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On the Road to Nowhere: The Unique Challenges Stateless People Face in Removal Proceedings and the Untenable Legal Limbo Following Final Orders of Removal

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**ON THE ROAD TO NOWHERE:
THE UNIQUE CHALLENGES STATELESS PEOPLE
FACE IN REMOVAL PROCEEDINGS AND THE
UNTENABLE LEGAL LIMBO FOLLOWING FINAL
ORDERS OF REMOVAL**

Rachel Marandett[†]

ABSTRACT

Under a world order defined by nation-states, having one's rights and dignity protected is inexorably tied to being a citizen of somewhere. Stateless people, who are citizens of nowhere, are thus left without the safeguards of a nation responsible for them. Today, there are over 200,000 stateless people living in the United States. Because the American immigration system is built upon the premise that everyone is a citizen of somewhere, stateless people are consistently trapped in a ceaseless legal limbo. In fact, the majority of stateless people in the United States have already gone through removal proceedings and have final orders of removal. These orders, however, cannot realistically be executed as most states will not accept stateless people. Thus, most stateless people are forced to live out their lives in the United States under Orders of Supervision. Trapped in this legal limbo, stateless peoples must perpetually endure limitations on their movement, persistent surveillance, no pathway to citizenship, and an ever-looming risk of prolonged detention or deportation to somewhere entirely unfamiliar. This ineffective system is as inhumane as it is unsustainable.

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In response to the voices and needs of stateless people across the country forced to live under these conditions, this Article seeks to unpack the unique challenges stateless people face in the removal process and the untenable legal limbo they are trapped in thereafter. Thorough analysis of these issues illuminates the need for an entirely new statutory framework for stateless people immigrating to the United States that is attentive to their unique situation. While the recently proposed Stateless Protection Act of 2022, written by stateless people, provides such a framework, Congress is unlikely to pass it without judicial decisions holding the present system's treatment of stateless people unconstitutional. Thus, this Article analyzes prior litigation efforts and proposes additional legal strategies to protect stateless people with final orders of removal. Lawyers and advocates must combine increased litigation efforts that utilize new and creative approaches with the important education and advocacy work stateless people in the United States are already doing in order to build a system that doesn't leave stateless people stranded on the road to nowhere.

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INTRODUCTION

*Because we don't have citizenship, we are like a fish out of water, flapping and unable to breathe. If we were given citizenship, we would be like that fish that you catch and then throw back in the water where he belongs. We are still out of water, and when a fish is out of water, it suffocates. We've been out of water for such a long time now, and we're suffocating. We're suffocating to death.*¹

These are the words of a Rohingya man from Myanmar. Like countless other members of his community, he is stateless—a citizen of nowhere.² Under a world order defined by nation-states, having one's rights and dignity protected is inexorably tied to being a citizen of somewhere.³ Citizens of nowhere, however, are left in a legal limbo without the protections and guarantees of a nation responsible for them.⁴ Hannah Arendt called this the “calamity of the rightless,” for the plight of the stateless “is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.”⁵ Recent data suggests that there are presently somewhere between 4.4 million⁶ and 10 million⁷ stateless people across the world experiencing this plight. While it is impossible to know exactly how many currently reside in the United States, recent estimates suggest there are around 218,000 people who are “potentially stateless or potentially at risk of statelessness” in the country.⁸

¹ TEDx Talks, *Nowhere People: Exposing a Portrait of the World's Stateless* | Greg Constantine | TEDxEastEnd, YOUTUBE, at 04:28 (Feb. 24, 2016), <https://www.youtube.com/watch?v=u9DD6MZj5Z4>.

² See Amal de Chickera, *Stateless and Persecuted: What Next for the Rohingya?*, MIGRATION POL'Y INST. (Mar. 18, 2021), <https://perma.cc/CSU9-5HBU>.

³ Jeremy Waldron, *Citizenship and Dignity*, in UNDERSTANDING HUMAN DIGNITY 327, 336 (Christopher McCrudden ed., 2014) (“Everyone’s having a state that is responsible for her and a particular political community to which she belongs is a way of realizing human dignity, maybe the best way . . .”).

⁴ See *id.* at 336-38.

⁵ HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM 295-96 (new ed. 1973).

⁶ *Refugee Data Finder*, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/refugee-statistics/download/?url=Wdg0kP> (last visited Dec. 21, 2023) (on file with CUNY Law Review) (counting stateless people as of mid-2023).

⁷ Inst. on Statelessness & Inclusion, *Statelessness in Numbers: 2020* (Aug. 2020), <https://perma.cc/M93D-BCA4> (examining estimates of stateless people as of 2020).

⁸ CTR. FOR MIGRATION STUD. OF N.Y., STATELESS IN THE UNITED STATES: A STUDY TO ESTIMATE AND PROFILE THE US STATELESS POPULATION 2 (2020), <https://perma.cc/5J4L-ZRHG> (“[S]everal data limitations make it impossible to provide precise estimates of this population.”).

One of these individuals is Danah Abdulaziz, a woman born in Kuwait who has been stateless since birth due to Kuwaiti law prohibiting women from passing down citizenship.⁹ When she was four years old, Danah and her family arrived in Brooklyn.¹⁰ Although they were able to remain undetected by the authorities for the next eleven years,¹¹ they had to navigate the immense challenges of living in the United States without lawful status or access to government services.¹² Then, when Danah was fifteen, Immigration and Customs Enforcement (“ICE”) came to her house early in the morning, put handcuffs on her, and took her to a facility in Queens, where they strip-searched her.¹³ Danah was subsequently held in ICE detention for six months before officials were forced to release her “because there was nowhere to deport her to.”¹⁴ Every year since then, Danah must report to those same immigration authorities.¹⁵ Describing her detention as the “climax of [her] life,”¹⁶ Danah went on to co-found United Stateless,¹⁷ the first nonprofit in the United States dedicated exclusively to advocating for stateless peoples’ rights.¹⁸

Born in Ethiopia to an Ethiopian mother and an Eritrean father, Miliyon Ethiopis is also a citizen of nowhere and a co-founder of United Stateless.¹⁹ When Ethiopia and Eritrea went to war in 1998 following Eritrea’s independence, Miliyon’s father was first sent to prison and then deported to Eritrea, while 24-year-old Miliyon stayed in Ethiopia with his mother and siblings.²⁰ Not long after, Ethiopian officials located, detained, and brutally tortured Miliyon purely because of his Eritre-

⁹ Danah Abdulaziz, Opinion, *I’m a New Yorker. I’m Also ‘Stateless.’ It’s Time for the U.S. to Help People like Me*, CITY LIMITS (Mar. 7, 2023), <https://perma.cc/CT5W-ESXD>.

¹⁰ Mary Giovagnoli & Karina Ambartsoumian-Clough, *Why Women Are More Likely to Be ‘Citizens of Nowhere,’* MS. (Mar. 14, 2023), <https://perma.cc/ANB5-453H>.

¹¹ *Id.*

¹² *See id.* (“[S]tateless people have no legal immigration status and therefore face many of the same challenges as unauthorized immigrants: difficulty finding work, inability to travel, paying taxes but having no access to social security benefits.”).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Abdulaziz, *supra* note 9. *See generally* UNITED STATELESS, <https://perma.cc/966V-425P> (last visited Dec. 21, 2023).

¹⁸ Ekaterina E, *The Transformative Power of Advocacy*, EUR. NETWORK ON STATELESSNESS (May 18, 2023), <https://perma.cc/9L7S-3VK2>.

¹⁹ Stephanie Sy & Lena I. Jackson, *Hundreds of Thousands of Stateless People Are Living in Legal Limbo in the U.S.: Transcript*, PBS (Apr. 5, 2022, 6:35 PM), <https://www.pbs.org/newshour/show/hundreds-of-thousands-of-stateless-people-are-living-in-legal-limbo-in-the-u-s> (on file with CUNY Law Review).

²⁰ *Id.*

an ethnicity.²¹ Once released, Miliyon went to an immigration office to flee to the United States, but Ethiopian officials confiscated his passport, rendering him stateless.²² Only after acquiring fake documents and hiring smugglers was he able to get to the United States.²³ Following the denial of his asylum request, Miliyon has spent the last decade living in Maryland, still stateless and stuck in legal limbo.²⁴ He explains that he and other stateless people in the United States “always try to . . . do normal things, . . . go to work, pay tax[es], be a good citizen But, at the end of the day, [we] don’t get anything back.”²⁵ Without lawful status, Miliyon cannot visit his family or even get a temporary work permit.²⁶ His lawyers explain that the only way he could get these minimal government benefits would be if he were given a final order of removal that the Department of Homeland Security (“DHS”) could not execute because of his statelessness.²⁷ This, however, would involve enduring six months of detention and consequently losing everything he has.²⁸ Today, Miliyon is unsure if he made the right decision in leaving Ethiopia, and “now fears he may have made his situation much worse.”²⁹

Danah and Miliyon’s stories are merely two of stateless peoples’ uncountable life experiences. Many, like Danah, were born without a legal nationality, while others, like Miliyon, experienced denationalization.³⁰ The three most common, often overlapping, causes of statelessness are “1) State succession; 2) discrimination and arbitrary denial or deprivation of nationality; and 3) technical causes.”³¹ State succession usually occurs where a new country splits away from an existing one (like Eritrea from Ethiopia or South Sudan from Sudan), where an empire or nation dissolves (like the Soviet Union or Yugoslavia), or where

²¹ *Id.*

²² *Id.*

²³ Shaminder Dulai & Moises Mendoza, *Stateless: The Ultimate Legal Limbo*, NEWSWEEK (Apr. 10, 2015, 6:36 AM), <https://perma.cc/7DVT-66JV>.

²⁴ Sy & Jackson, *supra* note 19.

²⁵ *Id.*

²⁶ Dulai & Mendoza, *supra* note 23.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Denationalization occurs where states arbitrarily and unlawfully take away someone’s citizenship, usually as some form of individual or collective punishment. For more on denationalization and related U.S. policy and case law, see generally Brett Stark & Jodi Zieseemer, *The Right to Have Rights: Loss of Citizenship, Asylum, and Constitutional Principles*, 30 GEO. IMMIGR. L.J. 429 (2016).

³¹ U.N. High Comm’r for Refugees & Open Soc’y Just. Initiative, *Citizens of Nowhere: Solutions for Statelessness in the U.S.* 13 (Dec. 2012), <https://perma.cc/3TSZ-RDFH> [hereinafter UNHCR & Open Soc’y Just. Initiative].

ownership of territory is contested (like Palestine).³² In such situations, people often “are perceived to be on the ‘wrong’ side of the border for people of their ethnicity or religion . . . [and] are rejected by the new political authorities in both places.”³³ Relatedly, members of minority groups are frequently deprived of citizenship due to racial, ethnic, religious, or gender-based discrimination. This is a leading cause of statelessness as it includes many marginalized communities such as the Rohingya in Myanmar, Haitians in the Dominican Republic, Black Mauritians, and Bedoons in Kuwait, as well as the twenty-five countries that only allow men to pass down citizenship.³⁴ Finally, technical causes occur where nationality laws are not compatible with transnational movement—someone is born in a country that does not grant citizenship by birth to parents whose country of origin does not grant citizenship by parental descent—or where another procedural abnormality, such as marriage or consulate registration requirements, is at play.³⁵ Today, the heightened discretion afforded to national laws, the rate of global migration, shifting borders, and innumerable domestic and transnational conflicts have only increased the possibility of becoming stateless.³⁶

Acknowledging the scale and depth of the statelessness problem in the modern world, several international legal doctrines and treaties recognize the right to nationality as a fundamental human right.³⁷ Moreo-

³² *See id.*

³³ Bronwen Manby, *People Without a Country: The State of Statelessness*, 17 *INSIGHTS ON L. & SOC’Y* 14, 16 (2019).

³⁴ GLOB. HUM. RTS. CLINIC, UNIV. OF CHI. L. SCH. & UNITED STATELESS, “ALL I WANT IS TO BE FREE”: SITUATION REPORT AND RECOMMENDATIONS TO PROTECT THE HUMAN RIGHTS OF STATELESS PEOPLE IN U.S. IMMIGRATION DETENTION AND SUPERVISION 5-6 (2022), <https://perma.cc/S4R5-P2FM> [hereinafter GLOB. HUM. RTS. CLINIC & UNITED STATELESS].

³⁵ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 14.

³⁶ Manby, *supra* note 33, at 17.

³⁷ For customary international law, see G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 15 (Dec. 10, 1948) (“(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”). For international treaties the United States has ratified, see International Covenant on Civil and Political Rights art. 24(3), Dec. 16, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 (“Every child has the right to acquire a nationality.”); International Covenant on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, T.I.A.S. No. 94-1120, 660 U.N.T.S. 195 (“State Parties undertake to . . . guarantee the right of everyone . . . to nationality.”). For international treaties the United States has not ratified, see, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Nationality of Married Women, *opened for signature* Jan. 29, 1957, 309 U.N.T.S. 65; Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S. T.S. No. 36, 1144 U.N.T.S. 123.

ver, the 1954 Convention Relating to the Status of Stateless Persons expressly establishes a universal definition of a stateless person and lays out criteria State Parties must adopt to protect stateless people,³⁸ and the subsequent 1961 Convention on the Reduction of Statelessness provides a framework to resolve nationality law conflicts and details a plan to reduce statelessness over time.³⁹ The United States, however, is not party to either Convention and, despite promises to the contrary, still has not implemented any domestic legal protections for stateless people. This legal void, combined with the complex administrative and political situation surrounding U.S. immigration law, renders stateless people in the United States uniquely vulnerable.

This Article assesses the contours and ramifications of this vulnerability in U.S. immigration law, with a focus on removal proceedings and orders, and analyzes possible solutions to the current, untenable system. Part I surveys the limited existing legal pathways available to stateless people in the United States prior to removal proceedings. Next, Part II examines the challenges stateless people face during removal proceedings. Part III then assesses the unique challenges stateless people face after receiving final orders of removal. Finally, Part IV reviews proposed legal and statutory solutions and contributes new, creative litigation strategies to challenge the perpetual legal limbo stateless people are trapped in after receiving final orders of removal.

I. LIMITATIONS OF THE LEGAL FRAMEWORK FOR STATELESS IMMIGRANTS IN THE UNITED STATES PRIOR TO REMOVAL PROCEEDINGS

In 1958, the Supreme Court issued a landmark decision striking down a law authorizing deprivation of U.S. citizenship as a form of punishment.⁴⁰ In his plurality opinion, Chief Justice Earl Warren recognized statelessness as a “condition deplored in the international community of democracies” with “disastrous consequences.”⁴¹ More than fifty years later, in 2011, the United Nations High Commissioner for Refugees (“UNHCR”) launched a global campaign to raise awareness about and encourage states to address the ongoing problem statelessness presents.⁴² As part of this campaign, the United States, along with many other

³⁸ Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117.

³⁹ Convention Relating to the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.

⁴⁰ *Trop v. Dulles*, 356 U.S. 86 (1958).

⁴¹ *Id.* at 102.

⁴² Vivian Tan, *New Campaign: UNHCR Launches Global Campaign for the Stateless Millions*, UNHCR (Aug. 25, 2011), <https://www.unhcr.org/news/stories/new-campaign-unhcr-launches-global-campaign-stateless-millions> (on file with CUNY Law Review).

states, pledged to work toward establishing legislation and revising administrative policy to create a pathway to citizenship for stateless people living in their borders.⁴³ Despite both acknowledging the scale of the unique issue of statelessness and pledging to take steps toward alleviating hardships,⁴⁴ U.S. law today still fails to provide any substantive protections for stateless immigrants.⁴⁵

Although U.S. law does acknowledge in its definition of refugee that immigrants may not possess any citizenship,⁴⁶ it does not contain any express definition for the term stateless,⁴⁷ and thus fails to legally recognize stateless people.⁴⁸ The Immigration and Nationality Act (“INA”) contains no references to statelessness, nor does it provide any guidance or system for determining statelessness.⁴⁹ Further, the United States has no process designed to grant legal status to stateless people that takes into account their unique circumstances and vulnerabilities.⁵⁰ This absence of clear domestic standards and processes that align with international expectations forces stateless people and their advocates in the United States to try to find pathways to residency or citizenship that are not appropriately tailored to their unique situations.⁵¹

One such pathway stateless people often try is applying for asylum. For a person without a nationality to be granted asylum, they must show they meet the definition of a refugee:⁵² “any person who is outside any

⁴³ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 2. For a complete list of pledges made at the UNHCR’s 2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons, see U.N. HIGH COMM’R FOR REFUGEES, PLEDGES 2011: MINISTERIAL INTERGOVERNMENTAL EVENT ON REFUGEES AND STATELESS PERSONS (2011), <https://www.refworld.org/pdfid/50aca6112.pdf> (on file with CUNY Law Review).

⁴⁴ *Statelessness*, U.S. DEP’T OF STATE: BUREAU OF POPULATION, REFUGEES, & MIGRATION, <https://perma.cc/R59W-XFQ2> (last visited Dec. 21, 2023).

⁴⁵ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 2.

⁴⁶ 8 U.S.C. 1101(a)(42).

⁴⁷ On August 1, 2023, following years of advocacy by United Stateless and the stateless community in the United States, the U.S. Department of Homeland Security issued a Policy Alert document about statelessness which does provide a definition of the term. See U.S. DEP’T OF HOMELAND SEC.: U.S. CITIZENSHIP & IMMIGR. SERVS., PA-2023-21, STATELESSNESS (2023), <https://perma.cc/K4HF-XM5M>; Press Release, United Stateless, U.S. Stateless Advocates Celebrate “Huge Win” With Clear Definition, Recognition of Statelessness by USCIS (Aug. 1, 2023), <https://perma.cc/UF77-73T4>. While this represents substantive movement in the right direction, this definition still is not binding law as it is only contained in a guidance document.

⁴⁸ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 8.

⁴⁹ David C. Baluarte, *Life After Limbo: Stateless Persons in the United States and the Role of International Protection in Achieving a Legal Solution*, 29 GEO. IMMIGR. L.J. 351, 360 (2015).

⁵⁰ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 8.

⁵¹ *Id.*

⁵² 8 U.S.C. § 1158(b)(1)(A).

country in which such person last habitually resided, and who is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁵³ U.S. courts have made clear that statelessness alone is not sufficient to meet this definition; instead, it may only be considered a *contributing* factor.⁵⁴ In *Ahmed v. Ashcroft*, the Third Circuit dismissed statelessness as an independent ground for asylum, despite acknowledging that both the United States and the international community are acutely aware of the problem of statelessness.⁵⁵ In practice, this failure to consider statelessness as grounds for asylum means that stateless asylum seekers must not only meet the standard definition of “refugee” based on persecution or fear of persecution on account of a protected ground, but also additionally demonstrate both that they have “no nationality” and where their “country of last habitual residence” is.⁵⁶

Both of these parts required for an asylum claim to proceed present unique challenges for stateless people. First, while certainly sometimes possible, showing persecution or fear of persecution can be acutely difficult for stateless people as many adjudicators do not understand the unique character of their past suffering or that which they are likely to endure in the future.⁵⁷ Some courts have found that individual situations of stateless people may rise to the level of required persecution;⁵⁸ however, these instances are most frequently found where the stateless person lost their citizenship due to discriminatory denaturalization, which only applies to a small subsection of all stateless asylum seekers.⁵⁹ Furthermore, because the fear of persecution must have a sufficient nexus to a protected ground, denaturalization often does not rise to the necessary threshold for asylum, even for stateless people denaturalized for dis-

⁵³ 8 U.S.C. § 1101(a)(42)(A).

⁵⁴ See, e.g., *Ahmed v. Ashcroft*, 341 F.3d 214, 218 (3d Cir. 2003); *Faddoul v. Immigration & Naturalization Service*, 37 F.3d 185, 190 (5th Cir. 1994); *Maksimova v. Holder*, 361 F. App'x 690, 693 (6th Cir. 2010); *Fedosseeva v. Gonzales*, 492 F.3d 840, 845 (7th Cir. 2007); *Pavlovich v. Gonzales*, 476 F.3d 613, 617 (8th Cir. 2007); *Najjar v. Ashcroft*, 257 F.3d 1262, 1293 (11th Cir. 2001).

⁵⁵ 341 F.3d at 218.

⁵⁶ *Baluarte*, *supra* note 49 at 367-68.

⁵⁷ *Id.* at 366-67.

⁵⁸ See, e.g., *Haile v. Holder*, 591 F.3d 572, 574 (7th Cir. 2010); *Stserba v. Holder*, 646 F.3d 964, 979 (6th Cir. 2011); *Mengstu v. Holder*, 560 F.3d 1055, 1059 (9th Cir. 2009).

⁵⁹ See Maryellen Fullerton, *The Intersection of Statelessness and Refugee Protection in US Asylum Policy*, 2 J. ON MIGRATION & HUM. SEC. 144 (2014) (providing a nuanced discussion of statelessness in U.S. asylum proceedings and the paths open specifically to stateless people who experienced discriminatory denaturalization).

criminatory reasons.⁶⁰ Second, even where one can show persecution and meet the nexus requirement, it is often quite challenging for a stateless person to show that they have no nationality due to the lack of any statelessness determination procedures in the United States.⁶¹ Third, stateless asylum seekers often struggle to prove that such persecution or fear of persecution comes from their most recent country of habitual residence, which may not be their country of birth or that which caused their statelessness.⁶² As a result of this surplus of unique challenges, many stateless immigrants to the United States cannot qualify for asylum and are left in limbo without legal status.⁶³

In addition to applying for asylum, stateless immigrants in the United States can try to avail themselves of several other pathways. First, they can make a claim for protection under the Convention Against Torture (“CAT”).⁶⁴ However, these claims not only require showing fear of torture, which inherently only applies to some stateless people, but also only can result in withholding or deferral of removal, which does not mitigate the risk of a stateless person being removed to a third country or remaining in a ceaseless legal limbo.⁶⁵ Alternatively, they can seek deferred action, temporary visas, temporary protection status, or a family-based adjustment of status, all of which are seldom successful in the long run for stateless immigrants due to their impermanence and limited scope.⁶⁶ Further, many stateless immigrants are either not eligible for these paths or are unaware of them, causing many such

⁶⁰ See U.N. High Comm’r for Refugees, *Representing Stateless Persons Before U.S. Immigration Authorities* 16-19 (Aug. 2017), <https://www.refworld.org/pdfid/59a5898c4.pdf> (on file with CUNY Law Review) [hereinafter UNHCR].

⁶¹ See *Zahren v. Gonzales*, 487 F.3d 1039 (7th Cir. 2007) (finding a Palestinian man who incorrectly admitted to having Jordanian citizenship in his immigration proceedings to not be eligible for asylum because of the deferential standard of review to the agency’s factual finding that he had Jordanian citizenship based on his erroneous statement).

⁶² Sarah B. Fenn, Note, *Paripovic v. Gonzalez: Defining Last Habitual Residence for Stateless Asylum Applicants*, 40 U.C. DAVIS L. REV. 1545, 1561-63 (2007) (demonstrating the ambiguity and inconsistencies of courts determining where a stateless person’s last country of habitual residence is, ranging from where they were born to where they temporarily lived most recently, such as in a refugee camp); see also UNHCR, *supra* note 60, at 12-13.

⁶³ Asako Ejima, Note, *Ghosts in America: Working Towards Building a Legal Framework for Stateless Individuals in the United States*, 53 CASE W. RES. J. INT’L L. 357, 376 (2021).

⁶⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, TIAS No. 94-1120.1, 1465 U.N.T.S. 85 [hereinafter Convention Against Torture].

⁶⁵ UNHCR, *supra* note 60, at 35-37.

⁶⁶ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 10-11.

individuals to live undocumented in the United States for years without any clear solution.⁶⁷

As a result of the plethora of specific hardships presented by existing legal pathways for stateless people, it is unsurprising that stateless immigrants to the United States, more often than not, find themselves undocumented and eventually end up in removal proceedings. As documented by the UNHCR, the majority of stateless people in the United States already have final orders of removal that cannot be executed.⁶⁸ Because stateless people so often find themselves in removal proceedings, Part II of this Article will explore the specific challenges stateless people face throughout this process and the untenable legal limbo it creates.

II. HOW THE CURRENT STATUTORY FRAMEWORK FAILS TO PROTECT STATELESS PEOPLE DURING REMOVAL PROCEEDINGS

For stateless immigrants who do not apply for asylum or whose claims are unsuccessful, it is likely they will eventually end up in removal proceedings. However, just as in the asylum process, stateless people face unique obstacles during removal proceedings that the statutory framework is unequipped to address—most notably, lacking a country to which the agency can designate their removal.

Under the INA, an individual can become deportable and be put into removal proceedings for a myriad of reasons,⁶⁹ ranging from violating the conditions of their visa (such as timeframe or limitations on employment)⁷⁰ to facing violent or nonviolent criminal charges.⁷¹ Many undocumented stateless and non-stateless immigrants go undetected by immigration enforcement for extended periods of time;⁷² however, once they are identified for whatever reason,⁷³ they are likely to be funneled

⁶⁷ *Id.* at 11.

⁶⁸ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 25.

⁶⁹ 8 U.S.C. § 1227.

⁷⁰ 8 U.S.C. § 1227(a)(1)(C)(i).

⁷¹ 8 U.S.C. § 1227(a)(2).

⁷² GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 14.

⁷³ Undocumented immigrants are detected by immigrant enforcement officials in a myriad of ways, often created by the immigration system itself, such as final denial of their asylum claim, filing an application for temporary protected status or the like, presenting an ID to a government official, or simply being in the wrong place at the wrong time. GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 14-15. For more on how ICE identifies undocumented people for removal proceedings, see generally RANDY CAPPS ET AL., MIGRATION POL’Y INST., REVIVING UP THE DEPORTATION MACHINERY: ENFORCEMENT AND PUSHBACK UNDER TRUMP (2018), <https://perma.cc/D23U-RLFC>.

straight into detention⁷⁴ to await removal proceedings.⁷⁵ During the period of removal proceedings (starting with the master calendar hearing and extending through all merits hearings and appeals until a final order of removal is issued), the government must determine where they will remove the person to.⁷⁶ For those classified as “arriving aliens”—meaning they are entering the United States at an official port-of-entry⁷⁷—the removal country is that from which they entered or, if that country is unwilling to accept them, that of which they are a national, that in which they were born, that in which they previously resided, or any other that will accept them.⁷⁸ For all other stateless immigrants, the removal country is wherever the person themselves designates or, if they do not do so “promptly,” that of which they are a national or one selected by the government.⁷⁹ The U.S. government has significant discretion in selecting a removal country, without even the requirement of a functioning government in the receiving state.⁸⁰

While this process is straightforward for many, designating a removal country is almost always incredibly challenging for stateless people. Embedded in the designation process is the presumption that once a final order of removal is issued, the person will be accepted by the designated country.⁸¹ This, of course, is wholly inapplicable to stateless people. As the UNHCR highlights, because they are not nationals or citizens of any country, “stateless people have no choice but to designate a country that does not legally recognize them as citizens and will, in all likelihood, refuse to accept them.”⁸² If one chooses not to designate a country themselves, they will be subjected to the procedure established in the INA, which fails to include any process for making a statelessness determination or addressing the unique challenges a stateless person would face if actually deported.⁸³ In the unlikely situation that the Unit-

⁷⁴ *But see* 8 U.S.C. § 1226 (authorizing the detention of immigrants while they are in the process of removal proceedings and permitting those not subject to mandatory detention (people with criminal charges) to be released on bond, which can be revoked by the Attorney General at any time). However, *Jennings v. Rodriguez*, 583 U.S. 281 (2018), held that the Constitution does not require the government to provide bond hearings for detained noncitizens during removal proceedings as their detention is left to the discretion of the government.

⁷⁵ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 14-15.

⁷⁶ *See* UNHCR, *supra* note 60, at 24-28.

⁷⁷ 8 C.F.R. § 1001.1(q).

⁷⁸ 8 U.S.C. § 1231(b)(1).

⁷⁹ 8 U.S.C. § 1231(b)(2).

⁸⁰ UNHCR, *supra* note 60, at 28; GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 20.

⁸¹ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 19.

⁸² GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 16.

⁸³ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 19.

ed States does find a country willing to accept a stateless person, they are not only at risk of being sent to an unsafe place to which they have no ties, but will likely also still be without citizenship and thus left acutely “vulnerable to discrimination and the deprivation of their human rights.”⁸⁴ More likely, however, is that the government will spend an extended period of time designating several removal countries, yet consistently fail to find one willing to accept the stateless person.⁸⁵

In addition to the issues in designating a removal country, all avenues for relief available during removal proceedings come with their own unique challenges for stateless people. During removal proceedings, those who qualify can present four main types of claims for relief, usually based on various humanitarian considerations.⁸⁶ Notably, even if a stateless person is able to apply for relief through one of these channels, they still must go through the challenging process of designating a removal country due to them already being in removal proceedings.⁸⁷ First, a stateless person may present an asylum claim in a defensive posture; however, this is subject to the same challenges and pitfalls discussed Part I.⁸⁸ Second, a stateless person may make a claim for withholding of removal under the INA.⁸⁹ However, this approach suffers the same issues for stateless people as making an asylum claim because it also requires showing clear probability of persecution with a nexus to a protected ground.⁹⁰ Similarly, a stateless person may apply for withholding or deferral of removal under CAT,⁹¹ which, per the United States’ implementation regulations, prohibits removing someone to a country where they will more likely than not be subjected to torture.⁹² This avenue, however, only applies to removal to countries found to meet the criteria for likely perpetration of torture and presents similar challenges for stateless people as asylum claims.⁹³ Moreover, receiving a withholding

⁸⁴ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 18.

⁸⁵ See UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 19; Baluarte, *supra* note 49, at 361-62. For example, in *Jama v. U.S. Immigr. & Customs Enf’t*, the Court held that because 8 U.S.C. § 1231(b) does not explicitly require the target country to consent to removal, Jama—a Somali man with no travel documents—could be deported to Somalia. 543 U.S. 335 (2005). However, when Jama arrived in Somalia without documents, he was not allowed in and had to be returned to the United States, where he continued to live for six months with his final order of removal, before fleeing to Canada to seek asylum. Baluarte, *supra* note 49, at 362 & n.44.

⁸⁶ UNHCR, *supra* note 60, at 28.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 1208.16.

⁹⁰ UNHCR, *supra* note 60, at 29.

⁹¹ Convention Against Torture, *supra* note 64.

⁹² 8 C.F.R. §§ 1208.16, 1208.17, 1208.18.

⁹³ See UNHCR, *supra* note 60, at 29-31.

or deferral of removal under either the INA or CAT is not a long-term solution that comes with any real legal status; in practice, it “neither resolves the underlying issue of statelessness, nor provides permanent stability, the ability to petition for reunification with family members, or to travel internationally to visit them.”⁹⁴ The only long-term form of relief available is cancellation of removal under the INA, which is left to the discretion of the U.S. Attorney General.⁹⁵ However, only those who have a parent, spouse, or child who is a U.S. citizen are eligible for this form of relief.⁹⁶

In sum, the array of obstacles present for stateless people during removal proceedings means that, in practice, most end up receiving a final order of removal that the U.S. government is unable to execute. In fact, the majority of stateless people the UNHCR have encountered in the United States already have final orders of removal and have spent time in immigration detention.⁹⁷ This leaves most stateless people in the United States trapped in perpetual legal limbo and subject to highly discretionary practices and policies for the rest of their lives.⁹⁸

III. THE UNTENABLE LEGAL LIMBO STATELESS PEOPLE ARE TRAPPED IN AFTER RECEIVING A FINAL ORDER OF REMOVAL

In finding the practice of denationalization as punishment unconstitutional, a plurality of Supreme Court justices explained that forcing someone to be stateless in the United States means their “enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights.”⁹⁹ Yet, the conditions the U.S. government subjects stateless people to endure after receiving final orders of removal embodies precisely this loss of “the right to have rights.”¹⁰⁰ Because the removal regime fails to protect stateless people by having “no legal process for ICE to recognize whether its statutorily mandated removal efforts will be futile,” it is likely that, after receiving a final order of removal, a stateless person will spend an extended period of time in detention while the government tries and fails to find a country that will accept them.¹⁰¹ Once they are eventually released from detention, they are forced to spend the rest of their lives living under an Order of Supervision

⁹⁴ *Id.* at 30-31.

⁹⁵ 8 U.S.C. § 1229b(b)(1).

⁹⁶ UNHCR, *supra* note 60, at 31-32.

⁹⁷ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 25.

⁹⁸ *Id.* at 19-20.

⁹⁹ *Trop v. Dulles*, 356 U.S. 86, 102 (1958) (plurality opinion).

¹⁰⁰ *Id.* at 101-02.

¹⁰¹ Baluarte, *supra* note 49, at 362.

(“OSUP”) with conditions left to the government’s discretion, ongoing risk of being put back into detention, and no pathway to ever truly settle in the United States.¹⁰² Moreover, this ceaseless, arbitrary, and discretionary OSUP system is not subject to any meaningful, independent judicial review.¹⁰³ The scale of the issues stateless people experience after receiving a final order of removal clearly illustrates how it is at this juncture where “the inhumanity of the stateless legal limbo become[s] most evident.”¹⁰⁴ Stateless people are excluded from the system by design, and thus the way most of them are forced to live is untenable and inhumane.

A. *Indefinite Detention*

Although they likely have already spent some amount of time in detention during the process of removal proceedings, once a stateless person receives a final order of removal, they will be held in detention for at least another ninety days, and often six months or more. When an Immigration Judge (“IJ”) issues a final order of removal, they trigger mandatory detention for a ninety-day removal period, during which time DHS is supposed to facilitate the execution of the final order of removal.¹⁰⁵ Even when it has already been established that a person is stateless and DHS has no reason to believe they will be able to actually deport them within the removal period, it will still necessarily stay in detention for a minimum of ninety days.¹⁰⁶ Although the INA says that after this initial removal period, detainees should be released on an OSUP,¹⁰⁷ it lays out several categories of people who “may” be held for longer, including anyone who is found deportable¹⁰⁸—meaning almost all stateless people in detention at this juncture. In order for DHS to decide if they will release or continue to hold someone after the ninety-day mark, the detained person is ostensibly granted a review, at which point they may show that their release will not pose a danger to the community and they are not a flight risk.¹⁰⁹ However, it is unclear what documentation or material one would need to provide to successfully make this case.¹¹⁰ Moreover, this custody review does not take place in any clearly described, formal setting, and, in a recent study, none of the stateless peo-

¹⁰² *See id.* at 362, 364-65.

¹⁰³ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 19-20.

¹⁰⁴ Baluarte, *supra* note 49, at 362-66.

¹⁰⁵ 8 U.S.C. § 1231(a)(1)-(2); 8 C.F.R. § 241.3.

¹⁰⁶ Baluarte, *supra* note 49, at 362-63.

¹⁰⁷ 8 U.S.C. § 1231(a)(3).

¹⁰⁸ 8 U.S.C. § 1231(a)(6).

¹⁰⁹ 8 C.F.R. § 241.4(d)-(e).

¹¹⁰ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 23.

ple researchers interviewed “recalled being asked to attend or send documentation for a review at the 90-day mark,”¹¹¹ despite the fact that they are supposed to receive notice thirty days prior to the review.¹¹² Thus, while some stateless people are in fact released at this juncture, DHS continues to hold many long after without justification.¹¹³

In 2001, the Supreme Court held in *Zadvydas v. Davis* that the section of the INS allowing people with final orders of removal to be held after the initial removal period contains an “implicit ‘reasonable time’ limitation.”¹¹⁴ After six months, detainees have the right to be released if they can demonstrate there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.”¹¹⁵ In response to *Zadvydas*, DHS implemented standards for reviewing the likelihood of removal after six months in detention,¹¹⁶ which is frequently used for stateless people.¹¹⁷ However, not only does the burden of showing there is “no significant likelihood of removal” rest on the detainee, but the Court also made clear that “[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.”¹¹⁸

Experts at the DHS Office of the Inspector General have observed significant issues with the regime’s implementation¹¹⁹ that are in large part due to the fact that the “likelihood of removal standard is not sufficiently documented and transparent.”¹²⁰ Thus, in practice, many stateless

¹¹¹ *See id.*

¹¹² 8 C.F.R. § 241.4(h)(2).

¹¹³ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 20-21.

¹¹⁴ *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); *see also* *Clark v. Martinez*, 543 U.S. 371 (2005) (extending the *Zadvydas* holding from just noncitizens already in the United States found to be deportable to inadmissible noncitizens detained upon arrival at the border).

¹¹⁵ *Zadvydas*, 533 U.S. at 701.

¹¹⁶ 8 C.F.R. § 241.13(f) (requiring consideration of “all the facts of the case including, but not limited to” (1) whether the noncitizen has complied with their order of removal by assisting the process of their deportation, (2) the history of ICE’s efforts to remove noncitizens to the country designated in their final order of removal or a third country, including efforts to remove the specific noncitizen in question, (3) the reasonably foreseeable results of such efforts, and (4) the views of the State Department regarding whether removal to the countries in question is likely); GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 23 (noting that this form of review was implemented in response to *Zadvydas*).

¹¹⁷ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 23.

¹¹⁸ *Zadvydas*, 533 U.S. at 701.

¹¹⁹ *See* KATHLEEN GLYNN & SARAH BRONSTEIN, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., SYSTEMIC PROBLEMS PERSIST IN U.S. ICE CUSTODY REVIEWS FOR “INDEFINITE” DETAINEES (2005), <https://perma.cc/Q9CB-7Q4M>.

¹²⁰ Baluarte, *supra* note 49, at 363-64.

people end up held in detention past the six-month mark.¹²¹ A stateless person may even be released, but then find themselves sent back to detention at a later juncture at the discretion of the government.¹²² Detainees frequently do not receive the statutorily mandated notification of the outcome of the review; as a result, those who continue to be held have no real option for redress other than filing a habeas corpus petition.¹²³ Moreover, there is no statutory right to counsel throughout this process,¹²⁴ despite the fact that, according to a survey of immigration attorneys, representation “is crucial at this stage in the process, as movement on an individual’s case appears to be sparked by counsel’s inquiry alone. Without representation, . . . the detainee’s ability to communicate with . . . officials and to access information about his or her case is limited at best.”¹²⁵

As a result of this ineffectively regulated and incredibly discretionary system, stateless people are at high risk of being subjected to indefinite detention as they often do not have access to advocates or communities that can provide insight into their case.¹²⁶ Detention, even when not indefinite, also comes with significant emotional trauma, including the experience of incarceration, removal from daily routine and livelihood, transfers between detention facilities often far from their homes, the uncertainty of the timeframe of detention, and fear of being sent to an entirely unfamiliar country to which they have no connection.¹²⁷

B. Orders of Supervision (“OSUPs”)

Once a stateless person with a final order of removal is eventually released from detention, they are subject to living under an OSUP.¹²⁸ An OSUP does not come with an end date; instead, it remains in effect “unless and until that individual obtains a lawful immigration status in the United States.”¹²⁹ Pertinently, an OSUP itself is not a legal residency status, meaning that people remain subject to deportation if at any point

¹²¹ See *id.*

¹²² See 8 C.F.R. § 241.13(i); see also UNHCR & Open Soc’y Just. Initiative, *supra* note 301 at 25.

¹²³ GLYNN & BRONSTEIN, *supra* note 119, at 16.

¹²⁴ See Polly J. Price, *Stateless in the United States: Current Reality and a Future Prediction*, 46 VAND. J. TRANSNAT’L L. 443, 482 (2013).

¹²⁵ GLYNN & BRONSTEIN, *supra* note 114, at 16-17.

¹²⁶ See Baluarte, *supra* note 49, at 364 (describing the story of a stateless man held in detention for fourteen months, only being released after his pro bono attorney filed a petition for habeas corpus).

¹²⁷ See, e.g., UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 25.

¹²⁸ OSUPs are statutorily authorized by 8 U.S.C. § 1231(a)(3) and regulated under 8 C.F.R. § 241.5.

¹²⁹ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 26.

the government finds it practicable.¹³⁰ Moreover, because there is neither an independent pathway for stateless people to gain lawful status nor a pathway for people with final order of removal to acquire such status, an OSUP “will, in effect, continue for [a stateless person’s] entire lifetime.”¹³¹ An OSUP comes with incredibly onerous conditions, difficulties obtaining work authorization, limited access to social services, and severe travel restrictions that, combined, render a lifetime under the legal limbo of OSUP extremely challenging.

OSUP regulations provide that, once released, a person with a final order of removal must follow several conditions, including (1) appearing before an immigration officer periodically for identification and to provide information under oath as requested (including nationality, circumstances, habits, associations, activities, etc.¹³²); (2) continuing to try to acquire travel documents; (3) submitting to medical and psychiatric examinations if requested; (4) obtaining advance approval of travel beyond specified times and distances; (5) providing notice of address changes; (6) obeying all applicable laws and written restrictions on conduct and activities; and (7) following any other conditions specified in their individual OSUP at the discretion of the government (sometimes including wearing an ankle monitoring bracelet¹³³).¹³⁴

These conditions pose severe hardships for stateless people living out their entire lives under them. Even though the DHS has officially taken the position that check-ins should only occur at less than three-month intervals, OSUPs often require people to check in as often as every week.¹³⁵ Regardless of their frequency, periodic check-ins come with financial and emotional consequences for stateless people. People often must take significant time off work to travel to facilities and wait for their appointment, making it challenging to hold down employment.¹³⁶ Moreover, employers and community members often assume that the periodic check-ins mean the person was involved in criminal activity, making maintaining employment all the more difficult and often making stateless people “feel that they are being treated like criminals.”¹³⁷ One

¹³⁰ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 26.

¹³¹ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 26.

¹³² Baluarte, *supra* note 49, at 364.

¹³³ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 25.

¹³⁴ See 8 C.F.R. § 241.13(h) (incorporating 8 C.F.R. § 241.5 by reference); Baluarte, *supra* note 49, at 364-65.

¹³⁵ See IMMIGRANT RTS. CLINIC, RUTGERS SCH. OF L.—NEWARK & AM. FRIENDS SERV. COMM., FREED BUT NOT FREE: A REPORT EXAMINING THE CURRENT USE OF ALTERNATIVES TO IMMIGRATION DETENTION 6 (2012), <https://perma.cc/9E4M-2NHK> [hereinafter IMMIGRANT RTS. CLINIC & AM. FRIENDS SERV. COMM.].

¹³⁶ *Id.* at 16-17.

¹³⁷ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 26.

stateless person interviewed for a recent report explained that he lost his job due to his monthly reporting because, despite his explanation, he felt his employers thought his frequent check-ins meant he “must have killed a couple people.”¹³⁸ What’s more, the ever-looming threat of being re-detained “for having inadvertently failed to comply with the terms of the order, for having run out of consulates or embassies to contact in order to request travel documents, or in some cases for no apparent reason at all” means many stateless people living under OSUPs are stuck in a constant state of fear.¹³⁹ Other psychological effects of these onerous reporting requirements include difficulty sleeping and eating; increased anxiety, stress, and paranoia; and a loss of will to continue with immigration proceedings.¹⁴⁰ While 2012 ICE policy guidance on the use of discretion to decrease reporting requirements for people with final orders of removal provided some hope that these unreasonable conditions would decrease,¹⁴¹ recent interviews with stateless people on OSUPs suggest the requirements remain a heavy burden.¹⁴²

In addition to contending with these ceaseless, challenging reporting requirements, stateless people with OSUPs have limited and revocable access to basic social services and employment authorization. Because they do not have any legal status, stateless people under an OSUP “routinely face barriers to health care, education, and other social services. They may not be able to own or inherit property, marry legally, enter in to a contract, or engage in other activities that most people take for granted.”¹⁴³ Moreover, while people on an OSUP are permitted to seek an employment authorization document (“EAD”), the granting of this document is subject to the discretion of the authorities.¹⁴⁴ There is also no clear, statutorily defined time period for an EAD’s validity, so that too is left to the authorities’ discretion.¹⁴⁵ Most frequently, an EAD is valid only for one year, meaning the stateless person must navigate the process of reapplying annually,¹⁴⁶ which, without a fee waiver, costs

¹³⁸ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 26.

¹³⁹ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 26; *see also* 8 C.F.R. § 241.4(l) (granting the government broad discretion to re-detain people with final orders of removal).

¹⁴⁰ IMMIGRANT RTS. CLINIC & AM. FRIENDS SERV. COMM., *supra* note 135, at 17.

¹⁴¹ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 26.

¹⁴² *See* GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 26-27.

¹⁴³ UNHCR & Open Soc’y Just. Initiative, *supra* note 31, at 24.

¹⁴⁴ 8 C.F.R. § 241.5(c).

¹⁴⁵ UNHCR, *supra* note 60, at 37.

¹⁴⁶ *Id.*; *see* GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 28 (noting that the report’s interviewees had to renew their EADs annually).

\$410 each time.¹⁴⁷ Government backlogs and agency delays also often mean that stateless people experience gaps in their work authorization, which can lead to difficulties in maintaining employment and withdrawal of basic services attached to employment such as obtaining a state ID, healthcare, and more.¹⁴⁸

The onerous reporting requirements and challenges to accessing employment and social services are only compounded by the severe travel restrictions stateless people with OSUPs face. Every OSUP contains travel restrictions, usually prohibiting leaving one's state of residence without authorization.¹⁴⁹ This permission, however, is left to authorities' discretion, which means stateless people must live with the frustration of having to ask for travel permission for the rest of their lives and often contend with officers' arbitrary decisions impacting their ability to work and engage with their loved ones.¹⁵⁰ Further, without a nationality, stateless people cannot obtain passports or international travel documents, permanently separating them from family abroad.¹⁵¹ This separation can be the most painful part of living under an OSUP for stateless people.¹⁵² Some stateless people recalled in interviews "missing important milestones such as weddings and funerals of loved ones," and others "expressed longer-term anguish due to their inability to see their children, from whom they had been separated for upwards of twenty years."¹⁵³

The combination of these severe encumbrances to living under an OSUP renders the lives of stateless people in the United States with final orders of removal deeply burdensome. In fact, the rules and prohibitions of OSUPs often unjustly, arbitrarily, and indefinitely separate stateless people from the rest of immigrants and society.¹⁵⁴ The majority of stateless people in the United States live out their lives in this posture, spending every day in fear of having their lives fully uprooted by being re-detained or deported.¹⁵⁵ Moreover, there is a steep "opportunity cost of keeping otherwise productive individuals in a constant state of instability and economic precariousness, in which they must compete on the job

¹⁴⁷ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 28; I-765, *Application for Employment Authorization*, U.S. DEP'T OF HOMELAND SEC.: U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/8AVT-GAQT> (click "Filing Fee" under "Form Details" to expand) (Jan. 4, 2024).

¹⁴⁸ See GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 28-29.

¹⁴⁹ UNHCR & Open Soc'y Just. Initiative, *supra* note 31, at 27.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 28.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 29.

¹⁵⁵ Ejima, *supra* note 63, at 386-87.

market with the stigma of being removable and apply for a temporary work permit every year.”¹⁵⁶ Thus, it is abundantly clear that the untenable legal limbo in which stateless people are forced to live out their lives requires urgent change.

IV. RECOMMENDATIONS FOR CHANGE THROUGH STATUTORY MEASURES AND LITIGATION EFFORTS

In order to address the issues stateless people face after receiving final orders of removal, scholars and experts have proposed several legislative and statutory suggestions. This Part provides an overview of these measures and strategies and evaluate their efficacy. It then contributes to the body of literature by proposing a new, creative litigation strategy to challenge the constitutionality of the OSUP regime under the Eighth Amendment.

A. *Proposed Policy Framework—The Stateless Protection Act and a Statelessness Determination Process*

A full decade ago, the bipartisan Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (“S. 744”)¹⁵⁷ passed in the Senate but subsequently died after it was never brought to the House floor.¹⁵⁸ Significantly, S. 744 included a provision on the “Protection of Certain Stateless Persons in the United States,” which would provide a legal framework to address the challenges of stateless people in the U.S. immigration system.¹⁵⁹ The proposed framework comprises of “an application procedure, which includes eligibility criteria, exclusions and waivers, and rules for employment authorization and derivative beneficiaries; considerations for stateless persons to adjust status to Lawful Permanent Resident . . . ; some information about evidentiary considerations; and provisions establishing rules for administrative review, reopening proceedings, and judicial review.”¹⁶⁰ While this framework would undoubtedly have been a massive step forward for stateless people who are ineligible for or were unsuccessful in an asylum claim, it still failed to resolve all the issues fueling its creation, including omitting key definitions and leaving out critical procedures attentive to

¹⁵⁶ Baluarte, *supra* note 49, at 366.

¹⁵⁷ S. 744, 113th Cong. (2013).

¹⁵⁸ *113th Congress: House Immigration Reform*, AM. IMMIGR. LAWS. ASS’N. (Oct. 26, 2016), <https://perma.cc/G926-L3ZG>.

¹⁵⁹ *Id.* at § 3405.

¹⁶⁰ Baluarte, *supra* note 49, at 372.

the unique conditions stateless people face.¹⁶¹ Thus, S. 744 likely would not have actually brought U.S. immigration law up to international standards for protecting stateless people.

Up until recently, there was little movement on the statelessness issue within the U.S. government following the stagnation of S. 744. However, just last year in December, another bill, the Stateless Protection Act of 2022 (“S. 5330”), was finally introduced in both the Senate¹⁶² and the House¹⁶³ to provide a pathway for stateless people. Although the House referred the bill to the Judiciary Committee,¹⁶⁴ the subsequent lack of movement means the new Congress will have to re-introduce it. This bill includes many of the same protections and approaches as S. 744, but expands upon the latter to expressly create a new status for stateless people called “Stateless Protected Status,” which would protect stateless people from deportation, detention, and removal and grant them work authorization, travel documents, and lawful permanent resident status with a pathway to citizenship.¹⁶⁵ It also would provide for immediate release from post-removal detention as soon as someone was found to be stateless.¹⁶⁶ To get this new status, a stateless person would go through a statelessness determination process, wherein the DHS would be required to consider evidence from prescribed national, international, and foreign entities.¹⁶⁷ Pertinently, S. 5330 was developed with United Stateless, stateless people, and allies.¹⁶⁸ As such, it effectively responds to many of the precise challenges and needs of stateless people and avoids many of the issues present in S. 744.¹⁶⁹ As promising as this new, community-driven proposal is, it is important to recognize that with Congress still deadlocked, there is a good chance S. 5330 will face a similar fate as S. 744, or, at best, see substantial chang-

¹⁶¹ For a comprehensive analysis of the benefits and pitfalls of the procedures S. 744 would have created for providing status to non-refugee stateless people, see *id.* at 372-89.

¹⁶² S. 5330, 117th Cong. (2022).

¹⁶³ H. 9671, 117th Cong. (2022).

¹⁶⁴ *All Information (Except Text) for H.R.9671 - Stateless Protection Act of 2022*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/9671/all-info> (last visited Dec. 22, 2023) (on file with CUNY Law Review) (showing the most recent activity as the bill’s referral to the Judiciary Committee on December 22, 2022).

¹⁶⁵ H. 9671 § 4(a) (proposing a new section of the INA, § 245B, which would lay out in § 245B(b)(1) “Mechanisms For Regularizing The Status Of Stateless Persons,” including a new “Stateless Protected Status”).

¹⁶⁶ *Id.* (including such provision in the proposed INA § 245B(b)(3)(A)).

¹⁶⁷ *Id.* (outlining these requirements in the proposed INA § 245B(c)).

¹⁶⁸ GLOB. HUM. RTS. CLINIC & UNITED STATELESS, *supra* note 34, at 3.

¹⁶⁹ For a comprehensive analysis of what a complete statutory framework for protecting stateless people in the U.S. immigration system requires, based on the language and drafting process of S. 5330, see *id.* at 37-50. While S. 5330 had not yet been proposed at the time of the report’s publication, the authors had access to the bill text at the time of writing.

es that strip down the strength of its current protections. As such, it is necessary to pursue litigation strategies in tandem with this important policy proposal in order to solidify the necessity of passing S. 5330 promptly and without changes.

B. Constitutional Challenges to Indefinite Detention and OSUP

Stateless and non-stateless people with final orders of removal who can show their deportation is not reasonably foreseeable have had some successes post-*Zadvydas* using habeas corpus litigation to terminate specific instances of extended, arbitrary detention.¹⁷⁰ However, many challenges to detention are still denied because *Zadvydas* created an incredibly deferential standard, wherein the initial burden of proving limited likelihood of reasonably foreseeable removal rests on the detainee, yet significant deference is given to the government's view.¹⁷¹ In *Zadvydas*, the Court held that habeas courts must "take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive . . . efforts to enforce this complex statute, and the Nation's need to 'speak with one voice' in immigration matters."¹⁷² As such, it is unsurprising that habeas petitions are frequently denied. One study that surveyed the 499 habeas petitions filed by detained immigrants in Louisiana between January 1, 2010 and July 31, 2020 found that only five

¹⁷⁰ See, e.g., *Hassoun v. Sessions*, No. 18-CV-586, 2019 WL 78984, at *19-20 (W.D.N.Y. Jan. 2, 2019) (conditionally granting the stateless Petitioner's habeas petition because his terrorism convictions rendered his removal merely speculative after fourteen months of detention); *Abdel-Muhti v. Ashcroft*, 314 F.Supp. 2d 418, 425 (M.D. Pa. Apr. 8, 2004) (granting the stateless Petitioner's habeas petition following his detention for fifteen months after the presumptively reasonable period); Findings, Conclusions and Recommendation of the United States Magistrate Judge at 6, *Turkistani v. Johnson*, No. 22-cv-00685 (N.D. Tex. Dec. 15, 2022), ECF No. 32 (recommending that the stateless Petitioner's habeas petition be granted following fifteen months of detention post receiving his final removal order because his removal "is speculative at best"), *case dismissed as moot, Turkistani*, No. 22-cv-00685 (N.D. Tex. Feb. 17, 2023); *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, at *6 (N.D. Ill. Apr. 28, 2003) (agreeing with the petitioner that, following seventeen months of detention due to the designated receiving country refusing to issue travel documents, the "Petitioner's period of post-final-order detention has been sufficiently long such that a remote, non-specific possibility [of removal] does not satisfy Respondents' burden" under *Zadvydas*); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1079-80 (9th Cir. Mar. 17, 2006) (granting the Petitioner's habeas petition because his nearly five years of detention following his final removal order was unreasonable despite the government's claim that he is suspected of terrorist activity).

¹⁷¹ *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001).

¹⁷² *Id.* at 700.

petitioners won a court-ordered release.¹⁷³ The study also found that habeas petitions on average took approximately six months from the day the case was filed until the day it was terminated, meaning that many detained immigrants who take this approach are forced to spend at least another six months in detention.¹⁷⁴ Thus, while habeas petitions certainly do offer one possible pathway for relief from indefinite detention, they are not consistently reliable.

Unlike those for relief from detention, attorneys have filed habeas and other kinds of petitions for relief from OSUP for stateless people on several constitutional theories, all of which have failed. In *Berry v. Adducci*, a stateless person on an OSUP whom the government was unable to remove to Lebanon filed a habeas petition arguing that subjecting a stateless person to a lifelong OSUP is a denial of his due process rights under the Fifth Amendment because it is a form of “indefinite custody.”¹⁷⁵ The district court dismissed the claim, finding that while the OSUP does amount to the broad definition of “in custody” for the purposes of establishing habeas jurisdiction,¹⁷⁶ it does not constitute “in custody in violation of the Constitution.”¹⁷⁷ The court reasoned that, under *Zadydas*, one can only obtain this form of relief if they are currently being “held in confinement,” which the court interpreted to mean physical confinement.¹⁷⁸ Similarly, in *Abusheikh v. AG* on an appeal of a denial of relief from removal, a stateless Palestinian person argued that being denied relief and forced to live the rest of his life under an OSUP constituted “unequal treatment on the basis of national origin in violation of the Fifth and Fourteenth Amendments because, as a stateless Palestinian, he can neither depart the United States nor work or live here legally.”¹⁷⁹ The court dismissed his argument, finding that there was not an adequate showing of “disparate treatment of different groups.”¹⁸⁰ While the strategies in both *Berry* and *Abusheikh* were unsuccessful, they were both only attempted in the Third Circuit. Thus, it would be valuable for lawyers to similarly argue in other Circuits that forcing stateless people to live their entire lives under an OSUP is an unconstitu-

¹⁷³ IMMIGR. RTS. CLINIC, TULANE UNIV. L. SCH., NO END IN SIGHT: PROLONGED AND PUNITIVE DETENTION OF IMMIGRANTS IN LOUISIANA 5, 12 (2021), <https://perma.cc/P7GW-4J2C>.

¹⁷⁴ *Id.* at 14.

¹⁷⁵ *Berry v. Adducci*, No. 10-CV-10969, 2010 WL 2105130, at *2-4, *8 (E.D. Mich. May 25, 2010).

¹⁷⁶ *Id.* at *8.

¹⁷⁷ *Id.* at *13.

¹⁷⁸ *Id.* at *10.

¹⁷⁹ *Abusheikh v. U.S. Att’y Gen.*, 225 F. App’x 56, 58 (3d Cir. 2007).

¹⁸⁰ *Id.* (quoting *DeSousa v. Reno*, 190 F.3d 175, 184 (3d Cir. 1999)).

tional form of being “in custody” unequally applied to stateless people who inherently have no chance of being removed.

C. *Human Rights Challenges to OSUP*

In addition to raising habeas petitions against OSUPs for violating due process and equal protection rights in more jurisdictions, attorneys should also raise a new argument: that indefinite OSUP is a violation of human rights and dignity under both the Eighth Amendment and international treaties. While the Supreme Court has held that the Eighth Amendment only applies to criminal punishments,¹⁸¹ presenting a serious obstacle to using it in immigration cases, lawyers and scholars are increasingly pushing for courts to take a more expansive view of the Eighth Amendment that considers deportation and other facets of the immigration system as punishment.¹⁸² Moreover, there is a strong argument that certain immigration decisions are still subject to the proportionality review—judicial assessment of the severity of a sanction in relation to the gravity of the offense—because the Court has emphasized that a “civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term.”¹⁸³ Moreover, in *Trop v. Dulles*, the Court applied Eighth Amendment reasoning to hold that divestiture of citizenship, or denationalization, is cruel and unusual punishment because it creates statelessness, which is “the total destruction of the individual’s status in organized society.”¹⁸⁴ The Court further reasoned that “[t]he question is whether this penalty subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the Eighth Amendment,” as the Eighth Amendment was created to preserve “[t]he basic concept . . . [of] the dignity of man” by assuring the power to impose punishment is “exercised within the limits of civilized standards.”¹⁸⁵

¹⁸¹ See, e.g., *Ingraham v. Wright*, 430 U.S. 651, 667-68 (1977).

¹⁸² See, e.g., Victor S. Navasky, *Deportation as Punishment*, 27 U. KAN. CITY L. REV. 213 (1959); Mark Mancini, *Deportation as Cruel and Unusual Punishment After Furman v. Georgia*, 3 U. SAN FERNANDO VALLEY L. REV., no. 2, 1974, at 27; Robert Pauw, *A New Look at Deportation as Punishment: Why at Least Some of the Constitution’s Criminal Procedure Protections Must Apply*, 50 ADMIN. L. REV. 305 (2000); Michael J. Wishnie, *Proportionality: The Struggle for Balance in U.S. Immigration Policy*, 72 U. PITT. L. REV. 431 (2011); Michael J. Wishnie, *Immigration Law and the Proportionality Requirement*, 2 U.C. IRVINE L. REV. 415 (2012); Kelly L. Anderson, *Enforcing Rights for Immigrants Facing the Ultimate Criminal Penalty: Deportation*, 80 ALB. L. REV. 995 (2017).

¹⁸³ *United States v. Halper*, 490 U.S. 435, 448 (1989).

¹⁸⁴ *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

¹⁸⁵ *Id.* at 99-100.

Stateless people subjected to a life under an OSUP both face an onerous and untenable parole system that fails to remedy their status as unremovable, and are forced to spend the rest of their lives trapped in the United States without legal status. Thus, lawyers should try raising an Eighth Amendment claim against the OSUP system, framing it as a non-remedial form of punishment that is not at all proportionate to the mere status of being unremovable. Because, under the *Berry* standard, stateless people under OSUP can file habeas claims, bringing this kind of a petition would be a viable platform to raise the Eighth Amendment claim. Even if this kind of claim is unsuccessful due to courts' hesitancy to label any form of immigration sanctions as punishment, the very act of raising the claim will still bring increased awareness to the issues stateless people face, especially if these cases are coupled with advocacy and education efforts.

Moreover, lawyers could bring a similar claim that forcing stateless people to spend their lives on OSUP without any pathway to legal status is a violation of human rights under several international conventions and treaties. While the United States has not ratified many significant international treaties, agreements that the country is party to contain both rights to nationality and rights to be free from treatment contrary to the basic principles of human dignity. For example, the International Covenant on Civil and Political Rights ("ICCPR") provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁸⁶ The United States ratified the ICCPR, but entered a declaration to render it non-self-executing,¹⁸⁷ meaning the ability of litigants to sue in domestic courts to enforce the treaty rights is limited.¹⁸⁸ That said, lawyers could raise the issue of stateless people spending life on OSUP before the Human Rights Committee, an international body established to monitor implementation of the ICCPR. While doing so may not have the same precedential effect as a claim in a domestic court, it could prove quite valuable in pressuring the United States to work toward a resolution for stateless people and raise significant awareness.

Crafting cases under the Eighth Amendment or international human rights frameworks to argue that the perpetual legal limbo stateless people on OSUPs must endure is cruel and unusual treatment or punishment could be an important new strategy to use in tandem with Fifth and

¹⁸⁶ International Covenant on Civil and Political Rights, *supra* note 37, art. 7.

¹⁸⁷ U.S. Reservations, Declarations, and Understandings to International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01 (daily ed. April 2, 1992).

¹⁸⁸ See *ArtII.S2.C2.1.4 Self-Executing and Non-Self-Executing Treaties*, CONGRESS.GOV: CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artII-S2-C2-1-4/ALDE_00012955/ (last visited Dec. 22, 2023) (on file with CUNY Law Review).

Fourteenth Amendment arguments. Even if bringing such a claim is ultimately unsuccessful, raising it could still shed light on the scale of the issue and untenable structure. This awareness in turn may help move the Stateless Protection Act forward to establish a comprehensive statutory framework for stateless people with final orders of removal to live humanely and have a pathway to citizenship.

CONCLUSION

Under an international system premised upon the supremacy of nation-states and an assumption that everyone is a citizen of somewhere, it is no surprise that the U.S. immigration system treats stateless people inadequately and inhumanely. With limited hope of succeeding in an asylum or CAT claim, most stateless people in the United States are forced to endure removal proceedings, prolonged detention, and a lifetime under an onerous and limiting Order of Supervision. The Stateless Protection Act, written by the very stateless people most impacted by the cruelty of this system, provides a beacon of hope by establishing a comprehensive framework to ameliorate these challenges and provide a pathway for stateless people that is attentive to their unique circumstances. However, in a gridlocked Congress, the likelihood of this legislation passing is quite low. Thus, it is of paramount importance for immigration and impact attorneys to mount constitutional claims against the untenable legal limbo stateless people in indefinite detention and under OSUPs are trapped in. Working in tandem with advocacy and education efforts, bringing both constitutional arguments grounded in the Fifth, Fourteenth, and Eighth Amendments and in international human rights arguments may prove the best tools available to challenge this cruel system and provide stateless people with respect and humanity. If advocates and impacted stateless communities are ever going to move the needle toward a future defined by recognition and liberation rather than erasure and entrapment, lawyers need to start utilizing the courtroom as a key tool in the fight against the ceaseless purgatory created by the inhumane OSUP system.

AFTERWORD

*Yes, you have convictions and you make judgements, but they are arrived at by work, and by a sense of association with others, other intellectuals, a grassroots movement, a continuing history, a set of lived lives.*¹⁸⁹

When I initially authored this Article, I had no idea how visible the privileges of citizenship would be at the moment of its publication. Since October 2023, the world has witnessed an appalling escalation of genocidal violence in Gaza¹⁹⁰ and turned focus to the ongoing settler-colonial project across Palestine.¹⁹¹ In recent months, popular media has depicted images of Israeli passport holders—many of whom even have additional nationalities¹⁹²—flooding Ben Gurion airport and fleeing the country,¹⁹³ often to family, friends, or even second homes in the United States or Europe.¹⁹⁴ These images stand in stark contrast the horrific

¹⁸⁹ EDWARD W. SAID, REPRESENTATIONS OF THE INTELLECTUAL 120 (Vintage Books 1996).

¹⁹⁰ See, e.g., Michael Merryman-Lotze, *The Historical Roots of Israel's Genocidal Violence in Gaza*, DEMOCRACY FOR THE ARAB WORLD NOW (Jan. 2, 2024), <https://perma.cc/AM24-3EJS>; *Damning Evidence of War Crimes as Israeli Attacks Wipe Out Entire Families in Gaza*, AMNESTY INT'L (Oct. 20, 2023), <https://perma.cc/6QCR-QCW3>; Bashir Abu-Manneh, *Israel's Assault on Gaza Is Part of Its Permanent War on Palestinians*, JACOBIN (Oct. 10, 2023), <https://perma.cc/TB6S-3A4K>.

¹⁹¹ See, e.g., Shahd Hammouri, Opinion, *How International Law Is Used to Cover Up Israeli Settler-Colonialism*, AL JAZEERA (Dec. 10, 2023), <https://perma.cc/NYX7-PZYC>; Meherab Hossain & Md. Obaidullah, *Is Israel an Upgraded Version of Settler Colony?*, MOD. DIPL. (Nov. 8, 2023), <https://perma.cc/E9VH-VZUY>. See generally Jennifer Schuessler, *What Is 'Settler Colonialism'?*, N.Y. TIMES (Jan. 22, 2024), <https://www.nytimes.com/2024/01/22/arts/what-is-settler-colonialism.html> (on file with CUNY Law Review).

¹⁹² Raoul Wootliff, *Most Israelis Want a Passport to Prosperity Abroad*, THE TIMES OF ISRAEL (Feb. 11, 2016), <https://perma.cc/3AC8-RPJ8> (stating that a 2016 poll found that, at the time, “17 percent of Israelis already hold a foreign passport and 56% would like one”). These percentages have likely only increased in the years since, given the recent surge in Israelis seeking foreign citizenship. See Hader Kane, *'Insurance Policy': Spike in Number of Israelis Applying for Foreign Citizenship*, HAARETZ (Mar. 2, 2023), <https://www.haaretz.com/israel-news/2023-07-27/ty-article-magazine/premium/israelis-hunt-for-foreign-passports-greece-berlin-even-canada-is-an-option/00000189-9266-d00f-a7db-b3ffc1040000> (on file with CUNY Law Review).

¹⁹³ E.g., Perkin Amalaraj, *Race to Escape Israel: Panic at the Airport as Travellers Desperate to Flee War Ditch Luggage and Race to Board Planes out of the Country - As Rockets Come Down Nearby*, DAILY MAIL, <https://perma.cc/6VZR-29V7> (Oct. 9, 2023, 10:21 A.M.); Helen Livingstone, *Governments Scramble to Evacuate Citizens from Israel amid Pleas for Help*, GUARDIAN (Oct. 11, 2023, 1:52 A.M.), <https://perma.cc/JM2K-LB4L>.

¹⁹⁴ E.g., Moshe Gilad, *Fight Hamas or Flight: The Israelis Fleeing the Country During the War*, HAARETZ (Oct. 16, 2023), <https://www.haaretz.com/israel-news/2023-10-16/ty-article-magazine/premium/fight-or-flight-after-hamas-attacked-these-israelis-fled-the-country/0000018b-3876-d450-a3af-797e47690000> (on file with CUNY Law Review).

scenes of stateless Palestinians trapped under bombardment in Gaza¹⁹⁵ or Zionist violence in the West Bank.¹⁹⁶ Unlike Israelis, to this day, even Palestinians who want to leave their homeland to escape the ceaseless violence are trapped, many with no identity documents¹⁹⁷ or, at best, one of the world's weakest passports.¹⁹⁸ Their statelessness has ensnared them not just in legal limbo, but inside an ongoing, colonial genocide.

The poignancy of this disparity illustrates that it is impossible to truly address the inhumanity of statelessness without fighting against the global, systemic, and colonial structures that cause it.¹⁹⁹ While I initially wrote this Article to serve as tool for domestic immigration lawyers and advocates to fight with and for stateless people in the United States—and I still hope it can and will serve that important function—many readers in the current moment will likely be struck by these pressing connections between statelessness, Palestine, and contemporary imperialism. As a fierce advocate for Palestinian liberation and a scholar of international law of self-determination, I want to underscore the importance of utilizing both sustained advocacy and scholarship to fight for stateless Palestinians beyond the boundaries of the U.S. immigration system and the intensity of the current moment.

¹⁹⁵ See, e.g., Michelle Lerner, *Gazans Have Nowhere Left to Flee*, TIME (Dec. 7, 2023, 7:00 A.M.), <https://time.com/6343516/southern-gaza-fleeing-safety-essay/> (on file with CUNY Law Review); Bobby Ghosh, Opinion, *No, Palestinians Can't Just Leave Gaza*, BLOOMBERG (Oct. 12, 2023), <https://www.bloomberg.com/opinion/articles/2023-10-12/palestinians-can-t-just-leave-gaza-during-israel-hamas-conflict> (on file with CUNY Law Review).

¹⁹⁶ See, e.g., Brian Mann, *Growing Israeli Settler Violence and Army Raids in the West Bank Raise Tensions: Transcript*, NPR (Dec. 9, 2023, 8:27 A.M.), <https://perma.cc/BE4T-WHAZ>; Omar Shakir, *While a Fire Rages in Gaza, the West Bank Smolders*, HUMAN RTS. WATCH (Nov. 22, 2023, 12:00 A.M.), <https://perma.cc/CR3K-B4FB>; *Israel/OPT: Horrifying Cases of Torture and Degrading Treatment of Palestinian Detainees amid Spike in Arbitrary Arrests*, AMNESTY INT'L (Nov. 8, 2023), <https://perma.cc/J938-6X5V>.

¹⁹⁷ See EURO-MED HUMAN RTS. MONITOR, *THE GAZA STRIP: UNDOCUMENTED CITIZENS 4-6* (2021), <https://perma.cc/BPY2-7KMY>; Hisham Daraghme, *'Not a Life': Israel Keeps Many Palestinians Without Legal Status*, AL JAZEERA (Oct. 26, 2021), <https://perma.cc/Y67F-QXTE>.

¹⁹⁸ *Palestinian Passport Classified Among Weakest in the World*, PALESTINIAN RETURN CTR. (Mar. 6, 2022), <https://perma.cc/N5GZ-PBQY>.

¹⁹⁹ See, e.g., Tendayi Bloom & Lindsey N. Kingston, *Introduction: Opening a Conversation About Statelessness, Governance, and the Problem of Citizenship*, in STATELESSNESS, GOVERNANCE, AND THE PROBLEM OF CITIZENSHIP 1, 1, 3 (Tendayi Bloom & Lindsey N. Kingston eds., 2021) (“For too long, the study of ‘statelessness’ has focused on technical legal issues. While these are vital in understanding and addressing people’s urgent needs, they represent only one aspect of a complex and messy reality.”); EDWARD W. SAID, *ORIENTALISM* 5 (Vintage Books 1979) (“[I]deas, cultures, and histories cannot seriously be understood or studied without their force, or more precisely their configurations of power, also being studied.”).

Direct advocacy in solidarity with Palestine can and should take innumerable forms: political education,²⁰⁰ mass mobilization,²⁰¹ legal work,²⁰² resource collection and sharing,²⁰³ and transnational solidarity,²⁰⁴ just to name a few. Scholarship's pivotal role lies in its ability to provide historical and political education, introduce theoretical frameworks, and raise challenging questions of ethics, law, and politics.²⁰⁵ As

²⁰⁰ E.g., PROJECT48, <https://perma.cc/99N5-WK9M> (last visited Feb. 1, 2024) (providing a comprehensive political education curriculum about the ongoing Palestinian Nakba); *Together We Rise: Palestine as a Model of Resistance*, U.S. CAMPAIGN FOR PALESTINIAN RTS., <https://perma.cc/J9FL-PBZ9> (last visited Feb. 1, 2024) (providing political education materials about the realities of Palestinian oppression and the struggle for rights and liberation); PALESTINE IN CONTEXT PROJECT, <https://perma.cc/NYJ5-AMBE> (last visited Feb. 1, 2024) (providing educational events and media on Palestinian liberation).

²⁰¹ E.g., Danica Kirka et al., *A Global Day of Protests Draws Thousands in Washington and Other Cities in Pro-Palestinian Marches*, ASSOCIATED PRESS, <https://apnews.com/article/protest-gaza-israel-palestinians-london-29d5cd664c81654283344d1874691a4f> (Jan. 13, 2024, 5:21 PM) (on file with CUNY Law Review); Nadine El-Bawab, *Thousands of Protesters Gather in DC to Call for a Cease-Fire in Gaza*, ABC NEWS (Nov. 5, 2023, 5:00 AM), <https://perma.cc/SW7E-JH6P>; Claire Fahy & Camille Baker, *Intense Protests Again Shut Down Midtown Manhattan Streets*, N.Y. TIMES (Nov. 9, 2023), <https://www.nytimes.com/2023/11/09/nyregion/protests-israel-hamas-palestinians-nyc.html> (on file with CUNY Law Review).

²⁰² E.g., *Gaza Genocide Lawsuit Against Biden Has Day in Court: Palestinians, Genocide Expert Provide Historic Testimony in U.S. Case*, CTR. FOR CONST. RTS. (Jan. 26, 2024), <https://perma.cc/9JMM-F9WT>; Ellen Ioanes & Nicole Narea, *South Africa's Genocide Case Against Israel, Explained*, VOX, <https://perma.cc/P27P-D2LQ> (Jan. 12, 2024, 4:00 PM); *UK Weapons Sales to Israel*, GLOB. LEGAL ACTION NETWORK, <https://perma.cc/2UJW-SUGT> (last visited Feb. 2, 2024).

²⁰³ E.g., *All the Walls Will Fall: 2023 Palestine Liberation Resource List*, PALESTINIAN YOUTH MOVEMENT, <https://docs.google.com/document/d/1ol9GjNwTo99mPzXnRgLOZLvs-fw0vc6MEPBjhuJHtbo> (last visited Feb. 2, 2024); *Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide—Continuously Updated*, LAW FOR PALESTINE, <https://perma.cc/63L8-27TQ> (Jan. 15, 2024); *The Palestine Reading List*, DECOLONIZE PALESTINE, <https://perma.cc/U48H-YP83> (last visited Feb. 2, 2024).

²⁰⁴ E.g., Noura Erakat & Marc Lamont Hill, *Black-Palestinian Transnational Solidarity: Renewals, Returns, and Practice*, 48 J. PALESTINE STUD. 7 (2019); *From Turtle Island to Palestine: Indigenous Delegation Blog*, PALESTINIAN YOUTH MOVEMENT, <https://perma.cc/6HVW-8HMB> (last visited Feb 2, 2024); see also *Ethical Travel to Palestine & Challenging Apartheid Tourism*, US CAMPAIGN FOR PALESTINIAN RTS., <https://perma.cc/KM74-JGPP> (last visited Feb. 2, 2024) (providing ethical travel guidance to international travelers visiting Palestine).

²⁰⁵ See, e.g., RASHID KHALIDI, *THE HUNDRED YEARS' WAR ON PALESTINE* (2020) (offering a comprehensive narrative of Palestinian history, incorporating first-person Palestinian perspectives); EDWARD SAID, *THE QUESTION OF PALESTINE* (1979) (discussing the history, sociopolitical evolution, and challenges facing Palestinians and advocates for Palestinian liberation); NOURA ERAKAT, *JUSTICE FOR SOME: LAW AND THE QUESTION OF PALESTINE* (2019) (analyzing the fight for Palestinian freedom through the lens of international law); MARC LAMONT HILL & MITCHELL PLITNICK, *EXCEPT FOR PALESTINE: THE LIMITS OF PROGRESSIVE POLITICS* (2021) (highlighting Western hypocrisy in supporting progressive international political causes while ignoring the colonial violence of Zionism).

Palestinian scholar Edward Said profoundly stated, “[w]e cannot fight for our rights and our history as well as future until we are armed with weapons of criticism and dedicated consciousness.”²⁰⁶ While scholarship alone is far from enough, there is a necessary relationship between scholarship and organizing in this movement and beyond.²⁰⁷

Engaging in scholarly and non-scholarly Palestine solidarity work comes with far more challenges than writing, editing, or reading an Article on statelessness in the United States does, rendering that work all the more necessary.²⁰⁸ Being a part of this movement means putting oneself out there in the face of McCarthyite repression and attacks,²⁰⁹ navigating controversial and difficult questions,²¹⁰ and unlearning embedded assumptions.²¹¹ For lawyers and other advocates, it means challenging the hegemonic structures that define the American and international legal systems²¹² and putting our jobs and reputations on the line²¹³

²⁰⁶ Edward Said, *The Challenge of Israel: 50 Years On*, AL-AHRAM WEEKLY, Jan. 15, 1998, reprinted in AHRAM ONLINE (May 16, 2023), <https://english.ahram.org.eg/News/500919.aspx> (on file with CUNY Law Review).

²⁰⁷ See, e.g., SAID, *supra* note 189, at 113 (writing that “[t]he intellectual’s representations . . . are always tied to and ought to remain an organic part of [the ongoing experiences] of the poor, the disadvantaged, the voiceless, the unrepresented, the powerless” and emphasizing the importance of preserving “the living connection between the intellectual and the movement or process of which he or she is a part.”); John Reynolds, *Disrupting Civility: Amateur Intellectuals, International Lawyers and TWAIL as Praxis*, 37 THIRD WORLD Q. 2098 (2016) (“[T]he first point of engagement for the university intellectual is her own sphere of operation. But [an intellectual’s work should] also entail[] engaging beyond the university and transcending the distinctions between different forms of labour.”).

²⁰⁸ See SAID, *supra* note 189, at 101 (“For despite the abuse and vilification that any outspoken supporter of Palestinian rights and self-determination earns for him or herself, the truth deserves to be spoken, represented by an unafraid and compassionate intellectual.”).

²⁰⁹ See, e.g., Alex Kane, *A “McCarthyite Backlash” Against Pro-Palestine Speech*, JEWISH CURRENTS (Oct. 20, 2023), <https://perma.cc/PYS2-FWBM> (discussing the “severe and unprecedented backlash” to Palestinian rights advocates on high school and college campuses).

²¹⁰ See, e.g., *How to Talk with Family and Friends About the Situation in Israel and Palestine*, AM. FRIENDS SERV. COMM., <https://perma.cc/6KKJ-QSWC> (Dec. 29, 2023) (providing tips for having challenging discussions about Palestine and the violence in Gaza with family and friends).

²¹¹ See, e.g., RECLAIMING JUDAISM FROM ZIONISM: STORIES OF PERSONAL TRANSFORMATION (Carolyn L. Karcher ed., 2019) (providing personal stories of Jews who unlearned Zionism and became advocates for Palestinian rights).

²¹² See Asli Bâli & Aziz Rana, *Constitutionalism and the American Imperial Imagination*, 85 U. CHI. L. REV. 257 (2018) (examining “the complex role liberal constitutionalism and American exceptionalism have played in both creating and undermining an international social contract premised on US hegemony”); ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW (2005) (arguing that Western colonialism “shaped the fundamental structures of international law”).

²¹³ E.g., Kelsey Vlamis, *3 Law Students from Harvard and Columbia Lost Job Offers over Student Organizations’ Statements on the Israel-Hamas War*, BUS. INSIDER (Oct. 17,

to fight for systemic change. For all readers, it means grappling with scholarship on and publicly speaking out against Zionism as a settler-colonial project²¹⁴ and Western orientalism and imperialism as its backbone.²¹⁵ It also means taking radical, powerful, and public stances in support of Palestinians' legitimate rights to self-determination²¹⁶ and return to their homeland,²¹⁷ as well as the legality and necessity of resisting colonial powers to realize them.²¹⁸

2023, 7:29 P.M.), <https://perma.cc/EF8U-WPZ7>; Steven Salaita, *Why I Was Fired*, THE CHRON. OF HIGHER EDUC. (Oct. 5, 2015), <https://www.chronicle.com/article/why-i-was-fired/> (on file with CUNY Law Review).

²¹⁴ See generally Tariq Dana & Ali Jarbawi, *A Century of Settler Colonialism in Palestine: Zionism's Entangled Project*, 24 BROWN J. WORLD AFFS., Fall/Winter 2017, at 197 (discussing the history of the Zionist movement's construction of Israel as a settler-colonial state); David Lloyd, *Settler Colonialism and the State of Exception: The Example of Palestine/Israel*, 2 SETTLER COLONIAL STUDS., no. 1, 2012, at 59 ("Israel's occupation of Palestine [is] an exemplary settler colonial project whose contradictions are embedded in the early framing of Zionism . . .").

²¹⁵ See generally Edward Said, *The Idea of Palestine in the West*, 8 MERIP REPS., Sept. 1978, at 3 (discussing how Zionism has "Western ideological parents" and how there is a "complete hegemonic coalescence between the liberal Western view of things and the Zionist-Israeli view.") M. Muhannad Ayyash, *Liberal Zionism: A Pillar of Israel's Settler Colonial Project*, AL-SHABAKA (June 14, 2023), <https://perma.cc/7J32-78Z8> ("[I]t is critical to understand liberal Zionism as part and parcel of colonial modernity. . . . [T]hat modernity—conceived of as a Western phenomenon—cannot be separated from the tools used to achieve it: Colonization and slavery."); Abdul-Wahab Kayyali, *Zionism and Imperialism: The Historical Origins*, 6 J. PALESTINE STUDS., Spring 1977, at 98 (examining the historical roots of Zionism in European imperialism and nationalism).

²¹⁶ See generally John Quigley, *Palestine's Declaration of Independence: Self-Determination and the Right of the Palestinians to Statehood*, 7 B.U. INT'L L.J. 1 (1989) (arguing that "the international community should recognize the right of Palestinian Arabs to statehood through the established principle of self-determination"); Curtis F. J. Doebbler, *Human Rights and Palestine: The Right to Self-Determination in Legal and Historical Perspective*, 2 BEIJING L. REV. 111 (2011) (examining the history of the legal right of self-determination in the context of its denial to Palestinians).

²¹⁷ See generally Salman Abu-Sitta, *The Right of Return: Sacred, Legal and Possible*, in PALESTINIAN REFUGEES: THE RIGHT OF RETURN 195 (Naseer Aruri ed., 2001) (advocating for "implementation of the right of return to the largest, oldest and most politically important refugees in the world," a right which is "sacred, legal and possible"); Susan M. Akram, *Myths and Realities of the Palestinian Refugee Problem: Reframing the Right of Return*, 8 MIT ELEC. J. MIDDLE E. STUD. 183 (2008) (outlining how four "positions negating a Palestinian right of return [have] been countered with significant legal authority, analysis, and state practice").

²¹⁸ See generally Shahd Hammouri, *The Palestinian People Have the Right to Resistance by All Means Consistent with the Principles of the UN Charter*, LAW FOR PALESTINE (Oct. 8, 2023), <https://perma.cc/2MXB-D4R6>; *Self-Defence and the Right to Resist in Palestine*, MORNING STAR (Nov. 11, 2023), <https://perma.cc/7SD7-P73L>; see also FRANTZ FANON, *THE WRETCHED OF THE EARTH* 1-62 (Richard Philcox trans., 2004) (presenting a seminal theoretical framework to understand why colonized peoples utilize violent resistance).

Importantly, despite the pivotal connection between statelessness and the ongoing Zionist colonial project, engaging with this Article and fighting for stateless people in the United States are not in and of themselves express forms of Palestine solidarity and anti-imperial advocacy. However, I hope this Article can serve as a launching pad for readers and legal academic spaces to take a strong and principled position in support of Palestinian liberation.²¹⁹ To that end, I encourage readers to learn, write, and think critically about Palestine, so that we all can resist repression and utilize scholarship as a backbone for unrelenting, powerful advocacy. For me, this Article represents only the beginning of a lifetime of advocacy, both in and outside of scholarship, to fight against imperialism and work toward humanization, liberation, and freedom within Palestine and all other peoples' self-determination movements.

²¹⁹ See, e.g., *IADL Statement: Support the Palestinian People, Call for International Action Against Israeli War Crimes*, INT'L ASS'N OF DEMOCRATIC LAWS. (Oct. 11, 2023), <https://perma.cc/S9M9-3EDP>; Hamza El Boudali & Stanford Students for Just. in Palestine, *Opinion, Stanford Students for Justice in Palestine*, STAN. DAILY (Oct. 10, 2023, 2:28 AM), <https://perma.cc/9F4X-CSHL>; *Palestine Legal Stands Firmly with the Palestine Movement, Condemns Rising Anti-Palestinian Attacks*, PALESTINE LEGAL (Oct. 10, 2023), <https://perma.cc/L59Y-8KFL>.