To protect stateless persons in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To protect stateless persons in the United States, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Stateless Protection
6 Act of 2022”.
7
8 SEC. 2. PURPOSES.
9 The purposes of this Act are—
10 (1) to resolve the status of stateless persons in
11 the United States and to promote their access to
12 fundamental human rights and human dignity; and
(2) to prevent statelessness from occurring
under United States law or on United States terri-
tory.

SEC. 3. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following find-
ings:

(1) The international community has recognized
the significance of the right to a nationality in the
International Covenant on Civil and Political Rights,
done at New York December 16, 1966, to which the
United States is a signatory, as well as the Uni-
versal Declaration of Human Rights and numerous
international treaties, including the Convention Re-
lating to the Status of Stateless Persons, done at
New York September 28, 1954, and the Convention
on the Reduction of Statelessness, done at New York
August 30, 1961.

(2) Statelessness is an abhorrent violation of
fundamental human rights and human dignity, and
a life of statelessness has been recognized by the Su-
preme Court of the United States as a form of pun-
ishment more primitive than torture.

(3) Government action and inaction causes
statelessness; therefore, governments have the power
to resolve and prevent statelessness.
(4) The United Nations High Commissioner for Refugees—

(A) is the United Nations agency responsible for preventing and reducing statelessness; and

(B) estimates that there are more than 4,200,000 stateless persons worldwide.

(5) A 2020 study found that there are approximately 218,000 individuals living in the United States who are stateless or at risk of statelessness.

(6) Stateless individuals live in all 50 States, and many such individuals have lived in the United States for years or decades without relief.

(7) Despite the presence of stateless persons in the United States, there is no law relating to the identification of stateless persons in the United States or to provide them with a path to legal status.

(8) Stateless persons generally—

(A) live without the means to work legally or to travel; and

(B) face barriers in opening bank accounts, pursuing higher education, and obtaining health care.
(9) If detained for removal from the United States, a stateless person is often subjected to prolonged detention and cannot be removed because no country recognizes the person as its citizen.

(b) Sense of Congress.—It is the sense of Congress that to resolve statelessness and its related human suffering, lost potential, and societal impacts, the United States should—

(1) provide a legal status to protect stateless persons; and

(2) urge the international community to take strong action to prevent statelessness globally.

SEC. 4. PROTECTION OF STATELESS PERSONS IN THE UNITED STATES.

(a) In General.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

“SEC. 245B. PROTECTION OF STATELESS PERSONS IN THE UNITED STATES.

“(a) Definitions.—In this section:

“(1) Competent authority.—With respect to a foreign country, the term ‘competent authority’—

“(A) means the authority responsible for—

“(i) conferring nationality on, or withdrawing nationality from, individuals; or
“(ii) in the case of nationality having been acquired or withdrawn automatically, clarifying the nationality status of an individual; and

“(B) includes a Federal, local, or regional government entity, a consular official, and a government official at any level, notwithstanding any process by which a decision by such an entity or official may later be overridden.

“(2) NATIONAL; NATIONALITY.—The terms ‘national’ and ‘nationality’—

“(A) refer to a formal link, of a political and legal character, between an individual and a country; and

“(B) do not include the concept of nationality relating to membership in a religious, linguistic, or ethnic group.

“(3) NONCITIZEN.—The term ‘noncitizen’ has the meaning given the term ‘alien’ in section 101(a).

“(4) OPERATION OF LAW; OPERATION OF ITS LAW.—The terms ‘operation of law’ and ‘operation of its law’—

“(A) refer to the consideration by a competent authority of a country with respect to an
individual in practice, including under the legis-
lation, ministerial decrees, regulations, orders,
judicial case law, and customary practices of
the competent authority; and

“(B) include situations in which the posi-
tion of the competent authority differs from the
law as written, if the position of the competent
authority that an individual is not a national of
the country is determinative.

“(5) RELEVANT ASSOCIATION.—The term ‘rel-
evant association’ means a natural person’s connec-
tion to a country through—

“(A) birth on the territory of the country;
“(B) descent from 1 or more individuals
who are nationals of the country;
“(C) marriage to an individual who is a
national of the country;
“(D) adoption by an individual who is a
national of the country; or
“(E) habitual residence in the country.

“(6) STATELESS PERSON.—The term ‘stateless
person’ means an individual who is not considered as
a national by any state under the operation of its
law.
“(b) Mechanisms for Regularizing the Status of Stateless Persons.—

“(1) Stateless protected status.—

“(A) Principal applicants.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall provide stateless protected status to a noncitizen who—

“(i) is a stateless person present in the United States;

“(ii) applies for such relief;

“(iii) has not formally renounced his or her nationality as a result of voluntary, affirmative, and intentional action after arrival in the United States and after the date of the enactment of this section, unless the renunciation was the result of duress, coercion, or a reasonable expectation that the noncitizen had acquired or would acquire another nationality or citizenship; and

“(iv) is not inadmissible under 212(a)(3), except as provided in paragraph (2) of this subsection; and

“(v) is not described in section 241(b)(3)(B)(i).
“(B) TREATMENT OF SPOUSE AND CHILDREN.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall provide stateless protected status to a noncitizen who—

“(i) is the spouse or child of a noncitizen described in subparagraph (A), if such spouse or child is not otherwise eligible for admission under that subparagraph;

“(ii) is accompanying, or following to join, such noncitizen;

“(iii) established the qualifying relationship to such noncitizen before the date on which such noncitizen applied for stateless protected status;

“(iv) is not inadmissible under 212(a)(3), except as provided in paragraph (2) of this subsection; and

“(v) is not described in section 241(b)(3)(B)(i).

“(C) STATELESS PROTECTED STATUS.—

Noncitizens with stateless protected status—

“(i) shall—
“(I) receive relevant protections against deportation, removal, and detention, as described in paragraph (3);

“(II) be authorized for employment, as described in paragraph (4); and

“(III) be eligible to apply for a travel document, as described in paragraph (5); and

“(ii) shall not face limitations from immigration enforcement officials on their domestic travel.

“(D) Concurrent grant of lawful permanent residence.—

“(i) In general.—Except as provided in clause (ii), notwithstanding any other provision of law, immediately on granting stateless protected status to a noncitizen, the Secretary of Homeland Security shall adjust the status of the noncitizen to that of a noncitizen lawfully admitted for permanent residence.

“(ii) Exception.—The Secretary of Homeland Security may not adjust the status of a noncitizen with stateless protected
status who is inadmissible under section 212(a)(2).

“(2) Waivers.—

“(A) In general.—Notwithstanding any other provision of law, the Secretary of Homeland Security may, for humanitarian purposes, in the interests of access to fundamental or enabling rights, to ensure family unity, or when it is otherwise in the public interest, waive the operation of the grounds of inadmissibility set forth in paragraphs (2) and (3) of section 212(a), for relief under this section.

“(B) Factors.—In making a determination under subparagraph (A), the Secretary of Homeland Security shall consider all relevant factors, including—

“(i) mitigating and aggravating factors of the basis for inadmissibility;

“(ii) the duration of the noncitizen’s residence in the United States; and

“(iii) the degree to which the noncitizen’s removal, or denial of the noncitizen’s application, would adversely affect the noncitizen or the noncitizen’s United States
citizen or lawful permanent resident family members.

“(3) Release from post-removal detention.—A grant of stateless protected status under this section shall—

“(A) trigger immediate release of an individual from post-removal detention;

“(B) be considered to establish that there is no significant likelihood of the individual’s removal in the reasonably foreseeable future; and

“(C) establish a presumption that travel documents are not available for the individual.

“(4) Employment authorization.—

“(A) In general.—An individual granted stateless protected status under this section shall receive employment authorization for a renewable period not less than 5 years.

“(B) Pending application.—

“(i) In general.—During the 150-day period after the date on which an application for status under this section is submitted, the Secretary of Homeland Security may authorize the applicant to engage in employment in the United States.
“(ii) Mandatory employment authorizations.—If the Secretary of Homeland Security has not issued a decision within the 150-day period beginning on the date on which an application for status under this section is submitted, the Secretary of Homeland Security shall authorize the applicant to engage in employment in the United States until the date on which a decision is issued on the application for lawful permanent residence or stateless protected status.

“(5) Travel documents.—

“(A) In general.—On request, the Secretary of Homeland Security shall provide to any noncitizen granted relief under this section, a travel document that facilitates the noncitizen’s ability to travel abroad and to be admitted to the United States upon return.

“(B) Validity.—The minimum period of validity for a document issued under subparagraph (A) shall be 10 years.

“(6) Naturalization.—Notwithstanding any other provision of law, an individual granted lawful permanent residence status under paragraph (1)(D)
may apply for naturalization after having resided continuously in the United States for at least 3 years beginning on the date on which such individual is granted lawful permanent resident status.

“(c) EVIDENTIARY MATTERS.—

“(1) IN GENERAL.—In determining if an individual is a stateless person under this section, the Secretary of Homeland Security shall consider and obtain any credible evidence relevant to the application, including information from—

“(A) the Department of State, particularly the Bureau of Population, Refugees, and Migration and the Bureau of Democracy, Human Rights, and Labor; and

“(B) relevant international and foreign bodies, such as the United Nations High Commissioner for Refugees, nongovernmental organizations, and the competent authorities of other countries.

“(2) DESIGNATION OF SPECIFIC GROUPS OF STATELESS PERSONS.—The Secretary of Homeland Security, in consultation with the Secretary of State, may designate 1 or more specific groups of individuals who shall be considered stateless persons for purposes of this section, and a noncitizen who be-
longs to a group so designated shall be considered a stateless person.

“(3) BURDEN OF PROOF.—The burden of proof with respect to evidentiary matters relating to an application under this section shall be shared between the Secretary of Homeland Security and the applicant.

“(4) STANDARD OF PROOF.—

“(A) IN GENERAL.—A noncitizen shall be considered to be a stateless person if it is established to a reasonable degree that the noncitizen meets the definition of the term ‘stateless person’ under this section.

“(B) ASSESSMENT OF NATIONALITY.—The nationality of an individual shall be assessed as of the date on which a determination of eligibility under this section is made.

“(5) SUBMISSION OF DOCUMENTARY EVIDENCE.—

“(A) SUPPORTING DOCUMENTS FROM APPLICANT.—An applicant for relief under this section shall submit, as part of the application for such relief—

“(i) a full and truthful account, to the best of the noncitizen’s knowledge, of such
noncitizen’s legal status with regard to any country in which the applicant was born or resided before entering the United States or to which the applicant has a relevant association; and

“(ii) all evidence reasonably available, including any valid or expired travel document.

“(B) EVIDENCE AVAILABLE TO SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall obtain and submit to the immigration officer or immigration judge and the applicant or, as applicable, the applicant’s counsel, all available evidence regarding the legal status of the applicant in the applicant’s country of birth or prior residence or any country to which the applicant has a relevant association, including information on the relevant laws and practices of the countries concerned.

“(C) CONSIDERATION OF RESPONSE.—The Secretary of Homeland Security may consider as substantial evidence that an individual is not considered by a country to be national of the country the following:
“(i) After 120 days have elapsed after the Secretary of Homeland Security has requested information from the country with respect to the nationality status of the individual, the lack of response from the competent authority of the country.

“(ii) A pro forma response from the country that lacks an application of the law or facts to the particular individual.

“(iii) The refusal of the country to accept the individual for deportation or removal.

“(d) FEES.—The Secretary of Homeland Security may not charge a noncitizen any fee in connection with an application for, or issuance of, lawful status under this section, employment authorization, or travel documents.

“(e) JURISDICTION AND REVIEW.—

“(1) IN GENERAL.—The Director of U.S. Citizenship and Immigration Services shall have jurisdiction over an application for stateless protected status and adjustment of status filed by a noncitizen under this section.

“(2) REVIEW.—A denial by the Secretary of Homeland Security of an application for relief under this section shall be subject to review by the Admin-

“(f) Effect on Removal Proceedings.—With respect to a noncitizen in removal proceedings who files an application for relief under this section, the Attorney General shall postpone the removal proceedings pending the adjudication of the application.

“(g) Applicants with Final Orders of Removal.—

“(1) Motions to Reopen.—

“(A) In general.—A noncitizen whose removal, deportation, or exclusion proceedings were concluded before the date of the enactment of this section, and who is eligible for relief under this section, may file 1 motion to reopen proceedings to apply for such relief not later than 1 year after the date of the enactment of this section.

“(B) Effect of Limitations.—A time or numerical limitation on motions to reopen removal, deportation, or exclusion proceedings may not be construed to restrict the filing of a motion to reopen under this paragraph if such limitation is based on previously unavailable evidence or facts, or on changed facts or cir-
cumstances, including a discovery by a noncitizen that the noncitizen may be a stateless person.

“(2) Stay of Removal.—

“(A) In General.—An applicant for relief under this section who has been issued a final order of removal, deportation, or exclusion may request a stay of removal, deportation, or exclusion.

“(B) Consideration of Request.—With respect to an individual who requests a stay under subparagraph (A), if the Secretary of Homeland Security determines that the application for relief is bona fide, the Secretary shall automatically stay the execution of the final order of deportation, exclusion, or removal, and the stay will remain in effect until a final decision is made on the applications.

“(C) Effect of Denial.—If the application is denied, the stay of the final order is deemed lifted as of the date of such denial, without regard to whether the noncitizen appeals the decision.

“(3) Termination.—On the grant of an application for relief under this section to a noncitizen
with a final order of removal, deportation, or exclusion, the final order shall be deemed canceled by operation of law as of the date of the approval.

“(h) Exclusion From Numerical Limitations.—

Individuals provided status under this section shall not be counted against any numerical limitation under sections 201(d), 202(a), or 203(b)(4).

“(i) Rule of Construction.—Nothing in this section may be construed to authorize or require the admission of any noncitizen to the United States.

“(j) Reports.—

“(1) In general.—Not later than 120 days after the date of the enactment of this section, and every 90 days thereafter, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on—

“(A) the number of applications submitted under each of paragraphs (1), (4), and (5) of subsection (b) since the date of the enactment of this section, disaggregated by the country of birth of the applicants; and

“(B) average timelines for processing each such application.
“(2) Public Availability.—The Secretary of Homeland Security shall publish each report submitted under paragraph (1) on the internet website of the Department of Homeland Security, respectively.

“(k) Publication of Guidance.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall publish all policy manuals, guidance, and application instructions relating to applications under this section on the internet website of the Department of Homeland Security.

“(l) Regulations.—The Secretary of Homeland Security may issue such regulations as the Secretary of Homeland Security considers appropriate to carry out this section.”.

(b) Technical and Conforming Amendments.—

(1) Table of Contents.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 245A the following:

“Sec. 245B. Protection of stateless persons in the United States.”.

(2) Exception for Unlawful Presence of Stateless Persons.—Section 212(a)(9)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)(iii)) is amended by adding at the end the following:
“(V) Stateless Persons.—
Clause (i) shall not apply to a noncitizen who demonstrates that he or she is a stateless person (as defined in section 245B(a)).”.

SEC. 5. PREVENTION OF STATELESSNESS.

(a) Births to United States Citizens Overseas.—Section 301 of the Immigration and Nationality Act (8 U.S.C. 1401) is amended—

(1) in subsection (g), by striking “; and” and inserting a semicolon;
(2) in subsection (h), by striking the period at the end and inserting “; and”;
(3) by adding at the end the following:

“(i) a person born to a citizen of the United States outside the United States or in an outlying possession of the United States, if such person is born as a stateless person (as defined in section 245B(a)).”.

(b) Foundlings.—Section 301 of the Immigration and Nationality Act (8 U.S.C. 1401) is further amended by striking subsection (f) and inserting the following:

“(f) a person of unknown parentage found in the United States while under the age of 18 years, until shown, prior to the person attaining the age of 21 years, not to have been born in the United States;”.
(c) Stateless Safeguards for Derivative Citizenship and International Adoptions.—

(1) Stateless safeguards.—Section 320 of the Immigration and Nationality Act (8 U.S.C. 1431) is amended by adding at the end the following:

“(e)(1) Notwithstanding any other provision of law, a person born outside the United States or in an outlying possession who is or becomes a stateless person (as defined in section 245B(a)) automatically becomes a citizen of the United States on the date on which one of the following conditions has been fulfilled:

“(A) One parent is or was a citizen of the United States.

“(B) The person was adopted by—

“(i) a citizen of the United States; or

“(ii) an individual who became a citizen of the United States after the date of such adoption.

“(2) This subsection applies to any person who meets the criteria under paragraph (1) at any time.”.

(2) Age.—Section 320(a) of the Immigration and Nationality Act (8 U.S.C. 1431(a)) is amended by striking paragraph (2) and inserting the following:
“(2) The child is under the age of 21 years.”.

(3) ENTRY AND CUSTODY.—Section 320(a) of the Immigration and Nationality Act (8 U.S.C. 1431(a)) is further amended by striking paragraph (3) and inserting the following:

“(3) The child is residing in the United States, and provided such child is under the legal age of adulthood in the State in which the parent of the child or the child resides, is in the legal and physical custody of the citizen parent.”.

(d) PROGRAMS TO PREVENT STATELESSNESS.—The Secretary of Homeland Security and Secretary of State shall jointly establish and carry out initiatives to prevent statelessness from occurring, which may include—

(1) an assessment of United States citizenship law to determine and amend any provision of law that results in statelessness or a delayed acquisition of nationality that increases the risk of statelessness;

(2) studies on the profiles and number of stateless people living in the United States;

(3) programs to promote inclusive and non-discriminatory nationality laws and practices in other countries, with particular attention to the prevention of atrocity crimes;
(4) programs to encourage other countries to establish stateless status determination and protection legislation; and

(5) grants to universities and nongovernmental organizations to accelerate research, education, curricula, and knowledge on nationality law and practice and statelessness.