

BUILDING A MORE PERFECT UNION

PART II



NATIONAL
ENDOWMENT
FOR THE
HUMANITIES

EDSITEment!
THE BEST OF THE HUMANITIES ON THE WEB

a more perfect
UNION NATIONAL
ENDOWMENT
FOR THE
HUMANITIES

NHD
NATIONAL
HISTORY DAY

THEN AND TODAY: MENDEZ V. WESTMINSTER

AUTHOR: Amy Trenkle, Alice Deal Middle School, Washington, D.C.

GUIDING QUESTION:

How did the Supreme Court decision in *Mendez v. Westminster* create a more perfect union then and today?

OVERVIEW

The quest for school desegregation was a lengthy and complicated process fought through the courts. In this lesson, students will examine primary and secondary sources written from multiple perspectives to better understand how the Supreme Court decision *Mendez v. Westminster* (1946) created a more perfect union.

OBJECTIVES

At the conclusion of this activity, students will be able to:

- > Read and analyze secondary and primary sources about *Mendez v. Westminster*;
- > Complete a small group seminar to answer the guiding question; and
- > Articulate in writing how *Mendez v. Westminster* led to a more perfect union, using evidence from the documents and seminar.

STANDARDS CONNECTIONS

CONNECTIONS TO COMMON CORE

- > CCSS.ELA-Literacy.RH.6-8.1 Cite specific textual evidence to support analysis of primary and secondary sources.
- > CCSS.ELA-Literacy.RH.6-8.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- > CCSS.ELA-Literacy.RH.6-8.6 Identify aspects of a text that reveal an author's point of view or purpose (e.g., loaded language, inclusion or avoidance of particular facts).

- > CCSS.ELA-Literacy.SL.8.1 Engage effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners.

CONNECTIONS TO C3 FRAMEWORK

- > D1.5.6-8. Determine the kinds of sources that will be helpful in answering compelling and supporting questions, taking into consideration multiple points of views represented in the sources.
- > D2.Civ.3.6-8. Examine the origins, purposes, and impact of constitutions, laws, treaties, and international agreements.
- > D2.Civ.10.6-8. Explain the relevance of personal interests and perspectives, civic virtues, and democratic principles when people address issues and problems in government and civil society.
- > D2.His.3.6-8. Use questions generated about individuals and groups to analyze why they, and the developments they shaped, are seen as historically significant.

DOCUMENTS USED

PRIMARY SOURCES

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster*
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

Judgment and Injunction in *Mendez v. Westminster*
National Archives and Records Administration (NAID: 294946)
<https://www.docsteach.org/documents/document/judgement-and-injunction>

Petition in *Mendez v. Westminster* School District, March 2, 1945
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>

Testimony of Superintendent Richard Harris in *Mendez v. Westminster*
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

SECONDARY SOURCES

Background Essay, “*Mendez v. Westminster*: Desegregating California’s Schools”
PBS Learning Media
<https://www.pbslearningmedia.org/resource/osi04.soc.ush.civil.mendez/mendez-v-westminster-desegregating-californias-schools/>

Research Guide, 1946: *Mendez v. Westminster*
Library of Congress
<https://guides.loc.gov/latinx-civil-rights/mendez-v-westminster>

Video, *Mendez v. Westminster*: Desegregating California’s Schools
PBS Learning Media
<https://www.pbslearningmedia.org/resource/osi04.soc.ush.civil.mendez/mendez-v-westminster-desegregating-californias-schools/>

TEACHER-CREATED MATERIALS

- > Pre-Seminar Worksheet
- > Primary Source Packet
- > *Mendez v. Westminster* Seminar Worksheet

CONNECTIONS

Federal and state courts help to ensure that the laws created by the legislative bodies at the state and federal levels are constitutional and applied correctly. In this way, there are many court cases at both levels that have helped to make America a more perfect union.

ACTIVITY PREPARATION

ACTIVITY ONE

- > Decide how you want your students to access the primary and secondary materials (online or on paper).
- > Make one copy of the Pre-Seminar Worksheet for each student.
- > Organize students into groups of three to four students each.
- > Arrange the classroom for group work.

ACTIVITY TWO

- > Make one copy of the *Mendez v. Westminster* Seminar Worksheet for each student.
- > Make (or project) a poster-sized Seminar Tracker with each student’s name around the perimeter of the circle.
- > Arrange the classroom for a seminar, with students facing each other.

PROCEDURE

ACTIVITY ONE: PRE-SEMINAR WORK (50 MINUTES)

- > Organize students into groups of three to four students each. Distribute one Pre-Seminar Worksheet to each student.
 - » **Teacher Tip:** Consider breaking up this task over two days to give students time to read and process in advance of the seminar.
- > Ask students to engage with the secondary sources and then write their summary of the sources. When the written summaries are complete, ask three students to share them.
- > Distribute the primary sources (through a Primary Source Packet or links).
- > Ask students to work with their groups to read each document and complete their analysis.
- > Circulate to assist students and provide vocabulary support as needed.
- > Have students complete the 3-2-1 Lesson Reflection.

ACTIVITY TWO: SEMINAR (50 MINUTES)

- > Distribute one Seminar Worksheet to each student and ask students to take out their Pre-Seminar Worksheet from the previous class.
- > Help students define the terms listed in Part A of their Seminar Worksheet.
- > Explain to students that they will participate in a seminar about what they read and learned yesterday. Give students ten minutes to complete Part B on their own paper. Do not review student answers.

When discussing the topic of school desegregation, students will encounter language that was common to the past, but might be offensive, problematic, or out-of-date. Remind students that in all discussions and written commentary, they should use modern-day terminology when speaking about people in the past.

- > Ask students to select their own goal for the seminar and complete Part C on their paper.
- > Explain to students how to use the tracker and its purpose.
- > Facilitate the seminar using the questions provided on the Seminar Worksheet.
 - » *How did the Supreme Court decision in Mendez v. Westminster create a more perfect union then and today?*
 - » *What were the conflicting perspectives in this case?*
 - » *How were rights going unrecognized? What were the specific rights? What were the barriers to fully enjoying these rights?*
 - » *Why types of educational inequalities existed before the passage of Mendez v. Westminster? Where has there been a development toward fairness in education today? What inequalities continue to exist today?*
 - » *What does a perfect union for education look like? To you personally? Locally? Nationally? Globally?*
- > Ask students to reflect on what they learned during the seminar and their progress toward their self-selected goal. Ask students to complete and submit their Seminar Worksheet.

ASSESSMENT OPTIONS

- > Students can submit the Pre-Seminar and Seminar Worksheets to demonstrate their understanding of the topic.
- > Teachers can choose to grade the Seminar based on student goals and participation.

STUDENTS INTERESTED IN THIS TOPIC MIGHT BE INTERESTED IN RESEARCHING THE FOLLOWING FOR AN NHD PROJECT:

- > *Bolling v. Sharpe* (1954)
- > *Guey Heung Lee v. Johnson* and *Johnson v. San Francisco Unified School District* (1971)
- > *Aspira v. New York* (1975)
- > Education of Handicapped Children Act (1975)
- > Individuals with Disabilities Education Act (IDEA) (1990)

To access a PDF containing all of the sources and materials to complete this lesson plan, go to:

NHD.ORG/250

EDSITEment!

RELATED RESOURCES

Media Resource: BackStory: Legislation Impossible—The Civil Rights Act of 1964
<https://edsitement.neh.gov/media-resources/backstory-legislation-impossible-civil-rights-act-1964>

Media Resource: Hispanic American Keywords for Chronicling America
<https://edsitement.neh.gov/media-resources/hispanic-american-keywords-chronicling-america>

Media Resource: Thurgood Marshall Before the Court
<https://edsitement.neh.gov/general-resources/thurgood-marshall-court-0>

Teacher's Guide: Hispanic and Latino Heritage and History in the United States
<https://edsitement.neh.gov/teachers-guides/hispanic-heritage-and-history-united-states>

PRIMARY SOURCE PACKET

Petition in *Mendez v. Westminster School District*, March 2, 1945
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>

1	DAVID C. MARCUS.	
2	Attorney at Law.	
3	213 Spring & Second Bldg.	
4	Los Angeles, California.	
5	VA. 6311	
6		
7		
8		FILED
9		MAR 2 - 1945
10		EDMUND J. SMITH, Clerk By <i>Edmund J. Smith Jr.</i> Deputy Clerk
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

GONZALO MENDEZ and SYLVIA, GONZALO and GERONIMO MENDEZ, by their father and next of friend GONZALO MENDEZ,
WILLIAM GUZMAN and BILLY GUZMAN, by his father and next of friend WILLIAM GUZMAN,
FRANK PALOMINO, and ARTHUR and SALLY PALOMINO, by their father and next of friend FRANK PALOMINO,
THOMAS ESTRADA and CLARA, ROBERTO, FRANCISCO, SYRIA, DANIEL and EVELINA ESTRADA, by their father and next of friend, THOMAS ESTRADA,
LORENZO RAMIREZ and IGNACIO, SILVERIO and JOSE RAMIREZ, by their father and next of friend LORENZO RAMIREZ,

Petitioners.

-vs-

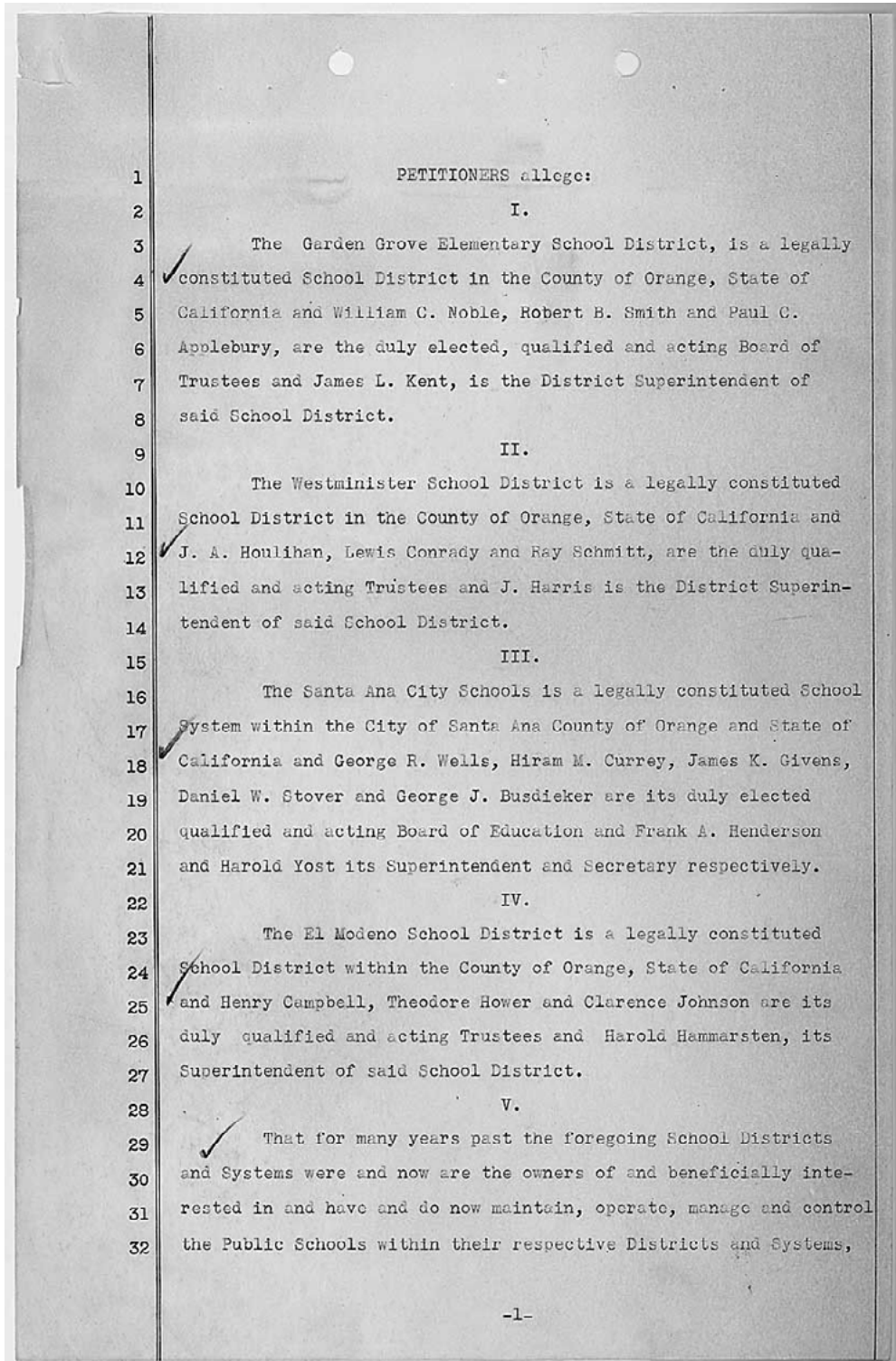
WESTMINISTER SCHOOL DISTRICT OF ORANGE COUNTY, and J. A. HOULIHAN, LEWIS CONRADY, RAY SCHMITT, as Trustees and J. HARRIS, Superintendent of said School District,
GARDEN GROVE ELEMENTARY SCHOOL DISTRICT OF ORANGE COUNTY and WILLIAM C. NOBLE, ROBERT B. SMITH and PAUL APPLEBURY as Trustees and JAMES L. KENT, Superintendent of said School District,
SANTA ANA CITY SCHOOLS and GEORGE R. WELLS, HIRAM M. CURREY, JAMES K. GIVENS, DANIEL W. SVOVER and GEORGE J. BUSDIEKER its Board of Education and FRANK A. HENDERSON and HAROLD YOST, its Superintendent and Secretary,
EL MODENO SCHOOL DISTRICT and HENRY CAMPBELL, THEODORE HOWER, CLARENCE JOHNSON as Trustees, and HAROLD HAMMARSTEN, Superintendent of said School District,

Respondents.

PETITION
No. 4292-M

PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>



PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>

1 for the benefit, health, recreation and education of the public and
2 particularly the children residing in their respective Districts and
3 Systems and for their use and benefit.

4 VI.

5 The said School Districts and Systems and facilities are
6 being maintained, operated, managed and controlled by and through
7 their said Boards of Education; Boards of Trustees; Superintendents
8 and Secretaries as before named.

9 VII.

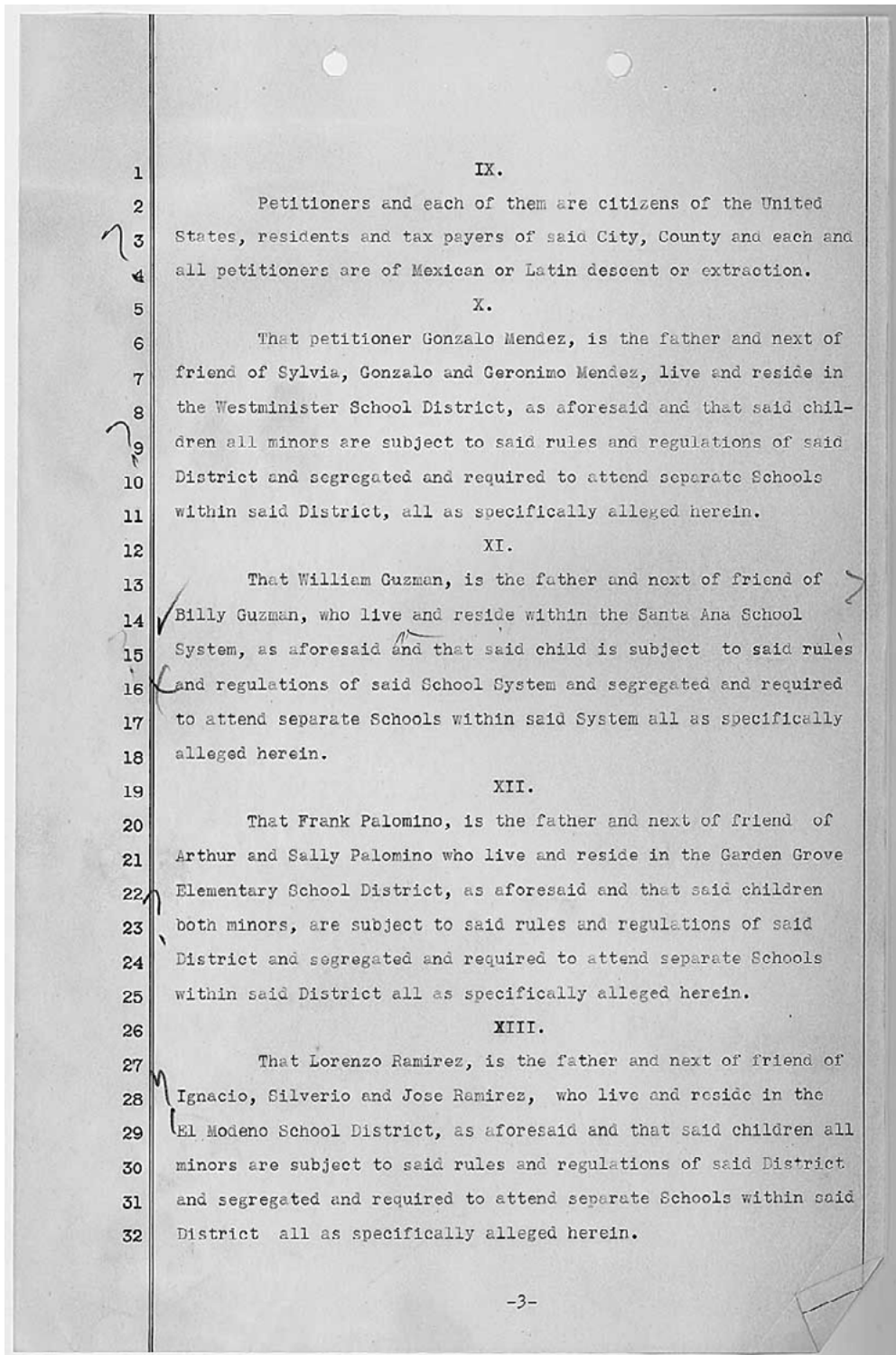
10 That respondents and each of them acting with a common
11 plan, design and purpose by aiding, abetting, advising and assist-
12 ing each other in their respective Districts and Systems, have
13 adopted and do practice by regulation, custom and usage; rules,
14 regulations and orders in the operation, management and control of
15 their said Districts, Systems and facilities as hereinafter stated.

16 VIII.

17 That for several years last past respondents have and do
18 now in furtherance and in execution of their common plan, design
19 and purpose within their respective Systems and Districts, have by
20 their regulation, custom and usage and in execution thereof adopted
21 and declared: That all children or persons of Mexican or Latin
22 descent or extraction, though Citizens of the United States of
23 America, shall be, have been and are now excluded from attending,
24 using, enjoying and receiving the benefits of the education, health
25 and recreation facilities of certain Schools within their respecti-
26 ve Districts and Systems but that said children are now and have
27 been segregated and required to and must attend and use certain
28 Schools in said Districts and Systems, reserved for and attended
29 solely and exclusively by children and persons of Mexican and Latin
30 descent, while such other Schools are maintained, attended and used
31 exclusively by and for persons and children purportedly known as
32 White or Anglo Saxon children.)

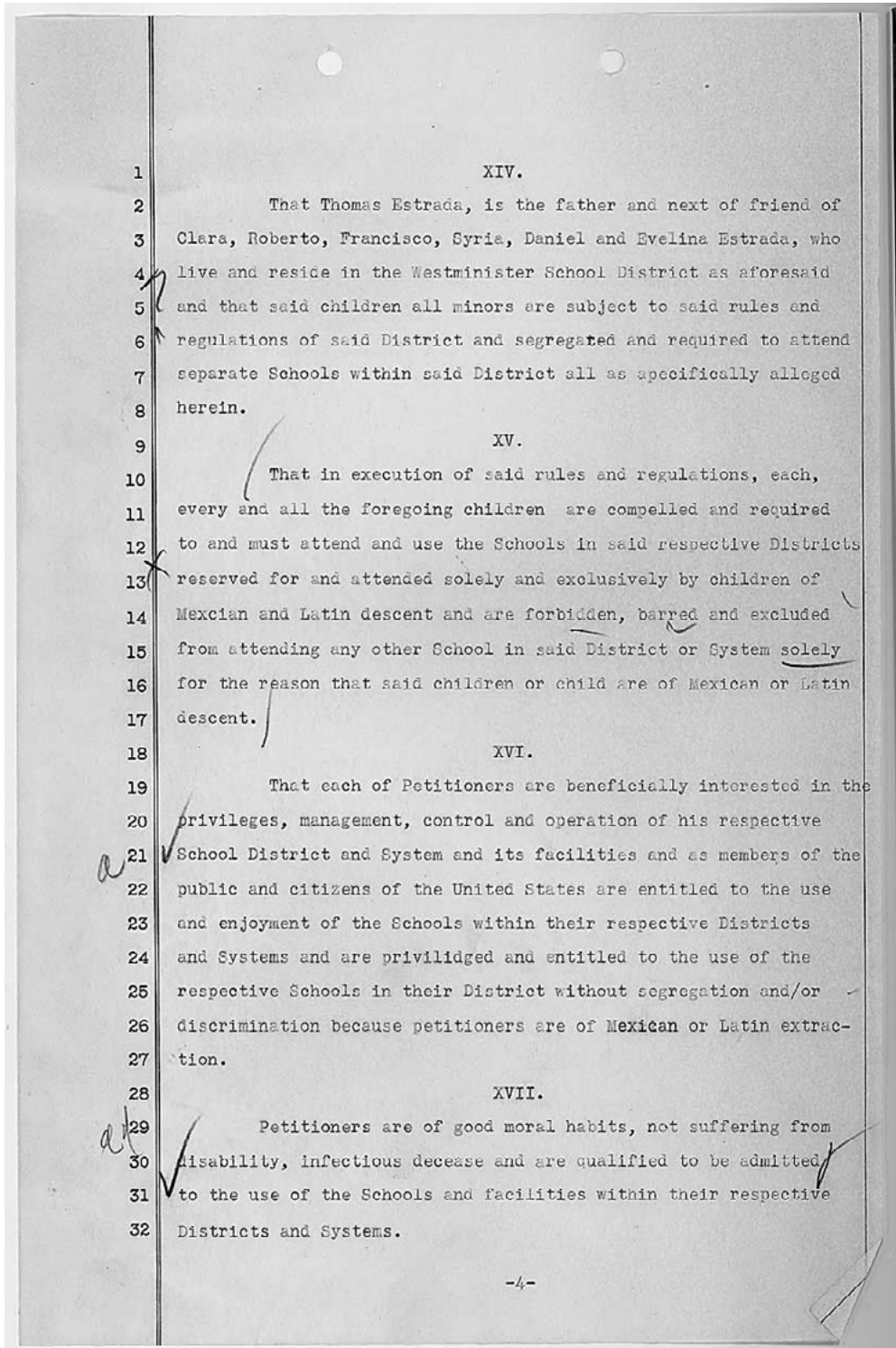
PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>



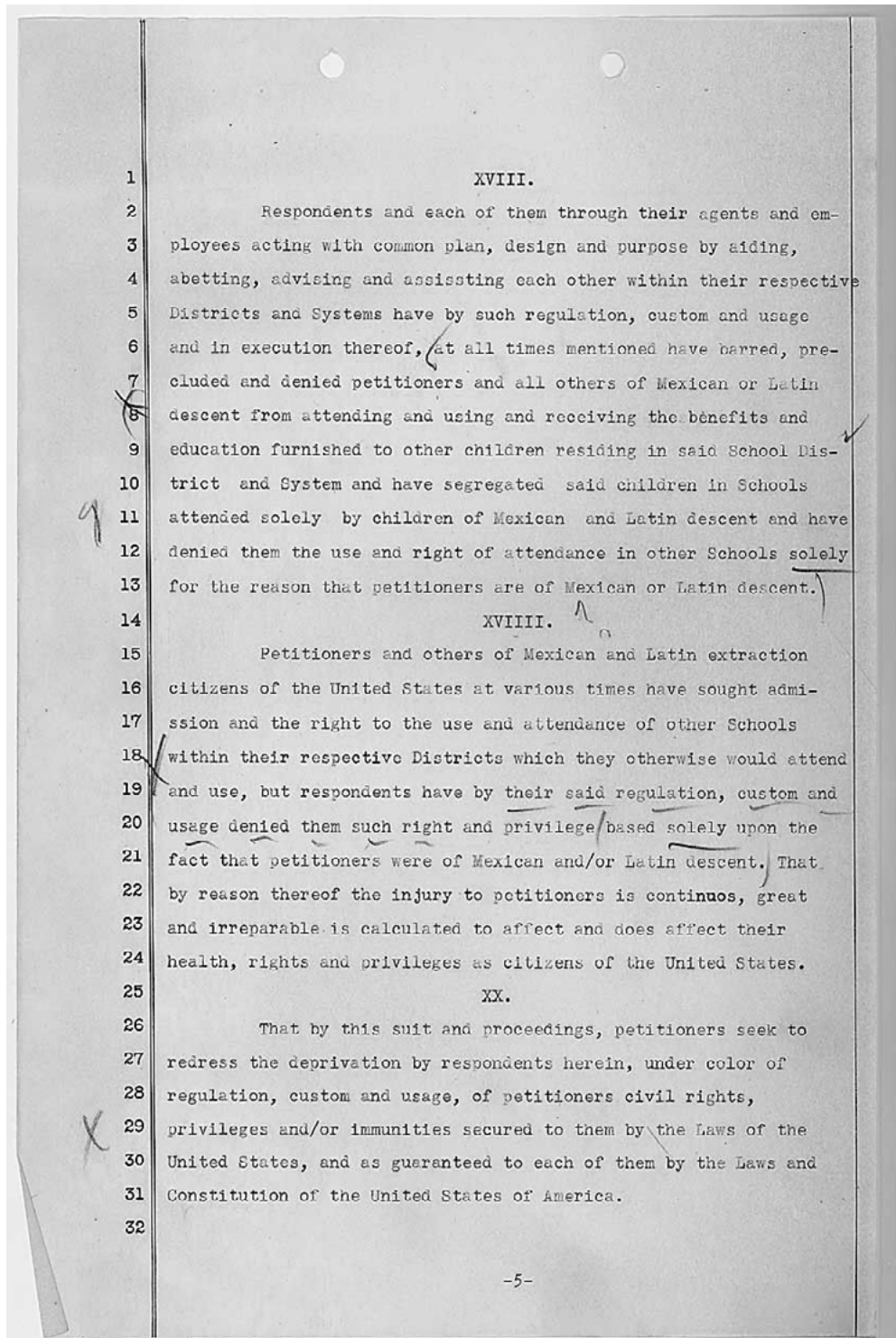
PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>



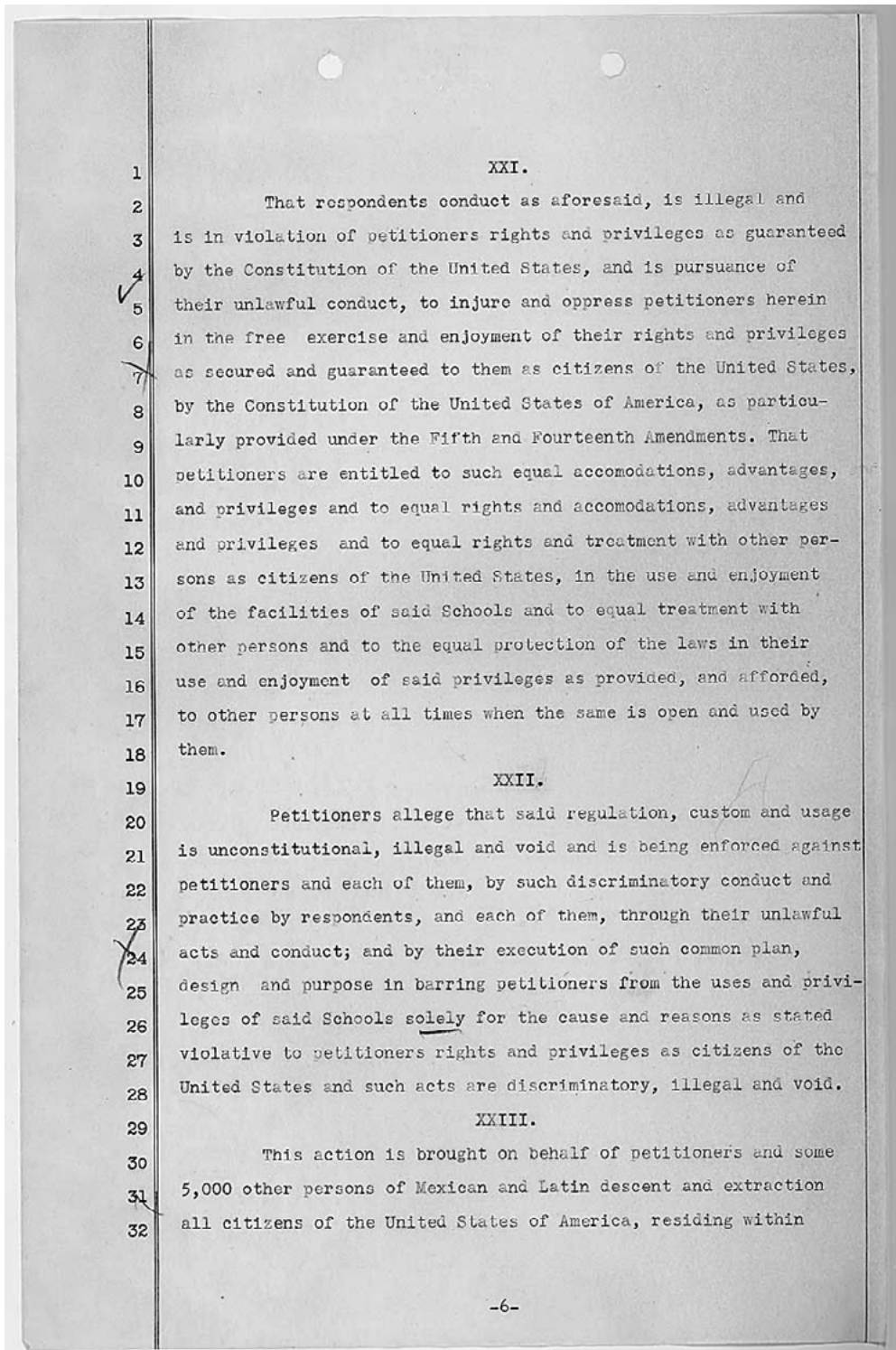
PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>



PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>



PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>

1 said Districts. That the questions involved by these proceedings
2 are one of a common and general interest and the parties are nume-
3 rous and it is impractical to bring all of them before the Court.
4 Therefore, these petitioners sue for the benefit of all.

XXIV.

6 This action is brought under the provisions of Sec. 24 of
7 the Judicial Code of the United States (28 U. S. C. A. sub 14)
8 to prevent the respondents from unlawfully interfering with peti-
9 tioners equal protection of the laws and due process of law.

XXV.

11 Petitioners allege that they have no plain, speedy or
12 adequate or any remedy at law, and that petitioners are suffering
13 great and irreparable damage.

14 WHEREFORE, petitioners pray:

16 (1) That said rules, regulation, custom or usage be adjudged
17 void and unconstitutional.

18 (2) That respondents, their servants, agents and employees
19 be permanently compelled to admit petitioners and all persons of
20 Mexican or Latin descent to the use, and enjoyment and privileges of
21 Schools in their respective Districts.

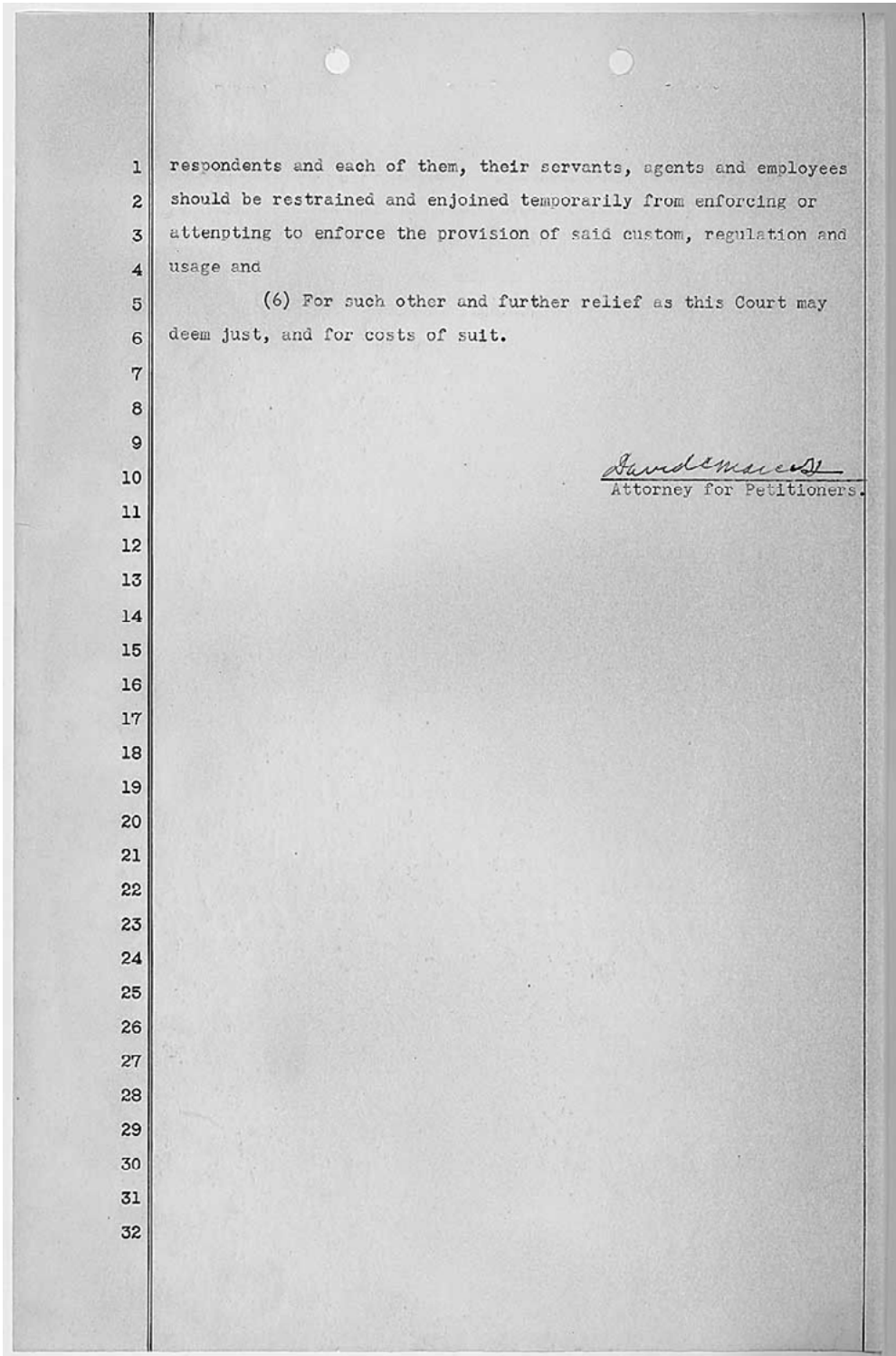
22 (3) That respondents, their servants, agents and employees
23 be permanently enjoined and restrained from in any way or manner
24 whatsoever barring, excluding or prohibiting petitioners from the
25 use, and enjoyment and privileges of the Schools within their res-
26 pective Districts.

27 (4) That an order to show cause be issued out of this Court
28 directed to said respondents, their servants, agents and employees
29 directing them to appear and show cause why a preliminary injunction
30 pendente lite or alternative writ of mandate should not issue until
31 the hearing of this matter.

32 (5) That pending further order of this Court that said

PRIMARY SOURCE PACKET (CON'T)

Petition in *Mendez v. Westminster School District*, March 2, 1945 (con't)
National Archives and Records Administration (NAID: 294940)
<https://www.docsteach.org/documents/document/petition-mendez>



PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster*
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

Zv1
340

310

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
3 CENTRAL DIVISION
4 - - -
5 HONORABLE PAUL J. McCORMICK, JUDGE PRESIDING
6 - - -
7 GONZALO MENDEZ, et al.,)
8 Plaintiffs,)
9 vs.) No. 4292-M-Civil.
10 WESTMINSTER SCHOOL DISTRICT)
11 OF ORANGE COUNTY, et al.,)
12 Defendants.)
13 - - -
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS.
15 Los Angeles, California
16 Monday, July 9, 1945
17 - - -
18 APPEARANCES:
19 For the Plaintiffs: DAVID C. MARCUS, Esq.
20 Amici Curiae: A. L. WIRIN, Esq., and
J. B. TIETZ, Esq.;
21 and
CHARLES F. CHRISTOPHER, Esq.
22 For the Defendants: JOEL E. OGLE, Esq., County Counsel;
23 and
GEORGE F. HOLDEN, Esq., Deputy
24 County Counsel.
25 - - -

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

:v281

331

1 LOS ANGELES, CALIFORNIA, MONDAY, JULY 9, 1945. 2:00 P. M.

2 - - -

3 THE COURT: Proceed, Mr. Marcus.

4 RICHARD F. HARRIS,

5 called as a witness by and on behalf of the plaintiffs, having
6 been previously duly sworn, resumed the stand and testified
7 further as follows:

8 DIRECT EXAMINATION (Continued)

9 BY MR. MARCUS:

10 Q Mr. Harris, you gave us some opinions respecting
11 the cultural background of children of Mexican descent and
12 children of other descents, particularly those who come here
13 that have English background from England. Now, is it your
14 opinion, Mr. Harris, that children of Mexican descent are in-
15 ferior because of their lack of English cultural background?

16 A Definitely not. They are inferior only in so far
17 as their ability to grasp English words and meanings and
18 conceptions are concerned.

19 Q Once that is grasped, then it is your feeling that
20 they are not inferior from a cultural background; is that
21 correct?

22 A They are definitely not.

23 Q Is there any other basis besides the cultural back-
24 ground that makes you, in your opinion, as the superintendent
25 of schools there, feel that the children should be segregated?

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

Zv382

332

1 A I think there is not.

2 Q Then once this English language has been grasped

3 by the children, then you feel that they are equal and not

4 inferior to other children?

5 A I would say so, providing it was --

6 Q Well, would you say so?

7 A The answer is yes.

8 Q All right. Now, we will speak of this 40 per cent

9 of children that you spoke of who have no knowledge of the

10 English language when they enter the school. Is it a fact

11 that they have acquired a sufficient understanding of the

12 English language after they reach the second grade?

13 A They have not acquired a sufficient knowledge of

14 the English language to be placed in a group which has.

15 Q Now, with respect to the other 60 per cent of the

16 children who do speak the English language, you say that

17 they are not inferior in any respect. Then why are those

18 children not afforded the same opportunities or the same priv-

19 ileges as the other children in that district, in their right

20 to attend a school of their choosing?

21 A I have answered that once before. I will again.

22 It is the degree of sufficiency which they have acquired in

23 the understanding and use and conception of symbols and

24 words of the English language, which is still not up to the

25 children of Anglo-Saxon descent, and others which are placed

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

2v383

880

1 in a different class.

2 Q Those children of Anglo-Saxon descent you say have
3 a greater ability to comprehend the course of study given to
4 them in the Westminster School than those children of, we
5 will say, Mexican descent?

6 A From these test scores which I have related to you,
7 I would say that that is the case.

8 Q And that is true with respect to every child, then,
9 of Mexican descent who is attending the Hoover School?

10 A No, I would say not.

11 Q But you haven't afforded those whom you say are
12 not, or as to whom you say that is not true, the privilege
13 of attending the Westminster School?

14 A Those who have applied, their application has been
15 given consideration.

16 Q Now, I understood you to say this morning that this
17 language difficulty has retarded the children of Mexican
18 descent at least through the sixth grade, that attend at the
19 Hoover School; is that correct?

20 A I have to an extent answered that question also.

21 Q Could you give us a yes or no answer to that, and
22 then give your explanation?

23 THE WITNESS: May I answer it my own way?

24 THE COURT: Yes, certainly.

25 THE WITNESS: Thank you.

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

84

331

1 THE COURT: So long as you answer the question, you do
2 not have to answer it in any special way.

3 THE WITNESS: Now, may I ask what the question was?

4 (The question referred to was read.)

5 THE WITNESS: How did I start out to answer that ques-
6 tion?

7 (The answer referred to was read.)

8 THE WITNESS: I pointed out to this court, Mr. Marcus,
9 that the greatest retardation naturally comes when the child
10 enters school for the first time. However, I think this
11 retardation of children who enter from homes who speak the
12 Spanish language in their homes, well, I think that the
13 retardation continues. I would say that there is a degree
14 to which it handicaps the child. Some have a greater degree
15 of handicap, and some have less, depending of course upon
16 their individual abilities, and depending of course upon the
17 extent of their home conditions.

18 Q BY MR. MARCUS: Do I understand, then, that that
19 handicap that affects these children of Mexican descent re-
20 tards their ability to acquire or learn the courses that you
21 prescribe in the schools for the period between the first and
22 sixth grades?

11

23 A We have gone over that.

24 MR. HOLDEN: I object to this on the ground, your Honor,
25 that it has been asked and answered three or four different

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

Zv385

1 times.

2 THE COURT: There is repetition here, and a good deal of
3 it.

4 MR. MARCUS: I didn't know there was repetition on this
5 particular question. There may have been some, and in going
6 through this subject there is bound to be some, but I don't
7 intend that there should be.

8 THE COURT: There is always repetition, I think, when we
9 take recesses, and in developing a line of thought there some-
10 times is repetition, but let's avoid it as much as we can,
11 because otherwise we would be here indefinitely, and we are
12 not going to do that. The objection is sustained.

13 Q BY MR. MARCUS: Is it the policy of the school to
14 keep the children separated or segregated definitely between
15 the first and sixth grades?

16 A No.

17 Q But you do have the segregation between the first
18 and sixth grades at the Hoover School?

19 MR. HOLDEN: I object to that, your Honor, on the ground
20 it has been admitted and has been testified to several times.

21 THE COURT: I think I will let him answer that one.
22 Overruled.

23 THE WITNESS: The answer is, no, not up to the sixth
24 grade.

25 Q BY MR. MARCUS: To what grade, sir?

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

Zv386

336

1 A From the first through the third grades, through
2 the fourth grade.
3 Q And what grades do you have at the Hoover School?
4 A Grades 1 through 8.
5 Q The first through the eighth grade?
6 A Yes.
7 Q And that is the school that you have told us is
8 solely attended by children of Mexican descent or Latin
9 descent?
10 A That is true. May I --
11 THE COURT: Sir?
12 THE WITNESS: May I speak for just a moment?
13 THE COURT: Certainly.
14 THE WITNESS: We have segregation, Mr. Marcus, in so far
15 as ability is concerned, in the Hoover School, exactly the
16 same as we have segregation in so far as ability is concerned
17 at the Westminster School.
18 Q BY MR. MARCUS: Yes, I understand that. But you
19 don't have any segregation for colored children there, have
20 you?
21 A No.
22 Q You have no segregation for any other race or
23 nationality at the Westminster School, have you?
24 A No.
25 Q Now, isn't it the policy of the Board, Mr. Harris,

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

lv387

337

1 that the pupils should attend the Hoover School until they
2 have acquired some efficiency in the English language?

3 A It is.

4 Q What do you mean, sir, by some efficiency in the
5 English language?

6 A At least to the extent of being able to carry on
7 a conversation in the English language, to be responsive to
8 certain questions in a clearer and in a larger answer than
9 "Yes" or "No."

10 Q All right. Do the children in the second grade at
11 the Hoover School meet that requirement?

12 A They do not.

13 Q Do the children in the third grade meet that re-
14 quirement?

15 A They do not.

16 Q You mean to say a child in the third ^{grade} at the Hoover
17 School is not able to carry on a conversation in the English
18 language?

19 A Not in the manner which I have indicated.

20 Q Do the children in the fourth grade meet that re-
21 quirement?

22 A There are some that have that ability.

23 Q How many? What percentage?

24 A I would not know. I would suspect probably 5 per
25 cent.

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Testimony of Superintendent Richard Harris in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 6277737)
<https://www.docsteach.org/documents/document/2-trial-transcript>

lv388

320

1 Q And 95 per cent of the children at the Hoover
2 School in the fourth grade are unable to understand or carry
3 on a conversation in the English language?

4 A Not in the manner which I have related to you.

5 Q All right. How about the fifth grade? Do they
6 meet those requirements?

7 A They are in practically the same category as the
8 fourth grade.

9 Q How about the children in the sixth grade?

10 A The ratio is about the same. The scale probably
11 increases somewhat with the grades.

12 Q Well, what is the ratio then in the fifth or sixth
13 grades?

14 A About 5 per cent.

15 Q 5 per cent of the children only are able to under-
16 stand or carry on a conversation in the English language?

17 A Such as I have pictured. You have not completed
18 my requisition there.

19 Q How about the children in the seventh grade? Do
20 they meet those requirements?

21 A I would say that they meet it in practically the
22 same manner.

23 Q Only 5 per cent of them?

24 A Possibly more. They have become adapted better at
25 that age.

MARIE G. ZELLNER

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster*
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 NATIONAL LAWYERS GUILD,
2 LOS ANGELES CHAPTER
3 By CHARLES F. CHRISTOPHER
4 8483 1/2 South Vermont Avenue
5 Los Angeles 44, California.
6 AMERICAN CIVIL LIBERTIES UNION
7 SOUTHERN CALIFORNIA BRANCH
8 By A. L. WIRIN
9 257 South Spring Street
10 Los Angeles 12, California
11 Attorneys Amici Curiae

FILED
OCT 1 1945
EDMUND L. SMITH, Clerk
Deputy Clerk

12 IN THE DISTRICT COURT OF THE UNITED STATES
13 SOUTHERN DISTRICT OF CALIFORNIA
14 CENTRAL DIVISION

15 GONZOLO MENDEZ, et al,
16 Plaintiff,
17 vs.
18 WESTMINSTER SCHOOL DISTRICT
19 OF ORANGE COUNTY, et al.,
20 Defendants.

21 No. 4292 M
22 BRIEF OF
23 NATIONAL LAWYERS GUILD, AND
24 AMERICAN CIVIL LIBERTIES UNION,
25 AMICI CURIAE

26 I
27 THE FEDERAL DISTRICT COURT HAS JURISDICTION TO HEAR
28 AND DETERMINE THE ABOVE ENTITLED ACTION.

29 A. The complaint on file herein alleges a cause of action and
30 the evidence introduced at the trial supported said allega-
31 tions, based upon the violation of plaintiffs' rights for
32 themselves and for all persons similarly situated, under
the Fourteenth Amendment to the Constitution. The speci-
fic clauses in question are the due process and equal
protection provisions. There is proof that there was
discrimination against persons of Mexican descent, solely
because thereof, through the systematic segregation of
pupils of such descent in separate school buildings.
Thus the evidence supports the plaintiffs' claim that

- 1 -

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 there was discrimination against a definite class of persons,
2 those of Mexican descent. That the discrimination violates
3 constitutional rights will be discussed at a later point
4 in this brief.

5 B. Amendment XIV of the United States Constitution is the basis
6 of the rights violated. The applicable part thereof reads:

7 " . . . nor shall any state deprive any person of
8 life, liberty or property without due process of law;
9 nor deny to any person within its jurisdiction the
10 equal protection of the laws."

11 C. United States Code, Title 28, Section 41, U.S.C.A., Section
12 41, Clause 14, is the section conferring specific jurisdic-
13 tion on the federal district courts to entertain civil suits
14 based on the XIV Amendment; it provides that the District
15 Court has jurisdiction:

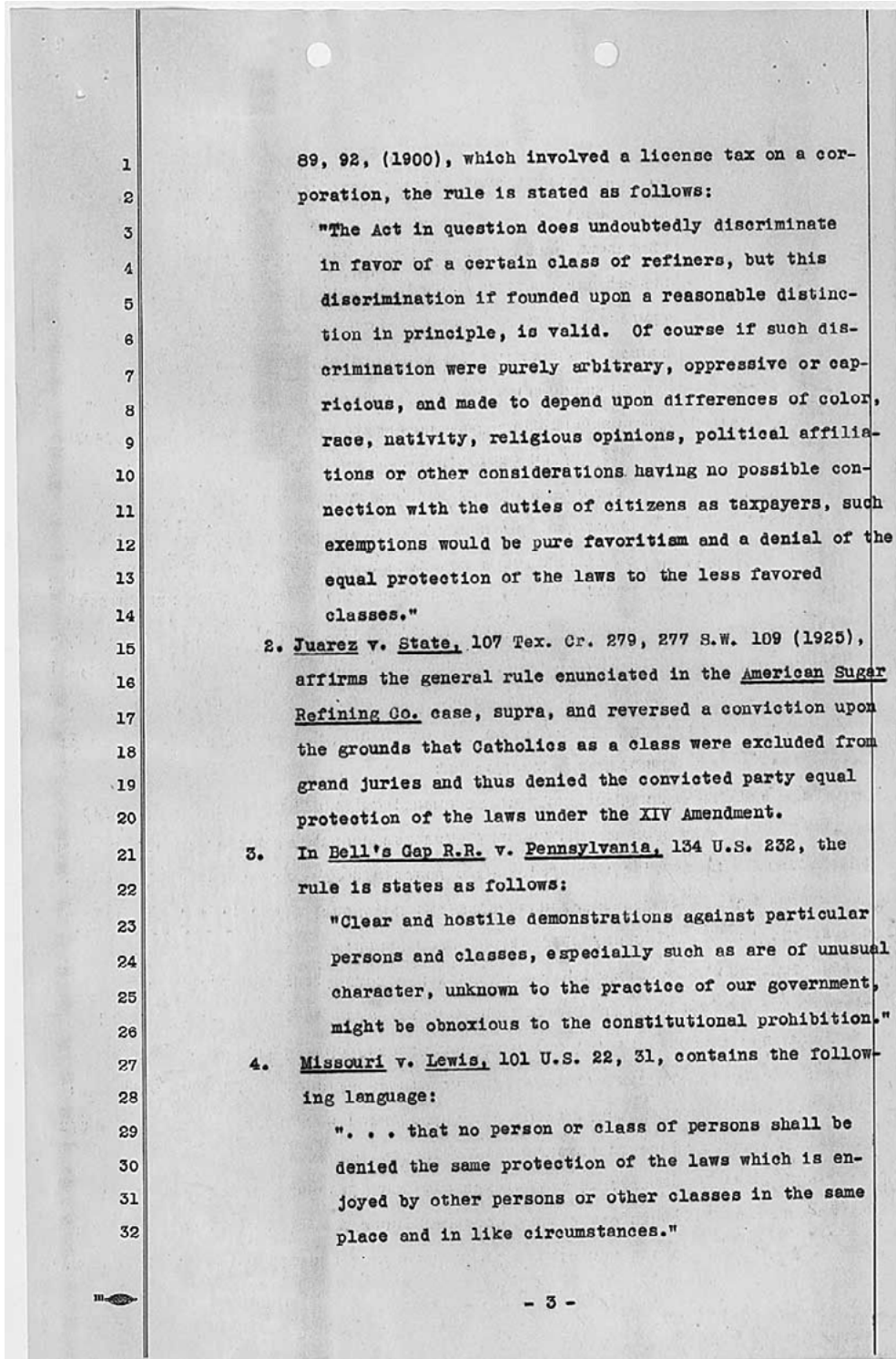
16 "Of all suits at law or in equity authorized by law to be
17 brought by any person to redress the deprivation, under
18 color of any law, statute, ordinance, regulation, custom,
19 or usage, of any State, of any right, privilege, or immu-
20 nity, secured by the Constitution of the United States,
21 or of any right secured by any law of the United States
22 providing for equal rights of citizens of the United
23 States, or of all persons within the jurisdiction of
24 the United States."

25 The cases support the proposition that there is jurisdiction
26 herein based upon the violation of rights under the Four-
27 teenth Amendment. The language of Amendment XIV is not
28 limited merely to the protection of persons of the colored
29 races, but applies broadly to "any person" and forbids all
30 arbitrary discrimination; not just discrimination based
31 upon race.

32 1. In American Sugar Refining Co., v. Louisiana, 179 U.S.

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>



PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 This language is cited with approval in Connolly v. Union
2 Sewer Pipe Co., 184 U.S. 540, 559 (1901).

- 3 5. Rawlins v. Georgia, 201 U. S. 638, 640, (1905), involved
4 an objection to the grand jury by a party convicted for
5 murder on the ground that lawyers, preachers, doctors,
6 engineers and firemen of railroad trains, and dentists
7 were expressly excluded from the jury, and thus there was
8 a violation of the XIV Amendment. Justice Holmer, in
9 holding that there was no violation of the Amendment,
10 states the rule as follows:

11 "The nature of the classes excluded was not such
12 as was likely to affect the conduct of the members
13 as jurymen, or to make them act otherwise than those
14 who were drawn would act. The exclusion was not then
15 result of race or class prejudice. It does not even
16 appear that any of the defendants belonged to any of
17 the excluded classes."

- 18 6. The decision of the Supreme Court in Truax v. Raich, 239
19 U.S. 33 (1915), by Justice Hughes, held that a State law
20 which prohibited the hiring of more than 20% non-citizens
21 by employers of more than five persons was unconstitutional
22 as being in violation of the equal protection clause of
23 the XIV Amendment. The pertinent part of the decision
24 is stated at page 39, as follows:

25 " . . . being lawfully an inhabitant of Arizona, the
26 complainant is entitled under the Fourteenth Amendment
27 to the equal protection of its laws. The description-
28 'any person within its jurisdiction' - - as it has
29 frequently been held, includes aliens. 'These pro-
30 visions', said the court in Yick Wo v. Hopkins, 118
31 U.S. 356, 369 (referring to the due process and equal
32 protection clauses of the Amendment), 'are universal

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 in their application, to all persons within the terri-
2 torial jurisdiction, without regard to any differences
3 of race, of color, or of nationality, and the equal pro-
4 tection of the laws is a pledge of the protection of
5 equal laws."

6 And at page 41 as follows:

7 "It is sought to justify this act as an exercise of the
8 power of the State to make reasonable classifications in
9 legislating to promote the health, safety, morals and
10 welfare of those within its jurisdiction. But this
11 admitted authority, with the broad range of legislative
12 discretion that it implies, does not go so far as to
13 make it possible for the State to deny to lawful inhabi-
14 tants, because of their race or nationality, the ordinary
15 means of earning a livelihood.

16 7. In the important case of Hague v. C.I.O. 307 U.S. 496, (1939)
17 the Court through Justice Stone discussed the matter of juris-
18 diction in some detail, especially as follows at page 526:
19 "The argument that the phrase in the statute 'secured
20 by the Constitution' refers to rights "created" rather
21 than "Protected" by it, is not persuasive."

22 And at page 525:

23 "Since all of the suits thus authorized are suits
24 arising under a statute of the United States to redress
25 deprivation of rights, privileges and immunities
26 secured by the Constitution, all are literally suits
27 'arising under the Constitution or laws of the United
28 States'. But it does not follow that in every such
29 suit the plaintiff is required by § 24 (1) of the
30 Judicial Code to allege and prove that the constitutional
31 immunity which he seeks to eradicate has a value in
32 excess of \$3000. There are many rights and immunities

- 5 -

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 secured by the Constitution, of which freedom of speech
2 and assembly are conspicuous examples, which are not
3 capable of money valuation, and in many instances, like
4 the present, no suit in equity could be maintained for
5 their protection if proof of the jurisdictional amount
6 were prerequisite."
7 And at page 530:
8 "By treating § 24 (14) as conferring federal jurisdic-
9 tion of suits brought under the Act of 1871 in which
10 the right asserted is inherently incapable of pecuniary
11 valuation, we harmonize the two parallel provisions
12 of the Judicial Code, construe neither as superfluous,
13 and give each a scope in conformity with its history
14 and manifest purpose."
15 And at page 531:
16 "The conclusion seems inescapable that the right con-
17 ferred by the Act of 1871 to maintain a suit in equity
18 in the federal courts to protect the suitor against a
19 deprivation of rights or immunities secured by the
20 Constitution, has been preserved, and that wherever the
21 rightor immunity is one of personal liberty, not depen-
22 dent for its existence upon the infringement of pro-
23 perty rights; there is jurisdiction in the district
24 court under § 24 (14) of the Judicial Code to entertain
25 it without proof that the amount in controversy
26 exceeds \$3000."
27 8. Mamoux v. United States, 264 F. 816 (CCA 8, 1920) recognized
28 that the XIV Amendment prohibits discrimination against any
29 class of persons in the following language, at page 818:
30 " . . . The mere fact, if it were such, that there were
31 no wage-earners on the jury, would not be enough to
32 entitle plaintiff in error to complain. It must appear

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 that wage-earners were purposely excluded because
2 they were of that class."
3 9. An interesting problem was raised in Richards v. State,
4 144 Fla. 177, 197 So. 772, (1940), when the person who was
5 convicted of accepting a bribe claimed that he belonged to
6 a political faction known as "Anti-ring faction", and that
7 his faction was excluded from the jury and thereby he was
8 deprived of the equal protection of the laws. The court
9 in refusing to reverse the conviction however did affirm
10 the general rule that XIV Amendment prevented discrimina-
11 tion against classes of persons, in the following language
12 at page 774:
13 "From these and similar cases, we glean the general
14 rule to be that any intentional and persistent discrim-
15 ination against a race or class of persons in the
16 selection of a jury list to try a criminal case is a
17 violation of the constitutional rights of the accused,
18 and that such violation is not excused by the fact that
19 the persons actually selected possess all the qualifi-
20 cations for jury duty prescribed by law. The discrimi-
21 nation on the basis of race, religion, or class must,
22 however be constant. It can have no relation to classes
23 or faction more or less fanciful, mysterious, or nebul-
24 ous, bound by no restrictions or common loyalties and
25 who continually shift from one faction to the other
26 unless conclusively shown that the verdict was
27 influenced by that fact."
28 10. Korematsu v. United States 323 U.S. 214 (1944) involved a
29 petitioner of Japanese descent who was convicted for
30 remaining in San Leandro, California contrary to military
31 orders. The court spoke of racial discrimination in its
32 opinion in giving expression to the rule that racial

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 antagonism can never justify restriction of civil rights,
2 although persons of Japanese descent were the subject of
3 the exclusion order based upon their Japanese ancestry,
4 and not because they were members of any certain race. Thus
5 Chinese members of the same race as Japanese were not ex-
6 cluded. This case is authority for the proposition that
7 the Constitution enjoins discrimination because of ancestry
8 or nationality. Thus in the cited case, persons of Japanese
9 descent; while in the case at issue, persons of Mexican
10 descent.

11 11. The famous flag salute case, Barnette v. West Virginia State
12 Board of Education, 319 U.S. 624, was a class suit by members
13 of Jehovah's Witnesses for themselves and for other Jehovah
14 Witnesses not mentioned as plaintiffs, under the due process
15 clause of the Fourteenth Amendment, and the court granted
16 plaintiffs an injunction; and also to those of the same class
17 as the plaintiffs.

18 12. See the discussion as to the application of the equal protec-
19 tion clause in "Our Civil Liberties" by Osmond K. Fraenkel,
20 New York Counsel for the American Civil Liberties Union,
21 at page 199 he states:

22 "The equal protection clause has nevertheless proved
23 useful in various respects, for it protects both the
24 citizen and the alien, the individual and the corporation,
25 and all minorities, whether racial or religious, as well
26 as Negro, for whom it was originally designed."

27 And again at page 207 he states:

28 "The equal protection clause is not limited to the protec-
29 tion of the Negro, nor to the protection of personal rights.
30 Any law is void that discriminates without reasonable
31 basis for the classification made by the law."

32 E. The action of the defendants is state action under the Fourteenth

PRIMARY SOURCE PACKET (CON'T)

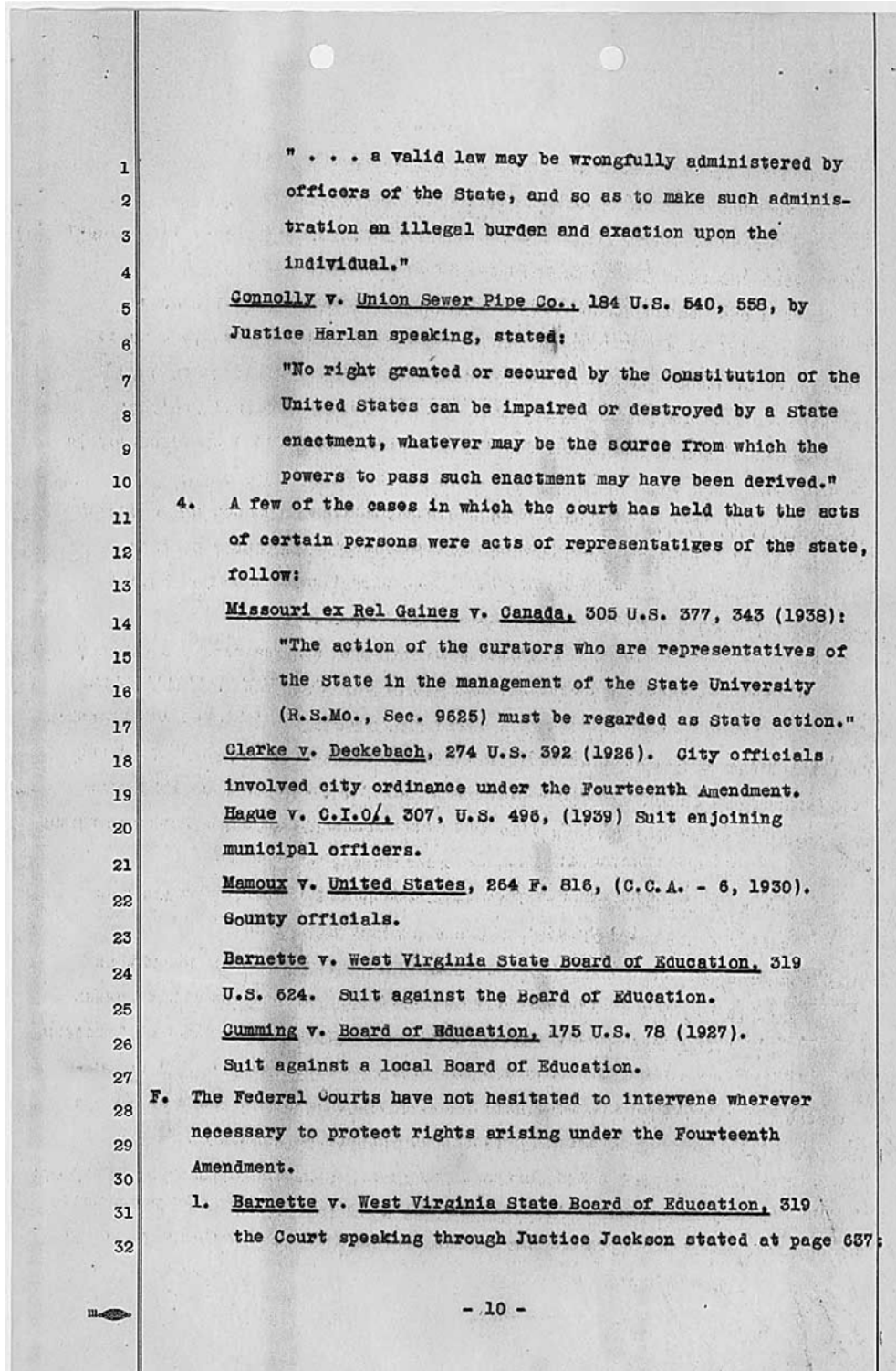
Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 **Amendment.**
2 1. In the recent case of Screws v. United States, 89 L. Ed.
3 (Adv. Op.) 1029 (1945), the court defined and interpreted
4 the words "under color of any law" as follows, at page 1041:
5 "Acts of officers who undertake to perform their
6 official duties are included whether they hew to the
7 line of their authority or overstep it. If, as sug-
8 gested, the statute was designed to embrace only action
9 which the state in fact authorized, the words "under
10 color of any law" were hardly apt words to express
11 the idea."
12 And at page 1043 in the concurring opinion by Justice
13 Rutledge:
14 ". . . The Amendment and the legislation were not aimed
15 at rightful state action. Abuse of state power was
16 the target. Limits were put to state authority, and
17 states were forbidden to pass them, by whatever agency."
18 2. In Barnette v. West Virginia State Board of Education,
19 319 U.S. 624, at page 634, the Court stated the general
20 rule:
21 "The Fourteenth Amendment, as now applied to the
22 States, protects the citizens against the State
23 itself and all of its creatures, Boards of Education
24 not excepted."
25 3. The leading case which permitted suits against officials
26 of states is Ex Parte Young, 209 U.S. 123, 150, 155.
27 A long line of cases have consistently followed this
28 opinion. It was held that a suit to restrain a state
29 officer from executing an unconstitutional statute
30 is not a suit against the state itself.
31 In Regan v. Farmers Loan & Trust Co., 154 U.S., 362, 390,
32 the following is found:

- 9 -

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>



PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 "Free public education if faithful to the ideal of
2 secular instruction and political neutrality, will not
3 be partisan or enemy of any class, creed, party, or
4 faction."
5 And at page 637:
6 "The Fourteenth Amendment, as now applied to the States,
7 protects the citizens against the state itself and all
8 of its creatures--Boards of Education not excepted.
9 These have, of course, important, delicate, and highly
10 discretionary functions, but none that they may not per-
11 form within the limits of the Bill of Rights. That they
12 are educating the young for citizenship is reason for
13 scrupulous protection of Constitutional freedoms of
14 the individual, if we are not to strangle the free mind
15 at its source and teach youth to discount important
16 principles of our government as mere platitudes."
17 And at page 638: "Such Boards are numerous and their territorial
18 jurisdiction often small. But small and local authority
19 may feel less sense of responsibility to the Consti-
20 tution, and agencies of publicity may be less urgent
21 in calling it to account. . . There are village tyrants
22 as well as village Hampdens, but none who acts under
23 color of law is beyond reach of the Constitution."
24 And at page 638:
25 "The very purpose of a Bill of Rights was to withdraw
26 certain subjects from the vicissitudes of political
27 controversy, to place them beyond the reach of
28 majorities and officials and to establish them as legal
29 principles to be applied by the courts. One's right
30 to life, liberty, and property, to free speech, a
31 free press, freedom of worship and assembly, and other
32 fundamental rights may not be submitted to votes,

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 they depend on the outcome of no elections."
2 **2. Missouri Ex Rel. Gaines v. Canada, 305 U.S. 337.** The
3 argument was made that the Federal Court should not inter-
4 fere with educational matters as it was a State matter, but
5 the Supreme Court did not hesitate to direct mandamus to
6 enable a colored student to enter a law school of the State.
7 In Hague v. C.I.O., 307 U.S. 496, the dissent by Justice
8 McReynolds was based upon the theory that the District
9 Court should refuse to interfere by injunction with the
10 function of the municipality to control its parks and
11 streets, and that plaintiffs had ample opportunity to
12 assert their claims through the State courts. The majority
13 opinion thus is authority that District Courts have power
14 to interfere by injunction in local matters.
15 Clarke v. Deckebach, 274 U.S. 392, was a petition of
16 mandamus against city officials to secure a license to
17 conduct a poolroom, and although the petition was denied
18 the Court based it on the ground that no arbitrary dis-
19 crimination was proved. From the opinion it is evident
20 that the Court would not have hesitated to order the writ
21 if a proper case had been proved.
22 **G. If the Federal Court has jurisdiction at all, it may proceed**
23 to a complete adjudication, although this may involve matters
24 of state or general law.
25 Cyclopedia of Federal Procedure, 2d Ed., Vol. 1, Sec 63,
26 p. 116
27 Greene v. Louis & Interurban R.R.Co., U.S. 499
28 At page 508 the Court stated:
29 "The contention of plaintiffs, set forth in their
30 respective bills of complaint, that the action of the
31 Board of Valuation and Assessment in making the assess-
32 ments under consideration and the threatened action of

- 12 -

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 defendant in respect of carrying those assessments
2 into effect constituted action by the state, and if
3 carried out would violate the equal protection provi-
4 sion of the Fourteenth Amendment, presents without
5 question, a real and substantial controversy under the
6 Constitution of the United States, which (there being
7 involved a sum and value in excess of the jurisdictional
8 amount) conferred jurisdiction upon the federal court,
9 irrespective of the citizenship of the parties. This
10 being so, the jurisdiction of that court extended, and
11 ours on appeal extends, to the determination of all
12 questions involved in the case, including questions of
13 state law, irrespective of the disposition that may
14 be made of the federal question, or whether it be
15 found necessary to decide it at all. Siler v.
16 Louisville & Nashville R.R. Co., 213 U.S. 175, 191;
17 Ohio Tax Cases 232 U.S. 576, 586."

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

II

THERE IS A CLEAR VIOLATION OF THE RIGHTS OF PLAINTIFF AND THE CLASS ON BEHALF OF WHOM THEY SUED UNDER THE FOURTEENTH AMENDMENT, UNDER BOTH THE DUE PROCESS AND EQUAL PROTECTION CLAUSES.

A. The evidence is without contradiction that children of Mexican descent have been segregated in separate school houses. Such segregation was demonstrated to be based upon the ancestry of the pupils, that of being descendants of Mexicans. The defense contention that the segregation was based upon other reasons was not supported at the trial. The evidence of the experts put on the stand by plaintiffs is uncontradicted in many particulars; their testimony amply supports the conclusion that it is bad education and social

- 13 -

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 policy to segregate children upon the basis of Mexican
2 ancestry from other children in separate school houses.
3 B. The segregation as practiced by the defendants is arbitrary,
4 discriminatory and unjust, and clearly in violation of the
5 Fourteenth Amendment.
6 1. In Korematsu v. United States, 323 U.S. 214, (1944)
7 the Court stated the broad principle, at page 216, that:
8 "It should be noted, to begin with, that all legal
9 restrictions which curtail the civil rights of a
10 single racial group are immediately suspect. That is
11 not to say that all such restrictions are unconstitu-
12 tional. It is to say that courts must subject them to
13 the most rigid scrutiny. Pressing public necessity
14 may sometimes justify the existence of such restric-
15 tions, racial antagonism never can."
16 Although the Court used the words "racial group" they
17 were actually speaking of persons of Japanese descent
18 since the army exclusion order was directed only at such
19 persons, and therefore the case involved only such
20 persons. The strong dissent of Justice Murphy should be
21 noted as on the point he was discussing, namely, racial
22 discrimination, he was in general agreement with the
23 majority opinion. Although he used the words "Racial
24 discrimination" and "races" he was actually speaking of
25 the treatment of persons of Japanese descent as the
26 case involved exclusion by military order of such per-
27 sons. Thus his words are applicable in the case at
28 issue since persons of a certain national descent,
29 Mexicans, are involved herein. At page 242 he states:
30 "I dissent, therefore, from this legalization of
31 racism. Racial discrimination in any form and in any
32 degree has no justifiable part whatever in our

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 democratic way of life. It is unattractive in any setting
2 but it is utterly revolting among a free people who have
3 embraced the principles set forth in the Constitution of
4 the United States. All residents of this nation are kn
5 in some way by blood or culture to a foreign land. Yet
6 they are primarily and necessarily a part of the new and
7 distinct civilization of the United States. They must
8 accordingly be treated at all times as the heirs of the
9 "merican experiment and as entitled to all the rights
10 and freedoms guaranteed by the Constitution."

11 Discrimination of any kind against any person or class of
12 persons can only be supported under the general police power,
13 and then only if the exercise of the power is reasonable and
14 extends only to such laws, enactments, customs, etc., that
15 are enacted in good faith for the promotion of the public
16 good. Arbitrary or irrational discrimination is plainly
17 prohibited under the cases.

18 Rawlins v. Georgia 201 W. 638, in denying relief, stated
19 the rule at page 640 that:

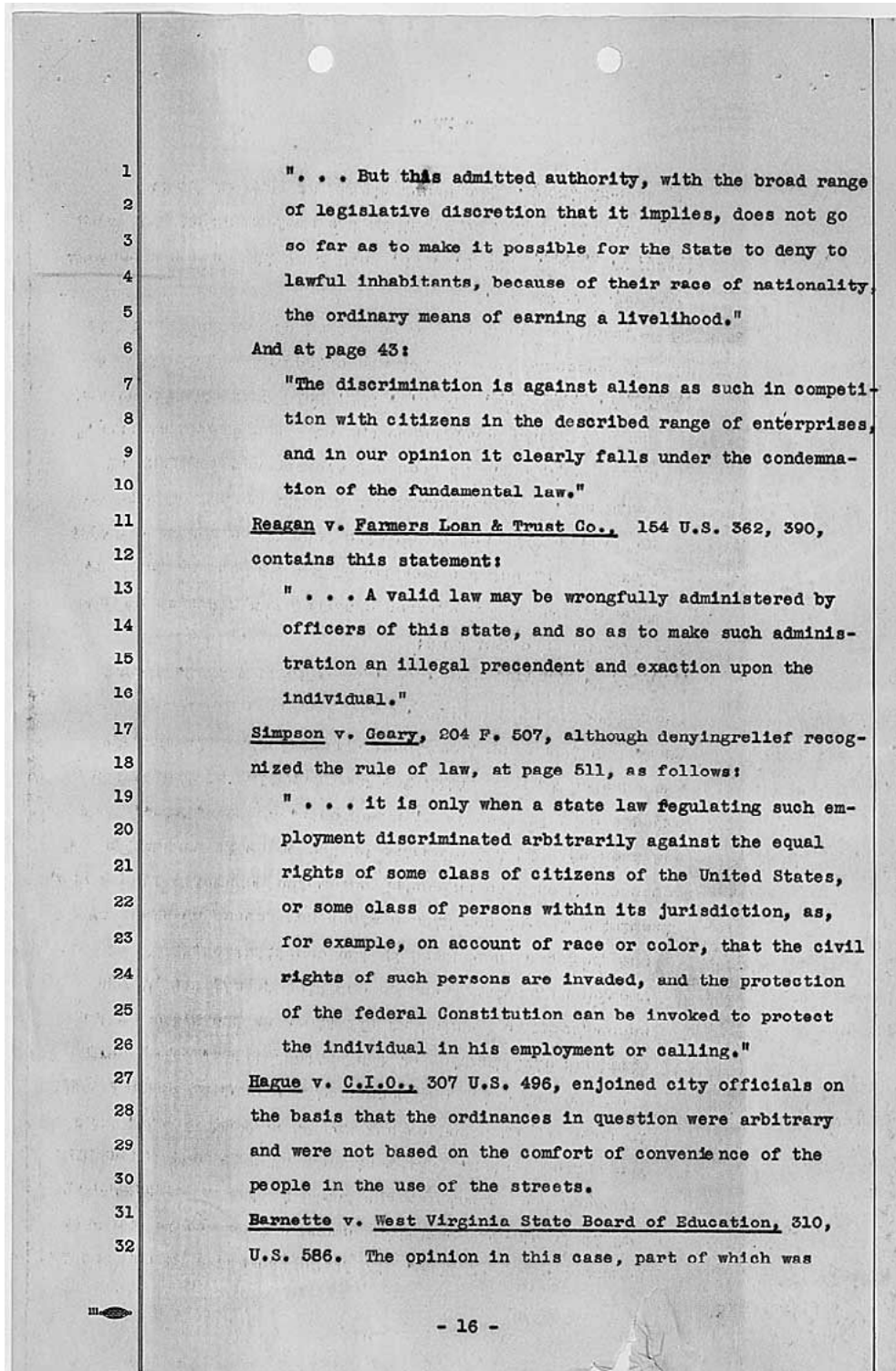
20 "The nature of the classes excluded was not such as was
21 likely to affect the conduct of the members as juryman,
22 or to make them act other wise than those who were drawn
23 would act. The exclusion was not the result of race or
24 class prejudice. It does not even appear that any of
25 the defendants belonged to any of the excluded classes."

26 Clarke v. Deckebach, 274 U.S. 392, held that alien race and
27 allegiance could be a legitimate object of legislation as
28 to be made the basis of and permitted classification if it
29 were not irrational.

30 Truax v. Raich, 239 U.S. 33, held that it was not a reason-
31 able classification to prohibit the employment of more than
32 20% non-citizens. The Court stated at page 41 that:

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>



PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

1 quoted supra, gives strong support to the protection of the
2 fundamental rights. Although Justice Murphy in his concur-
3 ring opinion, at page 645, was speaking of the freedom to
4 worship, his words are appropos here. A portion of his
5 statement follows:

6 "Reflection has convinced me that as a judge I have no
7 loftier duty or responsibility than to uphold the spirit-
8 ual freedom to its farthest reaches."

9 C. This is a proper case for a class suit. In Barnette v. West
10 Virginia State Board of Education, 319 U.S. 624, members of
11 Jehovah's Witnesses sued for themselves and for other members
12 of said sect, and were granted injunctive relief both for
13 themselves and for their class.

14 Cumming v. Board of Education, 175 U.S. 78. Although the Court
15 denied relief on the ground discrimination was not proved, the
16 action was a class suit by colored persons to enjoin the School
17 Board from using tax funds to operate a separate school for
18 white highschool females, thus the court in not putting its
19 opinion on that ground upheld the suit as a class suit.

20 III

21 THE CALIFORNIA LAW DOES NOT PERMIT SEGREGATION UPON
22 THE BASIS OF DESCENT FROM MEXICAN ANCESTRY OR SPEAKING
23 THE SPANISH LANGUAGE.

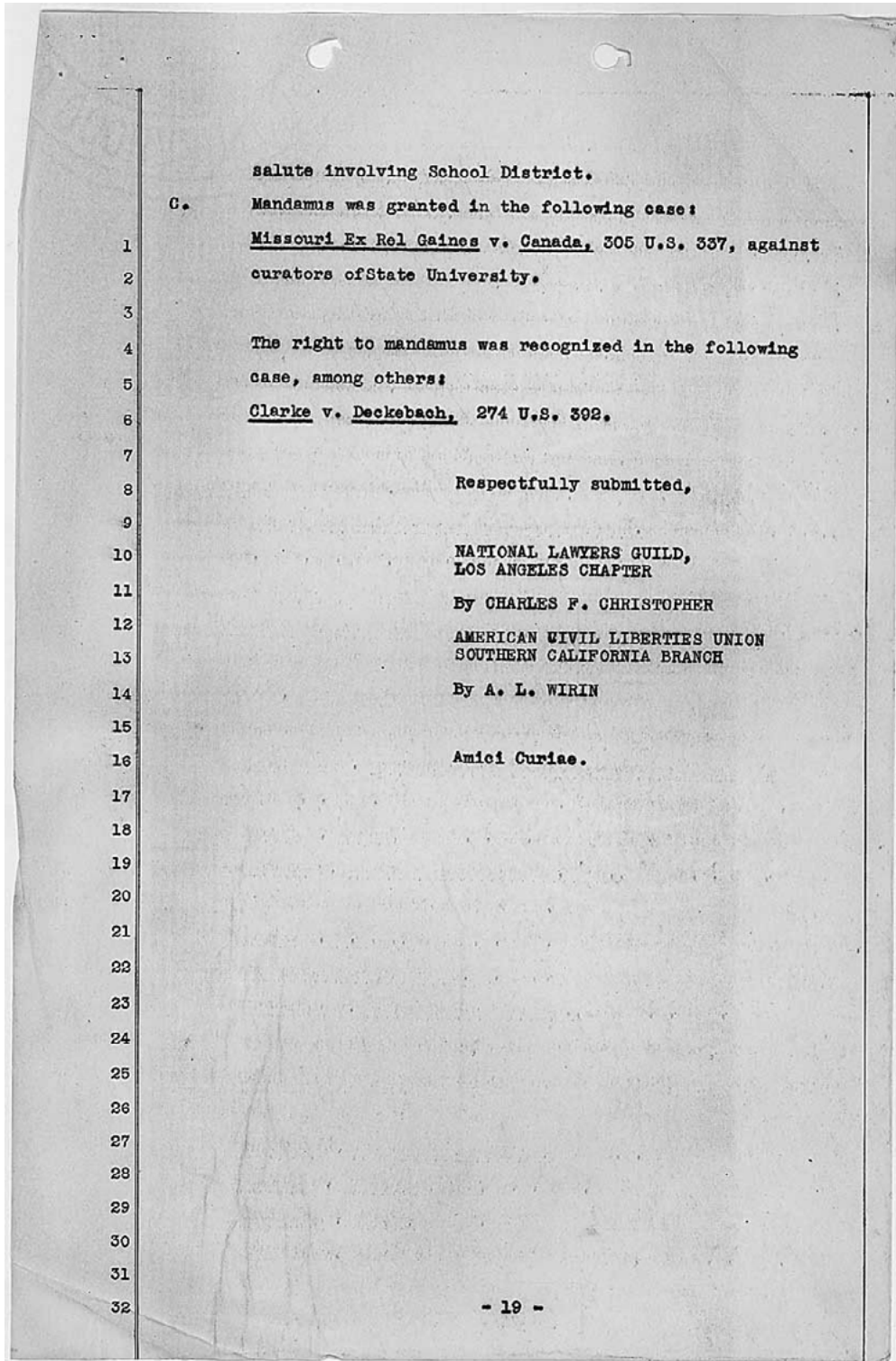
24 The California School Code, Section 8003, governs what types
25 of separate schools may be established, and among those listed
26 there is not mentioned separate schools for persons who speak
27 Spanish as distinguished from those who speak English, or
28 separate schools for those of Mexican descent. The Section
29 is quoted as follows:

30 "§ 8003. Schools for Indian children, and children of
31 Chinese, Japanese or Mongolian parentage:

32 Establishment. The governing board of any school district
may establish separate schools for Indian children, except-

PRIMARY SOURCE PACKET (CON'T)

Amici Curiae Brief of the National Lawyers Guild and ACLU in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294943)
<https://www.docsteach.org/documents/document/brief-nlg-aclu>



PRIMARY SOURCE PACKET (CON'T)

Judgment and Injunction in *Mendez v. Westminster*
National Archives and Records Administration (NAID: 294946)
<https://www.docsteach.org/documents/document/judgement-and-injunction>

BOOK 37 PAGE 368

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3 CENTRAL DIVISION
4

5 GONZALO MENDEZ and SYLVIA, GONZALO) No.4292-M. Civil.
6 and GERONIMO MENDEZ, by their father) JUDGMENT and
7 and next of friend GONZALO MENDEZ;) INJUNCTION.
8 WILLIAM GUZMAN, and BILLY GUZMAN,)
9 by his father and next of friend,)
10 WILLIAM GUZMAN; FRANK PALOMINO, and)
11 ARTHUR and SALLY PALOMINO, by their)
12 father and next of friend, FRANK)
13 PALOMINO; THOMAS ESTRADA and CLARA,)
14 ROBERTO, FRANCISCO, SYRIA, DANIEL)
15 and EVELINA ESTRADA, by their father)
16 and next of friend, THOMAS ESTRADA;)
17 LORENZO RAMIREZ and IGNACIO, SILVERIO)
18 and JOSE RAMIREZ, by their father)
19 and next of friend LORENZO RAMIREZ,)

20 Plaintiffs,

21 vs.

22 WESTMINSTER SCHOOL DISTRICT OF)
23 ORANGE COUNTY, and J. A. HOULIHAN,)
24 LEWIS CONRADY, RAY SCHMITT, as Trustees,)
25 and J. HARRIS, Superintendent of said)
26 SCHOOL DISTRICT;)
27 GARDEN GROVE ELEMENTARY SCHOOL DISTRICT)
28 OF ORANGE COUNTY, and WILLIAM C. NOBLE,)
29 ROBERT B. SMITH and PAUL APPLEBURY as)
30 Trustees, and JAMES L. KENT, Superin-)
31 tendent of said School District;)
32 SANTA ANA CITY SCHOOLS, and GEORGE R.)
WELLS, HIRAM M. CURREY, JAMES K.GIVENS,)
DANIEL W. STOVER and GEORGE J.BUSDIEKER,)
its Board of Education, and FRANK A.)
HENDERSON and HAROLD YOST, its Superin-)
tendent and Secretary;)
EL MODENO SCHOOL DISTRICT and HENRY)
CAMPELL, THEODORE HOWER, CLARENCE JOHNSON,)
as Trustees, and HAROLD HAMMARSTEN,)
Superintendent of said School District,)

Defendants,

This action came on for trial on the 5th day of
July, 1945, before the Honorable Paul J. McCormick, Judge
Presiding, the plaintiffs being represented by their attor-
ney, David C. Marcus, Esq., and the amici curiae American
Civil Liberties Union by attorneys A. L. Wirin, Esq., and
J. B. Tietz, Esq., and the National Lawyers Guild by

EDMUND L. SMITH, Clerk
By *W. H. Hansen*
Deputy Clerk

MAR 21 1946
FILED

PRIMARY SOURCE PACKET (CON'T)

Judgment and Injunction in *Mendez v. Westminster* (con't)

National Archives and Records Administration (NAID: 294946)

<https://www.docsteach.org/documents/document/judgement-and-injunction>

BOOK 37 PAGE 369

1 represented by their attorneys, Joel E. Ogle, Esq., County
2 Counsel, and George F. Holden, Esq., Deputy County Counsel,
3 of the County of Orange, State of California. And evidence
4 having been introduced, both oral and documentary, and said
5 action having been submitted for decision on the merits on
6 November 1, 1945; the Court having filed herein on February
7 18, 1946, written conclusions of the court, and the Court
8 having made and filed its findings of fact and conclusions
9 of law:

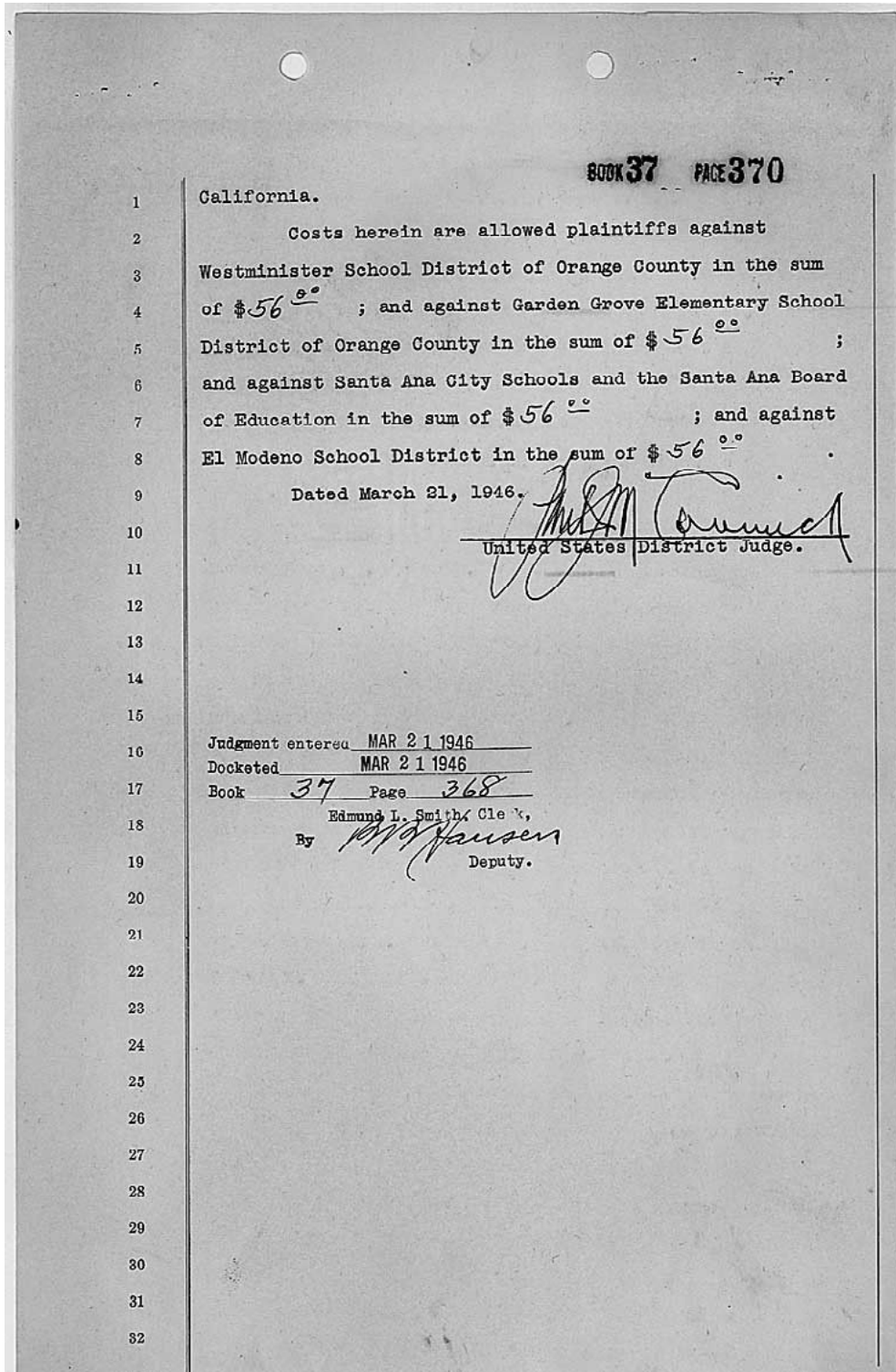
10 It is now, in conformity with the findings of fact
11 and conclusions, ordered, adjudged and decreed: That this
12 action by plaintiffs is a representative class action on
13 behalf of themselves and of all persons of Latin and Mexican
14 descent and that the action has been properly brought as
15 such class action pursuant to law.

16 It is further ordered, adjudged and decreed that
17 the regulations, customs, usages and practices of defendants
18 and each of them segregating persons and pupils of Latin
19 and Mexican descent in separate schools within the respec-
20 tive school districts of defendants and each of them in the
21 City of Santa Ana, California, and elsewhere in the County
22 of Orange, State of California, are and each of them is
23 arbitrary and discriminatory and in violation of plaintiffs'
24 constitutional rights and illegal and void.

25 And it is further ordered, adjudged and decreed
26 that the defendants and each of them are hereby permanently
27 restrained and enjoined from segregating persons and pupils
28 in the elementary schools of the defendant school districts,
29 respectively, of Latin or Mexican descent in separate
30 schools within the respective school districts of the de-
31 fendants and each of them within the City of Santa Ana,
32 California, and elsewhere in the County of Orange, State of

PRIMARY SOURCE PACKET (CON'T)

Judgment and Injunction in *Mendez v. Westminster* (con't)
National Archives and Records Administration (NAID: 294946)
<https://www.docsteach.org/documents/document/judgement-and-injunction>



PRE-SEMINAR WORKSHEET

SECONDARY SOURCE REVIEW

Review the sources below and write a summary of what you learned from the secondary sources.

"1946: *Mendez v. Westminister*"

Library of Congress

<https://guides.loc.gov/latinx-civil-rights/mendez-v-westminster>

"*Mendez v. Westminister*: Desegregating California's Schools"

PBS Learning Media

<https://www.pbslearningmedia.org/resource/osi04.soc.us.civil.mendez/mendez-v-westminister-desegregating-californias-schools/>

****On this site, watch the video and read the background essay (linked on the right side of the page).**

What is *Mendez v. Westminister* about in your own words?

PRE-SEMINAR WORKSHEET (CON'T)

PRIMARY SOURCE ANALYSIS

In your small group, analyze the sources and complete the graphic organizer for each primary source. This will become the evidence for your seminar discussion.

Source: Petition Filed by the Parents of the Students
<https://www.docsteach.org/documents/document/petition-mendez>

Date of the Document: _____ Author: _____

Write a one-sentence summary of this document:

Key phrases in this document:

Key Phrase	Why is this an important or key phrase?

PRE-SEMINAR WORKSHEET (CON'T)

PRIMARY SOURCE ANALYSIS

In your small group, analyze the sources and complete the graphic organizer for each primary source. This will become the evidence for your seminar discussion.

Source: Witness Testimony from Westminster School District Superintendent
<https://www.docsteach.org/documents/document/2-trial-transcript>

Date of the Document: _____ Author: _____

Write a one-sentence summary of this document:

Key phrases in this document:

Key Phrase	Why is this an important or key phrase?

PRE-SEMINAR WORKSHEET (CON'T)

PRIMARY SOURCE ANALYSIS

In your small group, analyze the sources and complete the graphic organizer for each primary source. This will become the evidence for your seminar discussion.

Source: Amici Curiae Brief of the National Lawyers Guild and ACLU
<https://www.docsteach.org/documents/document/brief-nlg-aclu>

Date of the Document: _____ Author: _____

Write a one-sentence summary of this document:

Key phrases in this document:

Key Phrase	Why is this an important or key phrase?

PRE-SEMINAR WORKSHEET (CON'T)

PRIMARY SOURCE ANALYSIS

In your small group, analyze the sources and complete the graphic organizer for each primary source. This will become the evidence for your seminar discussion.

Source: Judgment and injunction Ruling that the School Districts Could No Longer Segregate
<https://www.docsteach.org/documents/document/judgement-and-injunction>

Date of the Document: _____ Author: _____

Write a one-sentence summary of this document:

Key phrases in this document:

Key Phrase	Why is this an important or key phrase?

PRE-SEMINAR WORKSHEET (CON'T)

3-2-1 Lesson Reflection: Complete this 3-2-1 using the prompts below.

What are three new facts you learned from the primary and secondary sources?

1.

2.

3.

What are two questions you have related to the court case *Mendez v. Westminster*?

1.

2.

Can you draw a connection between this court case and your experience as a student today?
With other students' experiences? If so, please explain.

1.

SEMINAR WORKSHEET

A. Before the Seminar Begins

Define the following keywords and phrases:

- > Perspective: _____

- > Rights: _____

- > Fairness: _____

- > Development: _____

- > More Perfect Union: _____

B. Pre-Write: In your own words, answer our seminar question: **How did the Supreme Court decision in *Mendez v. Westminster* create a more perfect union then and today?** Use evidence from your notes to support your ideas. Use bullet points to organize your ideas. Try to identify two or three responses for each prompt.

<i>Mendez v. Westminster</i> helped build a more perfect union THEN . . .	<i>Mendez v. Westminster</i> helped build a more perfect union TODAY . . .

SEMINAR WORKSHEET (CON'T)

C. Goal Setting: Everyone will choose a goal for this seminar. Please circle which one you will focus on:

- > Participating
- > Paraphrasing skills
- > Citing evidence during a class seminar

Explain how you will work toward your goal and/or what this goal looks like during the seminar for you. Be specific.

D. Tracking my Seminar Participation: During the seminar, keep track of your own progress and participation.

Criteria	Check When Completed	Your statement/comment
Offering an on-task comment		
Asking a question		
Citing evidence from the text		

E. Post-Seminar Reflection: What new ideas did you gain?

SEMINAR WORKSHEET (CON'T)

Goal Reflection: How well did you meet your goal? Provide evidence of how you met or exceeded your goal. If you did not, why not? Explain.

Post-Seminar Assessment: In a five-to-seven sentence paragraph, respond to the prompt using at least two pieces of evidence (each from a different source). Be sure to address the FULL question.

How did the Supreme Court decision in *Mendez v. Westminster* create a more perfect union then and today?
