

Federal Law Should Recognize And Protect Stateless People

By **Samantha Sitterley and Charles Johnson** (June 5, 2023)

Earlier this year, more than 300 people became stateless when the regime of José Daniel Ortega in Nicaragua stripped political opponents of their citizenship. This left these individuals without a homeland, and without any government protections.[1]

The U.S. responded with condemnation and sanctions but, ironically, U.S. law currently offers no specific remedy to fix the problem of statelessness, which affects over 200,000 people living in this country.[2]

The situation in Nicaragua reminds us that this is an ongoing international problem, but also one that needs to be addressed here at home. Still, right now, there is no federal definition of statelessness, and no legal mechanism to assess or protect stateless individuals in the U.S.

U.S. Department of Homeland Security Secretary Alejandro Mayorkas has recognized and offered to assist stateless people stuck in legal limbo in this country.[3] Once implemented, this promised assistance will provide an opportunity for recognition and fair treatment under U.S. immigration laws to people in the U.S. who currently are not recognized as citizens by any country in the world.

In the meantime, fear, uncertainty and lack of basic freedoms continue to restrict the lives of stateless people in the U.S., while they are unable to leave the country or be deported. Stateless people anxiously await the federal recognition of their condition.

Though statelessness is purely a legal issue, created entirely by citizenship and immigration laws, the legal profession, along with the general U.S. population, is mostly unaware of statelessness. Even experts in immigration law can miss the issue. Stateless clients are often met with disregard and misunderstanding.

This misunderstanding is not a small thing: A 2020 comprehensive study by the Center for Migration Studies found that there may be as many as 218,000 stateless people in the U.S.[4]

These numbers alone suggest the legal profession needs to do more to educate itself about statelessness. Law schools can better prepare students to identify statelessness. And most importantly, the U.S. government should do more to recognize statelessness and define the legal boundaries around it by replacing an unjust legal limbo for stateless people in the U.S. with a path to citizenship. The time to fix these issues is now.

Statelessness occurs when a person has no recognized claim to citizenship under any country's laws. Stateless persons each have unique stories about the cause of their statelessness, with the common thread that their lack of citizenship was created by events well beyond their control.

Geopolitical crises that cause the displacement of people, such as the collapse of



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Afghanistan and war in Ukraine, often play a role in statelessness. Many refugees or displaced persons cannot prove their citizenship. Others are born in a country that will not recognize them as citizens.

Others have the misfortune of being born in countries that no longer exist, such as former Soviet states, and have not inherited a new country of citizenship. Some stateless people were born in a country that denies women the right to pass citizenship to their children.

Not uncommonly, stateless people are unaware they are stateless until they are required to prove their citizenship to travel or to obtain benefits in the country where they are living. International human rights law states that every person has the right to a nationality.

In spite of this, the U.S. has failed to establish a pathway for stateless people to obtain nationality or any type of specialized protections. Indeed, there isn't even a statutory or regulatory definition of statelessness in the U.S.

This lack of recognition of statelessness is slowly changing. In 2021, the U.S. Department of Homeland Security announced a first-ever commitment to adopt a federal definition of statelessness. Last year, Mayorkas affirmed this commitment during an appearance on PBS NewsHour.[6]

Even so, this commitment awaits DHS guidelines that will finally define statelessness, and create an assessment process and evidentiary standards that recognize stateless people and provide consistent treatment within the immigration system. At present, federal officers must sort statelessness situations case-by-case, often unaware of statelessness and without guidelines for evaluating such circumstances.

A clear screening process for statelessness would also give advocates the tools to raise the issue as a positive factor when seeking discretionary relief, and even to argue statelessness as a basis for asylum and other protections.

Even without a definition or a process, stateless people are not without some legal protection. Like all persons present in the U.S., they are entitled to basic due process and equal protection under the U.S. Constitution.

Some stateless noncitizens may qualify for certain forms of immigration relief, such as family-based immigration petitions and temporary protected status. And because statelessness is an abhorrent condition often caused by discriminatory nationality laws, some stateless people may be entitled to refugee or asylee status.

In extraordinary cases, the political system works to protect stateless persons. For instance, Congress recently passed a private bill sponsored by Sens. Lisa Murkowski and Dan Sullivan, both Republicans from Alaska, to regularize the status of Rebecca Trimble, who spent her entire life in Alaska pursuing the American dream and raising a family.[7]

Trimble first became aware that she was stateless when she faced threats of deportation to a country she had never known, which did not recognize her as a citizen. The private bill resolved more than a decade of uncertainty for Trimble.

In another case, American soldier Fadel Tankoano, caught in stateless limbo despite being issued a U.S. passport at birth in New York, became a U.S. citizen in March after a lengthy legal battle.[8]

These lengthy proceedings, in which the system struggles to fit stateless people into current legal paradigms, are not uncommon. These two exceptions prove the rule: Stateless people face enormous and time-consuming obstacles in the U.S. due to the absence of specific legal protections.

The U.S. government has an opportunity to end these kinds of struggles by updating our immigration laws to recognize and address the plight of the U.S.' stateless population. Fortunately, two congressional leaders from Maryland, Sen. Ben Cardin and Rep. Jamie Raskin, both Democrats, have introduced the Stateless Protection Act.[9]

The act would resolve the status of stateless people in America by defining statelessness under U.S. law for the first time, creating an opportunity for stateless people to have protected status and providing benefits such as green card eligibility and a pathway to permanent citizenship. It deserves broad bipartisan support.

In the meantime, the more attorneys and our nation's leaders talk and learn about statelessness, the better. The American Bar Association, recognizing the importance of generating broader awareness of the issue, recently hosted two trainings on statelessness.[10] Statelessness should also be included in the curricula of immigration classes in U.S. law schools.

Let us dedicate ourselves to addressing statelessness as soon as possible so that the stateless people living among us can realize stability and peace of mind concerning their citizenship status. It is time to end the legal limbo of statelessness.

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Disclosure: United Stateless was involved in drafting the Stateless Protection Act.

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[1] <https://www.aljazeera.com/news/2023/2/16/nicaragua-strips-94-political-opponents-of-citizenship>.

[2] <https://www.state.gov/sanctioning-three-nicaraguan-judges-depriving-nicaraguans-of-their-basic-right-to-citizenship/>.

[3] <https://www.dhs.gov/news/2021/12/15/dhs-announces-commitment-enhance-protections-stateless-individuals-united-states>.

[4] <https://cmsny.org/publications/stateless-in-the-united-states/>.

[5] Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

[6] <https://www.pbs.org/video/stateless-1649198029/>.

[7] https://www.murkowski.senate.gov/press/release/after-years-of-limbo-delegation-secures_rebecca-trimbles-permanent-resident-status.

[8] <https://www.houstonchronicle.com/news/houston-texas/article/houston-soldier-stateless-becomes-citizen-17865261.php>.

[9] <https://raskin.house.gov/2022/12/cardin-raskin-introduce-bill-to-protect-vulnerable-individuals-left-without-a-country#:~:text=9671%2C%20the%20Stateless%20Protection%20Act,the%20operation%20of%20its%20law>.

[10] <https://www.americanbar.org/events-cle/ece/ondemand/429743942/>.