

No. 09-5801

---

---

IN THE  
**Supreme Court of the United States**

---

---

RUBEN FLORES-VILLAR,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

---

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

---

---

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

---

---

Max Gitter\*  
Matthew C. Vogeles  
Rishi N. Zutshi  
Lisa M. Gouldy  
Ebunoluwa A. Taiwo  
CLEARY GOTTlieb STEEN & HAMILTON LLP  
One Liberty Plaza  
New York, New York 10006  
(212) 225-2610  
mgitter@cgsh.com

*Counsel for Amici Curiae*

*\*Counsel of Record*

June 24, 2010

---

---

## TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES .....	iii
INTEREST OF <i>AMICI CURIAE</i> .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	5
ARGUMENT.....	7
I. THERE WAS – AND CONTINUES TO BE – A SUBSTANTIAL RISK OF STATELESSNESS FOR CHILDREN BORN ABROAD OF UNMARRIED U.S. FATHERS.....	7
A. The Laws of Many Countries Created – as of 1940 and 1952 – and Still Create a Risk of Statelessness for the Children Born Abroad of Unmarried U.S. Fathers .....	8
B. The Government’s Reliance on the 1935 Article Is Misplaced for Other Reasons.....	15
C. The Presence of Large Numbers of Stateless Women Also Created and Creates a Risk of Statelessness for Non-Marital Children Born Abroad of U.S. Fathers .....	21

	<i>Page</i>
II. THERE WAS AND IS A SUBSTANTIAL RISK OF STATELESSNESS FOR CHILDREN BORN ABROAD OF MARRIED U.S. FATHERS .....	22
CONCLUSION.....	28
CERTIFICATION .....	29
APPENDIX OF FOREIGN LAWS.....	A1

## TABLE OF AUTHORITIES

	<i>Page(s)</i>
<b>Statutes</b>	
8 U.S.C. § 1401(a)(7) .....	passim
8 U.S.C. § 1401(g) .....	23
8 U.S.C. § 1409 .....	passim
Nationality Act of 1940, ch. 876, § 201(g), 54 Stat. 1139 .....	23
Laws of Foreign Countries .....	A4-A21
 <b>Other Authorities</b>	
<u>Acquisition and Loss of Nationality, Policies and Trends in 15 European States, Vol. 2: Country Analyses</u> (Rainer Bauböck, Eva Ersbøll, Kees Groenedijk & Harald Waldrauch eds., 2007) .....	
	A1
Alfred M. Boll, <u>Multiple Nationality and International Law</u> (2007) .....	
	A1
Julia Breslin & Toby Jones, “Qatar,” <u>in Women’s Rights in the Middle East and North Africa</u> 397 (Sanja Kelly & Julia Breslin eds., 2010) .....	
	A1
Bureau of Democracy, Human Rights, & Labor, U.S. Dep’t of State, <u>2009 Human Rights Report: Qatar</u> (Mar. 11, 2010) .....	
	A1

	<i>Page(s)</i>
<u>Citizenship Policies in the New Europe</u> (Rainer Bauböck, Bernhard Perchinig & Wiebke Sievers eds., expanded & updated ed. 2009) .....	A1
<u>The Civil Code of Iran</u> (Mostafa Shahabi trans., 2007) .....	A1
<u>A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties</u> (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).....	A2
Rupert Colville, <u>New Twist to a Sad Tale,</u> Refugees (UNHCR), Sept. 25, 2007, at 2 ...	21
Comm. on the Elimination of Discrimination against Women, <u>Combined Initial and Second Periodic Reports of States Parties: Bahrain</u> , U.N. Doc. CEDAW/C/BHR/2 (Nov. 12, 2007) .....	A2
Comm. on the Elimination of Discrimination against Women, <u>Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Libyan Arab Jamahiriya</u> , U.N. Doc. CEDAW/C/ LBY/CO/5 (Feb. 6, 2009).....	A2
Comm. on the Elimination of Discrimination against Women, <u>Initial Periodic Report of States Parties: United Arab Emirates</u> , U.N. Doc. CEDAW/C/ARE/1 (Sept. 17, 2008) ...	A2

	<i>Page(s)</i>
Comm. on the Elimination of Racial Discrimination, <u>Initial Periodic Report of States Parties due in 2004: Oman</u> , U.N. Doc. CERD/C/OMN/1 (Apr. 25, 2006) .....	A2
Comm. on the Rights of the Child, <u>Consideration of Reports Submitted By States Parties Under Article 44 of the Convention, Concluding Observations: Libyan Arab Jamahiriya</u> , U.N. Doc. CRC/C/15/Add. 209 (July 4, 2003) .....	A3
Dilek Çinar & Harald Waldrauch, “Austria,” in <u>Acquisition and Loss of Nationality, Policies and Trends in 15 European States, Vol. 2: Country Analyses</u> (Rainer Bauböck, Eva Ersbøll, Kees Groenedijk & Harald Waldrauch eds., 2007).....	19
Div. for the Dev. and Codification of Int’l Law, U.N. Legal Dep’t, <u>Laws Concerning Nationality</u> , U.N. Doc. ST/LEG/SER.B/4, U.N. Sales No. 54.V.1 (1954) .....	19-20, A3
Div. of Programme Support & Mgmt., U.N. High Comm’r for Refugees, <u>2009 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons</u> (2010).....	15, 21
Laurie Fransman, <u>British Nationality Law</u> (2d ed. 1998).....	A3
J. Mervyn Jones, <u>British Nationality Law and Practice</u> (1947) .....	A3

	<i>Page(s)</i>
Raphaël Lemkin, <u>Axis Rule in Occupied Europe</u> (The Lawbook Exchange 2005) (1944) .....	19
Bronwen Manby, Open Society Inst., <u>Citizenship Law in Africa: A Comparative Study</u> (2009) .....	A3
Prachi Mishra, <u>Emigration and Brain Drain: Evidence From the Caribbean</u> (IMF Working Paper, No. WP/06/25, 2006) .....	15
<u>Nationality and International Law in Asian Perspective</u> (Ko Swan Sik ed., 1990).....	A3
Gianluca P. Parolin, <u>Citizenship in the Arab World</u> (2009).....	A3
Durward V. Sandifer, <u>A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality</u> , 29 Am. J. Int'l L. 248 (1935) .....	passim
Catheryn Seckler-Hudson, <u>Statelessness: With Special Reference to the United States</u> (1934) .....	6
Charles Sudetic, "Historical Setting," in <u>Albania: A Country Study</u> (Raymond Zickel & Walter R. Iwaskiw eds., Library of Congress 1992) .....	19

	<i>Page(s)</i>
<u>To Revise and Codify the Nationality Laws of the U.S. Into a Comprehensive Nationality Code: Hearings Before the House Comm. on Immigration and Naturalization, 76th Cong. 431 (1945) .....</u>	5
U.N. Econ. & Soc. Council, <u>A Study of Statelessness</u> , U.N. Doc. E/1112 (1949) .....	22
Laura van Waas, <u>Nationality Matters: Statelessness Under International Law</u> (2008) .....	21
World Bank, <u>Refugee Population by Country or Territory of Origin</u> .....	15

**BRIEF OF *AMICI CURIAE* SCHOLARS  
ON STATELESSNESS  
IN SUPPORT OF PETITIONER<sup>1</sup>**

---

**INTEREST OF *AMICI CURIAE***

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:

- **Dr. Alice Edwards** is a member of the Faculty of Law at the University of Oxford, where she is Lecturer in International Refugee and Human Rights Law at the university's Refugee Studies Centre. She teaches an external short course specifically devoted to statelessness, the only one in the world, and other courses that have modules on statelessness. Among her many publications, she authored a paper for the United Nations High Commissioner for Refugees (for whom she has served as a legal adviser) entitled, Displacement, Statelessness and Questions of Gender Equality under the United Nations Convention on the Elimina-

---

<sup>1</sup> 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.

tion of All Forms of Discrimination against Women (2009). In 2010, she was awarded a British Academy grant to continue her work on questions of “effective nationality” and de facto statelessness. More information is available at: <http://www.rsc.ox.ac.uk/index.html?edwards>.

- **Jacqueline Bhabha** is the Jeremiah Smith Jr. Lecturer in Law at Harvard Law School, the Director of the Harvard University Committee on Human Rights Studies, and a Lecturer in Public Policy at the Kennedy School, where she teaches courses on refugees and international law. Her writings on issues of migration and asylum in Europe and the United States include a coauthored book, Women’s Movement: Women Under Immigration, Nationality and Refugee Law (1994), an edited volume, Asylum Law And Practice in Europe and North America (1992), a book chapter entitled, The “Mere Fortuity of Birth?”: Children, Borders, and the Right to Citizenship (2009), discussing the issue of statelessness, and an edited volume, Children Without a State: A Global Human Rights Challenge (forthcoming 2011). More information is available at: <http://www.hks.harvard.edu/about/faculty-staff-directory/jacqueline-bhabha>.
- **Kim Rubenstein** is a Professor and Director of the Centre for International and Public Law (CIPL) at the Australian National University College of Law. She has particular

expertise in citizenship laws, and her book Australian Citizenship Law in Context (2002) is a seminal work. Professor Rubenstein is the co-editor of the Cambridge University Press series Connecting International Law with Public Law. 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 2002-2003 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: <http://law.anu.edu.au/scripts/StaffDetails.asp?StaffID=378>.

- **Audrey Macklin** is a Professor at the Faculty of Law at the University of Toronto where she teaches courses on immigration and refugee law and administrative law. Professor Macklin 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, Law Commission of Canada, and 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\\_content.asp?profile=36&cType=facMembers&item-Path=1/3/4/0/0](http://www.law.utoronto.ca/faculty_content.asp?profile=36&cType=facMembers&item-Path=1/3/4/0/0).

- **David Baluarte** is a member of the faculty at the American University Washington College of Law, where he teaches in the International Human Rights Law Clinic. He has worked extensively on issues of statelessness in the Dominican Republic, producing numerous analyses of that country's immigration and nationality laws and recent constitutional reform in the context of litigating the implementation phase of the landmark decision of the Inter-American Court for Human Rights, Yean and Bosico v. Dominican Republic (2005). Recently, he has acted as a consultant for the Equal Rights Trust and produced a regional study of statelessness in North and South America, surveying the regions' immigration and nationality laws and assessing the level of protection provided to stateless persons.

Amici submit this brief to bring to the attention of this Court data and citations pertinent to the assertion by Respondent United States government that a valid congressional concern about statelessness justifies the discrimination against U.S. citizen fathers embodied in 8 U.S.C. §§ 1401(a)(7) and 1409(a), (c) (1974) (the "Statute at Issue").

## INTRODUCTION AND SUMMARY OF ARGUMENT

A principal justification asserted by the U.S. government and the United States Court of Appeals for the Ninth Circuit for the discrimination against U.S. citizen fathers worked by the Statute at Issue, and which this brief addresses, is to prevent statelessness in non-marital children born abroad. Specifically, the government asserts: “[T]he risk that a child who is born abroad to unmarried parents will be rendered stateless is much higher when his mother is a United States citizen [than when his father is a U.S. citizen].” U.S. Br. Opp’n to Cert. 15 (emphasis added).

Amici are aware of no study or compilation of data that establishes or supports this assertion. The one source cited by the government and the Court of Appeals does not do so. That source is a brief passage on one page of a transcript of the 1940 hearings on the Statute at Issue that in turn references one page of a 1935 law review article – a page that does not deal with or mention statelessness. To Revise and Codify the Nationality Laws of the U.S. Into a Comprehensive Nationality Code: Hearings Before the House Comm. on Immigration and Naturalization, 76th Cong. 431 (1945); 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, 258-59 (1935) (the “1935 Article”).

Viewed in totality, the evidence about the factors relevant to statelessness demonstrates that the 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 Petitioner), and remains as of today, substantial for unmarried U.S. fathers, a risk equal to or perhaps greater than that for unmarried U.S. mothers.<sup>2</sup> Those factors include not only the citizenship/nationality<sup>3</sup> laws of other countries but also a factor ignored by the government – the existence of large populations of stateless women abroad. The relevant data suggest 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 total pool of stateless children by making it more difficult (and in some cases, such as this one, impossible) for U.S. fathers who have undertaken the burdens of establishing paternity and providing financial support to pass on their U.S. citizenship to their non-marital children born abroad.

---

<sup>2</sup> For an earlier historical perspective, see generally Catheryn Seckler-Hudson, Statelessness: With Special Reference to the United States 220-21 (1934) (discussing risks of statelessness for foreign-born non-marital children of United States citizen fathers and foreign mothers).

<sup>3</sup> The terms “citizenship” and “nationality” are used interchangeably for purposes of this brief, except with regard to British Commonwealth dominions, colonies and territories, where “nationality” is used.

**ARGUMENT****I****THERE WAS – AND CONTINUES TO BE –  
A SUBSTANTIAL RISK OF STATELESSNESS  
FOR CHILDREN BORN ABROAD OF  
UNMARRIED U.S. FATHERS**

The citizenship laws of many countries – and other factors – show that U.S. citizen fathers, if hindered as they have been by the residence strictures of the Statute at Issue in passing on their U.S. citizenship, create a significant risk of stateless non-marital children born abroad. The Court of Appeals below, and the U.S. government now, ignore all but one of the factors, and they also overlook key evidence about the one factor on which they do focus, *i.e.*, certain categories of laws of selected countries mentioned on one page of the 1935 Article, and even language on the next page of the article. It is important to bear in mind throughout that the discriminatory residence requirements at issue do not come into play unless the U.S. father has established paternity and agreed to provide financial support. See 8 U.S.C. § 1409(a). Moreover, in some cases, such as applied to petitioner, the residence requirements could not physically be met because of age limitations requiring at least five years of the residence to accrue after the age of fourteen years.

**A. The Laws of Many Countries Created – as of 1940 and 1952 – and Still Create a Risk of Statelessness for the Children Born Abroad of Unmarried U.S. Fathers**

The government acknowledges that when the law of a country does not permit the mother to assign her nationality to a non-marital child, the government's rationale for discrimination against fathers is undermined. U.S. Br. Opp'n to Cert. at 15 & n.7. The government presumes that only one such country, Iran, does or did so. *Id.* at 15. The government's presumption is incorrect.

In fact, the laws of many countries do not (which, for this purpose, includes did not) permit their citizen mothers to assign their citizenship to a non-marital child born within the mother's country.<sup>4</sup> 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

---

<sup>4</sup> Amici have reviewed the relevant statutes of the countries cited herein. They 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 to do so as far as possible. Those secondary sources are identified in the Appendix, both generally, and on a country-by-country basis.

so when the alien father legitimates the child; and some countries 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 in fact to pass on his citizenship.<sup>5</sup> 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) (A4);<sup>6</sup> **Bahrain** (as of 2010) (mother may not pass citizenship unless father is unknown or stateless or fatherhood is not substantiated) (A4); **Bhutan** (as of 2010) (requiring both parents to be citizens) (A5); **Burma (Myanmar)** (as of 2010) (requiring both parents to be citizens) (A6); **Cameroon** (as of 2010) (mother may not pass citizenship unless father is stateless or of unknown nationality or did not filiate first) (A6); **Ceylon (Sri Lanka)** (as of 1952) (mother may not pass citizenship unless father has not legitimated) (A7); **China** (as of 1940) (mother may not pass citizenship unless father is unknown or stateless or has not legitimated) (A7); **Egypt** (as of 1940) (mother may not pass citizenship if paternity is established) (A7); **Finland** (as of 1940) (requiring both parents to be citizens, except that if father of non-marital child loses Finnish nationality in certain circum-

---

<sup>5</sup> Several countries make exceptions for certain categories of alien fathers, such as fathers from certain ethnicities, but to our knowledge none excepts U.S. fathers. See, e.g., Egypt (A7).

<sup>6</sup> A\_ refers to the page number of the Appendix that contains the relevant statutory (or constitutional) citations and/or secondary source for each country.

stances child retains citizenship of Finnish mother) (A7-A8); **Germany** (as of 1940) (citizenship through mother lost upon father's legitimation) (A8); **Guinea** (as of 2010) (recognizing nationality of the parent that first filiated) (A9); **Iran** (as of 1940 and 2010) (mother can never pass citizenship at birth, though child can apply for citizenship at age 18) (A9-A10); **Iraq** (as of 1940 and until 2005) (mother can never pass citizenship at birth, though child can obtain citizenship after reaching age of majority) (A10); **Japan** (as of 1940) (mother may not pass citizenship unless father is stateless or cannot be identified) (A11); **Trans-Jordan** (as of 1940) (mother can never pass citizenship at birth) (A11); **Jordan** (as of 2010) (mother may not pass citizenship unless father is stateless or of unknown nationality or has not filiated) (A11); **Korea** (as of 1952) (mother may not pass citizenship unless father is unknown or stateless) (A12); **Kuwait** (as of 2010) (mother may not ask Ministry of Interior for permission to pass citizenship unless father is unknown or father's kinship has not been legally established) (A12); the **Netherlands** (together with **Aruba** and **Suriname**, which were then under Dutch rule) (as of 1940) (mother may not pass citizenship unless father has not acknowledged child) (A14); **Oman** (as of 2010) (mother may not pass citizenship unless father is unknown or stateless) (A15); **Qatar** (as of 2010) (mother can never pass citizenship) (A16); **Romania** (as of 1940) (citizenship through mother lost upon legitimation) (A16); **Saudi Arabia** (as of 2010) (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) (A17); **Senegal** (as of 2010) (mother may not pass citizenship unless she filiates first or unless father is stateless or of unknown nationality) (A17); **Sudan** (as of 2010) (mother may not pass citizenship) (A17); **Swaziland** (as of 2010) (mother may not pass citizenship unless father fails to claim or adopt) (A18); **Taiwan** (as of 1952) (mother may not pass citizenship unless father is unknown or stateless or has not legitimated) (A19); **Togo** (as of 2010) (mother may not pass citizenship unless father is stateless or of unknown nationality) (A19); **United Arab Emirates** (as of 2010) (mother may not pass citizenship unless father is unknown) (A20); and **Yemen** (as of 2010) (mother may not pass citizenship unless father is not legally established or is stateless or of unknown nationality) (A21).<sup>7</sup>

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 satisfy the discriminatory residence tests in the Statute at Issue.

---

<sup>7</sup> Throughout the brief, in some of the countries cited 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 actually would divest the child of its mother's citizenship if the child is legitimated by an alien father.

Also significant, as of 1940 the statutes of more than three dozen countries (including nearly all of the British Commonwealth dominions and colonies which held 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 1935 Article and the government ignore this category of laws. 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 can never pass citizenship to child born abroad) (A4); **Australia** (as of 1940) (mother can never pass nationality to child born abroad) (A4); **Brunei** (as of 2010) (mother can never pass citizenship to child born abroad) (A5); **Canada**<sup>8</sup> (as of 1940) (mother can never pass nationality to child born abroad) and (as of 2010) (citizenship by descent is limited to only one generation born abroad) (A6); **India** (as of 1940 and 1952) (first under U.K. law, and later under independent domestic law, mother can never pass nationality to child born abroad) (A9); **Indonesia** (as of 1952) (*jus soli* but mother may not pass citizenship unless she is sole legally acknowledged parent) (A9); **Ireland** (as of 1940)

---

<sup>8</sup> While the citizenship laws of some countries, including Canada and Israel as of 2010, treat mothers and fathers the same for the purposes of transmission of citizenship to non-marital children born abroad, they are listed because of the restrictions they impose on births abroad.

(mother can never pass nationality to child born abroad) (A10); **Israel** (as of 2010) (citizenship by descent is limited to only one generation born abroad) (A10); **Kenya** (as of 2010) (mother can never pass citizenship to child born abroad) (A11); **Lebanon** (as of 2010) (mother cannot pass citizenship if father has filiated at the time of birth) (A12); **Liberia** (as of 1940) (mother can never pass citizenship to child born abroad) (A12); **Libya** (as of 1940 and 2010) (mother can never pass citizenship to child born abroad) (A12); **Mauritania** (as of 2010) (mother can never pass citizenship at birth to child born abroad, though child can apply for citizenship in the year preceding the age of majority) (A13); **Mexico** (as of 1940) (mother may not pass citizenship to child born abroad unless father is unknown) (A13); **Nepal** (as of 1952 and 2010) (mother can never pass citizenship to child born abroad) (A14); **New Zealand** (as of 1940) (mother can never pass nationality to child born abroad) (A14); **Pakistan** (including the territory that later became **Bangladesh**) (as of 1940 and 1952) (first under U.K. law, and later under independent domestic law, mother can never pass nationality to child born abroad) (A15); **Somalia** (as of 2010) (mother can never pass citizenship to child born abroad) (A17); **South Africa** (as of 1940) (mother can never pass nationality to child born abroad) (A17); **Suriname** (as of 2010) (mother cannot pass citizenship to child born abroad if the child is acknowledged) (A18); **Syria** (as of 2010) (mother can never pass citizenship to child born abroad) (A18); **Thailand** (as of 1940) (mother cannot pass

citizenship to child born abroad unless father is unknown) and (as of 1952) (mother cannot pass citizenship to child born abroad unless father is unknown or stateless) (A19); **Trinidad and Tobago** (as of 2010) (mother cannot pass citizenship to child born abroad if paternity is admitted or established) (A19); **Tunisia** (as of 2010) (mother cannot pass citizenship to child born abroad unless father is unknown, stateless, or of unknown nationality) (A20); **Vietnam** (as of 1940) (mother cannot pass citizenship to a child born abroad in a non-*jus soli* country unless father is unknown) (A21); and the **United Kingdom** (and at least the following British Commonwealth colonies and territories<sup>9</sup> that applied U.K. law: the **Bahamas, Barbados, Belize, Bermuda, Botswana, British Virgin Islands, Cayman Islands, Gambia, Ghana, Guyana, Hong Kong, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Nigeria, Palestine, Seychelles, Sierra Leone, Singapore, Sudan, Swaziland, Tanzania, Trinidad and Tobago, Uganda, Zambia, and Zimbabwe**) (as of 1940) (mother can never pass nationality to child born abroad) (A20).

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* pp. 21-22 and note 13. It is also significant today because of the large number of citizens from some of those

---

<sup>9</sup> This brief uses the contemporary names of these states, some of which had different colonial names in 1940.

countries who live abroad either as migrant workers or refugees (including stateless refugees) – e.g., Jamaica, Kenya, Lebanon, Mauritania, Somalia, and Syria.<sup>10</sup>

Virtually none of the laws discussed above, which posed and continue to pose a risk of statelessness for children of U.S. fathers, are included in the list of countries identified in the 1935 Article.

### **B. The Government’s Reliance on the 1935 Article Is Misplaced for Other Reasons**

As we have seen, the 1935 Article cited by the government for its conclusion of a “much higher” risk for U.S. mothers ignores the laws of many countries that did not or do not assign the mother’s

---

<sup>10</sup> See Div. of Programme Support & Mgmt., U.N. High Comm’r for Refugees [UNHCR], 2009 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons (2010), available at <http://www.unhcr.org/4c11f0be9.pdf> (listing Somalia as the third largest producer of refugees as of 2008 with 678,300 refugees and discussing Kenya as a major refugee producing country in 2008 arising from election violence, producing 9,620 refugees and accounting for 15,400 new asylum applications); The World Bank, Refugee Population by Country or Territory of Origin, available at <http://data.worldbank.org/indicator/SM.POP.REFG.OR> (for 2008, listing Lebanon as the country of origin for 12,967 refugees, Mauritania for 45,601, Somalia for 561,155, and Syria for 15,211); 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).

citizenship in cases of non-marital births, or if they did or do permit the mother to pass citizenship to non-marital children, it was or is in limited circumstances. There are other reasons why the government's reliance on that excerpt from the 1935 Article is misplaced.

First, the government, paraphrasing one sentence in the 1935 Article, says: "in approximately 30 nations, a child born out of wedlock was given the citizenship of the mother (subject, in most but not all cases, to taking the citizenship of the father in the event of legitimation)." U.S. Br. Opp'n to Cert. at 13-14. In fact, the relevant sentence states: "The laws of approximately thirty countries provide for nationality of illegitimate children, in the absence of acknowledgement or legitimation . . . such children follow the mother's nationality . . ." 1935 Article at 258. It certainly does not follow, as the government goes on to say, that "the result . . . was to create a risk of statelessness among the foreign-born children of unwed United States citizen mothers" and that that risk is "much higher" for U.S. mothers than U.S. fathers. Id. at 14-15. Notably, the author of the 1935 Article does not purport to claim that children born to a U.S. mother and local father in these 30 countries would become stateless. The sentence paraphrased by the government merely claims that the *jus sanguinis* sections of the laws of those 30 countries favored passage of the mother's citizenship in the case of illegitimate children, but in fact many of those statutes also contained partial *jus soli* provisions

that would bestow citizenship upon a child born within that country under certain circumstances. For instance, the statutes of Italy (A11) and France (A8) provided that a child born domestically that did not otherwise obtain the citizenship of its parents would become a citizen.

Further, as the author of the article goes on to point out, “[t]he majority rule with respect to legal recognition or legitimation is that the child takes the father’s nationality.” 1935 Article at 259. The footnote to this sentence cites the statutes of sixteen countries with laws that dealt with out-of-wedlock births and followed this majority rule. *Id.* at 259 n.40. These sixteen countries include China (A7), Germany (A8), and Romania (A16), all of which stripped the child of its mother’s citizenship upon legitimation by an alien father. For example, in Germany in 1940 (and as of 1952) the “illegitimate child of a German woman” would ordinarily at birth acquire the “citizenship of the mother.” Law of Nationality of July 22, 1913, RGBI. 46 at 583, § 4 (Germany) (A8). However, upon the “legitimation” of that child by a “foreigner,” if such legitimation was effective under German law, the child would actually lose its German citizenship – regardless of whether it could thereby obtain the citizenship of its newly legitimizing father. *Id.* at § 17(5). Other countries that divested – or now divest – a non-marital child of citizenship originally passed to it through the mother, upon acknowledgment or legitimation by an alien father, include: **Ceylon (Sri Lanka)** (as of 1952) (non-marital child only

takes mother's nationality if not "legitimated") (A7); **Egypt** (as of 1940) (non-marital child does not take the mother's nationality if paternity is established) (A7); the **Netherlands** and the countries following its law (as of 1940) (non-marital child only takes mother's nationality if "not acknowledged") (A14); **Poland** (as of 1940) (non-marital child takes father's citizenship if legitimated) (A15); **Senegal** (as of 2010) (non-marital child who is legitimated during childhood acquires Senegalese nationality if father is Senegalese) (A17); **Taiwan** (as of 1940) (applying Chinese law) (A19); and **Tunisia** (as of 2010) (non-marital child is considered to have never been Tunisian if foreign father's paternity is established) (A20).

The 1935 Article goes on to identify seven additional countries with laws that created yet an additional risk of statelessness for non-marital children born to U.S. fathers: "in case of legal acknowledgment or recognition, the nationality of the parent whose relationship is first legally established prevails, unless that of both is established by the same instrument, or simultaneously, in which case the nationality of the father takes precedence . . . ." 1935 Article at 259.

Moreover, when the author earlier in the article discusses children born in wedlock, rather than out of wedlock, he states: "[B]y far the larger number follow the rule of descent through the father," noting that 47 countries had rules passing nationality through descent from the father while also noting that only "nine countries have specific conditional

rules of *jus sanguinis* under which nationality is acquired by descent from the mother.” Id. at 254, 256.

In sum, the 1935 Article, read in its entirety, and even taken on its own terms, indicates a substantial risk of statelessness under the laws of many countries for the children of U.S. fathers born abroad – both in wedlock, and also, as in the situation at bar, out of wedlock, when the father has acknowledged his paternity or it has otherwise been established.

Second, several of the laws regarding non-marital births in the 30-some countries referenced in the 1935 Article were rendered somewhat irrelevant to the issue of statelessness for children of U.S. mothers by 1940, and for a period thereafter, because several of the countries listed were under Axis occupation or had been absorbed into the Soviet Union by 1940.<sup>11</sup> Today, the list of laws from 30-odd

---

<sup>11</sup> By 1940, Austria and Danzig were under occupation by Germany and applied German law, and Albania had been invaded by Italy and ceased to exist as an independent country. Dilek Çinar & Harald Waldrauch, “Austria,” in Acquisition and Loss of Nationality, Policies and Trends in 15 European States, Vol. 2: Country Analyses 19, 24 (Rainer Bauböck, Eva Ersbøll, Kees Groenedijk & Harald Waldrauch eds., 2007); Raphaël Lemkin, Axis Rule in Occupied Europe 155-56 (The Lawbook Exchange 2005) (1944) (Danzig); Charles Sudetic, “Historical Setting,” in Albania: A Country Study (Raymond Zickel & Walter R. Iwaskiw eds., Library of Congress 1992), available at <http://lcweb2.loc.gov/frd/cs/altoc.html>. Estonia and Lithuania had been absorbed into the Soviet Union by 1940 and applied Soviet citizenship law. See Decree of 7 September 1940, Concerning the Acquisition of

countries cited in the article has become even less relevant to issues of statelessness for children born abroad to U.S. mothers, because the citizenship laws of many countries have been materially amended – e.g., Estonia (A7); Lithuania (A13) – or now include fail-safe mechanisms to guard against statelessness for children born in those countries – e.g., Bulgaria (A5-A6); France (A8); Greece (A8); and Portugal (A16).

Third, in the paragraph immediately preceding the identification of the “approximately thirty countries” on which the government relies, the 1935 Article explains that the laws of approximately 40 other countries made no provision for “an illegitimate child [to take] the nationality of the mother.” 1935 Article at 258. Thus, to the extent the government relies on the laws of the 30 countries cited in the article as providing a full sample, that reliance is further misplaced. In fact, the article indicates that countries making no such specific provision for illegitimate children outnumbered those that permitted the nationality of the mother to be transmitted to such children.

---

USSR Citizenship by Nationals of the Lithuanian, Latvian and Estonian Soviet Socialist Republics (U.S.S.R.), reprinted in Div. for the Dev. and Codification of Int'l Law, U.N. Legal Dep't, Laws Concerning Nationality 463, U.N. Doc. ST/LEG/SER.B/4, U.N. Sales No. 54.V.1 (1954).

**C. The Presence of Large Numbers of Stateless Women Also Created and Creates a Risk of Statelessness for Non-Marital Children Born Abroad of U.S. Fathers**

When the mother is stateless, the residence burdens created for 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 the father in determining the citizenship of a non-marital child.

Today, it is estimated that there are between 6.6 million and 15 million stateless persons.<sup>12</sup> 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 non-marital children born abroad to U.S. fathers. That risk was especially severe in the period starting before World War II and through the 1940s. The

---

<sup>12</sup> UNHCR, 2009 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons, (2010) (stating that 6.6 million stateless persons have been reliably identified in sixty countries and estimating twice that number of stateless persons worldwide, not including stateless refugees and asylum-seekers); Rupert Colville, New Twist to a Sad Tale, Refugees (UNHCR), Sept. 25, 2007, at 2, available at <http://www.unhcr.org/46d2e8dc2.html> (“[UNHCR] believes the true total may be closer to 15 million.”). 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”).

dislocations of war, wartime changes in citizenship laws, the stripping of citizenship rights from some citizens, and other factors created vast numbers of female refugees/stateless women in Europe and Asia,<sup>13</sup> and therefore a prescription for the Statute at Issue to exacerbate the risk of statelessness for children.

## II

### **THERE WAS AND IS A SUBSTANTIAL RISK OF STATELESSNESS FOR CHILDREN BORN ABROAD OF MARRIED U.S. FATHERS**

The government argues, in effect, that the residence requirements in the Statute at Issue are based on the concept that different residence burdens for mothers and fathers are called for when the risk that a child born to such parent will be rendered stateless is much higher for one gender

---

<sup>13</sup> A 1949 United Nations report on statelessness provided the following overview of the problem:

In 1937 France had to take in over 100,000 Spanish Republicans and in 1939, over 400,000. Since that time Spanish refugees have continued to enter clandestinely. Immediately before and during the Second World War the exodus of Germans opposed to nazism and fascism and of persecuted Jews from the Axis countries and the occupied territories greatly increased. In the Far East population movements occurred as a result of Japanese aggression. At the present time an interrupted stream of refugees from the East European countries is flowing towards the West.

U.N. Econ. & Soc. Council, A Study of Statelessness, § II, ¶ 1, U.N. Doc. E/1112 (1949).

than for the other. As just discussed, in the context of unmarried parents the government's argument is not supported by the evidence. The government rationale is further weakened by the fact that, in the context of a married U.S. citizen having a child abroad with a foreign spouse, the Statute at Issue imposes equal residence burdens for U.S. mothers and U.S. fathers despite the fact that the state of the law abroad creates, and created in 1940, a greater risk of parenting stateless children abroad for U.S. fathers married to foreign citizens than for similarly situated U.S. mothers.<sup>14</sup>

At least the following countries did not, or today do not, permit their female nationals to pass their citizenship to a child born in a marriage to a foreign national, despite the fact that they do permit their male nationals to pass their citizenship to a

---

<sup>14</sup> In 1940 the Statute at Issue imposed, and still imposes today, equal residency burdens on U.S. citizen mothers and fathers married to foreign citizens in order for the U.S. parent to pass on his or her nationality to a child born abroad. In 1940, the Statute at Issue provided that a U.S. citizen parent (of either sex) married to a foreign citizen must have had "ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years" in order to pass his or her U.S. nationality to a child born abroad. Nationality Act of 1940, ch. 876, § 201(g), 54 Stat. 1139. The Statute at Issue currently provides that a U.S. citizen parent (of either sex) married to a foreign citizen must have been "physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years" in order to pass his or her U.S. nationality to a child born abroad. 8 U.S.C. § 1401(g).

child born in marriage to a foreign national: **Afghanistan** (as of 1940 and 2010) (in country, mother loses Afghan citizenship upon marrying and thus cannot pass citizenship, although child will still be Afghan if either parent was born in Afghanistan and lived there continuously; abroad, mother cannot pass citizenship) (A4); **Bahrain** (as of 2010) (mother loses Bahraini citizenship upon marrying and thus cannot pass citizenship) (A4); **Belgium** (as of 1940) (married mother cannot pass citizenship but child, if born in Belgium, may apply for citizenship if certain residence requirements are met) (A5); **Brazil** (as of 1940) (married mother may not pass citizenship to child born abroad) (A5); **Ceylon (Sri Lanka)** (as of 1952) (married mother may not pass citizenship) (A7); **El Salvador** (as of 1940) (married mother may not pass citizenship to child born abroad) (A7); **Germany** and **Austria** (as of 1940) (all foreign women marrying a German man become German, and all German women marrying a foreign man lose their citizenship) (A8, A4); **Guatemala** (as of 1940) (*jus soli*, but married mother may not pass citizenship to child born abroad) (A8-A9); **Iran** (as of 2010) (married mother cannot pass citizenship at birth, but child, if born in Iran, may apply for citizenship at age 18) (A9-A10); **Iraq** (as of 1940 and until 2005) (married mother cannot pass citizenship at birth, but child, if born in Iraq, may obtain citizenship after reaching age of majority) (A10); **Jordan** (as of 2010) (married mother cannot pass citizenship unless child is born in country and father is stateless) (A11); **Kiribati** (as of 2010) (married

mother cannot pass citizenship) (A11); **Kuwait** (as of 2010) (married mother can never pass citizenship) (A12); **Lebanon** (as of 2010) (married mother cannot pass citizenship if child is born abroad) (A12); **Libya** (as of 2010) (married mother cannot pass citizenship if child is born abroad) (A12); **Luxembourg** (as of 1940) (married mother can never pass citizenship) (A13); **Malaysia** (as of 2010) (married mother cannot pass citizenship to child born abroad) (A13); **Mexico** (as of 1940) (married mother cannot pass citizenship to child born abroad) (A13); **Monaco** (as of 1940) (married mother can never pass citizenship) (A14); **Nepal** (as of 2010) (neither married mother nor father can pass citizenship to child born abroad) (A14); the **Netherlands** and the countries following its law (as of 1940) (married mother cannot pass citizenship to child unless child is born in Netherlands and father is stateless or of unknown nationality) (A14); **Norway** (as of 1940) (married mother can never pass citizenship) (A15); **Oman** (as of 2010) (married mother cannot pass citizenship unless father is stateless) (A15); the **Philippines** (until 1973) (married mother cannot pass citizenship until child reaches majority) (A15); **Poland** (as of 1940) (married mother can never pass citizenship) (A15); **Romania** (as of 1940) (married mother can never pass citizenship) (A16); **Qatar** (as of 2010) (married mother can never pass citizenship) (A16); **Saudi Arabia** (as of 1940) (married mother cannot pass citizenship if child is born abroad) and (as of 2010) (married mother cannot pass citizenship at birth, but child can apply for citizenship after

reaching maturity if permanently residing in Saudi Arabia) (A16-A17); **Senegal** (as of 2010) (married mother cannot pass citizenship unless father is stateless or of unknown nationality, but child may apply for citizenship between ages of 18 and 25) (A17); **Suriname** (as of 2010) (married mother can never pass citizenship) (A18); **Sweden** (as of 1940) (married mother can never pass citizenship) (A18); **Syria** (as of 1940 and 2010) (married mother cannot pass citizenship if child is born abroad) (A18); **Togo** (as of 2010) (married mother cannot pass citizenship unless father is stateless or of unknown nationality) (A19); **Trans-Jordan** (as of 1940) (married mother can never pass citizenship) (A11); **Trinidad and Tobago** (as of 2010) (married mother cannot pass citizenship to child born abroad) (A19); **Tunisia** (as of 2010) (married mother cannot pass citizenship unless father is stateless or of unknown nationality) (A20); **United Arab Emirates** (as of 2010) (married mother can never pass citizenship) (A20); the **United Kingdom** and the countries following its law (as of 1940) (married mother cannot pass citizenship to child born abroad) (A20); **Venezuela** (as of 1940) (married mother cannot pass citizenship to child born abroad) (A21); and **Yemen** (as of 2010) (married mother cannot pass citizenship unless child is born in country and father is stateless) (A21).

In each of these countries the child of a U.S. father and a local mother will be stateless unless the U.S. father can fulfill the residence burdens in the Statute at Issue, while the child of a U.S. mother

and a local father will not be stateless: The child in that situation will take the local father's nationality. We are not aware of any countries having the opposite rule – i.e., not permitting their male nationals to pass their citizenship to a child born in a marriage to a foreign national, despite the fact that they do permit their female nationals to pass their citizenship to a child born in a marriage to a foreign national. Therefore, the risk of parenting stateless children abroad was and is much greater for married U.S. fathers than for married U.S. mothers.

If, as the government argues, the residence burdens in the Statute at Issue were designed to account for differential risks to U.S. fathers and U.S. mothers of parenting stateless children, or that those different residence burdens account for such a statelessness differential today, then the Statute at Issue should have had, and should now have, a lesser residence burden for married U.S. fathers having children abroad than for married U.S. mothers. That the Statute at Issue does not do so indicates that residence burdens were not designed to minimize, nor do they now have the effect of minimizing, the risk that children born abroad to U.S. parents will be rendered stateless.

**CONCLUSION**

There is no support for the government's assertion that the risk of statelessness for non-marital children of U.S. mothers was or is much higher than for U.S. fathers of non-marital children born abroad, or indeed any higher at all. It bears recalling that the discriminatory residence requirements in the Statute at Issue apply to U.S. fathers who establish paternity and commit to supporting their children financially. There is a more than reasonable possibility that the residence burdens imposed upon U.S. fathers by the Statute at Issue increased, and continue to increase, the incidence of statelessness for children born abroad of parents one of whom was or is a U.S. citizen. The judgment below should be reversed.

June 24, 2010

Respectfully submitted,

/s/

---

Max Gitter\*

Matthew C. Vogeles

Rishi N. Zutshi

Lisa M. Gouldy

Ebunoluwa A. Taiwo

CLEARY GOTTLIEB STEEN & HAMILTON LLP

One Liberty Plaza

New York, New York 10006

(212) 225-2610

mgitter@cgsh.com

*Counsel for Amici Curiae*

*\*Counsel of Record*

## CERTIFICATION

As required by Supreme Court Rule 33.1(h), I certify that the brief contains 6,593 words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

/s/

---

Max Gitter\*

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza

New York, New York 10006

(212) 225-2610

mgitter@cgsh.com

*Counsel for Amici Curiae*

*\*Counsel of Record*

## **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 Groenedijk & Harald Waldrauch eds., 2007) [hereinafter “Bauböck 2007”].
- Alfred M. Boll, Multiple Nationality and International Law (2007) [hereinafter “Boll”].
- Julia Breslin & Toby Jones, “Qatar,” in Women’s Rights in the Middle East and North Africa 397 (Sanja Kelly & Julia Breslin eds., 2010), available at <http://freedom-house.org/uploads/specialreports/womensrights/2010/womensrights2010.pdf> [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.unhcr.org/refworld/country,,,STATEPARTIESREP,BHR,,47ea235f2,0.html> [hereinafter “CEDAW Bahrain”].
- Comm. on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Libyan Arab Jamahiriya, U.N. Doc. CEDAW/C/LBY/CO/5 (Feb. 6, 2009), available at <http://www.universalhumanrightsindex.org/documents/826/1482/document/en/text.html> [hereinafter “CEDAW Libya”].
- 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.unhcr.org/refworld/publisher,CEDAW,STATEPARTIESREP,ARE,4970841f2,0.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) [hereinafter “CERD Oman”].

- Comm. on the Rights of the Child, Consideration of Reports Submitted By States Parties Under Article 44 of the Convention, Concluding Observations: Libyan Arab Jamahiriya, U.N. Doc. CRC/C/15/Add.209 (July 4, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.209.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.209.En?OpenDocument) [hereinafter “CRC Libya”].
- 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 (2009), available at [http://www.soros.org/initiatives/justice/focus/equality\\_citizenship/articles\\_publications/publications/citizenship\\_20091009/a\\_citizenship\\_20091009.pdf](http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/citizenship_20091009/a_citizenship_20091009.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.

### AUSTRIA

- Law of Nationality of July 22, 1913, RGBI. 46 at 583, §§ 4-6, 17 (Germany), reprinted in Flournoy at 306-13, discussed in Bauböck 2007 at 24.

### 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).

## **BELGIUM**

- Arrêté Royal du 14 Décembre 1932 Portant Coordination Des Lois Sur L'Acquisition, La Perte et le Recouvrement de la Nationalité, Dec. 14, 1932, arts. 1, 6-10 (Belg.), reprinted in Laws Concerning Nationality at 37-43, discussed in Bauböck 2007 at 69.

## **BHUTAN**

- Bhutan Citizenship Act, 1985, June 10, 1985, available at <http://www.nab.gov.bt/downloadsact/Eng58.pdf>.

## **BRAZIL**

- Constituição da República dos Estados Unidos do Brasil (de 24 de fevereiro de 1891) [Constitution of the Republic of the United States of Brazil of 24 of February of 1891], arts. 69, 71 (Braz.), reprinted in Flournoy at 48-49.
- Decreto No. 6948, de 14 de maio de 1908, art. 1 (Braz.), reprinted in Flournoy at 54-58.

## **BRUNEI**

- Brunei Nationality Act, 1984 ed., ch. 15, art. 4(1) (as amended 2002), available at <http://www.agc.gov.bn:81/images/LOB/PDF/Cap15.pdf>.

## **BULGARIA**

- Constitution of the Republic of Bulgaria, July 13, 1991, ch. 2, art. 25(1) (amended Sept. 26, 2003), available at <http://www.unhcr.org/>

refworld/docid/3ae6b53214.html, discussed in Bauböck 2009 at 220, 222.

- Law for the Bulgarian Citizenship, Nov. 5, 1998, ch. II, art. 10 (last amended Dec. 2007), available at <http://www.unhcr.org/refworld/docid/49622ef32.html>, discussed in Bauböck 2009 at 222.

### **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.unhcr.org/refworld/docid/3ae6b4d734.html>.

### **CANADA**

- Canadian Nationals Act of 1921, R.S.C., ch. 21 (1927) (in effect in 1940), reprinted in Flournoy at 86-87.
- Citizenship Act, R.S.C., ch. C-29, pt. I, § 3 (1985), as amended by An Act to Amend the Citizenship Act, S.C., ch. 14 (2008) (in effect in 2010) (Can.), available at <http://laws-lois.justice.gc.ca/PDF/Statute/C/C-29.pdf>.

**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.

**EL SALVADOR**

- Constitution of August 13, 1886, tit. III, art. 42 (El Sal.), reprinted in Flournoy at 516-18.
- Law of April 3, 1900 (El Sal.), reprinted in Flournoy at 518-21.

**ESTONIA**

- Citizenship Act, Jan. 19, 1995 (last amended June 2006) (Est.), available at <http://www.unhcr.org/refworld/docid/4933ce4e.html>.

**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.

#### **FRANCE**

- Code civil, arts. 18 to 19-1 (Fr.), available at [http://www.legifrance.gouv.fr/html/codes\\_traduits/code\\_civil\\_textA.htm#Section%20I%20%20Of%20French%20Persons%20by%20Parentage](http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm#Section%20I%20%20Of%20French%20Persons%20by%20Parentage).

#### **GERMANY**

- Law of Nationality of July 22, 1913, RGBI. 46 at 583, §§ 4-6, 17 (Germany), reprinted in Flournoy at 306-13, discussed in Bauböck 2007 at 24.

#### **GREECE**

- Nomos (2004:3284) Kodikas Ellenikes Ithageneias [Code of Greek Citizenship], Ephemeris tes Kyvernesos tes Hellenikes Demokratias [EKED] 2004, A:217, art. 1(2) (Greece), available at <http://eudo-citizenship.eu/NationalDB/docs/GRE%20Law%203284%202004%20%28English%29.pdf>, discussed in Bauböck 2007 at 265.

#### **GUATEMALA**

- Constitution of 1879, arts. 4-7 (as amended in 1927) (Guat.), reprinted in Flournoy at 321-22.

- Law of February 21, 1894, tits. I, VII (Guat.), reprinted in Flournoy at 322-24.

### **GUINEA**

- Code civil, Feb. 16, 1983, arts. 31, 40 (Guinea), available at <http://www.unhcr.org/refworld/docid/3ae6b4e88.html>.

### **INDIA**

- The Citizenship Act, No. 57 of 1955, §§ 3-4; India Code (1993), v.2, available at <http://www.unhcr.org/refworld/docid/3ae6b57b8.html>, as explained in Sik at 79 n.55.
- 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 230-34, 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 and in 2010) (Iran), translated in Shahabi at 113-14.
- Law on the Determination of Nationality of Children Born as a Result of Marriage of Iranian Women to Foreign Men of 2006 (in

effect in 2010) (Iran), translated in Shahabi at 113 n.55.

### **IRAQ**

- Nationality Law of October 9, 1924, arts. 8-9 (in effect in 1940) (Iraq), reprinted in Laws Concerning Nationality at 241-42.
- Law No. (46) of 1963 – Iraqi Nationality, art. 4 (in effect until 2005), available at <http://www.unhcr.org/refworld/docid/3ae6b4ec38.html>.
- Iraqi Nationality Law, Law 26 of 2006, Mar. 7, 2006, art. 4 (in effect in 2010), available at [www.unhcr.org/refworld/docid/4b1e364c2.html](http://www.unhcr.org/refworld/docid/4b1e364c2.html).

### **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>.

### **ITALY**

- Nationality Act of 13 June 1912, art. 1, Racc. Uff. 555 (Italy), reprinted in Laws Concerning Nationality at 267-71.

### **JAPAN**

- Law No. 66 of 1899 (last amended 1924) (Japan), reprinted in Flournoy at 382-86.
- Nationality Law, Act No. 147 of 1950 (Japan), reprinted in Laws Concerning Nationality at 271-73.

### **JORDAN**

- Revised Draft of Trans-Jordan Nationality Law of 1 May 1928, art. 6 (in effect in 1940) (Trans-Jordan), reprinted in Laws Concerning Nationality at 274-76.
- Law No. 6 of 1954 on Nationality, Jan. 1, 1954, art. 3 (last amended 1987) (in effect in 2010) (Jordan), available at <http://www.unhcr.org/refworld/docid/3ae6b4ea13.html>.

### **KENYA**

- Constitution, § 90 (2001) (Kenya), available at <http://www.unhcr.org/refworld/docid/47162cfc2.html>.

### **KIRIBATI**

- Constitution of Kiribati, 1979, ch. III, available at <http://www.parliament.gov.ki/constitution.html>.

## **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.
- Nationality Law 17 of 1954; Law No. 18 of 1980 pertaining to the resolutions of the Nationality Act; Regulatory Code for Law No. 18 of 1980 pertaining to the resolutions of the Nationality Act (in effect in 2010) (Libya), discussed in Manby at 45, 46, 98; discussed in CRC Libya ¶¶ 31-32; discussed in CEDAW Libya ¶ 17.

### **LITHUANIA**

- Law on Citizenship, Dec. 11, 1991 (Lith.), available at <http://www.unhcr.org/refworld/docid/3ae6b4f110.html>.

### **LUXEMBOURG**

- Loi du 9 Mars 1940 sur L'Indigénat Luxembourgeois, Mar. 9, 1940, art. 1(1) (Lux.), reprinted in Laws Concerning Nationality at 298-307.

### **MALAYSIA**

- Constitution of Malaysia, 1957, pt. III, sched. 2 (as amended 1995), available at [http://www.parliament.go.th/parcy/sapa\\_db/cons\\_doc/constitutions/data/Malaysia/malaysia.pdf](http://www.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Malaysia/malaysia.pdf), as explained in Boll at 453-55.

### **MAURITANIA**

- Loi N° 1961-112, Loi portant code de la nationalité mauritanienne, June 13, 1961, art. 13 (Mauritania), 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.

## **MONACO**

- Code civil art. 8, as amended by Ordonnance Sur la Nationalité du 13 Avril 1911, Apr. 13, 1911, art. 1 (Monaco), reprinted in Laws Concerning Nationality at 317-19.

## **NEPAL**

- Nepalese Citizenship Act 2009 V.S., 1952 (Nepal), reprinted in Laws Concerning Nationality at 320-21.
- Nepal Citizenship Act 2063 (2006 A.D.), Nov. 26, 2006, cls. 3, 5, available at <http://www.britishcitizen.info/NCA2006.pdf>.
- The Interim Constitution of Nepal, 2063, 2007, available at <http://www.ccd.org.np/new/resources/interim.pdf>.

## **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.

## **NORWAY**

- Law of August 8, 1924 Relating to Norwegian Nationality, § 1, reprinted in Flournoy at 453-57, discussed in Grete Brochmann, EUDO Citizenship Observatory, Country Report: Norway 2 (2010), available at <http://eudo-citizenship.eu/docs/CountryReports/Norway.pdf>.

## **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).

## **THE PHILIPPINES**

- Const. (1935), Art. IV (Phil.), available at <http://www.gov.ph/aboutphil/uploads/1935constitution.doc>, explained in Sik at 359-60.

## **POLAND**

- Law of January 20, 1920, arts. 5, 6, 1920 r. DZ. U. Nr 7, poz. 44 (Pol.), reprinted in Flournoy at 479-82, discussed in Bauböck 2009 at 124, 146 n.4.

## **PORTUGAL**

- Portuguese Nationality Act, Law 37/81, Oct. 3, 1981, art. 1(f), last amended by Organic Law 2/2006 of Apr. 17, 2006, available at [http://eudocitizenship.eu/NationalDB/docs/POR%20Law%2037%2081%20as%20consolidated%20by%20Law%202%2006%20\(English\).pdf](http://eudocitizenship.eu/NationalDB/docs/POR%20Law%2037%2081%20as%20consolidated%20by%20Law%202%2006%20(English).pdf), discussed in Nuno Piçarra & Ana Rita Gil, EUDO Citizenship Observatory, Country Report: Portugal 15-16 (2010), available at <http://eudo-citizenship.eu/docs/CountryReports/Portugal.pdf>.

## **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**

- Nationality Ordinance of 5 December 1938, Royal Decree No. 7/1/47, arts. 6-7 (in effect in 1940) (Saudi Arabia), reprinted in Laws Concerning Nationality at 399-402.

- 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), available at <http://www.unhcr.org/refworld/docid/3fb9eb6d2.html>, discussed in Parolin at 96-100.

### **SENEGAL**

- Loi n° 61-70 du 7 mars 1961, Code de la nationalité sénégalaise, Mar. 15, 1961, arts. 5, 8-9 (amended in 1989) (Sen.), available at <http://www.unhcr.org/refworld/docid/46cebc2e2.html>.

### **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 1957, § 5 (last amended 1974), available at <http://www.unhcr.org/refworld/docid/3ae6b56718.html>.
- Nationality Act, 2003, Dec. 31, 2003, § 5 (Sudan), available at <http://www.unhcr.org/refworld/docid/469e24992.html>.

### **SURINAME**

- Law on Nationality and Residence, State Ordinance of 24 November 1975 for the Regulation of the Surinamese Nationality and Residence in Suriname, Nov. 25, 1975 (last amended 1989), available at <http://www.unhcr.org/refworld/docid/3ae6b50714.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, available at <http://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

### **SWEDEN**

- 1 art. Law No. 130 of May 23, 1924 Respecting the Acquisition and the Loss of Citizenship (Juristtdnings Lagsamling 1924:30) (Swed.), reprinted in Flournoy at 545-50, discussed in Bauböck 2007 at 521-22.

### **SYRIA**

- Order No. 16/S of January 19, 1925, art.1(2) (in effect in 1940) (Syria), reprinted in Flournoy at 301-02.
- Nationality Act, Dec. No. 276/1969, art. 3, Nov. 24, 1969 (in effect in 2010) (Syria), available at <http://www.unhcr.org/refworld/>

docid/3ae6b56b10.html, 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.
- NATIONALITY ACT, B.E. 2495 (1952), ch. 2 (Thail.), reprinted in Laws Concerning Nationality at 455-58.

#### **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.

#### **TRINIDAD AND TOBAGO**

- Citizenship Act of the Republic of Trinidad and Tobago, July 31, 1976, available at <http://www.unhcr.org/refworld/docid/3ae6b4d028.html>.
- Constitution of the Republic of Trinidad and Tobago, Aug. 1, 1976, available at <http://www.unhcr.org/refworld/docid/3ae6b5954.html>.

## **TUNISIA**

- Code de la nationalité tunisienne, Apr. 22, 1963, art. 6 (amended 1984) (Tunisia), available at <http://www.imldb.iom.int/viewDocument.do?id={4AA741DF-0C37-42E8-8E39-E8B3444300CE}>.

## **UNITED ARAB EMIRATES**

- Federal Act No. 17 of 1972, arts. 2, 17 (U.A.E.), 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, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Nigeria, Palestine, Seychelles, Sierra Leone, Singapore, Sudan, Swaziland, Tanzania, Trinidad and 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).

**VENEZUELA**

- Civil Code of July 13, 1922 (Venez.), reprinted in Flournoy at 640-41.
- Constitution of May 29, 1929, ch. 2 (Venez.), reprinted in Flournoy at 640.

**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.yemenembassy.org/consulate/nationality.htm> (in effect in 2010).