

# The Burger Court Opinion Writing Database

## *Rosenberg v. Yee Chien Woo*

402 U.S. 49 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



**cc: The Conference**

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Black, J.

MAR 25 1971

No. 156.—OCTOBER TERM, 1970

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

George K. Rosenberg, District  
Director, Immigration and  
Naturalization Service, Peti-  
tioner,

v.

Yee Chien Woo.

On Writ of Certiorari to  
the United States  
Court of Appeals for  
the Ninth Circuit.

[March —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court.

Respondent, Yee Chien Woo, is a native of Mainland China, a Communist country, who fled that country in 1953 and sought refuge in Hong Kong. He lived in Hong Kong until 1959 when he came to the United States as a visitor to sell merchandise through a concession at a trade fair in Portland, Oregon. After a short stay, Woo returned to Hong Kong only to come back to the United States in 1960 to participate in the San Diego Fair and International Trade Mart to promote his Hong Kong business. Thereafter he remained in the United States although he continued to maintain his clothing business in Hong Kong until 1965. In 1965 Woo's wife and son obtained temporary visitor's permits and joined him in this country. By 1966 all three had overstayed their permits and were no longer authorized to remain in this

<sup>1</sup> "Without expressing any opinion as to why Congress chose to omit the 'firmly resettled' provision in the amendments to the Refugee Relief Act of 1953, this court finds that plaintiff was never 'firmly resettled' and still qualifies as a refugee under the terms of section 203 (a)(7). Accordingly, the District Director erred in denying plaintiff's application." 295 F. Supp. 1370, 1372 (1968).

Move to  
p. 2

WN

3  
4,38

To: The Chief Justice  
~~Mr.~~ Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated: \_\_\_\_\_

No. 156.—OCTOBER TERM, 1970

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MAR 26 1971

George K. Rosenberg, District  
Director, Immigration and  
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WD

548

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated: \_\_\_\_\_

No. 156.—OCTOBER TERM, 1970

Recirculated: MAR 31 1971

George K. Rosenberg, District  
Director, Immigration and  
Naturalization Service, Peti-  
tioner,

On Writ of Certiorari to  
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v.

Yee Chien Woo.

[April —, 1971]

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Respondent, Yee Chien Woo, is a native of Mainland China, a Communist country, who fled that country in 1953 and sought refuge in Hong Kong. He lived in Hong Kong until 1959 when he came to the United States as a visitor to sell merchandise through a concession at a trade fair in Portland, Oregon. After a short stay, Woo returned to Hong Kong only to come back to the United States in 1960 to participate in the San Diego Fair and International Trade Mart to promote his Hong Kong business. Thereafter he remained in the United States although he continued to maintain his clothing business in Hong Kong until 1965. In 1965 Woo's wife and son obtained temporary visitor's permits and joined him in this country. By 1966 all three had overstayed their permits and were no longer authorized to remain in this country. After the Immigration and Naturalization Service began deportation proceedings, Woo applied for an immigrant visa claiming a "preference" as an alien who had fled a Communist country fearing persecution as defined in § 203 (a) (7) of the Immigration and Nationality Act of 1952, as amended.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

WV

Stylistic Changes Throughout.

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 156.—OCTOBER TERM, 1970

Circulated: \_\_\_\_\_

Recirculated: APR 5 1971

George K. Rosenberg, District Director, Immigration and Naturalization Service, Petitioner, v. Yee Chien Woo.	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[April —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court.

Respondent, Yee Chien Woo, is a native of Mainland China, a Communist country, who fled that country in 1953 and sought refuge in Hong Kong. He lived in Hong Kong until 1959 when he came to the United States as a visitor to sell merchandise through a concession at a trade fair in Portland, Oregon. After a short stay, he returned to Hong Kong only to come back to the United States in 1960 to participate in the San Diego Fair and International Trade Mart to promote his Hong Kong business. Thereafter he remained in the United States although he continued to maintain his clothing business in Hong Kong until 1965. In 1965 respondent's wife and son obtained temporary visitor's permits and joined him in this country. By 1966 all three had overstayed their permits and were no longer authorized to remain in this country. After the Immigration and Naturalization Service began deportation proceedings, Yee Chien Woo applied for an immigrant visa claiming a "preference" as an alien who had fled a Communist country fearing persecution as defined in § 203 (a)(7) of the Immigration and Nationality Act of 1952, as amended.

WB

Handwritten initials "H L B" in the top left corner.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HUGO L. BLACK

April 8, 1971

Dear Thurgood,

Re: No. 156 - Rosenberg v. Woo

Since you wish to join Potter  
that, of course, is o.k.

Sincerely,

Handwritten signature "H L B" above the typed name "H. L. B."

H. L. B.

Mr. Justice Marshall

cc: Members of the Conference

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SSA/CNOC 30/ADYDGL 1 IN

37  
JL  
JR

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 156.—OCTOBER TERM, 1970

From: Black, J.

Circulated: \_\_\_\_\_

APR 14 1971

Recirculated: \_\_\_\_\_

George K. Rosenberg, District Director, Immigration and Naturalization Service, Petitioner,	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
v.	
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[April —, 1971]

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SSSBCNOC 30 ADV 11 IN



To: The Chief Justice  
 Mr. Justice Black  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 156.—OCTOBER TERM, 1970

3/29/71

George K. Rosenberg, District Director, Immigration and Naturalization Service, Peti- tioner, v. Yee Chien Woo.	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[March —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

I had thought we could take judicial notice that those who have "fled" a foreign nation for fear of persecution or death, often make their "flight" in successive stages. Those leaving modern Greece or Iran often stop for long periods at "stations" along the way. For the reasons stated by the Court of Appeals, 419 F. 2d 253-254, I think Congress used the word "fled" in that manner. The result is not to open wide our doors, as the Act limits the number of these refugees who can enter. The fact that a refugee has found "shelter in another nation"—to use the Court's phrase—does not necessarily mean that his aim to reach these shores has in any sense been abandoned.

I would affirm this judgment.

WB

Mr. Justice Black  
 ✓ Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

circulated: 4-5-71

No. 156.—OCTOBER TERM, 1970

circulated:

George K. Rosenberg, District  
 Director, Immigration and  
 Naturalization Service, Peti-  
 tioner,  
 v.  
 Yee Chien Woo.

On Writ of Certiorari to  
 the United States  
 Court of Appeals for  
 the Ninth Circuit.

[April —, 1971]

MR. JUSTICE BRENNAN, dissenting.

Respondent Ye Chien Woo applied for an immigrant visa claiming a "seventh preference" under § 203 (a)(7) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1153 (a)(7) (Supp. V, 1970). The statute extends the preference to aliens who

"satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, . . . that (i) because of fear of persecution on account of race, religion, or political opinion they have fled . . . from any Communist or Communist-dominated country or area . . . , and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made."

Thus, in unambiguous and unqualified terms, the statute makes eligible for the preference an alien who has fled persecution, who is unable or unwilling to return to his homeland due to that persecution, and who has not become a national of another country. Respondent precisely fits this description. It is undisputed that he fled from Communist China due to persecution, is unwilling

*I leave  
 from  
 me  
 W.D.*

3

Stylistic Changes Throughout.

McCaw  
223

5  
4th DRAFT

To: The Chief Justice  
✓ Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 156.—OCTOBER TERM, 1970

Circulated: \_\_\_\_\_

Recirculated: APR 5 1971

George K. Rosenberg, District  
Director, Immigration and  
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On Writ of Certiorari to  
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*Dear (supp)  
Justice  
William  
Department  
James  
Brennan  
He will  
want to  
change  
June 1971  
WU*

RECEIVED FROM THE CLERK OF THE SUPREME COURT, DIVISION OF THE CLERK OF THE SUPREME COURT

April 7, 1971

Dear Bill:

I have your note joing me  
in my dissent in No. 156 - Rosenberg v.  
Noo. But since you and Potter have a  
much more adequate and complete state-  
ment of the position to which I adhere,  
I have withdrawn my dissent and joined  
the two of you. I have so notified Hugo  
because he noted my dissent in a footnote.

William O. Douglas

Mr. Justice Brennan

WJ  
Admin 1487

FR 29

April 2, 1971

Re: No. 156 - Rosenberg v. Yee Chien Woo

Dear Hugo:

I agree with and am glad to join your opinion  
in this case.

Sincerely,

J.M.H.

Mr. Justice Black

CC: The Conference

Mr. Justice Black  
 ✓ Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 4-5-71

No. 156.—OCTOBER TERM, 1970

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[April —, 1971]

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Respondent Ye Chien Woo applied for an immigrant visa claiming a "seventh preference" under § 203 (a) (7) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1153 (a) (7) (Supp. V, 1970). The statute extends the preference to aliens who

"satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, . . . that (i) because of fear of persecution on account of race, religion, or political opinion they have fled . . . from any Communist or Communist-dominated country or area . . . , and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made."

Thus, in unambiguous and unqualified terms, the statute makes eligible for the preference an alien who has fled persecution, who is unable or unwilling to return to his homeland due to that persecution, and who has not become a national of another country. Respondent precisely fits this description. It is undisputed that he fled from Communist China due to persecution, is unwilling

*O leave  
 from  
 me  
 WVO*

WB

1a

To: The Chief Justice  
 Mr. Justice Black  
 ✓ Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 156.—OCTOBER TERM, 1970

Circulated: \_\_\_\_\_

George K. Rosenberg, District  
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 tioner,

v.

Yee Chien Woo.

On Writ of Certiorari to  
 the United States  
 Court of Appeals for  
 the Ninth Circuit.

Recirculated: 4/6/71

[April —, 1971]

MR. JUSTICE BRENNAN, dissenting.

Respondent Ye Chien Woo applied for an immigrant visa claiming a "seventh preference" under § 203 (a)(7) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1153 (a)(7) (Supp. V, 1970). The statute extends the preference to aliens who

"satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, . . . that (i) because of fear of persecution on account of race, religion, or political opinion they have fled . . . from any Communist or Communist-dominated country or area . . . , and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made."

Thus, in unambiguous and unqualified terms, the statute makes eligible for the preference an alien who has fled persecution, who is unable or unwilling to return to his homeland due to that persecution, and who has not become a national of another country. Respondent precisely fits this description. It is undisputed that he fled from Communist China due to persecution, is unwilling

W11

May -  
You voted  
with H.B.  
There are 3 dissents.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 6, 1971

RE: No. 156 - Rosenberg v. Yee Chien Woo

Dear Bill:

Will you please join me in your dissent  
in the above.

Sincerely,



W.J.B. Jr.

Mr. Justice Douglas

cc: The Conference



B

Mr. Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

Justice Brennan, J.

No. 156.—OCTOBER TERM, 1970

Argued: 4/7/71

George K. Rosenberg, District  
Director, Immigration and  
Naturalization Service. Peti-  
tioner,

v.

Yee Chien Woo.

On Writ of Certiorari to  
the United States  
Court of Appeals for  
the Ninth Circuit.

[April —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

Respondent Ye Chien Woo applied for an immigrant visa claiming a "seventh preference" under § 203 (a)(7) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1153 (a)(7) (Supp. V, 1970). The statute extends the preference to aliens who

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Thus, in unambiguous and unqualified terms, the statute makes eligible for the preference an alien who has fled persecution, who is unable or unwilling to return to his homeland due to that persecution, and who has not become a national of another country. Respondent precisely fits this description. It is undisputed that he fled

WV

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 7, 1971

RE: No. 156 - Rosenberg v. Yee Chien Woo

Dear Bill:

Thanks for your note of April 7 in the above. I think Potter's done a better job than I have and so I am also withdrawing my dissent and joining him as per the enclosed.

Sincerely,



Mr. Justice Douglas

7D  
*Joined by 4/7*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 7, 1971

RE: No. 156 - Rosenberg v. Yee Chien Woo

Dear Potter:

Since your dissent expands upon the thoughts expressed in mine, and Bill Douglas has withdrawn his dissent, I am going to withdraw mine and join you, if I may.

Sincerely,

*Bill*  
W. J. B. Jr.

*X* Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
 Mr. Justice Black  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan ✓  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 156.—OCTOBER TERM, 1970

Circulated: APR 6 1971

George K. Rosenberg, District  
 Director, Immigration and  
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 v.  
 Yee Chien Woo.

Recirculated: \_\_\_\_\_  
 On Writ of Certiorari to  
 the United States  
 Court of Appeals for  
 the Ninth Circuit.

[April —, 1971]

MR. JUSTICE STEWART, dissenting.

On March 8, 1966, the respondent, who fled mainland China for Hong Kong in 1953 and has resided in the United States since May 22, 1960, filed with the Immigration Service an application for adjustment of status pursuant to § 203 (a) (7) of the Immigration and Nationality Act, as amended, 8 U. S. C. § 1153 (a) (7). By the terms of § 203 (a) (7) applicants for adjustment of status are required to show:

1. that they "have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status;"
2. that "because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area . . . ;"
3. that they "are unable or unwilling to return to such country or area on account of race, religion, or political opinion;"
4. that they "are not nationals of the countries or areas in which their application for conditional entry is made . . . ."

The District Director denied the respondent's application for adjustment of status because of "intervening

WB

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas ✓  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

2nd DRAFT

From: Stewart, J.

**SUPREME COURT OF THE UNITED STATES**

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No. 156.—OCTOBER TERM, 1970

Recirculated: APR 8 1971

George K. Rosenberg, District  
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tioner,  
v.  
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On Writ of Certiorari to  
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[April —, 1971]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join, dissenting.

On March 8, 1966, the respondent, who fled mainland China for Hong Kong in 1953 and has resided in the United States since May 22, 1960, filed with the Immigration Service an application for adjustment of status pursuant to § 203 (a)(7) of the Immigration and Nationality Act, as amended, 8 U. S. C. § 1153 (a)(7). By the terms of § 203 (a)(7) applicants for adjustment of status are required to show:

1. that they "have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status;"

2. that "because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area . . . ;"

3. that they "are unable or unwilling to return to such country or area on account of race, religion, or political opinion;"

4. that they "are not nationals of the countries or areas in which their application for conditional entry is made . . . ."

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SSAFCNOU OF U I BBAVU OF U I N

BR  
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p. 3

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 156.—OCTOBER TERM, 1970

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George K. Rosenberg, District Director, Immigration and Naturalization Service, Petitioner,  
v.  
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On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1971]

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3. that they "are unable or unwilling to return to such country or area on account of race, religion, or political opinion;"
4. that they "are not nationals of the countries or areas in which their application for conditional entry is made . . . ."

Black's papers  
No. 156  
1970 ST

Supreme Court of the United States  
Memorandum

-----, 19-----

Hugo.

I dissent in  
Rosenberg, joined  
by WOD, WJB,  
and T.M.

P.S.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 6, 1971

Re: No. 156 - Rosenberg v. Yee  
Chien Woo

Dear Hugo:

Please join me.

Sincerely,

*Byron*

Mr. Justice Black

Copies to Conference

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W



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 29, 1971

Re: No. 156 - Rosenberg v. Yee Chien Woo

Dear Hugo:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Black

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 7, 1971

Re: No. 156 - Rosenberg v. Yee Chien Woo

Dear Hugo:

Attached is my join in Potter's opinion in this case. As I read the votes you still have a Court, and I would rest more easily if you will permit me to withdraw my concurrence in your opinion and join in Potter Stewart's opinion.

Sincerely,

  
T.M.

Mr. Justice Black

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

# AN ADVANCE OF CONCRETE

cc: The Conference

March 29, 1971

Re: No. 156 - Rosenberg, District Director v. Woo

Dear Hugo:

Your opinion is very persuasive, and I am pleased  
to join it.

Sincerely,

H. A. B.

Mr. Justice Black

cc: The Conference