



U N I T E D
STATELESS



Institute on
Statelessness and
Inclusion

**United Stateless
Institute on Statelessness and Inclusion**

Joint Submission in advance of the UN Special Rapporteur Minority
Issues' visit to the United States of America

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Introduction

“To be stateless is to stand at the edge of a void. So much of what defines a modern human being is tied to the concept of nationality and citizenship. When one is stripped of that, a gulf opens up between you and the rest of the human race.”
Ekaterina, United Stateless Founding Member

1. United Stateless¹ and ISI² make this submission to the United Nations Special Rapporteur on Minority Issues, on behalf of all stateless persons in the United States of America (U.S.). Minorities are at particular risk of statelessness. Most stateless people in the U.S. come from migrant backgrounds and belong to minority communities. This submission focuses on statelessness as a minority issue and the denial of the fundamental rights of stateless people in the U.S., addressing gaps in the U.S. national legal framework. It highlights and issues recommendations on the following intersectional issues:
 - The effects of Covid-19 on stateless people
 - Stateless people in U.S. immigration detention
 - Challenges stateless people face in accessing human rights, presented through stateless peoples' experiences
2. In December 2011 while commemorating the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, the U.S. government made pledges in support of the UN mandates to address statelessness around the world³. Ten years later, statelessness has yet to be addressed in the U.S. On behalf of all stateless persons living on U.S. territory, we ask for your support and solidarity to urge the U.S. government to enact legislation that provides protections and solutions for stateless persons living in the United States.

Statelessness in the U.S. and gaps in the national legal framework

3. According to the Center for Migration Studies (CMS), an estimated **218,000** U.S. residents are 'potentially stateless' or 'potentially at risk of statelessness'.⁴ The study elaborates that the number of 'potentially stateless' or those 'at risk of statelessness' is larger and more diverse than previously assumed, albeit with the caveat that severe data limitations make it impossible to provide precise estimates of this population'. In the United States, the statelessness profile reflects a diverse immigrant community, the vast majority of which is represented by racial and ethnic minorities. Some of the large minority groups represented in the U.S. include the Rohingya, Bidoon, former Soviet Union citizens, Palestinians, and Kurds.⁵

¹ *United Stateless* is a registered non-profit organisation in the United States with a mission to build and inspire community among those affected by statelessness and to advocate for their human rights. For more information about United Stateless, please see: www.unitedstateless.org/

² *The Institute on Statelessness and Inclusion* (ISI) is an independent non-profit organization dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

³ <https://www.unhcr.org/4ff55a319.pdf>

⁴ Center for Migration Studies, *Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population, 2020*, p. 4, <https://cmsny.org/wp-content/uploads/2020/01/StatelessnessReportFinal.pdf>.

⁵ Ibid.

4. While the U.S. applies jus soli at birth to all children born within the territory of the United States⁶ and jus sanguinis to qualifying children born abroad, it does not guarantee the right to a nationality for children who arrived in the United States after birth, and who would otherwise be stateless. In other words, concerns exist that policy proposals can deny nationality from children born to non US citizens on US soil.⁷
5. The United States is home to over more than 21 million naturalized citizens. Under the Fourteenth Amendment's Citizenship Clause, U.S. citizens born or naturalized in the U.S. are equal under the law and hold the same rights. From the 1960s to the early 2000s, denaturalization cases were extremely rare. However, since the early 2000s, the criteria for denaturalization have quietly expanded to include national security cases, for example, and today denaturalization is increasingly used as an immigration enforcement tool affecting people belonging to minority communities.⁸
6. U.S. law offers no definition of statelessness, nor is there a procedure for identifying stateless persons, protecting them and resolving their situations through facilitated naturalization. The Immigration and Nationality Act (INA) provides a path to naturalization that requires non-citizens to first acquire lawful permanent residence. Indeed, adjusting status to lawful permanent residency for some people requires leaving and reentering the country, something that is not possible for most stateless people. The lack of a legal framework and procedures which recognize and address the unique position of stateless persons, leaves them in limbo with no solution or access to justice or rights.

The Stateless Experience in the United States

The effects of Covid-19 on stateless persons in the U.S.

7. Covid-19 has disproportionately affected minority groups, including stateless people, in the US. While the true scale of the disparity is unknown, the available studies all reveal that the **minorities have suffered most acutely during the pandemic**⁹.
8. In the 2020 mapping project completed by CMS, it was determined that stateless people are more likely to serve in frontline jobs in essential industries, in positions requiring in-person human interactions. These would include working as grocery clerks, janitorial staff, cleaning medical facilities, as well as working on farms and in factories as meat, poultry, and fish processors. These jobs pose a much higher risk of exposure and vulnerability to the Covid-19 virus. Additionally, many immigrant communities in which minorities and stateless populations are concentrated in the US are located in midwestern and southern states where lockdowns were delayed, and the threat from the virus was downplayed.

⁶ With some exceptions – for example, those born in American Samoa are not citizens by birth.

⁷ For instance, in October 2018, President Trump suggested that he could sign an executive order that would reinterpret the Fourteenth Amendment's Citizenship Clause to take away the right to U.S. citizenship for children born to non-U.S. citizens on U.S. soil. For more information, see: <https://www.justiceinitiative.org/uploads/08cbf518-8a19-4601-897b-7187f04cea27/unmaking-americans-insecure-citizenship-in-the-united-states-fact-sheet-20190916.pdf>.

⁸ OSJI, Unmaking American. Insecure citizenship in the United States- Fact Sheet, <https://www.justiceinitiative.org/uploads/08cbf518-8a19-4601-897b-7187f04cea27/unmaking-americans-insecure-citizenship-in-the-united-states-fact-sheet-20190916.pdf>.

9. In the US, stateless people who lack immigration status are generally excluded from federal, or state-funded health insurance or relief programs.⁹ As the federal government released its first, second, and third stimulus packages, only those in the United States with a valid Social Security Number (SSN) were eligible to receive them. Most stateless persons do not have a social security number, and as such, were excluded from the relief stimulus programs. Also, fears of authorities works as a deterrent for stateless people in enjoying their right to vaccinations. They fear being asked for their ID.¹⁰
10. For stateless individuals in the U.S. immigration detention centers, the effects of Covid-19 are especially severe. Over-crowded cells, lack of social distancing, unsafe and unsanitary living conditions and improper medical care have all been reported as an ongoing reality in the US immigration detention facilities. Naturally, these conditions aggravate the suffering inherent in the experience of statelessness¹¹.

Stateless persons in the U.S. Immigration Detention

11. Many stateless people in the United States are undocumented and undeportable. Due to the lack of a dedicated statelessness identification and determination procedure, detention and removal officers may be unconvinced that an individual is stateless and therefore undeportable. In such cases, officers may declare that a removable non-citizen is uncooperative, or otherwise find their removal reasonably foreseeable. As a result, stateless persons continue to face a risk of prolonged or indefinite immigrant detention in the U.S., a situation that likely violates Article 9 of the ICCPR. Statelessness is not a defense against removal in the U.S., and removal procedures do not take account of a person's stateless status when a country for removal is determined. As a result, there have been cases of stateless persons being deported to countries to which they have no meaningful links.
12. While in immigration detention, some stateless persons are subjected to **forced labor**, which may violate the Abolition of Forced Labor Convention Article 1, which prohibits the use of forced labor as part of discrimination on the grounds of nationality. United Stateless has received reports of stateless youth in detention being forced to clean the toilets of immigration guards.

Lack of enjoyment of rights and adequate protection for stateless people

Inability to travel or work

13. Stateless persons in the U.S. experience limited freedom of movement, in violation of the ICCPR Article 12(1). They may spend years under a final order of removal from the U.S. but cannot be removed or resolve their status. Without the ability to travel outside the U.S. or to sponsor family members, **stateless people may spend years, even decades, separated from family members.**

"I found out about my statelessness while attempting to voluntarily deport myself to my home country to be with my dying father, only to be denied this right on the grounds that my country no longer recognized me as a citizen." - United Stateless member

⁹ Institute on Statelessness and Inclusion, Together We Can. The COVID-19 impact on stateless people & a roadmap for change, 2021, https://files.institutesi.org/together_we_can_report_2021.pdf, p. 8.

¹⁰ Ibid., p. 30. (Together we can report)

¹¹ New York Times [Virus cases are surging at crowded immigration detention centers in the U.S.](#)

14. Stateless persons lack documentation to facilitate movement on airplanes and buses. According to members of United Stateless, they are often unable to get driver's licenses and, if they are without a visa, they **risk arrest and detention when they travel**. In cases when a stateless persons may be eligible for a travel document (a green card holder, for example) they frequently cannot obtain travel documents to travel abroad because of gaps in the document issuance procedures.
15. Many stateless persons are not legally employable due to a lack of work authorization in the U.S. and have to rely on unregulated employment opportunities. In these jobs they are routinely subject to **unsafe working conditions, exploitation, enduring overtime and minimum wage violations, discrimination, and retaliation for speaking up**. Stateless women belong to minority groups and as such experience the intersectional impact of gender, race, and ethnic biases that result in greater vulnerability to exploitation and loss of employment.

"I was on a vacation in Florida this past January for my birthday and I had to travel by bus to get there because I have no state ID to board an airplane. When it was time for me to go back, I have seen a news report that there had been an ICE raid in the same greyhound station I had arrived from. I was too afraid to go back on the bus to Chicago, so my brother had to fly to Florida and rent a car to drive me back home." - United Stateless member

Inability to obtain Identity Documents

"I've been to the DMV about three different times trying to obtain a visitor's driver's license, but I was unable to because they wouldn't accept my Dutch birth certificate, as a form of identification. I was told I need a passport to show, which I do not have. I tried explaining my situation to the supervisor, but she told me she never heard of the term "stateless" and has never run into someone with my situation before. I was told to come back when I have an asylum/refugee card." - United Stateless member

16. Depending on their status, stateless persons in the U.S. often have no way of getting identity documents. If they have access to documents, they often struggle to meet the requirements or maintain these documents over a long time period. Even for individuals who qualify for relevant documents, statelessness may negatively impact their ability to get Green Cards, travel documents, work authorizations, drivers licenses, city ID cards, and other documents.
17. Lack of identity documents has a devastating effect on stateless people, restricts their movement, prevents them from working or attending university and makes it difficult to apply for credit cards, bank accounts, cell phones and any other services that require an ID card. In some cities, even accessing buildings or other spaces may be difficult due to the need to provide an ID card for security reasons. Likewise, encounters with government agents or police officers are a constant concern for stateless persons.
18. Recent studies¹² focusing on the discriminatory nature of the newly established voter ID laws in the U.S. serve to highlight that it is the members of ethnic or racial minority groups, people with disabilities, the elderly, or those living in rural areas without access to public or private transportation that have the hardest time obtaining IDs. This, of course, includes stateless people.
19. Many US immigration attorneys, officials, judges and others involved in the immigration system do not understand statelessness or have never heard of it before. The ways in which statelessness may contribute to a claim for asylum under US law are poorly understood by many immigration

¹² ACLU (<https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet>)

attorneys, judges and government officials. Many stateless people receive incompetent or insufficient help with their immigration and asylum cases. As a result, even when potential solutions exist for stateless people under the existing legal system, such as the asylum system, these opportunities are missed by attorneys and immigration officials.

Recommendations

Based on the above information, the co-submitting organizations urge the SR Minorities to raise the following issues:

- I. Enact legislation (**namely, the Stateless Protection Act drafted by United Stateless**) that adopts the internationally recognized definition of “stateless person” and provides lawful permanent residence and a path to U.S. citizenship for stateless people residing in the U.S.
- II. Ratify and fully implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and core human rights treaties, including the CRC, CEDAW, CMW and CRPD;
- III. Enact legislation that provides a path to citizenship for the Deferred Action for Childhood Arrivals (DACA) recipients who face risks of statelessness.
- IV. Amend U.S. laws to release stateless people from detention during the 90 day removal period to prevent arbitrary detention.
- V. Amend U.S. laws to remove re-entry requirements for stateless individuals to allow them to adjust their residence status in the U.S. without needing to travel overseas.
- VI. Amend procedures and policies to mainstream statelessness throughout the asylum and immigration judicial system, including by updating training manuals for judges and others involved in the process.
- VII. Work with the Department of Homeland Security (DHS) to: grant stateless people in the U.S. deferred action or temporary permission to reside in the U.S.; remove orders of supervision and travel limitations; establish a policy of timely release for stateless people with final orders of removal; and provide fee-exempt identity documents and work authorization.
- VIII. Reinstate the DACA program, which will provide temporary protection to certain stateless individuals.
- IX. Encourage Congress to pass legislation (namely the Stateless Protection Act drafted by United Stateless) that provides lawful permanent residence and a path to citizenship for stateless people in the U.S.
- X. Designate a department or bureau within DHS to address statelessness domestically, working in cooperation with the Department of State's Bureau of Population, Refugees and Migration which already works to address statelessness outside of the U.S.
- XI. **Establish stateless status determination procedure within DHS.**
- XII. Issue guidance to the Department of Justice(DOJ) to terminate final removal proceedings for stateless people residing in the U.S.
- XIII. Prioritize education and awareness on the issue of statelessness within the executive branch.

ANNEX I United States of America's International Obligations

1. The U.S. is a party to the International Covenant on Civil and Political Rights (ICCPR), which mandates in Article 24 that every child has the right to a nationality at birth. The U.S. largely satisfies this obligation through its application of both jus soli and jus sanguinis, as well as free, widely available birth registration. The right to a nationality under the Covenant forms part of a larger international framework through which the right to a nationality for all persons is recognized as a fundamental right, which is included in, among others, the CEDAW (Art 9), CRC (Arts 7 & 8) and Convention on Enforced Disappearances (CED) (Art. 25). 9. The United States has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which guarantees equal enjoyment of the right to a nationality in Article 5(d)(iii).
2. The U.S. is not party to the CRC, CEDAW and CRPD, and has received recommendations to ratify these conventions. Further, the U.S. is also not party to the Convention on the Protection of the Rights of All Migrant Workers (ICRMW) or the CE
3. The U.S. is also not party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, despite having participated in the drafting processes of both statelessness conventions. Further, it has also not acceded to the International Labor Organization Discrimination (Employment and Occupation) Convention and the Inter-American human rights instruments contain important protections for undocumented persons and migrant workers, groups in the U.S. which may include stateless persons. Ratification of these treaties would assist in efforts within the U.S. to ensure that all members of the U.S. population enjoy their right to a nationality.