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Situation Report and Recommendations to Protect the Human Rights of Stateless People in U.S. Immigration Detention and Supervision

November 2022
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Executive Summary

Statelessness — the condition of lacking citizenship or nationality in any country of the world — affects more than 10 million people globally. In the United States, conservative estimates put the number of stateless persons at over 200,000. Given that the U.S. provides citizenship to people born on the territory, nearly all stateless persons within the U.S. were born elsewhere. However, the U.S. immigration framework is silent with respect to statelessness, in effect leaving stateless people unrecognized, unprotected and invisible before the law.

As persons relegated to a life without legal status, stateless people in the United States are subject to being detained by immigration officials. Because they do not have a country of nationality where they can be deported to, stateless detainees have remained in immigration detention for months or years without any prospect of release, in violation of the U.S. Constitution and international human rights law. In some cases, after undergoing prolonged detention, stateless detainees have been forcibly deported to “third countries” (countries where they are not citizens), thereby perpetuating their condition of legal limbo and further depriving them of protection as required by international law.

This report by the Global Human Rights Clinic (GHRC) of the University of Chicago Law School, in partnership with the non-profit organization United Stateless (USL), documents how the U.S. government violates international law by subjecting stateless persons to prolonged, repeated and arbitrary detention. Drawing from interviews with impacted stateless individuals and experts on statelessness, the report sets out specific recommendations for the U.S. government to bring its laws and policies in compliance with international human rights law.
I. Introduction

Most people are able to take their citizenship for granted. It is such an engrained fact of life that it may rarely even come to mind. But the significance of holding citizenship comes to light when imagining what daily life would be like without any citizenship or nationality. Simple activities, such as obtaining legal employment or possessing documentation necessary to access healthcare, would not be possible without citizenship. For the millions of people around the world who are not considered nationals of any country, this is their reality. They are stateless.

Like most people, stateless individuals hope to lead stable, productive, enjoyable, and fulfilling lives. However, they cannot fulfill these basic aspirations in a country that gives them no option but to remain undocumented indefinitely. Despite the existence of two international treaties relating to statelessness, the United States is not a signatory and currently does not have any laws, policies or procedures in place to remedy the struggles of stateless individuals living within its borders.

In December 2021, the Department of Homeland Security (DHS) finally issued a statement expressing its “commitment to adopt a definition of statelessness for immigration purposes and enhance protections for stateless individuals living in the United States.” The recognition that statelessness “presents significant humanitarian concerns” in the United States is noteworthy, but it is only the first step toward protecting the human rights of stateless individuals. This report responds to the DHS’s stated intention to address this critical issue by describing the experiences of stateless persons living in the United States and recommending legal and policy reforms that would enable stateless individuals to enjoy their basic human rights.

The report proceeds in two parts. Part I explains the causes of statelessness and depicts the harrowing experiences of stateless people in the U.S. legal system today, as described by stateless persons interviewed for this report. It then outlines the international treaties and obligations the U.S. fails to uphold through its lack of legal recognition and protection of stateless people within its borders. Part II outlines pragmatic legal and policy reforms that, if enacted, would protect the human rights of stateless people in this country, in line with international law. It explains the necessity of a procedure through which the government can effectively identify stateless individuals and proposes the creation of a legal status, with attendant rights, specifically for stateless people. Finally, the report outlines a path to citizenship for eligible stateless persons, which is the only adequate and sustainable solution to their plight.

1 This report uses the terms nationality and citizenship synonymously.

1. RESEARCH METHODOLOGY

This report was produced by the Global Human Rights Clinic of the University of Chicago Law School (GHRC),3 in consultation and partnership with United Stateless (USL).4 Findings and recommendations are based on desk research and in-depth interviews conducted between November 2021 and May 2022.

The main findings derive from interviews with ten stateless individuals who volunteered to share their stories and experiences under U.S. immigration detention and supervision. The names of these individuals have been changed to pseudonyms in order to protect their privacy and personal safety. Additionally, the research team conducted interviews with expert stakeholders, including foreign and U.S. scholars on statelessness as well as legal practitioners who have represented stateless individuals in court.

Interviews were supplemented by extensive desk research on the issue of statelessness in the United States and worldwide. The research team surveyed the recent literature on stateless identification and protection, international laws on statelessness, and relevant human rights standards. To understand the United States’ existing laws and policies relevant to stateless individuals, the research team examined pertinent portions of the U.S. Code and administrative regulations,5 as well as publicly available agency guidelines, reports and forms. A crucial resource for the policy recommendations was the United Nations High Commissioner for Refugees’ Handbook on Protection of Stateless Persons (UNHCR Handbook), which provides generic guidance to all countries seeking to address statelessness within their borders.6 A second key resource was the Stateless Protection Act, draft legislation on the protection of stateless persons that USL, stateless individuals, and allies have developed by expanding upon language relevant to statelessness in prior versions of the Refugee Protection Act.7 The research team also consulted recent publications by reputable authorities and think-tanks, such as the U.S. Department of State Country Reports, the Institute on Statelessness and Inclusion, and the Center for Migration Studies.

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3 The GHRC is a practice-based course on human rights law and advocacy at the University of Chicago. While this report represents the views and perspectives of students, faculty and staff of the Global Human Rights Clinic at the University of Chicago Law School, it does not represent an institutional position of the Law School. The research and drafting team included Nick Schcolnik, Negar Shaban, Molly Stepchuk and Clare Chiodini, students at the GHRC, supervised by Mariana Olaizola Rosenblat, Lecturer-in-Law, and Claudia Flores, Professor of Law, respectively, at the University of Chicago Law School.

4 United Stateless is a national organization led by stateless people, with the mission of advocating for the human rights of stateless individuals in the U.S. Our Mission, United Stateless, https://www.unitedstateless.org/purpose (last accessed Apr. 30, 2022).


7 The Refugee Protection Act of 2019, H.R.5210, was last introduced to the U.S. House of Representatives on November 21, 2019. No further steps have been taken towards passing the bill. The Stateless Protection Act is not publicly available and is in draft form, but was developed by stateless people and attorneys as a starting point for legislation to address statelessness in the U.S. The text of the Stateless Protection Act is on file with the report’s authors.
To fill in gaps in publicly available information, the research team submitted requests under the Freedom of Information Act (FOIA) to four government agencies: the United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), the Department of Justice, and the Department of State. These open records requests can be found in the appendix. An array of information was requested under the FOIA submissions, ranging from internal policies and memoranda detailing how immigration officers determine stateless persons’ country of citizenship, to data tracking deportations of stateless individuals to third-party countries. Despite exceeding the statutory maximum number of days to respond, neither USCIS nor ICE have provided substantive responses to the research team’s requests as of the report’s publication. The Department of Justice and Department of State did not provide any new information.
II. Statelessness in the United States

A. ORIGINS OF STATELESSNESS

Stateless individuals do not have citizenship or nationality of any country. The formal definition of statelessness —“a person who is not considered as a national by any State under the operation of its law” — is accepted by some international authorities as part of customary international law.

Most people attain citizenship in one of two ways. In the jus sanguinis model of nationality acquisition, citizenship is granted through parental descent. In the jus soli model, citizenship is granted through birth in the country’s territory. The reasons a person may become stateless or be born without a nationality include, but are not limited to:

- **Racial or Ethnic Discrimination** — States may, by law or in practice, preclude residents of certain races or ethnicities from obtaining citizenship or strip citizens of their existing nationality. This is one of the leading causes of statelessness in the world, affecting groups such as the Rohingya in Myanmar, Dominicans of Haitian ancestry in the Dominican Republic, Bedoons in Kuwait, and Black Mauritanians in Mauritania.

- **Gender Discrimination** — In twenty-five countries, including Qatar, Lebanon, and Saudi Arabia, nationality is only granted by paternal descent, meaning that only men are permitted to...
to pass their nationality on to their children.\textsuperscript{23} If, for example, the father of a child does not acknowledge paternity or is not present for the issuance of a birth certificate, the father is stateless, or the father’s identity cannot be determined, then the infant may become stateless.\textsuperscript{24}

• \textit{Nationality Laws Incompatible with Transnational Movement} — Some nations may grant citizenship based on parental descent alone, while others may grant it based on country of birth alone.\textsuperscript{25} An unfortunate synergy of these two cases can give rise to statelessness at birth. This type of statelessness is common for children born to refugees or migrants in countries without unrestricted birthright citizenship (all but 33 countries globally).\textsuperscript{26} Someone born in a country without birthright citizenship to parents who are not nationals of that country may also be unable to access the nationality of the parents, either due to administrative requirements, a conflict of laws, death of the parent(s), or lack of documentation (as often is the case during forced migration). The result may be an individual who is born stateless. Additionally, people may lose citizenship of a particular country if they live outside that country’s borders for an extended period.\textsuperscript{27} Despite their continued residence in another country, that country of residence may not offer a path to citizenship.\textsuperscript{28}

• \textit{Emergence of New States} — When new states are created or previously existing states dissolve, certain categories of people may fail to establish nationality or citizenship of the newly created states.\textsuperscript{29} This occurred upon the dissolutions of the Soviet Union and Yugoslavia and, more recently, upon the creation of both Eritrea and South Sudan.\textsuperscript{30} Relatedly, people born in contested territories may also be stateless, as is the case with Palestinians.\textsuperscript{31} Because there is controversy over the existence of Palestinian statehood,\textsuperscript{32} the government of the region in which they are born may refuse to grant them citizenship. Other nations may also refuse to recognize a Palestinian citizenship.

\begin{itemize}
\item \textit{I was scared to tell them about my situation},” he said. \textit{“I didn’t have anyone who could guide me. I had no parents, I had nobody. I was on my own, and I was scared.”}
\end{itemize}

\begin{thebibliography}{99}
\bibitem{23} Id.
\bibitem{24} Id.
\bibitem{28} Id.
\bibitem{29} Id.
\bibitem{30} \textit{The World’s Stateless}, supra note 25.
\bibitem{31} Id.
\bibitem{32} Id.
\end{thebibliography}
• Inheritance — Absent the availability of *jus soli* nationality and other corrective laws, stateless parents may pass their lack of status down to their children.\(^\text{33}\) The Roma people, dispersed across Europe, are an example of this phenomenon.\(^\text{34}\)

Globally, UNHCR has counted \(^{\text{4}}\) 4.3 million stateless individuals as of 2021,\(^\text{35}\) with 79% of this population residing in Cote d’Ivoire, Bangladesh, Myanmar, Thailand, Latvia, and Syria.\(^\text{36}\) However, the actual number of stateless individuals has most recently been estimated at 10 million.\(^\text{37}\) Underreporting in the data can result from a few factors. Stateless populations are, by definition, largely undocumented. Some states may not even attempt to gather data on their stateless populations to avoid acknowledging that a problem exists.\(^\text{38}\) In cases where the state does inquire into statelessness, the data may still be skewed because many individuals are not aware that they are stateless.\(^\text{39}\) Individuals who know they are stateless may also avoid self-reporting in countries where doing so would amount to an open admission that they are living undocumented, putting them at risk of detention or deportation.\(^\text{40}\)

**B. LACK OF DOMESTIC LAW ON STATELESSNESS**

The United States employs a combination of *jus sanguinis*\(^\text{41}\) and *jus soli*\(^\text{42}\) methods of granting citizenship. As such, with some notable exceptions,\(^\text{43}\) U.S. law does not often give rise to statelessness at birth. Most stateless individuals arrive in the U.S. without a nationality or become stateless after arrival. Because the U.S. government does not provide data on the size of its stateless population, it is difficult to quantify and understand the magnitude of the problem. A 2020 study completed by the Center for Migration Studies employed surveys, interviews, and experts to create its own assessment.\(^\text{44}\) The study estimated that “roughly 218,000 U.S. residents are potentially stateless.


34 Many Roma in Europe are Stateless and Live Outside Social Protection, Council of Europe: Commissioner for Human Rights (Jul. 6, 2009), https://www.refworld.org/docid/4a7023c72.html.


36 Id.


39 Id.


41 See 8 U.S.C. § 1401(c)-(e), (g) (2012).

42 U.S. Const. amend. XIV, § 1; 8 U.S.C. § 1401(a).

43 The Immigration and Nationality Act requires that, in order to pass down their U.S. citizenship, the parent of a child born outside of the U.S. was physically present in the U.S. for a continuous year prior to the birth of the child. 8 U.S.C. § 1401(d), (e), (g). If both parents are U.S. citizens, a residency requirement is imposed instead. 8 U.S.C. § 1401(c). Additionally, there are reports that the U.S. Customs and Border Patrol returned mothers and their infants, who were born in U.S. territory, to Mexico without birth certificates for the U.S. citizen children. See Revealed: US Citizen Newborns Sent to Mexico Under Trump-Era Border Ban, The Guardian (Feb. 5, 2021), https://www.theguardian.com/us-news/2021/feb/05/us-citizen-newborns-mexico-migrant-women-border-ban.

44 Statelessness in the United States, supra note 40.
or potentially at risk of statelessness,”45 while acknowledging “that severe data limitations make it impossible to provide precise estimates of this population.”46 Even this likely underestimated figure is significant as it is larger than the populations of many U.S. cities, including each of Birmingham, AL, Rochester, NY, and Salt Lake City, UT.47

The United States has yet to legally adopt a definition for the term “stateless” and therefore does not formally recognize stateless individuals as such (although U.S. law does recognize that an individual may not hold any nationality or citizenship).48 There are no processes in place to properly remedy the lack of legal status and the particular circumstances and vulnerabilities of stateless people as such.49 Without targeted domestic processes that conform with human rights standards, stateless individuals are forced to find pathways to legal residency or citizenship that do not properly fit their circumstances. Some of the ill-conforming alternative pathways to legal residency stateless individuals might pursue include:

- **Asylum** — Only a portion of the stateless population may meet the legal definition of a refugee and therefore be eligible for asylum status in the U.S.50 Additionally, even those who seemingly have a strong case for a grant of asylum may face barriers to successfully obtaining it. First, such individuals must be able to prove that they are “unable or unwilling” to both return to their country of “last habitual residence” and avail themselves of the protections of that country.51 The term “last habitual residence” is ill-defined in both domestic and international law and may not be reflective of where the individual felt settled or truly at home.52 In fact, it is estimated that most stateless persons living in the U.S. consider it home due to the prolonged amount of time they have spent living in the country.53 Second, the individuals must prove past persecution or a well-founded fear of future persecution.54

Many, but not all, stateless persons arrived in the U.S. after fleeing discrimination or being

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45 Id.
46 Id.
48 See, e.g., 8 U.S.C. § 1254a, which provides for Temporary Protected Status, and 8 U.S.C. § 1158, which sets forth the conditions for asylum.
49 The FOIA requests submitted by the report’s research team asked for any internal policies or memoranda addressing statelessness. As of the publication of this report, no documents have been provided in response to this request.
50 “Refugees are generally people outside of their country,” while asylees “meet the definition of refugee” but “are already in the United States” or “are seeking admission at a port of entry.” Refugees and Asylum, U.S. Citizenship and Immigration Services, https://www.uscis.gov/humanitarian/refugees-asylum (last updated Nov. 12, 2015).
51 INA 101(a)(42)(A).
53 Statelessness in the United States, supra note 40.
54 The persecution must be due to one of five protected grounds: race, religion, nationality, political opinion, or membership in a particular social group. Representing Stateless Persons Before U.S. Immigration Authorities, supra note 52.
expelled from the country they had previously called home.\textsuperscript{55} However, even if they are part of a discriminated group that generally experiences threats to their life or bodily integrity, a particular stateless person may not have personally experienced threats rising to the level of persecution, despite suffering from acute discrimination and being rendered stateless.\textsuperscript{56} For example, the U.S. Court of Appeals for the Third Circuit held that “statelessness alone does not warrant asylum” and found that a stateless Palestinian had not experienced persecution in his country of last habitual residence.\textsuperscript{57} On the other hand, the U.S. Court of Appeals for the Sixth Circuit has contemplated that persecution may be demonstrated when a person’s nationality is revoked “due to his or her membership in a protected group” and thereby rendered stateless.\textsuperscript{58} The reason the person became stateless is likely pertinent to their qualifications as an asylee or refugee. However, the U.S. case law is unsettled in this regard, leading to uncertain outcomes for stateless persons applying for asylum.

\begin{itemize}
  \item \textit{Withholding of Removal and Protection under the Convention Against Torture} — The U.S. has incorporated provisions of the Convention against Torture (CAT) and the Refugee Convention into federal legislation.\textsuperscript{59} Individuals apply for this form of protection concurrently with asylum status.\textsuperscript{60} Because it affords fewer protections than asylum status, it can serve as an alternative when an applicant is denied asylum — including for applicants with criminal convictions.\textsuperscript{61} Unlike asylum, protection under CAT does not require the applicant to establish that their fear of torture is on account of race, religion, nationality, political opinion, or membership in a particular social group.\textsuperscript{62} However, those with claims under CAT or for withholding of removal can still be removed to a third-party country in which they are deemed safe from persecution.\textsuperscript{63}
\end{itemize}

\begin{footnotes}
\footnotetext[56]{Representing Stateless Persons Before U.S. Immigration Authorities, supra note 52.}
\footnotetext[57]{Ahmed v. Ashcroft, 341 F.3d 214, 218 (3d Cir. 2003).}
\footnotetext[58]{Stserba v. Holder, 646 F.3d 964, 974 (6th Cir. 2011).}
\footnotetext[59]{See 8 CFR § 1208.18. The general prohibition against torture is also considered customary law. See Definition of Torture Under 18 U.S.C. §§ 2340–2340A, U.S. Department of Justice n.2 (Dec. 30, 2004).}
\end{footnotes}
Deferred Action — Prosecutorial discretion gives immigration enforcement officers the option to defer or delay action taken against an individual at any point during a case or before any sort of proceeding has commenced.64 Although deferred action allows individuals to reside lawfully in the U.S., it is not a permanent legal status and does not offer a path to citizenship. A grant of deferred action is temporary and can be revoked at any time,65 leaving grantees under a looming threat of losing the status, particularly when administrations change. Some stateless individuals in the U.S. were able to take advantage of the Deferred Action for Childhood Arrivals (DACA) program—a form of prosecutorial discretion in which “certain people who came to the United States as children and meet several guidelines may request consideration of deferred action for a period of two years, subject to renewal.”66 As of this report’s publication, DACA has been challenged in litigation and its long-term future remains uncertain.67

Temporary Visas — Stateless individuals may obtain a temporary visa.68 However, this is a short-term solution to a long-term problem. Stateless individuals who arrive on a temporary visa may overstay it, given the lack of alternatives open to them, either in this country or abroad. Further, even while the temporary visa is valid, it may not guarantee legal work authorization.69

Temporary Protection Status — Stateless persons may be granted temporary protected status (TPS), a form of temporary immigration relief allowing them to work and live in the United States, if their country of last habitual residence has received the required designation under 8 U.S.C. § 1254a. TPS is currently offered to nationals and former habitual residents of fifteen countries,70 and the list of designated countries may change at any time at the Secretary of Homeland Security’s discretion.71 Therefore, TPS remains a highly precarious status, subject to change at two months’ notice.72

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64 Representing Stateless Persons Before U.S. Immigration Authorities, supra note 52.
67 In response to legal challenges, the Biden Administration has issued a final rule that aims to codify DACA as regulation. "However, while a July 16, 2021, injunction from the U.S. District Court for the Southern District of Texas remains in effect, DHS is prohibited from granting initial DACA requests and related employment authorization under the final rule.” See Press Release: DHS Issues Regulation to Preserve and Fortify DACA, U.S. Department of Homeland Security (Aug. 24, 2022), https://www.dhs.gov/news/2022/08/24/dhs-issues-regulation-preserve-and-fortify-daca
68 Statelessness in the United States, supra note 40, at 14.
72 Id ("A TPS designation can be made for 6, 12, or 18 months at a time. At least 60 days prior to the expiration of TPS, the Secretary must decide whether to extend or terminate a designation based on the conditions in the foreign country . . . If an extension or termination decision is not published at least 60 days in advance of expiration, the designation is automatically extended for six months.").
• **Family-Based Adjustment of Status** — Individuals who entered the United States lawfully may adjust their immigration status while remaining in the country if a family member, such as a spouse, files a petition on their behalf. However, stateless persons who entered without inspection, as many individuals applying for asylum do, are *de facto* barred from adjusting their status because they are required to leave and reenter the country legally—something that stateless persons often cannot do because they lack a valid passport or travel document.

Many stateless individuals may not be eligible for, or even aware of, any of these existing legal options. As a result, they may live in the United States undocumented for decades with no solution in sight. Such circumstances are particularly difficult for stateless individuals because, unlike most other noncitizens, stateless individuals cannot be deported or self-deport. Since they often cannot obtain travel documents, they may not be able to enter any other country. It is not the case that stateless people have chosen to live in the U.S. undocumented rather than legally in another country. No place exists that they can legally call home.

Stateless individuals face challenges similar to those faced by other undocumented persons, but which are exacerbated by their condition of statelessness. Without identity documents, there are significant barriers to accessing basic necessities, such as work authorization, bank accounts, and public benefits. Simple tasks like picking a child up from school can be a challenge without a valid form of identity. USCIS has acknowledged that stateless individuals “may face extreme difficulties’ when they attempt ‘traveling outside of the United States.’” The omnipresent threat of immigration enforcement clouds daily activities. Even if the stateless person has found a way to meet their basic needs while undocumented, mental anguish and anxiety can significantly impact their quality of life. One stateless person interviewed for this report voluntarily turned himself into immigration authorities because he could no longer tolerate the torment and uncertainty of living undocumented.

On the other hand, remaining undocumented may be the only option available to stateless people because there is a high likelihood that an application for a legal status will be denied, given that the parameters of such status were not designed to cover statelessness. If their applications fail, they are significantly more vulnerable to being detained because government authorities have their personal and contact information.

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74 Statelessness in the United States, supra note 40, at 97.
75 *Id* at 68.
76 *Id*.
79 Interview with Andrei Kozlov (Feb. 1, 2022).
C. STATELESS INDIVIDUALS IN THE U.S. DEPORTATION SYSTEM

Because the United States does not recognize their unique predicament, stateless individuals who are unable to attain or retain a valid immigration status are relegated to the same legal repercussions of apprehension and deportation as other noncitizens, even though there is a low likelihood of actually deporting stateless individuals. Further, because they lack a country of citizenship to which they can readily be deported, stateless individuals may remain stuck in immigration detention for lengthy periods. Stateless individuals have only two ways out of detention: they are either deported to a country that does not recognize them as citizens or released in the United States with the lifelong burden of onerous supervision requirements and the ever-present threat of being detained again for purposes of deportation. The choice between the two options is not their own.

i. How Stateless Individuals Are Apprehended

1. Becoming Deportable

As explained above, many stateless individuals reside legally in the U.S. with asylum, DACA, TPS, or other legal status. However, just like any noncitizen with a legal residency status, stateless individuals may lose their legal status and become deportable. Several grounds exist in U.S. law for stripping legal status from noncitizens. Two common grounds involve failure to abide by the terms of one’s visa and certain criminal charges:

Violating nonimmigrant status — Stateless individuals with nonimmigrant statuses, such as those with student visas or spouses of those with a J or L visa, may lose their legal residency if they violate the terms of their nonimmigrant status. Such terms may include time limitations on the period of admission and limitations on employment.

One common limitation on employment is the requirement of first attaining an employment authorization document (EAD) from the government. International students, asylum seekers, and spouses of E, L, or J visas all must have an EAD to work. When an individual whose visa requires an EAD works without one, they are in violation of their nonimmigrant status.

80 See, e.g., Arelis R. Hernandez, In one of its last acts, Trump administration tried to deport man to Haiti who has never been there, THE WASHINGTON POST, (Jan. 21, 2021) https://www.washingtonpost.com/immigration/in-one-of-its-last-acts-trump-administration-tried-to-deport-man-to-haiti-who-has-never-been-there/2021/01/20/738d88e4-5b49-11eb-a976-bad6431e03e2_story.html

81 8 U.S.C. § 1227

82 Chapter 4 - Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)), USCIS, https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-4

83 Id.

84 8 CFR § 274a.12; see also 642 F-1 and M-1 Nonimmigrant Students, USCIS, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-evidence-of-status-for-certain-categories/64-exchange-visitors-and-students/642-f-1-and-m-1-nonimmigrant-students
Delays in work authorization approval thus present many individuals with an impossible choice: either retain their eligibility for conditional residency or work for their basic subsistence (access to food, clothing, shelter, etc.). As of September 2021, the USCIS’ main processing center was averaging eight months to issue new work permits — a problem given that noncitizens must wait until three months before the expiration of their current permits to reapply. As of February 16, 2022, USCIS’ backlog stood at 1.48 million pending applications. This means that up to 1.48 million people could not get — or would soon lose — jobs. The lack of legal employment can lead many individuals to situations of severe financial crisis. Such pressure may compel noncitizens to participate in the informal economy, risking their legal residencies. In recognition of this impending catastrophe, USCIS announced a Temporary Final Rule on May 3, 2022, increasing the automatic extension period for EADs up to 540 days. The agency has stated that the rule will expire on Oct. 27, 2023, by which point the USCIS aims to have achieved a three-month processing period for authorization applications. USCIS’ rule, while temporarily helpful, is merely a band-aid. Stateless individuals will remain vulnerable to further delays in the long run unless a more permanent solution is found.

Overstaying the temporal limits on one’s visa may likewise be grounds for deportation. For example, an individual interviewed for this report, Mr. Abadi, came to the U.S. at the age of fifteen on a one-year tourist visa. Mr. Abadi, an ethnic Moroccan, was born in a refugee camp in Tindouf at the border of Algeria and Western Sahara, a disputed territory. The circumstances of his birth not only placed him at the heart of the “oldest unresolved, protracted humanitarian crisis in UNHCR history” but also made him stateless. When Mr. Abadi was fifteen years old, he received a travel document from the Red Cross to travel to the U.S. along with another family from Algeria. He entered the U.S. with the travel document but was then given no guidance.

In December 2021, the Department of Homeland Security (DHS) finally issued a statement expressing its “commitment to adopt a definition of statelessness for immigration purposes and enhance protections for stateless individuals living in the United States.”

87 Nicole Narea, supra note 85.
88 Id.
89 See e.g., How To Get A Job In The United States While Being Illegal, CurbeloLaw, https://curbelolaw.com/how-to-get-a-job-in-the-united-states-while-being-illegal/ (recognizing a noncitizen’s need to work, legally or illegally, and describing how and what sort of jobs undocumented individuals can find).
91 Interview with Mohamed Abadi (Jan. 13, 2022).
on how to remain in the country legally. After finding a sense of home and community with a group of ethnic Moroccans in Las Vegas, Mr. Abadi, who had been estranged from his biological family for over a year, remained in the U.S. past the expiration of his tourist visa and throughout adolescence.93 Once he discovered he was stateless, at eighteen years old, it was too late. If he approached an immigration authority, he would be arrested. “I was scared to tell them about my situation,” he said. “I didn’t have anyone who could guide me. I had no parents, I had nobody. I was on my own, and I was scared.” Years later, an ICE officer encountered Mr. Abadi on his way to work, demanded his identification, and immediately detained him when he could not provide proof of valid immigration status.

**Criminal Charges** — Criminal charges (including for nonviolent crimes) may also result in the loss of legal residency status.94 In some cases, being convicted of two offenses that carry a possible five-year sentence in total — even if the crimes arose from a single instance of misconduct — are sufficient bases for the government to strip away the legal status an individual may have depended on since childhood.95 One person interviewed for this report lost the refugee status he had held since he was eight because of cannabis-related charges in his early adulthood.96 Growing up, Mr. Kham believed he was just like anybody else — he had never been told that the government could revoke his legal residency. He was alarmed when, unlike his U.S. citizen friends, his conviction triggered not only a jail sentence but deportation proceedings as well.97

### 2. Becoming a Target of Immigration Enforcement

The detection and apprehension of undocumented stateless individuals varies depending on what sort of prior legal status they possessed, if any. Some acts which make an individual deportable, such as overstaying a visa, do not immediately trigger government enforcement. Thus, individuals may live undocumented for some time before being subject to Immigration and Customs Enforcement (ICE) raids, criminal arrests, or less formal encounters with ICE officers who can run their information through an identification database upon suspicion.98 For example, Mr. Abadi, one of the stateless individuals interviewed for this report, was traveling interstate to his workplace when an ICE officer requested to see his ID and detained him on the spot.99

93 *Id.*
94 *How to Avoid Deportation Based on a Criminal Conviction?*, Herman Legal Group, [https://www.lawfirm4immigrants.com/how-to-avoid-deportation-based-on-a-criminal-conviction/](https://www.lawfirm4immigrants.com/how-to-avoid-deportation-based-on-a-criminal-conviction/), 8 U.S.C. §1158 (c)(2)(B) (explaining that an asylee's status may be terminated if they have been convicted of a serious crime by final judgment).
96 Interview with Beni Kham (Jan. 11, 2022).
97 *Id.*
99 Interview with Mohamed Abadi (Jan. 13, 2022).
Sometimes, information provided to the government in immigration applications may be used against noncitizens later in removal proceedings. For instance, if a TPS applicant’s petition is denied, the information the applicant provides in their petition “may be used as a basis for… removal proceedings, even if the petition is later withdrawn.”  

Agency guidance suggests that USCIS does not actively alert ICE when it denies residency status to a noncitizen — yet this guidance may be reversed at any time. The exception to this general policy is asylum applicants: when an asylum seeker has no other legal status in the U.S. and their asylum claim is rejected, USCIS contacts ICE and ICE commences removal proceedings against the individual. One of our interviewees fell victim to this system when, immediately after her asylum application was denied, ICE arrived at her home in the early morning, shackled her and her teenage son, and dragged them both to detention.

If instead, an individual loses their legal status due to a criminal conviction, direct coordination between criminal and immigration authorities may result in an interview with ICE while the individual is in prison serving their sentence, followed by an immediate transfer to ICE custody upon completion of their criminal sentence. One of our interviewees painfully recalled being transferred directly from jail to detention after finally concluding his sentence.

### ii. The Stateless Person’s Experience of Immigration Detention

#### 1. Removal Period and Assignment of Removal Country

At some point after they are detained for purposes of deportation, a noncitizen will be brought before an immigration judge. No regulations restrict the period of time ICE can detain an individual before bringing them before such a court. Eventually, if an immigration judge orders the individual to be removed and the order becomes final, administrative regulations require the U.S. government to remove the noncitizen from the United States within ninety days.

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102 Id.
103 Interview with Tina Labzin (Nov. 19, 2022).
106 Regulations require at least 10 days between arrest and the first hearing, but there is no maximum time lapse provided. 8 U.S.C. §1229.
107 Interview with immigration law professor at the University of Chicago Law School (Sept. 4, 2020).
Designating a Removal Country — During the removal period, the government must determine where to send a detained noncitizen. ICE Regulations set forth a process for selecting the proper country. If a person is detained upon entry to the United States, they are to be returned to the country from which they entered. If that country refuses to take them, the U.S. government must send the person to 1) the country of which they are citizen, subject, or national, 2) the country in which they were born, or 3) the country in which they previously had a residence. If none of those countries will accept them, then the U.S. government can send them to any other country that agrees to accept them.

If, by contrast, ICE detains a person after entry and residence in the U.S., that person may designate the country to which they wish to be removed. However, if they do not designate a country, or the designated country fails to respond or refuses to accept them, then the U.S. government must remove the person to the country of which they are “subject, national or citizen.”

Stateless people are unique in that, as noted previously, they are by definition not “subject[s], national[s], or citizen[s]” of any country. As such, asking them to designate a country for removal is mostly pointless and nonsensical — stateless people have no choice but to designate a country that does not legally recognize them as citizens and will, in all likelihood, refuse to accept them. Nor will the U.S. government be able to remove the individual to a country of which they are “subject, national or citizen,” as no such country exists. Thus, the regulations stipulate for the U.S. government to attempt removal (in no particular order) to the country from which the noncitizen was admitted, their country of previous residence, their country of birth, the country that had sovereignty over their birthplace at the time of their birth (if it exists), or the country that currently has sovereignty over their birthplace. If removal to these countries is “impracticable, inadvisable, or impossible,” the U.S. government may remove the person to any other country that agrees to accept them.

It is not the case that stateless people have chosen to live in the U.S. undocumented rather than legally in another country. No place exists that they can legally call home.

111 8 USC 1231 (b)(2)(C). The same regulations provide that the U.S. government may also refuse to send a noncitizen to their country of choice if the U.S. government decides that removal to said country would be “prejudicial to the United States.”
112 8 U.S.C. §1231(b)(2) (D)
113 Id.
115 Id. at vii.
Refusal by Designated Countries — When attempting to deport an individual to any of the countries described in the regulations, ICE will first try to obtain travel documents for the individual from that country. Many foreign governments will refuse to issue any such travel documentation without interviewing the individual or examining national identity cards, expired passports, birth certificates, or baptismal records. Since stateless individuals often lack the requisite documentation, even where an individual has a tie to a country — such as ethnicity or birth within the country’s borders — the country may still refuse to issue travel documents. Thus, ICE is often unable to deport stateless individuals. Several stateless U.S. residents interviewed for this report described their experiences in this regard (their names have been converted to aliases in order to protect their privacy and safety).

- Ms. Labzin, a former national of the Soviet Union, was residing in the U.S. when the Soviet Union dissolved and Ukraine and Russia became new, independent nations. Because she had not been within either country’s borders at the time of independence, neither country considered her a citizen. As such, both refused to issue travel documentation.

- Mr. Kham, born in a refugee camp in Thailand to Laotian parents, was denied entry to both Thailand and Laos. Thailand, which does not automatically grant citizenship to people born within its borders, declined the request for travel documents after determining that Mr. Kham was not a national. Laos also refused, explaining that they had no birth certificate for him and allegedly no record of his parents.

- Mr. Abadi, born to Western Saharan parents in a refugee camp at the border with Algeria, was denied entry to a host of countries. First, U.S. immigration officers said they could not remove him to Western Sahara because it was an occupied territory. Instead, immigration officials tried deporting him to Spain because Western Sahara was a Spanish colony at the time of his birth, but Spain refused to receive him. ICE then tried to deport him to several other countries, including France, Portugal, Canada, Belgium, and Algeria — all of which refused to accept him.

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116 Id. at 8.
118 Id. (describing countries, such as Eritrea and Laos, which often refuse travel documents).
119 Id.
120 Interview with Tina Labzin (Nov. 19, 2022).
121 Interview with Beni Kham (Jan. 11, 2022).
122 Interview with Mohamed Abadi (Jan. 13, 2022).
Acceptance by Designated Countries — Instances where foreign countries agree to issue travel documents to stateless individuals can also be concerning. Sometimes, foreign governments may agree to issue travel documentation — but not citizenship — to people who were previously nationals or citizens of their countries.\(^\text{123}\) When the U.S. deports stateless individuals to countries that accept them but do not offer them citizenship, it leaves these individuals vulnerable to discrimination and the deprivation of their human rights.

### Interim Solution #1

**Parole in Place**

<table>
<thead>
<tr>
<th>USCIS should allow stateless people in the U.S. to parole in place.</th>
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<tr>
<td>8 USC 1182(d)(5)(A) gives the Attorney General the power of parole.</td>
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Allowing stateless people to parole in place would give them the legal avenue necessary to adjust their status for the purpose of green card applications without having to depart the United States. This would resolve a major hurdle for many stateless persons who are otherwise unable to adjust their status due to their undocumented status.

For example, after President Trump’s administration threatened sanctions against Sierra Leone, Cambodia, Eritrea, and Guinea for refusing to issue travel documentation to individuals the U.S. was trying to deport, those countries began accepting more deportees.\(^\text{124}\) One such individual, Mamadu Balde, had fled Sierra Leone’s civil war in 1999.\(^\text{125}\) U.S. immigration authorities had previously detained Balde twice, but both times Sierra Leone refused to accept him because they could not confirm his citizenship. During President Trump’s administration, Balde was detained yet again. This time, without warning or explanation, Sierra Leone issued him travel documentation.\(^\text{126}\)

An attorney from Ohio recounted a similar story about three of his Black Mauritanian clients. In the early 1990s, Mauritania denationalized and expelled over 70,000 Black Mauritanians, many of whom fled to the United States. When, about two decades later, Mauritania began to allow Black Mauritanians in bordering territories back into the country, it refused to issue many of them national identification cards. Mauritanian identity cards are necessary to travel within Mauritania, work, vote, and carry out official transactions.\(^\text{127}\) Left without such essential documentation, many Black

123 Wallace McKelvey, supra note 105.
124 Id.
125 Id.
126 Id.
Mauritanians were effectively denationalized. For nearly two decades, the U.S. declined to deport Black Mauritanians to Mauritania due to the persecution, slavery, and forced labor they would face upon return. However, despite the human rights-based objections of some policymakers, the Trump administration reversed this policy and ramped up efforts to deport them.

The Ohio attorney’s Black Mauritanian clients had entered the United States to seek asylum when they fled persecution in Mauritania years earlier. The administration rejected their refugee claims but released them under orders of supervision by ICE in tacit recognition of the dangers they would face if returned to Mauritania. However, after Trump became president and ICE was directed to deport even long-term U.S. residents under supervision, the three Black Mauritanians were unexpectedly detained. Mauritania agreed to issue a laissez-passer—a type of travel document—to two out of the three (it claimed it had no records of the third), giving the U.S. government the green light to deport them. Far from a guarantee of citizenship, however, these travel documents issued by Mauritania could be a ticket to enslavement, torture, or death. It is little wonder that the two Mauritanians refused to board the plane which would return them to Mauritania, preferring to remain in immigration detention than risk the brutal persecution which awaited them in the land of their birth—as had been the case with hundreds of Black Mauritanians before them. Unable to get them to board the plane, ICE officers eventually gave up and brought them back to their holding cells. As this example illustrates, a foreign government’s willingness to receive stateless persons who were previously nationals of their country does not necessarily resolve their statelessness or guarantee them a life free from persecution. As such, lawmakers should not equate the U.S.’ ability to deport a stateless individual with the fulfillment of that individual’s right to a nationality.

128 Interview with Mark Heller, Immigration Attorney (Feb. 15, 2022); see also Responses to Information Requests, Immigration and Refugee Board of Canada, https://www.justice.gov/sites/default/files/irb/attachments/2015/12/08/mrt105237_fe.pdf (explaining that the Mauritanian identity card is the identity document in use in Mauritania).


131 As will be explained below, ICE check-ins are routine for stateless individuals who have been identified by ICE but continue living in America without a legal residency status.


133 Interview with Mark Heller, Immigration Attorney (Feb. 15, 2022).


136 Interview with Mark Heller, Immigration Attorney (Feb. 15, 2022).
Regulations also grant the U.S. government the discretion to remove people to countries with which they have little to no ties. The FOIA requests submitted by the research team for this report inquired into the processes and methods by which the U.S. government selects a third-party country for deportation. In response, the government’s Executive Office for Immigration Review (EOIR), which is part of the Department of Justice, admitted to having no records of guidance, policies, or other memoranda regarding how immigration authorities determine the country to which a noncitizen is to be removed when their nationality cannot be determined.\(^{137}\) The government has also failed to provide data on the number of stateless people deported to third countries in the last 10 years. However, there is evidence to suggest that such deportations do occur. The Rwandan government has issued a statement claiming that it receives stateless people from around the world, including from the United States.\(^{138}\) Moreover, anecdotal evidence and media reports of such deportations have continued to surface. One example is of a stateless individual named Paul Pierrilus who was born to Haitian parents outside of Haiti and thus lacks Haitian citizenship. Haiti insisted that Pierrilus was not a Haitian citizen, yet ICE continued to push for Pierrilus’ deportation, including to other countries besides Haiti.\(^{139}\)

Even where third-party countries do not persecute racial minorities, deportation to such countries can condemn the individual to a life of subsistence-level existence, discrimination, and exclusion from access to basic education, medical care, vaccinations, and essential social services.\(^{140}\) In the best of circumstances, individuals will feel disconnected from a country to which they have no previous ties: they may not know anyone in that country or even speak the language.\(^{141}\) Had the Trump administration succeeded in deporting Mr. Pierrilus, it would have sundered him from his parents and sister in the United States, only to send him to a country he had never stepped foot in.\(^{142}\)

2. Detention and Release Proceedings

*In order to understand the experiences of stateless individuals subject to U.S. immigration enforcement, this section will follow a hypothetical stateless man, Mr. Keo, as he loses his legal status, ends up in detention, and strives for release. This hypothetical experience is a conglomeration of the recollections gathered through interviews conducted for this report.*\(^{143}\)

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139 Arelis R. Hernandez, supra note 80.
141 Representing Stateless Persons Before U.S. Immigration Authorities, supra note 52.
142 Arelis R. Hernandez, supra note 80.
143 Interview with Beni Kham (Jan. 11, 2022); Interview with Mohamed Abadi (Jan. 13, 2022). Interview with Chue Dou Yang (Feb. 22, 2022); Interview with Andrei Kozlov (Feb. 1, 2022).
Interim Solution #2
Presumption of Non-Detention

Individuals identified as stateless, or likely stateless, should enjoy a presumption of non-detention.

Individuals identified as stateless – which could occur through a referral for expedited determination by USCIS or through ICE’s bond adjudication process – should enjoy a presumption of non-detention. Indefinite detention and detention longer than reasonably necessary to remove a non-citizen from the U.S. are unconstitutional. Because a stateless person by definition cannot be removed to a country of nationality, there is no period of detention “reasonably necessary” to secure their removal.

Therefore, a finding by USCIS through an expedited process, or by ICE during its bond adjudication process, that a person is stateless or likely stateless should establish that there is no significant likelihood of removal in the reasonably foreseeable future and accordingly should trigger immediate release from post-removal-order detention.

Mr. Keo, the child of Laotian parents, was born in a refugee camp in Thailand. Due to the citizenship laws of those two countries, Keo was stateless from the moment he was born. While a teenager, he was admitted along with his mother to the U.S. as a resettled refugee. His mother passed away soon after the move, and Keo never adjusted his status to lawful permanent resident. At age eighteen, due to his exceptional talent in violin, Keo received a scholarship to study at a music conservatory in Massachusetts. He resided in the U.S. throughout college and discovered that he was stateless only after failing to obtain a passport to participate in a violin competition abroad. After graduation, Keo, whose life and prospects were now in the United States, decided to remain. Years passed, and Keo fell in love and had a child. However, one day Keo encountered an ICE agent who requested Keo’s identification, ran it through an identification database, and hauled him off to detention.

Keo’s life was upended in a matter of minutes. He lost contact with his girlfriend, who moved with their child to another city for work. Without the ability to go outside, play music or attend any kind of class, Keo felt purposeless and often depressed. Some of Keo’s fellow detainees had been transferred between facilities more than once during their time in detention, and their current placement was so far from their community that no one could visit. One of Keo’s fellow detainees had been transferred directly from prison after finishing a sentence for marijuana use and often complained that he would rather do five years in prison than a month in detention.
After several months passed, Keo was finally brought before an immigration judge, who issued an order of removal. U.S. regulations state that, barring special circumstances, a noncitizen can only be held in detention awaiting removal for a certain amount of time. However, that period does not begin until the noncitizen’s order of removal becomes final — that is, until the individual either consents to the order or appeals it (first to the Board of Immigration Appeals, and then to the federal judiciary system if necessary).

Keo was terrified of being removed, so he appealed the order. He did not realize that as a person without a nationality, his chances of deportation were low. After about a month in detention, Keo met a fellow detainee from Vietnam. The detainee told Keo that Laos was not accepting deportees. If Keo was an ethnic Laotian, he would not be deportable. The news surprised Keo, who had not considered that ICE might be unable to deport him. The man also advised Keo to sign a paper accepting his deportation order as final.

Accordingly, Keo signed the paper, his order of removal became administratively final, and, months after arriving in detention, his statutory removal period finally started ticking. The statutory removal period is ninety days. However, 8 U.S.C. §1231(a)(6) allows certain categories of noncitizens to be held past the initial ninety days. One such category is noncitizens who have no legal residency status in the United States — in other words, most stateless people who end up in detention.

In 2001, the Supreme Court in Zadvydas v. Davis interpreted §1231(a)(6) to contain an implicit “reasonable time” limitation. The Court held that six months was the “reasonable” duration for immigration officers to attempt removal while holding a noncitizen in detention. After six months, the Court held, detention was no longer presumptively constitutional. If the detainee can demonstrate no significant likelihood of removal in the reasonably foreseeable future, the government must release them.

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144 8. U.S.C §1231(a)(1)(A)(i) requires the AG to remove “the alien from the United States within a period of 90 days,” although 8 U.S.C. §1231(a)(6) allows for certain categories of immigrants to be held past the initial ninety-day period.

145 8 U.S.C. §1231 states that the removal period begins from the “latest of the following: (i) the date the order of removal becomes administratively final. (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order. (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” An order becomes administratively final “when either a decision by the Board of Immigration Appeals (BIA) affirms an order of removal or the period in which the individual is permitted to seek review of such order by the BIA has expired, whichever date is earlier.” USCIS, Department of Homeland Security Implements Exemption Authority for Certain Terrorist-Related Inadmissibility Grounds for Cases with Administratively Final Orders of Removal 1 (2008).

146 Provided, as explained above, that the 1) shifts in political pressures do not result in Laos suddenly agreeing to receive back ethnic Laotians and 2) the United States government cannot prevail upon a disconnected third-party country to receive Keo.


150 Id.

151 Id.
To be released from detention, regulations require the detainee to show that their release will not pose a danger to the community and that they are not likely to flee while immigration officers search for a way to deport them.\textsuperscript{152} These showings occur at custody reviews, where immigration officers try to conclude whether the detainee can attain travel documents, whether they are violent, and what sort of risk they might pose to the community.\textsuperscript{153} The first such custody review should occur within the first ninety days after the order of removal becomes final.\textsuperscript{154} If officers decide against releasing the detainee, their case (but not their person) is transferred from their local field office to the Headquarters Post-Order Detention Unit (HQPDU). HQPDU is then supposed to conduct another review at around the 180-day mark.\textsuperscript{155} It is unclear what sort of documentation would allow a noncitizen to make the showing required by the 90-day review. None of our interviewees recalled being asked to attend or send documentation for a review at the 90-day mark.

There are two kinds of 180-day reviews. The first kind attempts to make the same determinations as the 90-day review — namely, whether the noncitizen will be a flight risk or a danger to the community.\textsuperscript{156} The second review asks a different question. The government created this second review in response to \textit{Zadvydas}, and it is this review that is used for stateless individuals.\textsuperscript{157} This review, which need not occur before the 180-day mark,\textsuperscript{158} asks only whether there is a significant likelihood that the individual in question will be removed within the reasonably foreseeable future.\textsuperscript{159} There are four main factors in this decision: (1) whether the noncitizen has complied with their order of removal, (2) the history of ICE’s efforts to remove noncitizens to the country in question or a third country, (3) the reasonably foreseeable result of such efforts, and (4) the views of the State Department regarding whether removal to such countries is likely.\textsuperscript{160}

\begin{itemize}
  \item 8 C.F.R § 241.4(d).
  \item Before making a decision to release the detainee, the director of the detention office must conclude that: “(1) travel documents for the alien are not available; (2) the detainee is presently a non-violent person; (3) the detainee is likely to remain nonviolent if released; (4) the detainee is not likely to pose a threat to the community following release; (5) the detainee is not likely to violate the conditions of release; and (6) the detainee does not pose a significant flight risk if released.” 8 C.F.R § 241.4(e)(1)-(6). In weighing whether to release the detainee the director should consider: (1) the nature and number of disciplinary infractions received while incarcerated, (2) past criminal conduct, including sentences imposed, time served, (3) any available mental health history, (4) evidence of rehabilitation, (5) any favorable factors, (6) prior immigration history, (7) the likelihood that the alien is a significant flight risk and (8) any other information probative of whether the “alien” is likely to adjust to life in the community, continue in violence, pose a danger to himself etc. 8 C.F.R § 241.4(f) (1)-(8). Release may also be denied where the "alien fails or refuses to make timely application in good faith for travel documents necessary to the alien's departure..." 8 C.F.R. § 241.4 (g)(5).
  \item "The initial HQPDU review will ordinarily be conducted at the expiration of the three-month period after the 90-day review or as soon thereafter as practicable.” 8 C.F.R § 241.4(k)(2)(ii).
  \item Id.
  \item Though the HQPDU custody reviews have a few more elements to them, including interviews and panel recommendations, the Executive Associate Commissioner ultimately makes the release decision on the same grounds and using the same considerations as the local director. 8 C.F.R § 241.4(g).
  \item The Equal Rights Trust, From Mariel Cubans to Guantanamo Detainees: Stateless Persons Detained Under U.S. Authority 20 (Jan. 2010).
  \item 8 C.F.R. § 241.13(b)(2)(ii).
  \item 8 C.F.R. §241.13.
  \item 8 C.F.R § 241.13(f).
\end{itemize}
Mr. Keo was unaware that 90 days marked anything particular, and the date passed without him becoming aware of a custody proceeding. In the meantime, Keo went along with the immigration officers’ attempts to procure travel documents. He consented to having his fingerprints and pictures taken, answered questions regarding his ethnicity, and signed the documents they occasionally put in front of him (without fully understanding the implications of what the documents said). He handed over his Thai birth certificate, which immigration officers proceeded to translate. They later told him that the certificate said Keo was not a national of Thailand. A few months later, Thailand declined to issue him travel documents. Laos did the same.

Throughout his detention, Keo could not obtain much information regarding the status of his deportation proceedings. Although he often asked to contact his deportation officer, the repeated requests led nowhere. At some point during his time in detention, a friend put Keo in contact with Asian Americans Advancing Justice (AAJC), an NGO advocating for civil rights on behalf of Asian Americans. Keo asked the lawyers at AAJC if there was anything he should do to help his situation.

Practitioners in the field of immigration law assert that virtually the only way to secure the release of a detainee is to file a petition for habeas corpus. A 2005 report by the Catholic Legal Immigration Network Inc. (CLINIC) concluded that, because HQPDU rarely notifies detainees about the results of their custody review, a habeas petition is the only reliable method to secure release.

### Interim Solution #3

**Provision of Information**

ICE’s Detainee Handbook should provide detainees with information regarding their legal rights under Zadvydas.

According to ICE’s *Performance-Based National Detention Standards* document, “every facility shall issue to each newly admitted detainee a copy of the ICE National Detainee Handbook and local supplement that fully describes all policies, procedures and rules in effect at the facility.” Moreover, the law library in every detention center is supposed to include a copy of the ICE Detainee Handbook. The Detainee Handbook, however, says nothing about the Zadvydas standard. The ICE Detainee Handbook should be updated to include clear and comprehensible information regarding the definition of statelessness, the maximum period of detention under Zadvydas, and the process for filing habeas petitions that allow for detainees to be released under Zadvydas.

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161 Of our nine interviewees, only one was released at the ninety-day removal period mark. She did not recall having had any sort of custody review. Interview with Tina Labzin (Nov. 19, 2022).

162 Reports suggest that “once detainees’ files are transferred to Headquarters for review, detainees have little to no access to information about their status and lack opportunities for advocacy in favor of release.” Kathleen Glynn and Sarah Bronstein, CLINIC, Systematic Problems Persist in U.S. ICE Custody Reviews for ‘Indefinite’ Detainees 16 (2005).

163 The Equal Rights Trust, supra note 157.
Mr. Keo’s case could well have turned out differently. The first factor in the HQPDU’s custody review determination is whether the detainee has complied with their final order, in other words, whether they have cooperated with their removal.\textsuperscript{164} Clear cases of non-cooperation include instances where the detainee fails to fill out forms, does not provide truthful information, or resists removal.\textsuperscript{165}

However, the Department of Homeland Security (DHS) has wide discretion to decide what constitutes cooperation, as the regulations do not clarify what this means. Practitioners have alleged that DHS abuses this discretion and uses “non-cooperation...as a basis for continuing detention when there is no other reason to detain the individual, but [DHS] is not ready to release.”\textsuperscript{166} For instance, one report recounts the case of Faruk Abdel-Muhti. Abdel-Muhti was detained past 180 days on the grounds that he had not provided sufficient evidence to “establish his identity or nationality and he was ordered to contact this embassy and secure travel documents.”\textsuperscript{167} Over a year later, Abdel-Muhti requested a custody review and proved that he had been denied travel documents from Jordan, Egypt, Palestine and Honduras. However, the reviewing officer “determined that he had not established compliance with his obligation to cooperate.”\textsuperscript{168} Finally, after yet another year and a total of 36 months in detention, the district court “ordered Abdel Muhti’s release, noting that the Government had failed to demonstrate that he was uncooperative.”\textsuperscript{169}

In 2020, Keo was dropped off at a Supervision Office. They informed him of the requirements attached to his supervision order and let him go. His girlfriend and child were living across the country, but he had a friend two hours away. He had to find his own way home.

\textbf{iii. Residing with Orders of Supervision}

When individuals with final orders of removal are released from immigration detention, they are subject to burdensome supervision requirements, known as Orders of Supervision (OSUP).\textsuperscript{170} Persons under the OSUP regime must: report to immigration officers periodically and provide them with “relevant” information, continue efforts to obtain travel documents from foreign countries, obtain advance approval for travel if they leave the state where they reside — even if only temporarily — and provide DHS with a written notice of any change in address.\textsuperscript{171} People under OSUP are permitted to apply for employment authorization,\textsuperscript{172} but the authorization must be renewed periodically.\textsuperscript{173}

\begin{flushleft}
\textsuperscript{164} Id.
\textsuperscript{165} Thus, DHS can likely use non-cooperation as a reason to continue detaining the two Black Mauritanian individuals mentioned above who refused to board the flight to Mauritania.
\textsuperscript{166} The Equal Rights Trust, supra note 157.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{170} U.S.C. §1231(a)(3).
\textsuperscript{171} CFR 241.5(a)(2).
\textsuperscript{172} CFR 241.5.
\end{flushleft}
It is important to note that OSUP is not a legal residency status. Stateless persons with OSUP have merely been released from detention. They remain subject to deportation should an immigration officer deem it practicable. Thus, they cannot travel outside the country, even for emergencies: if they leave, they will not be allowed back in.174

(i) Immigration Check-ins

Orders of Supervision force stateless individuals to live in a sort of limbo, unable to foresee any country accepting them yet continually fearing the looming potential for removal. Although they live in the United States, they lack the basic rights of citizens and other legal residents. Stateless individuals on an OSUP are required to report for in-person check-ins with immigration officers up to weekly upon their release, even though the official DHS position has been that check-ins should not occur at less than three-month intervals.175 Several of our interviewees did note that their required check-ins had eventually dwindled to yearly appointments.176

Still, these periodic check-ins have serious financial and mental health consequences for stateless people. Financially, stateless individuals must take time off from work in order to travel to appointments that are in ICE offices, often far away and inaccessible via public transportation.177 One interviewee described the unpredictable wait times at supervision offices, noting that he had often been forced to sit for hours before an immigration officer could speak with him.178 Recurrent absences may make it challenging to find or retain employment.179 One interviewee recalled losing a job after his employers became suspicious that he had to report to the government every month and concluded he must be a criminal. “I mean,” said our interviewee, considering the perspective of his employers, “if you’re having to report monthly, it’s because you must have killed a couple people.”180

Emotionally, the threat of being re-detained casts a shadow over every check-in.181 A noncitizen’s release from detention may be revoked if (1) stateless individuals violate conditions of release or (2) the Executive Associate Commissioner uses their discretion to revoke the release.182

176 Interview with Tina Labsin (Nov. 19, 2022).
177 Rutgers, supra note 175, at 16.
178 Interview with Ihab Sabir (Nov. 18, 2021).
179 Rutgers, supra note 175, at 17.
180 Interview with Ihab Sabir (Nov. 18, 2021).
182 8 C.F.R §241.4(f).
discretion in the latter category suggests that stateless people could be re-detained arbitrarily and through no fault of their own. For example, as explained above, shifts in political pressures may cause some countries to accept individuals they had previously refused, even if the person's citizenship status has not changed. In such cases, those individuals may be detained at check-ins without warning.  

The “psychological effects of the check-in requirements include, but are not limited to, inability to sleep, loss of appetite, anxiety, stress, paranoia, and general lack of willpower to continue with one’s immigration proceedings.” Mr. Kozlov, a stateless individual interviewed for this report, explained that he had turned himself into immigration authorities years before, driven by a desperate desire to end the anxiety that came with living undocumented. However, his statelessness rendered him un-deportable. He describes himself now as living in similar psychological anguish. Fear accompanies him to every check-in, causing him to wonder whether he should attribute a recent heart attack to the anxiety of being re-detained.

Such trepidation also affects families with mixed immigration statuses, as the citizen in the family must live with the agonizing prospect of suddenly losing their non-citizen loved ones. When the Trump administration deported Mr. Baulde, he was abruptly separated from his U.S citizen wife and his niece and nephew — both of whom were orphaned and relied on him for support. Situations like these only add to the pressures that come with each check-in.

The check-ins can also be disruptive to daily life. Interviewees explained that, because immigration officers are still looking to remove them, the officers may ask repetitive yet stressful questions and requests at each check-in. One interviewee recalled being asked to bring proof to a check-in of a past marriage in Russia over twenty years earlier. Another was told that it was his job to deport himself and find a country that would accept him. At check-ins, the interviewee’s officers constantly probed him on whether he had been contacting foreign consulates to request travel documents. Because individuals can be re-detained for failing to abide by their conditions of release, and obeying officer demands at check-ins is one of these conditions, demands that a person under OSUP contact consulates can be highly stressful. Some stateless people may feel compelled to contact multiple embassies each month, stockpile rejection letters, and bring at least one to each check-in.

183 Interview with Mark Heller, Immigration Attorney (Feb. 15, 2022).
184 Rutgers, supra note 175, at 17.
185 Interview with Andrei Kozlov (Feb. 1, 2022).
186 Rutgers, supra note 175, at 17.
187 The stateless individual from Sierra Leone described above.
188 Wallace McKelvey, supra note 105.
189 Interview with Andrei Saharov (Nov. 16, 2022).
190 Interview with Andrei Kozlov (Feb. 1, 2022).
191 Interview with Ihab Sabir (Nov. 18, 2021).
192 UNHCR, Citizens of Nowhere, supra note 38.
(ii) Restricted Movement

Other requirements associated with supervised release also weigh heavily upon stateless people. In some jurisdictions, individuals may be placed on intensive supervision orders, which may require them to wear ankle monitors.193 Our interviewees explained that restrictions on movement and travel within the country are a severe inconvenience.194 However, the inability to travel outside the United States was far more painful for those we spoke with. Apart from a simple desire to see the world, interviewees recalled missing important milestones such as weddings and funerals of loved ones.195 Some also expressed longer-term anguish due to their inability to see their children, from whom they had been separated for upwards of twenty years.196 When asked what the U.S. government could do to better the condition of stateless people, one interviewee remarked, “All I want is to be free… to move around and travel… to go back to Russia and see my daughter…”197 Another lamented, “I just want to live my life. I don’t want to keep dealing with ‘what are you going to do with me’ whenever I have to report to the Immigration Office.”198

(iii) Employment Authorization

Interviewees also cited issues with employment authorization. EADs must be periodically renewed, and without a fee waiver, each renewal costs $410.199 Our interviewees said they had to renew their EADs each year.200 However, as described above, government backlogs in work authorization approvals can lead to gaps in employment authorization. One of our interviewees noted that he had taken to sending in his renewal application at least three months before the deadline, but he often still fails to secure renewal before his previous permit’s expiration.201 Because the ability to obtain a valid state ID or driver’s license may depend on an individual’s employment authorization status, gaps in employment authorization may deprive stateless individuals of identification as well as their ability to drive.202 One interviewee explained that when his driver’s license lapses, he must rely on his wife for transportation.203

193 Rutgers, supra note 175, at 8.
194 Interview with Andrei Kozlov (Feb. 1, 2022).
195 Id.
196 Interview with Tina Labzin (Nov. 19, 2022).
197 Interview with Andrei Kozlov (Feb. 1, 2022).
198 Interview with Mohamed Abadi (Jan. 13, 2022).
200 See, e.g., Interview with Mohamed Abadi (Jan. 13, 2022).
201 Interview with Mohamed Abadi (Jan. 13, 2022).
203 Interview with Mohamed Abadi (Jan. 13, 2022).
Interim Solution #4
Presumption of Least-restrictive Orders of Supervision

| Individuals identified as stateless should enjoy a presumption of least-restrictive orders of supervision. |
| To bring the US in line with the 1954 Statelessness Convention (specifically article 26 of the Convention), ICE should institute a policy wherein stateless people enjoy a presumption of the least restrictive Order of Supervision possible. Specifically, reporting mechanisms should be telephonic, should not include restrictions on movement or ankle monitors, and should be infrequent. Instituting a presumption of least-restrictive orders of supervision would be an acknowledgment that (a) it is not reasonably foreseeable that a stateless person will be removed, (b) stateless people are stateless through no fault of their own, and (c) there is no reasonable government purpose behind the imposition of onerous supervisory conditions in most cases. |

Moreover, since it is illegal to employ individuals without employment authorization, employers may hesitate to hire individuals that have to report for recurrent check-ins and have uncertain status, or fire employees whose authorization expires. One of our interviewees had been waiting on his employment authorization for months and spoke to us with some desperation due to his inability to work. After losing his asylum status, he noted the devastating irony that the government seemed intent on making an honest living impossible for him.

(iv) Emotional Burden of Lasting Parole

Supervision requirements make stateless individuals feel they are treated like criminals. One interviewee forced to wear an ankle monitor explained feeling ashamed wherever he went. He hesitated even to walk on the beach for fear of the stares he would receive. This feeling is not unique to those with ankle monitors. Another interviewee without a monitor shared a similar sentiment, remarking, “It’s like being a criminal. I live a criminal’s life.”

The demands and prohibitions of OSUP unfairly separate stateless individuals from the rest of society — sometimes indefinitely. Supervision requirements do not expire unless a person obtains a path to legal status in the U.S., which very few stateless people are able to obtain. “It’s not fair,” lamented Mr. Sabir, one of the stateless interviewees, who could not be deported and was released on an order of supervision. “Murderers have gotten out, but I’m on life probation.” The burdens of statelessness have intruded upon Mr. Sabir’s family life as well. He described dropping his U.S. citizen children off at the airport to visit their grandparents outside the country and feeling turmoil knowing not only that he could not accompany them but that his children do not understand why he cannot travel as they can. Other interviewees agreed. “I feel like I am just like everyone else,” said Mr. Abadi, “but legally, I’m not.”
### Andrei S: A Classic Example of Statelessness

Andrei was born in Estonia when that territory was part of the Soviet Union. Andrei eventually followed his mother to the U.S. as a teenager. His mother had gotten citizenship through marriage to an American, and she managed to procure a student visa for Andrei.

Andrei lost that status on account of two misdemeanor charges. In 2001 he was transferred from prison to ICE detention, where he consented to fingerprinting and pictures and signed documents requesting travel documents from Estonia. Estonia refused to grant them.

Six months passed and Andrei was still in detention. He might have been stuck there for a while longer had it not been for other detainees who told him that he could file a habeas corpus to petition for release. He did so, and although the judge gave the government thirty days to respond, the authorities simply released him.

Upon his release, Andrei became subject to the full panoply of supervision requirements. Immigration officers also tied Andrei’s leg with an ankle monitor, which he had to wear for a year. Andrei recalled feeling like a child molester whenever he walked on the beach.

His check-ins continue to this day and are mind-numbingly repetitive: different officers ask him the same questions at each visit. Sometimes his work permits arrive right before his previous one expires, which triggers a great deal of anxiety every time. Other times the permits don’t arrive on time, and he loses his job altogether.

Although Andrei’s detention was over twenty years ago, his condition of statelessness continues to weigh on him. Any time he travels (within the country), his wife and children make it through security while he gets pulled aside. It’s degrading. “Part of me is always incarcerated” he reflects, “it feels like parole for life.” With every change in administration, Andrei has to dig through the newspapers to anticipate how it might impact his situation. The anxiety keeps him up at night. “I keep having this dream that I get detained for some silly nonsense… I’d like to have my dreams back.”

But getting his dreams back will depend on the U.S. government recognizing the human rights of people like him. And Andrei knows his voice is small. “It’s sad,” he said, “your problems are not seen as others’ would be. You write to politicians who you hope can help you, but these are not popular problems.”
D. INTERNATIONAL LEGAL STANDARDS

i. Statelessness Conventions

There are two international treaties specific to statelessness, neither of which the U.S. has signed or ratified. Over 100 countries are party to at least one of these treaties, leaving the United States in the minority of countries that have chosen not to formally commit to protecting the human rights of stateless persons.

1954 Convention relating to the Status of Stateless Persons — The first treaty specific to statelessness, the 1954 Convention relating to the Status of Stateless Persons (1954 Stateless Convention), primarily addresses the treatment of individuals who are already stateless. There are currently ninety-six parties to the 1954 Stateless Convention, including Australia, China, France, Germany, and the United Kingdom. International support for this treaty has grown in recent years, with twenty-four parties ratifying the treaty within the last decade.

The purpose of the 1954 Stateless Convention was to provide “basic rights of stateless persons” who must “be respected by their countries of residence without discrimination of race, religion, or nation of origin.” One of its “most significant contribution[s] to international law is its definition of a ‘stateless person’” — that is, one “who is not considered as a national by any State under the operation of its law.” This definition is considered part of customary international law, meaning that it is binding on all countries regardless of whether they are parties to the treaty.

The 1954 Stateless Convention enumerates rights that should be afforded to stateless individuals, including freedom of movement, possession of identity documents, access to courts, and opportunities for gainful employment. Notably, it imposes duties on the contracting states to ensure access to

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204 UNHCR Handbook, supra note 6.
205 It is plausible that the 1961 Convention has not been implemented by the U.S. because it conflicts with domestic law. While U.S. law provides the right to renounce a nationality under any circumstance, 8 U.S.C. 1481(a)(5), Article 7 of the 1961 Convention essentially prohibits the renunciation of a nationality if doing so would render the person stateless. No similar reason exists for the lack of acceptance—or at least adherence to—the 1954 Convention. Indeed, the U.S. could still ratify the 1961 Convention with a reservation renouncing Article 7. See also Donald K. Duvall, Expatriation Under United States Law, Perez to Afroyim: The Search for a Philosophy of American Citizenship, 56 Va. L. Rev. 408, 419 (1970).
employment for stateless persons at least equivalent to the access afforded to other noncitizens in 
that state.\textsuperscript{215} States party to the treaty are also required to allow stateless individuals to “move freely 
within its territory,”\textsuperscript{216} and to issue identity papers to stateless individuals who otherwise lack travel 
documents.\textsuperscript{217} Stateless individuals must also have free access to courts under this treaty.\textsuperscript{218}

\textit{1961 Convention of the Reduction of Stateless} — The second international treaty specific to 
There are fifty-five parties to this Convention, including Australia, Brazil, Canada, France, 
Germany, and the United Kingdom.\textsuperscript{219} Thirteen of the parties joined between 2012 and 2013, 
but there have been no additional signatories since then.\textsuperscript{220}

While the 1954 Stateless Convention sets forth the rights of stateless individuals, the 1961 Stateless 
Convention targets the root causes of statelessness.\textsuperscript{221} Although a number of international human 
rights treaties include the human right to a nationality,\textsuperscript{222} only the 1961 Stateless Convention 
implies duties on contracting states to fulfill this right by granting nationality to stateless persons 
in certain circumstances.\textsuperscript{223}

\textbf{ii. Refugee Protection}

Although the United States is not a party to the 1954 or 1961 Stateless Conventions, it is a 
party to the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) by 
Protocol).\textsuperscript{224} The 1967 Refugee Protocol broadened the scope of the refugee definition provided 
in the 1951 Refugee Convention.\textsuperscript{225}

\textsuperscript{215} 1954 Stateless Convention art. 17. \textit{See also} 1954 Stateless Convention art. 18.
\textsuperscript{216} Id. art. 26.
\textsuperscript{217} Id. art. 27.
\textsuperscript{218} Id. art. 16.
\textsuperscript{221} Convention relating to the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S 175. \textit{[hereinafter 1961 Stateless Convention].}
\textsuperscript{223} \textit{See, e.g., 1961 Stateless Convention art. 1; 1961 Stateless Convention art. 5; 1961 Stateless Convention, art. 1, ¶ 3 (“A child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.”).}
To the extent that stateless individuals may concurrently meet the definition of a refugee under these binding treaties, the protections afforded to refugees may be invoked to protect the rights of stateless individuals. The 1951 Refugee Convention mirrors the 1954 Stateless Convention in many aspects concerning the rights afforded to someone who qualifies for protection under the treaty. The 1951 Refugee Convention’s definition of refugee includes those “who, not having a nationality and being outside the country of [their] former habitual residence as a result of such events, [are] unable or, owing to such fear, [are] unwilling to return to it.”

This implicates two challenges for stateless individuals attempting to utilize refugee status. First, not all stateless individuals can be considered refugees. The definition of a refugee is clearly different from the definition of a stateless person provided in the 1954 Stateless Convention. Second, if a stateless refugee’s risk of persecution ceases to exist, they may be expected to return to their country of last habitual residence. Yet, not having citizenship, they will be unlikely to be welcomed in that country, thus leaving them in the same situation as non-refugee stateless individuals — without a place in the world to call home.

iii. Right to a Nationality

Absent the United States’ ratification of the human rights treaties specific to statelessness, the U.S. may still be bound to elements of their substance by means of other sources of international law, including:

1948 Universal Declaration of Human Rights — Article 15 of the Universal Declaration of Human Rights (UDHR) provides “[e]veryone has the right to a nationality” and “[n]o one shall be arbitrarily deprived of [their] nationality nor denied the right to change [their] nationality.” It is widely agreed that many of the UDHR provisions have been incorporated into binding customary international law.

While the U.S. Supreme Court rejected an opportunity to embrace the UDHR in 2004, stating that it “does not of its own force impose obligations as a matter of international law,” the Court did acknowledge its “moral authority.”

Stateless individuals have only two ways out of detention: they are either deported to a country that does not recognize them as citizens or released in the United States with the lifelong burden of onerous supervision requirements and the ever-present threat of being detained again for purposes of deportation. The choice between the two options is not their own.
1966 International Covenant on Civil and Political Rights — Article 24 of the 1966 International Covenant on Civil and Political Rights (ICCPR) asserts that “[e]very child has the right to acquire a nationality.”\(^\text{231}\) The United States is a party to the ICCPR, meaning that the U.S. is bound to its terms under international law.\(^\text{232}\) In addition, by signing the treaty, the United States agreed “to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.”\(^\text{233}\) Arguably, by refusing to extend legal status to stateless persons inside the country, the United States contravenes a basic purpose of the treaty: ensuring the fundamental civil and political rights of all human beings within its jurisdiction.

1989 Convention on the Rights of the Child — Under Article 7 of the 1989 Convention on the Rights of the Child, each state is responsible for ensuring that every child obtains a nationality. The United States is the only country in the world that has yet to ratify the 1989 Convention. However, the U.S. may still be bound by certain provisions of the Convention that are considered part of customary international law.

iv. Freedom from Arbitrary Detention

Detaining a stateless individual for the purposes of deportation when there is no plausible alternative location to deport them to intuitively constitutes an arbitrary or unreasonable detention.\(^\text{234}\) The 1954 Stateless Convention’s requirement that “[c]ontracting states shall as far as possible facilitate the assimilation and naturalization of stateless persons,”\(^\text{235}\) is undermined when stateless individuals are detained for an extended period of time or kept under a regime of lifelong supervision in which their freedom of movement is restricted.\(^\text{236}\) Many of the same treaties discussed above contain provisions against arbitrary detention:

International Covenant on Civil and Political Rights — Article 9 of the ICCPR declares in part that “[n]o one shall be subjected to arbitrary arrest or detention” and that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”\(^\text{237}\) A detained person is entitled to “proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention.”\(^\text{238}\)


\(^{232}\) See Sosa v. Alvarez-Machain, 542 U.S. 692, 735 (2004). While the U.S. Supreme Court has stated that the ICCPR does not create a cause of action in U.S. courts, the U.S. can still be said to be in violation of international law if it does not comply with the terms of the treaty.


\(^{235}\) 1954 Stateless Convention art. 32.

\(^{236}\) In the event expulsion has been ordered, however, “[t]he Contracting States reserve the right to apply during that period such internal measures as they deem necessary.” 1954 Stateless Convention art. 3, § 3.

\(^{237}\) International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, art. 9, § 1 (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

\(^{238}\) International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, art. 9, § 4 (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”).
According to the United Nations High Commissioner for Refugees, the “detention of individuals seeking protection on the grounds of statelessness is arbitrary” under the ICCPR, whether such detention is routine, indefinite, or mandatory.\(^\text{239}\) Additionally, “[f]or detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances, proportionate and non-discriminatory.”\(^\text{240}\)

The U.S. Supreme Court has stated that the ICCPR’s reference to arbitrary detention merely “expresses an aspiration exceeding any binding customary rule with the specificity this Court requires.”\(^\text{241}\) Instead of relying on the ICCPR, the Court invoked the Restatement (Third) of Foreign Relations Law of the United States, “which refers to prolonged arbitrary detention, not relatively brief detention in excess of positive authority.”\(^\text{242}\)

*The Universal Declaration of Human Rights* — With the potential to be invoked as customary international law,\(^\text{243}\) the Universal Declaration of Human Rights (UDHR) provides a right to be free from arbitrary detention.\(^\text{244}\)

Despite not yet having signed the treaties specific to statelessness, the United States has clear obligations under international law toward stateless individuals through the human rights conventions it has ratified. The U.S. should live up to its rhetorical commitment to human rights by taking its treaty obligations seriously. Fulfilling the obligations owed to stateless individuals would be one simple yet powerful way to demonstrate this commitment.

**E. THE UNITED STATES HAS ACKNOWLEDGED THE PROBLEM BUT FAILED TO PROVIDE A SOLUTION**

All three branches of the U.S. government have acknowledged the perils of statelessness yet have failed to take even the simplest of measures to provide stateless individuals with any reprieve.

From as early as 1953 to as recently as 2017, the U.S. Supreme Court has demonstrated its awareness of statelessness. It has referred to “the evils of statelessness”\(^\text{245}\) and defined statelessness as the “possession of no citizenship at all.”\(^\text{246}\) In 1958, the Court described statelessness as “a condition deplored in the international community of democracies” with “disastrous consequences.”\(^\text{247}\)

\(^{239}\) UNHCR Handbook, supra note 6, at 40.

\(^{240}\) Id. at 41; *Representing Stateless Persons Before U.S. Immigration Authorities*, supra note 52.


\(^{242}\) Id.


Court has also recognized that stateless individuals have “no lawful claim to protection from any nation, and no nation may assert rights on [their] behalf.”

The executive branch has also expressed its awareness of statelessness through its agencies. For example, the Department of State has a page on its website describing the condition of statelessness and related treaties. As mentioned above, DHS issued a statement in late 2021 announcing its intentions to officially recognize and accept a definition of statelessness. This is a step in the right direction, but it alone does not protect the human rights of stateless individuals who reside in the U.S. and have no other place to go.

As early as 1940, Congress enacted legislation with the “express goal” of “reducing the incidence of statelessness.” Yet, over eighty years later, Congress has failed to incorporate international legal standards on statelessness into U.S. legislation, which it can do with or without the executive branch's decision to sign the relevant treaties. The Supreme Court has long held that “[t]he suggestion that judicial relief will be available to alleviate the potential rigors of statelessness assumes too much.” Indeed, it is not the role of the Court to fix largescale problems that should be solved through legislative and executive action.

Furthermore, by failing to address statelessness within its borders, the United States harms its own national interests. Government budget and personnel resources are spent on the apprehension, detention, and supervision of undocumented stateless individuals who are willing and able to find gainful employment and contribute meaningfully to society. More important, respecting the human rights of stateless people is in line with the United States’ professed commitments and core values. The United States was founded on the idea that all people have inherent and inalienable rights to “the preservation of life, & liberty, & the pursuit of happiness.” Stateless individuals are denied access to these fundamental rights when they are deprived of a path to legal recognition.

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248 Perez v. Brownell, 356 U.S. 44, 64–65 (1958) (Warren, dissenting). This opinion was later endorsed when the case was overruled. Afroyim v. Rusk, 387 U.S. 253, 267 (1967) ("[W]e agree with the Chief Justice's dissent in the Perez case").


253 Declaration of Independence (U.S. 1776).
III. Proposed Solutions for Stateless Persons Residing in the United States

Protecting stateless individuals’ human rights requires adopting two essential measures: a) establishing a Stateless Determination Process (SDP) that identifies and recognizes stateless individuals as such, and b) granting such individuals a legal status that properly accounts for their statelessness and allows them to enjoy their human rights. This section of the report advances policy recommendations regarding both aspects. In elaborating upon these recommendations, the research team paid close attention to authoritative guidance issued by the UNHCR in its Handbook on the Protection of Stateless Persons (UNHCR Handbook), as well as the U.S. refugee and asylum law regime, which provides a useful reference and point of comparison. In addition, the research team relied on interviews with experts on statelessness and U.S. immigration attorneys with first-hand experience representing stateless persons in detention.

A. STATELESS DETERMINATION PROCESS: STRUCTURE, ACCESSIBILITY, AND DUE PROCESS

A precondition to addressing statelessness is the identification of stateless individuals. Identifying stateless persons is necessary because the state cannot guarantee their rights without knowing who is entitled to such rights. Identification also allows the government to understand the scope of statelessness in the country and the populations that it affects. Moreover, since statelessness is a judicially relevant fact under international and domestic law, an effective stateless determination procedure would save the government time and resources by avoiding the costs of unnecessary administrative and judicial procedures.

Even though the 1954 Stateless Convention is the most pertinent treaty on statelessness, the Convention does not itself contain any instructions on how to identify stateless people. In other words, while the Convention guarantees rights to stateless persons, it does not prescribe a method

254 Such legal status should guarantee certain rights for stateless individuals, including the rights to work, to have an identity and travel documents, and freedom from detention and deportation. It should also provide stateless individuals with a path to citizenship. Access to such status should be granted to any stateless individual by virtue of their statelessness and should not depend on any other conditions. This point will be elaborated in subsequent sections.

255 UNHCR Handbook, supra note 6. The UNHCR Handbook, issued by the Office of the UN High Commissioner of Refugees, provides the leading set of guidelines for setting up an SDP. These guidelines are based on the rights and duties set out in the 1954 Stateless Convention.

256 UNHCR Handbook, supra note 6, at ¶9. As an example, statelessness is relevant in relation to protection against arbitrary detention (article 9(1) of the ICCPR), since detention on the sole basis of being stateless is considered arbitrary detention. It is also a judicially relevant fact regarding the right of women to equal treatment with men with regard to nationality (article 9 of the 1979 convention on the Elimination of All Forms of Discrimination against Women) and the right of every child to a nationality (article 24(3) of the ICCPR and Article 7(1) of the 1989 Convention on the Rights of the Child) (UNHCR Handbook, supra note 261, at ¶122).

257 In domestic law, issues of statelessness may arise when an individual is in a removal proceeding, and their right to nationality is challenged (UNHCR Handbook, supra note 6, at ¶57). It is also relevant when an individual is in removal proceedings and the immigration officers have to designate the country to where they can be deported.

for determining who can claim access to those rights. However, in the years since the Convention came into force, it has become widely understood that “[e]stablishing a [stateless determination procedure] is the most efficient means for [s]tates Parties to the 1954 Convention to identify the beneficiaries of that Convention.”

In line with this understanding, the United States should develop a Stateless Determination Procedure (SDP) to identify stateless individuals and afford them the rights to which they are entitled. This section outlines a framework and process for an SDP compatible with the U.S. legal system.

### i. Legislation to Adopt Statelessness Definition and Establish a Stateless Determination Procedure

The design of an SDP and associated rights of stateless individuals should be regulated through congressional legislation. UNHCR recommends that states formalize the SDP by enacting laws that promote fairness, transparency, and clarity in administrating the protection of stateless persons in their jurisdiction.

Establishing the SDP through legislation allows for a unified and durable stateless determination process and promotes transparency by subjecting the process to public scrutiny and accountability. Congress is also better suited to establish clear and just standards for the SDP and to harmonize the U.S. approach with international standards.

Establishing any SDP requires adopting a definition of statelessness. As noted above, although the U.S. government has used the word “stateless” in different contexts, there is no official definition of statelessness in U.S. law and regulations. As discussed in Part I, the widely accepted definition of statelessness — “a person who is not considered as a national by any State under the operation of its law” — is found in Article 1 of the 1954 Stateless Convention. This definition is recognized as part of customary international law, which means that even states which have not acceded to the Convention are bound by it as a matter of international law. By adopting this customary definition in its domestic legal system, the U.S. government can better cooperate with other countries in solving this pressing global issue. Moreover, this definition is compatible with

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260 UNHCR Handbook, supra note 6, at ¶71.


262 Despite the lack of an official definition in law, U.S. Department of State’s website defines a stateless person as “someone who, under national laws, does not enjoy citizenship – the legal bond between a government and an individual – in any country”. (Statelessness, U.S Department of State, https://state.gov/other-policy-issues/statelessness/).

263 The International Law Commission has stated that the definition of stateless person as defined in the language of the Article 1 of the 1954 Stateless Convention "can no doubt be considered as having acquired a customary nature". (Draft Articles on Diplomatic Protection with commentaries, United Nations 49 (2006) https://www.refworld.org/docid/525c7929d.html).
U.S. policy and practice. In fact, it has been used by some domestic agencies,\(^{264}\) which suggests a high level of receptivity within the U.S. government toward adopting the internationally accepted understanding of statelessness. Furthermore, the Convention definition is supported by detailed guidance from UNHCR in the Handbook to assist states in implementing SDPs.

**ii. Competent Agency and Initiation of the Procedure**

The SDP should be administered at the federal level under the mandate of the Department of Homeland Security (DHS) through DHS’ subagency, the U.S. Citizenship and Immigration Services (USCIS). DHS has a central role in administering all immigration and citizenship affairs in the U.S., including refugee and asylum cases. Given the similarities between refugees, asylum seekers and stateless persons, it would be appropriate to assign responsibility for their identification to the same competent national authority.

UNHCR suggests creating a centralized procedure for administering SDPs.\(^{265}\) A centralized procedure is one in which application review and decision-making is conducted by a single entity, as opposed to a system where decisions concerning statelessness are made by different local authorities. There are several reasons for adopting a centralized SDP in the U.S. Centralization facilitates the development of expertise in the officials who undertake the process\(^{266}\) and promotes uniformity in the treatment of cases.\(^{267}\) Other immigration processes, including asylum and Temporary Protected Status (TPS) applications, are processed by the USCIS. Utilizing this existing structure for statelessness determinations would maximize the system’s efficiency and coherence.

**iii. Accessibility of the SDP: Information Dissemination, Interpretation, and Legal Counsel**

An SDP cannot improve stateless persons’ situation unless those individuals have effective access to the procedure.\(^{268}\) Stateless individuals in the U.S. generally lack access to information about their status in a language they can understand, which impairs their ability to pursue legal avenues for securing their rights.\(^{269}\) In fact, stateless individuals are often unaware of their lack of

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\(^{265}\) UNHCR handbook, supra note 6, at ¶63.

\(^{266}\) Id. at ¶63.


\(^{268}\) See UNHCR Handbook, supra note 6, at ¶71.

\(^{269}\) A 2005 report by the Catholic Legal Immigration Network, based on their experience as an immigration law institute and the interviews they conducted with multiple immigration attorneys, concludes that the lack of language skills is one of the reasons that noncitizen detainees in ICE custody cannot effectively litigate their case in federal courts (Kathleen Glynn and Sarah Bronstein, CLINIC, SYSTEMATIC PROBLEMS PERSIST IN U.S. ICE CUSTODY REVIEWS FOR ‘INDEFINITE’ DETAINEES 31 (2005)). The report also mentions those language barriers as a factor that may lead to allegations of non-cooperation that subsequently poses difficulty to litigating their asylee case (Id. at 26); similarly, in an interview, the immigration attorney Mark Heller mentions that his clients, three Black Mauritians, filled out some forms at the time of their entry with the help of a translator, without knowing what was written on the form. Further, in the court their testimonies were inconsistent with what was written on the forms, which led to dismissal of their asylum-seeking claim (Interview with Mark Heller, Immigration Attorney (Feb. 15, 2022))).
nationality or citizenship and of the rights owed to stateless persons under international law.\footnote{Interview with Ihab Sabir (Nov. 18, 2021); Interview with Chou Dou Yang (Feb. 22, 2022); Interview with Beni Kham (Jan. 11, 2022); Interview with Tina Labzin.}

Lack of awareness about statelessness can significantly delay individuals’ access to stateless status protection.\footnote{Gabor Gyulai, (2014). \textit{The determination of statelessness and the establishment of a statelessness-specific protection regime}, Nationality and Statelessness under International Law116-128 (Alice Edwards & Laura. Van Waas ed., Cambridge University Press. 2014).} Accordingly, the U.S government should actively disseminate information about the SDP, the eligibility criteria for statelessness status, and its correspondent rights. Information about statelessness and the SDP should be available in different languages and accessible formats on the USCIS website, USCIS offices, and in ICE detention centers and offices.

Access to such information is particularly critical for stateless people already in detention, given their heightened state of vulnerability. Many of the individuals interviewed for this report only realized their condition of statelessness once they had been in detention for some time and found out they could not be deported to their country of origin.\footnote{Interview with Beni Kham (Jan. 11, 2022); Interview with Ihab Sabir (Nov. 18, 2021); Interview with Chou Dou Yang (Feb. 22, 2022).} Immigration and Customs Enforcement (ICE) officers should be legally obligated to inform individuals with final orders of removal and who exhibit some of the indicators of statelessness\footnote{There are multiple factors that UNHCR mentions as indicators that an individual may be stateless. These factors include: “An admission or statement that she lacks or has lost her citizenship or nationality; Being from a country that no longer exists; Fear of contacting the embassy of her country of last habitual residence; An inability of the U.S. government to remove the individual; An inability of the individual to secure travel documents from any country with which they have ties. In some cases, the individual’s ethnicity or country of origin signals a greater likelihood that they are stateless.” Representing Stateless Persons Before U.S. Immigration Authorities, supra note 52. Having a list of stateless indicators for ICE officers and placing the legal responsibility on them to inform the individuals meeting those criteria of the SDP would significantly improve the accessibility of the SDP.} of the existence of an SDP and the benefits of applying for status as a stateless person. ICE officers are in direct contact with stateless persons in detention and at ICE check-in appointments. As such, ICE officers should be trained to recognize the indicators of statelessness in the individuals they supervise and should be required to refer detainees meeting those criteria to the SDP.

In addition, USCIS should provide written applications in multiple languages,\footnote{UNHCR Handbook, supra note 6, at 571.} especially from regions where statelessness is prevalent. The government should also facilitate access to translation services so that stateless individuals are able to participate in the SDP — from filing written applications to participating in oral interviews — in a language that they can speak and understand.\footnote{In the context of refugee and asylum law in the U.S., when the applicant and the asylum officer cannot proceed effectively in English or another language in conducting an interview for asylum case, the officer has to arrange for assistance of an interpreter. 8 C.F.R 1208.31(c). This protection should also be afforded to stateless individuals in all stages of the SDP.} Finally, the government should expand access to counsel for individuals undergoing an SDP, especially for those individuals facing financial difficulties and those currently in detention.

Lawmakers should not equate the U.S.’ ability to deport a stateless individual with the fulfillment of that individual’s right to a nationality.
Such efforts can take the form of facilitating access to *pro bono* legal counsel in immigration detention facilities and cooperating with UNHCR to expand the hotline service that connects stateless individuals to NGOs, immigration attorneys, and statelessness experts.

### iv. Admissibility Criteria

Any restrictions on the admissibility of a stateless determination application should be based solely on their relevance to the applicant’s claim of being stateless. The protections afforded to stateless individuals under the 1954 Convention are not qualified on any grounds aside from statelessness.\(^\text{276}\)

Specifically, proof of previous lawful status in the territory should not be an admissibility requirement to apply for statelessness status. Lack of nationality makes it extremely difficult, if not impossible, for stateless individuals to obtain the documents required to apply for lawful residency. Consequently, qualifying their access to the SDP on previous lawful status would be unrealistic and unfair.\(^\text{277}\) Similarly, lawful entry should not be an admissibility ground for excluding stateless individuals who have entered the country unlawfully. Many stateless individuals have been present in the country for decades, and they should not be deprived of the opportunity to apply for the stateless status only because they entered without inspection. Statelessness is an objective situation that should not be qualified on any other requirement other than being stateless. Hence, requiring stateless individuals to prove lawful entry and lawful residency in the country before applying for the SDP would be contrary to international standards and authoritative guidance.\(^\text{278}\)

Secondly, there should not be temporal limitations for individuals to apply for stateless status after they arrive in the U.S. Many stateless individuals are not aware that they are stateless,\(^\text{279}\) and some are prevented from applying for legal recourse due to fear or past trauma.\(^\text{280}\) Therefore, temporal limitations would arbitrarily deprive some stateless persons of their human rights.\(^\text{281}\)

### v. Rights of Persons Awaiting an SDP Decision

The rights enshrined in the 1954 Stateless Convention attach to individuals that satisfy the definition in Article 1, regardless of whether they have been recognized as being stateless through an SDP.\(^\text{282}\) An SDP merely confirms such status and secures stateless persons’ access to attendant rights in the domestic legal system. Accordingly, a person awaiting an SDP decision should be granted similar protections given to individuals who attain stateless status via an SDP until the contrary is proved.

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\(^{277}\) UNHCR Handbook, supra note 6, at ¶69.

\(^{278}\) The 1954 Stateless Convention, Art. 1.

\(^{279}\) UNHCR Handbook, supra note 6, at ¶68.

\(^{280}\) Interview with Mohamed Abadi (Jan. 13, 2022); Interview with Andrei Kozlov (Feb. 1, 2022).

\(^{281}\) UNHCR Handbook, supra note 6, at ¶70.

\(^{282}\) *Id.* at ¶126.
Granting similar protections to those who await an SDP decision also encourages stateless persons to come out of the shadows and acquire legal status through the SDP. Specifically, to ensure the procedure is fair and effective, non-detained individuals who apply for stateless status should not be removed, detained, or deported while approval of stateless status is pending.\textsuperscript{283} UNHCR notes that those awaiting determination of statelessness are entitled under international treaties to protection against arbitrary detention and assistance for meeting their basic needs.\textsuperscript{284}

Relatedly, individuals applying for stateless status should be granted work authorization while their application is pending. Article 17 of the 1954 Stateless Convention, while granting the right to wage-earning employment for stateless persons residing lawfully in the country, urges the states to give “sympathetic consideration” to all stateless individuals in their territory with regard to assimilating their right to employment to the rights of nationals, especially for stateless individuals who entered the country “pursuant to programmes of labour recruitment or under immigration schemes.”\textsuperscript{285} The phrase “sympathetic consideration” is generally understood to mean “more or less the same as “favourable consideration,”\textsuperscript{286} which means that they should get the treatment not worse than foreigners in general who are in the same circumstances.\textsuperscript{287} In many cases, noncitizens applying for a legal status in the U.S. are eligible to apply for an EAD while their case is under review.\textsuperscript{288} Almost all stateless individuals interviewed for this report had applied for an EAD pursuant to 8 CFR 274a.12(c)(18), which provides that persons with a final order of removal may be granted employment authorization at the discretion of the district director if they “cannot be removed due to the refusal of all designated countries,” or when their removal “is otherwise impracticable or contrary to the public interest.” Conditioning the grant of an EAD on the individual having first been detained and released is a violation of their human rights and a waste of administrative resources. Granting work authorization upon filing the SDP application also incentivizes individuals to participate in the process and secures their basic needs while the results of the application are pending.

### B. STATELESS DETERMINATION: THE PROCESS

To ensure a fair and effective determination procedure, the SDP should conform to international norms regarding evidentiary standards, appeals, and timeliness. Publications from the U.N. and human rights organizations create a comprehensive picture of these international standards and best practices. Below, we propose a process for assessing applications under an SDP that aligns both with these sources and with existing practices in the U.S. legal system.

\textsuperscript{283} UNHCR Handbook, supra note 6, at ¶112.

\textsuperscript{284} Id. at ¶145.

\textsuperscript{285} The 1954 Stateless Convention, Art. 17(2).


\textsuperscript{287} Id, at Art 15(1).

\textsuperscript{288} 8 CFR 274a.12(c)(9), also see 8 CFR 274a.12(c)(20) and 8 CFR 274a.12(c)(22) [Add more context to similarities between cases].
i. Evidence

Two parties are involved in an SDP: the applicant and the government. While the applicant can most readily produce evidence of their personal circumstances, the government is more likely to have access to evidence regarding, for example, the laws and practices in other countries. Since an SDP requires the production of distinct types of evidence by the applicant and the government, an effective SDP necessitates cooperation between both parties.

Given that the applicant’s role is to provide personal circumstantial information, an SDP should require that the applicant give (1) “a full and truthful account to the best of the applicant’s knowledge of his or her legal status with regard to any [s]tate in which the applicant was born or resided before entering the United States or to which the applicant has a relevant link,”290 and (2) “all evidence reasonably available, including any travel documents….”291 Additionally, applicants must be afforded the opportunity to produce a complete and truthful account of the merits of their application before it is denied.292 Making interviews necessary only for those who might have their applications denied will help reduce costs and streamline the SDP since the government will not be required to interview somebody whose application is facially sufficient.

The government’s role in the SDP, on the other hand, will require it to obtain and submit evidence about the applicant’s legal status in the countries to which the applicant has ties and to obtain evidence related to the application, including from human rights reports compiled by the Department of State.293 Thus, the government’s fact-finding obligations will necessitate its active participation in the SDP.

A benefit of the government’s active involvement in the production of evidence is that the agency empowered to process SDPs will accrue institutional knowledge of the global causes of statelessness over time.294 Eventually, this accumulated knowledge will lead to reduced evidentiary burdens on both the applicant and the government. This accumulated institutional knowledge should also expedite the SDP as the agency and its personnel become increasingly familiar with the intricacies of statelessness worldwide.

Assessment of statelessness will in most circumstances require inquiring with a foreign government

289 UNHCR Handbook, supra note 6, at ¶ 83.
290 Stateless Protection Act, draft legislation on file with authors.
291 Id.
292 See, e.g., UNHCR Handbook, supra note 6, at ¶ 71, ¶ 73.
293 Id. Bureaus within the Department of State that might have relevant evidence include the “Bureau of Population, Refugees, and Migration and the Bureau of Democracy, Human Rights, and Labor…” Additionally, relevant international and foreign bodies include “other [s] tates’ competent nationality, immigration, or consular authorities, the United Nations High Commissioner for Refugees, and non-governmental organizations.” Stateless Protection Act, draft legislation on file with authors.
294 UNHCR Handbook, supra note 6, at ¶ 63.
as to the applicant’s citizenship status in that country. However, a foreign government’s competent nationality authority may be unwilling or unable to support the U.S. government’s investigation into the stateless applicant’s nationality. There thus exists a question as to how much evidentiary weight to give when another government does not respond or sends only pro forma responses to requests for information. The answer to this question should be fact-specific. As the UNHCR Handbook notes:

[i]f a competent authority has a general policy of never replying to such requests, no inference can be drawn from this failure to respond based on the non-response alone. Conversely, when a [s]tate routinely responds to such queries, a lack of response will generally provide strong confirmation that the individual is not a national. When a competent authority issues a pro forma response... and it is clear that the authority has not examined the particular circumstances of an individual’s position, such a response carries little weight.

In other words, depending on the facts, a lack of response from a foreign government’s competent authority can strongly support a stateless applicant’s claim of statelessness or can carry very little weight.

In making a statelessness determination in the U.S., “[t]he burden of proof... [should] be shared between the Secretary of Homeland Security or Attorney General and the applicant.” A shared burden of proof is appropriate in the SDP context for a number of reasons. First, the United States government is more likely than the applicant to have the resources available to understand the implications of other countries’ laws. Second, a shared burden of proof underscores the fact that the SDP is intended to be a cooperative endeavor between the government and the applicant. And third, a shared burden of proof serves as an acknowledgment of the difficulty of proving the absence of nationality and of the inherent vulnerability that comes with statelessness.

Finally, the U.S. government should recognize a stateless person “when it has been established to a reasonable degree that the individual is not considered as a national by any [s]tate under the operation of its law.” Accordingly, if “the determination authority is able to point to clear evidence that the individual is a national of an identified [s]tate,” then “statelessness will not [have] be[en] established to a reasonable degree.” Importantly, this standard of proof must

295 An exception to this, however, would be if the applicant states that they fear persecution in the country in question. UNHCR Handbook, supra note 6, at ¶ 96.
296 Stateless Protection Act, draft legislation on file with authors.
297 UNHCR Handbook, supra note 6, at ¶ 41.
298 Stateless Protection Act, draft legislation on file with authors.
299 UNHCR Handbook, supra note 6 at ¶ 89.
300 Stateless Protection Act, draft legislation on file with authors.
301 UNHCR Handbook, supra note 6 at ¶ 92. Per the UNHCR, “[s]uch evidence of nationality may take the form, for example, of written confirmation from the competent authority responsible for naturalization decisions in another country that the applicant is a national of that [s]tate through naturalization or information establishing that under the nationality law and practice of another [s]tate the applicant has automatically acquired nationality there.” UNHCR Handbook, supra note 6 at ¶ 93.
recognize that “lack of nationality does not need to be established in relation to every state in the world. Consideration is only necessary of those states with which an individual has a relevant link, generally on the basis of birth on the territory, descent, marriage, adoption or habitual residence.” Such a standard of proof, also codified into the SDP laws of numerous countries, is another acknowledgment of the challenges of proving a negative. In addition to reducing the burden on the stateless applicant, this rule also removes the absurdity of requiring stateless people to prove that they lack citizenship in countries with which they have no prior relationship.

ii. Appeals

People denied stateless status must have the opportunity to appeal this decision. We suggest that, rather than going through U.S. immigration courts (as is the case in the asylum context), an appeal of a denial of stateless status be processed through USCIS’ Administrative Appeals Office (AAO). There are several reasons for this deviation from the asylum context. First, unlike in the asylum context, where an unsuccessful appeal in immigration court results in removal (pending appeal), the consequence of an unsuccessful stateless status appeal through AAO is not removal. Additionally, AAO review is preferable to immigration court proceedings because AAO review is not adversarial: given both the difficulty of proving statelessness and the trauma that often accompanies statelessness, avoiding an SDP in which applicants are placed into an adversarial context is critical. Lastly, AAO review is de novo, meaning there would be no deference given to a previous USCIS denial of stateless status.

302 UNHCR Handbook, supra note 6 at ¶ 92 (footnote omitted).


304 In the United States, denied asylum applications are subject to both administrative and judicial review. The first layer of review for an asylum application denied by USCIS occurs in an immigration court pursuant to 8 C.F.R. §1208.2(b). The next layer of review occurs at the Board of Immigration Appeals (BIA), which maintains appellate jurisdiction over immigration courts under 8 CFR §1003.1(b)(9) (2022). Finally, BIA decisions can be appealed in federal circuit courts. Applications that go to immigration court from USCIS are not “denied.” Instead, they are “referred” to immigration court for further review. Types of Asylum Decisions, U.S. Citizenship and Immigration Services, https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/types-of-asylum-decisions (last updated Jan. 26, 2021).

305 See, e.g., De Novo, Cornell Law School Legal Information Institute, https://www.law.cornell.edu/wex/de_novo#:~:text=De%20novo%20review%20occurs%20when%20review%20is%20de%20novo%2C%20see%20McLane%20Co (last updated Jul. 2017).

AAO review is also preferable to immigration court proceedings because U.S. immigration courts are severely backlogged. Indeed, cases in immigration court today take an average of more than four years to conclude.\textsuperscript{307} Immigration courts are so backlogged that the Biden administration recently overhauled the asylum process by allowing USCIS asylum officers to handle defensive asylum applications.\textsuperscript{308} Since 64\% of all appeals to AAO are resolved within six months,\textsuperscript{309} an appeals process that runs through AAO offers the possibility for a faster resolution of stateless cases. This is a particularly important benefit for stateless individuals given the vulnerability inherent to lacking legal status and documentation anywhere in the world.

Importantly, it is crucial that the AAO’s denial of an affirmative application for stateless status “shall be without prejudice to the right to renew the application [if individuals are later] in [removal] proceedings….”\textsuperscript{310} In other words, individuals already in immigration court and thus defensively applying for stateless status must be able to reapply for such status, and AAO’s previous denial of an affirmative application must not be used against the applicant in this new application. Additionally, since applicants under these circumstances will already be in removal proceedings, denials of these applications “[would be] appealable to the Board of Immigration Appeals,”\textsuperscript{311} as they are in the asylum context.\textsuperscript{312}

\textbf{iii. Time Limits}

The timeline for adjudication in the SDP should mirror that of the U.S. asylum context: “in the absence of exceptional circumstances, final administrative adjudication of the [SDP] application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.”\textsuperscript{313} Implementing this timeline would also align the SDP with the UNHCR Handbook’s recommendation, which states that “it is undesirable for a first instance decision [in a

\textsuperscript{307} Jasmine Aguilera, \textit{A Record-Breaking 1.6 Million People Are Now Mired in U.S. Immigration Court Backlogs}, Time (Jan. 20, 2022), https://time.com/6140280/immigration-court-backlog/#:~:text=Roughly%201.6%20million%20people,58%20months%E2%80%94nearly%20five%20years.


\textsuperscript{310} Stateless Protection Act, draft legislation on file with authors.

\textsuperscript{311} Id.

\textsuperscript{312} 8 CFR §1003.1(b)(9) (2022).

statelessness determination process] to be issued more than six months from the submission of an application.”\textsuperscript{314} Moreover, due to the extra vulnerability of stateless individuals with a final order of removal, such individuals should be able to request expedited processing without additional fees. As we noted above, however, a stateless applicant should not need to be interviewed \emph{so long as} their application for stateless status is approved.

\section*{C. LEGAL STATUSES AND CORRESPONDING RIGHTS}

Once an applicant has been determined stateless through the SDP, the question turns to what legal rights this status should confer on the stateless person. There are four principal rights that the United States must guarantee to individuals determined to be stateless. These four rights, discussed below, are (1) work authorization, (2) identity and travel documents, (3) protection against removal and detention, and (4) a path toward naturalization.

\subsection*{i. Work Authorization}

One of the biggest challenges facing stateless individuals in the United States is their inability to receive work authorization and thus their inability to obtain legal employment. Like anybody else, stateless persons cannot meet their basic survival needs without the resources generated through employment. As noted above, one stateless interviewee stated that the months he spent waiting for work authorization left him no option but to work “illegally” or participate in criminal activity to support his wife and four children.\textsuperscript{315} Criminal activity is often what lands a stateless person in detention in the first place, and it can make stateless people ineligible for permanent residency.\textsuperscript{316}

Giving stateless individuals the right to work also aligns with widely accepted international human rights law. The 1954 Convention recognizes a right to “wage-earning employment” for stateless individuals, stating that “stateless persons [shall be accorded]… treatment as favourable as possible and… not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.”\textsuperscript{317} Moreover, under Section 2 of Article 17, “States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals....”\textsuperscript{318}

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\item\textsuperscript{314} UNHCR Handbook, supra note 6, at § 75.
\item\textsuperscript{315} Interview with B.C. (Jan. 11, 2022).
\item\textsuperscript{316} 8 U.S.C. §1182.
\item\textsuperscript{317} 1954 Stateless Convention art. 17, § 1.
\item\textsuperscript{318} Id. § 2.
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Additionally, given the significant time lapse between lodging an application for renewal of work authorization and its approval, an individual who is found to be stateless “should receive employment authorization for a renewable period not less than five years.”\(^{319}\) An EAD that lasts at least five years is reasonable because, in the analogous context of asylum law, refugees and asylees are allowed to work “indefinitely because their immigration status does not expire.”\(^{320}\) Moreover, to combat the issue of lapses between application for stateless identification and work authorization, work authorization should automatically be granted “if the Attorney General or Secretary of Homeland Security has not decided an applicant’s request for status… within 150 days of the individual’s application for such status….\(^{321}\) Instituting this rule would align the statelessness context with the asylum context because in the asylum context, applicants can apply for work authorization after 150 days.\(^{322}\)

**ii. Travel Documents**

Any individual identified as stateless through the SDP should be issued travel documents that can serve as proof of identity and facilitate travel. These travel documents should “facilitate the… ability to travel abroad and be admitted to the United States, with a minimum validity period of ten (10) years.”\(^{323}\) A right to international travel is uniquely important for stateless individuals since virtually all stateless people in the United States were born outside of the United States and are thus likely to have community and family outside of the country. Many stateless individuals likely have not been able to visit their families outside of the United States or attend weddings or funerals in decades due to their limited ability to travel.\(^{324}\) Issuing travel documentation would allow stateless individuals the opportunity to reconnect with families and countries that in many circumstances they have spent years missing.

**iii. Statelessness as a Factor against Detention and Removal**

A finding of statelessness should be considered as a factor when deciding whether to detain or remove individuals found to be stateless. This approach aligns with current U.S. jurisprudence. Indeed, as the Supreme Court noted in *Zadvydas*, “if removal is not reasonably foreseeable… court[s] should hold continued detention unreasonable and no longer authorized by statute.”\(^{326}\)

\(^{319}\) Stateless Protection Act, draft legislation on file with authors.


\(^{321}\) Stateless Protection Act, draft legislation on file with authors.


\(^{323}\) Stateless Protection Act, draft legislation on file with authors.

\(^{324}\) Under *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the United States offers birthright citizenship.

\(^{325}\) Interview with I.S. (Nov. 18, 2021).

An alternative would be to codify into law that, per *Zadvydas*, a finding of statelessness is sufficient to show that removal is not reasonably foreseeable. Although the argument against detention is based on the requirements that domestic and international law impose on the U.S. government, there are also practical reasons that the U.S. should not detain stateless individuals. For example, the UNHCR has found that “[t]here is no empirical evidence that detention deters irregular immigration….”

Moreover, detaining people is costly, and “alternatives to detention are considerably less expensive than detention.”

### iv. A Path Toward Naturalization

The only long-term solution to the problem of statelessness is citizenship. As such, Congress must provide a path to citizenship for people identified as stateless under the SDP. Any stateless protection regime without a path to citizenship would fail to address the core of the problem of statelessness. Article 32 of the 1954 Convention requires “[s]tates [to] facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings….” Accordingly, giving stateless people a path to naturalization would align the U.S. with international human rights law.

Stateless individuals in the U.S. should be able to apply for naturalization after three years of living as lawful permanent residents. The U.S. requires that asylees and refugees spend five years living as lawful permanent residents before becoming naturalized citizens, while, for example, the spouses of American citizens can become naturalized citizens after three years. Although this report has compared asylees and refugees to stateless individuals due to their shared circumstances, there is a critical difference between the two groups in this context: stateless people do not have any nationality. As such, stateless individuals, unlike refugees and asylees, should have the opportunity to become naturalized citizens after three years.

### v. Legal Statuses: Eligibility for Lawful Permanent Resident Status and Stateless Protected Status

We propose two legal statuses for individuals determined to be stateless: (1) Lawful Permanent Resident Status and (2) Stateless Protected Status. Lawful Permanent Residence (LPR) Status should be granted to those who have been determined to be stateless and who are “not inadmissible under paragraph (2) or (3) of [8 U.S.C. §1182(a)] based on criminal or national security grounds” and are moreover “not described in [8 U.S.C. §1231(b)(3)(B)(i), which allows for the removal

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328 *Id.* at 69. Thus, given the practical realities of detention, the UNHCR recommends that governments consider alternatives to detention, including “reporting requirements[,] structured community supervision, and/or case management programs.” *Id.* at 66.

329 1954 Stateless Convention art. 32.


332 *Stateless Protection Act*, draft legislation on file with authors.
from the U.S. of individuals who persecuted others in their home country].” This could be accomplished by creating a new method to adjust status to LPR status as well as creating a new category for cancellation of removal. On the other hand, Stateless Protected Status should be granted to applicants who would otherwise be eligible for lawful permanent residence as stateless individuals but who are disqualified on criminal grounds under 8 USC §1182(a)(2).

Stateless Protected Status would afford stateless individuals nearly identical rights as those given to stateless individuals who receive Lawful Permanent Resident Status. The only difference between the two is that those with Stateless Protected Status would not have a path to citizenship. In other words, stateless individuals with a qualifying criminal history under 8 USC §1182(a)(2) would be unable to become naturalized U.S. citizens, although they would retain all other rights conferred upon those identified as stateless. Thus, while certain criminal grounds would disqualify stateless individuals from achieving the full panoply of rights associated with Lawful Permanent Resident Status, having Stateless Protected Status will nevertheless give them legal status in the United States and ensure their basic human rights and human dignity. This generous status (when compared with other forms of waivers provided to humanitarian categories of migrants) makes sense in the context of the unique vulnerabilities of stateless persons.

333 Id.
334 A qualifying criminal history includes, for example, crimes involving moral turpitude, §1182(a)(2)(A)(i)(I), or multiple criminal convictions "for which the aggregate sentences to confinement actually imposed were 5 years or more." §1182(a)(2)(B).
IV. Conclusion

The United States violates both its own law and international human rights law by failing to afford stateless people their basic human rights. In addition to lacking a nationality, stateless people in the U.S. are often unable to work legally, left susceptible to prolonged and arbitrary immigration detention, subject to draconian conditions of supervisory release, and deprived of the essential identification documents required to live a minimally decent life. The U.S. government’s treatment of stateless individuals is consequently dehumanizing, in violation of international law, and contrary to the United States’ professed core values. This report outlined the abuses stateless individuals face in the U.S. and offered recommendations for reforms the U.S. government should adopt to rectify these violations.

Much of the problem of statelessness in the U.S. stems from the government’s failure to provide a legal solution for those who are stateless. As a result, stateless people are funneled into extant but ill-fitting U.S. immigration channels, or are forced to live on the margins of American society in an effort to avoid detection by immigration enforcement. Accordingly, the first step in rectifying the abuses suffered by stateless individuals is to properly identify those who are stateless and afford them adequate protections. To accomplish this, until Congress passes legislation, DHS must establish a stateless determination procedure either through administrative policy or regulatory action. This report also detailed the various procedural rights the U.S. must guarantee for this statelessness determination process to function fairly and effectively. Lastly, the report discussed the legal statuses and attendant rights that should be afforded to those identified as stateless.

There is reason to be optimistic that the U.S. legal regime regarding statelessness is headed in the right direction. DHS’s recent announcement that it was committed to adopting a definition of statelessness and recognizing individuals as such offers hope that positive change is imminent. In the spirit of encouraging the implementation of this stated commitment, this report shed light on the concrete steps that must be taken to fulfill the rights of stateless persons in the United States without further delay.
V. Appendix: FOIA Requests

I. FOIA Request to the Department of Homeland Security Customs and Border Patrol (Jan. 27, 2022)

II. FOIA Request to the Department of State (Jan. 27, 2022)

III. FOIA Request to the Executive Office for Immigration Review (EOIR) (Jan. 27, 2022)

III.a. Revised Follow-up FOIA Request to the Executive Office for Immigration Review (EOIR) (May 11, 2022)

III.b EOIR FOIA Interim Response to Request # 2022-21320 (Mar. 22, 2022)

IV. FOIA Request to United States Citizenship and Immigration Services (Jan. 27, 2022)

V. FOIA Request to United States Immigration and Customs Enforcement (Jan. 27, 2022)
FREEDOM OF INFORMATION ACT REQUEST

Dear U.S. Customs and Border Protection (CBP):

1. This is a request under the Freedom of Information Act, 5 U.S.C. § 552 et seq., by the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (Clinic). The Clinic hereby requests copies of any and all memoranda, guidance, records, spreadsheets, lists, and/or other data compilations that were prepared, received, transmitted, collected and/or maintained by CBP for the dates provided in each request below and which state, describe, refer, or relate to:

1. STATELESSNESS IN THE U.S. IMMIGRATION DETENTION SYSTEM

Requesters seek any and all records that were prepared, received, transmitted, collected and/or maintained by CBP from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.”1 However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

2. POLICIES REGARDING CITIZENSHIP AND/OR NATIONALITY DETERMINATIONS

a. Internal policies, guidance and/or memoranda concerning how immigration officers ascertain or determine a noncitizen’s2 country of citizenship and/or nationality (or lack thereof) for purposes of completing Form I-862 (“Notice to Appear”).

b. Current Records, including but not limited to internal policies, memoranda, and/or guidance, concerning how Immigration and Customs Enforcement (ICE) officers screen for citizenship and/or nationality during initial custody reviews by local offices of the Department of Homeland Security (DHS), 90-day Post Order Custody Reviews, and the Headquarters Post Departure Unit (HQPDU) 180-day review process.

3. POLICIES REGARDING DETENTION AND POST-ORDER CUSTODY REVIEW (POCR) DECISIONS

a. Internal guidance, policies and/or memoranda regarding how custody determinations under 8 C.F.R. § 241.4(h)(1) are made and communicated to detainees by the District Director or Director of the Detention and Removal Field Office, or current equivalent of such position, pursuant to 8 C.F.R. § 241.4(h)(1).

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2 The term “noncitizen” refers to an individual who is not a citizen of the United States.
4. DATA AND FORMS REGARDING POST-ORDER CUSTODY REVIEW (POCR) DECISIONS AND DETENTION

a. A blank copy of Form I-217 (“Information for Travel Document or Passport”).

b. Number or percentage of all I-217 Forms on record between January 2012 and December 2021 for which the person’s citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

Note that the Clinic does not seek any personally identifiable information about any third party in any of the above requests. If responsive records contain personally identifiable information, we respectfully request that you please redact such information and produce redacted records in response to the above request.

If EOIR has this information in electronic/computerized format, we respectfully request that you please provide it in that format, preferably in a publicly accessible format such as Microsoft Word, Microsoft Excel, or Adobe Acrobat.

If portions of the requested materials are claimed to be exempt, we respectfully request that you please indicate the specific bases for the alleged exemptions, the number of pages of withheld records, and the dates of the records withheld, and provide the remaining non-exempt portions.3

II. EXPEDITED PROCESSING REQUEST

The Clinic requests expedited processing of this request pursuant to applicable law and regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about government policy and procedures regarding immigration matters. These policies have been adversely affecting the lives of people living within our borders and will continue to do so unless they are changed.

On December 15, 2021, the U.S. Department of Homeland Security (DHS) announced its commitment to “enhance protections for stateless individuals in the United States.”4 This announcement prompted the publication of a number of press articles on the matter,5 further increasing the demand by civil society and the public for more complete information regarding the U.S. immigration system’s treatment of stateless individuals. Expedited processing would respond to this growing public demand.

3 5 USC § 552(b).
5 See, for example, an article posted on CNN on December 15th 2021: https://www.cnn.com/2021/12/15/politics/us-define-statelessness/index.html
The Clinic is “primarily engaged in disseminating information” within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the Clinic’s work and are among its primary activities.

The Clinic plans to analyze, publish, and disseminate to the public the information gathered through this request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this request to the public at no cost.

III. FEE WAIVER REQUEST

The Clinic asks that all fees associated with this FOIA request be waived, because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above, and because the disclosure is not in the Clinic’s commercial interest.6

As both a 501(c)3 nonprofit organization and an educational institution, the Clinic also asks that all search fees be waived under 6 CFR 5.11(d)(1). As part of the University of Chicago Law School, the Clinic also qualifies as an educational institution as defined by 6 CFR 5.11(b)(4). The University of Chicago Law School operates a program of scholarly research.

This request is being made directly in connection with the work of the Clinic and of the University of Chicago.

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to stateless individuals living in the U.S. Information obtained through this FOIA request will contribute to the Clinic’s public education materials on the immigration system and statelessness. It will assist the Clinic in providing understanding and awareness of the issue by the general public as well as by legal services providers. The information obtained will also inform the Clinic’s policy recommendations. The Clinic has the capacity and intent to disseminate widely the requested information to the public.

B. Disclosure of the Information Is Not in the Clinic’s Commercial Interest

The Clinic, in addition to being an educational institution, is a not-for-profit organization. The Clinic seeks the requested information for the purpose of educating members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

6 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). The Clinic is a 501(c)(3) organization that renders assistance to indigent clients through both litigation and legislative advocacy in the areas of human rights, immigration, civil rights, employment, housing, and access to justice. The work of the Clinic is completed by University of Chicago Law School students under the supervision of faculty and staff.
Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law.

If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

Mariana Olaizola Rosenblat  
Global Human Rights Clinic  
Fellow Lecturer in Law  
University of Chicago Law School  
6020 S. University Ave.  
Chicago, IL 60637  
Phone: 301-915-5744  
olaizola@uchicago.edu
FREEDOM OF INFORMATION ACT REQUEST

Dear U.S. Department of State (DOS):

1. This is a request under the Freedom of Information Act, 5 U.S.C. § 552 et seq., by the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (Clinic). The Clinic hereby requests copies of any and all memoranda, guidance, records, spreadsheets, lists, and/or other data compilations that were prepared, received, transmitted, collected and/or maintained by DOS for the dates provided in each request below and which state, describe, refer, or relate to:

1. STATELESSNESS IN THE U.S. IMMIGRATION AND/OR DETENTION SYSTEMS
   Requesters seek any and all records that were prepared, received, transmitted, collected and/or maintained by DOS from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.”1 However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

2. POLICIES REGARDING DESIGNATION OF COUNTRY OF DEPORTATION AND DEPORTATION
   Any and all current memoranda of understanding, binding agreements or nonbinding agreements between the U.S. government or any agency thereof and any foreign government for the deportation of individuals who are neither citizens of the U.S. or of the country to which they may be deported to under the given memoranda or agreement.

Note that the Clinic does not seek any personally identifiable information about any third party in any of the above requests. If responsive records contain personally identifiable information, we respectfully request that you please redact such information and produce redacted records in response to the above request.

If EOIR has this information in electronic/computerized format, we respectfully request that you please provide it in that format, preferably in a publicly accessible format such as Microsoft Word, Microsoft Excel, or Adobe Acrobat.

If portions of the requested materials are claimed to be exempt, we respectfully request that you please indicate the specific bases for the alleged exemptions, the number of pages of withheld records, and the dates of the records withheld, and provide the remaining non-exempt portions.2

2 5 USC § 552(b).
II. EXPEDITED PROCESSING REQUEST

The Clinic requests expedited processing of this request pursuant to applicable law and regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about government policy and procedures regarding immigration matters. These policies have been adversely affecting the lives of people living within our borders and will continue to do so unless they are changed.

On December 15, 2021, the U.S. Department of Homeland Security (DHS) announced its commitment to “enhance protections for stateless individuals in the United States.”\(^3\) This announcement prompted the publication of a number of press articles on the matter,\(^4\) further increasing the demand by civil society and the public for more complete information regarding the U.S. immigration system’s treatment of stateless individuals. Expedited processing would respond to this growing public demand.

The Clinic is “primarily engaged in disseminating information” within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the Clinic’s work and are among its primary activities.

The Clinic plans to analyze, publish, and disseminate to the public the information gathered through this request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this request to the public at no cost.

III. FEE WAIVER REQUEST

The Clinic asks that all fees associated with this FOIA request be waived, because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above, and because the disclosure is not in the Clinic’s commercial interest.\(^5\)

As part of the University of Chicago Law School, the Clinic also qualifies as an educational institution as defined by 22 C.F.R. 171.14(b)(ii)(A). This request is being submitted under the authority of The University of Chicago Law School, which operates a program of scholarly research. This request is being made directly in connection with the work of the Clinic and of the University of Chicago.

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\(^3\) https://www.dhs.gov/news/2021/12/15/dhs-announces-commitment-enhance-protections-stateless-individuals-united-states

\(^4\) See, for example, an article posted on CNN on December 15th 2021: https://www.cnn.com/2021/12/15/politics/us-define-statelessness/index.html

\(^5\) 5 U.S.C. § 552(a)(4)(A)(iii); see also 22 C.F.R. § 171.16. The Clinic is a 501(c)(3) organization that renders assistance to indigent clients through both litigation and legislative advocacy in the areas of human rights, immigration, civil rights, employment, housing, and access to justice. The work of the Clinic is completed by University of Chicago Law School students under the supervision of faculty and staff.
A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to stateless individuals living in the U.S. Information obtained through this FOIA request will contribute to the Clinic’s public education materials on the immigration system and statelessness. It will assist the Clinic in providing understanding and awareness of the issue by the general public as well as by legal services providers. The information obtained will also inform the Clinic’s policy recommendations. The Clinic has the capacity and intent to disseminate widely the requested information to the public.

B. Disclosure of the Information Is Not in the Clinic’s Commercial Interest

The Clinic, in addition to being an educational institution, is a not-for-profit organization. The Clinic seeks the requested information for the purpose of educating members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law.

If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

Mariana Olaizola Rosenblat
Global Human Rights Clinic
Fellow Lecturer in Law
University of Chicago Law School
6020 S. University Ave.
Chicago, IL 60637
Phone: 301-915-5744
olaizola@uchicago.edu
FREEDOM OF INFORMATION ACT REQUEST
Dear Executive Office for Immigration Review (EOIR):

I. This is a request under the Freedom of Information Act, 5 U.S.C. § 552 et seq., by the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (Clinic). The Clinic hereby requests copies of any and all memoranda, guidance, records, spreadsheets, lists, and/or other data compilations that were prepared, received, transmitted, collected and/or maintained by EOIR for the dates provided in each request below and which state, describe, refer, or relate to:

1. STATELESSNESS IN THE U.S. IMMIGRATION DETENTION SYSTEM
Requesters seek any and all records that were prepared, received, transmitted, collected and/or maintained by EOIR from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.”1 However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

2. POLICIES REGARDING DESIGNATION OF COUNTRY OF DEPORTATION AND DEPORTATION
Internal guidance, policies and/or memoranda regarding how immigration authorities are to determine the country to which a noncitizen is to be removed, pursuant to 8 U.S.C.A. § 1231(b)(2)(d) and (e), specifically for noncitizens whose citizenship and/or nationality cannot not be determined or is uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

3. DATA REGARDING DEPORTATION
The number of noncitizens deported in each month from January 2012 to December 2021 to countries where they are not citizens and/or nationals, as designated by the Attorney General under 8 U.S.C 1231 (b)(2)(E)(vii), broken down by country of deportation.

4. DATA REGARDING FINAL ORDERS OF REMOVAL
    a. The number of final orders of removal in each month from January 2012 to December 2021 for noncitizens whose citizenship and/or nationality could not be determined or was uncertain, and/or who are not citizens or nationals of any country.

    b. The number of final orders of removal in each month from January 2012 to December 2021 for noncitizens who were identified or labeled as stateless

    c. The number of final orders of removal in each month from January 2012 to December 2021 for noncitizens for whom no country of removal had been designated.

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d. The number of final orders of removal in each month from January 1991 to December 2021 for noncitizens who designated a country of removal which was then dissolved, including but not limited to the Soviet Union, Yugoslavia, Czechoslovakia, and Abyssinia, broken down by the designated country of removal.

e. The number of final orders of removal in each month from January 1991 to December 2021 for noncitizens who designated a country of removal which was then dissolved, including but not limited to Russia, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, and Slovenia, broken down by the designated country of removal.

Note that the Clinic does not seek any personally identifiable information about any third party in any of the above requests. If responsive records contain personally identifiable information, we respectfully request that you please redact such information and produce redacted records in response to the above request.

If EOIR has this information in electronic/computerized format, we respectfully request that you please provide it in that format, preferably in a publicly accessible format such as Microsoft Word, Microsoft Excel, or Adobe Acrobat.

If portions of the requested materials are claimed to be exempt, we respectfully request that you please indicate the specific bases for the alleged exemptions, the number of pages of withheld records, and the dates of the records withheld, and provide the remaining non-exempt portions.2

II. EXPEDITED PROCESSING REQUEST

The Clinic requests expedited processing of this request pursuant to applicable law and regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about government policy and procedures regarding immigration matters. These policies have been adversely affecting the lives of people living within our borders and will continue to do so unless they are changed.

On December 15, 2021, the U.S. Department of Homeland Security (DHS) announced its commitment to “enhance protections for stateless individuals in the United States.”3 This announcement prompted the publication of a number of press articles on the matter,4 further increasing the demand by civil society and the public for more complete information regarding the U.S. immigration system’s treatment of stateless individuals. Expedited processing would respond to this growing public demand.

2 5 USC § 552(b)
4 See, for example, an article posted on CNN on December 15th 2021: https://www.cnn.com/2021/12/15/politics/us-define-statelessness/index.html
The Clinic is “primarily engaged in disseminating information” within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the Clinic’s work and are among its primary activities.

The Clinic plans to analyze, publish, and disseminate to the public the information gathered through this request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this request to the public at no cost.

III. FEE WAIVER REQUEST

The Clinic asks that all fees associated with this FOIA request be waived, because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above, and because the disclosure is not in the Clinic’s commercial interest.5

As part of the University of Chicago Law School, the Clinic also qualifies as an educational institution as defined by 28 C.F.R. 16.10(b)(4). The University of Chicago Law School operates a program of scholarly research. This request is being made directly in connection with the work of the Clinic and of the University of Chicago.

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to stateless individuals living in the U.S. Information obtained through this FOIA request will contribute to the Clinic’s public education materials on the immigration system and statelessness. It will assist the Clinic in providing understanding and awareness of the issue by the general public as well as by legal services providers. The information obtained will also inform the Clinic’s policy recommendations. The Clinic has the capacity and intent to disseminate widely the requested information to the public.

B. Disclosure of the Information Is Not in the Clinic’s Commercial Interest

The Clinic, in addition to being an educational institution, is a not-for-profit organization. The Clinic seeks the requested information for the purpose of educating members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

5 5 U.S.C. § 552(a)(4)(A)(iii); see also 28 C.F.R. § 16.10(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). The Clinic is a 501(c)(3) organization that renders assistance to indigent clients through both litigation and legislative advocacy in the areas of human rights, immigration, civil rights, employment, housing, and access to justice. The work of the Clinic is completed by University of Chicago Law School students under the supervision of faculty and staff.
Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law.

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Fellow Lecturer in Law
University of Chicago Law School
6020 S. University Ave.
Chicago, IL 60637
Phone: 301-915-5744
olaizola@uchicago.edu
FREEDOM OF INFORMATION ACT REQUEST

Dear Executive Office for Immigration Review (EOIR):

This is a follow-up to our previous FOIA request, 2022-21320, adjusting the language of our first request.

I. This is a request under the Freedom of Information Act, 5 U.S.C. § 552 et seq., by the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (Clinic). The Clinic hereby requests: all internal policies, guidelines, and/or memoranda that were prepared, received, transmitted, collected and/or maintained by EOIR from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.”1 However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

II. EXPEDITED PROCESSING REQUEST

The Clinic requests expedited processing of this request pursuant to applicable law and regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about government policy and procedures regarding immigration matters. These policies have been adversely affecting the lives of people living within our borders and will continue to do so unless they are changed.

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3 See, for example, an article posted on CNN on December 15th 2021: https://www.cnn.com/2021/12/15/politics/us-define-statelessness/index.html
The Clinic plans to analyze, publish, and disseminate to the public the information gathered through this request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this request to the public at no cost.

III. FEE WAIVER REQUEST

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As part of the University of Chicago Law School, the Clinic also qualifies as an educational institution as defined by 28 C.F.R. 16.10(b)(4). The University of Chicago Law School operates a program of scholarly research. This request is being made directly in connection with the work of the Clinic and of the University of Chicago.

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The Clinic, in addition to being an educational institution, is a not-for-profit organization. The Clinic seeks the requested information for the purpose of educating members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law.

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4 5 U.S.C. § 552(a)(4)(A)(iii); see also 28 C.F.R. § 16.10(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). The Clinic is a 501(c)(3) organization that renders assistance to indigent clients through both litigation and legislative advocacy in the areas of human rights, immigration, civil rights, employment, housing, and access to justice. The work of the Clinic is completed by University of Chicago Law School students under the supervision of faculty and staff.
If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

Mariana Olaizola Rosenblat  
Global Human Rights Clinic  
Fellow Lecturer in Law  
University of Chicago Law School  
6020 S. University Ave.  
Chicago, IL 60637  
Phone: 301-915-5744  
olaizola@uchicago.edu
Dear Ms. Rosenblat,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) dated 01/27/2022 in which you seek records related to

1. Statelessness in the U.S. Immigration Detention System- Requesters seek any and all records that were prepared, received, transmitted, collected and/or maintained by EOIR from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.” However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

2. Policies regarding Designation of Country of Deportation and Deportation-Internal guidance, policies and/or memoranda regarding how immigration authorities are to determine the country to which a noncitizen is to be removed, pursuant to 8 U.S.C.A. § 1231(b)(2)(d) and (e), specifically for noncitizens whose citizenship and/or nationality cannot not be determined or is uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

3. Data regarding Deportation The number of noncitizens deported in each month from January 2012 to December 2021 to countries where they are not citizens and/or nationals, as designated by the Attorney General under 8 U.S.C 1231 (b)(2)(E)(vii), broken down by country of deportation.

4. Data regarding Final Orders of Removal
   a. The number of final orders of removal in each month from January 2012 to December 2021 for noncitizens whose citizenship and/or nationality could not be determined or was uncertain, and/or who are not citizens or nationals of any country.
   b. The number of final orders of removal in each month from January 2012 to December 2021 for noncitizens who were identified or labeled as stateless
   c. The number of final orders of removal in each month from January 2012 to December 2021 for noncitizens for whom no country of removal had been designated.
   d. The number of final orders of removal in each month from January 1991 to December 2021 for noncitizens who designated a country of removal which was then dissolved, including but not limited to the Soviet Union, Yugoslavia, Czechoslovakia, and Abyssinia, broken down by the designated country of removal.
   e. The number of final orders of removal in each month from January 1991 to December 2021 for noncitizens who designated a country of removal which was then dissolved, including but not limited to Russia, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, and Slovenia, broken down by the designated country of removal.
Pertaining to item 2 of your request, a search was conducted and no records were located.

Additionally, pertaining to item 3, after careful review of this portion of your request, we determined the information you are seeking to obtain are not agency records under the purview of the EOIR. You may wish to submit a request to the Department of Homeland Security (DHS).

Also, pertaining to item 4, the information you seek is publicly available at our webpage here under “EOIR CASE data”: https://www.justice.gov/eoir/foia-library-0. Specifically, monthly TRAC data, code “SS” under Field “NAT” in Table A_TblCase. Note that the tables can be filtered and sorted by converting the files to Excel spreadsheet per the vendor instructions here https://docs.microsoft.com/en-us/power-automate/desktop-flows/how-to/convert-csv-excel. A lookup table is also provided to explain codes used in the tables. Multiple tables can be cross-referenced using the IDN CASE.

In addition, pertaining to item 1, your request as-filed for records would require the Executive Office of Immigration Review to conduct an unreasonably burdensome search. Because your request would require an unreasonably burdensome search your request will be placed on hold.

Please contact EOIR to clarify item 1 of your request and discuss possible way to narrow the scope of your request. If we do not hear from you within 30 calendar days of this notice, we will assume that you are no longer interested and your request will be administratively closed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. See http://www.justice.gov/oip/foiapost/2012foiapost9.html.

You may contact the EOIR FOIA Public Liaison at (703) 605-1297 or EOIR.FOIArequests@usdoj.gov for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.
If you are not satisfied with the Executive Office for Immigration Review’s determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the correspondence and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

Jeniffer Perez Santiago

Attorney Advisor
FREEDOM OF INFORMATION ACT REQUEST

Dear United States Citizenship and Immigration Services (USCIS):

I. This is a request under the Freedom of Information Act, 5 U.S.C. § 552 et seq., by the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (Clinic). The Clinic hereby requests copies of any and all memoranda, guidance, records, spreadsheets, lists, and/or other data compilations that were prepared, received, transmitted, collected and/or maintained by USCIS for the dates provided in each request below and which state, describe, refer, or relate to:

1. STATELESSNESS IN THE U.S. IMMIGRATION AND/OR DETENTION SYSTEMS

   Requesters seek any and all records that were prepared, received, transmitted, collected and/or maintained by USCIS from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.”¹ However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

2. POLICIES REGARDING CITIZENSHIP AND/OR NATIONALITY DETERMINATIONS

   a. Internal policies, guidance and/or memoranda concerning how immigration officers ascertain or determine a noncitizen’s² country of citizenship and/or nationality for purposes of completing an I-862 Form (“Notice to Appear”).

   b. Records including but not limited to internal policies, memoranda, and/or guidance concerning how ICE officers screen for citizenship and/or nationality during initial custody reviews by local DHS offices, 90-day Post Order Custody Reviews, and the Headquarters Post Departure Unit (HQPDU) 180-day review process.

3. POLICIES REGARDING DETENTION AND POST-ORDER CUSTODY REVIEW (POCR) DECISIONS

   a. Internal guidance, policies and/or memoranda regarding how custody determinations under 8 C.F.R. § 241.4(h)(1) are made and communicated to detainees by the District Director or Director of the Detention and Removal Field Office, or current equivalent of such position, pursuant to 8 C.F.R. § 241.4(h)(1).

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² The term “noncitizen” refers to an individual who is not a citizen of the United States.
4. DATA AND FORMS REGARDING POST-ORDER CUSTODY REVIEW (POCR) DECISIONS AND DETENTION

a. A blank copy of Form I-217 (“Information for Travel Document or Passport”).

b. Number or percentage of all Form I-217s on record between January 2012 and December 2021 for which the person’s citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

5. POLICIES REGARDING GRANTS OF RELEASE

a. Current internal guidelines, standards, factors, and/or policies used by USCIS to determine when an “alien cannot be removed in a timely manner” under C.F.R. § 241.5(c)(1).

b. Current internal guidelines, standards, factors, and/or policies used by USCIS to determine when “removal of the alien is impracticable or contrary to public interest.” under C.F.R. § 241.5(c)(2).

6. DATA REGARDING EMPLOYMENT AUTHORIZATION

a. Number of grants and denials of Form I-765 applications (“Application for Employment Authorization”) in each month from January 2012 to December 2021 for noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

b. Number of grants and denials of Form I-765 applications (“Application for Employment Authorization”) in each month from January 2012 to December 2021 for previous residents but noncitizens of the following countries: Spain, South Africa, South Korea, Ethiopia, Eritrea, Palestine, Mauritania, Sudan, Tibet, Kuwait, Saudi Arabia, Haiti, Dominican Republic, Nepal, Vietnam, Laos, Thailand, Myanmar, Soviet Union, Yugoslavia, Czechoslovakia, Abyssinia, Russia, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, or Slovenia.

e. Average number of days between the applicant’s first submission of Application for Employment Authorization and the corresponding initial grant of Employment Authorization Document (EAD) in each month from January 2012 to December 2021 for noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.
d. Average number of days between the applicant's first submission of Application for Employment Authorization and the corresponding initial grant of EAD in each month from January 2012 to December 2021 for noncitizens who listed their country of citizenship and/or nationality as Spain, South Africa, South Korea, Ethiopia, Eritrea, Palestine, Mauritania, Sudan, Tibet, Kuwait, Saudi Arabia, Haiti, Dominican Republic, Nepal, Vietnam, Laos, Thailand, Myanmar, Soviet Union, Yugoslavia, Czechoslovakia, Abyssinia, Russia, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, or Slovenia, broken down by month and country of citizenship and/or nationality.

e. Average number of days between the applicant's first submission of Application for Employment Authorization and the corresponding initial grant of EAD in each month from January 2012 to December 2021, broken down by month and country of citizenship and/or nationality.

f. Average number of days between the submission of application for renewal of EAD and the corresponding grant of renewal of EAD in each month from January 2012 to December 2021 for those who both hold Employment Authorization at the time of application and are noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

g. Average number of days between the submission of Application for renewal of EAD and the corresponding grant of renewal of EAD in each month from January 2012 to December 2021 for all applicants who hold Employment Authorization at the time of application.

h. Number of granted EADs with a maximum EAD validity greater than one year from issue date in each month from January 2012 to December 2021 for noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country and have been granted an EAD.

i. Number of granted EADs with a maximum EAD validity greater than one year from issue date in each month from January 2012 to December 2021 for noncitizens who have been granted an EAD and listed their country and/or nationality as Spain, South Africa, South Korea, Ethiopia, Eritrea, Palestine, Mauritania, Sudan, Tibet, Kuwait, Saudi Arabia, Haiti, Dominican Republic, Nepal, Vietnam, Laos, Thailand, Myanmar, Soviet Union, Yugoslavia, Czechoslovakia, Abyssinia, Russia, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, or Slovenia.
j. Average number of consecutive years for which a noncitizen holding a valid EAD as of January 20, 2022 has renewed their EAD, broken down by country of citizenship and/or nationality, including instances in which citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

Note that the Clinic does not seek any personally identifiable information about any third party in any of the above requests. If responsive records contain personally identifiable information, we respectfully request that you please redact such information and produce redacted records in response to the above request.

If EOIR has this information in electronic/computerized format, we respectfully request that you please provide it in that format, preferably in a publicly accessible format such as Microsoft Word, Microsoft Excel, or Adobe Acrobat.

If portions of the requested materials are claimed to be exempt, we respectfully request that you please indicate the specific bases for the alleged exemptions, the number of pages of withheld records, and the dates of the records withheld, and provide the remaining non-exempt portions.\(^3\)

II. EXPEDITED PROCESSING REQUEST

The Clinic requests expedited processing of this request pursuant to applicable law and regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about government policy and procedures regarding immigration matters. These policies have been adversely affecting the lives of people living within our borders and will continue to do so unless they are changed.

On December 15, 2021, the U.S. Department of Homeland Security (DHS) announced its commitment to “enhance protections for stateless individuals in the United States.”\(^4\) This announcement prompted the publication of a number of press articles on the matter,\(^5\) further increasing the demand by civil society and the public for more complete information regarding the U.S. immigration system’s treatment of stateless individuals. Expedited processing would respond to this growing public demand.

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\(^3\) 5 USC § 552(b)

\(^4\) https://www.dhs.gov/news/2021/12/15/dhs-announces-commitment-enhance-protections-stateless-individuals-united-states

\(^5\) See, for example, an article posted on CNN on December 15th 2021: https://www.cnn.com/2021/12/15/politics/us-define-statelessness/index.html
The Clinic is “primarily engaged in disseminating information” within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the Clinic’s work and are among its primary activities.

The Clinic plans to analyze, publish, and disseminate to the public the information gathered through this request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this request to the public at no cost.

III. FEE WAIVER REQUEST

The Clinic asks that all fees associated with this FOIA request be waived, because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above, and because the disclosure is not in the Clinic’s commercial interest.6

As both a 501(c)3 nonprofit organization and an educational institution, the Clinic also asks that all search fees be waived under 6 CFR 5.11(d)(1). As part of the University of Chicago Law School, the Clinic also qualifies as an educational institution as defined by 6 CFR 5.11(b)(4). The University of Chicago Law School operates a program of scholarly research. This request is being made directly in connection with the work of the Clinic and of the University of Chicago.

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to stateless individuals living in the U.S. Information obtained through this FOIA request will contribute to the Clinic’s public education materials on the immigration system and statelessness. It will assist the Clinic in providing understanding and awareness of the issue by the general public as well as by legal services providers. The information obtained will also inform the Clinic’s policy recommendations. The Clinic has the capacity and intent to disseminate widely the requested information to the public.

B. Disclosure of the Information Is Not in the Clinic’s Commercial Interest

The Clinic, in addition to being an educational institution, is a not-for-profit organization. The Clinic seeks the requested information for the purpose of educating members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

6 5 U.S.C. § 552(a)(4)(A)(ii); see also 6 C.F.R. § 5.11(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). The Clinic is a 501(c)(3) organization that renders assistance to indigent clients through both litigation and legislative advocacy in the areas of human rights, immigration, civil rights, employment, housing, and access to justice. The work of the Clinic is completed by University of Chicago Law School students under the supervision of faculty and staff.
Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law.

If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

Mariana Olaizola Rosenblat
Global Human Rights Clinic
Fellow Lecturer in Law
University of Chicago Law School
6020 S. University Ave.
Chicago, IL 60637
Phone: 301-915-5744
olaizola@uchicago.edu
FREEDOM OF INFORMATION ACT REQUEST

Dear U.S. Immigration and Customs Enforcement (ICE):

I. This is a request under the Freedom of Information Act, 5 U.S.C. § 552 et seq., by the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (Clinic). The Clinic hereby requests copies of any and all memoranda, guidance, records, spreadsheets, lists, and/or other data compilations that were prepared, received, transmitted, collected and/or maintained by ICE for the dates provided in each request below and which state, describe, refer, or relate to:

1. STATELESSNESS IN THE U.S. IMMIGRATION AND/OR DETENTION SYSTEMS

   Requesters seek any and all records that were prepared, received, transmitted, collected and/or maintained by ICE from January 2012 to January 2022 which describe, refer, or relate to stateless individuals. We are defining “stateless” as a person “who is not considered a national by any state under the operation of its law.” However, we seek all materials referencing “stateless” or “statelessness” even if the agency uses a different definition or does not define the term.

2. POLICIES REGARDING CITIZENSHIP AND/OR NATIONALITY DETERMINATIONS

   a. Internal policies, guidance and/or memoranda concerning how immigration officers ascertain or determine a noncitizen’s country of citizenship and/or nationality for purposes of completing an I-862 Form (“Notice to Appear”).

   b. Records including but not limited to internal policies, memoranda, and/or guidance concerning how ICE officers screen for citizenship and/or nationality during initial custody reviews by local offices of the U.S. Department of Homeland Security (DHS), 90-day Post Order Custody Reviews, and the Headquarters Post Departure Unit (HQPDU) 180-day review process.

3. POLICIES REGARDING DETENTION AND POST-ORDER CUSTODY REVIEW (POCR) DECISIONS

   a. Internal guidance, policies and/or memoranda regarding how custody determinations under 8 C.F.R. § 241.4(h)(1) are made and communicated to detainees by the District Director or Director of the Detention and Removal Field Office, or current equivalent of such position, pursuant to 8 C.F.R. § 241.4(h)(1).

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2 The term “noncitizen” refers to an individual who is not a citizen of the United States.
4. DATA AND FORMS REGARDING POST-ORDER CUSTODY REVIEW (POCR) DECISIONS AND DETENTION

a. A blank copy of Form I-217 (“Information for Travel Document or Passport”).

b. Number and/or percentage of all I-217 Forms on record between January 2012 and December 2021 for which the person’s citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

c. Number of noncitizens who are or have been in detention beyond their 180-day HQPDU review, as of the first of each month for each month between January 2012 and December 2021, broken down by country of citizenship and/or nationality, including those whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

d. Number of noncitizens who are or have been in detention beyond their 180-day HQPDU review, as of the first of each month for each month between January 2012 and December 2021, broken down by country of last habitual residence for those whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

e. Copies of declarations of Failure to Comply with Removal sent to noncitizens between January 1, 2012 and December 31, 2021 whose country of citizenship and/or nationality could not be determined or is uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country, pursuant to 8 C.F.R 241.13 (e)(2), explaining the noncitizen’s failure to cooperate with their removal order. Please redact any confidential information as appropriate.

f. Written documentation by the HQPDU, pursuant to 8 C.F.R. 241.13(g), explaining Post-Order Custody Review (POCR) decisions for noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country between January 1, 2012 and December 31, 2021, with any confidential information redacted as appropriate.
5. DATA REGARDING DETENTION

a. The citizenship country, book-in date, final order date, removal date, and departed-to country of all noncitizens held in ICE detention from January 2012 to December 2021.

b. The book-in date, final order date, removal date, and departed-to country of all deported noncitizens who were held in ICE detention from January 2012 to December 2021, and whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

c. Average length of stay in detention for those who entered detention between January 1, 2010 and December 31, 2021, broken down by month of book-in date, for detainees designated as nationals and/or citizens of: Spain, South Africa, South Korea, Ethiopia, Eritrea, Palestine, Mauritania, Sudan, Tibet, Kuwait, Saudi Arabia, Haiti, Dominican Republic, Nepal, Vietnam, Laos, Thailand and Myanmar.

d. Average length of stay in detention for those who entered detention between January 1, 2010 and December 31, 2021, broken down by month of book-in date, whose country of last habitual residence was: Spain, South Africa, South Korea, Ethiopia, Eritrea, Palestine, Mauritania, Sudan, Tibet, Kuwait, Saudi Arabia, Haiti, Dominican Republic, Nepal, Vietnam, Laos, Thailand and Myanmar, and who do not have confirmed citizenship and/or nationality in their country of last habitual residence.

e. Average length of stay in detention for those who entered detention between January 1, 1991 and December 31, 2021, broken down by month of book-in date, for detainees designated as nationals and/or citizens of, or whose country of last habitual residence was: the Soviet Union, Yugoslavia, Czechoslovakia, or Abyssinia.

f. Average length of stay in detention for those who entered detention between January 1, 1991 and December 31, 2021, broken down by month of book-in date, for detainees designated as nationals and/or citizens of, or whose country of last habitual residence was: Russia, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, or Slovenia.
6. DATA REGARDING DESIGNATION OF COUNTRY OF DEPORTATION

a. The countries which non-arriving noncitizen detainees designated for removal pursuant to INA 241 (8 U.S.C. 1231(b)(2)(A)(i)) and the number of detainees who designated each country in each month from January 2012 to December 2021.

b. The number of noncitizens for which their designated country of deportation was disregarded pursuant to 8 U.S.C. 1231(b)(2)(C)(ii) in each month from January 2012 to December 2021, broken down by disregarded country of deportation and/or by month.

c. The number of noncitizens for which their designated country of deportation was disregarded because “the government of the country is not willing to accept the alien into the country” pursuant to 8 U.S.C. 1231(b)(2)(C)(iii) in each month from January 2012 to December 2021, broken down by disregarded country of deportation and/or by month.

d. The number of noncitizens whose country of designation was disregarded pursuant to 8 U.S.C. 1231(b)(2)(C), and for whom an alternative removal “to a country of which the alien is a subject, national, or citizen” under 8 U.S.C. 1231(b)(2)(D) was also unsuccessful due to the exceptions in 8 U.S.C. 1231(b)(2)(D)(i) and 8 U.S.C. 1231(b)(2)(D)(i)(ii) in each month from January 2012 to December 2021, broken down by the country to which removal was attempted under 8 U.S.C. 1231(b)(2)(D).

7. DATA REGARDING DEPORTATION

a. Number of ICE removals by country of citizenship and month of removal for each month from January 2012 to December 2021, including those whose citizenship was unknown or undetermined.

b. Number of ICE removals by departed to country and month of removal for each month from January 2012 to December 2021, including instances where the country to which the individual departed to is unknown.

c. Number of ICE removals for which the individual’s citizenship was unknown, broken down by the country to which they were deported and the month in which they were deported for each month from January 2012 to December 2021.

d. The number of noncitizens deported in each month from January 2012 to December 2021 to countries where they are not citizens and/or nationals, as designated by the Attorney General under 8 U.S.C 1231 (b)(2)(E)(vii), broken down by country of deportation.
8. POLICIES REGARDING RELEASE DECISIONS

a. Current internal guidelines, standards, factors and/or policies used by the Travel Document Unit when making a determination under C.F.R. § 241.13 that there is “no significant likelihood of removal in the reasonably foreseeable future” and/or is a situation where “removal is not reasonably foreseeable,” therefore requiring release.

b. Historical data regarding the length of time removal to a given country has taken and/or the historical success of removal to a given country that is currently used, relied on, and/or available for reference to the Travel Document Unit and/or ICE Detention and Removal (DRO) when making a determination under C.F.R. § 241.13 that there is “no significant likelihood of removal in the reasonably foreseeable future” and/or situations where “removal is not reasonably foreseeable,” therefore requiring release.

9. POLICIES REGARDING APPLICATION FOR RELEASE

a. Internal guidelines, standards, factors and/or policies used by the Executive Associate Commissioner and/or other relevant HQPDU office to determine that a noncitizen detainee has submitted “information sufficient to establish his or her compliance with the obligation to effect his or her removal and to cooperate in the process of obtaining necessary travel documents” under 8 C.F.R. § 241.1(d)(2).

10. DATA REGARDING TIMING OF APPLICATIONS FOR RELEASE

a. Number of written requests for release submitted in each month from January 2012 to December 2021 from noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country for which considerations were postponed until after expiration of the removal period under 8 C.F.R. § 241.13(d)(3).

b. Number of written requests for release submitted in each month from January 2012 to December 2021 from noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country, for which consideration was not postponed under 8 C.F.R. § 241.1(d)(3) and instead began prior to the expiration of the removal period.

11. DATA REGARDING REVIEW OF APPLICATIONS FOR RELEASE

a. Number of requests for review of likelihood of removal in the reasonably foreseeable future, or for release due to likelihood of removal in the reasonably foreseeable future under 8 C.F.R. § 241.13, that were forwarded to the Department of State for information and assistance under 8 C.F.R. § 241.13 (e)(3) in each month from January 2012 to December 2021, broken down by the country to which the noncitizen was ordered to be removed to (if any).
b. Number of requests for review of likelihood of removal in the reasonably foreseeable future, or for release due to likelihood of removal in the reasonably foreseeable future under 8 C.F.R. § 241.13, that were forwarded to the Department of State for information and assistance under 8 C.F.R. § 241.13 (e)(3) in each month from January 2012 to December 2021, from noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country, broken down by the country to which the noncitizen was ordered to be removed to (if any).

c. Number of requests for review of likelihood of removal in the reasonably foreseeable future or for release due to likelihood of removal in the reasonably foreseeable future under 8 C.F.R. § 241.13 that were forwarded to the Department of State for information and assistance under 8 C.F.R. § 241.13 (e)(3) in each month from January 2012 to December 2021, from noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country, broken down by the noncitizen’s country of last habitual residence.

d. Number of noncitizens whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country found not to have “cooperate[d] in the process of obtaining necessary travel documents” pursuant to 8 C.F.R. § 241.1(d)(2) and C.F.R. § 241.1(e)(2), preventing their release under orders of supervision, in each month from January 2012 to December 2021.

12. POLICIES REGARDING REVIEW OF APPLICATIONS FOR RELEASE

a. Current internal guidelines, standards, factors and/or policies currently in effect used to evaluate factors under 8 C.F.R. § 241.13 (f) to determine a significant likelihood of removal based upon each of:

i. “the history of the alien’s efforts to comply with the order of removal”

ii. “the alien’s assistance with” “the Service’s efforts to remove aliens to the country in question or to third countries”

iii. the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question

b. Guidance and policies which were updated after the release of the 2007 DHS Office of Inspector General’s Report, ICE’s Compliance With Detention Limits for Aliens With a Final Order of Removal From the United States,4 which clarified, elaborated on, and/or modified the methodology for evaluating the likelihood of removal for all cases, in order to increase transparency and objectivity.

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4 This report can be found at https://www.oig.dhs.gov/assets/Mgmt/OIG_07-28_Feb07.pdf. See pages 31-33 for discussion of the recommendation we are referring to.
13. DATA REGARDING GRANTS OF RELEASE

a. Number of individuals with a criminal record who were released because they had been in detention for six months and removal was not reasonably foreseeable (per Zadvydas v. Davis) in each month from January 2012 to December 2021 and whose citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country, broken down by the released individual's country of last habitual residence, including cases in which a country of last habitual residence could not be determined.

b. Number of individuals with a criminal record who were released because they had been in detention for six months and removal was not reasonably foreseeable (per Zadvydas v. Davis) in each month from January 2012 to December 2021 broken down by country of citizenship and/or nationality, including those for which the noncitizen's citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

c. Number of individuals without a criminal record who were released because they had been in detention for six months and removal was not reasonably foreseeable (per Zadvydas v. Davis) in each month from January 2012 to December 2021 for which the noncitizen's citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country, broken down by the released individual's country of last habitual residence, including cases in which a country of last habitual residence could not be determined.

d. Number of individuals without a criminal record who were released because they had been in detention for six months and removal was not reasonably foreseeable (per Zadvydas v. Davis) in each month from January 2012 to December 2021 broken down by country of citizenship and/or nationality, including those for which the noncitizen's citizenship and/or nationality could not be determined or was uncertain, who have been labeled stateless, and/or who are not citizens or nationals of any country.

e. Number of noncitizens currently under orders of supervision as of January 20, 2022, broken down by the month and year in which they were released under orders of supervision.

5 Zadvydas v. Davis, 533 U.S. 678.
f. Number of noncitizens who have been labeled stateless, whose citizenship and/or nationality are uncertain or could not be determined, and/or who are not citizens or nationals of any country released under orders of supervision in each month between January 2012 and December 2021.

g. Number of noncitizens under orders of supervision as of January 20th, 2022 who have been labeled stateless, whose citizenship and/or nationality are uncertain or could not be determined, and/or who are not citizens or nationals of any country, broken down by the month and year in which they were released under orders of supervision.

14. POLICIES REGARDING CONDITIONS ATTACHED TO RELEASE

a. Internal guidelines, standards, factors and/or policies currently in effect regarding the determination or consideration of “conditions that the HQPDU considers necessary to ensure public safety and guarantee the alien’s compliance with the order of removal” under C.F.R. § 241.13 (h)(1).

b. All current internal guidelines used by the Secretary of Homeland Security, pursuant to 8 U.S.C.A. § 1231(a)(3) and 8 C.F.R. § 241.13 (h)(1), outlining, explaining, or otherwise describing the conditions under which non-citizens may be released subject to supervision.

Note that the Clinic does not seek any personally identifiable information about any third party in any of the above requests. If responsive records contain personally identifiable information, we respectfully request that you please redact such information and produce redacted records in response to the above request.

If EOIR has this information in electronic/computerized format, we respectfully request that you please provide it in that format, preferably in a publicly accessible format such as Microsoft Word, Microsoft Excel, or Adobe Acrobat.

If portions of the requested materials are claimed to be exempt, we respectfully request that you please indicate the specific bases for the alleged exemptions, the number of pages of withheld records, and the dates of the records withheld, and provide the remaining non-exempt portions.6

6 5 USC § 552(b).
II. EXPEDITED PROCESSING REQUEST

The Clinic requests expedited processing of this request pursuant to applicable law and regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about government policy and procedures regarding immigration matters. These policies have been adversely affecting the lives of people living within our borders and will continue to do so unless they are changed.

On December 15, 2021, the U.S. Department of Homeland Security (DHS) announced its commitment to “enhance protections for stateless individuals in the United States.” This announcement prompted the publication of a number of press articles on the matter, further increasing the demand by civil society and the public for more complete information regarding the U.S. immigration system’s treatment of stateless individuals. Expedited processing would respond to this growing public demand.

The Clinic is “primarily engaged in disseminating information” within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the Clinic’s work and are among its primary activities.

The Clinic plans to analyze, publish, and disseminate to the public the information gathered through this request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this request to the public at no cost.

III. FEE WAIVER REQUEST

The Clinic asks that all fees associated with this FOIA request be waived, because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above, and because the disclosure is not in the Clinic’s commercial interest. As both a 501(c)3 nonprofit organization and an educational institution, the Clinic also asks that all search fees be waived under 6 CFR 5.11(d)(1). As part of the University of Chicago Law School, the Clinic also qualifies as an educational institution as defined by 6 CFR 5.11(b)(4). The University of Chicago Law School operates a program of scholarly research. This request is being made directly in connection with the work of the Clinic and of the University of Chicago.

8 See, for example, an article posted on CNN on December 15th 2021: https://www.cnn.com/2021/12/15/politics/us-define-statelessness/index.html
9 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). The Clinic is a 501(c)(3) organization that renders assistance to indigent clients through both litigation and legislative advocacy in the areas of human rights, immigration, civil rights, employment, housing, and access to justice. The work of the Clinic is completed by University of Chicago Law School students under the supervision of faculty and staff.
A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to stateless individuals living in the U.S. Information obtained through this FOIA request will contribute to the Clinic’s public education materials on the immigration system and statelessness. It will assist the Clinic in providing understanding and awareness of the issue by the general public as well as by legal services providers. The information obtained will also inform the Clinic’s policy recommendations. The Clinic has the capacity and intent to disseminate widely the requested information to the public.

B. Disclosure of the Information Is Not in the Clinic’s Commercial Interest

The Clinic, in addition to being an educational institution, is a not-for-profit organization.

The Clinic seeks the requested information for the purpose of educating members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law.

If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

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VI. Acknowledgments

This report was led and conceived by Mariana Olaizola Rosenblat while she was Lecturer and Global Human Rights Clinic Fellow at the University of Chicago Law School, in consultation with a core team at United Stateless, including its founding member and Executive Director, Karina Ambartsoumian-Clough.

The research and drafting of the report were primarily carried out by a team of law students at the University of Chicago Law School: Nick Schcolnik, Negar Shaban, Molly Stepchuk and Clare Chiodini. We thank them for devoting many hours to this project despite other academic obligations and for infusing the research with their thoughtful analysis, critical perspectives, and empathy for the plight of stateless individuals.

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