2 compel the State of Arizona to raise its benefits? I think
3 not.

4 If the Court accepts the Appellants' position
5 as tenable then all distinctions affecting aliens and citizens
6 would be suspect. Clearly this has not been the wisdom of the
7 Court in the past.

8 Furthermore, Arizona's citizenship policy is
9 articulated by the Social Security Act, which does not favor
10 -- does not forbid states from favoring citizens over aliens
11 in the distribution of welfare benefits. This interpretation
12 is bolstered by a committee report of the Congress which
13 states: "A state may if it wishes, assist only those who are
14 citizens, but not insist on their having been born citizens
15 or on their having been naturalized citizens for a specified
16 period of time."

17 Further, this has been the view of the Secretary
18 of Health, Education, and Welfare, the person charged with the
19 administration of the Social Security Act.

20 The Arizona citizenship requirements, I should
21 point out to the Court, affect three Federally-matched pro-
22 grams: the Old Age Assistance Program, the program that
23 Appellee applied for: Aid to the Permanently and Totally
24 Disabled, and the Aid to the Blind Program. There is one state
25 program that is involved in this case, and that's the General

1 Assistance Program which is solely funded by the State of
2 Arizona.

3 One more point that I would like to discuss is
4 the statutory issue of 42,000(d). This statute states that
5 no person shall be discriminated because of national origin
6 under a program which is financed by Federal funds. Arizona's
7 citizenship requirements apply to all programs -- excuse me,
8 all aliens, regardless of national origin. We do not dis-
9 tinguish between Germans or Englishmen or Japanese.

10 And, as was pointed out in the case of Lassiter
11 versus New Hampton Board of Elections, a statute does not
12 violate equal protection if it's applied equally. In that
13 case North Carolina's literacy test was upheld for the reason
14 that it applied to all races on an equal basis.

15 One other point: if a United States citizen who
16 has not resided in the United States for 15 years was ex-
17 patriated and at a later date was allowed into this country,
18 he too, would not be eligible for eligible assistance.

19 Q How many of those do you have in Arizona?

20 A None to my recollection. It's just a
21 theory I decided to point out to the Court.

22 I have nothing further.

23 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Flam.

24 Mr. Ching.

25 ORAL ARGUMENT BY ANTHONY B. CHING, ESQ.

1 MR. CHING: Mr. Chief Justice and may it please
2 the Court:

3 I would like to at this time reply very briefly
4 to the reply brief submitted by the Appellant. The Appellant
5 apparently felt that one of the arguments raised in the
6 Appellees' brief, the argument that the same would be accom-
7 plished by the treaties made by the United States, namely the
8 U.N. Charter and the charter of the OAS, since that argument
9 was not raised in the Court below we should not raise it here.

10 In reply to that argument I would like to point
11 out to this Court that it is a general Appellate rule that any
12 decision by a lower court should be affirmed if there is any
13 basis or ground to affirm that decision, even if the opinion
14 of the case would rely on grounds not otherwise raised in the
15 court below.

16 This is different than the Appellees' position,
17 which is: you can reverse the case on the basis of a ground
18 which has not been established below. In other words, the
19 lower court had no opportunity to review that claim and some-
20 how the result would have been different. And to support my
21 theory there are two cases decided by this Court very squarely
22 in point, and these cases are: Helgrin versus Gowran,
23 G-o-w-r-a-n, in 302 U.S. 238 and Securities and Exchange
24 Commission versus Tony Corporation (?) 318 U.S. 80.

25 The Appellees raise four different grounds for

1 affirmance of the decision below. I will discuss each of them
2 in this argument.

3 The first basis for affirming the decision is that
4 the United States Government has on several occasions entered
5 into multilateral treaties with other nations and particularly
6 the United Nations Charter, which governs this country the
7 same as any other treaty. This was the view advanced in an
8 earlier case argued before this Court in Rice versus Sioux City,
9 Cemetery case which I cite in my brief and the Court on
10 reviewing has said that that argument was not without merit.

11 We note that the United States is a leader of the
12 free world and that everything that we do reflects very
13 seriously on our posture abroad. Specifically if the states
14 are allowed to discriminate against aliens, nationals of other
15 countries who are invited to come to this country under our
16 immigration powers, they would weaken our posture before the
17 other nations.

18 And for this reason the states should not be
19 allowed to conflict with the national interest and the public
20 policy of the United States Government.

21 And more particularly, it seems it's established
22 that most of the aliens in Arizona are aliens of Mexican
23 origin. We are bound by the treaty called the Charter of the
24 Organization of American States and the earlier charter cited
25 in my brief specifically provided for equal treatment of all

1 persons within the respective jurisdictions.

2 Q Do they have a right to vote in the United
3 States?

4 A As far as the right to vote -- the alien's
5 right to vote concern it raises two different issues, which
6 neither of them are before the Court in this case. However,
7 if the Court wishes I will very briefly discuss that.

8 First of all, as to --

9 Q My whole point is: I think if you get to
10 cases in this Court, at least so far as I am concerned, you
11 would do much better than you will so far as I am concerned,
12 about the United Nations Charter, which says specifically: It
13 shall not apply to the internal affairs of any of its
14 assignees.

15 A I'm aware of that, however, in Oyama
16 against California, again cited before this Court, four of the
17 justices of this Court felt that the United Nations Charter
18 has some relevancy to the disposition of this case.

19 Q Why don't the --

20 A Mr. Justice White, I didn't quite follow
21 your question.

22 Q You say the charter requires aliens to be
23 treated like a citizen in all respects; is that your argument?

24 A If they resided in the jurisdictional
25 boundaries of --

1 Q Is that the most important part of the --

2 A Yes.

3 Q That's not treating them very equally
4 with the citizens; is it?

5 A I believe this is an area which is reserved
6 to the countries, as spoken by Mr. Justice Marshall.

7 Q You mean the charter covers everything and
8 that the treaty covers everything except what is inherent in
9 the stated --

10 A Exactly, plus the fact that deportation is
11 an expression of Congressional powers. We deal here with
12 states who are attempting to exercise powers that are in con-
13 flict with the Federal policy. And the Federal policy is
14 established by treaties by the Federal Government.

15 Q Well, anyway, there is some way the treaty
16 doesn't keep the United States from treating aliens ~~differently~~
17 differently?

18 A This raises a host of other problems that
19 I am not prepared at this time to get into about the standing
20 to raise Congressional statutes which may be unconstitutional.

21 I will now argue the Equal Protection argument,
22 which I believe is our chief argument, which is the argument
23 sustained by the Court below in rendering the favorable
24 decision. Although the argument was listed last in my brief,
25 there is no question in my mind that, based on previous

1 decisions of this Court that the Equal Protection Clause does
2 apply to aliens.

3 The only argument that is raised Mr. Flam is that
4 for some reason the states can discriminate against a so-
5 called special public interest. I don't believe that Mr. Flam
6 has really articulated what that interest is, other than the
7 saving of money.

8 We do have a classification in this case. First
9 of all, there are two classes: A and B. A would be citizens
10 of the United States who are residing in Arizona and B would
11 be the resident aliens in Arizona. And under B there are two
12 classes. First those aliens who have lived in Arizona for
13 15 years or more -- who have lived in the United States for
14 15 years or more and two: those who have not lived in the
15 United States for 15 years.

16 Q Mr. Ching if the 15 years requirement were
17 six months would you still be here?

18 A Yes, because it still discriminates against
19 the alien resident under the Equal Protection Clause.

20 Q You would feel necessarily then that the
21 states would not have a proper interest in requiring a six-
22 months residency?

23 A Unless the state can show that the six
24 months period is necessary for them to evaluate the eligibility
25 of an alien. In that case I would say that why is it that it

1 would take less time to evaluate the eligibility of a citizen.
2 As I see it, to determine eligibility is something which you
3 have to do for both aliens and citizens alike and certainly
4 there is a period of time that the application has to be
5 processed and to conduct proper investigation as to eligi-
6 bility. But there is no reason to require a longer period
7 for that purpose for aliens.

8 Q What has the Federal Government said about
9 this matter?

10 A The Social Security Act, as argued by Mr.
11 Flam, is not expressly in point. It permits the state, under
12 the interpretation placed by HEW in the handbook provision for
13 the states to enact requirements of residency or to --

14 Q That's residency in the United States?

15 A Yes, or to deny aliens from any benefits
16 entirely. The statute is not a mandatory one in that the
17 statute may permit them to so discriminate. I would submit
18 that furthermore the statute is being permissive and secondly
19 that Congress can no more authorize the states to violate
20 equal protection than the state can violate equal protection.

21 This is the precise language reached by this
22 Court in Shapiro v. Thompson.

23 Q Are you suggesting that what Congress has
24 done is as vulnerable as what the state has done?

25 A Yes. This issue was before this Court as to

1 the duration of the residency requirement for all persons in
2 Shapiro v. Thompson and the Congressional Act provided the
3 states may enact duration of residency requirements. And --

4 Q So that the Social Security Act expressly
5 said that: "We shall finance no plans that include aliens."
6 You would say that would be unconstitutional?

7 A I would say that would violate the Equal
8 Protection Act. The argument, as a matter of fact, of course
9 would be: how the Congress would regulate immigration and if
10 Congress has exercised that power and expressly provided that
11 as part of the immigration scheme that aliens should not get
12 welfare. And if the Congressional history adequately estab-
13 lished that and if was made into an overall scheme to prevent
14 regulate immigration then that may be supportable to the
15 standing of our argument as to the preemption aspects of
16 Federal law over state law.

17 However, that is not supportable under our Equal
18 Protection argument.

19 I would go on now to the interests affected. The
20 interests affected by the operation of the Arizona Act is a
21 very, very serious interest, as Mr. Justice Marshall observed
22 earlier: these people may well starve. These are people who
23 came to the country by permission of the Federal Government
24 on invitation. These people came here and for some reason
25 they became destitute. And the public system, such as Old Age

1 or Aid to the Disabled as sought by the Appellee here, is
2 something to barely keep a person going. The interest is
3 vital as compared to the interest of the state, the interest
4 of the individual must prevail.

5 The argument that the state is trying to save
6 part of a sinking ship is not convincing to me. We all know
7 that if you are on a sinking ship and you had to throw some-
8 body overboard in order to keep it afloat, the question who
9 who will you throw overboard? The State's arguments say you
10 throw the alien overboard because this Court had allowed the
11 states to do so. I don't think that this Court has really
12 authorized the state to do that and I think to throw aliens
13 overboard without moral(?) is unconstitutional, to say the
14 least.

15 There is a greater obligation on the part of the
16 State Government or the Federal Government, based on a
17 humanitarian interest to see if we can save and protect every
18 person, even though if everybody may get by with still less.
19 To arbitrarily, to use the phrase "selfishness" to just pre-
20 serve one's immediate family and throw other people to the
21 wolves is not a type of doctrine that will survive today when
22 the existence of mankind depends on the cooperation of every-
23 body and not a self-interest to protect one's immediate sur-
24 rounding members.

25 Q What lesser obligations do aliens have in

1 the country than citizens?

2 A The aliens have, just by all indications I
3 can think of, being an alien myself at one time, I will say
4 that the aliens pay all taxes: property taxes, income tax,
5 sales tax; the aliens are subject to the draft and military
6 service; they are working from their work they pay taxes, but
7 I would not think of any obligation that the aliens are exemp-
8 ted from.

9 Q So you don't know of any obligations that
10 a citizen has that an alien doesn't -- a resident alien
11 doesn't.

12 A No, unless it would view the exercise of
13 the right to vote as an obligation rather than a right. And
14 the aliens do not vote.

15 Q And how does the state get away with that?

16 A Well, I believe -- again, it is not before
17 this Court -- I believe that as to election is purely local
18 in nature, which affects the interest of an alien; for
19 example, a bond issue which would affect his property tax.
20 And if that alien could not become a U. S. citizen solely
21 because of the language requirement I would say that to deny
22 the persons the right to vote may well be unconstitutional.

23 As to elections for national officers or the
24 national government where the alien's loyalty to another
25 country may color his vote, I would say that can be sustained,

1 the denial of the right to vote.

2 But that is not before this Court today.

3 Q Well, are you suggesting that there could
4 be classifications among aliens that some would have a right
5 to vote and some would not; depending on the place of origin?

6 A No; I'm saying that depending on the
7 interests affected. In other words, if the election is on the
8 question of whether or not your taxes on your home would be
9 increased to pay for new schools; an alien owner of a home
10 cannot vote and yet he is subject to the tax. I would say
11 it would be a denial -- that an alien could vote in that case,
12 assuming that he had not become a citizen within the requisite
13 time due to other considerations I would say that that denial
14 may well be unconstitutional.

15 But this is not before this Court.

16 Q Well, Mr. Ching, how about this -- I can't
17 remember whether Congress has this provision or not, but if an
18 alien is admitted I take it that it's because -- one of the
19 reasons is that he is not going to be a public charge?

20 A Yes.

21 Q What if he is admitted and later he becomes
22 a public charge? Is he then subject to deportation?

23 A No. The statute, as cited in my brief,
24 provided that for deportation as to causes arising before they
25 come and not as to causes after.

1 Q Yes. Well, what if Congress did provide
2 that that if your entrance is conditioned on remaining self-
3 supporting?

4 A I would say that would be a valid exercise
5 of the Congressional power to regulate foreign commerce,
6 naturalization and immigration, if that is made part of the
7 scheme to legislate in this area.

8 That type of legislation as to aliens who, sub-
9 sequent to the granting of visas, become residents of the
10 United States, whether or not that provision violates the
11 equal protection is something that I can only speculate. It
12 is time that this Court will have to take it up on another
13 occasion. That will be a question between the one power of
14 Congress versus another power. The same situation as to
15 whether or not that provision would violate a treaty.

16 Maybe the possible variation would be some inter-
17 national tribunal; I don't know. This has been speculated by
18 people who are writing legal treatises, but I can only give
19 -- the answers today.

20 Q Well, if you say that it would have a
21 bearing to have a right possibly to vote for taxation purposes,
22 why wouldn't you go to the next step and say you had a right to
23 vote for national officers to determine what the income tax is
24 going to be. Where are you going to stop?

25 A I think the issue was raised where the line

1 as to where the direct interest appears and the indirect and
2 the decision of this Court has always been in trying to draw
3 the line somewhere.

4 Q Aren't you putting too much baggage on this
5 cart? We're talking about the Arizona statute involving
6 welfare rights. Why don't we stay on that?

7 A Well, I'm just responding to questions from
8 the bench and perhaps I'm being too loquacious in discussing
9 constitutional law.

10 Q You would love to stay right on your topic,
11 wouldn't you?

12 A Well, Mr. Justice White, I am -- being
13 from -- I enjoy talking about abstract principles. I under-
14 stand and I would emphasize that my answers to these questions
15 have no bearing to this case because we're dealing with a
16 state statute. We are arguing that the state statute violates
17 equal protection and that in the proposition of this Court
18 such as was true in Rice, Yick Wo and the latest case of this
19 Court in Takahashi versus California Fish and Game Commission,
20 very clearly show that the states can longer deny aliens
21 some of the basic necessities of life, such as employment, or
22 in this case: welfare benefits.

23 The cases cited by Mr. Flam, the case of Heim
24 and McCall, which came out the same year as Truax versus Raich
25 and also the people versus Crane. These are cases decided

1 in another day and age based on the right, privilege
2 dichotomy and I do not believe that these cases should be
3 used as authorities for this Court today and that these cases
4 should be overruled.

5 Third, we have position arguments, including the
6 since
7 presumption argument that/the Federal Government had provided
8 for immigration and naturalization under the Federal Commerce
9 powers and under the power to regulate immigration, and
10 naturalization, the state can no more enter the area because
11 it conflicts with the national policy of the Supremacy Clause.
12 Here because Here we have got several cases of this Court: the
13 Fong Yeu Ting case and the case of Hines versus Davidowitz on
14 the point.

15 Further, we have Congressional statutes in point
16 governing the Equal Protection Clause with the Civil Rights
17 Act of 1970 which is now in 42 USC 1981 and that statute was
18 cited with approval in _____ and the Takahashi case
19 as providing for equal treatment of all persons, including
20 aliens. That statute was very specific and said that all
21 persons within the jurisdiction of the United States, must be
22 subject to the same laws and the full and equal benefits from
23 all laws.

24 And in addition to the Civil Rights Law of '64
25 and 42 USC 2000(d), it is our position that the decision of
the lower court can be sustained on any and all grounds

1 raised by our brief. And that there are cases squarely in
2 point from precedents decided by this Court and that therefore
3 we urge that this Court affirm the decision rendered by the
4 Court below.

5 Are there any more questions?

6 Thank you.

7 MR. CHIEF JUSTICE BURGER: I think we will
8 recess for lunch now and not require you to divide your
9 rebuttal.

10 (Whereupon, at 11:55 o'clock a.m. the argument
11 in the above-entitled matter was recessed to be resumed at
12 1:00 o'clock p.m. this day.)

1 1:00 o'clock p.m.

2 MR. CHIEF JUSTICE BURGER: Mr. Flam you have
3 about ten minutes left.

4 REBUTTAL ARGUMENT BY MICHAEL S. FLAM, ESQ.

5 ON BEHALF OF APPELLANT

6 MR. FLAM: The Appellant waives rebuttal unless
7 there are questions from the Court.

8 MR. CHIEF JUSTICE BURGER: Apparently there are
9 none. Thank you, Mr. Flam. Thank you Mr. Ching.

10 The case is submitted.

11 (Whereupon, at 1:00 o'clock p.m. the argument in
12 the above-entitled matter was concluded)