No. 15-1191

IN THE

Supreme Court of the United States

LORETTA E. LYNCH,
ATTORNEY GENERAL,

Petitioner,

v.

LUIS RAMON MORALES-SANTANA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* SCHOLARS ON STATELESSNESS IN SUPPORT OF RESPONDENT

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BRIEF OF AMICI CURIAE SCHOLARS ON STATELESSNESS, IN SUPPORT OF RESPONDENT[1]

INTEREST OF AMICI

Amici have devoted much of their careers to teaching, writing about, and studying statelessness and related subjects, particularly refugees and asylum, migration, and citizenship laws, and they are familiar with the literature and studies of statelessness:

- **T. Alexander Aleinikoff** is currently a Visiting Professor of Law at Columbia Law School and a Hou Global Policy Initiative Research Fellow at the Columbia Global Policy Initiative. He is also a Senior Fellow at the Migration Policy Institute in Washington, D.C. From 2010 to 2015, he served as the Deputy High Commissioner for the Office of the United Nations High Commissioner for Refugees ("UNHCR") in Geneva. From 1997 to 2010, he was a Professor at Georgetown University Law Center, and the Dean between 2004 and 2010. He was a Profes-

[1] All parties have consented to the filing of this brief. Amici affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici or their counsel made a monetary contribution to its preparation or submission.

sor of Law at the University of Michigan Law School from 1981 to 1997. From 1994 to 1997, he served as the General Counsel, and then Executive Associate Commissioner for Programs, at the United States Immigration and Naturalization Service. He has authored or co-authored eight books and numerous articles on constitutional law, citizenship and nationality, statelessness, and related aspects. More information is available at: http://www.law.columbia.edu/fac/T.%20Alexander_Aleinikoff.

- **David Baluarte** is an Associate Clinical Professor of Law and Director of the Immigrant Rights Clinic at the Washington and Lee University School of Law. He has worked with the UNHCR on a variety of initiatives to identify and protect stateless persons in the United States and the Caribbean. Most notably, he performed a study of statelessness in the United States that led to the publication of the UNHCR and Open Society Justice Initiative report "Citizens of Nowhere." He subsequently received support from the UNHCR to establish a pilot law clinic to provide pro bono legal services to stateless persons in the United States. He also directed a UNHCR-funded project to establish a nationality rights clinic at a law school in the Bahamas and acted as

co-counsel on two cases decided by the Inter-American Court of Human Rights against the Dominican Republic on the issue of nationality rights and statelessness. In 2017, Professor Baluarte will travel to Argentina as a Fulbright Scholar to complete research on the protection of stateless persons in the Southern Cone.

- **Jacqueline Bhabha** is a Professor of the Practice of Health and Human Rights at the Harvard T.H. Chan School of Public Health. She is also the Jeremiah Smith Jr. Lecturer in Law at Harvard Law School and the Director of Research at the Harvard FXB Center for Health and Human Rights. Before joining the faculty at Harvard, she worked as a human rights lawyer in London, and then founded and directed the Human Rights Program at the University of Chicago.
- **Dr. Alice Edwards** is a human rights expert, currently serving as the Head of the Secretariat of the Convention against Torture Initiative, a government-led diplomatic initiative. She was a member of the Faculty of Law at the University of Oxford and the University of Nottingham, where she taught constitutional law, international refugee law, and human rights law. At the University of Oxford, she developed an external short course specifically devoted to statelessness, as

well as other courses that have modules on statelessness. She currently teaches in the University of London's International Programmes on gender and forced migration and remains an honorary fellow at the University of Nottingham's Human Rights Law Centre. Among her many publications, she is the lead editor of *Nationality and Statelessness under International Law* (2013), to which she also contributed two chapters. In 2010, she was awarded a British Academy grant for her continued work. More information is available at: https://works.bepress.com/alice_edwards/.

- **Erika Feller** is a Fellow of the Australian Institute of International Affairs and Vice Chancellor's Fellow at the University of Melbourne. Her professional career has included fourteen years and three international postings with the Australian diplomatic service, followed by twenty-six years of progressively senior appointments with the UNHCR, both in Geneva and the Field. Ms. Feller exercised oversight of the performance by the UNHCR of its core protection responsibilities worldwide, in the some 127 countries where the office is represented. Following these appointments, Ms. Feller has continued to work on statelessness issues. Ms. Feller is an academically acknowledged authority on refugee law (recog-

nized as such in Who's Who in International Law), has published widely in journals, is co-editor of a book on refugee protection in international law, and has contributed to other significant books, including the *Max Planck Encyclopedia of Public International Law*.

- **Audrey Macklin** is a Professor at the Faculty of Law at the University of Toronto School of Law, where she teaches courses on immigration and refugee law and administrative law. Professor Macklin is also Chair in Human Rights Law there. She was formerly a member of Canada's immigration and refugee board. She has published extensively on citizenship and the status of refugees, including articles in the European Journal of Migration and Law, Georgetown Immigration Law Journal, and Human Rights Quarterly. She has received grants from the United Nations Population Fund, the Law Commission of Canada, and the Social Sciences and Humanities Research Council for her research on refugees, law and citizenship, and the legal aspects of conflict-induced migration by women. More information is available at: http://www.law.utoronto.ca/faculty-staff/full-time-faculty/Audrey-macklin.
- **Kim Rubenstein** is a Professor in the Australian National University College of

Law and a Public Policy Fellow at the Australian National University (the "ANU"). She was the Director of the Centre for International and Public Law at the ANU from 2006 to 2015. She has particular expertise in citizenship laws, and her book *Australian Citizenship Law in Context* (2002) is a seminal work with a second edition due out later in 2016. Professor Rubenstein is the co-editor of the Cambridge University Press six-volume series *Connecting International Law with Public Law*, which includes the volume *Allegiance and Identity in a Globalised World* (2015). She has appeared three times in the High Court of Australia on citizenship matters, and her work was cited in the High Court judgment of *Singh v. Commonwealth* (2004). In 1992, Professor Rubenstein obtained her L.L.M. as a Fulbright postgraduate scholar at Harvard University and, from 2002 to 2003, she was based at Georgetown University Law Center as a Fulbright Senior Scholar, writing on the status of nationality in the international law context. More information is available at: https://researchers.anu.edu.au/researchers/rubenstein-k.

- **Peter J. Spiro** holds the Charles Weiner Chair in international law at Temple University School of Law. Before joining Temple's faculty in 2006, Professor Spiro was

the Rusk Professor of Law at the University of Georgia Law School. A former law clerk to Justice David H. Souter, he specializes in international, immigration, and constitutional law. He has held fellowships at the European University Institute, the Council on Foreign Relations, and the Open Society Institute. He has also held visiting appointments at the University of Texas, the ANU, and Sungkyunkwan University. Professor Spiro is a member of the International Mobility Treaty Commission and the Investment Migration Council, and a former member of the U.S. Department of State's Historical Advisory Committee. He is co-chair of the Migration Law Interest Group of the American Society of International Law. He also serves as U.S. country expert for the European University Institute's Citizenship Observatory. He is the author of *Beyond Citizenship: American Identity After Globalization* (2008) and *At Home in Two Countries: The Past and Future of Dual Citizenship* (2016).

- **Carmen Tiburcio** is a Professor at the Faculty of Law of the University of the State of Rio de Janeiro, where she lectures on private international law and international litigation, including issues of nationality and the status of aliens. Professor Tiburcio holds an L.L.M. and

S.J.D. in international law from the University of Virginia School of Law. She was appointed by the Brazilian Secretary of State as a prospective arbitrator for the Mercosur Tribunal and the Mercosur-Bolivia Tribunal. She has published extensively on subjects of citizenship and the status of aliens. Professor Tiburcio is a visiting lecturer at the University of Toulouse and will be a guest lecturer for the course on private international law at the Hague Academy of Private International Law in 2017. More information is available at: http://lattes.cnpq.br/8467140172529712.

Additionally, Professors Rubenstein, Tiburcio, and Spiro have been honored by the UNHCR to serve on the independent world expert panel as jurors for the UNHCR-Tilburg University Award for Research on Statelessness, which has been given annually in three categories: undergraduate dissertation or equivalent, graduate masters dissertation, and doctoral dissertation.

Amici submit this brief to bring to the attention of this Court data and authorities relevant to the U.S. government's arguments that the discrimination against fathers entrenched in the Statute at Issue is justified by a concern for, and an effort to reduce, the risk of statelessness. The "Statute at Issue," as it was applied to Respondent, consists of Sections 201 and 205 of the Nationality Act of 1940

(the "1940 Act" or the "Nationality Act"), as amended by Section 309 in the Immigration and Nationality Act of 1952 (the "1952 Act" or the "McCarran-Walter Act," and such amendment, the "1952 Amendment"), and now codified as 8 U.S.C. §§ 1401 and 1409 (1958).

INTRODUCTION AND SUMMARY OF ARGUMENT

1. A principal justification asserted by the government in its present brief ("U.S. Br.") for the discrimination against U.S.-citizen fathers in the Statute at Issue is to prevent or reduce statelessness of foreign-born non-marital children. Although its precise phrasing has varied on different occasions, its chief argument has been that the risk of statelessness for a foreign-born non-marital child is "substantially greater" or "much higher" when the U.S.-citizen parent is the mother rather than the father. U.S. Br. 33 ("substantially greater").[2]

Amici are aware of no study or compilation of data that establishes or supports this argument. The sources cited by the government in its present brief do not support it.

Viewed in totality, the evidence about the factors relevant to statelessness demonstrates that the

[2] *See also* Brief for the United States in Opposition to Cert. 15 ("much higher"), *Flores-Villar v. United States*, 564 U.S. 210 (2011) (No. 09-5801) [hereinafter U.S. Br. Opp'n to Cert. in *Flores-Villar*].

risk of parenting stateless children abroad was, as of 1940 (when the Statute at Issue was enacted) and as of 1952 (when it was amended in the form applied to Respondent), and remains today, substantial for unmarried U.S. fathers, a risk perhaps greater than that for unmarried U.S. mothers. The relevant data indicate that the special residence requirements for U.S. fathers in the Statute at Issue may have enlarged in the past, and may continue today to enlarge, the pool of stateless children by hindering U.S. fathers who have undertaken the responsibilities of fatherhood in passing on their U.S. citizenship to their foreign-born non-marital children by legitimating them.

2. The government's subsidiary arguments concerning statelessness and the Statute at Issue are that "Congress was aware of and concerned about the problem of statelessness, and that Congress revised the relevant provisions in 1952 with the *specific intent* of reducing the risk that a child born out of wedlock abroad to a U.S.-citizen mother would be born stateless." U.S. Br. 36 (emphasis added).

Although it asserts that there is "abundant" evidence, *id.*, for what it terms this "clear" purpose, *id.* at 38, the government cites no direct evidence of such an intention. Instead, the government imputes to Congress a *sub silentio* "specific intent" to reduce statelessness. *Id.* at 36.

The government's imputation is unwarranted for many reasons. The words "stateless persons" or

"statelessness" do not appear in the 1952 Act or its legislative history in connection with this Amendment or in any substantive context. The government conflates the very different terms "displaced persons" and "stateless persons." Proceeding from that erroneous conflation, the government reaches back to a 1947 Senate resolution and a 1950 Senate report to infer that "addressing problems of statelessness" was "part and parcel" of the immigration "overhaul" contained in the 1952 Act. *Id.* at 37. That ignores the important intervening legislation (and extensive legislative histories) of statutes that *were* about displaced persons (and also "statelessness," to the extent appropriate). It also ignores the only paragraph in the 971-page 1950 Senate report pertinent to this case, as well as the data for the period between 1947 and 1952 about displaced persons and stateless persons. In sum, the government's imputation of a "specific intent" to address and reduce statelessness in the 1952 Amendment is an overlong reach. *Id.* at 36.

There exists an alternative, temporally related reason for the 1952 Amendment: to clarify Section 205 of the 1940 Act so as to resolve—permanently—a dispute that arose in 1951 between the U.S. Department of State and the U.S. Department of Justice about the correct interpretation of that Section, and to forestall the "many strange results," *In re M—*, 4 I. & N. Dec. 440, 445 (B.I.A. 1951), that the Board of Immigration Appeals said would occur if the State Department's misinterpretation were accepted.

3. The government several times ascribes consensus or unanimity among experts for propositions it advances (*e.g.*, "Experts in nationality and international law have long agreed . . . ."). U.S. Br. 35. These statements are either incorrect, oversimplifications, or incomplete.

Amici submit to the Court a proposition that does command a consensus among scholars and other workers in the field of statelessness: gender discrimination against either mothers or fathers in citizenship and nationality laws is a major cause of statelessness. Amici base this not only on their own research and on their interactions with colleagues at numerous conferences and symposia around the world, but also on the authoritative, published positions of the UNHCR. In 2014, the UNHCR undertook a ten-year program to eliminate statelessness by 2024, a key component of which is the elimination of gender discrimination in citizenship and nationality laws. *See, e.g.*, *The Campaign to End Statelessness: April 2016 Update* (reporting on a speech by the High Commissioner to the European Parliament to "highlight the issue of gender discrimination in the nationality laws of 27 countries—a major cause of statelessness globally");[3] *Background Note on Gender Equality, Nationality Laws and Statelessness* (cataloging types of laws and circumstances relating to fathers that "can cre-

[3] *The Campaign to End Statelessness: April 2016 Update*, United Nations High Commissioner for Refugees: The UN Refugees Agency, http://www.unhcr.org/ibelong/wp-content/uploads/Campaign-Update-April-2016.pdf.

ate statelessness" and concluding, "Ensuring gender equality in nationality laws can mitigate the risks of statelessness").[4]

ARGUMENT

I

THERE WAS IN 1940 AND 1952—AND CONTINUES TO BE—A SUBSTANTIAL RISK OF STATELESSNESS FOR FOREIGN-BORN CHILDREN OF UNMARRIED U.S. FATHERS

The citizenship laws of many countries show that when U.S.-citizen fathers are hindered by the discriminatory residence strictures of the Statute at Issue in passing on their U.S. citizenship, there is a significant risk of statelessness for their foreign-born non-marital children. The interactions of the Statute at Issue with important categories of foreign citizenship laws invalidate the government's stated rationale for the discrimination imposed by the Statute at Issue.

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[4] *Background Note on Gender Equality, Nationality Laws and Statelessness*, United Nations High Commissioner for Refugees: The UN Refugees Agency (March 8, 2016), http://www.refworld.org/docid/56de83ca4.html.

A. The Laws of Many Countries Created as of 1940 and 1952, and Still Create, a Risk of Statelessness for Foreign-Born, Non-Marital Children of U.S. Fathers

Such laws fall into several categories.

1. The government has acknowledged that when the law of another country does not permit a mother to assign her nationality to a non-marital child, its rationale for discrimination against fathers is undermined. *See* U.S. Br. Opp'n to Cert. in *Flores-Villar* 15 n.7. In fact, the laws of at least thirty countries did not, or currently do not, permit (in whole or substantial part) their citizen-mothers to assign their citizenship to non-marital children born within the mothers' countries.[5] Some do not allow the mother to do so in any circumstances; others do not allow the mother to do so when the alien father can be merely identified; others do not permit the mother to do so when the alien father so much as acknowledges that the child is his; others do not permit the mother to do so when the alien father legitimates the child; and some countries

[5] Amici have reviewed the relevant statutes of the countries cited herein, when available. Amici are not, however, in a position to report on the court decisions and administrative regulations of every country, which may serve in some cases to fill the gaps in the relevant statutes or perhaps even to contradict them. For the effects of court decisions and regulations, Amici have relied on standard secondary sources such as treatises and published studies as far as possible. Those secondary sources are identified in the Appendix, both generally, and on a country-by-country basis.

strip the child of the citizenship passed by the mother upon the alien father's legitimation of the child—whether or not the father is able to pass on his citizenship. It is important to bear in mind that the Statute at Issue does not come into play unless the U.S. father legitimated the child.

These countries include at least the following: **Afghanistan** (as of 1940) (requiring both parents to be citizens unless child takes up permanent residence after reaching majority) (A3)[6]; **Aruba** (as of 1940, under Dutch rule) (mother may not pass citizenship unless father has not acknowledged) (A10); **Bahrain** (currently)[7] (mother may not pass citizenship unless father is unknown or stateless or fatherhood is not substantiated) (A4); **Bhutan** (currently) (requiring both parents to be citizens) (A4); **Burma (Myanmar)** (currently) (requiring both parents to be citizens) (A4); **Cameroon** (currently) (mother may not pass citizenship unless father is stateless or of unknown nationality or did not filiate first) (A5); **Ceylon (Sri Lanka)** (as of 1952) (mother may not pass citizenship unless father has not legitimated) (A5); **China** (as of 1940) (mother may not pass citizenship unless

[6] "A_" refers to the page number of the Appendix that contains citations to the relevant statute, constitution, and/or secondary source for each country.

[7] "Currently" refers to the law existing as of 2010, when this Court last reviewed the issues in this case, or, in several instances, as of 2016, if there has been a material change in that country's laws since 2010 that affects the point in the text.

father is unknown or stateless or has not legitimated) (A5); **Egypt** (as of 1940) (mother may not pass citizenship if paternity is established) (A5); **Finland** (as of 1940) (requiring both parents to be citizens, except that if father of non-marital child loses Finnish nationality, in certain circumstances child retains citizenship of Finnish mother) (A6); **Germany** (as of 1940) (citizenship through mother lost upon father's legitimation) (A6); **Iran** (as of 1940) (mother may not pass citizenship at birth, though child can apply for citizenship at age 18) (A7); **Iraq** (1940) (mother may not pass citizenship at birth, though child can obtain citizenship after reaching age of majority) (A7); **Japan** (as of 1940) (mother may not pass citizenship unless father is stateless or cannot be identified) (A8); **Trans-Jordan** (as of 1940) (mother may not pass citizenship at birth) (A8); **Korea** (as of 1952) (mother may not pass citizenship unless father is unknown or stateless) (A8); **Kuwait** (currently) (mother may not ask for permission to pass citizenship unless father is unknown or father's kinship has not been legally established) (A8); **Lebanon** (as of 1940) (mother may not pass citizenship unless the father has not filiated) (A8); the **Netherlands** (as of 1940) (mother may not pass citizenship unless father has not acknowledged) (A10); **Oman** (currently) (mother may not pass citizenship unless father is unknown or stateless) (A10); **Qatar** (currently) (mother may not pass citizenship) (A11); **Romania** (as of 1940)

(citizenship through mother lost upon legitimation) (A11); **Saudi Arabia** (currently) (mother may not pass citizenship at birth unless father is stateless or of unknown nationality, but child can apply for citizenship after reaching majority if permanent resident) (A11); **Sudan** (currently) (mother may not pass citizenship unless the father has not filiated) (A12); **Suriname** (as of 1940, under Dutch rule) (mother may not pass citizenship if child is acknowledged) (A10); **Swaziland** (currently) (mother may not pass citizenship unless father fails to claim or adopt) (A12); **Taiwan** (as of 1952) (mother may not pass citizenship unless father is unknown or stateless or has not legitimated) (A13); **Togo** (currently) (mother may not pass citizenship unless father is stateless or of unknown nationality) (A13); **United Arab Emirates** (currently) (mother may not pass citizenship unless father is unknown) (A13); and **Yemen** (currently) (mother may not pass citizenship unless father is not legally established or is stateless or of unknown nationality) (A15).[8]

In all of these countries, there is a severe or moderate risk that the child of a U.S. father and a local mother will be stateless, unless the father can sat-

[8] In some of these countries, the mother may nevertheless commence administrative proceedings, which can be very onerous, and which, if successful, could restore the child's citizenship through the mother. At the same time, as stated in the text, some countries would divest the child of its mother's citizenship if the child were legitimated by an alien father.

isfy the discriminatory residence tests in the Statute at Issue.[9]

2. Also significant: as of 1940, the statutes of as many as forty-five countries (including nearly all of the British Commonwealth dominions and colonies which extended the common British subject status and not independent citizenship) did not permit their female citizens to assign nationality to a non-marital child born outside the subject country with a foreign father. Several countries retain such a provision in their laws today.

The countries that then posed, or now pose, this second category of risk of statelessness for non-marital children born abroad of U.S.-citizen fathers include at least the following: **Andorra** (as of 1940) (mother may not pass citizenship to foreign-born children) (A3); **Australia** (as of 1940) (mother may not pass nationality to foreign-born children) (A3); **Brunei** (currently) (mother may not pass citizenship to foreign-born children) (A4); **Canada** (as of 1940) (mother may not pass nationality to foreign-born children) (A5); **Haiti** (as of 1952) (mother may

[9] Laws other than nationality/citizenship laws (such as criminal adultery laws) can also substantially impair a mother's ability to pass on her citizenship to a child, thereby furthering the need for ease of access to a father's nationality, instead of imposing special burdens upon him such as those imposed by the Statute at Issue. *See generally* Betsy Fisher, *Why Non-Marital Children in the MENA Region face a Risk of Statelessness*, Harvard Human Rights Journal Online, January 6, 2015, http://harvardhrj.com/2015/01/why-non-marital-children-in-the-mena-region-face-a-risk-of-statelessness/.

not pass citizenship to foreign-born children unless father does not recognize child) (A6); **Indonesia** (as of 1952) (*jus soli* but mother may not pass citizenship unless she is sole legally acknowledged parent) (A6-7); **Ireland** (as of 1940) (mother may not pass citizenship to foreign-born children) (A7); **Israel** (currently) (citizenship by descent is limited to only one generation born abroad) (A7); **Lebanon** (as of 1940) (mother may not pass citizenship unless the father has not filiated) (A8); **Liberia** (as of 1940) (mother may not pass citizenship to foreign-born child) (A8); **Libya** (as of 1940) (mother may not pass citizenship to foreign-born children on an equal basis as father) (A9); **Mauritania** (currently) (mother may not pass citizenship to foreign-born children at birth except in very limited circumstances, but child may apply for citizenship in the year preceding the age of majority) (A9); **Mexico** (as of 1940) (mother may not pass citizenship to foreign-born children unless father is unknown) (A9); **Nepal** (as of 1952) (mother may not pass citizenship to foreign-born children) (A9); **New Zealand** (as of 1940) (mother may not pass nationality to foreign-born children) (A10); **Pakistan** (including the territory that later became **Bangladesh**) (1940 and 1952) (first under U.K. law, and later under independent domestic law, mother may not pass nationality to foreign-born children) (A10); **Somalia** (currently) (mother may not pass citizenship to foreign-born children) (A11); **South Africa** (as of 1940) (mother may not pass citizenship to foreign-born children) (A12); **Suriname** (as of 1940, under Dutch rule) (mother

may not pass citizenship if the child is acknowledged by father) (A10); **Syria** (currently) (mother may not pass citizenship to foreign-born children) (A12); **Thailand** (as of 1940) (mother may not pass citizenship to foreign-born children unless father is unknown) (A13); **Vietnam** (as of 1940) (mother may not pass citizenship to foreign-born children in a non–*jus soli* country unless father is unknown) (A14); and the **United Kingdom** (and at least the following British Commonwealth colonies and territories[10] all of which applied U.K. law all as of 1940: the **Bahamas**, **Barbados**, **Belize**, **Bermuda**, **Botswana**, **British Virgin Islands**, **Cayman Islands**, **Gambia**, **Ghana**, **Guyana**, **Hong Kong**, **India, Jamaica, Kenya**, **Lesotho**, **Malawi**, **Malaysia**, **Malta**, **Mauritius**, **Nigeria**, **Palestine**, **Seychelles**, **Sierra Leone**, **Singapore**, **Sudan**, **Swaziland**; **Tanzania**, **Trinidad & Tobago**, **Uganda**, **Zambia**, and **Zimbabwe**) (mother may not pass nationality to foreign-born children) (A14).

This category of countries was significant as of 1940 and 1952 because of the large numbers of refugees outside their home countries created by World War II and its aftermath. *See infra* p. 29 and note 30. It remains significant today because of the many people from some of those countries who

[10] This brief uses the contemporary names of these states, some of which had different colonial names in 1940.

live abroad either as migrant workers or refugees (including stateless refugees)—*e.g.*, Jamaica, Kenya, Lebanon, Mauritania, and Somalia.[11] These problems have all been magnified by the conflicts in the Middle East and the large numbers of refugees they have created, particularly from Syria.

In all of these countries as well, the impediments to the mother's ability to pass on citizenship argue for ease of access for the U.S. father to pass on citizenship. Therefore, again, the discriminatory residence burdens on the U.S. father in the Statute at Issue do not reduce the risk of statelessness but potentially exacerbate it.

3. A third category of other nations' laws—more precisely, the absence of laws—also poses a risk of statelessness for foreign-born non-marital children of U.S.-citizen fathers.

As the 1934 Seckler-Hudson treatise points out, "an absence of law" regarding the status of illegiti-

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[11] *See, e.g.*, Div. of Programme Support & Mgmt., *2009 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons*, UNHCR, (June 15, 2010), http://www.unhcr.org/4c11f0be9.pdf [hereinafter UNHCR 2009 Global Trends] (listing Somalia as the third largest producer of refugees as of 2008 with 678,300 refugees); Prachi Mishra, *Emigration and Brain Drain: Evidence From the Caribbean* (IMF Working Paper, No. WP/06/25, 2006), *available at* http://www.imf.org/external/pubs/ft/wp/2006/wp0625.pdf (estimating that over 75% of the educated labor force in Jamaica has migrated to OECD Member Countries).

mate children creates "uncertain[ty]" and "possibilities that the child may, without its knowledge, choice, or selection, be an infant without a country." Catheryn Seckler-Hudson, *Statelessness: With Special Reference to the United States* 217-18 (1934) [hereinafter Seckler-Hudson].

The frequency of such regimes in the late 1930s is indicated in Durward V. Sandifer, *A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality*, 29 Am. J. Int'l L. 248 (1935) [hereinafter Sandifer]. Sandifer notes that "the statutory law[s] of about half the [79] states [he] studied"—*i.e.*, about forty countries—make no specific provision for the nationality of non-marital children. *Id.* at 256, 258.

The "uncertainty" cited by Seckler-Hudson alone makes the discriminatory residency burdens placed upon U.S. fathers by the Statute at Issue a potential source of concern about statelessness. Beyond that uncertainty, the fact that the default rule in the majority of *jus sanguinis* countries is descent of citizenship through the father, *see* Sandifer at 254, makes it more likely that even where there is no express law about non-marital children, the citizenship of the father would be applied by an official to non-marital children, again posing an increased risk for U.S. fathers, who must meet the heightened residency requirements of the Statute at Issue.

B. The Presence of Large Numbers of Stateless Women Created in 1940 and 1952—and Creates Today—a Risk of Statelessness for Foreign-Born Non-Marital Children of U.S. Fathers

When the mother is stateless, the residence burdens imposed upon U.S. fathers by the Statute at Issue create a self-evident risk of stateless children—whether the laws of the country of birth look to the mother or to the father in determining the citizenship of a non-marital child.

It has been estimated that there are millions of stateless persons around the globe.[12] Whatever the precise contours of the citizenship laws of any country in which U.S.-citizen males are present, the presence of large numbers of stateless women poses a risk of statelessness for the foreign-born non-marital children of U.S. fathers. That risk was especially severe in the period starting before World War II and through the 1940s. The dislocations of war, wartime changes in citizenship laws, the stripping of citizenship rights from some citizens, and other factors created unusually large numbers (although the published estimates can vary wildly) of female refugees and stateless

[12] *See, e.g.*, UNHCR 2009 Global Trends, *supra* note 11. *See also* Laura van Waas, *Nationality Matters: Statelessness Under International Law* 10 (2008) (noting that although it is "unlikely" a precise figure on stateless persons will ever be available, "all estimates point towards statelessness being an issue of global proportions and reach").

women in Europe and Asia, and more recently from the Middle East—precisely the circumstances in which the discriminatory provisions of the Statute at Issue exacerbate the risk of statelessness for children of U.S. fathers.

C. The Sources Cited by the Government Do Not Support Its Argument that Non-Marital Children of U.S. Mothers Were or Are at "Greater Risk" of Statelessness

The Government relies on the following sources:

1. Seckler-Hudson (1934). The government quotation, U.S. Br. 35, of a portion of a sentence from page 224 of this text fails to note that the quote is from a paragraph listing four additional situations that can be problematic in terms of statelessness, including situations applicable to U.S.-citizen fathers. And the paragraphs preceding the government's quote identify additional problematic categories (including the one discussed *supra* pp. 21-22 relating to the absence of laws).

It bears emphasis, furthermore, that the author of the text endorsed legislation proposed in the early 1930s providing that any child, "legitimate or illegitimate," born abroad of a U.S. citizen, mother *or* father, would be a U.S. citizen, subject to a simple residency test, equal in duration for mother and father. Seckler-Hudson at 222 (quoting H.R. 5489, 72nd Cong. (1931)).

2. Sandifer (1935). The government first cites Sandifer for the proposition that the laws of twenty-

nine of thirty countries provided that a child born out of wedlock acquired the citizenship of the mother and in nineteen of those twenty-nine, a child acquired the citizenship of the father upon legitimation. U.S. Br. 29. That may or may not be substantially correct—as far as it goes (*see supra* pp. 15-20 discussing impediments to acquiring citizenship from the mother). But the government's second reference to Sandifer, U.S. Br. 34, attributes to him a different statement, one Sandifer did not make—*i.e.*, that "the only parent legally *recognized as the child's parent* at the time of the birth usually was the mother" (emphasis added). Both of these references to Sandifer ignore the fact that Sandifer never mentions statelessness at all and the fact that, as of 1940, a substantial number of countries legally prevented the mother—in whole or in part—from transmitting her citizenship to a child born out of wedlock (*supra* pp. 15-18). Nor does the government mention Sandifer's recognition that about forty countries had no law concerning the citizenship status of children born out of wedlock—further creating a risk of statelessness.

Finally, Sandifer states that the majority rule with respect to marital children is that the father's nationality governs, noting that sixteen countries followed this rule for non-marital children. Sandifer at 254, 259. This too creates, under the discriminatory residence requirements of the Statute at Issue, a greater risk of statelessness for U.S.-citizen fathers of non-marital children.

3. Hall; Weis; and Flournoy & Hudson.[13] Hall's 1880 treatise is quoted or referenced three times by the government, U.S. Br. 28, 35, and 46, for the proposition that "almost everywhere" the nationality of illegitimate children comes from the mother because "the mother is their *only possible* root of nationality" (emphasis added).[14] Weis, U.S. Br. 29, 46, and Flournoy & Hudson, U.S. Br. 30, are cited for a similar assertion, although neither claims such inevitability. In either form, this assertion overlooks the many countries that prohibit or severely limit the mother's ability to pass on her citizenship (*supra* pp. 15-20). It also ignores the availability of legitimation by the father (a prerequisite for application of the Statute at Issue), and, therefore, the fact that, as of 1940, it would be the father's nationality that would pass to the child in the majority of states. *See* Sandifer, *supra*, at 254, 259.

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[13] William Edward Hall, *A Treatise on International Law* (1st ed. 1880) [hereinafter Hall]; P. Weis, *Nationality and Statelessness in International Law* (1956) [hereinafter Weis]; Richard W. Flournoy & Manley O. Hudson, *A Collection of Nationality Laws of Various Countries, as Contained in Constitutions, Statutes and Treaties* (1929) [hereinafter Flournoy & Hudson].

[14] The government cites a 1924 edition of Hall's treatise, but this quote appeared *in haec verba* in the first edition, published in 1880. William Edward Hall, *A Treatise on International Law* 188-89 (1st ed. 1880), *available at* http://catalog.hathitrust.org/Record/001155162.

4. International Union for Child Welfare (1947).[15] The government cites this study for its statement that "one of the primary categories of stateless children is '[c]hildren who are directly subjected to the consequences of the conflict between the *jus sanguinis* and the *jus soli*.'" U.S. Br. 34-35. Whether or not this is correct, it does not support the proposition that children of U.S. mothers are at a greater risk of statelessness than those of U.S. fathers.

5. Committee on Nationality (1950).[16] Page 57 of this report is cited by the government, U.S. Br. 35, but it is difficult to understand the relevance to this case of a quotation such as "consideration of the nationality laws of the various states . . . is difficult for various reasons." The reference to this report may have been intended to be read together with yet another cite to Hall's nineteenth-century text to bolster the government's conclusion that "[e]xperts in nationality and international law have long agreed that the risk of being born stateless was *particularly high* for a child born out of wedlock in a *jus sanguinis* country unless the child could obtain his mother's citizenship." U.S. Br. 35 (emphasis added). Amici are unaware of such an

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[15] "Stateless Children: A Comparative Study of National Legislations and Suggested Solutions to the Problem of Statelessness," *Int'l Union for Child Welfare* (1947).

[16] Comm. on Nationality & Statelessness of the Am. Branch of the Int'l Law Assoc., "Report on Nationality and Statelessness," 1950 Committee Report of the American Branch of the International Law Association (1950).

agreement, longstanding or otherwise. As for its substance, that sentence implicitly contradicts or renders irrelevant the assertion by the government that it is the law everywhere that the mother of a non-marital child passes on her citizenship to the child.

II

THE EVIDENCE DOES NOT SUPPORT THE GOVERNMENT'S IMPUTATION TO CONGRESS THAT IT ENACTED THE 1952 AMENDMENT WITH THE "SPECIFIC INTENT" TO REDUCE THE RISK THAT A CHILD BORN OUT OF WEDLOCK ABROAD TO A U.S.-CITIZEN MOTHER WOULD BE BORN STATELESS

The government argues: "Abundant evidence demonstrates that Congress was aware of and concerned about the problem of statelessness, and that Congress revised the relevant provisions [of the 1940 Act] in 1952 with the specific intent of reducing the risk that a child born out of wedlock abroad to a U.S.-citizen mother would be born stateless." U.S. Br. 36.

The government cites no direct evidence in support of such a "specific intent." *Id.* Instead, the government uses language indicative of post hoc attribution to impute that intent to Congress. *See, e.g.*, U.S. Br. 38 ("Congress understood"); *see also id.* at 26, 29.

The relevant chronology, the terms of the relevant congressional resolution, reports, statutes, and their legislative history, and relevant data from 1947 to 1952 negate the government's imputation. All point to a different, simpler congressional purpose.

Chronology

1. On July 26, 1947, the Senate adopted Resolution 137, calling for a report on displaced persons and also for a comprehensive review of the nation's immigration laws. S. Res. No. 137, 80th Cong. (1947).
2. On March 2, 1948, the Senate Judiciary Committee report on the subject of displaced persons, pursuant to Resolution 137, was published.
3. On June 25, 1948, Congress passed the Displaced Persons Act of 1948 (the "1948 Act"), Pub. L. No. 80-774, 62 Stat. 1009 (1948), which allowed the immigration of 200,000 European displaced persons into the United States by the end of 1950. *Id.* at § 3(a). The statute and legislative history contain many references to displaced persons and some references to stateless persons as well. The legislative history indicates:
    - At the end of WWII, there were 8,000,000 displaced persons in Europe, 7,000,000 of whom were repa-

triated to their home countries by mid-1947. S. Rep. No. 80-950 at 2037 (1948). A "displaced person" means a person who *de facto* "has been driven from his homeland or place of residence by war, internal upheaval or national disaster." *American Heritage Dictionary* (5th ed. 2001).

- There remained, as of 1947, approximately 800,000 displaced persons in "DP" camps, principally in Germany, but also in Austria and Italy.[17] Most were listed in Congressional documents as nationals of various European countries; a small fraction were listed as "stateless."[18] A "stateless person," as relates to this case and as used by the government in its brief, refers to the *de jure* status of a person who is "not considered as a national by any State under the operation of its law."[19]

4. On March 29, 1950, a 971-page report of the Senate Judiciary Committee (the

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[17] Hearing Before the Subcommittee on Immigration and Naturalization, Senate Judiciary Committee, 80th Congress 124 (1947).

[18] *E.g.*, *id.*

[19] Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117 (entered into force June 6, 1960).

"1950 Report"), the second of two reports responsive to Resolution 137, was published. S. Rep. No. 81-1515 (1950). It included a few minor, non-substantive references to "displaced persons" or "stateless" persons and one substantive reference, *id.* at 672, to a problem of statelessness, relating to an arcane issue about persons born in American Samoa of British Samoan heritage.

5. On June 16, 1950, after many criticisms of Congress for allegedly doing too little for victims of Nazi persecution in the 1948 Act, Congress passed an amendment. Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009 (1948), amended by Pub. L. No. 81-555, 64 Stat. 219 (1950). The amendment to the 1948 Act allowed 215,000 additional displaced persons to emigrate to the U.S. by the end of 1952. Pub. L. No. 81-555, §§ 3, 8, 10, 64 Stat. 219 (1950). The extensive legislative history of the amendment contains many references to displaced persons and several references to stateless persons among them. This statute, like the 1948 Act, implicitly treated nearly all of the covered prospective immigrants to the U.S. as nationals of their country of origin (hence, not "stateless") as their emigration to the U.S. was to be counted against the existing immigration quotas applicable to each

of those countries. Pub. L. No. 81-555, §§ 4, 10, 64 Stat. 219 (1950). H.R. Rep. No. 80-1854 at 1-3 (1948).

6. In late 1950 and during 1951, the U.S. Department of State officially disclosed its interpretation of Section 205a of the 1940 Act, which was contrary to that of the U.S. Department of Justice. *See In re M—*, 4 I. & N. Dec. 440 (B.I.A. 1951). In August 1951, the Board of Immigration Appeals published its decision, cited by the government, U.S. Br. 37, sharply ruling against the State Department's interpretation. *Id.*

7. In June 1952, Congress passed the McCarran-Walter Act. The Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (1952). After Congress overrode President Truman's veto, the 1952 Act became effective in December 1952. A word search of the 120-page statute and its extensive legislative history reveals scant, non-substantive, and—for these purposes—irrelevant references to "displaced persons."[20] There are a handful of non-substantive references to statelessness, including one administrative reference—in Section 281, relating to visa application fees.

[20] Most were references to the Displaced Persons Act of 1948, in a procedural or technical context.

Analysis

1. In its brief, the government begins attributing a specific intent to Congress to address the risk of statelessness for children of U.S.-citizen mothers in the 1952 Act by citing the 1947 Senate Resolution No. 137, and quoting from it the phrase "displaced persons." U.S. Br. 36. The government then proceeds to conflate "displaced persons" with "stateless persons" or "statelessness"—terms having quite different meanings—but treating the former as a complete proxy for the latter. *Id*. at 37. The government then jumps ahead five years in time and concludes, "Congress thus viewed the task of addressing problems of statelessness as *part and parcel* of the 1952 overhaul of the Nation's immigration and nationality laws." *Id*. (emphasis added).

The intervening events mentioned above negate this conclusion, by their stark contrast with the "1952 overhaul"—the government does not refer to the 1948 Judiciary Committee Report on displaced persons, the Displaced Persons Act of 1948 (and its legislative history), the 1950 lengthy amendment to the 1948 Act (and all of its legislative history), or the 971-page 1950 Senate Judiciary Committee report.[21] Unlike these reports and statutes, neither

[21] Later in its brief the government does refer once to the 1950 Report, erroneously asserting that at page 676 the Judiciary Committee "explained" the meaning of words quoted from Section 205 of the Nationality Act. In fact, the Judiciary Committee merely described Section 205 (neutrally and almost *in haec verba*) without "explanation," as part of a broader summary of who can be a citizen.

the 1952 Act itself nor the extensive supporting report of Senator McCarran cited by the government (the "1952 Report"), U.S. Br. 38-39, or anything else in the legislative history of the 1952 Act, includes any substantive mention of the word "stateless." Similarly, there is a paucity of substantive references to "displaced persons" in the 1952 Act and its legislative history.

There is ample reason for this paucity: neither "displaced persons" nor "stateless persons" were "part and parcel" of the 1952 Act as, by that time, their plight had been dramatically alleviated. Under the terms of the Displaced Persons Act of 1948, and as amended in 1950, the United States had absorbed (and would absorb by year-end 1952) over 400,000 displaced persons. By 1952, Australia had absorbed 170,000 displaced persons, most of these from Europe;[22] Israel had absorbed over 130,000 by that time;[23] and Canada, South Africa, and several Caribbean and Latin American countries, none of which had been a devastated war zone, had absorbed many thousands more.[24] The

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[22] Jayne Persian, *Displaced Persons and the Politics of International Categorisation(s)*, 58 Australian Journal of Politics and History 481 (2012).

[23] M. Web, *Guide to the Records of the Displaced Persons Camps and Centers in Germany 1945 – 1952*, Center for Jewish History (2014), http://findingaids.cjh.org/?pID=2142304 [hereinafter Web].

[24] *See, e.g.*, *Displaced Persons*, United States Holocaust Memorial Museum, https://www.ushmm.org/wlc/en/article.php?ModuleId=10005462 [hereinafter Displaced Persons—

last displaced person in the British sector of post-war Germany departed on August 15, 1951[25] and "[a]lmost all of the DP camps [throughout Europe] were closed by 1952."[26] As regards the group of Jewish Holocaust survivors, which had perhaps the most exigent need for displaced person or statelessness relief, the YIVO Institute for Jewish Research concludes, "The establishment of State of Israel in May 1948, aided by the introduction in the U.S. of the Displaced Persons Act of 1948 brought about the solution to the DP problem."[27] The overwhelming majority (perhaps even virtually all) of the remaining European displaced persons, whether they had been in DP camps or not, and whether stateless or not, had been or would be resettled by the end of 1952. The 1952 McCarran-Walter Act therefore was about different matters altogether.

2. In one instance, the 1952 Act did address an identifiable problem of "statelessness." That one instance further undermines the government's argument. The issue was this: in 1900, American Samoa became a U.S. possession and its residents

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USHMM]; *Refuge in Latin America*, United States Holocaust Memorial Museum, https://www.ushmm.org/wlc/en/article.php?ModuleId=10007824; *Brief History of Canada's Response to Refugees*, Canadian Council for Refugees, http://ccrweb.ca/sites/ccrweb.ca/files/static-files/canadarefugeeshistory.htm.

[25] Web, *supra* note 23.

[26] Displaced Persons—USHMM, *supra* note 24.

[27] Web, *supra* note 23.

and their progeny became U.S. nationals, but not citizens. Persons from British Samoa who later migrated to American Samoa—and their progeny, even if the progeny were born in American Samoa—were stateless by dint of the interaction of U.S. and British law at the time. And so, in the example cited to the Judiciary Committee in 1950, a soldier born in American Samoa who fought in the U.S. Armed Forces against Japan, but *one* of whose forebears came from British Samoa after 1900, was therefore not a U.S. national and could not migrate to Hawaii. S. Rep. No. 81-1515, at 672 (1950). The Committee suggested a statutory solution to such unintended statelessness consequences in its 1950 Report and that suggestion later was adopted in Section 308 of the 1952 Act. The 1950 Report used the word "stateless" repeatedly as to this issue—thus showing that when Congress had a "clear" purpose, U.S. Br. 38, to address a problem of statelessness, it said so.

3. The government nevertheless cites and underscores a sentence from the 1952 Report submitted by Senator McCarran describing the proposed 1952 Amendment. U.S. Br. 38, 39. It asserts that this one sentence, particularly the phrase "*insures that the child shall have a nationality at birth*," evinces Congress's "clear" purpose, *id.* at 38, for the 1952 Amendment to reduce statelessness.

The government's focus is misdirected. Properly viewed in context, the "insur[ance]" referred to was insurance against the undue *revocation* of the child's U.S. citizenship that it had previously

acquired "at birth"—a revocation never intended by Congress in the 1940 Act. Under the express words of Section 205 of the 1940 Act, a foreign-born non-marital child of a U.S.-citizen mother *already* acquired U.S. citizenship *at birth* from the mother. But the Department of State contended in 1951 that that child's citizenship was to be *divested* by Section 205 if, years later, the father legitimated the child. The U.S. Department of Justice, and the Board of Immigration Appeals, disagreed. In its August 1951 decision, the tribunal wrote that it could not

> believ[e] that it was the intent of Congress to first bestow United States citizenship status upon such child at birth and then, because of legitimation or adjudication of paternity during minority, take that citizenship status away and make the child an alien.[28]

This decision was published shortly before introduction of the bill that ultimately became Section 309(c) of the 1952 Act, which amended Section 205

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[28] *In re M—*, 4 I. & N. Dec. 440, 445 (B.I.A. 1951). As the use of the word "alien" in this quotation from the tribunal's decision makes plain, even adoption of the rejected State Department misinterpretation of Section 205 of the 1940 Act would not have meant that "Section 205 on its face present[ed] a real risk of statelessness." U.S. Br. 37. The child had been born in Portugal, a *jus soli* country, to a father of Portuguese nationality. *In re M—* at 441. Upon revocation of U.S. citizenship, the child thus would have become a U.S. alien with Portuguese nationality; the child would not have become stateless.

of the 1940 Act by supplanting the latter with the former.[29]

4. It requires no reach at all to conclude that the 1952 Amendment was but an unexceptional exercise of Congress' role to enact a clarifying amendment of an existing statute in order to permanently resolve a "definite difference of opinion," *In re M*— at 443, between two agencies about an interpretation of that statute—and, in this instance, to resolve it in a way to avoid the "many strange results," *id.* at 445, that the State Department's interpretation of the 1940 Act would have entailed (including, for example, the ongoing discouragement of fathers from marrying the U.S.-citizen mothers of their foreign-born children or legitimating those children).

CONCLUSION

There is no support for the government's assertion that the risk of statelessness for a foreign born, non-marital child was or is substantially greater when the U.S.-citizen parent is the mother rather than the father. There is a more than reasonable possibility that the discriminatory residence burdens imposed upon U.S. fathers by the Statute at Issue increased, and continue to increase, the incidence of statelessness for foreign-

[29] The tribunal ruled on August 3, 1951; the Amendment containing Section 309(c) of the Act entered the bill in October 1951, when it was introduced. H.R. 5678, 82nd Cong. § 309 (1951).

born, non-marital children with one U.S.-citizen parent. Nor is there support for the argument that the 1952 Amendment was intended to remedy statelessness risks for foreign-born, non-marital children of U.S.-citizen mothers.

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX OF FOREIGN LAWS

I. *Key to Secondary Sources Cited*

- *Acquisition and Loss of Nationality, Policies and Trends in 15 European States, Vol. 2: Country Analyses* (Rainer Bauböck, Eva Ersbøll, Kees Groenendijk & Harald Waldrauch eds., 2007) [hereinafter "Bauböck 2007"].
- Julia Breslin & Toby Jones, *Qatar*, *in Women's Rights in the Middle East and North Africa* 397 (Sanja Kelly & Julia Breslin eds., 2010) [hereinafter "Breslin"].
- Bureau of Democracy, Human Rights, & Labor, U.S. Dep't of State, *2009 Human Rights Report: Qatar* (Mar. 11, 2010), *available at* http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136078.htm [hereinafter "State Department Qatar"].
- *Citizenship Policies in the New Europe* (Rainer Bauböck, Bernhard Perchinig & Wiebke Sievers eds., expanded & updated ed. 2009) [hereinafter "Bauböck 2009"].
- *The Civil Code of Iran* (Mostafa Shahabi trans., 2007) [hereinafter "Shahabi"].
- *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties* (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929) [hereinafter "Flournoy"].

- Comm. on the Elimination of Discrimination against Women, *Combined initial and second periodic reports of states parties: Bahrain*, U.N. Doc. CEDAW/C/BHR/2 (Nov. 12, 2007), *available at* http://www.bayefsky.com//reports/bahrain_cedaw_c_bhr_2.pdf [hereinafter "CEDAW Bahrain"].
- Comm. on the Elimination of Discrimination against Women, *Initial periodic report of States parties: United Arab Emirates*, U.N. Doc. CEDAW/C/ARE/1 (Sept. 17, 2008), *available at* http://www.refworld.org/docid/4970841f2.html [hereinafter "CEDAW UAE"].
- Comm. on the Elimination of Racial Discrimination, *Initial periodic report of States parties due in 2004: Oman*, U.N. Doc. CERD/C/OMN/1 (Apr. 25, 2006), *available at* http://www.refworld.org/docid/453779830.html [hereinafter "CERD Oman"].
- Div. for the Dev. and Codification of Int'l Law, U.N. Legal Dep't, *Laws Concerning Nationality*, U.N. Doc. ST/LEG/SER.B/4, U.N. Sales No. 54.V.1 (1954) [hereinafter "Laws Concerning Nationality"].
- Laurie Fransman, *British Nationality Law* (2d ed. 1998) [hereinafter "Fransman"].
- J. Mervyn Jones, *British Nationality Law and Practice* (1947) [hereinafter "Jones"].

- Bronwen Manby, Open Society Inst., *Citizenship Law in Africa: A Comparative Study* (2010), *available at* http://www.unhcr.org/4cbc60ce6.pdf [hereinafter "Manby"].
- *Nationality and International Law in Asian Perspective* (Ko Swan Sik ed., 1990) [hereinafter "Sik"].
- Gianluca P. Parolin, *Citizenship in the Arab World* (2009) [hereinafter "Parolin"].

II. *Country by Country Citations*

AFGHANISTAN

- Afghan Nationality Law of November 8, 1936, ch. I, arts. 2, 4, 5, 11-12, *reprinted in* Laws Concerning Nationality at 1-4.

ANDORRA

- Décret du 17 Juin 1939, June 17, 1939, arts. I-II, VI (Andorra), *reprinted in* Laws Concerning Nationality at 9-10.

AUSTRALIA

- Nationality Act, 1920-1925, § 6 (Austl.), *reprinted in* Flournoy at 88-103, *discussed in* Jones at 270.

BAHRAIN

- Bahraini Citizenship Act, Sept. 16, 1963, arts. 4-5 (as amended 1981), *available at* http://www.unhcr.org/refworld/docid/3fb9f34f4.html.
- CEDAW Bahrain ¶ 78 (discussing the Bahraini Citizenship Act as amended through 1989).

BHUTAN

- Bhutan Citizenship Act, 1985, June 10, 1985, *available at* http://www.nab.gov.bt/assets/uploads/docs/acts/2014/Bhutan_Citizen_Act_1985Eng.pdf.

BRUNEI

- Brunei Nationality Act, 1984 ed., ch. 15, art. 4(1) (as amended 2002), *available at* http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97408/115570/F-2002352985/BRN97408.pdf.

BURMA (Myanmar)

- The Pyithu Hluttaw Law No. 4 of 1982 [Burma Citizenship Law], Oct. 15, 1982, ch. II, arts. 5-7, *available at* http://www.unhcr.org/refworld/docid/3ae6b4f71b.html.

CAMEROON

- Loi n° 1968-LF-3 du 11 juin 1968, Portant code de la nationalité camerounaise, July 15, 1968, §§ 6-8, 1968-LF-3 (Cameroon), *available at* http://www.refworld.org/docid/3ae6b4db1c.html.

CANADA

- Canadian Nationals Act of 1921, R.S.C., ch. 21 (1927) (in effect in 1940), *reprinted in* Flournoy at 86-87.

CEYLON (Sri Lanka)

- Citizenship Act, No. 18 of 21 September 1948, §§ 4, 5, 9, *as amended by* Citizenship Amendment Act, No. 40 of 1950 (Ceylon), *reprinted in* Laws Concerning Nationality at 83-91.

CHINA

- Nationality Act of 5 February 1929, chs. 1-3 (in force until 1949) (China), *reprinted in* Laws Concerning Nationality at 94-97.

EGYPT

- Decree Law No. 19, of February 27, 1929 (Egypt), *reprinted in* Flournoy at 225-30.

FINLAND

- Constitution of July 17, 1919, art. 4 (Fin.), *reprinted in* Flournoy at 237, *discussed in* Bauböck 2007 at 154.
- Law of June 17, 1927 Regarding the Loss of Finnish Citizenship, art. 2 (Fin.), *reprinted in* Flournoy at 239-40, *discussed in* Bauböck 2007 at 154.

GERMANY

- Law of Nationality of July 22, 1913, RGBI. 46 at 583, §§ 4-6, 17 (Germany), *reprinted in* Flournoy at 306-13.

HAITI

- Constitution of the Republic of Haiti, 1946, art. 4 (Professor David Baluarte's translation).

INDIA

- Sik at 69-70 (explaining applicability of U.K. law in 1940); Jones at 114, 232-35, 286-87 (same).

INDONESIA

- Act No. 3 of 10 April 1946 Concerning Citizens and Residents of Indonesia, arts. 1, 3 (Indon.), *reprinted in* Laws Concerning Nationality at 230-234, *discussed in* Sik at

34-35 (explaining law's applicability on federal level was unclear between 1949 and 1958 and was applied on a local level).

IRAN

- Qanun-i Madani [Civil Code], May 23, 1928, art. 976 (in effect in 1940) (Iran), *translated in* Shahabi at 113-14.

IRAQ

- Nationality Law of October 9, 1924, arts. 8-9 (in effect in 1940) (Iraq), *reprinted in* Laws Concerning Nationality at 241-42.

IRELAND

- Irish Nationality and Citizenship Act, 1935 (Act. No. 13/1935), §§ 2(1)-2(2), *reprinted in* Jones at 338-60, *discussed in* Bauböck 2007 at 295.

ISRAEL

- Nationality Law, 5712-1952, art. 46, LSI 50 (1951-52) (through 1980 amendments; art. 4 in effect in 2010) (Isr.), *available at* http://www.unhcr.org/refworld/docid/3ae6b4ec20.html.

JAPAN

- Law No. 66 of 1899 (last amended 1924) (Japan), *reprinted in* Flournoy at 382-86.

JORDAN

- Revised Draft of Trans-Jordan Nationality Law of 1 May 1928, art. 6 (in effect in 1940) (Jordan), *reprinted in* Laws Concerning Nationality at 274-76.

KOREA

- Nationality Law No. 16 of 20 December 1948 (Korea), *reprinted in* Laws Concerning Nationality at 280-83.

KUWAIT

- Nationality Law, 1959, arts. 2-3, 5 (Kuwait), *available at* http://www.unhcr.org/refworld/docid/3ae6b4ef1c.html.

LEBANON

- Legislative Decree 15 of 19 Jan 1925 (nationality), arts. 1-2 (Leb.), *available at* http://www.unhcr.org/refworld/docid/44a24c6c4.html.

LIBERIA

- Law of February 8, 1922, § 67 (Liber.), *reprinted in* Flournoy at 413-15.

LIBYA

- Law No. 1013, of June 26, 1927 Regarding Italian Lybian Citizenship, art. 29 (in effect in 1940) (Italian Lybia/Libya), *reprinted in* Flournoy at 379-80.

MAURITANIA

- Loi N° 1961-112, Loi portant code de la nationalité mauritanienne, art. 13 (Mauritania), 13 June 1961, *available at* http://www.unhcr.org/refworld/docid/3ae6b5304.html.

MEXICO

- Constitución Política de los Estados Unidos Mexicanos [Political Constitution of the United Mexican States], art. 30, *as amended* 1934, Diaro Oficial de la Federación, 5 de Febrero de 1917 (Mex.), *reprinted in* Laws Concerning Nationality at 307.

NEPAL

- Nepalese Citizenship Act 2009 V.S., 1952 (Nepal), *reprinted in* Laws Concerning Nationality at 320-21.

THE NETHERLANDS (including Aruba and Suriname in 1940)

- *Compare* 1892 Dutch Nationality Act, arts. 1-2 (as amended 1920) (Neth.), *reprinted in* Flournoy at 440-46, *and* 1892 Dutch Nationality Act, arts. 1-2 (as amended 1947) (Neth.), *reprinted in* Laws Concerning Nationality at 321-26, *discussed in* Bauböck 2007 at 393-95.

NEW ZEALAND

- British Nationality and Status of Aliens (in New Zealand) Act, 1928, 19 Geo. 5, c. 58, § 6, sched. 2, *reprinted in* Flournoy at 104-15, *discussed in* Jones at 270-71.

OMAN

- Omani Nationality Law No. 3/83 (as amended), 1983, art. 1, *discussed in* CERD Oman at 16.

PAKISTAN

- Pakistan Citizenship Act, No. II, of 13 April 1951, ¶ 5, *reprinted in* Laws Concerning Nationality at 361-66.
- Sik at 69-70 (explaining applicability of U.K. law in 1940); Jones at 114, 232-35, 286-87 (same).

QATAR

- Qatari Citizenship Act No. 38 of 2005, arts. 1-2, *discussed in* Parolin at 96-100; *discussed in* Breslin at 400; *discussed in* State Department Qatar.

ROMANIA

- Law of February 23, 1924, arts. 2, 36(b) (Rom.), *reprinted in* Flournoy at 497-508, *discussed in* Bauböck 2009 at 180-81 (noting that although a new citizenship law was passed in 1939 it "did not alter the main principles of ascribing citizenship").

SAUDI ARABIA

- Saudi Arabian Nationality Regulations, Council of Ministers Res. No. (4), 25/1/1374 (Sept. 23, 1954), arts. 7-8, *as amended by* Res. No. 210, 7/11/1379 (1959) (in effect in 2010) (Saudi Arabia), *available at* https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83623/92465/F2086231767/SAU83623.pdf.

SOMALIA

- Transitional Federal Charter for the Somali Republic, Feb. 2004, art. 10, *available at* http://www.unhcr.org/refworld/docid/4795c2d22.html.

SOUTH AFRICA

- Act No. 40, of November 11, 1927, ch. 1 (S. Afr.), *reprinted in* Flournoy at 127-29.

SUDAN

- Sudanese Nationality Act 1994, ch. 2 (last amended 2011), *available at* http://www.refworld.org/docid/503492892.html.

SWAZILAND

- Citizenships Order, 1974, Apr. 12, 1973, §§ 4-5 (Swaz.), *available at* http://www.unhcr.org/refworld/docid/3ae6b4fa20.html.
- Constitution of the Kingdom of Swaziland Act 2005, ch. 4, § 43 (in effect in 2010), *available at* http://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf.

SYRIA

- Nationality Act, Dec. No. 276/1969, art. 3, Nov. 24, 1969 (Syria), *available at* https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83625/92467/F153006838/SYR83625.pdf, *discussed in* Parolin at 96-99.

TAIWAN

- Nationality Act of 5 February 1929, chs. 1-3 (in force in China pre-1949, in force solely in Taiwan post-1949) (Taiwan), *reprinted in* Laws Concerning Nationality at 94-97, *explained in* Sik at 35-40.

THAILAND

- Nationality Act B.E. 2456 (1913) (Thail.), *explained in* Sik at 463-64.

TOGO

- Loi sur la nationalité togolaise, Sept. 11, 1978, art. 3 (Togo), *available at* http://www.unhcr.org/refworld/docid/3ae6b4d02c.html, *discussed in* Manby at 5.

UNITED ARAB EMIRATES

- Federal Act No. 17 of 1972, arts. 2, 17 (U.A.E.), *available at* http://www.lexismiddleeast.com/files/353289/9801I_LN_1972-11-18_00017_FL_En.pdf, *discussed in* CEDAW UAE at 39.

UNITED KINGDOM [Including the colonies and territories in 1940 which now comprise the Bahamas, Barbados, Belize, Bermuda, Botswana, British Virgin Islands, Cayman Islands, Gambia, Ghana, Guyana, Hong Kong, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Nigeria, Palestine, Seychelles, Sierra Leone, Singapore, Sudan, Swaziland, Tanzania, Trinidad & Tobago, Uganda, Zambia, and Zimbabwe]

- Nationality & Status of Aliens Act, 1914, 4 & 5 Geo. 5, c. 17, § 1 (U.K.), *reprinted in* Flournoy at 61-72, *discussed in* Jones at 113-57.
- Jones at 114, 232-35, 268-87 (discussing application of British Nationality & Status of Aliens Act to British Commonwealth colonies and territories); *see also* Fransman at 467-993 (discussing the colonial status of each of the British Commonwealth colonies and territories).

VIETNAM

- Code civil du Tonkin de 1931 (Vietnam), *reprinted in* Laws Concerning Nationality at 549-50.

YEMEN

- Law No. 6 of 1990 Concerning Yemeni Nationality, arts. 3-4, *available at* http://www.refworld.org/docid/3ae6b57b10.html (in effect in 2010).