# 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?

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# 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"

Cltizenehip: "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









STATELESSNESS IS ALMOST ALWAYS CAUSED BY SOME NATION'S LAWS OR PRACTICES ROOTED IN RACIAL, GENDER, ETHNICITY OR RELIGION-BASED DISCRIMINATION.

THE UNHOR 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.





EMPLOYMENT NO RIGHT TO WORK LEGALLY
HIGHER EDUCATION UPWARD MOBILITY LIMITED
HEALTHCARE MENTAL/PHYSICAL HEALTH ISSUES
TRAVEL FAMILY SEPARATION
DEPORTATION REPEATED & PROLONGED DETENTION
EMBASSY UNPROTECTED
ADJUSTMENT OF STATUS LIMITED PATH TO REMAIN IN THE U.S.

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

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MENTION
STATELESSNESS

U.S. LAWS OR
POLICIES
PROVIDE A PATH TO
LEGAL STATUS BASED
ON STATELESSNESS

THERE IS

NO
OFFICIAL DATA OR
EFFORT FROM U.S.
GOV TO QUANTIFY
STATELESSNESS



# MANY

STATELESS PEOPLE REMAIN INVISIBLE, UNPROTECTED, UNIDENTIFIED, POSSIBLY DETAINED







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





	All former Soviet Republics	Eth	iopians and Eritreans
ESS	Palestinians from various	Tibe	etans
ТАТЕ	countries	For	mer Yugoslavians
) BE S	Roma in Italy and Germany	The	Americas:
ELY TC	Bidoon from the Middle East		Dominicans of Haitian
ELIKI	South Sudanese		ancestry
ETHNID COMMUNITIES MORE LIKELY TO BE STATELESS	Rohingya		Bahamians of Haitian
ži E	Hmong from Laos and Thailand		ancestry
MMU	Nepalese born after 1990		Venezuela
00 gr	Zimbabweans with foreign		Cuba
E	parent		Mexico
	Black Mauritanians		Chile

	Spain	Somalia
	Saudi Arabia	Thailand
	Kuwait	Macedonia
IGIN	• Greece	Western Sahara
OTHER COUNTRIES OF ORIGIN	Bahrain	• Iraq
RESC	Morocco	Vietnam
INNO	<ul> <li>Lebanon</li> </ul>	Jamaica
ĒRO		
Ē		
	<ul> <li>People born overseas to a US</li> </ul>	Citizen and a noncitizen
	o 8 USC 1401(g)	
	<ul> <li>5 yrs physical presence</li> </ul>	in US

# 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
- o 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

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IN DEPTH INTERVIEW  → 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?"

• Which States?

"State" defined, 1933 Montevideo Conv./international law
 Is the only entity the person has link to a non-State?

o States to which person has a relevant link

A	APPLYING THE "STATELESS" DEFINITION
	a person who is <b>not considered as a national</b> by any State <b>under the</b> p <b>peration of its law.</b> "
	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."
A	PPLYING THE "STATELESS" DEFINITION
	a person who <mark>is not considered as a national</mark> by any <b>State under the</b> peration of its law."
•	<b>"Considered"</b> - 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 <b>LAW</b> : things to look out for	
Acquisition:     Check if by operation of law (automatic) vs positive action required	
<ul> <li>Gender specific clauses or regulations</li> <li>Barriers to birth registration (i.e. children born out of wedlock)</li> </ul>	
Loss:     Denationalization through state succession, amendments, courts     Loss (automatic) - criminals/traitors, time abroad, marriage to noncit	
Desprivation of nationality (i.e. by order) due to failure to perform military/alternate civil service, in 'public interest,' fraud	
Renunciation without acquiring new nationality, i.e. naturalization	
APPLYING THE "STATELESS" DEFINITION	
Foreign <b>PRACTICE</b> : 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	
<ul> <li>Look for discriminatory citizenship laws/practice</li> <li>Gender, race, ethnicity, political motives (Zimbabwe)</li> </ul>	
Travel documents are not all made equal Noncitizen/stateless travel docs, do not always have right to renew	
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HOW YOU CAN HELD	
Encourage your asylee, refugee, LPR clients to naturalize ASAP     Screen for nationality	
Screen for nationality     Detention - help people at risk of statelessness to get released  Consult with the client -	
O Help client understand nationality status and any	
nationality options  ■ Write to consulates, set  Stateless community  Stateless community	
up interviews up interviews up interviews up interviews up into consulates, set up interviews up interviews up interviews up interviews up interviews	

 Advocate for stateless people Apply for immigration relief

Help client apply for any citizenship claims if beneficial

POS	SIBLE	RELI	EF	

# **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..."
  - o Statelessness in and of itself is not considered persecution
  - o "Denationalization" on account of a protected characteristic may amount to persecution
- Cancellation of Removal
- Other Humanitarian Visas
- o U visa, VAWA, T visa, SIJS
- Family-Based Immigration

# POSSIBLE TEMPORARY RELIEF

- Temporary Protected Status
  - o "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
  - o Not pursue appeal
  - o Communicate re: stays of removal
- Positive factors
  - o "Compelling humanitarian factors"
  - o 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

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# 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!