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The Intersection of Statelessness and Refugee Protection in US Asylum Policy

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Executive Summary

More than ten million people are stateless today. In a world of nation states, they live on the margins without membership in any state, and, as a consequence, have few enforceable legal rights. Stateless individuals face gaps in protection and in many cases experience persecution that falls within the refugee paradigm. However, US asylum policy does not adequately address the myriad legal problems that confront the stateless, who have been largely invisible in the jurisprudence and academic literature.

Two federal appellate court opinions shed new light on the intersection of statelessness and refugee law in the United States. In 2010, *Haile v. Holder* examined the asylum claim of a young man rendered stateless when the Ethiopian government issued a decree denationalizing ethnic Eritreans. In a 2011 case, *Stserba v. Holder*, the court reviewed an asylum claim by a woman who became stateless when the Soviet Union collapsed, and the successor state of Estonia enacted citizenship legislation that included a language requirement. This article analyzes the opinions which suggest that state action depriving residents of citizenship on ethnic and other protected grounds warrants a presumption of persecution. This article also identifies additional circumstances in which stateless individuals may have a well-founded fear of persecution that qualifies them for asylum in the United States.

In addition, this article notes that although far too many stateless individuals face persecution, not all of them do. Stateless persons who do not fear persecution, however, are also vulnerable. The absence of state protection condemns them to a precarious existence and their inability to obtain passports or other travel documents often prevents their return to states where they formerly resided. The refusal of most states to admit non-citizens frequently keeps stateless persons in limbo. Stateless individuals stranded in the United States live under a supervisory patchwork that serves neither their interests nor those of the United States. Rather than relying on incremental case law developments and inapposite regulatory schemes, the US State Department and the Department of Homeland

> Security should convene a task force to report on the size and composition of the stateless population in the United States and the need to develop legislative, regulatory, and other policy guidance concerning statelessness claims.

Introduction

Half a century ago, Earl Warren, the former Chief Justice of the United States Supreme Court said, "Citizenship is man's basic right, for it is nothing less than the right to have rights."[1] Without citizenship, individuals lack the mechanisms to access their rights. A central notion of refugee law is that those who fear persecution in their homeland and cannot rely on their own government to protect their rights can call upon the international community to provide protection. Refugees may possess passports, a firm sense of national identity, and a legal basis for citizenship, but their formal citizenship does not protect them. They are *de facto* stateless while the threat of persecution continues, and they need surrogate protection, which treaty and customary international refugee law have evolved to provide (see, e.g., Goodwin-Gill and McAdam 2007).

But what about those who are *really* stateless? In a world of nation states, the *de jure* stateless lack "the right to have rights." Because no government recognizes them as citizens, they are uniquely vulnerable. Frequently, stateless persons do not have birth certificates; many cannot obtain travel documents to visit family members in other states or seek opportunities elsewhere. A state may, as a matter of national law, authorize stateless residents to remain, to work, to go to school, and to partake in other aspects of the life of the community. A state may, as a matter of policy, extend to stateless individuals all the rights and protections extended to other noncitizens, and these rights may be substantial. Nonetheless, if the state of residence chooses not to allow noncitizens to remain, the stateless—in contrast to other non-citizen residents—have no other state to fall back on. Stateless persons who migrate to obtain work often find their residence permission tied to their employment authorization. If the job ends and they are ordered to leave, no other state, including the state where they were born, has an obligation to allow them to enter. In these circumstances, statelessness is "rightslessness" (Darling 2009).

Denial of re-entry, refusal to provide birth certificates, and inability to obtain travel documents are examples of the protection needs of the stateless. To date, US refugee law and policy have largely failed to identify and address these and other legal problems that confront stateless persons.[2] In many instances stateless populations face severe harm that rises to the level of persecution. These situations fall within the ambit of refugee law, although, thus far, they have been largely invisible in the jurisprudence and academic literature.

In other cases, the vulnerability and uncertainty in which stateless persons live may not trigger the protections of refugee law. This, however, does not mean that protection is unwarranted. Rather, the precarious situation of stateless individuals stranded far from

1 *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (dissenting opinion).

2 This analysis does not focus on the protections that international human rights law may confer upon the stateless.

their former residence suggests that statelessness raises complex protection concerns and, at times, may point to the need for different solutions that refugee law cannot provide.

This article examines two federal appellate court opinions, *Haile v. Holder*[3] and *Stserba v. Holder*,[4] that shed light on ways in which statelessness may be a form of persecution. It also identifies additional circumstances in which stateless persons may have a well-founded fear of persecution that qualifies them for asylum in the United States. In addition, it identifies some of the practical problems facing stateless persons whose claims do not fall within the refugee paradigm, and suggests policy approaches to protect stateless individuals marooned in the United States.

Background

The 1951 Convention relating to the Status of Refugees extends its protections to persons who are outside their country of nationality and unable or unwilling to avail themselves of its protection due to their fear of persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group.[5] The Convention expressly acknowledged that stateless persons may need protection: it includes in the refugee definition "those *not having a nationality* and being outside [their] country of former habitual residence" who are unable or, due to their fear of persecution, unwilling to return to their former residence.[6] This explicit text notwithstanding, the stateless have been largely unnoticed in the scheme of international law—fallen between the cracks in a system built on nation states.[7]

The post-World War II diplomatic community that drafted the conventions concerning refugees and stateless persons assumed that statelessness was a temporary phenomenon. The stateless were a byproduct of the ravages of a global war, the disintegration of empire, and the decolonization process (see Hathaway 1991). Statelessness would gradually diminish as the age of empire ceased, colonies gained independence, and the post-war

3 591 F. 3d 572 (7th Cir. 2010).

4 646 F. 3d 964 (6th Cir. 2011).

5 "For the purposes of the present Convention, the term "refugee" shall apply to any person who [a]s a result of events occurring before January 1,1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the *country of his nationality* and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; *or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*." Article 1. A (2), 1951 Convention relating to the Status of Refugees, *signed* July 28, 1951, 189 U.N.T.S. 137 [emphasis added]. See also 1967 Protocol relating to the Status of Refugees, *done* January 31, 1967, 19 U.S.T.

6 Article 1 A (2).

7 There are two international treaties that address statelessness, the 1954 Convention relating to the Status of Stateless Persons, *adopted* July 28, 1951, G.A. Resolution 429(V), 360 U.N.T.S. 117, *entered into force*, June 6, 1960, and the 1961 Convention on the Reduction of Statelessness, *adopted* August 30, 1961, G.A. Resolution 896(IX), 989 U.N.T.S. 175, *entered into force*, December 13, 1975. Only 74 states are parties to the 1954 Convention, and even fewer – 45 – have ratified the treaty that commits states to take concrete measures to reduce statelessness (see UNHCR, UN Conventions on Statelessness: Key for Protecting the Stateless, http://www.unhcr.org/pages/4a2535c3d.html). These treaties have attracted far fewer than the 145 states that have ratified the 1951 Refugee Convention and the jurisprudence concerning statelessness is minimal.

world was rebuilt and revitalized. During its first half century, the United Nations did not task any unit or agency to attend to the stateless.[8]

History proved the predictions wrong. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that there are 10 million stateless people in the world today.[9] In the 1990s, the UN General Assembly formally placed the stateless within the UNHCR mandate.[10]

Statelessness in recent history has often resulted from political upheaval, armed conflict, or ethnic targeting. For example, more than one million Rohingya Muslims who live on the borders of Myanmar and Bangladesh are denied nationality by each State (Pitman 2012). They are derided as "illegal" immigrants, though their families have resided in the same villages for multiple generations. They need government permission to leave their villages, to marry, or to have more than two children. Fleeing from communal violence, boatloads of Rohingya have been turned back by coast guard units in Bangladesh and elsewhere (ibid.).

Palestinians form another large stateless community. The population displaced by the Arab-Israeli war of 1948 has taken root in many other countries in the Middle East. Lebanon, Syria, and other Arab States that host large groups of Palestinians generally provide residence and travel permits, but not citizenship.[11] While many Palestinians acquired Jordanian nationality, the past decade has seen Jordan's withdrawal of citizenship from thousands of Palestinians (Human Rights Watch 2010). The uprisings in the Arab world and unsettled situations in the region have exacerbated the insecurity of the stateless and placed many Palestinians and others in peril.

In September 2013, many thousands born in the Dominican Republic became subject to statelessness when the Constitutional Court of the Dominican Republic issued a decision that interpreted a constitutional provision concerning citizenship to exclude those born in the Dominican Republic to unauthorized migrants during the past 85 years.[12] Ruling that children born in the Dominican Republic to foreigners "in transit" do not obtain citizenship, the Court held that unauthorized migrants were "in transit," notwithstanding the official registration of their children as Dominicans, their acceptance as such by the larger community, and the fact that they have lived their entire lives there.[13] Moreover,

8 International law defines a stateless person as a "person who is not considered a national by any State under the operation of its law." Art. 1, 1954 Convention relating to the Status of Stateless Persons, *done* September 28, 1954, 360 U.N.T.S. 117. See Batchelor 1998 for a discussion on the anticipated interaction between statelessness and refugee protection.

9 UNHCR estimates there were 16.7 million refugees, more than 10 million stateless people, and 33.3 million internally displaced persons in 2013 (UNHCR 2014a, 2).

10 See G.A. Res. A/Res/50/152, February 9, 1996; UNHCR, http://www.unhcr.org/pages/49c3646c16a.html.

11 See, e.g., *Ouda v. INS*, 324 F.3d 445 (6th Cir. 2003) (stateless Palestinians born in Kuwait traveled on Egyptian travel documents); *Faddoul v. INS*, 37 F.3d 185 (5th Cir. 1994) (stateless Palestinian born in Saudi Arabia traveled on Lebanese travel documents). See generally UNRWA, *Palestine Refugees*, http://www.unrwa.org/etemplate.php?id=86.

12 *Sentencia TC/0168/13*, Constitutional Court of the Dominican Republic, September 23, 2013, http://www.refworld.org/docid/526900c14.html.

13 *Id*. The Constitutional Court ruled against Ms. Juliana Dequis Pierre, who had been born in the Dominican Republic to parents who had migrated from Haiti decades earlier. Ms. Dequis Pierre, herself the mother of four Dominican-born children, had been officially registered at birth as a Dominican citizen (see UNHCR 2013).

the Court concluded that this citizenship provision applied retroactively to 1929.[14] The impact of this ruling fell largely on the sizeable group of longtime residents who are of Haitian descent; some estimate 200,000 individuals could be affected (Archibold 2013). Many found themselves suddenly bereft of the right as citizens to seek the government's protection, and violent attacks against Haitians in the Dominican Republic have intensified their sense of insecurity (Delva 2013). Those who have never been to Haiti, do not speak the language, and have no family or work prospects there were not comforted by the Dominican Republic's assertion that they can apply to the Haitian government for recognition as Haitian citizens.[15]

Perhaps the greatest cause of the increase in stateless populations during recent decades has been the dissolution of states. For example, the end of the Soviet Union in 1991 left close to 300 million Soviet citizens in need of acquiring a new nationality. The successor states adopted different nationality laws that left substantial numbers of long-time residents without citizenship (UNHCR 1996). Similar problems arose in the dissolution of Yugoslavia in the early 1990s, and in the Velvet Divorce of the Czech Republic and Slovakia in 1993 (UNHCR 2000). The independence of Eritrea from Ethiopia later that same year may have created additional groups of stateless persons, and the subsequent border war resulted in discriminatory denationalizations. The Arab Spring revolutions that began in 2011 may also produce further groups of stateless people.

In addition to political upheaval, a number of other factors contribute to statelessness. These include the inability of many vulnerable populations to register births, gender discrimination in nationality laws, and the impact of *jus sanguinis* citizenship regimes.[16] Many parents are unable to register the births of their children, in particular when families have been displaced from their homes. Whether forced migrants remain within their country of residence or cross territorial borders, they frequently do not have access to registration offices (UNHCR 1996). Sometimes those living in camps or temporary shelters find registration officials reluctant to issue documents to non-permanent residents. In other cases individuals in short-term accommodations or in flight think they should delay registration until they return home or until they reach a final destination. By the time they do—if they do—reach someplace they can call home, the registry offices may no longer be open to them. Those whose births have not been registered or who cannot produce evidence of registration are unable to prove where they were born or who their parents are. Children without birth certificates grow up to be adults whom no country will acknowledge as nationals.

Gender discrimination in nationality laws can also result in statelessness (UNHCR 2012a).

14 *Id*. In addition to denying that Ms. Dequis Pierre is a citizen, the Court instructed government officials to identify similarly situated persons who had been registered as Dominican citizens since 1929. For additional commentary, see Aber and Small 2013.

15 The government of the Dominican Republic also stated it would propose legislation that would provide a pathway for long-term residents to regularize their status and eventually to naturalize (Fieser 2014). In May 2014 the Congress of the Dominican Republic passed legislation granting citizenship to children born to foreign parents, provided the children have Dominican government identification documents and are listed in the civil registry (Archibold 2014). The number of people who will benefit from the new law is unclear.

16 Under *jus sanguinis* principles, citizenship is based on the citizenship of the parents; under *jus soli*, citizenship is based on the territory in which the birth occurs.

Statutes that link citizenship of married women to their husbands can leave women stateless if their spouses die or divorce them (ibid.; see also UNHCR 2014b and 2012b). Even without death or divorce, women can become stateless if their home state automatically deprives them of citizenship upon marriage to a national of another state, yet their husband's state does not automatically grant citizenship based on marriage. Gender discrimination combined with *jus sanguinis* principles can increase the incidence of statelessness. To give an example, some states confer citizenship at birth according to paternal descent. A woman from such a country married to a stateless man would not be able to pass her citizenship to her child, who would be stateless. Another common example is that of children born to unmarried parents who receive at birth the citizenship only of the mother. If the mother is stateless, so is the child, even if the father is a national of the state where the child is born.

Even in the absence of gender discrimination, *jus sanguinis* approaches to citizenship may lead to statelessness. Some states require citizens born abroad to reside in the home country for a specified period of time in order to retain the citizenship they acquired from their parents at birth.[17] Families that live and work abroad for many years may be unable to satisfy the home country residence requirement. These and other scenarios contribute to the persistence of statelessness today.

US Law: Statelessness as Persecution

The *Refugee Act of 1980*, generally tracking the 1951 Convention, specifies that stateless persons fall within the refugee definition when they face persecution or a well-founded fear of persecution in their country of residence on one of the enumerated grounds.[18] The US refugee definition is even more expansive than the 1951 Convention definition, in ways that may be especially pertinent to those who are stateless.

First, in contrast to the 1951 Convention, the US refugee legislation encompasses those who suffered persecution in the past but no longer face a threat of future persecution.[19] Accordingly, stateless populations who have already suffered severe harm may be able to receive protection in the United States even though they lack evidence of current persecutory threats. US law requires that the past persecution must have been linked to race, religion, nationality, political opinion, or membership in a social group,[20] and these types of animus are frequently the basis for hostility directed against groups that are stateless.

17 E.g., US legislation confers citizenship at birth to a child born outside of US territory to parents who are US citizens only if one of the parents resided in the US prior to the birth of the child. INA § 301(c). If one parent is a US citizen and the other is not, a child born outside of US territory acquires citizenship at birth only if the US citizen parent was physically present in the US for at least 5 years or more, at least 2 years of which were after the parent was 14 years old. INA § 301(g).

18 The term "refugee" means any person who is outside any country of such person's nationality or, *in the case of a person having no nationality*, is outside any country in which such person has habitually resided. . . . INA § 101(a)(42).

19 The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person has 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. . . . INA § 101(a)(42).

20 *Id*.

In addition, pursuant to the US refugee definition, those who have not left their country of nationality or residence may receive protection.[21] The stateless, who frequently lack the ability to obtain travel documents, often find it difficult to cross international borders. While remaining in the country where they reside precludes them from refugee protection under the 1951 Convention, even if they have a well-founded fear of persecution, this limitation does not interfere with protection under US refugee law.

Despite the elaboration of the US refugee definition in ways that increase the likelihood of its applicability to stateless individuals, the case law is sparse. Two federal court opinions, in 2010 and 2011, addressed claims for protection raised by stateless persons. Together, the cases begin to explicate the circumstances in which statelessness constitutes a form of persecution in the context of US asylum policy.

Haile v. Holder

In a 2010 case, *Haile v. Holder*,[22] the US Court of Appeals for the Seventh Circuit examined the asylum application of Temesgen Woldu Haile, a young man born in Addis Ababa, Ethiopia in 1976 to parents of Eritrean background. Haile and his parents were citizens of Ethiopia, at that time ruled by Mengistu, the Soviet-backed military dictator. After the Soviet Union collapsed,[23] Mengistu's government was overthrown, a new transitional government was formed, and a referendum about the independence of Eritrea from Ethiopia was scheduled. The referendum vote was overwhelmingly in favor of independence, and Eritrea became independent in 1993. A year earlier, in 1992, Haile's parents had moved to Eritrea, leaving their teenage son in Ethiopia. After independence, the parents renounced their Ethiopian citizenship and acquired Eritrean citizenship. The son had remained in Ethiopia, where he resided in 1998 when war broke out between Eritrea and Ethiopia over the territorial boundary between the two countries.[24] The war brought mass deportations, with each country deporting thousands of citizens and residents of the "wrong" background. For example, Ethiopia decided to identify and expel residents of Eritrean origin who provided support to Eritrea. This led to the expulsion of more than 75,000 Ethiopia citizens of Eritrean heritage, many in an arbitrary and vengeful manner with no proof of disloyalty to Ethiopia (see Human Rights Watch 2003). The war ended in 2000, but tensions remained high between the two countries.[25] After the fighting concluded, Ethiopia passed several

21 The term "refugee" [encompasses] in such special circumstances as the President after appropriate consultation . . . may specify, any person who is within the country of such person's nationality or, *in the case of a person having no nationality, within the country in which such person is habitually residing*, and is persecuted or has a well-founded fear of persecution. . . . INA § 101(a)(42).

22 591 F. 3d 572 (7th Cir. 2010). For additional commentary on *Haile v. Holder*, see Forbes 2013.

23 The collapse of the Soviet Union had consequences, direct and indirect, on the political events that gave rise to both *Haile v. Holder* and *Stserba v. Holder*, the subsequent case. When the Soviet Union dissolved, Estonia and the other former Soviet republics became independent countries. In the Baltic region and elsewhere, the result of new citizenship legislation was that many lifelong residents lost their nationality. See Barrington 1999 and Visek 1997. Farther afield, the collapse of the Soviet Union led to the evaporation of Soviet aid to Africa, which indirectly led to the downfall of the Ethiopian government. Subsequent events there, especially the border war between Ethiopia and Eritrea, manifested longstanding ethnic hostilities and resulted in deportations and actions to strip citizenship from groups of residents.

24 *Id.* at 573.

25 591 F. 3d at 575.

laws allowing certain categories of former citizens and residents who had suffered during the war to apply to regain their property and their citizenship. It is unclear whether these laws have been effective.[26]

Haile, who was 21 or 22 years of age when war broke out, fled Ethiopia and ultimately applied for asylum in the United States, alleging that Ethiopia's removal of citizenship from ethnic Eritreans constituted persecution. The Immigration Judge rejected his application after reviewing a record that apparently contained no evidence that Haile had been arrested, harassed or otherwise targeted for persecution before he left Ethiopia.[27] The Immigration Judge ruled that a country has the sovereign right to define its citizenry, and that the removal of citizenship does not constitute persecution *per se*.[28] Because Haile did not allege other harsh treatment, the judge concluded that Haile had had neither suffered persecution in the past, nor was likely to suffer harm in the future now that the war had ended. Accordingly, the Immigration Judge denied his claim;[29] the Board of Immigration Appeals (BIA) affirmed.[30] The US Court of Appeals for the Seventh Circuit remanded the case to the BIA to examine more closely the claim that Haile had been or would be deprived of his Ethiopian citizenship:

> [The immigration judge's] reasoning is problematic—it fails to recognize the fundamental distinction between *denying* someone citizenship and *divesting* someone of citizenship. . . . [No] case of which we are aware . . . suggests that a government has the sovereign right to strip citizenship from a class of persons based on their ethnicity. It is arguable that such a program of denationalization and deportation is in fact a particularly acute form of persecution.[31]

The court expressly declined to analyze whether "denationalization as such amounts to persecution"[32] and further noted that the record was insufficient to determine the current citizenship status of ethnic Eritreans who had left Ethiopia during the war.[33] Accordingly, the court remanded the case to the BIA for further factual findings and legal consideration.

The BIA rejected the asylum claim a second time. It reasoned that denationalization does not always constitute persecution, even when the denationalization is linked with ethnic group or another ground protected by the 1951 Convention. Rather, the BIA ruled, an asylum applicant must produce some evidence of actual harm that accompanied or resulted from the loss of citizenship.[34] In Haile's second appeal to the Seventh Circuit, the court focused on statelessness as persecution:

> [Although] a change of citizenship incident to a change in national boundaries is not persecution *per se*, it does not follow that taking away a person's citizenship because of his religion or ethnicity is not persecution. If Ethiopia denationalized the petitioner

26 *Id*.
27 *Id*. at 495.
28 *Id*.
29 *Id.*
30 *Id.*
31 *Haile v. Gonzales*, 421 F 3d 493, 496 (7th Cir. 2005) (emphasis in original).
32 *Id*.
33 *Id*. at 496-7.
34 591 F 3d 572 at 573-4.

> because of his Eritrean ethnicity, it did so because of hostility to Eritreans; and [this] created a presumption that he has a well-founded fear of being persecuted should he be returned to Ethiopia. Indeed, *if to be made stateless is persecution, as we believe*, at least in the absence of any [contrary explanation], then to *be deported to the country that made you stateless and continues to consider you stateless is to be subjected to persecution even if the country will allow you to remain and will not bother you as long as you behave yourself* [emphasis added]. [35]

The Court noted that the record lacked information concerning the impact, under either Ethiopian or Eritrean law, on a minor child of parental renunciation and/or acquisition of citizenship.[36] There was also a lack of evidence examining the applicability to Haile of a 2003 law allowing Ethiopians to regain their nationality if they had lost it by acquiring another nationality.[37] Pointing out that Haile had not renounced his Ethiopian citizenship in order to acquire another nationality, but that Ethiopia had apparently made him stateless,[38] the court remanded the case to the BIA for further analysis and proceedings.

Although this opinion does not attempt to provide a definitive analysis of statelessness as a form of persecution, its initial and tentative thinking is instructive. The Seventh Circuit rejected as insufficient the abstract argument that a sovereign has the right to define the terms of citizenship. The Court insisted that it was relevant to examine the context in which citizenship decisions are made. It emphasized three aspects of the government's decree: the apparent ethnic basis of the decree; the consequent statelessness (as contrasted with situations in which statelessness might not result); and the government's affirmative action to strip citizenship from someone who had possessed it for years. In combination, these factors appear to bring the case directly within the persecution paradigm: government action motivated by ethnic animus causing severe harm to a despised minority. The advance in the *Haile* court's reasoning is that the issue of statelessness is central, and the Court recognizes that statelessness itself can constitute severe harm.

Stserba v. Holder

In 2011, one year later, the Sixth Circuit addressed another situation of statelessness. In *Stserba v. Holder*,[39] a woman born in Estonia during the Soviet era to an ethnic Russian family, claimed that Estonia's application of its citizenship law to her constituted persecution. Lilia Stserba grew up in Estonia, but went to Russia for her medical training and married a Russian citizen.[40] Back in Estonia, she practiced medicine and gave birth in Estonia to a son, Artjom.[41] After Estonia regained its independence from the Soviet Union in 1991, there was great hostility to the Soviet oppression (see, e.g., Lottman 2008; Barrington

35 *Id*. at 574
36 *Id.* at 574-5.
37 *Id.*
38 *Id.* at 575.
39 646 F. 3d 964 (6th Cir. 2011). For additional commentary on *Stserba v. Holder*, see Forbes 2013, and Rempell 2013 (discussing harms that may constitute persecution).
40 Prior to the dissolution of the Soviet Union, of course, Stserba and her husband were citizens of the Soviet Union. Post dissolution, Stserba's husband was a citizen of Russia. *Id*. at 968.
41 *Id.* at 968-9 (discussing details of Sterbsa's life).

1999; Visek 1997). Soviet forces had occupied Estonia since the Second World War, and they had made efforts to dilute the Estonian population by encouraging ethnic Russians to move to Estonia and help pacify the area.[42] The new Estonian nationality law automatically conferred citizenship on those whose families had possessed Estonian citizenship prior to the Soviet occupation in 1940. Others, including lifelong residents, were eligible for citizenship if they could speak Estonian and pass a language test (Estonia.eu 2014).

Lilia Sterbsa and Artjom did not qualify for citizenship under the new Estonian law, presumably because they did not speak Estonian. The record did not indicate whether they were eligible for Russian citizenship via Stserba's husband and Artjom's father, but they apparently did not acquire Russian citizenship and consequenly became stateless.[43] Two years later, as part of an electoral change, Stserba and her son Artjom became Estonian citizens.[44] Five years after that, in 1998, Estonia stopped recognizing scientific degrees issued by Russian institutions, with apparent retroactive effect because Stserba reported that this policy change meant that she could no longer practice medicine in Estonian hospitals.[45]

Stserba and her husband came to the United States in 2003, where Stserba applied for asylum based on the persecution she had suffered on account of her Russian ethnicity.[46] The persecution she alleged consisted of her statelessness between 1991 and 1993, the inability to practice her profession after Estonia revoked its recognition of Russian scientific degrees, and claims of inferior medical treatment for her son.[47] The record showed that roughly 65,000 ethnic Russians were naturalized in Estonia during the 1990s,[48] and that ethnic Russians living in Estonia without Estonian citizenship could remain residents, obtain travel documents, and vote in local elections. Non-citizens, however, could not vote in national elections, purchase property, or join political parties.

The Immigration Judge concluded that the harms that Stserba had experienced did not constitute persecution. He noted that Stserba had regained citizenship relatively quickly, had not suffered "any adverse consequences" during the time she was stateless, and had experienced diminished professional opportunities and reduced levels of medical treatment that did not rise to the level of persecution. [49] The BIA affirmed the denial of asylum.[50]

The Sixth Circuit Court of Appeals expressed a more nuanced view of the situation:

> Regardless of the practical ramifications that befall a denationalized person, the inherent qualities of denationalization are troubling when a country denationalizes a

42 Ethnic Estonians constituted 88 percent of the population of Estonia in 1934. By 1989, they constituted only 61 percent (Estonia.eu 2014; Barrington 1999; Visek 1997).
43 646 F. 3d at 969.
44 *Id.*
45 *Id.* In addition, Stserba testified that the Estonian medical treatment for her son Anton, who was born with a severe medical condition, changed for the worse. *Id.* at 969-70.
46 Stserba's son Anton, who had severe medical problems, came to the United States, but her son Artjom remained in Estonia. *Id.* at 968-9.
47 In addition to allegations that her son Anton received inferior medical care Stserba alleged that her son Artjom had been harassed after the rest of the family had left for the United States. *Id.*
48 *Id.* at 973-4.
49 *Id.*at 971.
50 *Id.* The BIA also specified that the events involving the son who remained in Estonia did not constitute persecution. *Id.* at 978-9.

> person who is not a dual national, thereby making him or her stateless. Statelessness is "a condition deplored in the international community of democracies."[51] The essence of denationalization is "the total destruction of the individual's status in organized society" because, "[i]n short, the expatriate has lost the right to have rights."[52] "While any one country may accord [a denationalized person] some rights, . . . no country need do so because he is stateless."[53] "The calamity is 'not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever.'"[54] The United States Supreme Court has described denationalization as "a form of punishment more primitive than torture."[55] Accordingly, because denationalization that results in statelessness is an extreme sanction, denationalization may be *per se* persecution when it occurs on account of a protected status such as ethnicity. Although the status of "[s]tatelessness . . . does not entitle an applicant to asylum,"[56] *a person who is made stateless due to his or her membership in a protected group* may have demonstrated persecution, even without proving that he or she has suffered collateral damage from the act of denationalization. [57]

The court noted that there was reason to suspect that the Estonian law, though neutral in its terms, impermissibly targeted ethnic Russian residents of Estonia. If so, said the court, then Stserba may have suffered past persecution when she became stateless, whether or not the statelessness had a serious impact on her daily life.[58] The court remanded the case to the BIA, emphasizing that "[a]lthough not every revocation of citizenship is persecution, ethnically targeted denationalization of people *who do not have dual citizenship* may be persecution."[59]

Denationalization and Naturalization Laws Resulting in Statelessness

The Sixth and the Seventh Circuits offer strikingly similar perspectives on fundamental statelessness issues. Both courts examined the impact of statelessness in the framework of refugee law where evidence of past or future persecution is central. Both courts emphasized the salience of government actions that target or have a substantial impact on those who fall

51 Quoting *Trop v. Dulles*, 356 US 86, 102 (1958)(plurality).
52 *Id.* at 101-2.
53 *Id.* at 101.
54 *Kennedy v. Mendoza-Martinez*, 372 US 144, 161 (1963) (quoting Hannah Arendt, *The Origins of Totalitarianism* 294 (1951)).
55 *Trop v. Dulles* at 101.
56 *Maxismova v. Holder*, 361 F. App'x 690, 693 (6th Cir. 2010) (denying asylum to Estonian woman claiming persecution based on statelessness, religious discrimination and ethnic persecution).
57 *Stserba*, 646 F 3d at 974 (emphasis in original).
58 *Id.* at 975. The Sixth Circuit provided further guidance for the BIA's reconsideration of the case. The court emphasized that if the BIA concluded that Stserba had suffered past persecution, then U.S. law would entitle her to a presumption that she will fear persecution in the future. 8 C.F.R. § 208.13(b)(1). At that point the government could introduce evidence to rebut the presumption by showing that circumstances had changed so substantially that future persecution would be unlikely. The court noted that Stserba's reacquisition of citizenship in 1993 might suggest that things have changed in such a way that she would not have a well-founded fear of future persecution.
59 *Id.* at 973.

within one of the grounds enumerated by the 1951 Convention. Both courts indicated that depriving citizens of nationality based on grounds protected by the 1951 Convention may constitute persecution. Moreover, they suggested that withdrawing citizenship in situations that render individuals stateless is presumptively persecutory. Further, they posited that denationalization on ethnic grounds that results in statelessness may constitute persecution *per se*, obviating the need for applicants to produce evidence that statelessness caused them practical harm. Because they remanded the cases for further development and analysis, neither the *Haile* nor the *Stserba* court addressed the type of evidence that might rebut a presumption of persecution.

The examinations of statelessness in *Haile* and *Stserba* are an important step forward for US refugee law and asylum policy. They acknowledge the great vulnerability that statelessness engenders. They also indicate that when governments take actions that render people stateless, this should give rise to a presumption of persecution. This view is in line with the concept of surrogate protection, one of the central policies of refugee law (see Goodwin-Gill and McAdam 2007). When individuals cannot rely on their home states to protect them from persecution, they can turn to other states. Those made stateless by government action should also be able to turn to other states for protection.

It is important to note, however, that the *Stserba* case arose in a significantly different context from *Haile*. The dissolution of the Soviet Union, and with it the disappearance of Soviet citizenship, led to substantial gaps in citizenship law and citizenship status. Each of the new States that arose out of the constituent parts of the former Soviet Union fashioned its own citizenship legislation. Thus, politically freighted decisions concerning membership were simultaneously underway in multiple new states. This was compounded by the fact that some states, such as Estonia, viewed themselves as re-gaining their pre-existing sovereignty after decades of foreign occupation. From this perspective, they were not "new" states, but already established states re-asserting the terms of membership in their polity.[60]

In contrast to *Haile*, Stserba was not stripped of her citizenship by government decree. Instead, she and other residents whose families had not been citizens of Estonia prior to the Soviet takeover in 1940, faced a naturalization process that included a language requirement. The language requirement clearly placed a burden on the portion of the resident population who did not speak Estonian, but, as opposed to the Ethiopian decree withdrawing citizenship from ethnic Eritreans, residents in Estonia were eligible to seek naturalization, and thousands of ethnic Russians successfully naturalized. These and other aspects of the dissolution of the Soviet Union and the consequent developments in citizenship law in successor (or re-established) States made the Estonia circumstances markedly different from the war-time decrees in Ethiopia and Eritrea.

Nonetheless, different though they are, both the *Haile* and *Stserba* opinions agree that denationalization on ethnic grounds that results in statelessness should lead to a presumption of persecution. These opinions do, however, leave many unanswered questions as to when statelessness does not constitute persecution, and more generally, as to the intersections

60 This is not necessarily to agree with actions taken by Estonia, but to provide a perspective on the legal steps the government of Estonia took.

of statelessness and refugee law. The *Stserba* and *Haile* courts at times characterize the situations as denationalizations, or deprivations of already acquired citizenship. Is this an appropriate framework for analyzing claims that arise when one country dissolves and new countries, with new citizenship legislation, come into existence? More fundamentally, does the analysis of whether statelessness constitutes persecution depend on whether the government has affirmatively acted to remove citizenship? Or is a government's failure to act to confer citizenship sufficient to create a presumption of persecution?

Dual (or multiple) nationality is another factor that may affect the analysis. If a government strips citizenship from a group of residents, some of whom are left stateless and some of whom are nationals of another state, should the presumption of persecution come into play? Would this be a situation in which the presumption of persecution might be rebutted in some instances (those with another nationality) but not in others (those rendered stateless)?[61] Would it constitute persecution if the state of residence deprives a dual national of citizenship, when the individual has never visited her other state of citizenship? If this individual cannot speak the language of the second country and has no economic prospects there, should we view her as effectively stateless despite her formal claim to another state's citizenship?

Taking this line of inquiry one step further, should it matter to the analysis of statelessness as persecution if the individual deprived of citizenship has the ability to acquire citizenship in another state through a spouse or parent? For example, would it be relevant if Stserba could acquire Russian citizenship based on her long-term marriage to a Russian citizen? Should the citizenship decisions of parents matter to the analysis of a state's deprivation of the citizenship of the child? Was it relevant that Haile's parents departed from Ethiopia and renounced Ethiopian citizenship or was the salient fact that Ethiopia removed the citizenship of a young man who had neither left the country of his birth nor renounced its citizenship?

Another set of concerns arises when naturalization laws have a disproportionate impact on minority populations and may render substantial numbers of them stateless. Under refugee law principles, persecutory actions linked to race, religion, nationality, political opinion, or membership in a particular social group are proscribed. Should the presumption of persecution be rebuttable in certain historic and political settings?[62] In the context of independence from a colonial power, would it constitute persecution if citizenship laws

61 The 1951 Convention regards those with multiple nationalities as refugees if they can show they have a well-founded fear of persecution in each of their States of nationality. Art. 1. A (2) (2nd para.). The *Refugee Act of 1980* includes different text that supports the conclusion that individuals with more than one nationality are eligible for refugee status in the United States if they have a well-founded fear of persecution in one of their countries of nationality. For a thorough discussion of the text, legislative history, and prior US practice, see Bauer, forthcoming.

62 In the traditional asylum context, US regulations provide that applicants who suffered past persecution shall be presumed to have a well-founded fear of persecution on the basis of the original harm they experienced. The government can rebut the presumption by showing a fundamental change in circumstances that removes the fear of future persecution or by showing that the applicant can avoid future persecution by relocating to a different part of the applicant's country. 8 C.F.R. § 208.13(b)(1)(i). A working group or comprehensive report on the protection needs of stateless persons in the United States should examine whether or not there are analogous circumstances in which the US government could present evidence to rebut a presumption that state action that resulted in statelessness for a portion of the population constituted persecution.

disfavor the colonizers and their descendants? In response to government policies that have intentionally aimed to change the ethnic composition of a restive area (consider Tibet under Chinese rule, Estonia under Soviet rule), would citizenship laws that disfavored those groups that had arrived as part of the pacification plan escape the presumption of persecution? For example, although the historical details were not developed in *Stserba*, it is safe to assume that many ethnic Estonians believed that the Soviet government intentionally encouraged ethnic Russians to move to Estonia in order to dilute the percentage of Estonian residents who might oppose communist rule. Would this be relevant in analyzing whether subsequent Estonian citizenship legislation constituted persecution if its requirements were more difficult for ethnic Russians to satisfy? This raises a related question concerning citizenship laws that impose language requirements. Generally viewed as a legitimate eligibility factor for those seeking naturalization,[63] do language requirements constitute persecution when applied to lifelong residents? Would it matter if the language test was imposed in the context of succession of states? Or that the disfavored group was entitled to citizenship elsewhere?

There are many additional and pressing questions at the intersection of refugee law and statelessness that the facts of the *Haile* and *Stserba* cases did not raise. What happens when longtime stateless residents lose their jobs and, as a consequence, their residence permits? In what circumstances might this constitute persecution? If a state cannot expel a stateless person, does living without rights under the perpetual threat of deportation constitute persecution? Conversely, if a stateless person is temporarily outside her state of long-term residence, are there circumstances in which refusal to re-admit her amounts to persecution? These and similar scenarios have arisen with troubling consequences in the Middle East and Asia in recent years.[64] They alert us to the context-specific nature of persecution, and the myriad forms that it can take. They also guarantee that, with more than 10 million stateless individuals in the world today, we are likely to confront many circumstances when state action and inaction regarding stateless persons are linked to race, religion, nationality, political opinion, or membership in a particular social group and are presumptively persecutory.

US Law: Other Protection for Statelessness

Although statelessness may frequently arise in the context of persecution, there are instances when the stateless do not fear persecution. In such situations, US asylum policy does not protect the stateless. Nonetheless, these persons may be unable to return to their country of former residence; other countries are unlikely to accept them. As a result, they are effectively stranded. Without asylum or some form of lawful immigration status, they

63 E.g., US naturalization law requires applicants to "demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language." INA §312(a).
64 For the US perspective that the refusal to readmit stateless Palestinians can constitute persecution, see David A. Martin, General Counsel, US Immigration and Naturalization Service (INS), Legal Opinion, October 27, 1995: "The expulsion of or denial of reentry to a stateless Palestinian . . . by his country of last habitual residence may result in such serious violations of the applicant's basic human rights as to constitute persecution. Whether such an asylum applicant can establish that he has been persecuted will depend on the particular circumstances of each case. If he does establish [persecution] because of his national origin as a Palestinian, or because of another protected ground, he may qualify as a refugee under United States law."

remain in limbo.[65]

It is estimated that approximately 4,000 people fall into this category in the United States.[66] Many of them have applied for asylum and for protection under the Convention Against Torture, but have not succeeded in their claims (Acer and Magner 2013). US government statistics present a snapshot of the situation. Between 2005 and 2010, 628 stateless applicants filed affirmative asylum claims with the US Asylum Office. Of this number, 283 received asylum, 359 were referred to Immigration Court where an Immigration Judge would evaluate their claim, and 23 were denied asylum (USCIS Asylum Division as reported in UNHCR 2012c, 22). During the same period, the US Immigration Courts reported that 1,087 stateless individuals raised asylum claims as a defense to removal. Of this number, 463 received asylum, 166 were denied asylum, and 295 either relinquished their asylum claims or received some other form of relief (US Department of Justice, Executive Office for Immigration Review as reported in UNHCR 2012c, 22-23).

Anecdotal evidence indicates that many of the stateless in the United States came from the former Yugoslavia and the former Soviet Union, having fallen into the gaps between the citizenship laws of the new states after dissolution (UNHCR 2012c, 23). Other stateless people in the United States include ethnic Eritreans denationalized by Ethiopia, as in *Haile*. The recent judicial opinion in the Dominican Republic retroactively withdrawing citizenship from many Dominicans of Haitian descent may render stateless numerous members of the Dominican diaspora in the United States.[67] The Palestinian community in the United States is another group that may include stateless persons, as Palestinians born in Egypt, Kuwait, Saudi Arabia, Lebanon, and other countries generally were not granted citizenship in those states.

Stateless individuals who have not filed for asylum or whose protection claims have failed are caught in the gaps of a world of nation states. When the United States cannot find a country to accept them, they are commonly ordered removed but by necessity remain in the United States, without lawful status and subject to the threat of removal at any time. Current US law contains no provisions to recognize the protection needs of the stateless in these situations and no means for them to regularize their status. The typical scenario is that the United States detains those with final orders of removal for 90 days in order to accomplish the logistics of their removal.[68] If the person does not leave the United States within this period, he or she can be released "pending removal" under a government order of supervision.[69] These policies apply to all who cannot be removed in the foreseeable future—not just the stateless—and require that the individuals continue to try to obtain travel

65 For an overview of statelessness in the Western Hemisphere, in general, and in the United States, in particular, see Price 2013.

66 *Renewing America's Commitment to the Refugee Convention: The Refugee Protection Act of 2010:* Hearing Before the Senate Committee on the Judiciary, 111th Cong. (2010) (statement of Dan Glickman, President, Refugees International), www.judiciary.senate.gov/hearings/hearing.cfm?id_e655f9e2809e5476862f735da15dabac.

67 Reports indicate that there were approximately 1.5 million people of Dominican descent in the United States in 2010 (Motel and Patten 2012). This number includes all those born in the Dominican Republic, as well as those born in the United States or elsewhere who reported one of their ancestries to be Dominican (See Migration Policy Institute 2004). The number who are also of Haitian descent is unknown.

68 See INA § 241, 8 U.S.C. § 1231, Detention and Removal of Aliens Ordered Removed.

69 INA § 241(a)(3).

documents from other countries, submit to medical and psychiatric exams, and routinely report in person to immigration officials.[70] Persons subject to an order of supervision may receive employment authorization,[71] but this requires applications, renewals, and annual processing fees (UNHCR 2012c).

These conditions are neither reasonable nor efficient when the individual who cannot be removed is stateless. The supervisory orders require futile acts, and they do nothing to assure public safety.[72] They keep stateless individuals in a temporary and tenuous setting, though they are, in effect, permanently marooned in the United States. Those who are stateless are unable to seek family reunification; they are unable to travel outside the United States for family or other emergencies; and they live in a precarious psychological state as they must continually justify their situation, which is beyond their control.

Some States, such as Hungary, have enacted legislation specifically addressed to the protection needs of stateless people within their communities.[73] For example, Hungary's immigration law provides protection to stateless residents and establishes a procedure through which they can apply to the Office of Immigration and Nationality for determination that they are entitled to legal status (Gyulai 2010). [74] Those determined to be stateless have the right to obtain a humanitarian residence permit, travel documents, basic public health care services, and free public elementary and secondary education.[75] They are eligible for work permits, although these may be difficult to obtain, and to seek family reunification for immediate relatives.[76]

Proposed legislation in the United States would accomplish similar goals. The comprehensive immigration reform bill, S. 744, passed by the Senate in June 2013 included provisions creating a pathway for stateless individuals in the United States to regularize their situation.[77] The Secretary of Homeland Security, in consultation with the Secretary of State, could designate certain groups of individuals as stateless persons.[78] Stateless persons would be eligible for discretionary protection known as conditional lawful status.[79] While in conditional status, they would receive authorization to work, travel documents that would allow them to be readmitted to the United States, and their spouse and minor

70 8 C.F.R. § 241.13(h).
71 8 C.F.R. § 241.13(h)(3).
72 See Gary Mead, *Memorandum on ICE Reporting Guidance*, August 23, 2012, concerning the use of discretion on reporting requirements for noncitizens with final orders of removal. This policy may reduce the onerousness of the supervisory orders, but will not cure the heart of the problem with regard to the stateless, which is the futility of treating them as if the circumstances preventing their removal will change.
73 Procedures to determine statelessness exist in France, Hungary, Italy, Latvia, Mexico, and Spain (UNHCR 2012d).
74 Only foreigners with legal permission to reside in Hungary are eligible to apply for stateless status, which limits the applicants to between 10 and 50 per year (Gyulai 2010, 16, 27).
75 (Gyulai 2010, 31-5).
76 (Gyulai 2010, 32, 35-6).
77 S. 744, Border Security, Economic Opportunity, and Immigration Modernization Act, § 3405, proposing adding new § 210A to the Immigration and Nationality Act (INA). Similar legislative provisions were included in the proposed Refugee Protection Acts of 2010, 2011, 2012, and 2013. See UNHCR 2012c, 28-29.
78 Proposed § 210A (a)(2).
79 Proposed § 210A (b)(1).

children would be able to receive the same status.[80] After one year in conditional status, and after clearing criminal background investigations and security checks, they would be eligible for lawful permanent residence in the United States.[81] Ultimately, they would be able to apply for naturalization so they could become US citizens.[82] Those who renounced their citizenship or knowingly let it lapse in order to become stateless would be ineligible for this relief.[83]

The Department of Homeland Security realizes that the lack of a mechanism to deal with stateless persons whom the United States cannot remove is a problem. It has indicated it would favor legislative or regulatory changes to address this situation (Acer and Magner 2013). But, with immigration reform legislation effectively stalled, other avenues of improving US protection policy need to be explored.

Conclusion

This complex and under-studied area needs careful and systematic attention. Thus far, the issues have surfaced sporadically and haphazardly. Judges and government officials, dependent on the specific situations and resources of individual litigants, have struggled to respond to the protection needs of those in front of them.

Under the existing legal framework, the stateless can be divided into two major groups: (1) those with a fear of persecution who are eligible for refugee protection and asylum in the United States, and (2) those who fall outside the current asylum policy of the United States. Within the first category, those who become stateless via denationalization decrees appear to fit more easily within the refugee paradigm and may be entitled to a presumption of past persecution because these governmental acts typically stigmatize entire vulnerable groups based on ethnic, religious, or political animus. Those who become stateless as a result of the dissolution of states, when the causal link to discriminatory government action is indirect or absent, might be treated differently. The specter of ethnicity-based legislation in successor states, however, suggests that they, too, should warrant a rebuttable presumption of the need for protection.

The instances in which people are born into statelessness, due to the operation of the *jus sanguinis* laws of the states of which their parents are citizens or due to a failure to have been registered at birth may not warrant a presumption of persecution, but may still fall within the persecution paradigm. Individuals born stateless or who become stateless by marriage are likely to be members of vulnerable populations that endure discriminatory treatment. Depending on their circumstances, they may have a well-founded fear of persecution. News reports of the refusal of the April 2014 Myanmar census to allow the 1.3 million Rohingya Muslims to identify themselves as "Rohingya" rather than "Bengali" (implying that these multi-generational residents are not citizens of Myanmar but unlawful migrants from neighboring Bangladesh), are a reminder that the protection needs of the stateless

80 Proposed § 210A (b)(5) - (7).

81 Proposed § 210A (c).

82 INA § 316(a). The naturalization requirements include five years of continuous residence in the United States after being lawfully admitted for permanent residence.

83 Proposed § 210A (b)(1)(C).

are ongoing (Associated Press 2014). Violent attacks against the Rohingya in Myanmar in the past two years, leaving almost 300 dead and forcing 280,000 to flee, demonstrate that persecution on account of religion and nationality continues to afflict stateless populations (ibid.).

Despite the far too many stateless individuals who face persecution or severe harm, not all of them do. This second group of stateless people, though they do not qualify as refugees, remains exceedingly vulnerable. Their inability to procure the protection of any state condemns them to a precarious existence in the United States.

A major problem in generating solutions is the dearth of information on the dimensions of the problem. At this point, no one knows exactly how many stateless individuals there are in the United States. Nor is there reliable information on the countries from which they came, the circumstances through which they became stateless, or any protection alternatives which they may be able to pursue. Rather than relying on incremental case law developments and *ad hoc* regulatory fixes, there should be a serious and sustained evaluation of the protection needs of the stateless in the United States. The US State Department should commission a report on the size and scope of the protection gap in the United States and develop legislative, regulatory, and other policy guidance concerning statelessness claims. There is precedent for this approach in the 2004 State Department study of the US refugee resettlement program that led to an exhaustive report with an array of legislative and administrative reforms to improve the refugee admissions system (Martin 2005).

Another possibility is to convene a working group to examine the issues related to statelessness. The US task force on refugee women overseas provides a useful model. The working group, coordinated by the Secretary of State in conjunction with the Attorney General and the Department of Homeland Security, surveyed the potential protection gaps involving women at refugee camps overseas. The task force's work, which involved careful review of international and national law, as well as investigation of the legal, practical, and cultural challenges encountered by a particular population seeking protection, resulted in a nine-page set of Gender Guidelines for Overseas Refugee Processing (Weiss 2001).

A task force or a commissioned report is warranted in order to produce guidance on a range of statelessness issues. In addition to developing an empirical basis for understanding the needs, one or both of these approaches could consider the strengths and weaknesses of proposed solutions, and could contemplate the manner in which multiple policy changes might complement each other. For example, the process could examine the current regulatory framework for the US asylum policy and the manner in which past persecution triggers a rebuttable presumption of persecution in the future.[84] It could evaluate whether regulations should include a similar presumption for those rendered stateless by denationalization decrees and for those whose statelessness is a direct result of ethnic discrimination.

A task force or commissioned report could also review the legislation proposed during the last decade, including provisions included in S. 744, which would regularize the status of stateless individuals who cannot be removed to other countries. It would consider what should be the contours of the regularization process. How long should it take? What benefits

84 8 C.F.R. § 208.13(b)(1).

should it entail? Should it be open to all stateless individuals in the United States or only to those who have filed for asylum but have been rejected?

Furthermore, the process could reflect on the need for continuing education for government personnel who encounter stateless individuals. Asylum officers, Immigration Judges, members of the Board of Immigration Appeals and other public officials currently receive training concerning the refugee law developments and country conditions.[85] They could no doubt benefit from additional sustained attention to the complex topic of statelessness. They need to understand the protection needs of stateless individuals and to be aware of the possible avenues of protection available under US law.

In addition, future scholarly research and litigation should explore more deeply the ramifications of statelessness. These efforts, in tandem with government measures to acknowledge and ameliorate the difficulties facing stateless individuals in the United States, can help create a humane approach for the future. The stateless were largely invisible in the human rights developments in the last half of the twentieth century. The dawn of the twenty-first century should begin to shine light on this phenomenon and its human and legal implications.

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85 E.g., asylum officers receive training in international human rights law, international and national refugee laws and principles, and other matters relevant to asylum determinations. 8 C.F.R. § 208.1(b).

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