

CITIZENS OF NOWHERE

SOLUTIONS FOR THE
STATELESS IN THE U.S.



A REPORT FROM THE

United Nations High Commissioner For Refugees and Open Society Justice Initiative

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Executive Summary

Tatianna and her two sons, David and Danil, were born in the Soviet Union in what is now Ukraine. In 1992, Tatianna fled to the United States with her younger son, David, to escape escalating government threats against the family for their political beliefs. Assuming that she could send for him once she was settled in the United States, Tatianna left 19-year-old Danil behind. Tatianna and David's asylum claims were denied in 1997. When government authorities tried to deport them, they found that Ukraine did not consider them citizens because they left for the United States without having fulfilled the residency requirements necessary for citizenship in Ukraine. The Russian Federation and other successor states did not recognize them as citizens because they did not live there after the collapse of the Soviet Union. They are stateless. As a direct result of their statelessness, Tatianna and David were arrested and held for months in immigration detention while the government attempted to deport them; they have had difficulties maintaining their permission to work; they cannot travel freely throughout the United States and cannot leave the United States because they do not have any valid travel documents. They continue to live in limbo and it has often been difficult for them to survive.

Stateless persons are individuals who are without the recognition or protection of any country. Without the protection of citizenship or nationality, stateless individuals are highly vulnerable to discrimination and abuse, and are often denied essential human rights by the State in which they live. As a result, many stateless individuals live in the shadows to minimize their risk of exposure to harsh treatment and potential expulsion. This “shadow” existence of many stateless individuals greatly impedes the ability to develop a full picture of statelessness globally and to make a precise determination of the number of stateless individuals in the world today. The Office of the U.N. High Commissioner for Refugees (UNHCR) estimates that there are 12 million stateless persons globally, of which 3.5 million are in countries for which there are reliable statistics counting stateless individuals. An undetermined number of these individuals live in the United States—many without any lawful status, access to rights or protections.¹

This report focuses primarily on the especially vulnerable population of stateless individuals residing in the United States who have no path to acquire lawful status or become naturalized U.S. citizens under the current law.² The report provides an overview of statelessness in the global context, including its causes and often grave consequences to those individuals who are stateless, the international legal framework, and the role of UNHCR. The report then discusses some of the key issues faced by this group of stateless individuals in the U.S. and concludes with recommendations of measures for the U.S. Government to take to ensure that these individuals receive the rights and responsibilities that will enable them to participate as full members of society. These individuals are destined to remain forever stateless and vulnerable unless concrete, specific actions are taken by the U.S. Government. These actions are delineated in the recommendations at the conclusion of this report.

The year 2011 marked the 50th anniversary of the 1961 *Convention on the Reduction of Statelessness* and to commemorate that occasion, UNHCR, pursuant to its mandate,³ launched a global campaign to raise awareness and increase State responsiveness to statelessness. Among the many fruits of this endeavor, a number of states, including the United States, took action, made commitments to action, or both, to enhance the protection of stateless individuals.⁴ Specifically, the United States pledged to the following:

Actively work with Congress to introduce legislation that provides a mechanism for stateless persons in the United States to obtain permanent residency and eventually citizenship; [and to c]onsider the revision of administrative policies to allow the circumstance of stateless persons to inform decision-making regarding their detention, reporting requirements, and opportunity to apply for work authorization.⁵

Almost all stateless individuals in the United States who are not also refugees have become stateless while in the U.S., usually through no fault of their own.⁶ This is so because stateless individuals often lack identity and travel documents and are rarely able to travel to the United States from elsewhere. Among the causes of statelessness for these individuals are that their countries have dissolved and they have not acquired citizenship in any of the successor states, or there are incompatibilities between different legal regimes that have left them without a nationality. In other cases, statelessness may be the result of discriminatory laws or practices or in some cases even punitive or malevolent treatment.

The 14th Amendment to the United States Constitution guarantees *jus soli* citizenship—in other words citizenship on the basis of birth on U.S. territory. In a number of circumstances, U.S. laws also extend citizenship to individuals born to U.S. citizens abroad. These protections ensure that the United States for the most part does not “create” stateless individuals, but does not offer a solution for

those individuals from other countries who have become stateless and find themselves in the United States.

The U.S. Supreme Court has recognized statelessness as a “condition deplored in the international community of democracies” with “disastrous consequences”.⁷ Despite this strong view, the United States law does not accord any protections to stateless individuals in the country, nor does it provide any avenue for these individuals to acquire lawful status or citizenship on the basis of their statelessness alone.

Stateless individuals who have not been identified by the U.S. immigration system live in the shadows without any means to support themselves lawfully and in constant fear of exposure. Because they have no country of nationality, there is generally nowhere for them to “return”. These individuals are left with no alternative but to remain in the United States without any official status or protection, leaving them vulnerable to discrimination and poverty. Without travel or identity documents, travel within the United States is complicated and travel outside the United States is next to impossible—which often means they must live forever apart from family and loved ones.

Stateless individuals who have gone through the U.S. immigration system and have a final order of removal issued against them experience particular protection concerns. Among these are extended periods of detention and the imposition of restrictions—“orders of supervision”—as a condition of release. Orders of supervision typically require regular in-person reporting to government authorities—ranging anywhere from once a week to once a year—and limit the geographic areas within the United States to which the individual may travel without explicit permission. An order of supervision may grant a stateless individual permission to work, but must be renewed annually, requires paying a fee of several hundred dollars for each request or renewal, and, because of delays in processing time, can

lead to gaps in authorized employment. Because these individuals have no path to lawful status and cannot leave the United States, they may well be subject to such restrictions for the rest of their lives. Neither the individuals themselves nor the U.S. Government is able to establish their right to return to any other country—for the simple reason that no state will allow them to enter.

The 1954 Convention relating to the Status of Stateless Persons and the 1961 *Convention on the Reduction of Statelessness* provide a comprehensive framework for international action on statelessness. While the United States has not acceded to either of these Conventions, the *jus soli* nationality regime in the U.S. is a strong, albeit imperfect, protection against the creation of statelessness, and brings the United States largely into alignment with international standards on the prevention of statelessness. Nonetheless, the laws and policies of the U.S. fall far short of providing protection, rights, and liberties for those stateless individuals residing in the country.

UNHCR and a number of U.S. Government officials agree that the only adequate and lasting solution for stateless individuals in the United States is to add a section to the law to address their particular situation. Such a solution is proposed in the Refugee Protection Act, introduced in both the U.S. Senate and House of Representatives in 2010 and again in 2011, which contains a section that addresses some of the key concerns regarding statelessness in the United States. Significantly, this Act contains a provision that would establish a process for determining whether an individual is stateless and, if so, a path for eligible stateless individuals to seek lawful permanent residence and ultimately U.S. citizenship. The U.S. Government worked with Congress to refine the statelessness provisions included in the RPA and, consistent with the U.S. commitments made in 2011, has since engaged in outreach to Congress on the possibility of advancing legislation of this sort. Unfortunately, these provisions have not yet become law.

In addition to supporting the development of



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a legislative framework, the U.S. Government has undertaken certain administrative efforts that help lessen the hardships facing stateless individuals. This includes a 2012 policy that provides discretion to lessen reporting requirements for certain stateless individuals with final orders of removal. Additional administrative policy changes that could improve the quality of life of stateless individuals in the United States would include routinely providing work authorization, refraining from detaining them when it is clear that there is no country that will accept them, and limiting the in-person reporting requirements.

This report provides information on statelessness in the United States and offers recommendations to aid policy makers and legislators in implementing administrative and legislative changes to improve the lives of stateless individuals who already reside in this country—individuals like Tatianna and her son David—so that they are able to participate as full members of society. This report makes the following recommendations concerning stateless individuals in the United States.

Recommendations for the White House

1. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.
2. In the absence of a legislative framework addressing statelessness in the United States, engage in dialogue with the Department of Homeland Security to grant deferred action, or temporary permission to reside in the United States, to eligible stateless individuals.

Recommendations for the United States Congress

3. Enact legislation that provides a path for

stateless individuals in the United States to seek lawful permanent residency and U.S. citizenship to address the lack of options and permanent solutions currently available to them.

4. Amend existing laws to allow stateless individuals to be released from immigration detention during the 90-day removal period, in recognition of the fact that, in most cases, the removal of stateless persons is *per se* unforeseeable.

5. Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 *Convention on the Reduction of Statelessness* in consultation with the Executive Branch, and enact any necessary implementing legislation.

Recommendations for the Department of Homeland Security

6. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

7. Establish an individual statelessness status determination procedure in consultation with UNHCR that incorporates a definition of statelessness in accordance with international law and provide successful applicants with permission to reside in the United States.

8. Designate officers responsible for assessing whether an individual is stateless. Ensure that they receive comprehensive training and guidance on making this assessment and that information concerning the treatment of stateless individuals is widely disseminated among all officers.

9. Provide automatic, fee-exempt identity and work authorization document that does not require annual renewal to individuals determined to be stateless.

10. Establish a central, intra-agency referral mechanism to address the concerns of individual stateless persons.

11. Establish a policy to release stateless individuals from immigration detention in a timely manner, including during the 90-day period after a final order of removal has been entered, on the basis that statelessness is a compelling indicator that there is no reasonably foreseeable prospect of removal.

12. Limit orders of supervision of stateless individuals to annual in-person reporting requirements, with no limitation on travel within the United States.

13. Following a reasonable effort to seek admission into countries with which they have ties, ensure that such persons are under no obligation to continue contacting embassies and consulates for travel documents without a demonstrated reason to apply or reapply to a particular country.

14. Refrain from detaining, or signaling that authorities will detain, stateless individuals who have made reasonable efforts to seek, but were unable to obtain, admission into other countries with which they have ties.

15. Provide stateless individuals with necessary documentation to travel abroad and return to the United States.

16. Launch a public education campaign about the administrative remedies available to stateless persons and the procedures for obtaining them, including work authorization, reduced reporting requirements, and the ability to travel within the United States.

17. In consultation with the Department of Justice, improve the collection and assessment of statistical data concerning stateless individuals, including standardized terminology used to identify stateless persons between the two agencies, to ensure more accurate information and greater understanding of the scope of statelessness.

Recommendations for the Department of Justice

18. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

19. Ensure that all immigration judges receive comprehensive training and guidance on making determinations as to whether an individual is stateless, incorporating a definition of statelessness in accordance with international law. Ensure that information concerning the treatment of stateless individuals is widely disseminated among all immigration judges

20. In consultation with the Department of Homeland Security, improve the collection and assessment of statistical data concerning stateless individuals, including standardized terminology used to identify stateless persons between the two departments, to ensure more accurate information and greater understanding of the scope of statelessness.

Recommendation for the Department of State

21. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

22. As pledged by the U.S. Government in December 2011, continue to raise awareness and focus U.S. diplomacy on preventing and resolving statelessness worldwide, particularly among women and children, including through mobilizing governments to repeal discriminatory nationality laws and to enact safeguards to prevent statelessness at birth.

Introduction and Scope of the Report

Stateless persons are individuals who are without the recognition or protection of any state.⁸ Without the protection of citizenship or nationality,⁹ stateless individuals are highly vulnerable to discrimination, abuse, and deprivation of essential human rights by the State in which they live and often by other members of society as well. As a result, many stateless individuals live in the shadows to minimize their risk of exposure to harsh treatment and potential expulsion. This “shadow” existence of many stateless individuals greatly impedes the ability to develop a full picture of statelessness globally and to make a precise determination of the number of stateless individuals in the world today.

The Office of the U.N. High Commissioner for Refugees (UNHCR) estimates that there are 12 million stateless persons worldwide, of which 3.5 million are found in countries for which there are reliable statistics counting stateless individuals.¹⁰ The United States is home to an undetermined number of stateless persons—many of whom have no lawful status or rights—who, like their counterparts around the world, do not enjoy the protections of citizenship or nationality from any government, leaving them vulnerable to discrimination, exploitation, lack of rights and security, detention, and even deportation. Stateless persons are affected on a daily basis by their lack of lawful bond with any country and the rights, protections, and obligations that flow from that bond, which keep them vulnerable and unable to fully engage in their communities and in society as a whole. Yet simple legislative and administrative remedies would

ensure their safety, protection, and ability to achieve full integration into society.

This report focuses primarily on the especially vulnerable population of stateless individuals residing in the United States who have no path to acquire lawful status or become naturalized U.S. citizens under the current law.¹¹ The report provides an overview of statelessness in the global context, including its causes and often grave consequences to those individuals who are stateless, the international legal framework, and the role of UNHCR. The report then discusses some of the key issues faced by this group of stateless individuals in the U.S. and concludes with recommendations of measures for the U.S. Government to take to ensure that these individuals receive the rights and responsibilities that will enable them to participate as full members of society. These individuals are destined to remain forever stateless and vulnerable unless concrete, specific actions are taken by the U.S. Government. These actions are delineated in the recommendations at the conclusion of this report.

The year 2011 marked the 50th anniversary of the 1961 *Convention on the Reduction of Statelessness*. Pursuant to its mandate and recognition by the U.N. General Assembly as the U.N. institution with the responsibility to address the concerns of stateless individuals,¹² UNHCR launched a global campaign to raise awareness and increase State responsiveness to stateless individuals in their territories and throughout the world in commemoration of that occasion.¹³ Among the many



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Women selling turnips in a market in Dhaka, Bangladesh. These women were members of a group of Urdu speakers who were stateless for decades until a 2007 landmark court decision that reconfirmed their Bangladeshi citizenship.

fruits of this endeavor, a number of States took action, made commitments to take action, or both, to enhance the protection of stateless individuals. The United States made two pledges at the UNHCR December 2011 Ministerial Meeting that relate specifically to the issues addressed in this report—to review administrative measures that can be taken to increase the protections accorded to stateless individuals in the U.S. and to encourage and support efforts to enact legislation providing a means of attaining lawful permanent residence and ultimately U.S. citizenship to eligible stateless individuals.¹⁴ This report, the first presentation of the circumstances and concerns of stateless individuals in the United States, is intended to further those efforts and provides clear recommendations for fulfilling the pledges made by the U.S. Government.

UNHCR and the Open Society Justice Initia-

tive, a non-governmental organization committed to combating statelessness globally, collaborated on this report in recognition of the 50th anniversary of the 1961 *Convention on the Reduction of Statelessness*. The report is based on various sources of data, including UNHCR's experience assisting stateless individuals in the U.S., interviews conducted with stateless individuals, surveys of 45 organizations in 19 U.S. States that provide legal services to immigrant communities, an examination of government statistics, and a review of federal case law.

Statelessness is "a condition deplored in the international community of democracies."

Trop v. Dulles, 356 U.S. 86, 102 (1958).¹⁵

The Role of UNHCR in Addressing Statelessness

UNHCR has been involved in statelessness issues and with stateless individuals since its inception in 1950. The organization is mandated by the United Nations to protect refugees and to help them find solutions to their plight and many of the refugees assisted throughout the years have also been stateless.¹⁶ Indeed, over the past several decades, the link between the loss or denial of national protection and the loss or denial of nationality has been well established. It is now generally understood that nationality helps to prevent involuntary and coerced displacements of persons.¹⁷

UNHCR's role in addressing stateless issues and assisting stateless individuals has ex-

panded with time. The U.N. General Assembly has recognized UNHCR as the U.N. institution with an international protection mandate for stateless persons¹⁸ and has elaborated on the organization's responsibilities on these issues,¹⁹ as has UNHCR's own governing body, the Executive Committee of the High Commissioner's Programme.²⁰ The UNHCR mandate set out in these resolutions is universal in scope and does not limit UNHCR's activities to States Parties to either the 1954 Convention or the 1961 Convention. UNHCR's statelessness mandate covers all situations of statelessness. In 2006, the General Assembly urged UNHCR to continue to work "*in regard to identifying stateless persons, preventing and reducing statelessness, and protecting stateless persons*".²¹

Today, UNHCR's efforts concerning statelessness are focused on four key areas: identification, prevention, reduction, and protection.

The identification of statelessness includes continued efforts to identify populations which are stateless or of undetermined nationality; improving collection and sharing of statistical data on these populations; and undertaking and sharing research on the causes, scope, and



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Children make drawings as part of a protection workshop run by Plan International on behalf of UNHCR in Elias Piña, Dominican Republic. Many of these children, living in impoverished communities called *bateyes*, are at risk of becoming stateless.



A UNHCR protection officer addresses adults at a protection workshop run by Plan International in the remote town of Elias Piña, Dominican Republic, near the border between the Dominican Republic and Haiti.

consequences of statelessness “so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem”.²²

UNHCR’s mandate to prevent and reduce statelessness encompasses a range of efforts to encourage states to identify and address the hardships of statelessness. These efforts include the provision of technical and advisory services for the drafting and implementation of nationality and related legislation and for the elimination of obstacles to acquisition or confirmation of nationality; the promotion of accession to the 1961 Convention and of recognition of “the right of every child to acquire a nationality, particularly where the child might otherwise be stateless”.²³

UNHCR encourages states to reduce state-

lessness by, among other measures, adopting “measures to allow the integration of persons in situations of protracted statelessness”, and disseminating “information regarding access to citizenship”.²⁴

In fulfilling its mandate to ensure the protection of stateless persons and to facilitate their ability to exercise their rights, UNHCR promotes accession to the 1954 Convention and urges states to “implement programmes [...] which contribute to protecting and assisting stateless persons”.²⁵

Statelessness: A Global Phenomenon

A stateless person is a person “who is not considered a national by any State under the operation of its law”.²⁶ Nationality connects an individual to a State and is the fundamental basis for acquiring and exercising the rights, protections, and obligations inherent in full membership in a society. As indicated above, UNHCR estimates that there are 12 million stateless persons across the globe, of which 3.5 million reside in countries for which there are reliable statistics counting stateless individuals.

Stateless persons commonly lack authorization to stay in the territory of the country in which they reside. They are routinely excluded from the legal regime available to citizens and are vulnerable to deprivation of a wide range of civil, political, social, and economic rights, often without recourse.²⁷ Stateless individuals often face limited—if any—access to lawful employment, education, health-care, birth registration, property ownership, freedom of movement, and political participation.²⁸ They are typically unable to obtain even the most basic identity and travel documentation, further impeding their ability to engage in routine daily activities. This lack of documentation and the inability to secure permission to enter or remain in any country renders stateless individuals vulnerable to prolonged, sometimes indefinite, immigration detention. In some instances, stateless people have been “in orbit,” that is, deported from one country to another because no country will allow them to enter and reside in their territory. Because of their inherent vulnerability and in the absence of State protec-

tion inherent to nationality, stateless individuals are at greater risk of becoming victims of human trafficking and other forms of exploitation.²⁹ These circumstances can result in many hardships, chief among them a lifetime of family separation.

Data and statistics on stateless persons are difficult to obtain for a variety of reasons. There is a general lack of understanding about who qualifies as stateless and a lack of appropriate procedures to determine that status as well as reluctance on the part of many countries to recognize statelessness as a problem within their own borders. Many stateless persons are fearful of what may happen to them if they come forward—a fear that is often not misplaced.



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Julien Jean, 42, received his Haitian passport in December 2011 with the help of a local NGO. Without a passport he described life as being like a “goat in the mountains.” With a passport, he says that if he dies in the street then at least he will be recognized and identified.

International Treaties Addressing Statelessness

Stateless individuals, like refugees, were identified prior to World War II as persons lacking protection and in need of humanitarian assistance, but it was the tragedy of that conflict that spurred efforts to consolidate an international legal regime to specifically address their circumstances. In the immediate aftermath of the war, concerns about stateless individuals were seen as similar to and often overlapping with those regarding refugees. Given this perception, the drafters of the Convention relating to the Status of Refugees (1951 Refugee Convention)³⁰ intended to address stateless persons in an accompanying protocol. Instead, when the 1951 Refugee Convention was adopted, the draft protocol on statelessness was referred to a separate negotiating conference and, rather than being a protocol to that Convention, ultimately became an independent treaty—the 1954 Convention relating to the Status of Stateless Persons (1954 Convention).³¹

The 1954 Convention establishes the universal definition of a stateless person and sets forth the criteria States must adopt to regulate and improve the legal status of stateless persons residing on their territory and to ensure non-discriminatory protection of their fundamental rights and freedoms. Many of its provisions are similar to those of the 1951 Refugee Convention, including the rights to non-discrimination,³² religious freedom,³³ employment,³⁴ welfare,³⁵ freedom of movement,³⁶ travel and identity documents,³⁷ and an obligation to “facilitate...assimilation and naturalization”.³⁸ Significantly, the 1954 Convention prohibits expulsion of stateless per-

sons “save on grounds of national security or public order”.³⁹ The 1954 Convention was primarily intended to recognize and address the particular plight of stateless persons who are not refugees to ensure they have access to lawful status and secure their enjoyment of basic human rights.⁴⁰

In 1961, the *Convention on the Reduction of Statelessness* (1961 Convention)⁴¹ was adopted to reduce statelessness over time by elaborating clear, detailed, and concrete safeguards to prevent statelessness among children; due to loss, renunciation, or deprivation of nationality; and in the context of State succession.⁴² The 1961 Convention establishes the means for:

the acquisition of nationality by those who would otherwise be stateless and who have an appropriate link with the State through birth on the territory or through descent from nationals, *and* for the retention of nationality for those who will be made stateless should they inadvertently lose the State’s nationality.⁴³

The principles outlined in the 1961 Convention provide an effective framework within which to resolve conflicts of nationality laws.⁴⁴

Defining Statelessness

1954 Convention Definition of Statelessness

“For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered a national of any State by operation of its law.”

1954 Convention Relating to the Status of Stateless Persons, Article 1

The drafters of the 1954 Convention agreed on the following definition of statelessness: “[T]he term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law”.⁴⁵ The drafters believed that this definition would cover the large majority of stateless individuals who would not otherwise be recognized as refugees and receive international protection through the 1951 Refugee Convention. The International Law Commission has concluded that the 1954 Convention definition of a stateless person can “no doubt be considered as having acquired a customary nature”⁴⁶ and is therefore binding on all nations because every nation is bound to observe and respect an international principle or obligation that has achieved the status of customary international law even if a State has not ratified a particular treaty concerning that issue. Not all countries agree that the Article 1 stateless definition is customary law.⁴⁷ Nevertheless, the fact that at least some international law authorities have found the stateless definition to have attained this level of recognition is an indication of its significance.

Under the 1954 Convention definition, to determine whether an individual is “not considered as a national”, one must consult not only

the nationality laws of the State but also its practices in applying or implementing those laws.⁴⁸ To be “a national” under this definition requires the existence of a formal bond, but does not require an effective or genuine link between the State and the individual.⁴⁹ Individuals who have a formal bond of nationality but are not granted the rights and protections generally accorded other nationals of that country, would not typically be viewed as stateless. Such individuals would, nevertheless, be vulnerable to the same or similar hardships as stateless individuals and should be treated in a similar manner as individuals who are stateless.⁵⁰ At the same time, the 1954 Convention definition of a stateless person is intended to be interpreted inclusively to include the broadest scope of stateless individuals in order to ensure that those individuals lacking nationality receive the necessary protection.⁵¹

Causes of Statelessness

The factors contributing to statelessness can be summarized through three principal causes: 1) State succession; 2) discrimination and arbitrary denial or deprivation of nationality; and 3) technical causes. These three causes often overlap.

State Succession

State succession occurs when an existing State is replaced by two or more states; when part of a State separates to form a new State; when territory is transferred from one State to another; or when two or more States unite to form a new state. State succession can create stateless populations when individuals fail or are unable to secure citizenship in the successor states.⁵²

“Stuck” in the U.S. after dissolution of Soviet Union

Slawa was born in 1952 in the Soviet Union in what is currently Turkmenistan. At age 27, he migrated to Soviet Russia where he resided for many years. In 1990, he fled to Hungary and traveled through Europe, South America, and Central America for 15 months before reaching the U.S. in October 1991, where he applied for asylum. By December 1991, the Soviet Union had dissolved and 15 newly independent States had emerged. Meanwhile, his claim for asylum was denied. He has appealed to both Russia and Turkmenistan to recognize him as a citizen, but he is unable to meet the nationality laws of either country because he did not reside on their territory at the time of independence or afterwards. He is stateless—no country will recognize him as a citizen. For over 20 years, Slawa has been “stuck” in the U.S. with no ability to obtain lawful status and no ability to leave.

The redrawing of international borders has been a consistent cause of statelessness throughout history. Since the end of World War II, more than 100 new independent States have been formed.⁵³ During the first several decades following the adoption of the two conventions in 1954 and 1961, statelessness did not receive much attention. With the dissolution of the former Soviet Union and the break-up of the former Yugoslavia in the 1990s, concerns over statelessness returned to the fore. Since that time, new States continue to be formed, most recently with the creation of the Republic of South Sudan in 2011.

Because State succession frequently arises due to political or other differences between populations within the original state, the resulting statelessness is often related to discrimination. Ideally, in cases of State succession the people within the new territory would have access to acquiring the citizenship of the new State; however, this is often not the case as the new States frequently determine for themselves the populations they will recognize as nationals.⁵⁴

Discrimination and Arbitrary Deprivation of Nationality

Statelessness is often caused by discrimination against particular groups, including ethnic, racial, religious, and linguistic minorities and women. In 26 countries, among them Kuwait, Lebanon, and Qatar, gender-discriminatory legislation denies mothers the right to pass nationality to their children on an equal basis as fathers, which can create statelessness.⁵⁵ State policies and practices often deny citizenship to children born out of wedlock. In some countries, there are discriminatory laws where marriage or dissolution of marriage serves as a ground for automatic loss of citizenship.

One particularly sensitive and often complicated form of discrimination is the arbitrary deprivation of nationality. Deprivation of nationality resulting in statelessness is generally considered to be arbitrary, unless it serves a legitimate purpose and is subject to important substantive and procedural standards.⁵⁶ For example, nationality should only be deprived under exceptional circumstances⁵⁷ and only “as prescribed by law.”⁵⁸

Arbitrary deprivation of nationality often results from State practices or policies that disproportionately affect particular minority groups and may include, for example, denying children citizenship at the time of birth or stripping individuals of citizenship later in life. The refusal of the Dominican Republic to issue documents proving citizenship to many Dominican-born children of Haitian descent who were previously recognized as citizens is one example of this kind of discrimination.⁵⁹ Another is the decision of Mauritania in 1989 to deprive a large segment of its black population of citizenship and subsequently expel them to Mali and Senegal.⁶⁰

Technical Causes of Statelessness

“Technical causes” refers to situations where statelessness is the unintended result of gaps

in a country’s nationality laws, conflict of citizenship laws, or the actions or inactions of individuals. Perhaps the most common technical cause of statelessness is incompatibilities between the laws of States recognizing citizenship primarily through blood relationship (*jus sanguinis*) and those recognizing citizenship through birth in the country (*jus soli*). A child whose parents are nationals of a country that grants nationality primarily through birth on the territory and limits transmission by descent or blood line, but who is born in a country that grants nationality primarily through the blood line of one or both parents, may not be able to acquire any nationality at birth.⁶¹

Other “technicalities” in nationality laws can render an individual stateless at birth or later in life. A few examples include: not providing nationality to abandoned children found on the territory; automatic loss of nationality of individuals who reside abroad without registering with a consulate after a specified period of time;⁶² procedural formalities upon the marriage of a national of a country to a non-national who, by virtue of that marriage, does not retain his or her citizenship in their home country.

Statelessness can also result when individuals fail to overcome administrative hurdles related to proof of nationality. For example, in countries with onerous requirements for birth registration, such as unreasonable deadlines, excessive fees, or burdensome document requirements, and particularly among certain migrant, displaced, or nomadic communities, parents may be unable to comply with registration requirements for obtaining birth certificates for their children. As a result, these children may not be able to obtain documentary evidence of their nationality. In most cases, undocumented children do have a nationality, but their inability to prove their birth, origins, or legal identity when needed can lead to statelessness if their country of nationality then refuses to acknowledge them as nationals.

International Obligations and the United States Framework

Apart from the 1954 and 1961 Conventions on Statelessness, there are other international documents that address the right to nationality and the protection of those who have none. The United States is bound by some of these. The United States also has its own legal framework through which it views issues relating to citizenship and statelessness. These are discussed below as a means to provide insight into the solutions that would best fit within the existing laws and policies to address statelessness in the United States. The principal concern in the U.S. context is to provide protection—rights and responsibilities—to stateless individuals residing in the United States. It is particularly with this concern in mind that the international framework is discussed.

International Instruments and Obligations

There are a number of international instruments that address or at least implicate the responsibilities of States to stateless individuals within their territory. Among these is the Universal Declaration of Human Rights,⁶³ which, although not a binding treaty, is the foundational document in modern human rights law, and some of its provisions are widely viewed as customary international law.⁶⁴ The Universal Declaration explicitly articulates a right to nationality and, although it has not been officially recognized as customary international law, it is, at a minimum, a significant guiding principle in protecting the human rights of every individual.

Universal Declaration of Human Rights Article 15

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The universal human right to a nationality is mirrored in other international instruments relevant to the prevention of statelessness that the United States has ratified.⁶⁵ One such example is the International Covenant on Civil and Political Rights, one of the core international human rights treaties, which provides: “Every child has the right to acquire a nationality”.⁶⁶ The United States has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which establishes that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone...to nationality”.⁶⁷ By ratifying these international instruments, the United States has bound itself to the obligation to respect and ensure human rights, including the right to nationality. Unfortunately, the United States has not enacted national legislation that would provide a means for these obligations to be legally enforceable rights within the United States.⁶⁸

“The U.S. Government believes that the prevention of statelessness and the protection of those who are stateless should be priorities for all governments.”

Nicole Green and Todd Pierce⁶⁹

U.S. Department of State, Bureau of
Population, Refugees, and Migration

The United States has not ratified either the 1954 Convention relating to the Status of Stateless Persons⁷⁰ or the 1961 Convention on the Reduction of Statelessness.⁷¹ The principal reason asserted by the U.S. Government for not becoming a party to the two conventions is that the instruments contain certain obligations that are inconsistent with U.S. law. For example, the United States has stated that the prohibition against the renunciation of nationality where such renunciation would result in statelessness in the 1961 Convention “conflicts with the U.S. law, which

has long recognized the right of Americans to renounce their nationality, even if doing so would lead to statelessness”.⁷²

Although there may be some aspects of U.S. law that would need to be reconciled with the obligations under the 1954 Convention, this is surmountable, and acceding to the Convention would be a strong and vital step in demonstrating nationally and globally the United States’ commitment to ensuring that the treatment of stateless persons on U.S. territory adhere to important minimum standards. Accession to the 1954 Convention would also invoke a statelessness status determination procedure which is a prerequisite for ensuring that a State can identify those who are stateless and, thus, in need of protection.



A stateless woman living in Ukraine.

The U.S. Framework

2012 Continuing Appropriations Bill

During deliberations for the 2012 Continuing Appropriations Act, the U.S. House of Representatives Committee on Appropriations expressed the following concerns about stateless individuals:

The Committee has become aware of the tragedy of...individuals in the United States who may be classified as “stateless” because they have no legal claim to U.S. residency but are unable to return to their country of origin. This situation can arise because of changes in political structures such as the collapse of the Soviet Union, destruction of citizenship records due to revolution or civil unrest, and other geopolitical changes outside of their control. In such cases, there is no legal pathway for stateless persons in the United States to gain lawful status, and therefore they remain unable to participate fully in society. The Committee encourages USCIS [U.S. Citizenship and Immigration Services] to work with CBP [Customs and Border Protection], ICE [Immigration and Customs Enforcement], and the Office of Immigration Statistics to review DHS [Department of Homeland Security] records and attempt to quantify the number of stateless persons in the country. The Committee also encourages USCIS to provide recommendations to the relevant Congressional committees of jurisdiction that are developing immigration reform legislation so that USCIS has legal methods to address statelessness in the future.⁷³

United States laws employ principles of both *jus soli* and *jus sanguinis*. Article 1 of the Fourteenth Amendment of the U.S. Constitution guarantees that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside”.⁷⁴ This *jus soli* citizenship provides the single greatest protection against statelessness under U.S. law by ensuring that statelessness cannot be inherited.⁷⁵ Children born to U.S. citizens abroad under most circumstances acquire U.S. citizenship at birth. The federal statutory provisions that set forth who “shall be nationals and citizens of the United States at birth” encompasses both *jus soli* and *jus*

sanguinis principles for acquisition of citizenship, with some exceptions to “inherited” U.S. citizenship.⁷⁶

As discussed more fully below, over the years, U.S. courts have explicitly recognized the vulnerability of stateless persons in a variety of circumstances and expressed an interest in preventing statelessness as a matter of policy. This long-held stance in favour of protecting against statelessness found in the U.S. Constitution, federal laws, and court interpretation of the laws is not as clear in the arena of administrative law and policy.

Stateless Issues in the U.S. Immigration Law Context

There is currently no provision under U.S. law that provides for stateless individuals living in the United States to gain lawful status solely on the basis of being stateless. Nevertheless, there are several circumstances in the context of immigration proceedings where the issue of whether an individual is stateless can arise. Specifically, a determination of statelessness may need to be made in the context of the following: 1) as part of the examination of the merits of claims for asylum and related protection; 2) in designating a country for removal in the event a request for asylum or other immigration remedy fails; or 3) following a final order of removal in executing that order and deciding whether to detain an individual pending execution of that order.⁷⁷

Requests for Asylum Protection

The 1951 Refugee Convention drafters believed that many stateless individuals in the world would also be recognized as refugees. To best ensure this, the 1951 Refugee Convention specifically includes protection for any individual who “*not having a nationality*” has a fear of persecution in the country of “*former habitual residence*.”⁷⁸ When Congress enacted the 1980 Refugee Act, to bring the United States into compliance with its international obligations as a party to the 1967 Protocol to the 1951 Refugee Convention, it adopted essentially the same language as the international refugee definition.⁷⁹ Under U.S. law a refugee is defined as:

any person who is outside any country of such person’s nationality or, *in the case of a person having no nationality, is outside any country in which such person last habitually resided*, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸⁰

This definition makes it clear that a stateless individual *may* be recognized as a refugee under U.S. law.⁸¹ Consistent with the international interpretation of the refugee definition, U.S. courts have recognized that being stateless may be a contributing factor to vulnerability.⁸² A least three courts have raised questions as to whether discriminatory denationalization that results in statelessness can constitute persecution as a basis for asylum protection, including one court that found unequivocally that it could indeed be persecution.⁸³ Similar to the interpretation of the international refugee definition, U.S. courts have consistently found that statelessness is not an independent ground for establishing eligibility to receive the protection of asylum.⁸⁴ As is the case for anyone seeking refugee protection, stateless individuals must also demonstrate a well-founded fear of persecution on account of a protected ground—but in the country of their “last habitual residence” as opposed to in their country of nationality.

Is Discriminatory Denationalization Persecution?

“To be deported to the country that made you stateless and continues to consider you stateless is to be subjected to persecution”.

Mr. Haile, an Ethiopian of Eritrean ethnicity, fled to the United States when the Ethiopian Government began arbitrarily expelling 75,000 persons of Eritrean ethnicity. He sought asylum based on his fear that he too would be stripped of his citizenship by the Ethiopian authorities. His claim was denied by the Immigration Judge and the Board of Immigration Appeals based on the conclusion that forced denationalization without additional harm is not persecution. On appeal, the circuit court ruled that in some circumstances forced denationalization could constitute persecution. “If Ethiopia denationalized [him] because of his Eritrean ethnicity, it did so because of hostility to Eritreans.... To be deported to the country that made you stateless and continues to consider you stateless is to be subjected to persecution”.

Haile v. Holder, 591 F.3d 572 (7th Cir. 2010).

Designation of a Country of Removal

In proceedings before an immigration judge, one of the first steps is to designate a country for removal in the event that an individual is found not to have any relief from deportation. In most instances, this will be the individual's country of origin or nationality. The designation is based on a presumption that if a final order of removal is issued, the individual will be accepted into that country. This fairly routine matter can raise complicated issues for stateless persons because they are not recognized as nationals of any country and as such, it is highly unlikely any country will agree to accept them. If an individual indicates he or she is not recognized as a national of any country and declines to designate a country for removal, the court must undertake a specific process to determine whether

there is an appropriate country to designate in the event the individual becomes subject to a final order of removal.⁸⁵

There is no defined procedure for making a statelessness inquiry under law or regulation nor has any uniform procedure been established for the immigration courts to follow. The process immigration judges must follow in determining what country to designate for removal set out in U.S. immigration law may lead to a finding that an individual is or may be stateless. The U.S. Supreme Court consolidated this process into four consecutive steps, which can be summarized as follows: 1) an individual shall be removed either to a country he or she designates⁸⁶ or to the country where she or he boarded the vessel or aircraft that brought her or him to the U.S.,⁸⁷ unless one of the exceptions to the applicable provision applies; 2) if the first measure cannot be satisfied, an individual shall be removed to the country of which he or she is a citizen, unless one of the exceptions to this provision applies; 3) if the second measure cannot be satisfied, an individual shall be removed to a country where he or she has a lesser connection; or, 4) if the third measure cannot be fulfilled, an individual shall be removed to any country whose government will accept him or her into that country.⁸⁸ In going through these procedures, an immigration judge may conclude that an individual for whom there is no country to which he or she can be deported is or may be stateless.

A finding of statelessness by an immigration judge does not in itself constitute a defense against removal. In fact, the U.S. Supreme Court has held that the permission of a country is not required for it to be designated as the country for removal.⁸⁹ However, a designated country that does not recognize an individual as a citizen may refuse to accept that person into their territory. As a practical matter, it is rare that any country other than the country of citizenship will accept an individual who has been ordered removed from the United States. This renders stateless individuals with a final order of removal subject to discretionary practices and policies

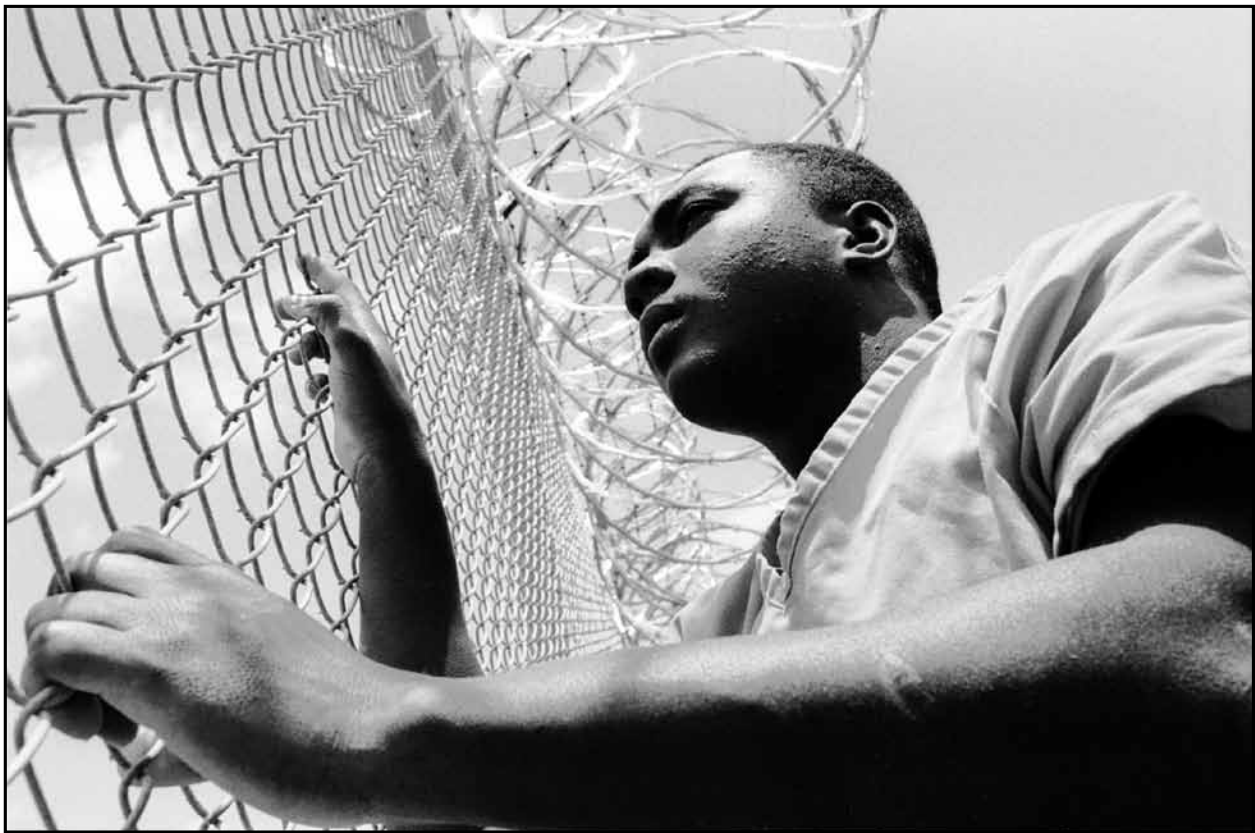
– in particular, the discretionary authority to grant or deny employment authorization and to set the conditions of supervision orders. Moreover, there is currently no independent judicial review of these discretionary decisions.

Final Orders of Removal and Related Detention

Once a final order of removal is issued, the individual to be deported is responsible for obtaining travel documents to return to his or her country of origin. Even though under U.S. law, the Department of Homeland Security has the authority to remove a non-citizen without the permission of the country designated for removal, actual removal to that country may be impracticable—even impossible—if the person cannot obtain a passport or travel document. Because a period of detention almost invariably follows an order

of removal,⁹⁰ persons whose removal orders cannot be executed may spend extended periods of time in detention after all immigration procedures have ended while awaiting a response from a country that feels no obligation to them.

Under current law, a person who has been ordered removed is detained for a 90-day period to facilitate the government’s ability to execute that removal order.⁹¹ Accordingly, even in the case of an individual who has been determined to be stateless, a country for removal would be assigned and the stateless individual would be detained despite any real expectation that the person will actually be removed. In many cases, a stateless person will be released under an order of supervision at the end of the 90-day period,⁹² but this is not always the case. In some cases, stateless individuals are released after 90 days but subsequently detained again, even though nothing in their situation had changed.



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Every year, hundreds of thousands of non-citizens, including some stateless individuals, are held in immigration detention facilities

In other cases, stateless individuals may be detained for much longer periods of time. U.S. law provides that all non-citizens detained following a final order of removal have the right to release after six months if they can demonstrate that there is “no significant likelihood of removal in the reasonably foreseeable future”.⁹³ Nonetheless, some stateless persons have been detained beyond the six-month period, due in part to difficulties establishing a lack of nationality and the inability to obtain travel documents. There are currently no mechanisms to ensure that statelessness is consistently identified and taken into account when making custody determinations in the post-final order context. Enhancing immigration officials’ understanding of statelessness and providing the appropriate staff with training and tools to enable them to identify statelessness would greatly facilitate their ability to recognize when a detained individual is or may be stateless. Such efforts, combined with clear procedures and policies for follow-up once an assessment is made that an individual may be stateless would in turn better ensure that lack of nationality does not result in indefinite detention in the context of post-final order custody determinations.

A related concern is what happens to stateless individuals with a final order of removal but for whom removal is not reasonably foreseeable *after* they have been released from detention. The regulations provide for release under an order of supervision requiring the individual to: (1) appear before an immigration officer periodically for identification; (2) submit, if necessary, to a medical and psychiatric examination; (3) give information under oath about his or her nationality, circumstances, habits, associations, and activities, and any other information requested by the authorities; (4) obey all applicable laws and other reasonable written restrictions on conduct or activities; (5) continue to seek travel documents, assist authorities in obtaining such documents, and provide the authorities with all correspondence with relevant embassies

requesting the issuance of travel documents; (6) obtain advance approval of travel beyond previously specified times and distances; and (7) provide notice of change of address.⁹⁴ Stateless individuals faced with this regime of supervised release with no foreseeable end date have unsuccessfully challenged such conditions under a variety of constitutional theories.⁹⁵

Most stateless persons in the United States who are subject to orders of supervision remain in this condition of perpetual legal limbo with at times serious restrictions on all aspects of their life in the United States, unable to leave the country and unable to fully participate in society. The United States recently revised its policy guidance on the use of discretionary agency authority to set reporting requirements for individuals with final orders of removal who are being released from detention.

In an August 2012 policy memorandum, the Department of Homeland Security’s (DHS) Immigration and Customs Enforcement (ICE) explains to its officers that reporting requirements “may be reassessed and modified based on the alien’s level of compliance, ICE’s detention and enforcement priorities, changes to the circumstances of the individual case, and as a matter of discretion”.⁹⁶ Applied with appropriate consideration of the particular intractability of statelessness, this new guidance should increase the likelihood that the reporting requirements for stateless individuals will be reasonable and not onerous. This new policy is an example of positive agency action that, if applied appropriately and consistently, will alleviate one of the burdensome restrictions often imposed on stateless individuals in the United States. An important next step, however, will be to issue specific guidance and develop training to ensure the memo is effectively implemented.

Stateless Individuals in the United States

Challenges in Quantifying

Estimating the number of stateless individuals in the U.S. is difficult for a number of reasons and there are no official data on how many stateless individuals live in the United States. Neither the 2000 nor the 2010 census inquired about statelessness.⁹⁷ Statelessness and its consequences are not widely understood. Because of their vulnerability and lack of access to rights and privileges in the United States, it is believed that many stateless individuals in the country remain underground and hidden and thus would not be recorded in any immigration statistics maintained by the Department of Justice (DOJ), DHS, or other entities.

For those individuals who have come into contact with the U.S. immigration authorities, typically by either submitting a claim for asylum or being placed into removal procedures, DHS and DOJ maintain some records of those who may be stateless. The U.S. Citizenship and Immigration Services (USCIS) within DHS and the Executive Office for Immigration Review (EOIR) within DOJ maintain nationality statistics with regard to asylum claims processed by their agencies.⁹⁸ Although the numbers provide some sense of the size of the stateless population in the United States, the quality of the statistics is limited by the lack of uniform guidelines across agencies for determining whether an individual is stateless⁹⁹ and the unclear nature of the categories each agency uses to designate potentially

stateless individuals.¹⁰⁰ The Appendix to this report contains several charts depicting the various numbers discussed in this section.¹⁰¹

In summary, USCIS statistics provide that, during fiscal years 2005 to 2010, in addition to asylum applications from stateless persons pending at the outset of 2005, 628 stateless persons sought asylum affirmatively at the asylum offices,¹⁰² 283 stateless persons were granted asylum, 23 were denied asylum, and 359 had no final decision reached on their application, but were instead placed in removal proceedings¹⁰³ and referred to immigration court to have their asylum claim decided by an immigration judge.¹⁰⁴ The EOIR statistics for the same six-year period indicate that 1,087 stateless persons sought asylum defensively before the immigration court, 463 stateless were granted asylum, 166 were denied such relief, and 295 either abandoned or



The break-up of the Soviet Union created legal and bureaucratic obstacles that still affect people today. Here, a woman from Ukraine holds her expired Soviet passport.

© UNHCR/G. Constantine

withdrew their applications or received some other treatment. It can be inferred from these figures that, between 2005 and 2010, a minimum of 461 stateless individuals remained in the United States without any lawful immigration status and no means to attain one.¹⁰⁵

The data from ICE from January 1, 2009 to April 15, 2011 indicate that of the 12,781 people released from detention after the 90-day removal period, 16 were considered to be “stateless”, four were of an “unknown nationality”, 18 were “Soviet nationals”, and 28 were “Yugoslavian nationals”.¹⁰⁶ The apparent inability of immigration officials to remove these individuals, combined with their inability to assign an existing nationality to them, indicates these individuals may well be stateless, although it is not possible to be certain of this.

While these imperfect statistics reveal a relatively low number of stateless individuals interacting with the U.S. immigration authorities, they are significant enough to warrant the creation of specific procedures and guidance for identifying stateless individuals, recognizing their unique situation, and ensuring their protection. Until the United States has in place a uniform system for determining whether an individual is stateless and provides meaningful access to certain rights, such as permission to work, that will draw people to submit to this determination process, the stateless population in the United States will continue to remain largely hidden, as will the extent of the hardships they face, who they are, where they come from and how they arrived here, and their numbers. Furthermore, the establishment of a statelessness status determination procedure and its implementation would enable ICE to distinguish between stateless persons who cannot leave the United States and individuals who, in fact, do have a nationality or right of residence elsewhere and can return or be returned to that country.

Qualitative Aspects Identified in Federal Case Law

As a supplement to official immigration statistics, federal case law addressing stateless individuals in the United States may capture some of the qualitative characteristics of this population.¹⁰⁷ Between January 1980 and August 2011, there were at least 70 federal court decisions in which the petitioner made a specific claim of statelessness and the court either agreed with that assertion or information in the case did not otherwise contradict it. Cases raising the issue of statelessness were brought in every region of the United States¹⁰⁸ by individuals from a variety of ethnic and national backgrounds. Among these 70 court decisions, the most common backgrounds are: individuals who traveled to the United States on a Soviet passport and were unable to obtain a citizenship from one of the newly independent countries after the fall of the Soviet Union;¹⁰⁹ individuals from the former Yugoslavia who lacked a nationality in any of the newly formed countries;¹¹⁰ ethnic Eritreans who had held Ethiopian nationality but were denationalized during the war or whose parents fled the conflict and were born in countries in which they were unable to acquire citizenship;¹¹¹ and Palestinians born in such places as Saudi Arabia, Lebanon, Kuwait, Egypt, Gaza, and the West Bank who were unable to obtain citizenship of any State.¹¹² There have also been individual cases, such as a stateless Armenian Christian born in Lebanon;¹¹³ an Urdu speaker from Bangladesh;¹¹⁴ and a man born to a Syrian Arab mother and a Kurdish father in Syria, where the law does not allow citizenship to derive from a mother but only the father.¹¹⁵

Although in many of these cases the issue of statelessness arose in the context of a claim for asylum or related protection, the precise legal issues they address and their outcomes vary widely. Although 70 cases over a ten-and-a-half year period is significant, the limitations of a review of published court decisions make it difficult to draw any solid

conclusions or firm generalizations. However, two observations can be drawn from the jurisprudence. First, stateless individuals from a broad range of national and ethnic backgrounds have been living in the United States for many years. Second, the consequences of statelessness need to be consistently taken into account and effective remedies need to be in place in order to ensure that stateless individuals have meaningful avenues to address their otherwise precarious and vulnerable situation.

Obstacles and Restrictions for Stateless Individuals

Stateless individuals in the United States face a variety of obstacles that seriously impede their ability to live without fear as full members of society. The most common include detention that may be prolonged and may recur over time; restrictive orders of supervision that typically require frequent in-person reporting to immigration officials and limit one's ability to travel outside the state of residence; difficulty obtaining and maintaining work authorization; and an inability to travel

outside (or return to) the United States—not even for family emergencies. In addition, stateless persons routinely face barriers to health care, education, and other social services. They may not be able to own or inherit property, marry legally, enter in to a contract, or engage in other activities that most people take for granted.

Although the ultimate solution to ensure stateless individuals are accorded the rights and obligations that would allow them to be contributing members of their communities is through legislation, many of the daily hardships they face could be resolved at the administrative level with clear policy guidance from DHS. Those impediments that could be addressed through administrative action include the use of detention, the imposition of restrictive reporting requirements, limited, if any, access to work authorization, and lack of ability to travel.



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Detention

“Stateless persons are also uniquely vulnerable to prolonged detention and States should be sensitized to respect the rights of stateless persons to be free from arbitrary detention as a result of their stateless status”.

Ban Ki-moon,
U.N. Secretary-General
*Guidance Note of the Secretary General:
The United Nations and Statelessness,*
June 2011

The majority of stateless people encountered by UNHCR in the United States have a final order of removal issued against them and have therefore spent some period of time in immigration detention awaiting removal from the United States. Most of these individuals have experienced tremendous emotional trauma during detention, including the stress of detention itself, the removal from their daily life, transfers to different immigration detention facilities away from their homes and communities, the uncertainty of how long they will be detained since no country recognizes them, and fears about being sent to a country with which they have no connection. Because stateless individuals have no country that recognizes them as citizens, they are rarely accepted to another country for removal and are often detained beyond the 90-day removal period. For these individuals, their only recourse is often to file a *habeas corpus* petition with a federal district court, a measure which is time-consuming, difficult for someone without familiarity with U.S. laws, and one that they may only learn about after having spent substantial time in detention. Some stateless individuals are released from detention only to be detained again at a later time,¹¹⁶ often without warning, leaving others remain fearful that this will happen to them.

Detention Takes Its Toll

Viktorya N., a woman with a thriving small business in California, came to the United States in 1990 from the Ukrainian Soviet Socialist Republic of the former Soviet Union.¹¹⁷ Following a final order of removal against her, she was detained, but her removal order could not be executed because the Soviet Union had ceased to exist and neither Russia nor Ukraine would recognize her as a national. She remained in detention for three months and experienced significant trauma—not only by her detention but also by the great uncertainty of what would happen to her and where she might be sent. She spent weeks wondering who would take her, knowing that she was not a citizen of any country, and imagining that some country would accept her as a favor to the United States and she would be forced to move there. After several months in detention, she wrote a letter explaining why she believed no country would ever accept her. She was eventually released but continues to face restrictions in her daily life and entrepreneurial endeavors based on the requirements of the order of supervision that her release is contingent upon.

Reporting Requirements

Stateless persons as well as other individuals with a final order of removal must comply with an order of supervision as a condition of their release from detention.¹¹⁸ Requirements under an order of supervision generally include regular—sometimes monthly or even weekly—in-person reporting to an immigration office which may be as far away as 50 miles or more; no travel outside the individual’s state of residence without a discretionary grant of permission in advance; and the obligation to regularly contact embassies and consulates to request travel documents or permission to enter that country’s territory. In some cases, stateless individuals have been required to wear electronic ankle devices as a means to track and further restrict their every move. Other than the necessity of an or-

der of supervision as a prerequisite to release from detention, the only other advantage associated with an order of supervision is that it typically provides a basis for the individual to seek permission to work. An order of supervision will generally remain in effect unless and until that individual obtains a lawful immigration status in the United States. For stateless individuals, who have no means to gain lawful status based solely on their being stateless and frequently have no independent basis to obtain lawful status, an order of supervision will, in effect, continue for their entire lifetime.

The regular reporting requirements pose hardships for stateless individuals. Many stateless individuals fear they may be taken into immigration custody each time they report to the immigration office for having inadvertently failed to comply with the terms of the order, for having run out of consulates or embassies to contact in order to request travel documents, or in some cases for no apparent reason at all.¹¹⁹ Between travel time and waiting to be called in to see an officer, reporting can take an entire day and can interfere with, and even jeopardize, a person's employment. In addition, repeated need to request time off may lead to the need to explain their situation to supervisors and colleagues who may assume the person has been involved in criminal activity or something else to warrant close immigration supervision and may view the individual as a more risky employee. In fact, many stateless individuals express that these regular in-person reporting requirements make them feel that they are being treated like criminals.

As mentioned above, the August 2012 ICE policy guidance on the use of discretion to set reporting requirements for individuals with final orders of removal should decrease the likelihood that stateless individuals are subject to unreasonable reporting requirements.¹²⁰ This new policy represents a positive example of administrative action that, if applied appropriately and consistently, will alleviate a degree of the hardship facing stateless individuals in the United States. Again, the agency will need to issue specific guidance and develop train-

ing to ensure the memo is effectively implemented.

There Are Not Enough Embassies in the World

Agnes B.,¹²¹ a stateless woman born in the former Latvian Soviet Socialist Republic, first came to the United States as a child with her parents in 1995. After the family's application for asylum was denied and final removal orders issued, Agnes was detained for the 90-day removal period. Upon her release from detention under an order of supervision, she was told that she would be detained again—and prosecuted—if she did not continually contact embassies to request permission to enter another country. Many embassies do not reply to such requests. She felt compelled to contact many embassies each month, but would share only one letter at a time with the officer she had to report to every month. She lived in constant fear of running out of countries to contact, being returned to immigration detention, and of being criminally prosecuted for lack of documentation of her efforts.

Permission to Work

Immigration regulations provide that non-U.S. citizens released under an order of supervision may be granted work authorization.¹²² It appears that most stateless individuals who have an order of supervision are granted work authorization; however, the authorization must be renewed annually and all required fees for this document must be paid.¹²³ For stateless individuals, this means they will have to go through the filing process and pay the fees every year—potentially for the rest of their lives—even though their statelessness is typically no fault of their own. In addition, due to agency delays, there may be gaps in their authorization to work while the renewal request is being processed, which can lead to difficulty maintaining the same job year after year.

Stateless individuals who have had their immigration court cases terminated or who have not yet been detected by immigration authorities have no basis to apply for work authorization. Because they have no lawful immigration status, they are not eligible for any state, local, or federal benefits. These individuals remain unable to work lawfully and many live in poverty and must work in the underground market for their mere survival.

Without Work There Is No Shelter

Roc K. is an orphan who came to the United States from France as a teenager. He has no proof of his birth in France and despite repeated efforts—on his own and with the assistance of counsel—has not been able to obtain any documentation from French authorities confirming whether he is or is not a citizen of France. Being an orphan, he has no independent means to assert or establish citizenship in France or elsewhere. He married a U.S. citizen and sought to become a lawful permanent resident but his petition was denied because he could not establish his identity or French nationality. He was put in immigration proceedings, ordered removed, and placed under an order of supervision for several years until an immigration judge finally recognized that the United States would never be able to deport him and closed his case. Although the restrictions he was subject to under the order of supervision have ended, his situation has worsened considerably. Because he is no longer under a supervision order, he has no basis to qualify for employment authorization. Unable to work lawfully, Roc is now homeless and living in a shelter.

Travel Restrictions and Lack of Family Unity

All orders of supervision include some type of travel restriction. Most commonly, they

prohibit travel beyond a certain distance such as outside of the state where the stateless person resides. Generally, they also provide that the individual may request authorization to leave the area. This permission is discretionary and, in addition to the frustration of knowing that one must obtain permission to travel for the rest of one's life, these travel restrictions may interfere with the success of their business or work life.

Without a nationality, stateless individuals in the United States cannot obtain passports or other international travel documents. Even those individuals who are under an order of supervision do not have any means to travel – or return from – abroad. This means they are permanently separated from loved ones. Many stateless individuals express a great sense of sadness and loss at the thought of never being able to see their parents, siblings, or children again or to attend funerals, weddings, or births of loved ones.

If I Could Only See My Loved Ones Again

Tatianna L.¹²⁴ has not seen her oldest son, Danil, since she escaped the former Soviet Union with her younger son David, almost 20 years ago. While Tatianna does not regret her decision to save David from what she believes was certain danger, had she ever imagined she would be forever separated from Danil, she would have found a way to take him with her, too. Because she is stateless and, as a result, has no travel documents, she has been unable to see Danil, who remains in Russia, since the end of 1993. Under her order of supervision, not only is she unable to leave the country, she is also prevented from traveling *within* the United States for longer than two days without first notifying ICE of her proposed travel plans.

Addressing Statelessness in the United States

The United States has recently championed diplomatic efforts to address the problem of statelessness worldwide,¹²⁵ in large measure through the U.S. Department of State; yet the circumstances and treatment of stateless individuals within the United States receive very little attention. The year 2011 marked the 50th Anniversary of the 1961 Convention.¹²⁶ As the culmination of this Commemorative year, UNHCR hosted a ministerial meeting of States in December 2011. States were asked to announce at that meeting pledges that would enhance their commitment to meeting their obligations and improve the quality of protection and of the lives of individuals within their territory covered by this instrument. In his closing remarks, UNHCR High Commissioner António Guterres stated: “Where I believe there was a real breakthrough, a quantum leap, was in relation to the protection of stateless people”.¹²⁷ At that meeting, the United States made several pledges relating to stateless individuals including those in the United States.¹²⁸ These pledges are positive steps that reflect both efforts already underway, as well as the need for further action. If fulfilled, these pledges will go a long way towards enhancing the rights and protections accorded stateless individuals.

In recent years, DHS has provided limited administrative measures for stateless individuals on a case-by-case basis, such as facilitating a grant of work authorization or considering a reduction in the frequency or extent of reporting or supervision requirements. Although these administrative remedies assist the few individuals who obtain

U.S. Government Pledges to Address Statelessness in the United States

Actively work with Congress to introduce legislation that provides a mechanism for stateless persons in the United States to obtain permanent residency and eventually citizenship.

Consider the revision of administrative policies to allow the circumstances of stateless persons to inform decision-making regarding their detention, reporting requirements, and opportunity to apply for work authorization.

*U.S. Commemorations Pledges
December 7, 2011¹²⁹*

them, they are not known or accessible to most stateless individuals. At present, there is no uniform written guidance on how immigration officials should treat stateless individuals, including when and how to assess whether an individual is, in fact, stateless; setting the terms of release from detention; specifying the requirements under orders of supervision; or granting work authorization. In addition, there is no designated office or entity responsible for addressing issues of statelessness; no office or entity designated to make stateless status determinations and no stateless determination process in place.¹³⁰

The first comprehensive legislative solution that would provide a pathway for stateless individuals residing in the United States to obtain lawful status was introduced in

2010¹³¹ and again in 2011,¹³² as part of a larger bill known as the Refugee Protection Act (RPA).¹³³ The provisions relating to statelessness authorize the Secretary of Homeland Security and the Attorney General to “provide conditional lawful status to [certain stateless individuals] who [are] otherwise inadmissible or deportable from the United States”.¹³⁴ Under these provisions, five years after a grant of conditional resident status, a stateless individual becomes eligible to apply for Lawful Permanent Resident (LPR) status.¹³⁵ Once the application for LPR status is approved, the individual becomes immediately eligible to apply for U.S. citizenship.¹³⁶

An individual who applies for status under these provisions is eligible to request work authorization.¹³⁷ Upon receipt of conditional lawful status, the spouse or child of that individual may be granted conditional lawful status if they meet certain criteria.¹³⁸ “Individuals who have lost their nationality as a result of their voluntary action or knowing inaction after arrival in the United States” are not eligible to seek status under these provisions,¹³⁹ resolving the threshold concern about individuals who may attempt to abuse the law to gain U.S. citizenship.¹⁴⁰

The proposed legislation defines a stateless individual as someone “who is not considered a national *under the laws* of any country,”¹⁴¹ which differs from the 1954 Convention

defining a stateless individual as “a person who is not considered as a national by any State *under the operation of its law*”.¹⁴² The language in the RPA may be subject to a narrower interpretation of who is stateless and thus eligible to receive protection and lawful status in the United States than was contemplated by the 1954 Convention. For example, under the RPA definition, an individual who is without nationality due to the discriminatory application of a citizenship law that should otherwise apply to her might not be considered stateless.¹⁴³ In view of the longstanding definition contained in the 1954 Convention, its recognition by some international authorities as customary international law,¹⁴⁴ and the apparent purpose of the stateless provisions of the RPA to ensure stateless individuals are recognized and accorded access to lawful status in the United States,¹⁴⁵ the stateless definition should be understood and applied in a manner consistent with the definition in Article 1(1) of the 1954 Convention.

The provisions in the 2011 RPA concerning statelessness could easily be introduced as a stand-alone bill or as part of some other bill, and do not need to be specifically tied to this particular legislative effort. The U.S. Government worked with Congress to refine the statelessness provisions included in the RPA and, consistent with the U.S. commitments made in 2011, has since engaged in outreach

to Congress on the possibility of advancing legislation of this sort. These provisions are a strong first step toward addressing the protection concerns of some stateless individuals and, combined with changes in administrative practices including providing greater access to work authorization, would enhance the lives of many stateless individuals in the United States.

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Conclusions and Recommendations

“The issue of statelessness has been left to fester in the shadows for far too long. It is time to take the necessary steps to rid the world of a bureaucratic malaise that is, in reality, not so difficult to resolve. It is simply a question of political will and legislative energy”.

António Guterres, U.N. High Commissioner for Refugees and
Louise Arbour, former U.N. High Commissioner for Human Rights¹⁴⁶

“Without the ‘right to have rights,’ stateless people are among the most vulnerable in the world.”

Eric P. Schwartz, former Assistant Secretary,
Bureau of Population, Refugees, and Migration,
U.S. Department of State¹⁴⁷

Individuals in the United States who are stateless constitute a discrete but vulnerable population that deserves the attention of policy and lawmakers, civil society, and the public in general. These individuals are, by definition, trapped in the United States. Thus, it is the U.S. Government’s responsibility to recognize this vulnerable population within its borders and take adequate measures to protect them, and to provide them a permanent solution, which requires establishing a means for stateless individuals to seek and obtain U.S. citizenship. Accordingly, this report urges U.S. Government officials to implement the following recommendations.

Recommendations for the White House

1. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that

provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

2. In the absence of a legislative framework addressing statelessness in the United States, engage in dialogue with the Department of Homeland Security to grant deferred action, or temporary permission to reside in the United States, to eligible stateless individuals.

Recommendations for the United States Congress

3. Enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and U.S. citizenship to address the lack of options and permanent solutions currently available to them.

4. Amend existing laws to allow stateless individuals to be released from immigration

detention during the 90-day removal period, in recognition of the fact that, in most cases, the removal of stateless persons is *per se* unforeseeable.

5. Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 *Convention on the Reduction of Statelessness* in consultation with the Executive Branch, and enact any necessary implementing legislation.

Recommendations for the Department of Homeland Security

6. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

7. Establish an individual statelessness status determination procedure in consultation with UNHCR that incorporates a definition of statelessness in accordance with international law and provide successful applicants with permission to reside in the United States.

8. Designate officers responsible for assessing whether an individual is stateless. Ensure that they receive comprehensive training and guidance on making this assessment and that information concerning the treatment of stateless individuals is widely disseminated among all officers.

9. Provide automatic, fee-exempt identity and work authorization document that does not require annual renewal to individuals determined to be stateless.

10. Establish a central, intra-agency referral mechanism to address the concerns of individual stateless persons.

11. Establish a policy to release stateless individuals from immigration detention in a timely manner, including during the 90-day

period after a final order of removal has been entered, on the basis that statelessness is a compelling indicator that there is no reasonably foreseeable prospect of removal.

12. Limit orders of supervision of stateless individuals to annual in-person reporting requirements, with no limitation on travel within the United States.

13. Following a reasonable effort to seek admission into countries with which they have ties, ensure that such persons are under no obligation to continue contacting embassies and consulates for travel documents without a demonstrated reason to apply or reapply to a particular country.

14. Refrain from detaining, or signaling that authorities will detain, stateless individuals who have made reasonable efforts to seek, but were unable to obtain, admission into other countries with which they have ties.

15. Provide stateless individuals with necessary documentation to travel abroad and return to the United States.

16. Launch a public education campaign about the administrative remedies available to stateless persons and the procedures for obtaining them, including work authorization, reduced reporting requirements, and the ability to travel within the United States.

17. In consultation with the Department of Justice, improve the collection and assessment of statistical data concerning stateless individuals, including standardized terminology used to identify stateless persons between the two agencies, to ensure more accurate information and greater understanding of the scope of statelessness.

Recommendations for the Department of Justice

18. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the

United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

19. Ensure that all immigration judges receive comprehensive training and guidance on making determinations as to whether an individual is stateless, incorporating a definition of statelessness in accordance with international law. Ensure that information concerning the treatment of stateless individuals is widely disseminated among all immigration judges

20. In consultation with the Department of Homeland Security, improve the collection and assessment of statistical data concerning stateless individuals, including standardized terminology used to identify stateless persons between the two departments, to ensure more accurate information and greater understanding of the scope of statelessness.

Recommendation for the Department of State

21. As pledged by the U.S. Government in December 2011, support and encourage Congressional efforts to enact legislation that provides a path for stateless individuals in the United States to seek lawful permanent residency and, ultimately, U.S. citizenship.

22. As pledged by the U.S. Government in December 2011, continue to raise awareness and focus U.S. diplomacy on preventing and resolving statelessness worldwide, particularly among women and children, including through mobilizing governments to repeal discriminatory nationality laws and to enact safeguards to prevent statelessness at birth.

Appendix

Government Statistics Regarding Stateless or Potentially Stateless Individuals Who Made Affirmative or Defensive Asylum Requests and the Outcomes¹⁴⁸

USCIS Asylum Requests and Resolution Statistics¹⁴⁹

Individuals Identified as Stateless							
FY	Accepted		Granted	Referred	Denied	Closed	Pending
	Received	Re-opened					
2010	80	1	36	41	4	6	33
2009	108	5	82	54	2	7	32
2008	121	3	61	83	2	7	55
2007	134	5	40	78	6	19	76
2006	75	7	33	41	7	21	60
2005	83	6	31	62	2	8	71
6-Yr Total	601	27	283	359	23	68	327

EOIR Asylum Statistics¹⁵⁰

Individuals Identified as Stateless or “No Nationality” ¹⁵¹						
FY	Received	Granted	Denied	Abandoned	Withdrawn	Other
2010	133	85 (2)	22	3	11	34
2009	274	82	20	7	11	56
2008	214 (4)	59 (1)	36 (1)	5	7	24 (3)
2007	178 (3)	79	34	3	6	30
2006	112 (1)	86	26	8	9	33
2005	176	72 (1)	28	1 (1)	9	38
6-Yr Total	1,087 (8)	463 (4)	166 (1)	27 (1)	53	215 (3)

Individuals Identified as “Unknown Nationality”						
FY	Received	Granted	Denied	Abandoned	Withdrawn	Other
2010	59	7	34	0	9	19
2009	91	7	40	1	19	11
2008	91	5	28	0	6	17
2007	36	2	11	2	5	5
2006	12	1	1	0	0	0
2005	9	1	17	0	0	0
6-Yr Total	298	23	131	3	39	52

Individuals from the Former Soviet Union						
FY	Received	Granted	Denied	Abandoned	Withdrawn	Other
2010	514	176	36	13	27	83
2009	467	154	39	15	32	97
2008	330	173	58	14	37	85
2007	479	191	62	39	29	118
2006	463	188	65	41	37	113
2005	595	169	95	43	24	143
6-Yr Total	2848	1051	355	165	186	639

Individuals from the Former Yugoslavia						
FY	Received	Granted	Denied	Abandoned	Withdrawn	Other
2010	107	85	23	1	14	31
2009	193	101	40	5	12	25
2008	200	128	32	6	24	48
2007	245	125	58	11	34	52
2006	198	154	83	11	29	64
2005	306	182	159	9	42	84
6-Yr Total	1249	775	395	43	155	304

Individuals from Palestine						
FY	Received	Granted	Denied	Abandoned	Withdrawn	Other
2010	4	1	3	0	0	2
2009	14	0	5	1	6	2
2008	6	1	5	2	3	4
2007	17	3	7	0	0	1
2006	8	0	7	4	1	2
2005	15	0	5	0	4	3
6-Yr Total	64	5	32	7	14	14

Notes

1 Due to a lack of reliable, comprehensive data on stateless individuals in the United States, this number is undetermined. This report addresses some of the challenges in quantifying the number with available statistics. See *infra* “STATELESS INDIVIDUALS IN THE UNITED STATES—Challenges in Quantifying”.

2 Important populations of stateless individuals, or individuals at risk of statelessness, are not addressed by this report. Their situations present important issues that need further attention and full redress, but are beyond the scope of this report.

For instance, some stateless persons in the United States do have a means to attain lawful status – e.g., individuals married to U.S. citizens and those recognized as refugees abroad or through the U.S. asylum system. These individuals have a means to obtain lawful permanent residence and ultimately U.S. citizenship and as such have lawful recourse to end their statelessness. These individuals are not covered by this report.

There are still others who are stateless and risk remaining so, such as the roughly 40,000 refugees from Bhutan who were resettled to the U.S. from Nepal over the past five years. Unlike most resettled refugees, these refugees are not recognized as nationals of any country. Although they have a means to obtain lawful permanent residence and ultimately U.S. citizenship, historical data indicate that not all refugees and asylees complete the necessary steps to achieve citizenship. In the case of these refugees, if they do not obtain U.S. citizenship, they will remain stateless. Given that they have lawful recourse to end their statelessness, this population is not addressed in this report.

Another important issue beyond the scope of this report concerns the inability of some refugees and asylees in the United States to become U.S. citizens through the naturalization process. This can occur for a number of reasons, including inability to cov-

er the costs—the current fee is \$680 per person; or an inability to meet the English language or civics knowledge requirements. 8 U.S.C. §1423(a) & (b). There are limited waivers or exceptions for these requirements.

Nor does this report address the concerns that some elderly and disabled refugees who have not been able to become U.S. citizens have or are in danger of losing federally funded Supplemental Security Income benefits.

3 See, e.g., General Assembly Resolution 50/152 (1996) at ¶14 (“The General Assembly ... Encourages the High Commissioner [for Refugees] to continue her activities on behalf of stateless persons, as part of her statutory function of providing international protection and of seeking preventive action...”); General Assembly Resolution 61/137 (2007) (“The General Assembly...notes the work of the High Commissioner [for Refugees] in regard to identifying stateless persons, prevention and reducing statelessness, and protecting stateless persons, and urges the Office of the High Commissioner to continue to work in this area....”); U.N. Secretary-General, *Guidance Note of the Secretary General: The United Nations and Statelessness*, June 2011 at 3 (“The U.N. General Assembly has entrusted the Office of the United Nations High Commissioner for Refugees (UNHCR) with a mandate relating to the identification, prevention and reduction of statelessness and protection of stateless persons.”), available at <<http://www.unhcr.org/refworld/pdfid/4e11d5092.pdf>>. It is important to note that UNHCR’s mandate to address statelessness does not necessarily extend to all stateless persons. Under Article 1 of the 1954 Convention relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S.117 (1954 Convention), those stateless “persons with respect to whom there are serious reasons for considering that: (a) They have committed a crime against peace, a war crime, or a crime

against humanity...; (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country; (c) They have been guilty of acts contrary to the purposes and principles of the United Nations” are excluded from the scope of the 1954 Convention and are not viewed as deserving of international protection or as persons of concern to UNHCR. Article 1 also excludes those who have already obtained the rights and obligations accorded to nationals in the country where they reside as well as those who are already receiving the protection of the United Nations. In addition, individuals who are stateless based on having voluntarily renounced their nationality for reasons of personal convenience may not require protection in the U.S. It should be understood that any stateless individual who falls within any of these exclusion grounds would not generally be eligible for the protection, rights and benefits discussed throughout this report.

UNHCR is best known as the international agency mandated from its inception in 1951 by the U.N. General Assembly with responsibility for providing international protection to refugees and others of concern, and together with Governments, for seeking permanent solutions for their problems. Statute of the Office of the UNHCR ¶1, U.N. Doc. A/RES/428(v) (Dec. 14, 1950); see also, 1951 *Convention relating to the Status of Refugees*, July 28, 1951, 19 U.S.T. 6259 and 1967 *Protocol relating to the Status of Refugees*, Jan. 31, 1967, 606 U.N.T.S. 267.

4 At least 35 states pledged to accede to, or take steps to accede to, one or both 1954 Convention and the 1961 *Convention on the Reduction of Statelessness*, Aug. 30, 1961, 989 U.N.T.S.175 (1961 Convention), or to take other treaty action. For a complete summary of all pledges undertaken by states parties during the December 2011 ministerial meeting closing out the Commemorations Year, see UNHCR, *Pledges 2011 - Ministerial Intergovernmental Event on Refugees and Stateless Persons*, May 2012, available at <<http://www.unhcr.org/4ff55a319.html>>.

5 For a complete list of the U.S. Government pledges made during the December 2011 ministerial meeting in closing out the 2011 Commemorations Year, see <<http://www.state.gov/j/prm/releases/factsheets/2011/181020.htm>>.

6 An individual may be both stateless and a refugee. Stateless individuals who are also refugees may receive the protection of asylum in the U.S. and

through this determination will have access to the subsequent process for attaining lawful permanent resident status and ultimately U.S. citizenship. The fact of being stateless is not, alone, a basis to receive the protection of asylum or refugee status in the U.S. or elsewhere.

7 *Trop v. Dulles*, 356 U.S. 86, 102 (1958). In this landmark decision the Supreme Court struck down a law authorizing the deprivation of citizenship as punishment for conviction by court martial of wartime desertion.

8 The internationally recognized definition of statelessness is contained in the 1954 *Convention Relating to the Status of Stateless Persons*, Sept. 28, 1954, 360 U.N.T.S.117, Article 1 and is discussed more fully in various sections of this report.

9 For purposes of this report, the terms nationality and citizenship shall be used interchangeably. At the international level these terms are generally considered synonymous. Some countries do, however, make a distinction between the two. For example, in the United States, there is a small number of individuals who may be nationals but not citizens, including (1) persons born in outlying possessions of the U.S.; (2) persons born outside the United States to U.S. nationals who are not U.S. citizens, but who have met certain residency requirements; (3) foundlings discovered in an outlying possession under the age of five; and (4) persons born outside the United States to one U.S. national who has met certain residency requirements. 8 U.S.C. § 1408.

10 See, e.g., UNHCR Stateless People: Who is Stateless and Where at: <<http://www.unhcr.org/pages/49c3646c15e.html>>.

11 For an explanation of additional stateless populations, or populations at risk of statelessness, in the U.S. whose situations are not addressed by this report, see *supra* note 2.

12 See, e.g., General Assembly Resolution 50/152 (1996) at ¶14 (“The General Assembly...Encourages the High Commissioner [for Refugees] to continue her activities on behalf of stateless persons, as part of her statutory function of providing international protection and of seeking preventive action...”) (emphasis in original); General Assembly Resolution 61/137 (2007) (“The General Assembly...notes the work of the High Commissioner [for Refugees] in regard to identifying stateless persons, prevention and reducing statelessness, and protecting stateless persons, and urges the Office of the High Commissioner

to continue to work in this area....”); U.N. Secretary-General, *Guidance Note of the Secretary General: The United Nations and Statelessness*, June 2011 at 3 (“The U.N. General Assembly has entrusted the Office of the United Nations High Commissioner for Refugees (UNHCR) with a mandate relating to the identification, prevention and reduction of statelessness and protection of stateless persons.”), available at <<http://www.unhcr.org/refworld/pdfid/4e11d5092.pdf>>.

UNHCR is best known as the international agency mandated from its inception in 1951 by the U.N. General Assembly with responsibility for providing international protection to refugees and others of concern, and together with governments, for seeking permanent solutions for their problems. Statute of the Office of the UNHCR ¶1, U.N. Doc. A/RES/428(v) (Dec. 14, 1950); see also, 1951 *Convention relating to the Status of Refugees*, July 28, 1951, 19 U.S.T. 6259 and 1967 *Protocol relating to the Status of Refugees*, Jan. 31, 1967, 606 U.N.T.S. 267.

It is important to note that UNHCR’s mandate concerning statelessness worldwide does not necessarily extend to all stateless persons. Under Article 1 of the 1954 *Convention relating to the Status of Stateless Persons*, Sept. 28, 1954, 360 U.N.T.S.117 (1954 Convention), those stateless “persons with respect to whom there are there are serious reasons for considering that: (a) They have committed a crime against peace, a war crime, or a crime against humanity...; (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country; (c) They have been guilty of acts contrary to the purposes and principles of the United Nations” are excluded from the scope of the Convention and are not viewed as deserving of international protection or as persons of concern to UNHCR. Article 1 also excludes those who have already obtained the rights and obligations accorded to nationals in the country where they reside as well as those who are already receiving the protection of the United Nations. In addition, individuals who are stateless based on having voluntarily renounced their nationality for reasons of personal convenience may not warrant international protection. It should be understood that a stateless individual who falls within any of these exclusion grounds would not generally be eligible for the protection, rights, or benefits discussed throughout this report.

13 The year 2011 also marked the 60th Anniversary of the 1951 *Convention relating to the Status of Refugees*, July 28, 1951, 19 U.S.T. 625, which UNHCR equal-

ly commemorated throughout the year. See, generally, *UNHCR Intergovernmental meeting at Ministerial level: Closing remarks by the United Nations High Commissioner for Refugees* (8 December 2011) available at <<http://www.unhcr.org/4ef094a89.html>>.

14 U.S. Commemorations Pledges, Fact Sheet, Bureau of Population, Refugees, and Migration, December 7, 2011, available at <<http://www.state.gov/j/prm/releases/factsheets/2011/181020.htm>>.

15 In this landmark decision the U.S. Supreme Court struck down a law authorizing the deprivation of citizenship as punishment for conviction by court martial of wartime desertion. More fully, the Supreme Court stated:

We believe, as did Chief Judge Clark in the court below, that use of denationalization as a punishment is barred by the Eighth Amendment. There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual’s status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights, and presumably as long as he remained in this country he would enjoy the limited rights of an alien, no country need do so because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights.

This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies. It is no answer to suggest that all the disastrous consequences of this fate may not be brought to bear on a stateless person. The threat makes the punishment obnoxious.

Id. at 101-102 (citations omitted).

16 Paragraph 6(A) (II) of UNHCR's Statute, Article 1(A) (2) of the 1951 Convention and Article I.2 of the 1967 Protocol (incorporating by reference the relevant portions of Convention article 1(A)(2)) refer to stateless persons who meet the criteria of the refugee definition. UNHCR's statelessness mandate also applies to stateless individuals who are internally displaced.

17 See, e.g., U.N. General Assembly Resolution A/RES/50/152 at 2 (1995).

18 *Id.*, at ¶ 14 (clarifying that UNHCR's activities on behalf of stateless persons are part of the office's statutory function of providing international protection); A/RES/61/137 ¶ 4 (urging UNHCR to continue its work "in regard to identifying stateless persons, preventing and reducing statelessness, and protecting stateless persons"); See generally, *UNHCR's Role in Supervising International Protection Standards in the Context of its Mandate*, Keynote Speech delivered by Volker Türk at York University (Toronto, CA) May 2010, available at: <www.unhcr.org/4bf406a56.html>.

Although UNHCR is not explicitly mentioned in either the 1954 Convention or the 1961 Convention, the U.N. General Assembly has specifically designated UNHCR as the appropriate body to examine the cases of persons who claim the benefit of the 1961 Convention and assist them in presenting their claim to the authorities under Article 11 of this treaty. U.N. General Assembly Resolution 3274 (XXIX) (10 December 1974); A/RES/31/36 (30 Nov. 1976). Further, under UNHCR ExCom Conclusion 106, paragraph (x), the office is requested "to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions."

19 See, e.g., U.N. General Assembly Resolutions A/RES/51/75 (1997) ¶ 18; A/RES/55/74 (2001) ¶ 5; A/RES/62/124 (2008) ¶ 5; A/RES/65/194 (2011) ¶ 5.

20 See, e.g., *ExCom Conclusion No. 78, Prevention and Reduction of Statelessness and the Protection of Stateless Persons* (1995) ¶ (a) ("Encourag[ing] UNHCR to continue its activities on behalf of stateless persons, as part of its statutory function of providing international protection and of seeking preventive action....") (emphasis in original); *ExCom Conclusion No. 106, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons* (2006) at 1 ("[r]eaffirming the respon-

sibilities given to the High Commissioner by the United Nations General Assembly to contribute to the prevention and reduction of statelessness and to further the protection of stateless persons") and at ¶ (a) ("[u]rg[ing] UNHCR, in cooperation with governments, other United Nations and international as well as relevant regional and non-governmental organizations, to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons."); available at: <<http://www.unhcr.org/41b041534.html>> and <<http://www.unhcr.org/refworld/docid/453497302.html>, respectively>.

As of July 2012, the Executive Committee is composed of representatives from 87 countries, including the United States, and meets annually to review and approve the UNHCR's programmes and budget; advise on international protection matters; and discuss a wide range of related issues with UNHCR and its intergovernmental and non-governmental partners.

21 U.N. General Assembly Resolution A/RES/61/137 ¶ 4 (2006).

22 UNHCR ExCom Conclusion No. 106, ¶ c.

23 *Id.*, ¶ q.

24 *Id.*, ¶¶ p and r.

25 *Id.*, ¶ v. In conjunction with the 2011 50th Anniversary of the 1961 Convention, UNHCR placed statelessness issues at the centre of its advocacy work and continues to intensify its efforts in achieving greater State accession to the international statelessness instruments. For a map of States Parties to the 1954 and 1961 Conventions, including those that have acceded since the October 2010 UNHCR launch of its 2011 Commemorative Campaign, see <<http://www.unhcr.org/4ff2e44a9.html>>.

26 1951 Convention Art. 1 (1). See pages 17-18 for a discussion of this definition.

27 See e.g., UNHCR, *Action to Address Statelessness: A Strategy Note*, March 2010, p.14, available at: <<http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>>. See generally, LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 12 (INTERSENTIA 2008) for an excellent treatment of statelessness globally.

28 For a fuller discussion of the disadvantages of statelessness, see, e.g., *The United Nations and Statelessness*, at 5-6.

29 For more on the nexus between statelessness, human trafficking, and international protection, see UNHCR, International protection for trafficked persons and those who fear being trafficked, 20 December 2007, ISSN 1020-7473, available at: <<http://www.unhcr.org/refworld/docid/4c247bc32.html>>.

30 1951 *Convention relating to the Status of Refugees*, July 28, 1951, 19 U.S.T. 6259. The 1951 Refugee Convention is the key legal document defining who is a refugee, enumerating refugees' rights, and setting forth States' legal obligations. The 1967 Protocol relating to the Status of Refugees removed the geographical and temporal restrictions from the 1951 Refugee Convention and incorporated all of its substantive provisions. The United States acceded to the 1967 Protocol in 1968 and in doing so, bound itself to the substantive provisions of the 1951 Refugee Convention, even though it has not acceded to the Convention itself. As of June 2012, 145 States are parties to the 1951 Refugee Convention, 146 States are parties to the 1967 Protocol to the Convention, and 147 are parties to one or both. See UNHCR, *States Parties to the 1951 Convention relating to the Status of Refugees* and the 1967 *Protocol* as of 1 April 2011, <<http://www.unhcr.org/3b73b0d63.html>>.

31 1954 *Convention relating to the Status of Stateless Persons*, Sept. 28, 1954, 360 U.N.T.S.117, available at <<http://www.unhcr.org/3bbb25729.html>>. As of 19 October 2012, there are 76 States Parties to this Convention. See *Status of the Convention relating to the Status of Stateless Persons* at: <http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSOnline&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en>.

32 *Id.* at art 3.

33 *Id.* at art. 4.

34 *Id.* at art. 17-19.

35 *Id.* at art. 20-24.

36 *Id.* at art. 26.

37 *Id.* at art 27-28.

38 *Id.* at art. 32.

39 *Id.* at art. 31(1).

40 The 1951 Refugee Convention, Article I B.(2), as amended by the 1967 Protocol Article I 2, defines a "refugee" to include, in addition to those who have fled persecution in their country of nationality, any person "not having a nationality [who is] outside the country of his [or her] former habitual residence..." This provision was included specifically to address the protection needs of refugees who are stateless.

41 1961 *Convention on the Reduction of Statelessness*, Aug. 30, 1961, U.N.T.S. 989 [1961 Convention]. As of 19 October 2012, 48 States have become parties to this Convention. See *Status of the Convention on the Reduction of Statelessness* at: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en>.

42 UNHCR, Preventing and Reducing Statelessness: The 1961 *Convention on the Reduction of Statelessness*, September 2010, available at: <<http://www.unhcr.org/refworld/docid/4cad866e2.html>>.

43 Division of International Protection, UNHCR, *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons* and the 1961 *Convention on the Reduction of Statelessness*, Geneva: UNHCR, June 1996; Rev. Jan. 1999, at 13, ¶40 (emphasis added).

44 UNHCR, *Objectives and Key Provisions of the 1961 Convention on the Reduction of Statelessness*, <<http://www.unhcr.org/3bd7d3914.html>> (Oct. 1, 2001).

45 1954 *Stateless Convention* art. 1(1). The phrase "under the operation of its law" as used in the stateless definition is different from the legal term of art "by operation of law," which refers more narrowly to an automatic creation of a legal right. In contrast, "under the operation of its law" is understood to have a broader meaning that includes both the lack of formal recognition of citizenship or nationality under the law as well as in the application of the law, "including for example customary rules and practices". See, UNHCR, *Expert Meeting: The Concept of Stateless Persons under International Law Summary Conclusions*, Prato, Italy (May 27, 2010) (Prato Conclusions), at 3, ¶ 15.

46 International Law Commission, *Commentary on the Draft Articles on Diplomatic Protection*, 23 July 1999, A/54/10, ¶ 3 at 48-49, available at: <http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf>. See, also, e.g., UNHCR, *Expert Meeting: The Concept of Stateless Persons under International Law Summary Conclusions*, Prato, Italy (May 27, 2010) at 2.

47 For example, no United States court has explicitly recognized the stateless definition as customary international law.

48 UNHCR *Guidelines on Statelessness No. 1: The Definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons* (20 February 2012) (UNHCR *Stateless Guidelines No. 1*), ¶¶16-17, available at: <<http://www.unhcr.org>>.

[hcr.org/refworld/docid/4f4371b82.html](http://www.unhcr.org/refworld/docid/4f4371b82.html)>. See also, Prato Conclusions at 3, ¶ 13.

49 UNHCR *Guidelines on Statelessness No. 1*, ¶ 47.

50 See, e.g., Prato Conclusions at 8 ¶ 11; see also *Id.* ¶ 12 (noting that some unresolved situations of this nature may lead, over time, to statelessness. The 1954 Convention definition has sometimes been referred to as “*de jure*”—by law—definition of statelessness even though this term is not found in any international treaty. Individuals who have a nationality but are outside the country of their nationality and are denied diplomatic and consular protection accorded to other nationals by their state of nationality have been referred to as “*de facto*” stateless. See, Prato Conclusions, which reflects the current understanding of *de facto* statelessness.

51 Prato Conclusions at 2, ¶¶ 1 and 6. By affirming that the 1954 Convention definition requires an analysis not only of whether an individual is considered as a national under the laws of a state, but also how those laws are applied in practice, many of those previously thought to be *de facto* stateless qualify as *de jure* stateless under the definition in Article 1(1). *Id.* at 3, ¶¶ 16 - 17; see also UNHCR *Guidelines on Statelessness No. 1* at ¶¶ 15 - 16.

52 For example, the former Yugoslavia is now five separate countries: Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Montenegro, and Slovenia; Sudan is now divided into two separate countries: Sudan and the Republic of South Sudan; and Nigeria transferred the territory of the Bakassi Peninsula to Cameroon.

53 MALCOLM SHAW, *INTERNATIONAL LAW* 861 (Cambridge University Press 2003).

54 The International Law Commission has adopted standards to address the problem of statelessness arising as a result of state succession. U.N. General Assembly, *Report of the International Law Commission*, 23 July 1999, A/54/10, available at: <<http://www.unhcr.org/refworld/docid/3ae6af970.html>>. While these standards have not yet been adopted in the more binding form of an international treaty or declaration they do have important value as “soft law”.

55 Gender inequalities in nationality law can render a child stateless if the law limits the mother from conveying nationality and the father is also unable to convey nationality. Some scenarios include “(i) where the father is stateless; (ii) where the laws of the father’s country do not permit him to confer nationality in certain circumstances, such as when the

child is born abroad; (iii) where a father is unknown or not married to the mother at the time of birth; (iv) where a father has been unable to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children because, for example, he has died, has been forcibly separated from his family, or cannot fulfill onerous documentation or other requirements; or (v) where a father has been unwilling to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children, for example, if he has abandoned the family.” U.N. High Commissioner for Refugees, *Background Note on Gender Equality, Nationality Laws and Statelessness*, 8 March 2012, available at: <<http://www.unhcr.org/refworld/docid/4f59bdd92.html>>.

56 See U.N. Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, 7 at 27, available at: <<http://www.unhcr.org/refworld/docid/4b83a9cb2.html>>.

57 The 1961 Convention on the Reduction of Statelessness lists specific, exceptional circumstances under which deprivation of nationality resulting in statelessness may not be considered arbitrary. See, 1961 Convention, Art. 8.2 and 8.3.

58 VAN WAAS, *supra* note 29, at 94.

59 See, e.g., *Case of the Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights (IACrHR), 8 September 2005 (ruling that the Dominican Republic (DR) violated the rights to nationality and equal protection of children born on the territory of the DR of Haitian parents by denying them birth certificates generally issued by the State’s Registry Office). Available at: <<http://www.unhcr.org/refworld/docid/44e497d94.html>>.

60 See, e.g., BRONWEN MANBY, *STRUGGLES FOR CITIZENSHIP IN AFRICA* 96-108 (London, Zed Books 2009).

61 *Id.* A *jus sanguinis* regime without safeguards against statelessness as prescribed by Article 1 of the 1961 Convention also creates the likelihood that, if that child remains in that state and one day has his or her own children, they may inherit the statelessness of their parent. *Id.* The 1961 Convention and a number of regulatory instruments explicitly provide protection from this form of statelessness.

62 Kazakhstan, Tajikistan, and Uzbekistan are examples of countries with such provisions. U.N. High Commissioner for Refugees, *Statelessness in Central Asia*, May 2011, p. 19, available at: <<http://www.unhcr.org/>

refworld/docid/4e560b162.html>.

63 *Universal Declaration of Human Rights*, Article 15, available at: <<http://www.ohchr.org/en/udhr/pages/language.aspx?langid=eng>>.

64 See, e.g., U.N. HUMAN RIGHTS COMMITTEE, General Comment No. 24 (52), U.N. Doc. CCPR/C/21/Rev. 1/Add. 6, 1994; Restatement (Third) of Foreign Relations § 701, Reporters' Note 4 (1986) ("There are indeed numerous United Nations resolutions and statements referring, for example, to 'the duty of states to fully and faithfully observe the provisions of the Universal Declaration.'") (citing Art. 11, G.A. Res. 1904, 18 U.N. GAOR Supp. No. 15, at 35).

65 See, e.g., *infra* note 47 and accompanying text. Moreover, at least one U.S. court has found that arbitrary denationalization is a violation of the law of nations and recognized that this "reflects international concern regarding the existence of stateless persons". In *re South African Apartheid Litigation*, 617 F.Supp.2d 228, 253 (SDNY 2009).

66 International Covenant on Civil and Political Rights, Article 24(3), available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>.

67 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5, available at: <<http://www2.ohchr.org/english/law/cerd.htm>>. The right to a nationality is also recognized in other international legal instruments to which the United States is *not* a State Party, including the American Convention on Human Rights, Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99(1969); the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456(1989); the Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33(1980); the Convention on the Nationality of Married Women, 309 U.N.T.S. 65, *entered into force* Aug. 11, 1958; the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 76th plen. mtg., U.N. Doc A/RES/61/106 (Dec. 13, 2006); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family, New York, Dec. 18, 1990, *entered into force* July 1, 2003, 2220 U.N.T.S. 93, 30 I.L.M. 1517 (1991).

68 See *Sosa v. Alvarez-Machain*, 542 U.S. 692, 728 (2004) (observing that "the Senate has expressly declined to give the federal courts the task of interpreting and applying international human rights law, as when its ratification of the [ICCPR] declared that

the substantive provisions of the document were not self-executing", citing 138 Cong. Rec. 8071 (1992)); see also *Johnson v. Quander*, 370 F.Supp.2d 79, 100-101 (D.D.C. 2005) (noting that "only two courts have reviewed the CERD for the purpose of determining whether it is self-executing and therefore permits a private right of action, both concluding that it did not").

69 Nicole Green and Todd Pierce, "Combating statelessness: a government perspective", 32 *Forced Migration Review* 34 (2009), available at <<http://www.fmreview.org/statelessness.htm>>. At the time of publication, both authors were employed by the U.S. Department of State, Bureau of Population, Refugees, and Migration. This article does not address conflicts between U.S. law and the 1954 Convention; however, one potential conflict is reflected by Article 23 of the 1954 Convention, which provides that stateless individuals have the same access to public benefits as nationals of the country. The United States does accord certain non-U.S. citizens access to certain public benefits, but not necessarily equal to those benefits accorded to U.S. citizens. Since 2008, the U.S. State Department has monitored the situation of stateless people and detailed their conditions in its annual human rights reports.

70 Adopted on Sept. 28, 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A(XVII) of April 26, 1954.

71 Adopted on Aug. 30, 1961 by a conference of plenipotentiaries which met in 1959 and reconvened in 1961 in pursuance of General Assembly resolution 896 (IX) of Dec. 4, 1954.

72 Green and Pierce, *supra* note 74. At the time of publication, both authors were employed by the U.S. Department of State, Bureau of Population, Refugees, and Migration. This article does not address conflicts between U.S. law and the 1954 Convention; however, one potential conflict is reflected by Article 23 of the 1954 Convention, which provides that stateless individuals have the same access to public benefits as nationals of the country. The United States does accord certain non-U.S. citizens access to certain public benefits, but not necessarily equal to those benefits accorded to U.S. citizens. Since 2008, the U.S. State Department has monitored the situation of stateless people and detailed their conditions in its annual human rights reports.

73 H.R. REP NO. 112-091, pt.1, at 1 (2012), available at <<http://thomas.loc.gov/cgi-bin/cpquery/?&sid>

=cp112gnzml&r_n=hr091.112&dbname=cp112&&sel=TOC_412336&>. H.R.2017, the Continuing Appropriations Act of 2012, introduced on May 26, 2011, became Public Law 112-33 on September 30, 2011.

74 Fourteenth Amendment (Amendment XIV) to the United States Constitution, adopted July 9, 1868, available at: <http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html>. This provision is known as the “Citizenship Clause” or the “Naturalization Clause.”

75 The 14th Amendment Citizenship Clause is also consistent with Article 24.3 of the International Covenant on Civil and Political Rights, which guarantees the right of every child to acquire a nationality.

76 Under 8 U.S.C. § 1401, a child born abroad to two married U.S. citizen parents automatically acquires U.S. citizenship at birth so long as one of the parents resided in the U.S. prior to the birth of the child. Children born to one citizen parent and one foreign national will obtain citizenship at birth if the citizen parent resided in the U.S. for the requisite period of time before the child’s birth (the length of required residence is either five years or ten years depending on the law that was in effect on the date of the child’s birth). Children born out of wedlock to a U.S. citizen mother will be U.S. citizens if the mother resided in the United States for at least one year prior to the child’s birth. Children born out of wedlock to a U.S. citizen father do not automatically acquire U.S. citizenship but can if the father agrees in writing to financially support the child and can prove a blood relationship. As discussed previously, there are a few limited situations in which an individual may be national of the United States and not a citizen.

77 See also *infra* note 75.

78 1951 Refugee Convention, art. 1 A (2). (emphasis added).

79 The United States acceded to the 1967 Protocol in 1968. The 1967 Protocol to the 1951 Refugee Convention incorporates by reference all the substantive provisions of the 1951 Refugee Convention. Its primary purpose was to amend the 1951 Refugee Convention definition of refugee by removing all geographic and temporal references to World War II, thereby universalizing the refugee definition. The U.S. Supreme Court has recognized that when Congress enacted the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, it made explicit its intention to “bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the

Status of Refugees”. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987) (citing H.R. Rep. No. 96-608 at 9 (1979)).

80 8 U.S.C. § 1101(a)(42) (emphasis added). The asylum provisions under U.S. law contain several references to persons with “no nationality” and such persons’ “country of last habitual residence”. See, e.g., 8 U.S.C. § 1158(c)(1)(A) regarding asylum status in general. The regulations subsequently drafted and promulgated by the U.S. Department of Justice to provide the procedures and criteria to implement the statutory requirements replace “no nationality” with the term “stateless”. See, e.g., 8 C.F.R. § 208.13(b)(2) (i)(A) (“The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence”).

81 Of course, not all refugees are stateless and not all stateless individuals are refugees. This section refers only to cases where an individual is both stateless and seeking asylum or relate protection under U.S. law.

82 See *Guerrero v. United States*, 691 F. Supp. 260, 264 (D. N. Mar. I. 1988).

83 *Haile v. Holder*, 591 F.3d 572 (7th Cir. 2010); *Mengstu v. Holder*, 560 F.3d 1055, 1059 (9th Cir.2009); *Stserba v. Holder*, 646 F.3d 964,(6th Cir. 2011). In all three of these, the courts have sent the case back to the Board of Immigration Appeals to consider this issue. The 7th Circuit in *Haile* found that forced denaturalization is discrimination and remanded to the BIA for further proceedings consistent with that understanding. In the other two cases, the 6th Circuit in *Stserba* and the 9th Circuit in *Mengstu* indicated that forced denaturalization *may* be discrimination, and both courts remanded to the BIA for consideration in the first instance of whether there was discrimination in the particular case. Under international refugee law, where discriminatory denationalization is due to a protected ground, it would clearly satisfy the refugee definition.

84 See, e.g., *Faddoul v. Immigration & Naturalization Service*, 37 F.3d 185 (5th Cir. 1994); *Fedosseeva v. Gonzales*, 492 F.3d 840 (7th Cir. 2007); *Pavlovich v. Gonzales*, 476 F.3d 613 (8th Cir. 2007); *Al Najjar v. Ashcroft*, 257 F.3d 1262 (11th Cir. 2001).

85 8 U.S.C. §1231(b) (governing the designation of a country of removal).

86 *Id.* at §1231(b)(2)(A) (concerning individuals placed in removal proceedings sometime after they have been inside the U.S.).

87 *Id.* at (b) (1)(A) (concerning individuals who are placed in removal proceedings at the time of their arrival to the U.S.).

88 *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 341 (2005); and see 8 U.S.C. § 1231(b).

89 *Jama*, 543 U.S. at 346.

90 See 8 U.S.C. § 1231(a)(2). For a fuller treatment of the detention of stateless individuals, See, e.g., *Unraveling Anomaly: Detention, Discrimination, and the Protection Needs of Stateless Persons* (The Equal Rights Trust, July 2010), available at <<http://www.equalrightstrust.org/view-subdocument/index.htm?id=748>>.

91 See 8 U.S.C. § 1231(a)(2).

92 See 8 CFR § 241.13(h).

93 The Supreme Court examined the indefinite detention of a stateless individual who was subject to removal and held that non-U.S. citizens admitted to the U.S. but subsequently ordered removed cannot be detained beyond the 90-day removal period for any longer than is “reasonably necessary” to effectuate their removal from the country. This “reasonably necessary” period has been determined to be an additional 90 days. *Zadvydas*, 533 U.S. at 701. This rule of law was incorporated into DHS operations through what have become known as the *Zadvydas* regulations. See 8 CFR § 241.13 (“Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future”).

94 8 CFR § 241.13(h) (incorporating by reference the provisions of 8 U.S.C. §1231(a)(3) and 8 CFR §241.5).

95 See, e.g. *Berry v. Adducci*, No. 10-10969, slip op (E.D.Mich. 2010) (arguing that subjecting a stateless individual to a perpetual order of supervision pending delays in obtaining a travel document to remove him to Lebanon is a denial of his due process rights under the Fifth Amendment); *Abusheikh v. Att’y Gen.*, 225 Fed.Appx. 56 (3rd Cir. 2007) (arguing that the denial of relief from removal to a stateless Palestinian constituted unequal treatment on the basis of national origin in violation of his Fifth and Fourteenth Amendment rights).

96 Mead, Gary, *Memorandum on ICE Reporting Guidance*, dated August 23, 2012 (expressly rescinding Cerda, Victor X., *Memorandum Orders of Supervision*, dated November 12, 2004) [hereinafter Mead Memo]. Guidance for the implementation of this memorandum is forthcoming.

97 See 2011 Statistical Abstract, The National Data

Book (July 24, 2011) <<http://www.census.gov/compendia/statab/2011/2011edition.html>>.

98 As background, there are two procedures for applying for asylum in the U.S. – affirmatively and defensively. Individuals may apply affirmatively by filing an I-589 asylum application with USCIS. Following an interview with an asylum officer, USCIS will either approve the application, deny it (only permissible where the applicant has an underlying legal status in the U.S.), or refer it for further review by an immigration judge at EOIR who conducts a “*de novo*” hearing of the case. When an asylum claim is referred to EOIR, removal proceedings are also initiated against the applicant and the posture of the asylum claim becomes defensive. Individuals are already subject to removal proceedings with EOIR may also request asylum for the first time in immigration court as a defense against removal from the U.S. Defensive asylum cases heard by immigration judges are adversarial proceedings in which a trial attorney from the U.S. Immigration and Customs Enforcement (ICE) bears the burden of proving removability and ICE also maintains nationality statistics in relation to its role in removing individuals from the United States.

99 The recently issued *UNHCR Guidelines on Statelessness No. 2* may be useful in any endeavour the U.S. may undertake to establish its own procedures. See *UNHCR Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person* (5 April 2012) <<http://www.unhcr.org/refworld/topic,4565c2252,4565c25f8f,4f7dafb52,0,UNHCR,,html>>.

100 USCIS keeps statistics of asylum seekers’ nationality, including categories for “stateless” and “nationality unknown”, while EOIR maintains statistics for “no nationality”, “stateless”, and “unknown nationality”. There is no clear definition of these categories, nor is there a standardized approach to categorizing and calculating statistics between the two agencies.

101 USCIS statistics are kept per individual asylum applicant while EOIR statistics cover asylum cases, which may represent more than one individual when family members are included in the primary asylum seeker’s application.

102 This figure captures both the number of new asylum applications received and the number of previously filed asylum cases that were reopened by USCIS during the relevant time frame.

103 Individuals can affirmatively seek asylum by submitting an application to USCIS Asylum Division.

If USCIS does not approve the asylum claim, and the applicant does not otherwise have lawful status in the United States, the individual is placed in removal proceedings and her case is referred to the EOIR immigration court. Once before the court, the individual may request asylum as a defense to removal. If unsuccessful, the asylum seeker risks having a removal order issued against her. See *generally* INA § 208, 8 U.S.C. § 1158, 8 C.F.R. § 208.

104 Because affirmative asylum applicants whose claims are referred by USCIS have the opportunity for a *de novo* hearing before an Immigration Judge at EOIR, some of these 359 stateless individuals may also be included in the EOIR statistics for 2005 to 2010. For this reason, there will necessarily be some overlap between the 2005-2010 USCIS statistics on affirmative asylum claims filed by stateless individuals and the 2005-2010 EOIR data on defensive asylum applications filed by stateless people. As such, the total numbers from both agencies cannot be added together.

105 461 represents the total of the last four columns (Denied, Abandoned, Withdraw, Other) in the EOIR Asylum Statistics chart *Individuals Identified as Stateless or "No Nationality"*. It should also be noted that these statistics do not include other categories from the statistical summary that may represent additional stateless individuals who were miscategorized, such as those from the former Soviet Union and Yugoslavia or Palestinians.

106 Document on file with UNHCR.

107 Issues concerning statelessness can come before the federal courts in several ways. Persons in removal proceedings may appeal adverse decisions from the immigration court to the Board of Immigration Appeals (Board or BIA), the administrative review body, and if the BIA affirms that adverse decision, they may seek review by a federal circuit court of appeals to review the decision of the Board. Individuals who are detained following a final order of removal can challenge their detention by filing a *habeas corpus* petition in one of the U.S. District Courts with jurisdiction over their custodian.

108 Some of the inherent limits to this overview of court decisions are that not all stateless individuals will have the resources or knowledge to appeal their decisions and that the word "stateless" does not necessarily appear in every case that may address issues relevant to stateless individuals in the U.S. In all, there are 13 federal circuit courts of appeals that cover 11

different state regions and the District of Columbia. There were no reported cases raising stateless issues during the 1980 – 2011 period in the Circuit Court of Appeals for the District of Columbia. The thirteenth court, also located in the District of Columbia, is the United States Court of Appeals for the Federal Circuit, which only hears cases on certain specific subjects, such as customs and patents, but not immigration matters. The jurisdiction where the most of these cases arose was the Ninth Circuit with 15 cases, and the jurisdiction with the fewest cases was the Tenth Circuit, with one case. The Ninth Circuit has jurisdiction over cases arising from the immigration courts and U.S. District Courts in California, Arizona, Nevada, Idaho, Oregon, Washington, Montana, Alaska, and Hawaii. The Tenth Circuit has jurisdiction over cases arising from those cases arising in Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

109 See, e.g., *Poplavskiy v. Mukasey*, 271 Fed.Appx. 130 (2nd Cir. 2008) (native of the Ukraine); *Stserba v. Holder*, No. 09-4312 (6th Cir. 2011) (native of Estonia).

110 See, e.g. *Paripovic v. Gonzales*, 418 F.3d 240 (3rd Cir. 2005) (ethnic Serb born in Croatia rendered stateless by the dissolution of the former Yugoslavia); *Koljenovic v. Ashcroft*, 2006 WL 3325651 (M.D. Pa. 2006) (rendered stateless by successor state Serbia and Montenegro).

111 See, e.g. *Tesfamichael v. Gonzales*, 469 F.3d 109 (5th Cir. 2006); *Dulane v. INS*, 46 F.3d 988 (10th Cir. 1995) (Eritrean who fled to a refugee camp and never acquired citizenship).

112 See, e.g. *Zabadi v. Chertoff*, 2005 WL 3157377 (N.D. Cal. 2005) (person recognized by the court as a stateless Palestinian born in Kuwait); *Elfarra v. Ashcroft*, 88 Fed.Appx. 141(8th Cir. 2004) (person recognized by the court as a stateless Palestinian born in Saudi Arabia).

113 *Bozoian v. Ashcroft*, 118 Fed.Appx. 309 (9th Cir. 2005).

114 *Ahmed v. Keisler*, 504 F.3d 1183, 1191 (9th Cir. 2007) (citing 8 U.S.C. § 1101(a)(42)(A)); see also *Ahmed v. Gonzales*, 166 Fed.Appx. 942 (9th Cir. 2006). In 2008, the high court of Bangladesh ruled that Biharis are nationals of the country and are to be treated as such. As a result, they are no longer considered stateless. *Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission*, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008, available at:

<<http://www.unhcr.org/refworld/docid/4a7c0c352.html>>.

115 *Safad-Hamade v. Atty. Gen.*, 192 Fed.Appx. 917 (11th Cir. 2006).

116 8 CFR § 241.13(i).

117 This individual's name has been changed to protect her privacy.

118 8 U.S.C. §1231(a)(3)

119 Under 8 CFR § 241.4(l)(2), designated immigration officials within DHS “have the authority, *in the exercise of discretion*, to revoke release and return to [immigration] custody an [individual] previously approved for release Release may be revoked *in the exercise of discretion* when, in the opinion of the revoking official: ... (ii) The alien violates any condition of release; ... or (iv) *The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.*” (emphasis added). See also 8 CFR § 241.13(i) (“Any alien who has been released under an order of supervision under this section who violates any of the conditions of release may be returned to custody and is subject to the penalties described in section 243(b) of the Act. In suitable cases, the HQPDU shall refer the case to the appropriate U.S. Attorney for criminal prosecution. The alien may be continued in detention for an additional six months in order to effect the alien’s removal, if possible, and to effect the conditions under which the alien had been released.”).

120 See *supra* Mead Memo, FN 98.

121 This name was changed to protect the individual's privacy.

122 8 CFR § 274a.12(c)(18). A grant of employment authorization is discretionary upon consideration of factors including economic necessity, existence of dependents and length of time before removal.

123 The current fee for an employment authorization document is \$380, not including any additional associated costs such as photographs and postage. The fee is set by the agency in its discretion and could be increased at any time.

124 This is the same stateless woman described in the *Executive Summary* of this report.

125 For example, U.S. Secretary of State Hillary Clinton underscored that promoting the eradication of gender discrimination in nationality laws and preventing statelessness among women and children are priorities of the United States:

...I want only briefly to mention...a particular prior-

ity for [the U.S. Government] and for me personally. It concerns one of the major causes of statelessness, which is discrimination against women.

At least 30 countries around the world prevent women from acquiring, retaining, or transmitting citizenship to their children or their foreign spouses. And in some cases, nationality laws strip women of their citizenship if they marry someone from another country. Because of these discriminatory laws, women often can't register their marriages, the births of their children, or deaths in their families. So these laws perpetuate generations of stateless people, who are often unable to work legally or travel freely. They cannot vote, open a bank account, or own property, and therefore they often lack access to healthcare and other public services. And the cycle continues, because, without birth registration or citizenship documents, stateless children often cannot attend school.

In this compromised state—or no state, better put—women and children are vulnerable to abuse and exploitation, including gender-based violence, trafficking in persons, and arbitrary arrests and detention. That hurts not only the women and their immediate families, but the larger communities. When you have a population of people who are denied the opportunity to participate, they cannot contribute.

The United States has launched an initiative to build global awareness about these issues and support efforts to end or amend such discriminatory laws. We want to work to persuade governments—not only officials but members of parliament—to change nationality laws that carry this discrimination to ensure universal birth registration and establish procedures and systems to facilitate the acquisition of citizenship for stateless people. I encourage other member-states to join this effort, and I want to thank the High Commissioner, who has signaled his support. I encourage UNHCR to work with U.N. Women, UNICEF, UNDP, and other U.N. partners to achieve equal nationality rights for women.

Remarks at the United Nations High Commissioner for Refugees Ministerial Meeting on the 60th Anniversary of the Refugee Convention, Secretary of State Hillary Rodham Clinton, Geneva, Switzerland, December 7, 2011, available at: <<http://www.state.gov/secretary/rm/2011/12/178406.htm>>.

126 2011 also marked the 60th Anniversary of the 1951 Refugee Convention, which was also addressed throughout the year and at the December 2011 Ministerial Meeting. See, e.g., *UNHCR Intergovernmental meeting at Ministerial level: Closing remarks by the United Nations High Commissioner for Refugees* (8 December 2011) available at <<http://www.unhcr.org/4ef094a89.html>>.

127 *Id.* at 2.

128 U.S. Commemorations Pledges, Fact Sheet, Bureau of Population, Refugees, and Migration, December 7, 2011, available at <<http://www.state.gov/j/prm/releases/factsheets/2011/181020.htm>>. Early in 2011, UNHCR provided “proposed pledges” that it urged the United States to consider adopting, with a focus on the protection gaps for refugees and asylum seekers. These proposed pledges also contain a section concerning stateless individuals in the United States. That document is available at: <http://www.unhcrwashington.org/site/c.ckLQI5NP1gJ2G/b.7794709/k.AA71/Priority_Pledges.htm>.

129 See *supra* FN 5.

130 The UNHCR *Guidelines on Procedures for Determining Whether an Individual is a Stateless Person* underscore the importance of establishing statelessness status determination procedures and provide guidance to states on doing so. UNHCR *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person* (5 April 2012), available at: <<http://www.unhcr.org/refworld/docid/4f7dafb52.html>>.

131 Refugee Protection Act of 2010, S. 3113, 111th Cong. 2nd Session §24 (2010). This legislation was introduced in the Senate by Senator Patrick Leahy (D-VT).

132 Refugee Protection Act of 2011, S. 1202, 112th Cong. 1st Session (2011) (introduced by Senator Patrick Leahy (D-VT)); Refugee Protection Act of 2011, H.R. 2185, 112th Cong. 1st Session (2011) (introduced by Representative Zoe Lofgren (D-CA)) (collectively referred to as RPA). The RPA is a comprehensive set of measures promoting the rights and protections of refugees, asylum seekers, stateless individuals, and other persons of concern to UNHCR. While the majority of the bill addresses asylum and refugee issues, one of its 32 sections specifically addresses the protection of stateless persons in the United States. See S. 1202, 112th Cong. 1st Session §17, *Protection of stateless persons in the United States*.

133 Prior to 2010, legislation was introduced that

included language requesting a report to begin to understand the phenomenon of statelessness in the United States. See e.g., H.R. 72, 111th Cong. 1st Session (2009) (introduced by Representative Sheila Jackson Lee (D-TX)).

134 RPA at §17 (b)(1). The language explicitly excludes persons who are inadmissible on certain criminal or security-related grounds, §17 (b)(1)(C) (referring to inadmissibility grounds under INA §212(a)(2), (3)); or are determined to be persecutors of others, §17 (b)(1)(E) (referring to INA §241(b)(3)(C)[sic](i)) and Comprehensive Immigration Reform Act of 2010 S.3932, 111th Cong. §210A(b)(1)(D) (referring to INA §241(b)(3)(B)(i)).

135 RPA at §17 (c)(1) (stating that an individual is eligible to seek adjustment to lawful permanent resident status under this Act, if that individual, *inter alia*, has been physically present in the United States for at least five years after being granted conditional lawful status.)

136 RPA at §17 (c) (3) (stating that following adjustment to lawful permanent resident status under this Act, it shall be recorded as having been granted at the time lawful conditional resident status was first granted, thus satisfying the five-year period as a lawful permanent resident required to become eligible to seek naturalization as a United States citizen. 8 U.S.C. §1427(a).

137 RPA at §17 (b)(4). Providing work authorization is discretionary with DHS but, as with most applications that allow for a discretionary grant of work authorization, it is reasonable to assume that absent compelling reasons to the contrary, work authorization under this provision would be routinely granted. The RPA does not indicate whether the individual may continue to work once in conditional lawful status but given the intention and purposes of these provisions, it is a reasonable inference that it is intended that work authorization would continue to be provided throughout the conditional lawful status period. To ensure such intent is carried out, it would need to be made explicit in the statute or the regulations.

138 RPA at §17(b)(5).

139 RPA at §17(a)(1).

140 See, e.g., *Politis v. Dep’t of Homeland Sec.*, 2009 WL 650879 (S.D. Tex. 2009) (noting that the individual in removal proceedings had renounced his Greek citizenship so as to complicate his removal).

141 RPA at §17 (a)(1) (emphasis added).

142 1954 Convention, art. 1(1) (emphasis added). See *supra* note 27 and accompanying text for an explanation of the meaning of the term “under the operation of its law”. The RPA stateless definition also refers explicitly to an individual who is “*de jure*” stateless. The use of “*de jure stateless*” and “*under the laws*” language in the RPA, to the extent it may be interpreted in a manner that would preclude otherwise stateless individuals from receiving needed protection and status, is problematic. See *supra* notes 31 – 35 for a discussion on this point.

143 See, e.g., Open Society Institute (OSI), *Citizenship Law in Africa: A Comparative Study*, October 2010, p. 53-54, ISBN: 978-1-936133-29-1, available at: <<http://www.unhcr.org/refworld/docid/4cf76b192.html>> (indicating that nationality laws in Ethiopia are gender neutral on their face but not in practice).

144 See *supra* note 44 and accompanying text on the 1954 Convention definition of statelessness as customary international law.

145 RPA §17 is entitled “Protection of Stateless Persons in the United States”.

146 A. Guterres and L. Arbour, “The Hidden World of Stateless People”, United Nations Office of the High Commissioner for Human Rights (28 November 2007), available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=4964&LangID=E>>.

147 *Protecting Stateless Persons: the Role of the U.S. Government*, remarks made October 30, 2009, available at: <<http://m.state.gov/md181119.htm>>.

148 This is the only publicly available U.S. Government source of statistical information concerning stateless individuals in the United States. These charts include the number of asylum requests received and the various dispositions that occurred but the dispositions do not necessarily reflect adjudication of the number received during the same fiscal year. Claims pending from previous years may have been adjudicated during any given year while other claims filed more recently or in the current fiscal year were not adjudicated until a later fiscal year.

149 USCIS Asylum Division, Refugees, Asylum, and Parole System (RAPS), July 19, 2011.

150 Statistics for Fiscal Years (FY) 2006 through 2010 were obtained from the U.S. Department of Justice, Executive Office for Immigration Review’s FY 2010 Statistical Yearbook, prepared by the Office of Planning, Analysis, and Technology in January 2011. Statistics for FY 2005 were obtained from the FY 2009 Statistical Yearbook, prepared by the Office of Planning, Analysis, and Technology in January 2010.

151 The numbers of those identified by EOIR as having “no nationality” are in parenthesis next to the number of those identified as “stateless”.



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