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An Analysis on the United States' Approach to Resolving Statelessness

Introduction

In 2004, American director Steven Spielberg unveiled his comedic-drama, *The Terminal,* starring Tom Hanks. Hanks portrays Viktor Navorski, a traveler who arrives at John F. Kennedy International Airport from the fictional state of Krakozhia. Viktor is stopped from leaving the airport, as U.S. Customs and Border Protection fails to recognize his travel documents. Unbeknownst to Viktor, his home country of Krakozhia has experienced a military coup during his transit overseas; the former government that issued his passport no longer existed and had become invalid. Viktor's visa could not be formally processed to admit him into the country. However, Viktor was also unable to return home. As his passport was issued by a government that no longer existed, the new military regime of Krakozhia would also not recognize Viktor, either as a foreigner from abroad or as one of its citizens. Not understanding the reasons for his apprehension, the Customs and Border Protection Director explains the facing issue facing Viktor:

> "No more Krakozhia! OK? New government! Revolution! You understand? All of the flights in and out of your country have been suspended indefinitely. The new government has sealed all borders, which means that your passport and visa are no longer valid. So currently, you are a citizen of nowhere. [...] You don't qualify for asylum, refugee status, temporary protective status, humanitarian parole, or non-immigration work travel. You don't qualify for any of these. You are, simply, at this time… unacceptable."[1]

[1] *The Terminal,* directed by Steven Spielberg, (2004: Universal City, CA; DreamWorks Pictures), DVD, https://www.youtube.com/watch?v=nmuXMDLYzPg. Based on the true story of Mehran Karimi Nasseri, an Iranian refugee who was forced to stay in Charles de Gaulle International Airport in Paris, France after his refugee identification papers were stolen, rendering him stateless.

Unable to either enter the United States or depart home for Krakozhia, Viktor is left with no choice but to shelter in place at JFK's terminal lounge for an indefinite amount of time. He begins to construct a makeshift home within the terminal, with nothing but his suitcase, invalid passport, and a can of Planter's peanuts. All he could do was wait and hope that Krakozhia's former government would be restored or that he would be gifted with new identification documents. Nine months following Viktor's initial apprehension, he wakes to the news that Krakozhia's civil war has ended and that he has received a green card to return home.[2]

The Terminal marked one of the first instances where a stateless person, or an individual that is "not considered as a national by any state under the operation of its law,"[3] was cast as a protagonist in popular American film culture. As a group often classified with refugees and asylum-seekers, the stateless and their plight are often overshadowed within America by larger immigration issues pertaining to asylum-seekers, refugees, and undocumented migrants.[4] Though Spielberg's intent was to share a film that could make viewers "laugh and cry and feel good about the world" as the protagonist miraculously overcomes a systemic flaw, Viktor's story represents a human rights violation that catalyzes emotions of isolation, ostracism, confusion, despair, and perpetual otherness that is often overlooked by the global community.

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[2] Ibid.

[3] United Nations High Commissioner for Refugees (UNHCR), Convention Relating to the Status of Stateless Persons, September 27, 1954, https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf (Accessed 5/5/21).

[4] The term 'undocumented' does not accurately capture the experience of stateless people, particularly within the context of the United States. Within the American immigration system, the term 'undocumented' refers to "foreign-born people who do not possess a valid visa or other immigration documentation, because they entered the U.S. without inspection, stayed longer than their temporary visa permitted, or otherwise violated the terms under which they were admitted" (Washington State Department of Social and Health Services, "What's the difference between legal and undocumented immigrants?" *Frequently Asked Questions,* https://www.dshs.wa.gov/faq/what%E2%80%99s-difference-between-legal-and-undocumented-immigrants (Accessed 5/7/21)). While all stateless people within the United States are foreign-born and may have overstayed their visa or entered the U.S. without proper documentation, they are unable to be deported to another country as no state recognizes them as its national. Other migrant groups, such as those that cross the southern border of the U.S. without authorization, *can* be deported, as another country *does* recognize the individual as its national. Though there is overlap between stateless and undocumented people, the term cannot be used interchangeably within the American context.

The United Nations High Commissioner for Refugees (UNHCR), the global agency tasked with protecting and identifying stateless persons, officially reports on four million stateless people worldwide, yet projects the global stateless population to be as high as 15 million.[5] To shed greater light on the statelessness globally, the UNHCR initiated the #IBelong campaign in 2014, an ambitious project to end statelessness worldwide within a ten year time frame.[6] Though the #IBelong campaign passed its mid-way point in 2019, little noteworthy progress has been made, therefore calling into question the international community's true commitment to the eradication of statelessness.

Experts on statelessness emphasize that if the goals of the #IBelong are to be reached by 2024, drastic changes will have to be enacted by key international players.[7] The United States, a global power in the United Nations and the United Nations Security Council, is one country that must change its perspective on statelessness to propel the work of #IBelong. The United States has taken an indifferent stance towards the campaign and has failed to commit to any of the ten Global Action Plans. The refusal to participate in the #IBelong campaign stems from the U.S. government's continued ignorance and denial of statelessness as a domestic issue. Formal U.S. policies frame statelessness as a foreign policy issue to be addressed in countries abroad, despite the U.S. State Department's admission that "statelessness exists in every region of the world" as

[5] UNHCR, "UNHCR Global Trends 2019," *UNHCR USA,* 2019, https://www.unhcr.org/en-us/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html: 56; Lilly Chen, Petra Nahmias, Sebastian Steinmueller, United Nations High Commissioner for Refugees (UNHCR), "UNHCR Statistical Reporting on Statelessness," October 2019, https://www.unhcr.org/5d9e182e7.pdf. The large discrepancy between the reported and estimated stateless numbers is due to gaps in reporting and statistics. As statelessness creates a legally invisible population with no formally recognized government documents, many states do not count, track, or report the number of stateless people within their sovereign territory.

[6] United Nations High Commissioner for Refugees (UNHCR), 2014. "Global Action Plan to End Statelessness: 2014-2024." https://www.unhcr.org/en-us/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html.

[7] Chris Nash, "Iceland's accession to the UN STatelessness Conventions reminds us how much more still needs to be done across Europe," *European Network on Statelessness*, February 11, 2021, https://www.statelessness.eu/updates/editorial/icelands-accession-un-statelessness-conventions-reminds-us-how-much-more-still (Accessed 5/16/21).

a "largely 'hidden' problem without government recognition."[8] Though the U.S. urges other states abroad to resolve existing issues of statelessness, the U.S. government itself hesitates to adopt a strategy that recognizes, acknowledges, and assists its own stateless population.

The United States absolves itself as a perpetrator of human rights abuses by refusing to engage with critical UN initiatives on statelessness and by further ignoring its own lengthy history of creating and maintaining statelessness. The United States continues to uphold the problematic ideals of American exceptionalism, thereby exempting the government from accountability measures and cherry-picking which universal rights receive recognition under domestic law. Without immediate changes to its view of statelessness, the United States will fail to achieve its foreign policy objectives as a global defender of human rights and equality.[9]

Defining and Identifying Statelessness Internationally: The Statelessness Conventions, UNHCR, and #IBelong

As stated by the UN in its 1949 *Study on Statelessness,* statelessness remains "a phenomenon as old as the concept of nationality itself."[10] Though cases of statelessness had formerly been adjudicated in the League of Nations, statelessness did not reach mass proportions until after 1945. The war-torn landscape of Europe, with its multitude of reshuffled territorial borders, land transferrances, and millions of displaced persons, brought the issue of statelessness to unimaginable proportions. From World War II, two categories of stateless persons emerged: *de jure* and *de facto*. The former were legally recognized as stateless, as they were not granted

[8] United States Department of State, Bureau of Population, Refugees, and Migration, "Statelessness," https://www.state.gov/other-policy-issues/statelessness/.
[9] Anthony J. Blinken, United States Secretary of State, "U.S. Decision to Reengage with the UN Human Rights Council," February 8, 2021, https://www.state.gov/u-s-decision-to-reengage-with-the-un-human-rights-council/.
[10] United Nations Economic and Social Council (UN ECOSOC), August 1 1949, *A Study of Statelessness,* E/1112; E/1112/Add.1 https://www.refworld.org/docid/3ae68c2d0.html (Accessed 5/5/21). The United Nations has began to move away from the distinction between *de jure* and *de facto* stateless persons, and instead uses the internationally adopted definition of a stateless person as stated in the 1954 Convention, i.e. someone who is "not considered a national by any state under the operation of its laws." The phrase "under the operation of its laws" is viewed by human rights practitioners as a way to encompass *de jure* and *de facto* aspects of statelessness as it entails that stateless people are without a legally recognized or effective nationality.

citizenship at birth or had been denied or stripped of citizenship without acquiring a new one. The latter describes those who, having fled their country of nationality, were unwilling or unable to obtain the protection or assistance of their home state. Though the legal status of *de jure* and *de facto* stateless persons were distinguishable, they were "in practice [...] similar" in the way that both groups were without effective connection to a state.[11] The newly formed United Nations had to not only resolve the issue of refugees, but the issue of *de jure* and *de facto* stateless persons, both of whom lacked a secure national identity.

Effective connection to the state defines modern nationality, as that connection enables people to exercise all other social, political, and human rights. Political theorist Hannah Arendt— who was stateless for twelve years before having her American nationality affirmed— described nationality as the 'right to have rights' in her 1951 publication, *The Origins of Totalitarianism.* Though human rights are inherent within each person, only the state government could guarantee and protect them. To Arendt, that meant that one had to be "not only a human, but a citizen of a nation-state" to enjoy free access to political, social, and economic rights.[12] Based on Arendt's writings and experience, the legal relationship between the state and an individual is essential in order to have human rights upheld and access to basic freedoms. Without an effective legal connection, stateless persons frequently have difficulty exercising other rights, ranging from the right to free movement (UDHR Article 13), the right to marry and establish a family (UDHR Article 16), the right to employment (UDHR Article 23), and to access health care (UDHR Article 25). Stateless persons are oftentimes excluded from basic life opportunities, such as opening a bank account, owning a formal home, and purchasing property[13]

[11] UN ECOSOC, *A Study of Statelessness,* 7.
[12] Masha Gessen, "The Right to Have Rights and the Plight of the Stateless," May 3, 2018, *The New Yorker,* https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless.
[13] Brad K. Blitz and Maureen Lynch, *Statelessness and the Benefits of Citizenship: A Comparative Study,* Geneva Academy of International Humanitarian Law and Human Rights, (Oxford Brookes University: 2009): 4-5.

due to the lack of formal, state-issued identification and are therefore condemned to an isolated life in existential limbo.

Arendt's observation on the importance of citizenship was solidified in the Universal Declaration of Human Rights. Article 15, Subsection A establishes the human right to a nationality, while Subsection B states that a person's nationality cannot be arbitrarily deprived by a state and that every individual has the right to change their nationality.[14] The incorporation of nationality as a human right signified the consensus that all international actors held a common interest and role in eradicating statelessness.[15] To further develop legal frameworks on how to care for and resolve issues of statelessness, the United Nations developed three instruments to guide signatory states: the 1951 Convention on Refugees, the 1954 Convention Relating to Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.[16] Though the United States played an important role in the construction of these Conventions, it refrained from ratifying the protocols out of domestic considerations (see below). As states negotiated the Conventions, the United Nations General Assembly (UNGA) tasked the newly established refugee agency, the UNHCR, with the legal responsibility of locating, protecting, and resolving cases of statelessness in refugee populations, and, in 1974, broadened its mandate to include non-refugee stateless populations.[17]

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[14] "Universal Declaration of Human Rights," United Nations (United Nations, December 10, 1948), https://www.un.org/en/universal-declaration-human-rights/.

[15] Laura Van Waas, "A 100-year (Hi)Story of Statelessness," August 25, 2016, *Peace Palace Library,* https://www.peacepalacelibrary.nl/2016/08/a-100-year-history-of-statelessness/ (Accessed 5/6/21). Laura Van Waas is the Co-Director of the Institute on Statelessness and Inclusion (ISI) and an Assistant Professor at Tilburg School of Law.

[16] Ibid. The 1951 Convention on Refugees is included in this listing as the Convention included refugees that "had been forced to flee their country due to a well-founded fear of persecution and who may or may not also have been denationalised." Also see "Statelessness and Displacement" by the Norwegian Refugee Council and Tilburg University: https://files.institutesi.org/stateless_displacement.pdf.

[17] UNHCR, "UNHCR's mandate for refugees, stateless persons, and IDPS," *United Nations High Commissioner for Refugees - Emergency Handbook,* https://emergency.unhcr.org/entry/55600/unhcrs-mandate-for-refugees-stateless-persons-and-idps (Accessed 5/17/21).

As the scope of the UNHCR's mandate for stateless people increased over the years, it has boosted its expenditures on stateless services. Between 2009 and 2013, the agency tripled the amount of funding to its statelessness units from $12 million to $36 million.[18] With these funds, the UNHCR deployed twenty specialists around the world to work with stateless communities and UNHCR teams on the ground to assist large stateless populations. Though these endeavors showcase the growing intrigue in resolving statelessness overall, the greatest show of support for the statelessness movement emerged in 2014 with the unveiling of the #IBelong Campaign. Calling for the total commitment of the international community, the UNHCR outlined ten actions for member-states to implement by 2024. Each of the ten actions fell beneath one of the UNHCR's mandated responsibilities to "resolve existing cases of statelessness, prevent new cases of statelessness from emerging, and better identify and protect stateless persons" amongst UN member-states.[19] Though members of the UN welcomed the campaign with enthusiasm, none of the established interim 2017 and 2020 targets were reached.

The lack of progress on #IBelong is a result of varying levels of commitment to the campaign. As #IBelong is voluntary and non-binding, states can decide at any time which Action Plan to pursue. Some have been spurred to action as a direct result of #IBelong; for example, with guidance from #IBelong and UNHCR, the Kyrgyz Republic granted citizenship status to over 13,000 stateless persons in July 2019, effectively ending all of its known cases of statelessness in five years.[20] The Kyrgyz Republic's actions are representative of how

[18] United Nations High Commissioner for Refugees (UNHCR), 2014. "Global Action Plan to End Statelessness: 2014-2024." https://www.unhcr.org/en-us/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html (Accessed 5/18/21): 6.
[19] United Nations High Commissioner for Refugees (UNHCR), 2014. "Global Action Plan to End Statelessness: 2014-2024." https://www.unhcr.org/en-us/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html.
[20] UNHCR, "Kyrgyzstan Ends Statelessness in Historic First," UNHCR, July 4, 2019, https://www.unhcr.org/news/press/2019/7/5d1da90d4/kyrgyzstan-ends-statelessness-historic-first.html.

statelessness can be eradicated through consistent state-level action encouraged by international and regional developments.

Though there have been some successes in #IBelong, there is still much inertia that the UN must overcome— particularly that of the United States. To date, the United States has fulfilled none of the suggested Global Action Plans nor made any declarations of intent to address the campaign. At the 2019 High-Level Segment on Statelessness, the United States delegation reaffirmed its commitment to the resolution of statelessness through diplomacy. Hosted as an event for states to demonstrate their achievements on the UNHCR's Global Action Plan and encourage new vows for the second-half of the #IBelong Campaign, the U.S. did little but make three pledges: first, to "engage in strong U.S. diplomacy to advocate for the prevention and reduction of statelessness"; second, to commit to an "external evaluation" of the U.S. State Department's Population, Migration, and Refugees (PRM) Bureau to prevent and reduce statelessness; and finally, to "champion the goal of achieving nationality law reforms in the 25 countries that do not allow women to confer nationality to their children."[21] The United States did not pledge to devote itself to any of the ten Global Action Plans that would address statelessness within its borders— the primary aim of #IBelong.

As the international community continues its attempts to reduce statelessness, the United States continues to strategically remove itself from active participation in such campaigns. Instead, the United States opts to take a passive role in eliminating statelessness by focusing its efforts abroad under the claim that the *jus soli* (birthright citizenship) laws of the United States "do not contribute to the problem of statelessness."[22] Though not contributing to the creation of a

[21] UNHCR, "High-Level Segment on Statelessness," October 2019, https://www.refworld.org/docid/5ec3e91b4.html: 74.
[22] Eric P. Schwartz, "Recognizing Statelessness," September 8, 2011, *HuffPost,* https://www.huffpost.com/entry/recognizing-statelessness_b_954084 (Accessed 4/26/21).

native-born stateless population, the current laws of the United States *uphold* statelessness within migrant communities, which the federal government disregards.[23] By ignoring its migrant stateless population, the United States is able to claim that it holds no stake in enacting the goals of #IBelong and place further onus on other member-states.

Meaningful participation and engagement with the UNHCR on the resolution of statelessness requires the U.S.' admittance to its history of statelessness— a widely unacknowledged and undiscussed issue. It is from this inability to recognize its role in enabling and maintaining statelessness domestically that prevents the United States from adequately enacting change in domestic and international spheres.

An Historical Overview of Statelessness within the United States

While thousands of Viktor Navorskis exist within the United States today, the notion of statelessness appeared with the arrival of European settler-colonists prior to the conception of the American republic. While settler-colonists represented different states in Europe, they introduced and maintained in indigenous lands the first stateless population: the enslaved African people brought to the New World in 1619. Approximately 160 years later, when the American colonists created a new republic, enslaved men, women, and children were purposefully excluded from participating in the system that would protect and guarantee their individual political and social rights.

Though the post-Civil War Amendments overturned the denial of citizenship to enslaved Black people, statelessness still existed as a method of enforcing White supremacy and national

[23] Ibid. Schwartz argues that the laws of the United States do not create new cases of statelessness, as the United Sates Constitution under Amendment XIV states that every individual born on the incorporated territory of the United States is automatically an American citizen, and that children born abroad to U.S. parent-citizens can oftentimes receive U.S. citizenship "if statutory requirements are met." While this is true that the U.S. reputable *jus soli* nationality laws prevent the creation of a large native-born stateless population, statelessness exists within the United States in a migratory context. For further information, see UNHCR's 2012 Report and CMS' 2020 Study.

purity. As U.S. female citizens married foreign nationals, they quickly found that they were unable to retain their American national identity and could be left vulnerable to statelessness. The denial of citizenship was a method in upholding legal systems of white supremacy and patriarchy that, in many ways, still threatens the United States today.[24]

Racialized Statelessness in the American Colonies and the American Republic

Despite the "self-evident truth" that "all men are created equal,"[25] individual political and social rights were only guaranteed to white men. The humanity of the enslaved was completely stripped on the basis of their Blackness; they were not humans, but property, and therefore could not access citizenship or its various benefits. As slavery was a system intended to maximize cost-efficient labor, white, male, citizen enslavers frequently (and forcefully) progenerated with the Black, stateless women that they enslaved to create more bodies to claim as property. However, the creation of mixed-race children brought with it a threat to white power. Under English common law, a child, even those born out of a legitimate marriage, followed the legal status of the father. Should the colonies follow English law, this same rule would apply to the mixed children of slave women, creating a new class of free Black citizens.[26] In order to work around this law, the colonial institutions devised a loophole that perpetuated the dehumanization of Black women. Colonies would follow the laws of governing the ownership of farm animals and cattle when determining the legal status of mixed race children. Under these laws, mixed race children would become the property— not the child— of the enslaver.[27] Biracial children in the age of American chattel slavery therefore inherited the stateless status of their Black mothers

[24] Kenneth James Lay, "Sexual Racism: A Legacy of Slavery," *National Black Law Journal* 13(1), 1993: 170.
[25] Declaration of Independence. 1776. https://www.archives.gov/founding-docs/declaration-transcript.
[26] Paul Finkelman, "Slavery in the United States: Persons or Property?", in *The Legal Understanding of Slavery: From the Historical to the Contemporary,* ed. Jean Allain, 2012*:* 111.
[27] Ibid.

and left them without a nationality. “Any black blood classified a person as black; and to be black was to be a slave,” wrote David Pilgrim. “By [...] defining all mixed offspring as black, white society found the ideal answer to its labor needs, its compulsion to maintain its culture purebred, and the problem of maintaining, at least in theory, absolute social control.”[28] The establishment of a rigid racial caste system in the early days of American democracy often distinguished who was and was not a citizen under the operations of U.S. law.

The Supreme Court’s decision in *Dred Scott v. Sanford* (1858) further cemented the enslaved peoples’ position as property, thereby denying them the possibility of ever becoming a recognized national. While some of the freed Black populations could be considered as citizens of the state in which they resided in, they could not be considered as citizens of the United States. “[T]he language used in the Declaration of Independence shows that neither the class of persons who had been imported as slaves, nor their descendants, [...] were then acknowledged as a part of the people, nor intended to be included,” concluded Chief Justice Roger B. Taney. “[T]hey had no rights which the white man was bound to respect.”[29] With the decision of the judiciary, Black people in 19th-century America were confirmed to be *de jure* stateless with no legal attachment to the national government.[30]

The ratification of the 14th Amendment in 1866 overturned the *Dred Scott* decision and established *jus soli* citizenship, thereby granting the formerly enslaved persons a formal national identity. Section I of the 14th Amendment held that “all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State

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[28] David Pilgrim, ”The Tragic Mulatto Myth,” in *Anti-Black Imagery*. Jim Crow Museum, Ferris State University, Nov. 2000, https://www.ferris.edu/HTMLS/news/jimcrow/mulatto/homepage.htm (Accessed 5/18/21). Dr. Davia Pilgrim is a professor of Sociology at Ferris State University and founder and curator of the Jim Crow Museum, a collection of over 12,000+ racist artifacts used to promote tolerance and social justice.

[29] Samuel A Cartwright., Roger B. Taney, John H Van Evrie., *The Dred Scott Decision: The Opinion of Chief Justice Taney,* (New York: Van Evrie, Horton & Co., 1860): 17.

[30] Linda K. Kerber, “Toward a History of Statelessness in America,” *American Quarterly,* Vol. 57 No. 3, Sept. 2005: 733.

wherein they reside," and further held that all citizens are entitled to the privileges and immunities that accompany American nationality.[31] Though the Constitution now guaranteed citizenship to those born on incorporated U.S. territory, the possibility of statelessness persisted as the U.S. expanded its empire. Following the 1898 Spanish-American War, the United States created the term "non-citizen national" that placed the people of Guam, the Philippines, Cuba, and Puerto Rico in a dubious and indeterminable position. As people living in the newly acquired 'unincorporated territories' of the United States, non-citizen nationals were not considered citizens, but subjects of the U.S. government.[32] Without the establishment of American citizenship, the people subject to imperial U.S. rule were rendered *de facto* stateless and were without an effective nationality. Though the Philippines and Cuba have gained independence, and persons born in Puerto Rico, Guam, the U.S. Virgin Islands, and Northern Mariana Islands are considered to be American citizens, American Samoas remain to this day as unincorporated territories with those born in the Samoas determined as "non-citizen nationals." As a result, American Samoans are in a ubiquitous gray area that places them at a heightened risk of statelessness.[33]

Gender and Statelessness in America

Though citizenship could no longer legally be denied to those born on United States soil, the equal right to citizenship remained a persistent problem in 20th-century America. American women, regardless of race or class, remained increasingly vulnerable to statelessness in

[31] Constitution of the United States of America. Amendment XIV, Section I. https://www.law.cornell.edu/constitution/amendmentxiv.
[32] Kerber, "Statelessness in America," 735.
[33] Gabriela Melendez Olivera, "'Nationals,' but not 'Citizens': How the U.S. Denies Citizenship to American Samoans," *American Civil Liberties Union,* May 22, 2020, https://www.aclu.org/news/voting-rights/nationals-but-not-citizens-how-the-u-s-denies-citizenship-to-american-samoans/.

comparison to men— particularly because their nationality status was largely contingent upon whom they married.

In the early 1900s, Congress passed the Expatriation Act, which stipulated that American-born women voluntarily renounce their U.S. citizenship upon marriage to a foreign national after March 1907. Regardless if the married couple lived within U.S. territory, the wife's national identity immediately conformed to that of her husband's under U.S. law. However, other states did not have laws that resembled that of the United States' provisions. As each country is entitled to establish its own nationality codes, some states did not extend immediate citizenship to their national's wife— some did not even extend citizenship to foreign spouses at all. If an American-born woman wished to have her citizenship restored, she would have to apply to undergo the naturalization process and re-pledge their allegiance to the country.[34]

The feminist movement advocated for American-born women's right to retain and individual national identity. After the passage of the 19th Amendment in 1921, the outcry for equal citizenship rights between men and women was partially addressed through the Cable Act of 1922. The Cable Act overturned some, but not all portions of the 1907 Expatriation Act. While women who married foreign nationals after 1922 no longer had to fear losing their citizenship, women who wedded a foreigner between 1907 and 1922 did not automatically have their citizenship restored and still had her eligibility for citizenship contingent upon the "eligibility" of her husband.[35]

These stringent requirements allowed women to remain in legal limbo. For instance, in 1925, an American woman left the United States for an overseas visit with her Chinese husband

[34] Meg Hacker, "When Saying "I Do" Meant Giving Up Your U.S. Citizenship," *Prologue*, (Washington, D.C.: National Archives and Records Administration): 56–61, https://www.archives.gov/files/publications/prologue/2014/spring/citizenship.pdf (Accessed 5/18/21).
[35] Ibid.

and was unable to re-enter the country as she had 'voluntarily renounced' her citizenship having married a man deemed 'ineligible' for American citizenship. As the Chinese nationality laws offered her no relief, she remained stateless.[36] Similarly, a woman who was living abroad and lost her citizenship due to the 1907 Act attempted to return to the United States to regain her citizenship. But, due to the U.S.' Immigration Quota of 1924, she would have to return to the United States as a quota immigrant. If the quota for her husband's country had been filled for that year, she could not get a visa and could not return to the United States to repatriate.[37] Denaturalized American women could not reapply for citizenship, independently of their marriage status, until the late 1930s, leaving them extremely vulnerable to a life devoid of rights and privileges.[38]

The thirty year period in which American-born women could lose their nationality rights based on whom they married reveals the patriarchal nature of American citizenship. While American women were forcibly stripped of their nationality, American men were permitted to marry foreigners without having to renounce their citizenship. Instead, he had his American citizenship extend and envelope his foreign wife. For American women, citizenship was a fragile social and legal identity that could unknowingly disappear and leave her unprotected.

Creation of the Statelessness Conventions and the U.S. Position on Denaturalization

Though a founding member of the UN and a leading entity coordinating post-World War II relief efforts, the United States did not perceive stateless persons as a population for concern. Stateless persons were instead viewed as an issue solely pertinent to the U.S.' European counterparts. A declassified 1950 position paper written by the U.S. Department of State

[36] Kerber, "Statelessness in America," 734.
[37] Hacker, "When Saying "I Do,"" 59.
[38] Hacker, "When Saying "I Do,"" 59-60.

exemplifies the U.S.' view on statelessness as a matter irrelevant to national interests. Following World War II, the United States' immediate area of interest rested in resolving the refugee flows within continental Europe. Though statelessness often overlapped with refugee issues, the U.S. delegation took the position that stateless persons under the 1951 Refugee Convention "are not likely to be granted all the rights and privileges which governments afford to refugees" and therefore required a separate protocol.[39]

Due to the U.S.' stance and dominant position within the United Nations, stateless persons were excluded from the 1951 Protocol Relating to the Status of Refugees that the U.S. emphasized throughout the remainder of negotiations. The State Department's position paper concluded that while the United States delegation should "work for and support the adoption of" all protocols relating to refugees and stateless persons, "action [...] on the Protocol Relating to the Status of Stateless Persons and the Draft Resolution on the Elimination of Statelessness, [...] is not so urgent."[40] The issue of statelessness was relegated to the diplomatic back burner and hardly discussed by the United States delegation throughout the remainder of its negotiations on UN Refugee Conventions.

The United States recommended that select countries ratify two separate conventions on statelessness: the 1954 Convention Relating to the Status of Stateless Persons, which established protocols on how to address statelessness, and the 1961 Reduction of Statelessness, which aimed to eliminate statelessness from occurring at birth. Both instruments were created to ensure that stateless people who fell between the cracks of the competing nationality laws of *jus soli* (birthright citizenship) and *jus sanguinis* (citizenship by parentage or bloodline) would still enjoy

[39] *Foreign Relations of the United States,* 1950, Volume II, The United Nations: Western Hemisphere, ed. Ralph R. Goodwin, David W. Mabon, and David H. Stauffer, (Washington: Government Printing Office, 2010), Document 310.
[40] *Foreign Relations of the United States,* 1950, Volume II, The United Nations: Western Hemisphere, ed. Ralph R. Goodwin, David W. Mabon, and David H. Stauffer, (Washington: Government Printing Office, 2010), Document 310.

some rights and protections under international law. However, while the U.S. emphasized the importance of the Conventions to other states, it failed to ratify either document out of considerations for domestic affairs.[41]

To many U.S. officials, the laws of the United States were enough to protect stateless individuals and prevent future cases of statelessness from arising. All persons born on incorporated U.S. territory were automatically considered to be American citizens. Similarly, children born abroad to U.S. parent-citizens were granted citizenship if certain requirements were met, while Immigration and Naturalization Services (INS) oversaw naturalization requirements for incoming migrants.[42] Many diplomats were under the impression that statelessness existed only in parts of the world where conflict abounded— discriminated Jewish populations under Nazi Germany, the persecuted Romanis of Europe, the 'backward' Palestinian Arabs of the Middle East.[43] U.S. diplomats at the 1950s negotiations failed to see the applicability of the Stateless Conventions to their own country, as a result of the U.S.' reliable *jus soli* laws and naturalization agencies.

The United States continues to view the Stateless Conventions as incompatible with domestic law and national priorities. Eric P. Schwartz explained that the United States declined to sign the 1961 Convention as it "limits voluntary renunciation of citizenship" which "conflict with the right to voluntary expatriation that is recognized under U.S. law."[44] As a state that

[41] Blitz and Lynch, *Statelessness and the Benefits of Citizenship,* 5-6.
[42] U.S. Citizenship and Immigration Services (USCIS), "Our History," *U.S. Citizenship and Immigration Services,* https://www.uscis.gov/about-us/our-history (Accessed 5/17/21). The Immigration and Naturalization Services (INS) existed under the Department of Justice. It was formed in 1933 by the president, which mandated that INS would oversee immigration proceedings, border protection, and immigration enforcement. INS was replaced by Citizenship and Immigration Services, an extension of the Department of Homeland Security, through the Homeland Security Act of 2002.
[43] Linda K. Kerber, "Toward a History of Statelessness in America," *American Quarterly,* Vol. 57 No. 3, Sept. 2005: 731.
[44] Eric P. Schwartz, "Recognizing Statelessness," September 8, 2011 (Last Edited: December 6, 2017), *HuffPost,* https://www.huffpost.com/entry/recognizing-statelessness_b_954084 (Accessed 4/26/21). Eric P. Schwartz was the former Assistant Secretary of State for the Bureau of Population, Refugees, and Migration (2009-2011) and is the current President of Refugees International (2017-Present).

emphasizes and prioritizes individual freedoms, the United States permits its citizens the ability to renounce their American nationality without requiring proof of a second nationality. The country's insistence that its citizens have the right to revoke their citizenship is a key reason as to why the United States hesitates to sign on to the Statelessness Conventions.

Though the United States permitted its citizens the right to *relinquish* their nationality— and by extension, their political, social, and human rights— it acknowledged at the same time that the country could not denaturalize native-born, nor naturalized citizens in instances where the individual will be left stateless. In 1944, Albert Trop, an American citizen by birth, deserted his military post in Morocco and was dishonorably released from the U.S. Armed Forces. Eight years later, when Trop applied for a passport, his request was denied, as the Armed Forces stripped him of his citizenship under Section 401, subsection (g) of the 1940 Nationality Act, citing wartime desertion as Trop's offense.[45] Under the Warren Court, the Supreme Court held in *Trop v. Dulles* that expatriation was barred as a form of punishment. Though the case was decided in the context of a military deserter, *Trop v. Dulles* set precedent for other nationality cases. "Citizenship is not a license that expires upon misbehavior," wrote the Court.[46] Chief Justice Earl Warren continued to describe the abhorrent conditions of life without a nationality:

> This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies. [...] The civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime. It is true that several countries prescribe expatriation in the event that their nationals engage in conduct in derogation of

[45] Trop v. Dulles, 356 U.S. 86, 1958, https://supreme.justia.com/cases/federal/us/356/86/#tab-opinion-1941975 (Accessed 4/27/21).
[46] Trop v. Dulles, 356 U.S. 86, 1958, https://supreme.justia.com/cases/federal/us/356/86/#tab-opinion-1941975 (Accessed 4/27/21).

> native allegiance. [...] But use of denationalization as punishment for crime is an entirely different matter. The United Nations' survey of the nationality laws of 84 nations of the world reveals that only two countries, the Philippines and Turkey, impose denationalization as a penalty for desertion. In this country, the Eighth Amendment forbids this to be done.[47]

The minority doubted the severe social and political complications that resulted from nationalization. In his dissenting opinion, Justice Frankfurter noted that, when faced with deserters, the military can punish defectors with the death penalty. "Is constitutional dialectic so empty of reason that it can be seriously urged that loss of citizenship is a fate worse than death?" Justice Frankfurter cynically wrote.[48] Despite the Supreme Court's ruling that citizenship could not be revoked, the U.S. legal system continued to face multiple cases relating to citizenship revocation and recognition.

The Legacy of Gender and Race for Statelessness in America

The intersection of gender, race, and denationalization as a form of punishment in relation to United States citizenship policies persists into the 21st-century— particularly in cases of overseas birth or births where one parent is a foreign national. In 2002, the Supreme Court ruled on *Tuan Anh Nguyen v. Immigration and Naturalization Services (INS).* Tuan Anh Nguyen was an Amerasian child, born in Saigon, Vietnam to a Vietnamese mother and an American soldier during the Vietnam War. Tuan moved to Houston, Texas as a permanent resident in the early 1970s at age 6, but his American father made no moves to claim citizenship for his son. Then, at age 22, Nguyen pleaded guilty to two counts of sexual assault on a child, resulting in INS initiation deportation proceedings back to Vietnam. Though Nguyen's American father appealed to the Board of Immigration Appeals, it was rejected as it did not comply with section

[47] Trop v. Dulles, 356 U.S. 86, 1958, https://supreme.justia.com/cases/federal/us/356/86/#tab-opinion-1941975 (Accessed 4/27/21).
[48] Ibid.

1409, subsection a of Chapter 8 of the United States Code, which detailed requirements for children born out of wedlock abroad to a foreign citizen.

By a slim 5-4 majority, the Court upheld that a child born abroad to unmarried parents can only claim citizenship from a U.S. citizen-father when specific conditions are met: the father's paternity must be convincingly established prior to the child's eighteenth birthday, and the father must also agree in writing to provide financial support to the child until he or she reaches age 18.[49] In comparison, children born out of wedlock to a citizen mother on foreign territory automatically had American citizenship conferred, granted that the mother had "previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."[50] Split between ideological camps, the conservative leaning court majority ruled that gender-based distinction under U.S. law was permitted under circumstances that served "important governmental interest" and that "discriminatory means employed" the achievement of such government objectives. In the case of *Tuan Ahn Nuguyen,* the governmental interest at hand was the verification of a citizenship tie by birth. As mothers were, by nature, always present at the time of birth, there were limited ways in which the blood tie to an American mother-citizens would be questioned. American father-citizens, on the other hand, require additional verification that they are the true father, as they are not naturally required to be present at the child's birth.[51]

The Court's second argument for ruling in favor of the Section 1409(a) referred back to a fear held by the Department of Justice at the time the 1940 Nationality Act was written. The 1940 Act was written in such a way to ensure that the child of an unwed citizen mother had U.S.

[49] 8 U.S. Code § 1409, https://www.law.cornell.edu/uscode/text/8/1409 (Accessed 5/18/21).
[50] Ibid.
[51] "Tuan Anh Nguyen v. Immigration and Naturalization Service," Oyez, https://www.oyez.org/cases/2000/99-2071 (Accessed 5/18/21).

nationality at birth to "advance the DOJ's important interest in avoiding statelessness."[52] However, the DOJ made clear in a separate case just three years prior to *Nguyen* that its true fear was not statelessness amongst children with a legitimate claim to U.S. citizenship, but a fear of fraudulent applications for naturalization.[53] The Court's upholding of Section 1409(a) left Nyugen without American citizenship and subject to deportation back to Vietnam, a country that he had not lived in since his early childhood.

Though the United States and Vietnam signed a repatriation agreement in 2008, many other Amerasian children of other Asian ethnicities (Korean, Cambodian, Loatian), who were brought over to the United States through the Orderly Departure Program or the American Homecoming Act of 1987, were now at risk of having their national identity compromised.[54] Bureaucratic inconsistencies between the coordinating American and Asian states muddled how Amerasians' nationality was to be classified. According to the Vietnamese government, individuals departing for the U.S. were considered American; but, according to the U.S. government, Amerasians were considered refugees and not immune to deportation proceedings.[55] Vietnamese Amerasians found themselves stuck in a legal limbo, uncertain of which state to turn to for assistance.[56]

The *Tuan Ahn Nguyen* ruling emerged simultaneously with a variety of immigration reform bills, including the Illegal Immigration Reform and Immigrant Responsibility Act of

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[52] Kerber, "Statelessness in America," 740.
[53] Kerber, "Statelessness in America," 741; *Miller v. Albright* (1998), *Oyez,* https://www.oyez.org/cases/1997/96-1060 (Accessed 5/18/21).
[54] The Orderly Departure Program was a UNHCR-initiated campaign to actively resettle refugees fleeing Indochina in the late 1970s through arranged, third-country agreements. The American Homecoming Act of 1987 was signed by President Reagan to prioritize the immigration applications for the "Amerasian" children fathered by U.S. soldiers throughout the Korean and Vietnam Wars, who were considered a population of humanitarian concern by Americans.
[55] Pham, Hauyen, "A Displaced Cost of War: The Statelessness ofVietnamese Amerasians," 2019, Master's thesis, Harvard Extension School: 7, https://nrs.harvard.edu/URN-3:HUL.INSTREPOS:37364575 (Accessed 5/18/21).
[56] Kerber, "Statelessness in America," 738-742.

1996 and the consolidation of all American immigration agencies under the Department of Homeland Security in 2002. The sweeping changes to federal immigration resulted in the tightening of restrictions on immigrant populations. Final removal orders were required for any migrant that was convicted of an aggravated felony, which was gradually broadened to include minor crimes and misdemeanors. As a result, hundreds of convicted migrants were held for indefinite detention and under the strict supervision of Immigrations Customs Enforcement (ICE).[57]

Tuan Anh Nguyen v. INS demonstrates the continued existence of discriminatory citizenship laws that preclude the equitable extension of American citizenship between men and women and allows undesired children born abroad to live as legal ghosts. It is worth noting that the existing gaps preventing the equal passage of American nationality echo the antiquated laws from the antebellum period; just as the mixed race children of Black, stateless mothers and white, citizen fathers were precluded from obtaining their father's national status, the children of Vietnamese women and American citizen soldiers were likewise unable to secure their father's legal status. The two laws demonstrate how citizenship has been used, historically and presently, as a means to uphold systems of nativism, sexism, and racism under the guise of state security.

The Promise of Domestic Reform

In 2011, Secretary of State Hilary Clinton delivered a speech to the UNHCR Ministerial on the 60th Anniversary of the Refugee Convention, commenting on the importance of the 1951 Refugee Convention and the 1961 Statelessness Convention. "The United States has launched an initiative to build global awareness about [statelessness] and support efforts to end or amend such discriminatory laws," proclaimed Secretary Clinton. "We want to work to persuade

[57] Ibid.

governments [...] to change nationality laws that carry this discrimination to ensure universal birth registration and establish procedures and systems to facilitate the acquisition of citizenship for stateless people."[58] The initiative laid out by the U.S. State Department included statelessness as a top priority in foreign policy, primarily through the Women's Nationality Initiative (WNI), which focused on nationality rights for women in Benin, Nepal, and Qatar.

More importantly, as a part of the State Department's initiatives on statelessness, it pledged to incorporate the resolution of statelessness into domestic legislation. The Bureau of Population, Refugees and Migration (PRM) under the Department of State pledged that the U.S. government would "actively work with Congress to introduce legislation that provides a mechanism for stateless persons in the United States to obtain permanent residency and eventually citizenship" and "consider the revision of administrative policies to allow the circumstance of stateless persons to inform decision-making regarding their detention, reporting requirements, and opportunity to apply for work authorization."[59]

Secretary Clinton's proposed initiative quickly appeared within Congress, and in 2013, Senator Patrick Leahy (D-VT) introduced the Refugee Protection Act. The Refugee Protection Act intended to update the Immigration and Nationality Act to "reaffirm the United States' historic commitment to protecting refugees who are fleeing persecution or torture."[60] Included within the language of this bill was expanded protections for stateless people, the first modern bill that attempted to do so. Section 17 of the Act aimed to add a separate section at the end of Chapter 1 of Title II of the Immigration and Nationality, solely devoted to defining and

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[58] Hillary Rodham Clinton, Department of State, "Remarks at the UN High Commissioner for Refugees Ministerial on the 60th Anniversary of the Refugee Convention," *U.S. Department of State,* December 7, 2011, https://2009-2017.state.gov/secretary/20092013clinton/rm/2011/12/178406.htm.
[59] U.S. Department of State, Bureau of Population, Refugees, and Migration, "U.S. Commemorates Pledges," *U.S. Department of State: Diplomacy in Action,* October 12, 2012, https://2009-2017.state.gov/j/prm/releases/factsheets/2012/199145.htm.
[60] Patrick J. Leahy, "Text - S.645 - 113th Congress (2013-2014): Refugee Protection Act of 2013," Congress.gov, March 21, 2013, https://www.congress.gov/bill/113th-congress/senate-bill/645/text.

protecting stateless persons in the United States. Section 17 aimed to: define a stateless person under U.S. law; elaborating on mechanisms for determining and identifying stateless persons; and methods for reviewing the claims of stateless persons. Though the Act was read through twice by Congress and referred to the Committee of the Judiciary, no further action has been taken on the 2013 Bill.[61]

Citizenship Under Fire: Current Threats of Statelessness

The threat of statelessness in the United States is still prevalent, as threats to re-enact exclusive citizenship grow more prevalent. In 2018, former President Trump suggested that he would create an Executive Order that would reinterpret the Fourteenth Amendment and prohibit the right to birthright citizenship granted to children born on American soil to non-citizen parents.[62] Trump's reasoning for initiating a mass denationalization campaign was based upon reports from the Department of Justice of migrants falsifying information on their applications for naturalization, thereby obtaining their citizenship by fraudulent means. The campaign for denaturalization also accompanies the rise in anti-immigrant rhetoric, which had grown exponentially under the Trump Administration. Former President Trump repeatedly referred to immigrants at the southern border as drug dealers, criminals, and rapists,[63] and went as far to call them "animals" at a 2018 meeting with California officials.[64] The amplified attempts to remove citizenship represents one of the many ways migrants are continuously dehumanized, ostracized, and othered in comparison to native-born Americans.

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[61] Ibid.
[62] Open Society Justice Initiative, "Unmaking Americans: Insecure Citizenship in the United States," https://www.justiceinitiative.org/uploads/08cbf518-8a19-4601-897b-7187f04cea27/unmaking-americans-insecure-citizenship-in-the-united-states-fact-sheet-20190916.pdf (Accessed 3/15/21).
[63] British Broadcasting Corporation (BBC) News, "'Drug Dealers, criminals, rapists': What Trump thinks of Mexicans," *BBC News,* August 31, 2016, https://www.bbc.com/news/av/world-us-canada-37230916.
[64] Julie Hirschfield Davis, "Trump Calls Some Unauthorized Immigrants 'Animals' in Rant," *The New York Times,* May 16, 2018, https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html.

The proposed action sparked panic amongst the near 20 million naturalized U.S. citizens, who were at risk of losing their citizenship and becoming stateless.[65] Though an Executive Order outlining changes to the Fourteenth Amendment was not passed, the administration took other measures to target denaturalization procedures. Such measures included the removal of over $200 million from USCIS' Examinations Fee account, an account that assists citizenship seekers prepare for their naturalization examination. Instead, USCIS rerouted the money to ICE to bolster denaturalization and immigrant enforcement efforts.[66] Additionally, the Department of Justice announced in early 2020 that it was creating a denaturalization section within its immigration office in order to demonstrate its commitment to "bring justice to terrorists, war criminals, sex offenders, and other fraudsters."[67] Though the denaturalization section has grounded its purpose in revoking citizenship from those committing federal crimes and international war crimes, many critics fear that the section will broaden its scope to include migrants charged with unserious crimes. The Trump Administration took denaturalization measures to new heights and sought to review over 700,000 cases where individuals were suspected to have been granted citizenship under fraudulent circumstances.[68] Of the 228 denaturalization cases filed by the department since 2008, the *New York Times* reports that approximately forty percent of cases were filed in 2017 alone.[69]

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[65] Cassandra Burke Robertson and Irina D. Manta, "(Un)Civil Denaturalization," *The New York University Law Review,* June 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3241044 (Accessed 5/18/21).
[66] American Lawyers Immigration Association, "Policy Brief: Seven Ways USCIS is Defying the Will of Congress," February 15, 2019, https://www.aila.org/advo-media/aila-policy-briefs/seven-ways-uscis-is-defying-the-will-of-congress (Accessed 5/17/21).
[67] Katie Benner, "Justice Dept. Establishes Office to Denaturalize Immigrants," *The New York Times,* June 17, 2020, https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html (Accessed 4/19/21).
[68] Cassandra Burke Robertson and Irina D. Manta, "Trump Administration Seeks to Strip More People of Citizenship," *American Constitution Center,* February 28, 2020, https://www.acslaw.org/expertforum/trump-administration-seeks-to-strip-more-people-of-citizenship/.
[69] Benner, "Justice Department Establishes Office to Denaturalize," *The New York Times.*

Interestingly, the denaturalization campaign intersected with a critical development at the U.S. southern border, where the U.S. frequently enables cases of statelessness. Though citizenship by birth is guaranteed by the U.S. Constitution, there have been reports of the U.S. government withholding birth certificates for infants born to migrant mothers at the southern border. In February 2021, *The Guardian* reported that under orders of the Trump Administration, at least eleven migrant women were deported to Mexico without birth certificates for newborns. Individual accounts from migrant mothers state that they were taken to American hospitals to give birth, but were driven back across the border only hours after labor.

The reported number of newborns being deported across the border without a birth certificate is estimated to be much higher, particularly as the Trump Administration authorized "fast-track expulsions away from the public eye and without the involvement of lawyers," particularly under Title 42.[70] Title 42 of the United States Code is titled the "Public Health and Welfare," with Section 362 of the act stipulating that the Surgeon General has the ability to "restrict the introduction of persons and goods" into the United States on public health grounds.[71] As the novel coronavirus (COVID-19) disease made its way across the globe, former President Trump referred to Section 362 of Title 42 to prevent migrants at the southern border from entering or staying within the country, citing disease prevention spreading COVID-19 in and around detention facilities.

However, many legal scholars from top institutions such as Harvard and Stanford Law Schools are wary of Trump's decision to utilize Title 42 to halt migration cases and increase

[70] Tanvi Misra, "Revealed: US Citizen Newborns Sent to Mexico Under Trump-Era Border Ban," *The Guardian,* February 5, 2021, https://www.theguardian.com/us-news/2021/feb/05/us-citizen-newborns-mexico-migrant-women-border-ban

[71] Morgan Sandhu, "Unprecedented Expulsion of Immigrants at the Southern Border: The Title 42 Process," in *Covid-19 and the Law: Harvard Law and Policy to Address Basic Needs and Marginalized Populations,* December 26, 2020, https://covidseries.law.harvard.edu/unprecedented-expulsion-of-immigrants-at-the-southern-border-the-title-42-process/.

deportation rates.[72] The largest concerns regarding Title 42 are those regarding its interpretation and its usage as a barrier to immigration. Many attorneys pointed out the gaps in application; the measure was not being implemented in an equitable fashion between all groups of migrants, and continued to permit the free movement of some between Mexico and the United States at a time when the country had skyrocketing cases of COVID-19.[73] Additionally, as a public health law administered by the Department of Health and Human Services (HHS), Title 42 has never before been used to justify restrictions to the immigration system. The application of the measure to the immigration system is viewed by many as an overreach of power that is used to excuse the country from its humanitarian duty under international law. Title 42 permits applications for humanitarian protection in the U.S. to continue, but the experience for many has been expulsion across the border with no due legal process. Overall, the application of Title 42 is seen as a questionable way to prevent migrants from entering or staying within the country and utilizes a health crisis to mask the deportation of children born to non-citizens on American soil.

Without a birth certificate acknowledging the registration of a child's birth, mothers of newborns are unable to prove U.S. citizenship, nor apply for Mexican citizenship. "For all intents and purposes, [those children are] stateless, which is going to create a whole host of barriers because they're unable to establish citizenship," stated Nicole Ramos, Director of Al Otro Lado's Border Rights Project, a legal services organization for migrants. Particularly in the midst of a global health crisis, mothers and newborns will face a series of barriers as they attempt to find medical care.

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[72] Lucus Guttentag, "Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors," *Stanford Law School,* April 15, 2020, https://law.stanford.edu/2020/04/15/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/.
[73] Sandhu, "The Title 42 Process," *COVID-19 and the Law.*

Though President Biden authorized a review of Title 42 and made promises for no deportations throughout the first one hundred days of his term,[74] immigration activists note that over 326,000 deportations have occurred since the Biden-Harris inauguration.[75] Stateless persons are presumed to be included in this amount, but the exact number, however, remains uncalculated. Multiple cases have been reported of stateless adults being deported to states abroad, despite recipient states claiming that they have no citizenship record of said deportees. Most recently, the *Miami Herald* reported in early February 2021 about the deportation of a stateless man to Haiti. Originally born on the French island of Saint Martin to parents of Haitian descent, Paul Pierrilus is not considered a citizen of France or Haiti.[76] Though the United States cannot deport non-citizens to a state that does not recognize the deportee as a national, Pierrilus was still transported to Port-au-Prince,[77] likely under Title 42 measures.[78]

Conclusions and Recommendations

As stated by feminist historian, Linda K. Kerber, "statelessness has [...] haunted the United States throughout its history, from its oxymoronic founding as a republic of slavery to our

[74] Joseph R. Biden, "Executive Order on on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border," February 2, 2021, *The White House,* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration-throughout-north-and-central-america-and-to-provide-safe-and-orderly-processing/.
[75] United We Dream, "Biden Must Stop Deportations Now!," *United We Dream,* May 6, 2021, https://unitedwedream.org/protect-immigrants-now/biden-stop-deportations-now/ (Accessed 5/6/21).
[76] Arelis A. Hernandez, "In one of its last acts, Trump administration tried to deport man to Haiti who has never been there," *The Washington Post,* January 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.
[77] Jacquiline Charles, "ICE deports 'stateless' man to Haiti after Biden moratorium,' *The Miami Herald,* February 2, 2021, https://www.miamiherald.com/news/nation-world/world/americas/haiti/article248959659.html.
[78] Julian Borger, "Haiti deportations soar as Biden Administration deploys Trump-era health order," *The Guardian,* March 25, 2021, https://www.theguardian.com/us-news/2021/mar/25/haiti-deportations-soar-as-biden-administration-deploys-trump-era-health-order.

own time."[79] At best, the United States' lack of diplomatic action on statelessness abroad stems from its general ignorance of its history as a practitioner of human rights abuses. At worst— which I believe to be the case— the United States is unwilling to admit to its long, egregious past and see the faults within its domestic system. Either way, the United States is proven to be one of the greatest enablers of statelessness to-date due to its continued inactivity and insincerity in its desires to fully see statelessness eradicated.

By following the suggested Global Action Plans, the U.S. government can contribute to the international goal of eradicating statelessness by 2024. Congress should grant particular attention to Action Plans 6, 9, and 10. Action Plan 9 urges states to ratify the 1954 and 1961 Conventions on Statelessness with minimal reservations. Upon signing the two Conventions, the United States would have a formal definition of a stateless person under domestic law. Most importantly, ascension to the Conventions would mean greater accountability measures for the United States government and ensuring that stateless persons are protected through international law.

However, as the United States is likely to refer back to its domestic considerations and view the Conventions as an encroachment on national interests, it may choose to take direct action on statelessness by reforming domestic laws and implementing new legislation. Action 6 (Creation of Stateless Determination Procedures) will be of the utmost interest to the United States in ensuring that stateless people have a way to be recognized. Currently, the United States does not recognize statelessness as a protected status, leaving thousands of stateless people legally vulnerable. Creating laws that recognize and protect statelessness as a legal status would be the first step in ensuring that stateless people have a pathway to citizenship.

[79] Kerber, "Towards a History of Statelessness," 745.

Additionally, the United States Executive Branch must broaden its efforts to collect quantitative and qualitative data on its existing stateless population, as stated in Action Plan 10. Though the United States has a long history of creating stateless people to emphasize social and political exclusion, this history does not quantify how many people were forced to live as legal ghosts. To date, the United States does not have a federal department that tracks the number of stateless persons within its borders. Although some federal databases may track persons by nationality or refugee status, many do not include an option for statelessness.[80] Instead, research efforts to describe and capture the U.S.' stateless population have largely been carried out by civil society organizations.

The UNHCR estimated in its 2012 "Citizens of Nowhere" report that several hundred persons recorded by the U.S. Citizenship and Immigrations Service were listed as stateless over the course of five years and further reported that "a couple thousand" stateless people were predicted to reside within U.S. territory.[81] However, a January 2020 report from the New York City-based organization Center for Migration Studies (CMS) challenged the UNHCR's results and estimated that 218,000 people are stateless or either at risk of becoming stateless across all fifty states. The most concentrated stateless populations are within California, New York, Texas, Ohio, Minnesota, Illinois, Pennsylvania, Wisconsin, Georgia, and Virginia, respectively.[82] Despite the latest CMS reports on stateless persons in the United States, the UNHCR appears unwilling to acknowledge or support CMS' findings out of an abundance of caution for "political sensitivities" in regards to current American immigration policy.[83]

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[80] Center for Migration Studies. "Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population." *Journal on Migration and Human Security,* vol. 8(2), June 2020: 4. Though some databases may offer the option of 'nationality unknown,' this is not an exclusive option for people that are or are at risk of becoming stateless.

[81] Ibid.

[82] Center for Migration Studies. "Statelessness in the United States,": 2.

[83] This conclusion emerged through personal and confidential communication between the author and staff at USL and CMS. For their safety, their names are omitted.

Despite CMS' data analysis, these numbers are only estimates; there may be even greater numbers of stateless people within the U.S. that cannot be accounted for, therefore underscoring the necessity of a federal data screening of stateless people. Determining the exact number of stateless individuals within the United States can be accomplished through a detailed survey completed by the State Department's PRM Bureau and through a reformed census that includes statelessness as an option for nationality. The UNHCR continues to urge states to include "questions related to nationality in population and housing censuses" and undertake "targeted surveys and studies" as a method to locate and describe a country's stateless population.[84] Though censuses may be the easiest way to gather information on stateless people, compiling such data for governmental purposes proves difficult in some countries, as individuals may have to self-identify themselves to a political system that does not provide any legal safety nets for undocumented stateless persons. Without legal protections in place, many stateless persons may hesitate to identify themselves on paper out of fear of being detained or deported, thus potentially leading to national underreporting of statelessness.[85] Thus, if the United States endeavors to undertake data collection via the 2030 Census, it must take adequate measures to ensure that stateless individuals will not be detained.

Though the United States has identified statelessness as an acute human rights violation internationally, it still must take multiple steps to reform its domestic laws to protect stateless persons, prevent statelessness from occurring on U.S. soil, and meaningfully contribute to the #IBelong campaign. With further leadership, the United States has the ability to exceed its expectations as a defender of human rights and encourage other states to follow in its footsteps.

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[84] UNHCR, "UNHCR Global Trends 2019," 30; UNHCR, "Global Action Plan," 31. Until 2018, the UNHCR reported that the United States had "0" stateless people within its sovereign territory. Currently, after advocacy efforts from U.S. civil society groups, the UNHCR has updated the U.S.' count and replaced the "0" with an asterisk (*) to symbolize the unknown total of stateless people;

[85] UNSC Side Event, "Leaving No One Behind: Improving Statelessness Statistics," February 16, 2021.

But first, it must find the political will to do so and confront its own existing and historical structural errors on combatting, creating, and maintaining statelessness.

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