

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON; STATE OF
ARIZONA; STATE OF ILLINOIS; and
STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity
as President of the United States; U.S.
DEPARTMENT OF HOMELAND
SECURITY; BENJAMINE HUFFMAN, in
his official capacity as Acting Secretary of
Homeland Security; U.S. SOCIAL
SECURITY ADMINISTRATION;
MICHELLE KING, in her official capacity
as Acting Commissioner of the Social
Security Administration; U.S.
DEPARTMENT OF STATE; MARCO
RUBIO, in his official capacity as Secretary
of State; U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
DOROTHY FINK, in her official capacity
as Acting Secretary of Health and Human
Services; U.S. DEPARTMENT OF
JUSTICE; JAMES MCHENRY, in his
official capacity as Acting Attorney
General; U.S. DEPARTMENT OF
AGRICULTURE; GARY WASHINGTON,
in his official capacity as Acting Secretary
of Agriculture; and the UNITED STATES
OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF
DAVID C. BALUARTE

1 I, David C. Baluarte, declare as follows:

2 1. I am over the age of 18, competent to testify as to the matters herein, and make
3 this declaration based on my personal knowledge.

4 2. I am a Professor of Law and the Senior Associate Dean for Academic Affairs at
5 CUNY School of Law in New York. My professional and scholarly focus is and has long been
6 on immigration, refugee, and statelessness protection, and international human rights issues.

7 3. Prior to joining CUNY School of Law in 2024, I held numerous academic
8 positions at Washington and Lee University School of Law in Lexington, Virginia, from 2013
9 to 2023. As a Clinical Professor of Law, I founded the Immigrant Rights Clinic and designed a
10 clinical curriculum in which students represented immigrants in federal removal proceedings
11 and state court custody matters. In addition to the Immigrant Rights Clinic, I taught classes on
12 Immigration Law, Transnational Law, Refugee Protection and Human Rights, and Civil
13 Litigation. Prior to my time at Washington and Lee University School of Law, I also was a
14 Practitioner-in-Residence in the International Human Rights Law Clinic at American University
15 Washington College of Law, where I co-taught a year-long clinic seminar and supervised
16 students in their representation of individuals and communities in international human rights
17 litigation and advocacy, as well as their representation of asylum seekers. I also taught a class
18 on Asylum and Refugee Law in that position. In this role, I also conducted multiple funded
19 projects, including a project to establish a pilot clinic for stateless persons in the United States
20 (funded through the United Nations High Commissioner for Refugees) and a cross-clinical
21 partnership focused on protecting and promoting nationality rights in the Bahamas.

22 4. I have researched and published extensively on issues related to immigration,
23 refugee, and statelessness in particular. For example, in 2017, I published an article in the Yale
24 Human Rights and Development Law Journal on issues related to statelessness, entitled *The Risk*
25 *of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality*, 19 Yale Hum.
26 Rts. & Dev. L.J. 47 (2017). Before that, in 2015, I published an article in the Georgetown

1 Immigration Law Journal entitled *Life after Limbo: Stateless Persons in the United States and*
 2 *the Role of International Protection in Achieving a Legal Solution*, 29 Geo. Imm. L.J. 351
 3 (2015). In addition to those law review articles (and numerous others), I have also published
 4 multiple short journal articles and reports on issues related to statelessness and other
 5 immigration, refugee, and human rights issues. For example, in 2020, I published an article in
 6 the Brown Journal of World Affairs entitled *Protecting Stateless Refugees in the United States*.
 7 In 2012, I authored a report entitled *Citizens of Nowhere*, which was co-published by the United
 8 Nations High Commissioner for Refugees (UNHCR) and the Open Society Justice Initiative.
 9 That report was the first comprehensive review of U.S. jurisprudence relating to statelessness.

10 5. As a scholar focused on statelessness issues, I have also served as an expert
 11 consultant in numerous roundtable matters, advised on a variety of legal issues related to
 12 statelessness, and engaged with civil society on these issues. I have also delivered numerous
 13 speaking engagements on statelessness issues in multiple academic and civil society convenings.
 14 I was a founding Steering Committee Member of the American Network on Nationality and
 15 Statelessness and am currently an Advisory Council Member with the Institute on Statelessness
 16 and Inclusion.

17 6. The term “stateless” refers to individuals and populations who are “not
 18 considered as a national by any State under the operations of its law.” That definition comes
 19 from the 1954 Convention Relating to the Status of Stateless Persons and has acquired customary
 20 international law status. In essence, stateless individuals are citizens or nationals of no country.
 21 They include individuals who are not recognized as a national under the laws of any country or
 22 certain individuals outside the county of their presumptive nationality who are denied the
 23 protection, assistance, or recognition by that country. An expert meeting on statelessness issues
 24 in 2010 offered a useful and recognized functional definition of statelessness, stating that an
 25 individual is stateless “if all states to which he or she has a factual link fail to consider the person
 26 as a national.” Polly J. Price, *Stateless in the United States: Current Reality and a Future*

1 *Prediction*, 46 Vanderbilt J. Transnat'l L. 443, 451 (2021) (discussing the 2010 Expert Meeting
 2 on the Concept of Stateless Persons at Prato, Italy). The State Department's Bureau of
 3 Population, Refugees, and Migration likewise recognizes this understanding of what it means to
 4 be stateless, explaining that "[a] stateless person is someone who, under national laws, does not
 5 enjoy citizenship – the legal bond between a government and an individual – in any country."¹
 6 As I have written previously, "to be stateless is to have no nationality, which the U.S. Supreme
 7 Court has called 'a fate of ever increasing fear and distress' that is 'deplored by the international
 8 community of democracies.'" *Life after Limbo: Stateless Persons in the United States and the*
 9 *Role of International Protection in Achieving a Legal Solution*, 29 Geo. Imm. L.J. 351, 352
 10 (2015).

11 7. Worldwide, the United Nations Commissioner for Refugees has found that there
 12 are at least 4.4 million stateless people and recognizes that the actual number is believed to be
 13 substantially higher due to the fact that many countries do not report statelessness data. In the
 14 United States, the Center for Migration Studies, which is recognized as having conducted the
 15 most rigorous analysis to date on the issue, estimates that as of 2020, there were approximately
 16 218,000 U.S. residents, spread across all 50 states, that are potentially stateless or at risk of
 17 becoming stateless.² Numerous causes are recognized as driving statelessness in the United
 18 States and elsewhere, including gaps in nationality laws (including laws restricting acquisition
 19 of citizenship, laws restricting the right of women to pass on their nationality to their children,
 20 and laws relating to children born out of wedlock and during transit), discrimination against
 21 minorities, lack of birth registration and birth certificates, birth to stateless parents, political
 22 changes and transfers of territory, and other administrative oversights and procedural problems
 23 (such as destruction of official records).

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 25
 26 ¹ Available at: <https://www.state.gov/other-policy-issues/statelessness/>.

² Available at: <https://cmsny.org/wp-content/uploads/2020/01/StatelessnessReportFinal.pdf>

8. While there are likely more than 200,000 individuals in the United States who are potentially stateless or at risk of being stateless today, that number is generally limited to one generation. The reason is that under the existing rule of birthright citizenship in the U.S., children born in the United States are citizens regardless of their parents' citizenship, status, or country of origin. In other words, the United States currently has a relatively minor statelessness problem when compared with other countries around the world, in large part because of the longstanding and brightline rule of birthright citizenship. If the established rule of birthright citizenship in the United States were to change to exclude children born to undocumented mothers or parents, however, the number of stateless children would increase dramatically.

9. This likely outcome of modifications to the Fourteenth Amendment's birthright citizenship rule in the United States has been discussed at length in the academic literature on statelessness issues. One key article that details the mechanisms by which the number stateless individuals would increase if there were a change to the United States' established rule of birthright citizenship is Professor Polly Price's *Stateless in the United States: Current Reality and a Future Prediction*, 46 Vanderbilt J. Transnat'l L. 443 (2021). As Professor Price explains, "[s]tatelessness, already present in the United States, would be increased by these restrictions [on birthright citizenship]" for two reasons: "(1) statelessness already exists in the Western Hemisphere, from which many, if not most, unauthorized migrants come to the United States, and (2) new restrictions will extend statelessness to second or subsequent generations, as well as create statelessness for some children even when the parent has a recognized nationality." *Id.* at 446. In terms of the number of individuals who might be rendered stateless under a change to the U.S. birthright citizenship rules, one study estimated that a prospective denial of birthright citizenship to children born to unauthorized immigrants would create in the United States a population of up to 13.5 million native-born, but stateless, children by 2050. *See* Margaret Stock,

1 *The Cost to Americans and America of Ending Birthright Citizenship*, National Foundation for
 2 American Policy (March 2012).³

3 10. In my view, there are three ways that the number of stateless individuals in the
 4 United States would multiply at an exponential rate should the established birthright citizenship
 5 rule be limited. The first is that there are already individuals who are stateless in the United
 6 States today. If those individuals have children who are not U.S. citizens and do not
 7 automatically acquire another nationality through their parents' country of origin, those children
 8 too will become stateless. This is essentially the creation of a second generation of stateless
 9 individuals. Second, the number of stateless individuals would be increased because some
 10 parents, due to the laws of their country of origin, may be nationals of that country but are
 11 prohibited from transmitting citizenship to their children born abroad (i.e., in the United States).
 12 This is essentially the creation of a new generation of stateless individuals in the United States.
 13 And third, there are individuals who are nationals of other countries that nonetheless reside here
 14 in the United States. Under a reasonable interpretation of their country of origin's nationality
 15 laws, they may be able to pass that citizenship to their children, but despite a credible claim, their
 16 country of origin may refuse to recognize a claim to citizenship for numerous reasons (such as
 17 record keeping issues, political issues or disagreements with the United States, or discrimination
 18 against certain racial, ethnic, or religious groups of which the individual is a member).

19 11. The impacts are not purely hypothetical. As I have explained in prior work,
 20 whatever the exact size of the stateless population, birthright citizenship limits the size of the
 21 population put into the legal limbo that is being statelessness in the United States. Indeed, the
 22 Fourteenth Amendment's birthright citizenship rule has provided a guarantee that statelessness
 23 cannot be reproduced in the United States. One example is Kuwaiti Bidoons (a group that lacks
 24 a nationality in their homeland), who fled the first Gulf War to the United States and can count
 25 on U.S. citizenship for their children who are born here. Those children would otherwise be

26 ³ Available at: <https://nfap.com/pdf/NFAPPolicyBrief.BirthrightCitizenship.March2012.pdf>.

1 stateless. As noted above, due to country-specific nationality laws, nationals of some countries
2 cannot transmit their own nationality to children who are born abroad. But if those children are
3 born in the United States, they automatically gain American citizenship. The Bahamas presents
4 another example of this phenomenon in the Western hemisphere: Bahamian women are not
5 permitted to pass their nationality to children born abroad. And in Haiti and some other Western
6 hemisphere countries, crumbling birth-registration systems make it difficult to substantiate
7 nationality claims for children who are born abroad. Other noted profiles of individuals who are
8 stateless or likely stateless in the United States have been recognized in the literature, including
9 in the 2020 CMS Report, which provides an extensive description of such groups in the United
10 States. Taking these cases into consideration, the potential problem of statelessness in the United
11 States would be substantially larger if the current birthright citizenship rule is changed or limited.

12 12. The harm of individuals becoming stateless is significant to the individual and to
13 the United States as a whole. For an individual, U.S. immigration law does not explicitly
14 recognize statelessness, nor does it provide humanitarian protection to relieve stateless persons
15 of their suffering. Stateless individuals are instead treated like other unauthorized migrants in
16 the United States. This means that a limitation on birthright citizenship in the United States will
17 have the effect of immediately increasing the population of undocumented individuals here, and
18 in fact will create a permanent growing class of undocumented individuals. And because of their
19 stateless status, these individuals do not have a home country to return to voluntarily or
20 otherwise. They must simply remain in the United States with no citizenship or status at all.

21 13. The personal harm is substantial to these individuals—many of whom will be
22 children if birthright citizenship is denied to them. Some stateless individuals may be able to
23 apply for and obtain protection from removal or a form of temporary relief, but neither those
24 forms of relief nor a path to nationality or citizenship are guaranteed. If requests for those
25 protections are not granted and the individual is put into removal proceedings and ordered
26 removed, they may be subject to mandatory detention while immigration officials try to execute

1 those efforts—which will fail because no other nation will recognize the stateless individual and
2 accept them. And for individuals subsequently released or who have not entered removal
3 proceedings, they are left in legal limbo. They have no nationality or legal status in the United
4 States or elsewhere.

5 14. Being stuck in this limbo comes with serious consequences. Stateless individuals
6 face significant barriers to participating in the economy because, without a legal status, they
7 cannot obtain authorization from the government to work legally. They also lack access to many
8 social welfare or government services programs and cannot be involved in the political process.
9 While they are here in the United States, they must navigate without consular assistance matters
10 involving protection, travel documentation, and judicial proceedings. Instead, they must live
11 with the permanent threat of detention or being put into removal proceedings, and they cannot
12 return to a country of origin and pursue a life where political, economic, and social participation
13 is possible.

14 15. In essence, individuals who are stateless in the United States are part of a
15 permanent underclass of people with no path to citizenship. They face increased insecurity and
16 instability in their daily lives, restrictions on their ability to freely travel, detrimental employment
17 and economic consequences as a result of their status that severely limit their upward mobility,
18 and overall they must navigate their lives in American society without being fully part of society.
19 This harm can be hard to quantify but cannot be understated—for individuals who are stateless
20 there is simply no safe place to go. Limiting birthright citizenship in the United States will
21 exponentially increase the number of individuals put into this situation and vastly expand the
22 scope of those harms to those individuals, their families, and the United States at large.

1 I declare under penalty of perjury under the laws of the State of Washington and the
2 United States of America that the foregoing is true and correct.

3 DATED and SIGNED this 20th day of January 2025, at New York, NY.

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David C. Baluarte