

to Saudi Arabia and other Gulf allies, and it explicitly provides for the possibility that additional countries could be invited to join the agreement.³⁶ According to an administration official, the agreement “can serve as . . . [a] kind of a cornerstone for [a] broader grouping of countries over time that share our common vision on deterrence, diplomacy, economic and security integration, and de-escalation of conflicts.”³⁷ It is unclear how Hamas’s attack on Israel in October 2023 and the war that followed will affect U.S. plans.

IMMIGRATION AND MIGRATION

The Department of Homeland Security Issues First Guidance on Statelessness

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Making good on a 2021 pledge,¹ the U.S. Department of Homeland Security (DHS) has issued its first guidance “to assist stateless noncitizens in the United States who wish to obtain immigration benefits or have submitted other requests” to U.S. Citizenship and Immigration Services (USCIS).² The guidance—codified as an update to the USCIS Policy Manual³—defines “statelessness” in a manner that accords with 1954 Convention Relating to the Status of Stateless Persons, establishes a process for how immigration officials can determine if a person is stateless, and explains the implications of a statelessness determination for requests for benefits and/or relief from removal.⁴ Calling the new policy a “historic step,” DHS Secretary Alejandro Nicholas Mayorkas avowed that “DHS is fully committed to addressing the global issue of statelessness and to breaking down barriers that these individuals face in the United States.”⁵

Statelessness impacts many across the globe. As of mid-2023, approximately 4.4 million stateless persons were known to be residing in ninety-seven countries, though the actual number may be “significantly higher” according to the Office of the UN High Commissioner for Refugees (UNHCR).⁶ More than three-quarters of the global stateless population are members

³⁶ See Matthew Martin, *U.S. and Bahrain Sign Security Pact That May Become Model for Middle East*, BLOOMBERG (Sept. 14, 2023), at <https://www.bloomberg.com/news/articles/2023-09-13/us-and-bahrain-sign-security-pact-that-may-become-model-for-middle-east>; C-SIPA, *supra* note 1, Art. VIII.

³⁷ Background Press Call, *supra* note 2.

¹ See UNHCR, *Outcomes of the High-Level Officials Meeting 2021* (Dec. 14–15, 2021), at <https://www.unhcr.org/media/high-level-officials-meeting-2021-outcome-document> [<https://perma.cc/L4HV-PRNP>]; U.S. Dep’t of Homeland Security Press Release, *DHS Announces Commitment to Enhance Protections for Stateless Individuals in the United States* (Dec. 15, 2021), at <https://www.dhs.gov/news/2021/12/15/dhs-announces-commitment-enhance-protections-stateless-individuals-united-states> [<https://perma.cc/B98P-8ER6>].

² U.S. Dep’t of Homeland Security Press Release, *DHS Issues Guidance for Stateless Noncitizens in the United States* (Aug. 1, 2023), at <https://www.dhs.gov/news/2023/08/01/dhs-issues-guidance-stateless-noncitizens-united-states> [<https://perma.cc/W9FP-VYZ9>] [hereinafter DHS Press Release].

³ USCIS Policy Manual, at <https://www.uscis.gov/book/export/html/68600> [<https://perma.cc/6WYE-EKXY>] [hereinafter USCIS Policy Manual]. The guidance was added as a new Part K to Volume 3 of the Policy Manual. See *id.*, Vol. 3, pt. K. The guidance went into effect on October 30, 2023.

⁴ U.S. Dep’t of Homeland Security Policy Alert, *Statelessness* (Aug. 1, 2023), at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230801-Statelessness.pdf> [<https://perma.cc/6L8Z-PS7W>] [hereinafter DHS Policy Alert].

⁵ DHS Press Release, *supra* note 2.

⁶ UNHCR, *Refugee Data Finder*, at <https://www.unhcr.org/refugee-statistics> [<https://perma.cc/PS8W-ZGGC>].

of minority groups.⁷ Given the impacts of the COVID-19 pandemic, climate change, and “historic levels of forced displacement,” the number of stateless persons is at risk of increasing.⁸ In the United States, about 218,000 people are potentially stateless or at risk of being stateless.⁹ A person might be *de jure* stateless (not recognized as a citizen under any state’s laws) or *de facto* stateless (not recognized as a citizen even though they have a claim under the law of one or more states). Common causes of statelessness include: lack of documentation, such as birth certificates; birth to stateless parents; political change accompanied by the transfer of territory; administrative errors; procedural problems; conflicts of laws; destruction of official records; laws that restrict the rights of women to pass on their nationality; laws that pertain to children born out of wedlock; and revocation of nationality, among others.¹⁰ Stateless persons face critical challenges. They “have no legal protection and no right to vote, and they often lack access to: education; employment; health care; registration of birth, marriage, or death and property rights.”¹¹ They may “encounter travel restrictions, social exclusion, and heightened vulnerability to sexual and physical violence, exploitation, trafficking in persons, forced displacement, and other abuses.”¹² If a country’s immigration procedures do not recognize statelessness, it is very challenging for a stateless person to gain legal status upon entry, let alone a path to citizenship.

DHS’s new policy guidance defines “statelessness” and elaborates the procedures that USCIS officials should follow when a person claims statelessness or appears to be stateless. Following the wording almost exactly of the 1954 Convention (to which the United States is not a party), the guidance defines a stateless person as someone who is “generally not considered a national by any state under the operation of its laws.”¹³ While, according to the guidance, there is “no form of immigration benefit or relief where eligibility is based solely on a requestor’s statelessness,”¹⁴ USCIS, significantly, “may consider statelessness as a factor in determining whether a noncitizen has met eligibility requirements, or merits a favorable exercise of discretion for an immigration benefit or other action.”¹⁵ If a noncitizen communicates that they are stateless during an immigration proceeding, “the [adjudicating]

⁷ UNHCR, “This Is Our Home” Stateless Minorities and Their Search for Citizenship 1 (2017), at https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf [<https://perma.cc/2KQ9-R3WB>].

⁸ Friends of the #IBelong Campaign to End Statelessness, UNHCR ExCom Plenary Statement 4 (Oct. 10, 2022), at <https://www.unhcr.org/uk/sites/uk/files/legacy-pdf/63453dfa7.pdf> [<https://perma.cc/P2LS-CYMT>].

⁹ See UNHCR, Statelessness, at <https://www.unhcr.org/us/what-we-do/u-s-asylum-resources/statelessness> [<https://perma.cc/MR4Y-HYZW>].

¹⁰ See U.S. Dep’t of State, Bureau of Population, Refugees, and Migration, Statelessness, at <https://www.state.gov/other-policy-issues/statelessness> [<https://perma.cc/7V4A-8BXE>].

¹¹ *Id.*

¹² *Id.*

¹³ USCIS Policy Manual, *supra* note 3, Vol. 3, pt. K, Ch. 2. *Compare* Convention Relating to the Status of Stateless Persons, Art. 1(1) (“the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law”). The guidance notes the “International Recognition of Statelessness as a Serious Problem,” as reflected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 1967 Protocol relating to the Status of Refugees. See *id.*, Ch. 1. It indicates that the 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness “are dedicated to this issue.” *Id.* And it acknowledges that, though “the United States is not a state party to either of these conventions, the U.S. government has recognized the importance of the principles enshrined in them.” *Id.*

¹⁴ *Id.*, Ch. 1.

¹⁵ *Id.*

officer may, in their discretion, request a report to assist in determining whether to consider the noncitizen stateless for purposes of the immigration benefit or other request.”¹⁶ Even if the non-citizen does not assert statelessness, the officer may request a report if the officer believes that “statelessness may be relevant.”¹⁷ However, only an immigration officer can request a statelessness report; the non-citizen cannot.¹⁸ The “report only addresses the issue of statelessness and does not mandate any factual findings or the issuance of a specific decision on the underlying immigration benefit or request.”¹⁹ Thus, the “adjudicating officer ultimately makes the final determination of eligibility for the benefit sought, including whether the evidence presented warrants a favorable exercise of discretion, if applicable.”²⁰

The guidance reviews the types of evidence and documentation that can be considered during the “specialized internal process” that generates the report.²¹ USCIS can examine relevant country conditions or foreign law, statements written by the non-citizen, primary evidence, secondary evidence, and evidence from international organizations, such as UNHCR and the International Organization for Migration.²² Primary evidence can include official documents like travel documents, school records, and medical reports, while secondary evidence can include employment records, property records, and religious records.²³ Based on the evidence, USCIS “provides a report relevant to whether the noncitizen should or should not generally be considered stateless for immigration purposes.”²⁴ The adjudicating officer, who is not bound by the report, then “may make a factual determination relating to statelessness” and a “decision on the underlying application, petition, or requested action, taking into account the applicability of their statelessness finding.”²⁵ Although the non-citizen cannot appeal the report (also called a “statelessness report” or an “advisory report”), the non-citizen can “file a motion or appeal . . . to challenge an unfavorable decision” by the adjudicating officer.²⁶ Under certain circumstances, after the advisory report is issued, the immigration officer can request an updated report.²⁷ The determination of “whether a noncitizen may be considered stateless for immigration purposes [is reached] by the preponderance of the evidence standard.”²⁸

A determination of statelessness can be significant because statelessness may be considered “a favorable factor in the exercise of discretion” and “a relevant factor . . . in rendering a decision on various immigration benefit requests or other actions,” including deferred action, parole in place, refugee status and asylum, T and U visas, and temporary protected status (TPS).²⁹ Statelessness

¹⁶ *Id.*, Ch. 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*, Ch. 3.

²² *See id.*

²³ *See id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, Ch. 4. Filing requirements are detailed by USCIS. *See* USCIS, Statelessness, at <https://www.uscis.gov/humanitarian/statelessness> [<https://perma.cc/43HS-UZMX>].

may be relevant to deferred action—an “an act of prosecutorial discretion to delay or defer the removal of a noncitizen”—because “stateless individuals may have no means to provide evidence of nationality, and since it may be impracticable to remove a stateless noncitizen from the United States, there may be both humanitarian concerns and other relevant factors associated with statelessness to consider when reviewing a deferred action request.”³⁰ Because statelessness “may create unique vulnerabilities and difficulties for a non-citizen located in the United States who may otherwise be at risk of return,” statelessness may be “relevant” to a parole in place request, which, if granted, authorizes a non-citizen to stay in the United States for a temporary period, “on a case-by-case basis for urgent humanitarian reasons or a significant public benefit, and where the non-citizen demonstrates that they merit a favorable exercise of discretion.”³¹ Statelessness is “a relevant factor [for refugee and asylum processes] in identifying [the] place of last habitual residence for purposes of analyzing past and future persecution and in establishing identity.”³² Statelessness may be relevant to T and U visa applications, which allow victims of certain crimes, including human trafficking, to remain in the United States for an initial period of up to four years, because statelessness “may be a relevant factor in analyzing the underlying circumstances surrounding the trafficking, establishing identity, and determining whether other eligibility requirements have been met.”³³ Statelessness is also “a relevant factor in determining eligibility for TPS where the noncitizen claims or appears to have no nationality and [that person] last habitually resided in a TPS-designated country.”³⁴

DHS’s actions bring the United States closer to implementing a statelessness determination procedure (SDP),³⁵ as it pledged to do in 2011.³⁶ An SDP “serves to identify stateless persons among migrant populations to ensure that they enjoy the rights to which they are entitled.”³⁷ UNHCR identifies seven elements of an SDP: (1) the staffing of a “[s]tate’s legal or administrative framework” with “examiners . . . [who have] expertise on statelessness determination”; (2) the access of stateless persons to SDPs that is guaranteed, not time-barred, and in a language they understand; (3) the coordination of refugee and statelessness determinations when applicants raise both; (4) the consideration of all available evidence and the adoption of a standard of proof that recognizes the challenge of proving statelessness; (5) the adoption of procedural guarantees such as legal aid and interpretation assistance; (6) the provision of rights to recognized stateless persons, such as the right of residence and the right to work; and (7) the facilitation of stateless persons’ naturalization.³⁸ DHS’s new

³⁰ USCIS Policy Manual, *supra* note 3, Vol. 3, pt. K, Ch. 4.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ UNHCR, Establishing Statelessness Determination Procedures for the Protection of Stateless Persons, 5 (July 2020), at <https://www.refworld.org/pdfid/5f203d0e4.pdf> [<https://perma.cc/W2HE-SP94>] [hereinafter Establishing SDPs]. The United States is not listed in Annex 1: Overview of National Procedures for Determining Statelessness. *Id.* at 44–66.

³⁶ See UNHCR, PLEDGES 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons, 35 (2012), at <https://www.refworld.org/pdfid/50aca6112.pdf> [<https://perma.cc/K2PX-GN5U>].

³⁷ UNHCR, Statelessness Determination Procedures, 4 (Aug. 2014), at <https://www.refworld.org/pdfid/5412a7be4.pdf> [<https://perma.cc/HY2Q-6QZW>].

³⁸ Establishing SDPs, *supra* note 35, at 10–22.

policy guidance falls short as it does not “adjust[] requirements and procedures for naturalization to make it easier for stateless persons to acquire nationality.”³⁹

DHS’s new policy guidance has been well received. UNHCR “welcom[ed] [the] important progress toward fulfilling U.S. government commitments made on statelessness in the United States.”⁴⁰ U.S. actions, UNHCR noted, “provide renewed hope for those who, deprived of the basic right to nationality, must live in constant uncertainty.”⁴¹ The Hebrew Immigrant Aid Society (HIAS), a leading U.S. non-profit organization that provides humanitarian aid and assistance to refugees, “applaud[ed] the announcement.”⁴² United Statelessness, an organization led by stateless people, called the DHS guidance “a huge win” that “will help address the legal limbo” of stateless persons in the United States and “will lead to more effective representation and improved outcomes for stateless individuals navigating the immigration system.”⁴³ Senator Ben Cardin lauded DHS’s announcement for “providing clarity” for stateless persons in the United States and for having “real, tangible impacts.”⁴⁴ He called upon Congress to “take action to provide a comprehensive, long-term solution for stateless persons.”⁴⁵ In 2022, Senator Cardin and Representative Jamie Raskin introduced the Stateless Protection Act, which “would allow stateless persons in the United States to qualify for legal permanent residency and eventually citizenship.”⁴⁶ Following DHS’s action, Senator Cardin indicated that he and Representative Raskin would introduce a revised version of that bill.⁴⁷

³⁹ *Id.* at 20.

⁴⁰ UNHCR Press Release, UNHCR Welcomes Progress Toward U.S. Commitments on Statelessness (Aug. 1, 2023), at <https://www.unhcr.org/us/news/press-releases/unhcr-welcomes-progress-toward-u-s-commitments-statelessness-0> [<https://perma.cc/Y6KV-PSMR>].

⁴¹ *Id.*

⁴² HIAS, HIAS Applauds New Guidelines on Protecting Stateless Individuals in U.S. (Aug. 4, 2023), at <https://hias.org/statements/hias-applauds-new-guidelines-protecting-stateless-individuals-u-s> [[https://perma.cc/ZN\]6-CZQX](https://perma.cc/ZN]6-CZQX)].

⁴³ United Stateless Press Release, U.S. Stateless Advocates Celebrate “Huge Win” (Aug. 1, 2023), at <https://www.unitedstateless.org/post/u-s-stateless-advocates-celebrate-huge-win> [<https://perma.cc/E5EW-NY2R>].

⁴⁴ Office of Senator Ben Cardin Press Release, Cardin Praises New DHS Guidance for Stateless Persons in the United States (Aug. 1, 2023), at <https://www.cardin.senate.gov/press-releases/cardin-praises-new-dhs-guidance-for-stateless-persons-in-the-united-states> [<https://perma.cc/34WG-6J3A>] [hereinafter Office of Sen. Cardin Press Release].

⁴⁵ *Id.*

⁴⁶ *Id.*; see H.R. 9671, 117th Cong. (2022); S. 5330, 117th Cong. (2022); Office of Rep. Jamie Raskin Press Release, Cardin, Raskin Introduce Bill to Protect Vulnerable Individuals Left Without a Country (Dec. 22, 2022), at <https://raskin.house.gov/2022/12/cardin-raskin-introduce-bill-to-protect-vulnerable-individuals-left-without-a-country> [<https://perma.cc/DFD4-YSSG>].

⁴⁷ See Office of Sen. Cardin Press Release, *supra* note 44.