UNDERSTANDING & SCREENING FOR STATELESSNESS IN THE U.S.

• What is Statelessness?

- What Happens to Stateless People?
- Screening for Stateless Persons
- Possible Relief

June 25, 2021 | 2:00 - 3:30 pm (et)

TODAY'S PRESENTERS

UNITED STATELESS Karina Ambartsoumian-Clough Jessica George CLINIC, DEFENDING VULNERABLE POPULATIONS Victoria Neilson

United Stateless is a national organization led by stateless people whose mission is to build and inspire community among those affected by statelessness, and to advocate for their human rights to a nationality.





CLINIC's Mission Statement

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs.

cliniclegal.org

USL-CLINIC-UNHCR: PARTNERSHIP

- Increase awareness of statelessness
- Mentor attorneys
- Provide resources for practitioners
 Listserv for legal practitioners: email vneilson@cliniclegal.org

WHAT IS STATELESSNESS?

HOW IS CITIZENSHIP / NATIONALITY ACQUIRED?

- Generally at birth in two different ways: jus soli (soil) and jus sanguinis (blood) In some cases, a person can acquire citizenship by naturalization (requirements for naturalization vary by country)

- It is a gateway right to other rights.

UNIVERSAL DECLARATION OF HUMAN RIGHTS Article 15: Human Right to a Nationality

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.

Nationality: "membership in a nation or sovereign state"

Citizenship: "relationship between an individual and a state to which the individual owes allegiance and in turn is entitled to its protection" (Understood as interchangeable)

CONVENTIONS ON STATELESSNESS

1954 Convention Relating to Status of Stateless Person

- Ensures Stateless person are accorded fundamental rights & freedoms without descrimination
- Defines 'stateless'
- States must identify stateless, issues IDs, travel documents and path to naturalization

1961 Convention Reduction of Statelessness

- Aims to avoid statelessness at birth
- Prescribed standards relating to acquisitions or loss of nationality
 - Safeguards to prevent statelessness
- Disputes can be submitted to Intern'l Court of Justice







15 MILLION Stateless People Worldwide	A CHILD IS BORN Stateless Every 10 Minutes	THE MOST Acute and Invisible Human Rights Violation
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THE UNHCR ESTIMATES THAT **75%** of stateless people are from ethnic or racial minority groups.

THERE ARE AT LEAST 25 COUNTRIES WHERE Mothers cannot pass on their citizenship The same way that fathers can.



WHAT HAPPENS TO

STATELESS

PEOPLE?





FROM 1980-2011, AT LEAST 70 U.S. COURT CASES MENTION STATELESSNESS

U.S. LAWS OR Policies Provide a path to Legal status based on statelessness



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THERE IS NO OFFICIAL DATA OR EFFORT FROM U.S. GOV TO QUANTIFY STATEL ESSNESS

MANY STATELESS PEOPLE REMAIN INVISIBLE, UNPROTECTED, UNIDENTIFIED,

POSSIBLY DETAINED

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OUR STORIES



I was born in the former Soviet republic of Ukraine of Armenian & Ukrainian ethnicity. I came to the U.S. in 1996 at 8 years old seeking asylum. At 13 years old my 3rd asylum claim was denied and I was put into removal proceedings to self deport with no country designation. When the Ukrainian embassy would not issue me travel documentation. I discovered that I am a stateless person, a ghost, a oltizen of Nowhere.

WE URGE THE U.S. TO

ADOPT FEDERAL LAWS that allow a path to lawful permanent residency and citizenship. ESTABLISH A STATELESS DETERMINATION PROCEDURE STOP UNNECESSARY DETENTION or restrictive reporting requirements. ISSUE TRAVEL DOCUMENTS COLLECT AND ASSESS DATA SIGN THE INTERNATIONAL STATELESSNESS TREATIES





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		All former Soviet Republics
ESS.	LESS	Palestinians from various
	тате	countries
ETHND: COMMUNITES MORE LIKELY TO BE STATELESS) BE S	Roma in Italy and Germany
	ELV TO	Bidoon from the Middle East
	E LIKI	South Sudanese
	MOR	Rohingya
	ATTES	Hmong from Laos and Thaila
	MMM	Nepalese born after 1990
	100 0	Zimbabweans with foreign
	ETHN	parent

Black Mauritanians

s and Thailand

- Tibetans
- Former Yugoslavians • The Americas:

 - Bahamians of Haitian
 - Venezuela

- Kuwait • Greece

• Spain • Saudi Arabia

- Bahrain
- Lebanon
- · People born overseas to a US citizen and a noncitizen
 - 8 USC 1401(g)
 - 5 yrs physical presence in US

- Mexico

- - - Macedonia
 - Western Sahara

 - Jamaica

HOW STATELESS PEOPLE APPEAR In U.S. Immigration system

- Visa overstays
- Failed consular registrations or lapse in travel document validity
- Undocumented (doubly undocumented)
- Asylum denials
- Resettled refugees, as well as permanent residency or refugee status loss due to certain types of crimes
- Denaturalization / Denationalization
- Adoptees, UAMs, and others who entered as minors and never naturalized
- Order of supervision for decades

SCREEN FOR NATIONALITY / STATELESSNESS

When should we screen?

- No enabling documents (birth cert., ID, passport), or person possesses a non-citizen travel doc.
- Inability to be deported/return to COO
- Born in country without jus soli (to foreign parent(s))
- Mixed nationality parents
- Member of groups known to have high risk of statelessness:
 - Minority ethnic groups
 - Born in border/disputed region
 - Nomadic group
 - Born in refugee camp
- Born to a foreign parent in country prohibiting dual nationality
- Passport or other IDs taken away by issuing country

INTAKE SCREENING QUESTIONS

- 1. Enabling Documents: Have you ever had problems accessing a birth certificate, ID or passport / travel doc.?
- Right of Reentry: Have you ever been detained by immigration/ICE, but they could not find a country that would accept you for deportation?
- 3. Citizenship Access: Have you ever had problems accessing citizenship or nationality?
 - a. i.e. voting rights, travel rights, access to loans, education, medical care, vaccines

IN DEPTH INTERVIEW

 \rightarrow If client presents a stateless risk factor:

In depth interview to gather info on:

- 1) Family history
 - a) Place of birth, parents' nationality, parents' marriage, adoption
 - b) Parents alive? Parents' documentation accessible?
- 2) Personal history
 - a) Marriage, ordinary or habitual residence
- 3) Documentation
- a) Level of documentation, attempts made, responses from auth.
- 4) Immigration history overseas and in US

POST-INTERVIEW RESEARCH

Nationality is acquired -

- 1. At birth automatic
 - Birth on a State's territory (jus soli)
 By descent through one's parents or grandparents (jus
- sanguinus) **1. By declaration – non-automatic, non-discretionary** – Through birth registration and/or declaration of loyalty
- 1. Upon application non-automatic, discretionary – Marriage to a citizen, Long-term legal residence, Birth on territory + long-term residence

APPLYING THE "STATELESS" DEFINITION

"a person who is **not considered as a national** by any **State under the operation of its law**."

- What constitutes a "State?"
 - "State" defined, 1933 Montevideo Conv./international law
 - $\circ~$ Is the only entity the person has link to a non-State?
- Which States?
 - States to which person has a relevant link

APPLYING THE "STATELESS" DEFINITION

"a person who is **not considered as a national** by any State **under the operation of its law.**"

- 1. Law = legislation, ministerial decrees, regs, orders, case law, and customary state practice
 - a. Citizenship law on DOB
 - b. Relevant amendments to the law/regs; recent orders, decrees
- 1. State Practice = mixed question of fact and law
 - a. "A state may not in practice follow the letter of the law, even going so far as to ignore its substance."

APPLYING THE "STATELESS" DEFINITION

"a person who **is not considered as a national** by any **State under the operation of its law**."

- **"Considered"** by whom? A State's Competent Authorities: authorities responsible for conferring/withdrawing nationality or clarifying nationality status
 - A low level local government official can constitute a competent
 - authority.
 - Not necessary to appeal
- **"Is"** present tense. If non-automatic mode, steps must be taken. Until application/registration approved, person is not a citizen.

APPLYING THE "STATELESS" DEFINITION

"a person who is not considered as a national by any State under the operation of its law."

Viewpoint of the State

- Administrative applications for BC, passport, ID;
- Consular Interviews/Letters;
- Detention Interviews
- Access to Services or Rights Limited to Citizens

"Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national."

APPLYING THE "STATELESS" DEFINITION

Foreign LAW: things to look out for

- Acquisition:
 - \circ $\;$ Check if by operation of law (automatic) vs positive action required
 - Gender specific clauses or regulations
- Barriers to birth registration (i.e. children born out of wedlock)
 Loss:
 - Denationalization through state succession, amendments, courts
 - Loss (automatic) criminals/traitors, time abroad, marriage to noncit
 Deprivation of nationality (i.e. by order) due to failure to perform
 - military/alternate civil service, in 'public interest,' fraud
 - \circ $\;$ Renunciation without acquiring new nationality, i.e. naturalization

APPLYING THE "STATELESS" DEFINITION

Foreign **PRACTICE**: things to look out for

- Nonresponse of competent authorities after reasonable period of time can be evidence of lack of state recognition of citizenship
- Consult country research for similarly situated people from this country/region; consult citizenship law experts and/or history
- Look for discriminatory citizenship laws/practice • Gender, race, ethnicity, political motives (Zimbabwe)
- Travel documents are not all made equal
 Noncitizen/stateless travel docs, do not always have right to renew

HOW YOU CAN HELP

- Screen for nationality
- Consult with the client Help client understand nationality status and any
 - nationality options

 Write to consulates, set
 - up interviews
- Help client apply for any citizenship claims if beneficial
- Encourage your asylee, refugee, LPR clients to naturalize ASAP
- Detention help people at risk of statelessness to get released
- Identity documents (city/state)
- Connect stateless people to United Stateless community
 <u>info@unitedstateless.org</u>
 <u>www.unitedstateless.org</u>
- Advocate for stateless people
- Apply for immigration relief

POSSIBLE RELIEF

POSSIBLE PERMANENT RELIEF

- Asylum and related relief
 - "Or in the case of a person having no nationality, is outside any country in which the person last habitually resided..."
 - Statelessness in and of itself is not considered persecution
- "Denationalization" on account of a protected characteristic may amount to persecution
- Cancellation of RemovalOther Humanitarian Visas
- U visa, VAWA, T visa, SIJS
- Family-Based Immigration

POSSIBLE TEMPORARY RELIEF

- Temporary Protected Status
 - "And individuals having no nationality, who last habitually resided..."
- Deferred Action
- Orders of Supervision
- EADs

PROSECUTORIAL DISCRETION

Immigration and Customs Enforcement Office of Principal Legal Advisor "Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities " May 27, 2021

- OPLA can:
 - Move to dismiss
 - Not pursue appeal
 - Communicate re: stays of removal
- Positive factors
 - "Compelling humanitarian factors"
 - Length of residence in the United States

UNHCR STATELESS ADVISORY OPINIONS (SAO)

- The UNHCR Multi-Country Office Washington will issue Stateless Advisory Opinions (SAOs) in certain circumstances for individuals in the United States who believe they may be stateless or show signs of statelessness.
- Request by attorney and must demonstrate how the SAO will help in the case
- Be aware that these advisory opinions take several months to complete given the level of research and analysis.
- To be considered for an SAO, please email UNHCR at usawasta@unhcr.org. UNHCR will send you a form to complete in order to be considered for an SAO.
- You may also use this email address for other inquiries related to statelessness and to request UNHCR assistance.

OUR ROLES

USL

- Conduct screenings
- Create community for stateless people in the United States
- Advocate for change

CLINIC

- Mentor cases
- Create practice materials
- Advocate for change

RESOURCES:

UNHCR Stateless Advisory Opinions CLINIC Case Mentorship Legal Guide to Representing Stateless in US Immigr. UNHCR Handbook On Stateless Persons USL Stateless Services & Legal Expert Allies Statelessness Listserv https://docs.google.com/document/d/1Y68QRDH5Y58fLms80ui_hBU GnjLZYEtW1BycP1NiTgg/edit TUNE IN TO OUR NEXT CLINIC WEBINAR IN FALL 2021,

FOCUSING ON LEGAL RELIEF!