



Yale Immigrant
Justice Project

Yale Environmental
Law Association

Shelter from the Storm:

Policy Options to Address Climate Induced

Displacement from the Northern Triangle

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Table of Contents

EXECUTIVE SUMMARY	4
GENERAL RECOMMENDATIONS	7
I. AN INTRODUCTION TO CLIMATE CHANGE DISPLACEMENT	10
Climate Change: Causes and History	13
Analyzing Climate Change Displacement.....	14
Challenges in Designing and Implementing Solutions for Affected Communities.....	16
II. CLIMATE CHANGE AND THE NORTHERN TRIANGLE.....	20
An Overview of Climate Change Impacts on Central America	20
a. Impacts on Agriculture	23
b. Food Insecurity	24
Climate Change and Movement to Urban Areas	28
Climate Change and Movement to the United States	29
III. EXISTING LEGAL AVENUES FOR IMMIGRATION RELIEF	32
a. Refugee Law and Climate Change	32
b. Temporary Protected Status.....	40
c. Deferred Enforced Departure.....	42
d. Humanitarian Parole	43
IV. RECOMMENDATIONS.....	47
To the Biden Administration	47
To Congress	59
V. CONCLUSION.....	64

EXECUTIVE SUMMARY

The planet is experiencing climate change. The most recent decade has been the warmest ever recorded. Indeed, we have already surpassed the level of atmospheric carbon dioxide considered safe by the most esteemed scientists in the field. As the impacts of climate change continue to be felt around the world, experts predict that climate change will lead to massive movements of people within and across borders, including into the United States. Experts estimate that climate change could displace over 200 million people by 2050.¹ Extreme weather events, climate-related disasters, gradual environmental degradation, sinking coastal zones, and sea level rise will continue to amplify existing stressors and contribute to internal and cross-border movement by rendering currently inhabited parts of the world less habitable.

The Northern Triangle—the area that includes Guatemala, El Salvador, and Honduras—is among the world’s most vulnerable regions. Due to their geographic location and widespread socio-economic inequality, Northern Triangle countries are highly vulnerable to climate-related impacts. Studies identify food insecurity, recurring droughts, decline in agricultural production, increased susceptibility to disease, and water scarcity as main drivers of climate displacement. Overall disruptions in the climate system result in significant economic losses for smallholder farmers, including those producing coffee, corn, and beans. Soil degradation, accelerated by a changing climate, will also likely contribute to displacement, as it already has in Guatemala. Meanwhile, coastal areas face an increase in sea level rise and destruction of local mangrove ecosystems, which threaten communities that depend on fishing.

Last year, Hurricanes Iota and Eta ravaged the Northern Triangle region, causing massive flooding and rain. The convergence of the hurricanes’ impact, the COVID-19 pandemic, and pre-

existing socioeconomic vulnerabilities are expected to worsen food insecurity due to extensive impacts on agriculture, livestock, and rural livelihoods, in addition to the threat that vector-borne diseases pose to human health in the aftermath of the storm. These impacts will contribute to the already deteriorating environmental situation that is driving people from their homes into urban centers and towards the United States. Experts project **that climate change will displace up to 3.9 million people across Mexico and Central America by 2050.**

In recent years, migration from Honduras, Guatemala, and El Salvador has also increased significantly as a result of gender-based and gang violence, as well as economic and political instability, among other factors. An unprecedented number of families and unaccompanied minors have been forced to flee their homes and seek asylum in the United States.

The long history of U.S. military intervention, drug enforcement, and counterinsurgency policies in Central America has contributed greatly to the destabilization of governments in the region, adversely affecting their ability to respond to climate and other conditions. Deepening economic inequality and ongoing violence stemming from this long history of U.S. intervention has upended the lives of many people in the region.

As one of the world's greatest emitters of greenhouse gases, the United States has disproportionately contributed to the world's climate crisis. Thus, the United States must reduce greenhouse gas emissions and help fund climate change adaptation measures for highly vulnerable countries.² In addition, we must improve our current migration policies to ensure that those who must migrate can do so with security and dignity.

The United States bears a special responsibility to the region, given its role in creating and fomenting violence there. The United States government has ignored its own research findings and opted for a law enforcement approach to curb migration flows. While the Biden

Administration has taken steps in the right direction by requiring several agencies to prepare a report on climate change and its impact on migration,³ much more is needed to properly tackle this complex issue.

This white paper examines the large-scale ongoing and future migration of residents of the Northern Triangle. It considers the protections, under U.S. law and international refugee law, afforded those fleeing environmental disaster. First, this paper analyzes the impacts of climate change on migration. Second, the paper focuses on climate change in the Northern Triangle region and its relationship to current and future migration flows. Third, the paper addresses the increasing recognition of the relevance of refugee protection for many people affected by climate change. The paper then surveys other provisions in U.S. law that provide avenues for status and protection for those displaced by climate change. Finally, the paper charts a course forward, recommending legislative and administrative measures that would ensure greater protection for those who flee environmental disaster.

In summary, the paper seeks to move current immigration law and policy in a more sensible and humane direction, focusing on how climate change impacts migration, particularly from the Northern Triangle.

GENERAL RECOMMENDATIONS

1. Reconceptualize Environmental Crises to Include Slow-Onset Weather Events

The United States has historically afforded temporary protection to persons either displaced from or unable to return to nations affected by sudden crises, whether environmental disasters or armed conflict. For example, the United States has made Temporary Protected Status (TPS) available to those unable to return to nations affected by events such as typhoons and earthquakes. The Deferred Enforced Departure (DED) program was extended to certain Liberians whose TPS was expiring. However, many countries are devastated by slow moving environmental crises, such as droughts and coastal erosion. Climate displacement will result from both rapid and slow-onset weather events. Thus, the Biden Administration should consider making programs like TPS, DED, and Humanitarian Parole available to those facing slow-onset events as both urgent and worthy of special attention.

2. Expand Temporary Emergency Programs to Individuals Outside the United States

The United States currently does not offer temporary protection to climate displaced persons who are outside the country. The most robust temporary protection programs are offered only to individuals severely affected or displaced by environmental disasters that occur in the United States. While these programs are crucial and should be expanded, they are nonetheless insufficient to address the needs of the vast majority of climate displaced persons worldwide. Thus, the government should extend protections to individuals outside the United States who face climate displacement.

3. Create a New Climate Visa

Given the tremendous protection gap for individuals facing climate displacement, Congress and the Biden Administration should consider the introduction of legislation creating a new climate change visa as well as a visa specifically for Central Americans, given the historical role that the United States has played in the region. The visas could be granted for a specific number of years and renewed if the conditions resulting in displacement continue and could offer a path to permanent residency and citizenship.

4. Broaden the Definition of the Public/National Interest

Several existing categories of emergency migration relief require a determination that granting relief to a given group or individual will contribute either to the public interest generally or to a U.S. foreign policy interest. While these forms of protection historically have been limited in scope, there are exceptionally strong arguments for including climate displacement and the needs of those displaced by climate-related events. Furthermore, there is a clear and important link between climate displacement and U.S. foreign policy, as well as the interests of current U.S. residents. Thus, by broadening the definition of public or national interest to encompass the climate-migration nexus, U.S. policies and laws granting migratory relief can better address the humanitarian needs arising from future migration flows.

5. Integrate climate change in the current asylum framework

We call on the Biden Administration, in consultation with NGOs and the United Nations High Commissioner for Refugees, to issue guidelines for considering climate change displacement, where appropriate, in the current asylum framework. There is precedent in the United States for issuance of such guidelines for claims of women to asylum and withholding of removal or non-refoulement⁴ and subsequently for claims of children.⁵ The latest UNHCR report

on “Legal Considerations Regarding Claims for International Protection Made in the Context of Climate Change and Disasters” can serve as a starting place. In consultation with NGOs and the UNHCR, the Biden Administration should draft and issue Executive Office for Immigration Review (EOIR) guidance on asylum and withholding of removal claims related to climate change in addition to Refugee, Asylum and International Operations (RAIO) training modules on this subject.

6. *Restore and strengthen the asylum system in the United States*

The Biden Administration should rescind regulations from the prior administration that undermined decades of asylum jurisprudence and disregarded U.S. obligations under the Refugee Convention and Protocol and international law. These include but are not limited to the final rule on “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review,” the implementation of which was enjoined on January 8, 2021.⁶

7. *Increase Research on Climate Migration*

Current information gaps hinder the formulation of sound policymaking on climate displacement. The federal government should increase funding for research on current and future migration flows, particularly as they relate to climate displaced persons, to develop a better and more robust understanding of future challenges and opportunities related to food insecurity, climate change, and human movement. While research on climate migration generally is no doubt useful, there should be a special focus on migration from Northern Triangle countries into the United States, given the complex historical and political relationship between the United States and countries in the region.

I. AN INTRODUCTION TO CLIMATE CHANGE DISPLACEMENT

This past decade—2010-2019—was the hottest decade ever recorded. The year 2019 was one of the three warmest on record.⁷ Last year, Mexico and eastern South America hit record-high average land temperatures, while the global average sea surface temperature reached the second highest level ever recorded.⁸ The current atmospheric concentration of carbon dioxide has already surpassed 400 parts per million (ppm), which is significantly higher than the 350 ppm threshold regarded by experts as the highest “safe level” of carbon dioxide in the atmosphere.⁹

As the average global temperature continues to rise, climate change-related impacts such as sea level rise, extreme weather events, desertification, droughts, and flooding will increase and drive displacement around the globe. The economic slowdown caused by COVID-19 reduced emissions in the second quarter of 2020, but within months of the global shock of March and April, emissions rapidly approached their pre-COVID level.¹⁰ The crisis has not abated.

Although there are no perfect estimates for population flows related to climate change, ample scientific evidence has linked gradual and sudden environmental changes to human displacement.¹¹ Since the 1990s, the Intergovernmental Panel on Climate Change (IPCC), the world’s leading authority on the matter, has warned that the greatest single impact of climate change will be human migration.¹² Scientists predict that climate change will lead to large-scale movements of people within and across borders, including into the United States. Indeed, this movement is already occurring. Some experts estimate that 200 million people could be displaced due to climate change by 2050.¹³ However, because climate change scenarios vary depending on a range of historical, structural, political, economic, and environmental factors, it is

virtually impossible to predict the precise scale of climate movement in the coming decades. The International Organization for Migration (IOM) has highlighted the empirical challenges in analyzing the impacts of climate change on human populations: the complexity of climate science and climate scenarios, differences in resources and adaptive capacity to external shocks within and between countries, and the difficulty of identifying causality in a chain of events including economic “pull” and environmental “push” factors.¹⁴ All of these variables will certainly depend on future greenhouse gas emissions, the rate of future population growth and distribution, the trajectory of climate change impacts, and the effectiveness of local and national adaptation strategies.¹⁵

Nonetheless, while difficult to attribute a specific extreme weather event to climate change, climate-related disasters, gradual environmental degradation, sinking coastal zones, and sea level rise have exacerbated and will continue to exacerbate existing stressors¹⁶ as well as contribute to internal and cross-border movement by rendering currently inhabited parts of the world less habitable.¹⁷ These changes will significantly affect food and water supplies, ultimately driving human movement.¹⁸ Forced migration may have a series of impacts on development by increasing pressure on urban infrastructure and services, potentially increasing the risk of conflict, and undermining health, education, and social outcomes.¹⁹

In the Northern Triangle countries of Honduras, El Salvador, and Guatemala, climate change is already affecting local ecosystems and livelihoods, emerging as a significant driver of internal and external migration.²⁰ The IPCC has identified Central America among the tropical regions most vulnerable to climate change impacts,²¹ partly as a result of its geographic position and socioeconomic context.²² It is worth noting that climate change interacts with and can exacerbate existing environmental degradation, which often results from a variety of extractive

practices including clear cutting, mining, and cattle farming. The destruction of local ecosystems reduces their resiliency and capacity to adapt to severe changes in weather patterns and extreme weather events.²³ Honduras alone has been identified, among all countries, as the second most-affected by extreme weather events between 1998 and 2017, with 66 total climatic events.²⁴ More recently, Hurricane Iota and Eta ravaged Central America, causing massive flooding and rain in 2020. The hurricanes' impact, combined with the COVID-19 pandemic and pre-existing socioeconomic vulnerabilities, is expected to worsen food insecurity due to extensive harms to agriculture, livestock, and rural livelihoods, in addition to the threat that vector-borne diseases (diseases resulting from infections transmitted by blood-feeding anthropods, such as mosquitos, ticks, or other insects) pose to human health in the aftermath of the storm.²⁵

Evidence suggests that more extreme El Niño events in Central America (unusual warming of surface waters across the central and east-central Equatorial Pacific) will result in drier climates in the southern part of the region and wetter conditions in the northern part.²⁶ An increase in the frequency and intensity of extreme weather events coupled with significant changes in precipitation patterns have already exacerbated droughts, flooding, and water scarcity across the region.²⁷ Projections for Central America indicate that the onset date of mid-summer drought will occur earlier than in the recent past.²⁸ Experts predict that these and other environmental changes linked to climate change and climate variability will affect agricultural yields across the Northern Triangle, resulting in significant economic losses for smallholder farmers, including farmers producing coffee, corn, and beans.²⁹ Soil degradation, accelerated by a changing climate, will also likely contribute to migration, as it already has in Guatemala.³⁰ In turn, these impacts will worsen food insecurity and social instability, driving people from their homes into urban centers and towards the United States.

Climate Change: Causes and History

Climate change is caused by rising greenhouse gas emissions globally. Increasing emissions accelerate the Earth's natural greenhouse effect, trapping heat in the atmosphere and resulting in higher average global temperatures. According to the IPCC, global temperatures will continue to rise and have “pervasive and irreversible impacts for people and ecosystems.”³¹ As a result of anthropogenic climate change, the Earth has already warmed approximately 1.0°C (or about 1.8°F) above preindustrial levels, making it the warmest it has been in 11,000 years.³² The Earth's temperature is expected to increase between 1.8°C and 4°C (3.2°F and 7.2°F) over the next century.³³

Climate change is already having serious impacts globally. The Greenland and Antarctic ice sheets have been losing mass, while glaciers continue to shrink across vast regions of the planet.³⁴ With a significant decrease in the amount of snow cover, the rate of sea level rise has been greater than the mean rate during the previous two millennia.³⁵ Sea levels are projected to rise and threaten large delta systems through flooding. Coastal wetlands will also face a decrease in total surface area as a result.³⁶ As rainfall patterns change, the planet will experience more intense hydrological cycles. While impacts will vary by region, overall effects will include an increase in frequency and intensity of extreme weather events such as heat waves, droughts, floods, hurricanes, cyclones, and wildfires. Other impacts will include changes to precipitation patterns and water scarcity.

According to the IPCC, “extreme weather events provide the most direct pathway from climate change to migration” by displacing populations through the destruction of their places of residence or through economic disruption.³⁷ In 2019, approximately 23.9 million people were forcibly displaced by weather-related disasters, including flooding, wildfires, droughts,

landslides, extreme temperatures, storms, hurricanes, and cyclones.³⁸ Climate change can also indirectly increase risk of violent conflicts by intensifying poverty and economic shock.³⁹ Populations without resources for planned migration already experience higher exposure to extreme weather events, particularly in low-income countries.⁴⁰

According to the World Bank, 143 million people in Latin America, sub-Saharan Africa, and Southeast Asia could be forced to relocate within their own countries to escape the slow-onset impacts of climate change by 2050.⁴¹ Climate change is also expected to drive up to 3.9 million people across Mexico and Central America by 2050.⁴² In 2018, disasters across El Salvador, Mexico, and Honduras resulted in the displacement of 257,950 people.⁴³ It is also worth noting that longer-term environmental degradation caused by climate change is expected to intensify existing trends in displacement, such as rural to urban migration.⁴⁴ Further, while some communities migrate to escape climate variability and climate-induced environmental degradation, individuals may still be exposed to hazardous conditions in their new destinations.⁴⁵

Analyzing Climate Change Displacement

Scholars studying the intersection of climate change, migration, and displacement have used different terminology to describe the movement of people within and across borders due to climate-related factors. While the arguments for various positions in this debate are outside the scope of this report, the authors use the term “person displaced by climate change” or “climate displaced person” to describe the plight of those who are forced to leave their homes as a result of climate change, whether because of slow-onset or rapid-onset events. The authors avoid the term “refugee” because of its specific legal meaning under the Refugee Convention and U.S. law.⁴⁶ The report uses the term “displaced” to emphasize the forced nature of the movement,

particularly since there is no universally accepted definition of forced migration under international law. Scholars have conceptualized a particular community's vulnerability to a disaster as a function of its exposure to specific climate impacts and the community's adaptive capacity.⁴⁷

The complexity in conceptualizing climate displacement also arises from the different types of climate or environmental impacts, which could be directly tied to climate change, environmental degradation, or both. Furthermore, migration is often classified in binary terms as either forced or voluntary, but most migration occurs on a continuum where the individual "decision" to migrate is shaped by external pressures.⁴⁸ For instance, indigenous and rural populations across the Americas have been forced out of their communities and displaced to larger towns and cities as a result of social, political, environmental, and economic structures. In light of the scale and complexity of climate-related migration, different academic disciplines have approached climate displacement through distinct lenses.

As with other impacts of climate change, the relationship between climate change and migration is "multifaceted and direct causation is difficult to establish."⁴⁹ Climate change impacts do not operate in isolation, but rather in a context with other migration drivers.⁵⁰ For instance, population growth, income distribution, economic mobility, non-governmental actors, and government policies may push people to live in certain places, even when there are no climate-related drivers in the first place.⁵¹ An emerging literature also explores the nexus between environmental conflict, migration, and governance, documenting the ways in which climate change impacts exacerbate existing conflict.⁵² While experts cannot pinpoint the precise degree to which climate change drives migration, there is widespread consensus that climate-

related impacts are and will increasingly be a key factor driving human movement, especially from highly vulnerable places like the Northern Triangle.

Climate change as a key driver of migration

Climate change migration presents analytical and governance challenges precisely because it results from a web of effects and interactions between and among social and natural systems.⁵³ It is this web of effects that drives migration. Nonetheless, to ignore the role of climate change in intensifying current migration drivers would result in fragmented and myopic solutions. Climate change has already compounded existing threats, including structural violence, and interacted with other factors that determine whether or not people move and the direction, scale, and duration of their movement.⁵⁴ As climate impacts increase in frequency and intensity, policymakers must address the role of climate change in shaping migration, especially from the Northern Triangle and other highly vulnerable regions that have already faced severe disruptions as a result of climate change.

Challenges in Designing and Implementing Solutions for Affected Communities

Climate change's unequal impacts mean that vulnerable populations—including women, children, persons with disabilities, minorities, indigenous peoples, and individuals lacking the resources for planned migration—experience higher exposure to extreme weather.⁵⁵ In the process, the human rights most likely to be affected include rights to life, adequate food and water, health, decent housing, and self-determination.⁵⁶ Unfortunately, the mainstream discourse around climate displacement does not use a human rights framework and is instead centered around conflict, security, and climate.⁵⁷ This national security discourse reinforces racialized conceptions and “deep-seated fears and stereotypes of the dark-skinned, overbreeding, dangerous

poor” crossing borders.⁵⁸ The dominant narrative focuses on security implications for potential receiving States, building on a legacy of stereotypes that link environmental degradation to demographic pressures and poverty.⁵⁹ Within this narrative, blame is shifted to migrants who are deemed responsible for their own displacement, thus depoliticizing the causes of and responses to displacement.⁶⁰

Existing international law does not directly address protection for climate displaced populations. Individuals fall into a protection gap to the extent that they might not fit clearly under either the refugee or internally displaced person categories. One question that often arises is whether existing international refugee law mechanisms are sufficient or whether they should be supplemented with an additional international framework.⁶¹ Along with the protection gap, there is a funding gap when climate displacement is compared to the legal category of refugees for whom the United Nations has created a specific international organization (UNHCR).⁶² By contrast, there is no single, sizable, stable, transparent, and predictable source of international funding to help offset the costs of climate displacement. Any protection scheme will require funding for implementation. Unfortunately, there are no current authoritative estimates nor is there an internationally recognized mechanism to finance programs to protect climate displaced populations.⁶³ Other challenges include a lack of political will to create a new legal instrument given the resistance of States to take on new obligations,⁶⁴ a resistance to admitting responsibility for environmental change that might set precedent for other damages,⁶⁵ and limited institutional capacity across international organizations to focus specifically on climate change and migration.⁶⁶

Migration from Central America to the United States

In the context of the Northern Triangle, the last several years—at least before the coronavirus pandemic hit—witnessed an increase in migration flows towards the United States, particularly for families and unaccompanied minors. These groups have fled their countries of origin because of gender-based violence, gang violence, and racial persecution, among other reasons, and have encountered dangerous conditions throughout their journeys.⁶⁷ To respond appropriately to future population flows, it is critical for policymakers to better understand how the effects of climate change interact with underlying socioeconomic inequality, food insecurity, and violence.⁶⁸

Given that Global North countries like the United States have contributed disproportionately to global climate change through their emissions over decades, principles of fairness and justice underscore the historic responsibility of wealthy countries not only to reduce their emissions and transition towards more sustainable energy systems, but also to help other countries—particularly those in the Global South—adapt to climate impacts. Wealthy countries must also be held accountable for their role in creating the climate crisis in the first place. Scholars have argued that Global North countries have an obligation not only to reduce emissions and provide adaptation finance to highly vulnerable countries, but also to provide reparations to climate displaced persons by allowing them to migrate with dignity and access relocation and resettlement programs.⁶⁹

Scholars have noted the historical connections between decades of U.S. intervention in Latin American politics—including support for authoritarian regimes responsible for grave rights abuses and instability—and the contemporary flows of people from Central America to the United States.⁷⁰ Much of the violence fueling migration from the Northern Triangle is connected

to U.S. policies on mass incarceration, drug enforcement, and counterinsurgency.⁷¹ As one scholar has observed, “[t]he atrocities committed by U.S.-trained soldiers and U.S.-aligned paramilitaries during the Salvadoran and Guatemalan civil wars, including executions of targeted populations and the use of rape as a tool of social control, have left a lingering legacy.”⁷² This history of violence merged with U.S. immigration policy in the 1990s to foster the creation and intensification of gang violence in the Northern Triangle.⁷³

The consideration of possible accountability frameworks targeted at Global North countries for their historical role in destabilizing Central American States, as well as for their role in fueling climate change, is beyond the scope of this paper. Our focus is more limited. Nonetheless, in light of these historical accountability arguments, the animating principles of human rights, and the vulnerability of those affected by climate change, we present potential changes to current immigration law and policy in the United States that could help protect populations displaced by climate-related impacts.

II. CLIMATE CHANGE AND THE NORTHERN TRIANGLE

An Overview of Climate Change Impacts on Central America

Despite relatively low levels of emissions compared to other Latin American countries such as Mexico or Brazil, Central American countries already face disproportionate burdens of global climate change. Under a scenario of no more than 1.5°C or 2.7°F of average global warming—a very ambitious scenario given that the planet has already experienced warming of 1°C or 1.8 °F above pre-industrial levels— significant changes in Central America’s climate system are expected.⁷⁴ The Northern Triangle countries are highly vulnerable to climate impacts, particularly in rural areas.⁷⁵ Variations in the risks among countries are “strongly influenced by local socio-economic conditions.”⁷⁶ Both Guatemala and El Salvador are among the top 15 countries with highest exposure to environmental disasters in recent decades.⁷⁷ In Guatemala, climate change has exacerbated erratic rainfall patterns and drought conditions in rural agricultural areas, while also contributing to rising sea levels and intense heat in low lying coastal areas.⁷⁸ In addition, environmental degradation as a result of deforestation has reduced the resilience of local ecosystems and increased the likelihood of landslides.⁷⁹ Further still, El Salvador has seen a steady increase in extreme weather events during the last 30 years; projected impacts of climate change include decreased precipitation and longer and drier periods of drought.⁸⁰ El Salvador has already experienced a rise in sea level and sea surface temperature, both of which are eroding beaches and threatening mangroves, fish stocks, and wetlands.⁸¹ Honduras will experience similar impacts, including an increase in frequency and severity of water scarcity and climate-related hazards.⁸²

Climate scientists predict the Northern Triangle as a whole will experience an increase in average temperatures, decreased water availability, and more extreme weather events.⁸³ Central

America has been identified as the tropical region most affected by climate change, with “a steady increase in extreme events, including storms, floods, and droughts.”⁸⁴ Since the mid-twentieth century, rainfall patterns have become increasingly erratic, with the onset of the rainy season starting later than usual.⁸⁵ In turn, water shortages are expected to affect urban water supply and agricultural production.⁸⁶

The Northern Triangle has already experienced an increase from 0.7°C to 1°C (33.3°F to 33.8 °F) in the last four decades.⁸⁷ As a result of these climate impacts, the IPCC predicts a range of effects on human wellbeing. Poverty levels and economic inequality are expected to increase as average global temperatures rise by 1.5°C (34.7°F) and higher.⁸⁸ An increase in temperature is also expected to reduce soil moisture and have significant health impacts, including the spread of heat-related and vector-borne diseases.⁸⁹

As discussed earlier, complex social contexts often mean that there is rarely a single cause for migration.⁹⁰ According to researchers, the “consequences of climate change for infrastructure, tourism, migration, crop yields and other impacts interact with underlying vulnerabilities . . . to affect livelihoods and poverty.”⁹¹ In addition, several factors such as type of work, education level, quality of life, family ties, and access to resources may influence an individual’s decision to migrate.⁹² In many cases, individuals do not in fact have a choice in deciding whether to leave their home, particularly when they are forced to flee violence or persecution. **In the Northern Triangle, the changing climate is increasingly becoming a significant factor driving displacement, particularly as a result of impacts on livelihoods.** In the absence of a robust government response, individuals and families are often “forced to flee because their homes are no longer habitable.”⁹³ Furthermore, environmental degradation and the mismanagement of natural resources have also rendered some land infertile and unstable, while

improper use and disposal of chemicals has undermined agricultural productivity.⁹⁴ Subsistence economies are thus impacted by both climate-induced changes as well as other forms of environmental mismanagement and degradation.⁹⁵

Climate change is expected to reduce agricultural yields of crops such as corn, rice, and wheat across Central America.⁹⁶ These climate impacts on agriculture are likely to drive migration in agriculture-dependent communities.⁹⁷ In addition, climate change is predicted to reduce water availability and access. In Guatemala, 80-90% of the population relies on groundwater for drinking, which is ultimately derived from precipitation.⁹⁸ Approximately 30% of the rural population does not have household water connections, making them particularly vulnerable to droughts.⁹⁹ In Central America, people are likely to migrate away from rain-fed croplands due to increasing agricultural marginality related to climate impacts. The last five years have been characterized by consistent drought.¹⁰⁰ **The 2014–2016 drought—exacerbated by global climate change—left 1.6 million people moderately or severely food insecure across El Salvador, Guatemala, and Honduras as a result of substantial losses of crops and livestock.**¹⁰¹

Climate scientists currently predict that an increase in global temperatures will also increase the likelihood and intensity of extreme weather events, such as hurricanes and tropical storms. **2020 had the most active Atlantic hurricane season ever recorded, with 13 hurricanes ravaging Central America.**¹⁰² In particular, tropical storm Amanda, which landed on June 2020 in El Salvador, battered the country and was described by the World Food Programme (WFP) as “the most devastating weather disaster in El Salvador since Hurricane Mitch in 1998.”¹⁰³ The storm resulted in 57 major floods and 1,114 landslides, causing property damage and claiming the lives of at least 30 people.¹⁰⁴ In Honduras, communities living along

the Caribbean coast already experience climate disruption as a result of encroaching sea and flooding. An unprecedented number of Garífuna families (an Afro-indigenous group) in the coastal city of Tela have been forced to leave the region and join caravans.¹⁰⁵

a. Impacts on Agriculture

Climate change in Central America is expected to produce “disastrous consequences on the cultivation of basic grain crops, such as corn, which are part of the region’s subsistence agriculture.”¹⁰⁶ By 2070, yields of some staple crops in Guatemala may decline by nearly a

third.¹⁰⁷ **Corn, beans, and rice—the three primary subsistence crops in the Northern Triangle—are predicted to drastically decrease in yield by the end of the century.**¹⁰⁸

Climate impacts are likely to cost smallholder farmers significant economic losses. In Honduras, Guatemala, and Nicaragua, nearly one-third of the population works in agriculture.¹⁰⁹ Under current climate scenarios, increased temperature and reduced precipitation will contribute to an increase in semi-arid land in Guatemala, thus limiting agricultural production.¹¹⁰ In Honduras, coffee rust disease, caused by a fungus that has proliferated in warmer weather, has damaged coffee production and prices.¹¹¹ Similarly, in El Salvador, climate change is likely to contribute to an increase in crop pests and diseases such as coffee rust, potato psyllid, and fall army worm,¹¹² harming the livelihoods of close to 400,000 small famers.¹¹³

A disruption in the water cycle stemming from changes in rainfall patterns or increasing drought directly affects crop production, which reduces productivity and may render rural life untenable. In addition to El Niño, recurring drought can decimate rural livelihoods by destroying the income and food sources of rural farmers, particularly subsistence farmers.¹¹⁴ Households that depend on rain-fed agriculture are especially sensitive to drought events,¹¹⁵ which is why experts predict that rain-fed croplands are likely to experience climate displacement.¹¹⁶ Overall,

the agricultural sector will face challenges resulting from the sensitivity of crops to water shortages and heat stress.¹¹⁷

Rising temperatures, spread of crop disease, and extreme weather events have already made coffee harvests unreliable¹¹⁸ and threatened the agricultural sector as a whole.¹¹⁹ Higher temperatures shift the areas suitable for Arabica coffee, with an average decrease in the total area suitable for this crop.¹²⁰ Thus, if global temperature trends continue, countries are expected to face economic losses on the global market.¹²¹ Multiple studies support these findings, pointing to a reduction in coffee production in Central America. In Guatemala, the potential increase in productivity in higher elevation areas will not be sufficient to offset the reduction in productivity in other areas.¹²² While some areas will eventually develop “optimum” climate conditions to grow Arabica coffee, which may result in higher yields, the total net surface area will decrease since more areas will suffer from a decline in production. In Honduras, corn and coffee production will decrease due to drought, increased temperatures, decreased rainfall, erosion, and deforestation.¹²³ Changes to climatic and weather patterns can be devastating for Hondurans living in rural areas, particularly small scale farmers.¹²⁴ Some coffee producers have already abandoned coffee production altogether and have shifted to corn, beans, and other crops, while others have migrated internally or to other countries.¹²⁵ In El Salvador, coffee farms are projected to become increasingly vulnerable to climate hazards.¹²⁶

b. Food Insecurity

As in other Latin American countries, land distribution in the Northern Triangle is highly unequal, which in turn affects the livelihoods of residents who rely on semi-subsistence production for food security.¹²⁷ On average, landholdings are insufficient to meet basic needs, which results in rural poverty and hunger, both of which have been recognized among “key

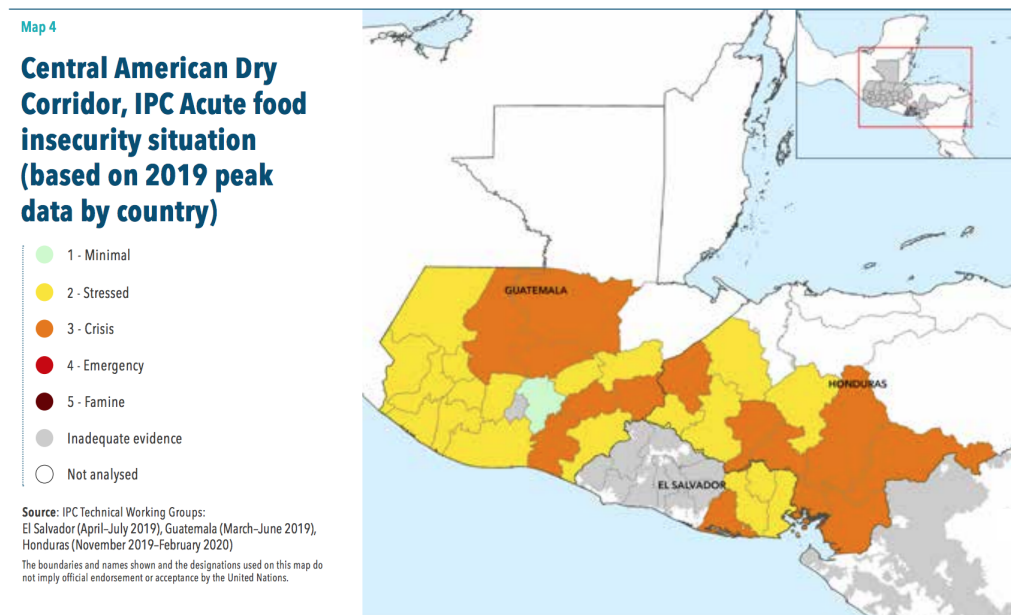
driver[s] of migration” from Guatemala to the United States.¹²⁸ Climate change is expected to exacerbate this dire situation. The Dry Corridor, an area that stretches from the Pacific Coast of Mexico to the western part of Costa Rica and Panama, is characterized by irregular rainfall and high susceptibility to climate change and variable weather patterns.¹²⁹ Guatemala, El Salvador, and Honduras are particularly prone to drought or extreme rainfall.¹³⁰ Studies have identified a marked increase in food insecurity, and resulting widespread flight from the Dry Corridor, which is likely to continue in the coming years.¹³¹ In 2018 alone, drought conditions in Central America resulted in an 82% loss of corn and bean crops in Honduras, putting nearly 3 million people at risk of food insecurity.¹³² Drought the following year affected agricultural workers who had not yet recovered from the 2018 drought and five years of erratic seasonable weather patterns.¹³³

According to the UN World Food Programme, a survey of hundreds of families living in areas in the Dry Corridor found that climate-induced food insecurity may lead individuals and families to migrate, along with violence and poverty.¹³⁴ Nearly 47% of the families interviewed were food insecure to some extent—a level of food insecurity that had not been seen in the region.¹³⁵ Drought has contributed to the increasing cost of food, which is significant given that approximately 80% of families in the region live below the poverty line and 30% live in extreme poverty.¹³⁶ Those living in poverty, and especially those living in extreme poverty, are highly sensitive to food costs, which constitute a disproportionate share of their budgets. Similarly, a survey found that 74% of respondents had noticed changes in rainfall patterns in the last two decades. When comparing climate conditions today with those two decades ago, half of survey respondents indicated that there are more drought/dry spells, 39% mentioned more floods, 68% more heavy rain, and 65% more extreme weather events.¹³⁷ As a result of these changes, half of respondents modified food production to increase agricultural output, while a smaller number

decided to sell their assets (mostly livestock). A smaller percentage of respondents cut their food consumption, reduced their expenditures, or diversified their economic activities.¹³⁸

Current research also links climate change to profound effects across the Dry Corridor's economy and society, beginning with food insecurity. In turn, food insecurity and other factors increase the risk of migration.¹³⁹ Chronic malnutrition, especially in children, also drives families to relocate.¹⁴⁰ There is widespread consensus about the lack of data and information to fully understand and prepare for how climate risk interacts with food insecurity.¹⁴¹

Extreme weather events can also exacerbate food insecurity. For instance, after tropical storm Amanda landed in El Salvador, an estimated 336,000 people faced a threat of severe food insecurity following the storm.¹⁴² In 2015 alone, El Niño destroyed 60% of corn and 80% of bean crops across the Northern Triangle, leaving 1.5 million people food insecure.¹⁴³ In the following years, excessive rainfall ruined harvests. El Niño destroyed crops of subsistence farmers and rendered more than a million people in need of food assistance. Experts point out that 2018 and 2019 specifically correspond to the greatest increase in the rate of people traveling to the United States.¹⁴⁴ Notably, gender-based violence, gang violence, and political persecution are also among the factors forcing people to flee.



Source: 2020 Global Report on Food Crises. UN World Food Programme. 2020.
<https://www.wfp.org/publications/2020-global-report-food-crises> at 48.

While the long-term impacts of the COVID-19 pandemic are not yet fully understood,¹⁴⁵ experts have predicted that 14 million people across Latin American and the Caribbean are at risk of severe food insecurity because of the pandemic.¹⁴⁶ In the Northern Triangle, residents have already suffered greatly as a result of local restrictions and the economic vulnerability resulting from the public health crisis.¹⁴⁷ Overall, COVID-19 has exacerbated food insecurity, which is likely to persist even as restrictions eventually phase out.¹⁴⁸ Those fleeing or making the journey to the United States are facing border restrictions and public health regulations that seek to deter movement.¹⁴⁹ People in Guatemala and Mexico have reported reduced access to work and asylum amid the pandemic, lack of mobility, higher levels of anxiety and stress, reduced availability of basic goods, and increased racism and xenophobia.¹⁵⁰

Climate Change and Movement to Urban Areas

Factors such as food insecurity and water scarcity interact with existing dynamics in the Northern Triangle—including violence, insecurity, weak governance, corruption, lack of access to services, and income variability¹⁵¹— to drive people out of the countryside and into urban areas. For most vulnerable communities already living on the margins, climate change will push them closer to the edge. When climate change-induced stress overwhelms livelihood systems, people migrate.¹⁵² In this sense, while there may be more than one factor involved in the decision to leave, climate change intensifies existing drivers of migration and displacement.

As a result of climate change impacts, the World Bank estimates that two million people will be displaced by 2050 in Central America.¹⁵³ For communities, migration can reduce household vulnerability not only by moving the family away from the risks, but also by enabling economic survival and potential wealth accumulation for the benefit of those who remain.¹⁵⁴ Those who migrate often transfer income back to others in their communities of origin in the form of remittances.¹⁵⁵

When people flee rural areas as a result of droughts, floods, and overexploitation of natural resources, they often move to urban areas. Some, though not most, relocate to pastoral and rangeland areas.¹⁵⁶ Across Latin America over the past half-century, there has been a long, gradual shift in population from rural to urban areas. Climate change displacement will intensify this existing hemispheric trend.¹⁵⁷ There is increasing evidence that this is already happening: as one study concludes, young people facing heat waves “are more likely to move to urban centers than when exposed to disasters endemic to the region.”¹⁵⁸ It is expected that major cities like Guatemala City will become “hotspots of climate in-migration.” Evidence suggests that internal climate migrants generally move “from areas of increasing climate risks, including small towns

and areas affected by hydro-meteorological hazards, to locations with better environmental conditions, particularly urban areas able to provide employment opportunities.”¹⁵⁹ Thus, most movement will likely be towards urban areas.¹⁶⁰

Even among communities living in situations of vulnerability, certain groups face a differentiated impact due to their limited movement or dependence on their environment. For instance, some studies have found that youth are more likely to migrate in response to droughts and hurricanes, exhibiting stronger inclination towards relocating to urban centers.¹⁶¹ According to another study, migration from rural areas disproportionately affects men and youth.¹⁶² Women are also forced to migrate as they and their families and communities suffer; however, women face greater barriers to movement as a result of the maintenance of traditional gender roles, household obligations, and limited language skills. One third of rural indigenous women in Guatemala, for example, are monolingual in their local, non-Spanish language.¹⁶³ In Honduras, the Garífuna people are on the frontlines of vulnerability to climate change given that villages are particularly susceptible to land loss and tropical storm surges.¹⁶⁴ Repetitive flooding displaced hundreds of households between 1998 and 2009.¹⁶⁵

Climate Change and Movement to the United States

Once driven to urban centers in the Northern Triangle, individuals often face intensification of a range of problems, including gang and state-sanctioned violence, as well as the inability of authorities to protect communities. Scholars have documented how Central American States have effectively waged war against people from local communities who have been forced to relocate.¹⁶⁶ Furthermore, Northern Triangle governments have been found to work directly or indirectly with local gangs, drug cartels, and death squads.¹⁶⁷ In addition, high unemployment rates, lack of services, and precarious socioeconomic conditions interact with

climate variability and food insecurity, driving many Central Americans to flee their countries. People displaced to urban areas often face discrimination, and migrants from rural areas lack the cultural and technical skills necessary to compete for jobs in cities.¹⁶⁸ For instance, Guatemalans with agricultural backgrounds have access to relatively few work opportunities in Guatemala City, and many seek temporary or semi-permanent migration to the United States as a result.¹⁶⁹ In short, while many rural individuals will first move to other areas in the country—particularly large urban areas¹⁷⁰—they may subsequently be forced to flee internationally.¹⁷¹ It is worth noting that many of these individuals are from indigenous communities and suffer years of systemic persecution and discrimination before facing additional challenges as a result of climate-related factors.

Thus, in addition to flight from rural to urban areas, experts have documented and predict further flight from urban areas to the United States as a result of lack of economic opportunities, violence, and food insecurity.¹⁷² An internal Customs and Border Protection report issued under the Trump Administration found that crop shortages resulting from climate change were driving record-setting migration rates from Guatemala to the United States. The report found that migration rates for Guatemalans increased in areas without reliable subsistence farming or commercial farming jobs, like Guatemala's Huehuetenango, Chiquimula, and Zacapa departments.¹⁷³ **Instead of addressing food insecurity, climate-induced crop failures, or a fungus known as coffee leaf rust affecting coffee production, the Trump Administration decided to increase funding for law enforcement efforts to deter migration to the United States.**

On average, 265,000 people have left the Northern Triangle in each of the past five years, with the majority bound for the United States.¹⁷⁴ Recently, the number of apprehensions of

people originating from the Northern Triangle exceeded that of Mexicans at the U.S. border.¹⁷⁵ In 2019, families from El Salvador, Guatemala, and Honduras made up about 71% of the total number of apprehensions at the U.S. border. Relatedly, the number of Central American asylum seekers has significantly increased and surpassed Mexican asylum seekers.¹⁷⁶ In the same year, 2019, about 80% of people detained along the U.S.-Mexico border consisted of families and unaccompanied minors from Guatemala, Honduras, and El Salvador.¹⁷⁷ **The over-440% increase in unaccompanied minors is unprecedented, from 10,146 in FY2012 to 55,109 in FY2019.**¹⁷⁸

III. EXISTING LEGAL AVENUES FOR IMMIGRATION RELIEF

Given the tremendous challenges that climate change poses to individuals all across the Northern Triangle and for policymakers in the United States, the following section presents a brief overview of existing legal avenues that could provide temporary or even permanent protection to individuals displaced by climate change. The first section explores how existing refugee law may be applied to climate-change displacement. The second part explores other legal mechanisms that have been applied to populations facing environmental disasters in the past and how those mechanisms may be used to address the plight of climate displaced persons.

a. Refugee Law and Climate Change

Climate change has resulted in large and growing numbers of people fleeing their home countries and fearing the possibility of return to their home countries. How does the framework of refugee law apply in the context of climate change? As described further below, climate change may disproportionately harm vulnerable groups, who are eligible for refugee protection. Environmental degradation and disasters may, for example, lead those already facing race or gender-based harm to seek asylum, and their claims for protection would be encompassed within U.S. and international refugee law.

While there has been much debate over the applicability of refugee law to the plight of those displaced or forced to flee their homes due to climate change,¹⁷⁹ recent developments indicate an increasing recognition that climate change displacement claims may meet criteria for protection under the Refugee Convention. Specifically, in 2020, UNHCR issued the “2020 Legal Considerations Regarding Claims for International Protection Made in the Context of Climate Change and Disasters,” an important document on the applicability of refugee law to climate

displacement.¹⁸⁰ The 2020 Legal Considerations guidance “sets out key legal considerations concerning the applicability of international and regional refugee and human rights law when cross-border displacement occurs in the context of the adverse effects of climate change and disasters.”¹⁸¹ The guidance reflects an increasing recognition among the international community that people displaced by climate change may meet the criteria for protection under international refugee law, depending on the facts of their claims.

The 1951 Convention Relating to the Status of Refugees¹⁸² (“Convention” or “Refugee Convention”) and the 1967 Protocol to the Convention¹⁸³ (“the Protocol”) form the basis of the international refugee regime. They define who qualifies as a refugee¹⁸⁴ and detail the social, economic civil, and political rights to which refugees are entitled—including the guarantee of *non-refoulement*, protection from return to a country where a refugee’s life is in danger.¹⁸⁵ Nearly 150 States around the world are parties to the Convention, with millions of people seeking its protections annually.¹⁸⁶ The United States is a party to the Protocol, which eliminated the Convention’s geographic and temporal restrictions, universalizing its applicability.¹⁸⁷

The international refugee protection regime steps in to provide surrogate protection when an applicant’s home state has failed to protect that person’s basic human rights under one of the five Refugee Convention grounds.¹⁸⁸ The grounds—race, religion, nationality, membership in a particular social group, and political opinion—identify characteristics, founded in principles of non-discrimination, that fundamentally marginalize or disenfranchise persons from their societies.¹⁸⁹

In 1980, the United States incorporated key provisions of the Protocol into its domestic law with the Refugee Act of 1980, making the Protocol one of only two human rights treaties that have been directly incorporated into U.S. law.¹⁹⁰ Indeed, as the Supreme Court recognized in

INS v. Cardoza-Fonseca, “one of Congress’ primary purposes [with the Refugee Act] was to bring United States’ refugee law into conformance with the Protocol.”¹⁹¹ Under U.S. law, recognition as a refugee leads to secure status, including family reunification, a path to permanent residency, and citizenship. U.S. law also incorporates the Convention’s protection from return (or *nonrefoulement*) in section 241(b)(3) of the Immigration and Nationality Act (INA). This is of particular significance since it is obligatory for signatory states, has international human rights roots,¹⁹² and is regarded as a customary norm that has effect outside any treaty or conventional framework. Under U.S. law, a refugee is “any person who is outside any country of such person’s nationality ... and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹⁹³ U.S. law thus recognizes both past persecution and a well-founded fear of future persecution as bases for protection.¹⁹⁴

This is significant in the climate change context because one can qualify for asylum based on past persecution alone. Furthermore, under U.S. law, an asylum applicant who suffered past persecution under a Convention ground but who no longer has a future fear of persecution due to changed circumstances may be granted humanitarian asylum based on either the severity of the past persecution suffered, or if the applicant faces a reasonable possibility of suffering “other serious harm” upon return.¹⁹⁵ Climate change factors should be considered as part of the “other serious harm” determination, which requires no nexus to a Convention ground, but relates to “the potential for new physical and psychological harm” to the applicant.¹⁹⁶

Climate Change Impacts and Persecution

Harms resulting from climate change fall squarely within the definition of persecution under U.S. and international law. As UNHCR has explained, “protection from persecution lies at the heart of the international refugee protection regime.”¹⁹⁷ “Persecution” contains two elements: serious harm and a failure of state protection, the latter of which can be demonstrated through infliction of harm either by the State itself or by non-state actors that the State is unwilling or unable to control.¹⁹⁸ Courts have interpreted serious harm broadly to include the deprivation of economic and social rights as well as political and civil rights.¹⁹⁹ Persons fleeing or fearing return to harm resulting from climate change may (depending on the factual context) demonstrate that such harm satisfies the definition of persecution as described above.²⁰⁰

The recognition that violations of economic and social rights, including the taking or destruction of a person’s land, are encompassed within the meaning of persecution is longstanding in U.S. law.²⁰¹ Although the harm must be more severe than mere harassment, persecution does not require a “total deprivation of livelihood or a total withdrawal of all economic opportunity.”²⁰² Serious harm has been found to include the large scale loss of property, or actions that “reduce an applicant to an impoverished state,” even if the person could otherwise survive.²⁰³ The taking or destruction of land that may arise in the climate change context—for example, in claims involving indigenous people—thus falls within the meaning of persecution. Moreover, persecution includes psychological or emotional harm, including trauma, that may result from climate change impacts that lead people to flee their home countries or fear returning to their home countries.²⁰⁴

It is important to note that persecution does not require the State's complicity in the harm: instead, a State fails in its duty of protection when it is unable, even if willing, to protect a person from serious harms inflicted by non-State actors under one of the five grounds.²⁰⁵

Nexus and Climate Change

To establish eligibility for refugee status or protection, a person must show a causal link (commonly referred to as “nexus”) between the harm suffered or feared and one (or more) of five grounds: race, religion, nationality, membership in a particular social group, and political opinion.²⁰⁶ In the United States, a protected ground must be “at least one central reason” for the feared persecution;²⁰⁷ the ground need not be the exclusive or dominant reason.²⁰⁸ Persons fleeing or fearing return to their countries as a result of climate change effects may establish nexus when the effects adversely impact vulnerable groups (as set forth in the definition of refugee or the protected grounds) or aggravate the severity of serious harm they experienced or face upon return. A rapid-onset extreme weather event or a slow-onset climate change event may trigger the flight or fear of return of those already severely harmed, for example, due to their indigenous status or gender. Cases involving infliction of serious harm such as crackdowns on dissent related to environmental disasters and the denial of disaster relief under a protected ground (e.g., denial to religious or racial minorities) may also qualify for refugee status or protection.

Refugee law jurisprudence has seen movement away from consideration of the motives and intention of the persecutor. This is especially important when climate change or its effects are one cause of flight or fear of return, and when there are accompanying causes that more directly implicate a ground protected under the Convention and Protocol. UNHCR and scholars alike have urged a shift in focus from this intent-based approach to a “holistic understanding of

the circumstances from which the claimant has fled, and in which she will find herself on return.”²⁰⁹ This holistic approach, “focusing not simply on the intent of the persecutor or of the State’s failure to protect, but more broadly on the reason for exposure to the risk,”²¹⁰ may allow those fleeing risks associated with climate change to qualify for refugee status and protection.²¹¹ While the United States remains somewhat of an outlier, in many cases continuing to fix its sight on persecutor motives,²¹² there are indications of a reorientation, considering instead context and impact in establishing causation or the “nexus”²¹³ element. This reorientation could, in turn, facilitate the acceptance of climate change-based refugee claims.²¹⁴

Refugee law may provide protection where, for example, a State caused environmental destruction in an intentional effort to target a particular group of persons or chose a particular area to place a project. Refugee law may also provide protection when a State imposes a policy that causes environmental harm because persons in that area are considered less deserving of protection because of their race, religion, nationality, membership in a particular social group (which may include gender or kinship or family affiliations), or political opinion.²¹⁵ Importantly, as noted above, a Convention ground does not need to be the sole reason a person seeks refugee protection, only one central reason. A person may seek protection that includes both Convention and non-Convention grounds for multiple reasons.

Internal Relocation and Climate Change

A person does not qualify as a refugee if they can avoid persecution by relocating within the home country.²¹⁶ In the United States, where the applicant has suffered past persecution, the burden is on the government to establish that relocation to an area within the country where the applicant does not have a well-founded fear would be reasonable under all the circumstances.²¹⁷

As UNHCR describes in its 2020 Legal Considerations guidance, slow-onset climate change factors may make relocation “neither relevant nor reasonable.”²¹⁸

Scenarios involving Climate Change and Refugee Protection

In his recently published treatise, Matthew Scott presents different scenarios in which persons fleeing or fearing return to climate change-related harm may qualify for status and protection under the Refugee Convention.²¹⁹ These scenarios include instances of direct and intentional infliction of harm, such as intentional environmental damage inflicted or allowed to occur by the State,²²⁰ crackdowns on perceived dissent relating to the causes and/or management of environmental degradation or disasters,²²¹ and the denial of disaster relief to members of opposition political parties, minority ethnic or religious groups, or other targeted minorities or perceived opponents.²²² Scott also addresses other relevant failures of state protection including instances in which (a) the State itself causes damage to the environment (or allows such damage to be perpetrated by non-state actors), (b) the State is unable to protect a population in the context of an environmental disaster, (c) the State will not “be bothered” to protect a group of persons from such disaster-caused adversity for reasons of one of the protected grounds, or (d) the State refuses international assistance to provide disaster relief for members of a protected ground, among other instances.²²³ Scott discusses the Convention’s application to disasters that engender a “serious threat to public order,”²²⁴ and *ex ante* discrimination as a contributory cause of human rights violations or vulnerability in the face of a disaster-related harm.²²⁵

There are thus several ways an individual displaced by climate change may meet the definition of a refugee under both international and domestic law. As discussed further in the recommendations section, *infra*, it is imperative that the United States take steps to interpret and apply refugee law in a manner that affords refugee protection to those forced to flee or unable to

return to their home country due to climate change-related harm. Such steps should include the issuance of guidance to asylum adjudicators (such as the guidance issued in cases of women and children applying for refugee status).

Refugee Resettlement

In addition to the U.S. asylum system, domestic refugee law also creates a pathway to protection and permanent residency and citizenship for refugees through the U.S. Refugee Admissions Program. Pursuant to the 1980 Refugee Act, each year the President is required to set an annual determination on the number of refugees to be resettled, following a consultation with Congress.²²⁶ As part of this determination, the administration has the discretion to designate groups of special humanitarian concern to the United States (known as the Priority 2 or P-2 category) for resettlement. Certain groups under the P-2 designation may also be eligible for in-country processing, like Iraqis who supported U.S. missions and Central American minors seeking reunification with a parent lawfully residing in the United States. While the Central American Minors Program (see also discussion of the Parole component of the program *infra*), was terminated under the Trump Administration,²²⁷ the Biden Administration has already proposed restarting the refugee component of the Central American Minors Program as part of its “Proposed Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021.”²²⁸ While there has yet to be a P-2 designation for a particular group detrimentally impacted by climate, it is within the discretion of the Executive Branch to consider such designations. The Biden Administration has also proposed the establishment of Designated Processing Centers throughout Central America to register and process displaced persons for refugee resettlement and other lawful migration avenues.²²⁹

Notably, the refugee definition applies to the overseas resettlement program, although some have been admitted who do not strictly meet the criteria of refugee law, such as those who are still within the country of persecution. The Central American Minors Program (see below) is an example. This broadened eligibility is an advantage in the climate migration context.

b. Temporary Protected Status

Temporary Protected Status (TPS) is a temporary immigration status under U.S. law provided to nationals of certain countries experiencing conditions that make it difficult or unsafe for them to return to their country of origin. Congress created TPS in the Immigration Act of 1990 “to establish a uniform system for granting temporary protection to people unable to return to their home countries because of a political or environmental catastrophe.”²³⁰ Prior to TPS, there were no established criteria for determining how a country might qualify for Extended Voluntary Departure (EVD)—the predecessor to TPS—which resulted in significant criticism, particularly when the Reagan administration refused to designate El Salvador for EVD despite the ongoing civil war.²³¹

TPS is currently the only statutorily provided means of protection from return for people in the United States affected by environmental disasters. A country may be designated for TPS for one or more of the following reasons: (a) an ongoing armed conflict, such as a civil war, that poses a serious threat to the personal safety of returning nationals, (b) an environmental disaster, such as an earthquake, hurricane, or epidemic, that results in a substantial but temporary disruption of living conditions, where the foreign State is temporarily unable to adequately handle the return of its nationals; and/or (c) when the foreign country officially requests TPS designation after a natural disaster.²³² Of the three categories for which the Secretary of DHS

may grant TPS, only in the case of environmental disasters is a nation required to proactively request designation.

The Department of Homeland Security (DHS) has discretion to decide when a country merits a TPS designation, but DHS must consult with other agencies such as the State Department.²³³ Currently, TPS does not provide a path to lawful permanent residency or citizenship. When TPS designation ends, beneficiaries return to the immigration status held prior to receiving TPS unless that status has expired or the person has successfully acquired a new immigration status. Beneficiaries with no prior status or eligibility for immigration relief may be subject to removal when the TPS designation ends.

TPS designation may be for six, 12, or 18 months. At least 60 days before the expiration of designation, the Secretary of DHS must decide whether to extend or terminate it. There are, however, circumstances under which the DHS Secretary can extend the TPS designation, choosing to redesignate such that individuals who arrived after the initial designation date may become eligible to apply. There is no limit to how many times TPS may be extended as long as conditions making it dangerous to return are the same. Ten countries currently retain TPS designations, five of which are a result of environmental disasters (El Salvador, Haiti, Nicaragua, Honduras, Nepal).²³⁴ The Biden Administration has also granted TPS to Venezuela and Burma (Myanmar).

Certain features of TPS limit its potential efficacy at addressing the needs of climate displaced people. First, TPS applies only to individuals already present in the United States at the time of designation. Second, while people with TPS status are legally able to work, they are not placed on a path to permanent residency or citizenship by virtue of the designation itself. Finally, U.S. federal agencies retain discretion over which nations receive TPS designation. Because

initial TPS designations last only six, 12, or 18 months and renewal requires the exercise of discretion, people protected by TPS are subject to a perpetually precarious immigration status. Even for those countries where protection has spanned several decades, TPS by itself does not provide permanent relief. However, the proposed U.S. Citizenship Act would provide those eligible for TPS status on January 1, 2017 with the ability to adjust to lawful permanent status.²³⁵ In sum, TPS has significant limitations, both in the reach of its application and in the security of the status it provides. TPS is also subject to political will and decision-making. However, as a statutorily-defined administrative power, TPS has the potential to be a strong tool for a committed administration to allow climate displaced people to remain in the United States given that it provides work authorization,²³⁶ the right to travel,²³⁷ and in some places, access to state tuition rates at public institutions. Below, we propose legislative expansions of TPS, as well as new regulatory interpretations of the program that would provide greater protection to people displaced by climate change.

c. Deferred Enforced Departure

Deferred Enforced Departure (DED) (formerly Extended Voluntary Departure) allows certain individuals from designated countries and regions facing political or civic conflict or natural disaster to remain in the United States. The president may authorize DED under discretionary authority and as part of the office's constitutional power to conduct foreign relations. Individuals covered by DED are not subject to removal from the United States for a designated period of time. DED is a temporary immigration benefit. Until recently, Liberia was the only country with DED status. The Biden Administration designated Venezuela as well in March 2021.²³⁸

However, in contrast to TPS, the authority to grant DED to nationals of particular countries does not have a statutory basis, but rather is an extension of the President's foreign policy power. Additionally, there are no explicit criteria for making DED designations or determining which individuals are eligible once a State has been designated as such.²³⁹

But DED's lack of defined designation criteria make it potentially a more flexible tool. A DED designation could permit the President to extend protection to climate displaced people with a greater degree of latitude than TPS. For instance, the President might be able to define an environmental disaster more broadly than under the definition used for TPS, thus applying DED to both rapid and slow-onset events. However, the lack of statutory authority may also mean that this power, if expansively used, may be subject to legal challenge.²⁴⁰ In addition, the limitations of TPS apply to DED, such as the absence of a provision granting a secure status.²⁴¹ However, compared to TPS, DED is a more flexible tool for the President to use to grant continued protection to residents unable to return to their home country.

d. Humanitarian Parole

DHS may exercise discretion to temporarily allow certain noncitizens to enter the United States if they are either inadmissible or do not have a legal basis for admission. DHS grants such "humanitarian" parole only if the agency determines that there are "urgent humanitarian or significant public benefit reasons" for a person to qualify for admission to the United States and that the person merits a favorable exercise of discretion. Grants of parole are made for limited periods of time to accomplish a discrete purpose, and individuals are typically expected to depart the United States when the authorized period expires. While humanitarian parole is explicitly authorized by the INA, there is no statutory or regulatory definition of an "urgent humanitarian reason." The United States Citizenship and Immigration Services (USCIS) has stated, however,

that it will consider factors such as the time-sensitivity of the circumstances and the degree of suffering that may result if parole is not authorized.²⁴²

Central American Minors Program (CAM).²⁴³ The CAM program was established in 2014 to provide certain minors, and in some circumstances parents of a child residing in the United States or accompanying such a minor, the possibility of entering the United States even if they are in their home country. The person is considered first under the overseas refugee resettlement program, and if determined to be ineligible, the person's admission is considered pursuant to the exercise of parole authority.²⁴⁴

Humanitarian Parole significantly expands the scope of protection offered under DED and TPS: it applies to individuals living outside the United States and is defined by potentially broader eligibility criteria. It also provides authority to allow the entrance of persons affected by a wide range of climate-related disasters. However, because it requires a case-by-case determination, which has been applied narrowly, its potential is limited for now.²⁴⁵ Moreover, because parole status allows people to enter but does not afford them a status while they are in the United States²⁴⁶ and does not guarantee authorization to work, it may not be an effective long-term solution for people displaced by climate change. Nonetheless, Humanitarian Parole offers the federal government yet another strong tool for assisting climate displaced people and recommendations below describe ways of expanding its protections.

Summary of existing and potential avenues of protection or relief

	DED	TPS	Withholding of removal	Humanitarian Parole	Asylum	Resettlement	Climate visa
Type of relief	Protection from deportation	Temporary immigration benefit	Protection from deportation	Protection from deportation	Immigration benefit	Immigration benefit	Immigration benefit
Permanency	Not permanent, designated for specific timeframe	Not permanent, designated for specific timeframe	Not permanent, depending on threat in home country	Not permanent, designated for specific timeframe	Pathway to citizenship	Pathway to Citizenship	TBD
Designation	By U.S. President	By DHS Secretary	By DOJ (EOIR)	By DHS	By DHS or DOJ (EOIR)	DOS	By DHS
Consultation with Secretary of State	Not required	Required	Not required	Not required	Not required	N/A	Not required
Eligibility	Country or region-specific	Country-specific	Individual case-by-case basis or for specified population categories	Individual case-by-case basis or for specified population categories	Individual case-by-case basis or for specified population categories	Individual case-by-case or for specified population categories	TBD

Expiration	Country or region-specific with option for extension	Country or region-specific with option for extension	None	Case-by-case basis usually with option for extension	None	Annual presidential determination	TBD
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*Table updated based on National Immigration Forum's Fact Sheet.*²⁴⁷

IV. RECOMMENDATIONS

To the Biden Administration

The Office of the President has a long history of creating programs through executive actions that have provided temporary protection to immigrants facing extreme circumstances if returned to their home countries. According to research conducted by the American Immigration Council, every U.S. president since 1956 has granted temporary immigration relief to one or more groups in need of assistance in the United States and abroad.²⁴⁸ These measures include deferred deportation as with President Obama's Deferred Action for Childhood Arrivals (DACA), as well as other measures to limit or expand the enforcement and implementation of immigration laws.

The Biden Administration should quickly implement a more humane immigration agenda, including measures to increase the numbers of refugees resettled to the United States, safeguard TPS, preserve and fortify DACA, create pathways to permanent status for millions of DACA recipients and TPS holders, and restore asylum protections, among other actions. These reforms could also include allowing more people affected by climate-related disasters to qualify for TPS, DED, humanitarian parole, or refugee resettlement under current definitions.²⁴⁹ For example, the Administration could consider creating a P-2 designation under the refugee resettlement program for Central Americans detrimentally impacted by climate change.

In addition, Special Presidential Envoy for Climate John Kerry should expeditiously address advancing a more humane agenda on climate displacement as part of his new role.²⁵⁰ The Administration's approach towards science-based policymaking provides room for a more comprehensive and integrated approach to this complex issue.

Furthermore, agencies within the Executive Branch can play a significant role in developing and implementing protections for climate-displaced persons.

To the Department of Homeland Security

- Expand TPS Protection

Make TPS designation more broadly available. The existing TPS framework is already a strong tool that the Secretary of DHS²⁵¹ may use to provide relief for significant numbers of potential climate displaced people; the DHS Secretary has the authority to designate persons from more countries as eligible for TPS status. Instead of applying the TPS designation in a selective and arbitrary fashion (as administrations have done in the past), the Biden Administration should grant TPS designations to additional countries experiencing environmental disasters and degradation.²⁵² There is significant room for the Biden Administration to employ TPS more aggressively and grant TPS designations more broadly based on climate-related criteria, without modification of the text or historical interpretation of the statute.

The Biden Administration should also reverse the Trump Administration's decision to eliminate Temporary Protected Status (TPS) protections for people from El Salvador, Haiti, Honduras, and Nicaragua.

Apply TPS designation to slow-onset disasters.

TPS has been applied exclusively to sudden, disastrous environmental events like earthquakes and hurricanes.²⁵³ While this category of events is a main driver of displacement, it does not capture the vast range of slow-onset environmental and climatic changes that render regions vulnerable and, in many cases, uninhabitable.²⁵⁴ The greatest barrier to considering these types of disasters for TPS designation is their gradual, progressive nature. It is worth noting that

slow-onset degradation tends to be more permanent than sudden events. The Secretary of DHS could provide a temporary designation to nationals of States suffering the effects of both rapid and slow-onset events. This would, at a minimum, provide temporary relief to nationals of countries experiencing such climate-related disasters.

Apply TPS designation to “quasi-temporary” environmental disaster.

As discussed above, TPS to present has not been applied to nationals of States experiencing events that may expand across time (e.g. environmental degradation). This is because nations that seek designation must show that conditions will be unsuitable for a limited period of time. However, there is a wide category of events whose timeframes are uncertain, precisely because their long-term impacts are difficult to predict. These types of circumstances could be better addressed by a more flexible interpretation of temporary conditions, considering the short, medium, and long-term impacts of disasters. In the past, DHS has applied a more flexible interpretation in some cases (e.g., Syrian conflict, El Salvador TPS renewals), which should be extended to environmental disasters as well.

- Expand DED Protection

The Biden Administration should recognize the impacts of climate change on national security, international cooperation, and displacement and apply DED protection more broadly to people displaced by environmental disaster and degradation.

Apply DED protection to slow-onset disasters. The authority to grant DED to nationals of particular countries does not have a statutory basis, but rather is an extension of the President’s foreign policy power. Additionally, there are no explicit criteria for making DED designations, or determining which individuals are eligible once a nation has been designated as such.²⁵⁵ Given

the flexible nature of DED, the Biden Administration could apply DED to both rapid and slow-onset environmental disasters.

- Expand Humanitarian Parole Protections

Create Purpose-Built Special Humanitarian Parole Programs as a Bridge to Permanent Status. Because of the temporary nature of parole status, the program may provide immediate relief to individuals in danger or members of a particularly vulnerable group, such as children. One example of this was the 2010 Special Humanitarian Parole Program for Haitian Orphans. In the wake of the 2010 Haitian earthquake, DHS created a program to offer temporary parole status to roughly 1,000 eligible Haitian orphans. These children had already been adopted, but were otherwise waiting for their immigration process to complete before they could enter the United States. The Special Parole program allowed these children to be placed with their adoptive parents while they awaited the completion of their immigration processes.²⁵⁶ While this was a very specific situation and responded to a limited need, the program demonstrated the capacity of humanitarian parole to serve as a powerful measure to assist at-risk individuals in migrating to the United States.

Reconceptualize Public Interest. The Immigration and Nationality Act provides authority to grant parole where there is significant public benefit. No statutory guidance exists for this definition, opening the possibility for much broader grants of parole. In the event of a large-scale environmental catastrophe, large-scale displacement could have a highly destabilizing global effect. It is therefore in the public interest to reduce this instability by providing avenues for entry into the United States for climate displaced persons.²⁵⁷ Additionally, there is a clear and important link between climate displacement and U.S. foreign policy, as well as the interests of

current U.S. residents. Thus, by broadening the definition of public or national interest to encompass the climate-migration nexus, U.S. policies and laws granting relief can better address the humanitarian needs arising from future migration flows.

Broaden the Definition of Urgent Humanitarian Reasons Necessary for Parole.

Effectively responding to climate change requires a focus on slow-onset environmental crises, in addition to rapid extreme weather events. While the destabilizing effects of drought or coastline erosion may not be quite as sudden as a hurricane, they create no less urgent humanitarian needs.

- Create Temporary Emergency Programs for Individuals Outside the United States

The United States currently does not offer temporary protection to climate displaced persons who are outside the United States. The most robust temporary protection programs are offered only to individuals severely affected or displaced by environmental disasters already present in the United States. While these programs are crucial and should be expanded, they are nonetheless insufficient to address the needs of the great majority of climate displaced persons worldwide. Thus, the government should extend protections to individuals outside the United States who face climate displacement.

Several international programs could serve as models. For example, the Temporary Protection Directive passed by the European Council, as well as the Finnish and Swedish Aliens Acts, all provide some temporary resettlement assistance for groups not already inside the nation.²⁵⁸ The parole component of the Central American Minors Program also provides a useful example.

To the Department of Homeland Security and the Department of Justice

- Consider Climate Change in the Current Asylum Framework

We call on the Biden Administration, in consultation with NGOs and UNHCR, to issue guidelines for considering, where appropriate, climate change displacement in the current framework for refugee protection. The 2020 UNHCR report on “Legal Considerations Regarding Claims for International Protection Made in the Context of Climate Change and Disasters” can serve as a starting point.

In consultation with NGOs and the UNHCR, the Biden Administration should also draft and issue Executive Office for Immigration Review (EOIR) guidance on asylum and withholding of removal claims related to climate change in addition to Refugee, Asylum and International Operations (RAIO) training modules on this subject for the USCIS.

- Restore and Strengthen the Asylum System in the United States

The Trump Administration has underfunded, dismantled, and undermined numerous parts of the current U.S. asylum, refugee, and immigration infrastructure,²⁵⁹ which together play a significant role in supporting those fleeing from climate-related events. Accordingly, it is critical to ensure that as initiatives are developed, the Biden Administration takes immediate action, not just to roll back the deleterious actions of the Trump Administration, but also to restore and significantly expand the scale of caseload management systems for connecting refugees and asylum seekers with infrastructure to ensure effective participation in hearings, including legal aid resources and interpreter services. Without such early and organized investment, the United States will lack the infrastructure necessary to meet the needs of climate displaced people, regardless of other proactive steps taken by the Biden Administration.

The Biden Administration should rescind regulations from the prior administration that undermined decades of asylum jurisprudence and disregarded U.S. obligations under the Refugee Convention and Protocol and international law, which could affect those displaced by climate change. This includes but is not limited to rescinding the final rule on “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review,” the implementation of which was enjoined on January 8, 2021.²⁶⁰

In addition, further administration actions should establish by regulation the international law consensus that “Particular Social Group” (PSG) is a group characterized by an immutable characteristic that a person cannot or should not be required to change (e.g., sex, kinship ties, and age) and that persecution includes the infliction of harm by non-state actors where the state is unable or unwilling to provide protection. These regulations also should make clear that the “political opinion” ground is not limited to formal party membership and can include views not only expressly held or manifested by the person seeking protection, but also those imputed to the person by state and non-state actors.

To the Department of State

- Strengthen and Expand the State Department’s Bureau of Population, Refugees, and Migration (PRM)

The Biden Administration should invest in the State Department’s Bureau of Population, Refugees, and Migration (PRM) to increase support for refugee populations abroad, rebuild the U.S. Refugee Admissions Program,²⁶¹ and spearhead a more coordinated response to international migration.²⁶² Such an expansion would increase the agency’s ability to support people displaced by the climate crisis. Increased funding to community partners in the United

States would also ensure that refugee communities are safe and able to thrive in their new locations.²⁶³

- Engage Across Different Platforms on Climate Displacement

The executive branch should center an international climate strategy on the countries likely to suffer the most due to the impacts of the climate crisis. Such efforts would be strengthened by considering and implementing the recommendations of expert bodies, including the Nansen Initiative on Disaster-Induced Cross-Border Displacement²⁶⁴ and the Platform on Disaster Displacement (PDD). The PDD offers an opportunity for the Biden Administration to engage with other States and collaborate on international and regional approaches to climate displacement.²⁶⁵

In addition, the Regional Conference on Migration (RCM) provides the United States a platform to build consensus within the region on addressing the root causes of climate change while determining what type of protections to give individuals fleeing from climate-related or environmental disasters.²⁶⁶

The United Nations Framework Convention on Climate Change's (UNFCCC) Task Force on Displacement also has begun to look at climate change displacement. Specifically, the task force, among other activities, is identifying "opportunities for accessing existing funding and developing guidance on preparing project proposals on averting, minimizing and addressing displacement related to climate change."²⁶⁷ The United States could support this initiative by pledging to fund it unilaterally or by working with other Global North countries to create a fund to support this type of research in the United Nations. On this point, the United States should also contribute to the Green Climate Fund and meet its prior promise to deliver \$3 billion in

climate finance. In addition, the United States should submit commitments under the Sendai Framework for Disaster Risk Reduction, which seeks to strengthen efforts to manage disaster risk.²⁶⁸

Furthermore, the UN Global Compact for Safe, Orderly, and Regular Migration (GCM) establishes systems for information sharing and analysis to predict, address, and cooperate to tackle migration caused by climate change and related drivers.²⁶⁹ In parallel to the framework of the GCM, 164 countries voted to adopt the Global Compact on Refugees (GCR) in December 2018. The GCR addresses increasing displacement in the face of climate change. Unfortunately, the United States withdrew from participation in both compacts.²⁷⁰ The Biden Administration should sign on to the GCR and pledge to share responsibility for countries affected by displacement resulting from environmental disasters and environmental degradation. The Biden Administration should also evaluate options for adoption of the GCM to ensure U.S. participation in a globally coordinated strategy to address migration-related challenges.

Democratic Party candidates for President launched platforms that included valuable suggestions related to climate change in the lead up to the 2020 election. For example, Washington Governor Jay Inslee proposed launching a regional refugee resettlement initiative that would bring together the efforts of national governments, NGOs, and international partners such as the UNHCR to collectively manage the unique needs of applicants from the Northern Triangle region.²⁷¹

As Special Presidential Envoy for Climate and Cabinet member, John Kerry could convene regional climate security dialogues with international partners. These dialogues could be jointly organized by USAID, DOD, and the State Department to address existing critical climate-related threats to national and regional security, including extreme weather events, livelihood

insecurity, domestic and transboundary resource scarcity and conflict, sea-level rise, and climate displacement and migration. While this would represent a vital step in the right direction, it is worth noting that in addition to national security considerations, climate-change displacement should be analyzed and addressed through a human rights lens that prioritizes those most affected by climate change and their lived experiences.

- Explore the Possibility of Supporting the Development and Implementation of Free Movement Agreements in the Northern Triangle

Recent scholarship on climate change and migration has shed light on potential policy solutions such as Free Movement Agreements (FMAs) and their role as a protection framework for individuals.²⁷² These types of agreements have already been successful in specific contexts in the Caribbean since they allow individuals to safely migrate regardless of the drivers of movement.

To the Department of Health and Human Services (HHS)

- Direct HHS Direct to Coordinate Across Agencies to Prepare for the Impacts that Global Climate Change Will Have on Migration and Create Programs to Prepare for Changing Patterns of Immigration.

In 2013, the Obama Administration issued an executive order to direct the Department of Health and Human Services (HHS) to coordinate across administrative agencies to prepare for and respond to the climate crisis.²⁷³ While the Trump Administration revoked this directive,²⁷⁴ the Biden Administration could reiterate and expand it to include consideration of the impacts that global climate change will have on migration and to direct HHS to coordinate across

agencies to create programs to prepare for these changing patterns of migration, while supporting affected communities.

- **Invest in Office of Refugee Resettlement**

The Office of Refugee Resettlement was systematically under-resourced and undermined throughout the Trump presidency. Consequently, there is a critical need to ensure that more consistent and regular investments are made to ensure ORR populations, including resettled refugees and unaccompanied children, are adequately supported.²⁷⁵ Further, the Biden Administration should increase transitional programs that allow refugee communities—including those affected by climate displacement—to access employment, medical, and language assistance.

To the Environmental Protection Agency

- **Invest in Environmental Justice Small Grant Program**

The Trump Administration repeatedly tried to defund or underfund the EPA's Environmental Justice Small Grant Program. The Biden Administration should increase investment in this program. The program has previously been used to support localized resettlement and support for the Refugee Dream Center, a local organization that worked with climate displaced populations relocated in Rhode Island.²⁷⁶ The Biden Administration should not only increase investment in these kinds of local resettlement support programs, but also set aside funds to support local organizations planning for the impacts that climate displacement will have on their own communities and regions.

- Invest in Office of International and Tribal Affairs

Within the EPA's Office of International and Tribal Affairs, the Biden Administration could expand, empower, and better resource the office to consider more deeply the issue of climate displacement for indigenous communities both within the United States and globally. Moreover, by housing such a program within this office, the EPA could support climate displaced peoples and frontline communities.

- Invest in Global Climate Change program

The EPA's Global Climate Change program has been deprioritized and underutilized by the Trump Administration. In a Biden Administration, there is an opportunity to strengthen this agency to focus not only on international initiatives, but also on global climate displacement research, transnational and domestic climate displacement, and other related issues.

To United States Agency for International Development

- Expand USAID's Global Climate Change Program

The Biden Administration should expand funding and programming under USAID's Global Climate Change program to provide resources directly to nations and regions affected by climate displacement to develop more local and regional resources to support, relocate, and rehome impacted communities. Given the United States' historical responsibility in creating the climate crisis, it should offer significant financial support to vulnerable populations across the Global South.

To Congress

Legislative changes rather than executive directives can provide more permanent solutions to those forced to leave their homes. Congress should take action to modify existing statutes to provide protection for people displaced by slow-onset events, environmental degradation, and climate displacement. Furthermore, it should also create a new legislative framework to accommodate people displaced by climate change.

- Create a New Climate Visa

Given the tremendous protection gap for individuals facing climate displacement, Congress or the Biden Administration should introduce legislation creating a new climate change visa as well as a visa specifically for Central Americans, given the historical role that the United States has played in the region. The visa could be granted for a specific number of years, renewed if the conditions resulting in displacement continue, and create a path to permanent residency and citizenship.

One model to consider is the Pacific Access Category Resident Visa, which New Zealand created in 2017 for people from Tonga, Fiji, Tuvalu, and Kiribati.²⁷⁷ The program was aimed at providing protection to those displaced by climate change, as “an experimental humanitarian visa category.”²⁷⁸ If such a visa program were established, it should not require that individuals secure a job prior to moving, as the New Zealand program does. Work authorization should accompany the visa, as with the diversity visa program.

- Increase Funding for Research on Climate Displacement

Current information gaps hinder the formulation of sound policymaking on climate displacement. The federal government should increase funding for research on current and future migration flows, particularly as they relate to climate displaced persons to develop a better and more robust understanding of future challenges and opportunities related to food insecurity, climate change, and human movement. While research on climate migration generally is no doubt useful, there should be a special focus on migration from Northern Triangle countries into the United States, given the complex historical and political relationship between the United States and countries in the region.

- Broaden TPS to benefit people not already within the U.S. at the time of designation and provide a path to residency and citizenship.
- Remove the case-by-case determination process by which humanitarian parole decisions are made and allow for group designations of urgent humanitarian reasons for parole purposes.
- Support existing bills related to climate displacement that have already been introduced by members of Congress to protect those displaced by climate change.

Congress can also create a new legislative framework to accommodate people displaced by climate change. These bills, which have already been introduced by members of Congress, serve as potential frameworks for future legislation on this issue.

The Biden Administration has introduced comprehensive immigration legislation that includes several measures relevant to climate migration.²⁷⁹ The bill's use of the refugee resettlement program, the provision restoring the Central American Minors Program, and the designation of processing centers throughout Central America to process displaced persons for refugee resettlement and other lawful migration avenues, should consider those displaced because of climate change. Furthermore, Section 2101 of the bill, setting out strategies for U.S. engagement in Central America, should consider the impact of climate change on each of the listed elements for engagement.

Senator Markey (D-MA) and Rep. Velazquez (D-NY) introduced a bill to establish a Global Climate Change Resilience Strategy and authorize the admission of “climate displaced persons” into the United States, whether they are abroad or already in the country.²⁸⁰ The bill seeks to create a framework to address climate change migration and would create a federal program separate from the existing overseas refugee program to take in a minimum of 50,000 “climate displaced persons” starting 2021. The bill would direct the White House to collect data on people displaced by extreme weather, drought, and sea level rise and submit an annual report to Congress. It also would require the State Department to work with other federal agencies to create a Global Climate Resilience Strategy that puts climate change at the center of U.S. foreign policy. The bill includes a proposal to amend the INA to recognize the definition of “climate displaced persons” and thus presents the opportunity to expand definitions of refugees within the current immigration/legal system.

Rep. Espaillat (D-NY) introduced a resolution that seeks to “[recognize] that climate change most severely impacts vulnerable and disadvantaged communities in the United States and around the world, and that it is the responsibility of the United States to work with its global

partners to promote environmental justice and climate justice”. This kind of legislation should pass as expeditiously as possible to signal the importance of the issue of climate displacement for the new Congress and the Biden Administration. Further, passage of such legislation could help raise the awareness of members of Congress as well as the public about the urgent need to take aggressive action to tackle climate displacement.

Sen. Hirono (D-HI) and Rep. Lee (D-CA) introduced the Women and Climate Change Act of 2019 to establish the Federal Interagency Working Group on Women and Climate Change within the Department of State, acknowledging the disproportionate impacts that the climate crisis has on women and girls around the world.²⁸¹ The bill targets “people displaced because of environmental causes, notably land loss and degradation, and environmental disasters, who have left their community or country of origin.” The bill identifies opportunities for various divisions of the federal government to evaluate and adapt their roles to better serve communities, especially women and girls, affected by the climate crisis. The bill could serve as a useful foundation and reference for federal government action on climate change. It also takes an intersectional approach in evaluating climate issues and other interrelated factors that lead to forced migration, including poverty and food insecurity.

Sen. Markey (D-MA) and Rep. Clarke (D-NY) introduced The FEMA Climate Change Preparedness Act. The Act requires FEMA to (1) revise its 2018-2022 Strategic Plan to ensure that the plan explicitly mentions climate change and addresses its implications on national security and near- and long-term national disaster risk; and (2) ensure that future strategic plans do likewise.²⁸² This could offer an opportunity to expand FEMA’s scope of disaster response to include more short-, medium-, and long-term support for climate displaced people.

Rep. Neguse (D-CO) proposed the Special Envoy for Refugees Act, which would require the President to appoint a Special Envoy for Refugees whose duties would include (1) representing the United States in diplomacy related to global displacement, migration, refugees, asylum seekers, and internally displaced and stateless people; and (2) leading interagency coordination to oversee research related to the global refugee crisis and the U.S. refugee program.²⁸³ Passage of this legislation would provide an opportunity to enhance U.S. global presence and work on the intersection between displacement/migration and climate change.

V. CONCLUSION

Even if greenhouse gas emissions are dramatically reduced in the next decade, large numbers of people will be forced to leave their homes as a result of climate change impacts that exacerbate underlying vulnerability. Thus, the United States must plan and develop a robust and comprehensive framework to allow people to migrate with dignity. While we applaud the early efforts of the Biden Administration to better understand and prepare for climate displacement, time is of the essence. Particularly in the Northern Triangle, the COVID-19 pandemic, decades of violence and corruption amplified by U.S. intervention, and climate change impacts—such as more intense and frequent droughts and hurricanes—are pushing people over the edge. We call on Congress and the Biden Administration to step up to the challenge and provide real solutions to those most vulnerable.

ENDNOTES

¹ Throughout the report, we refer to people forced to leave their homes at least in part because of climate change impacts as “climate displaced people” or “people displaced by climate change.” We avoid using the term “climate refugee” because of the specific legal meaning of refugee within international and U.S. law. Given the complexity of climate change-induced movement, we abstain from recommending one single term to describe the plight of people displaced by climate change, who may fit under different categories such as refugees, internally displaced persons, migrants, etc. depending on their circumstances. For further discussion, *see infra* “Analyzing Climate Change Displacement.”

² While the scope of this report does not cover the United States’ commitments under the international climate change negotiations, we urge the Biden Administration to increase finance to support adaptation efforts in the Global South and meet its pledge to give \$3 billion to the Green Climate Fund. For more information, *see* Kayly Ober, *At a Climate Change Crossroads: How a Biden-Harris Administration Can Support and Protect Communities Displaced by Climate Change*, REFUGEES INT’L (Feb. 11, 2021), <https://www.refugeesinternational.org/reports/2021/2/10/at-a-climate-change-crossroads-how-a-biden-harris-administration-can-support-and-protect-communities-displaced-by-climate-change> (“The Green Climate Fund (GCF) is a UN financial mechanism that assists developing countries in funding adaptation and mitigation efforts. It was set up by the United Nations Framework Convention on Climate Change (UNFCCC) in 2010 and was meant to mobilize the largest commitment for climate finance to date, with initial targets set at \$100 billion per year . . . Former U.S. president Barack Obama was a proponent of the GCF and pledged to give \$3 billion to the Fund in 2014. The United States made an initial payment of \$500 million to the GCF, and just days before leaving office, President Obama transferred a second installment of \$500 million—leaving \$2 billion outstanding.”).

³ *Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change and Migration*, THE WHITE HOUSE (Feb. 4, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/> (Sec. 6 of the EO reads “Within 180 days of the date of this order, the APNSA, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Homeland Security, the Administrator of the [USAID], and the Director of National Intelligence, shall prepare and submit to the President a report on climate change and its impact on migration, including forced migration, internal displacement, and planned relocation. This report shall include, at a minimum, discussion of the international security implications of climate-related migration; options for protection and resettlement of individuals displaced directly or indirectly from climate change; mechanisms for identifying such individuals, including through referrals; proposals for how these findings should affect use of United States foreign assistance to mitigate the negative impacts of climate change; and opportunities to work collaboratively with other countries, international organizations and bodies, non-governmental organizations, and localities to respond to migration resulting directly or indirectly from climate change. The APNSA shall

work with appropriate agencies to ensure that the report, or a summary thereof, is made publicly available.”).

⁴ Memorandum from Phyllis Coven, INS Office of International Affairs, *Considerations for Asylum Officers Adjudicating Asylum Claims from Women* (May 26, 1995), <http://www.unhcr.org/refworld/docid/3ae6b31e7.html>.

⁵ Memorandum from Jeff Weiss, Acting Director, INS Office of International Affairs, “Guidelines for Children's Asylum Claims” 120/11.26 (Dec. 10, 1998).

⁶ See *Pangea Legal Services v. DHS*, No. 20-CV-09253-JD, (N.D. Cal. Jan. 8, 2021); and *Immigration Equality v. DHS*, No. 20-CV-9258-JD, (N.D. Cal. Jan. 8, 2021).

⁷ *2019 Was 2nd-Hottest Year on Record for Earth, Say, NOAA, NASA*, NOAA (Jan 15, 2020), <https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa>.

⁸ *Id.*

⁹ Nicola Jones, *How the World Passes a Carbon Threshold and Why It Matters*, YALE ENVIRONMENT 360 (Jan. 26, 2017), <https://e360.yale.edu/features/how-the-world-passed-a-carbon-threshold-400ppm-and-why-it-matters>.

¹⁰ Zhu Liu, Philippe Ciais, & Hans Joachim Schellhuber, *Near-Real-Time Monitoring of Global CO₂ Emissions Reveals the Effects of the COVID-19 Pandemic*, 11 NAT. COMMS. 5172 (2020), <https://doi.org/10.1038/s41467-020-18922-7>.

¹¹ *Submission by the United Nations High Commissioner for Refugees (UNHCR) supported by the International Organization for Migration (IOM) and the Norwegian Refugee Council (NRC), to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA 6) under the UN Framework Convention on Climate Change (UNFCCC)* (May 15, 2009), www.refworld.org/docid/4a2d189d3.html; See also Parag Mahajan and Dean Yang, *Taken by Storm: Hurricanes, Migrant Networks and US Immigration*, 12 AM. ECON. J: APPLIED ECON. 250 (2020).

¹² *Migration and Climate Change*, No. 31, IOM (2008), https://publications.iom.int/es/system/files/pdf/mrs-31_en.pdf at 3.

¹³ *Id.* at 9.

¹⁴ *Id.* at 12.

¹⁵ *Id.* at 27.

¹⁶ Scholars have also explained forced migration from Central America in part as a result from the imposition of neoliberal policies pushing austerity measures and privatization of state-owned entities across the region, particularly on rural and indigenous communities. See Thomas Klak, *Globalization, Neoliberalism and Economic Change in Central American and the Caribbean*, in LATIN AMERICA TRANSFORMED: GLOBALIZATION AND MODERNITY (Robert N. Gwynne & Cristóbal Kay, eds., 2004); COLIN SAMSON & CARLOS GIGOUX, INDIGENOUS PEOPLES AND COLONIALISM: GLOBAL PERSPECTIVES (2016). Naomi Klein has coined the term “disaster capitalism” to explain how the rise of neoliberal free market policies both increase vulnerability to disasters and are in turn imposed by elites in the wake of disasters or natural catastrophe in order to profit off the crisis. NAOMI KLEIN, THE SHOCK DOCTRINE: THE RISE OF DISASTER

CAPITALISM (2007). Other scholars have discussed the role of patriarchal structures and gender-based violence in driving migration. Cecilia Menjívar & Shannon Drysdale Walsh, *Gender, Violence, and Migration*, in HANDBOOK ON CRITICAL GEOGRAPHIES OF MIGRATION (Katharyne Mitchell, Reece Jones, & Jennifer L. Fluri, eds., 2020).

¹⁷ *Climate Change 2014, Impacts Adaptation and Vulnerability: Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC) (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf.

¹⁸ IOM, *supra* note 12, at 16.

¹⁹ *Id.* at 8.

²⁰ Raoul Kaenzig & Etienne Piguet, *Migration and Climate Change in Latin America and the Caribbean*, in PEOPLE ON THE MOVE IN A CHANGING CLIMATE: THE REGIONAL IMPACT OF ENVIRONMENTAL CHANGE ON MIGRATION (Etienne Piguet & Frank Laczko, eds. 2014).

²¹ IPCC, *supra* note 17, at 1502.

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²⁸ Edwin P. Maurer, Nicholas Roby, Iris T. Stewart-Frey, & Christopher M. Bacon, *Projected Twenty-First Century Changes in the Central American Mid-Summer Drought Using*

Statistically Downscaled Climate Projections, 17 REG. ENV'T'L CHANGE 2421 (2017), <https://link.springer.com/article/10.1007/s10113-017-1177-6>.

²⁹ Rigaud et al., *supra* note 26, at 3. It is important to note that affected populations are not monolithic and can often find distinct and new ways to cope with extreme weather without necessarily being displaced. For example, “while the poorest households in Honduras suffered greatest losses due to the impacts of Hurricane Mitch in 1990, they were found to be less vulnerable to storms a decade later due to changes in land tenure and better early warning

systems.” (internal citations omitted), *see* Neil Adger, Juan M. Pulhin, Jon Barnett Geoffrey D. Dabelko, Grete K. Hovelsrud, Marc Levy, Úrsula Oswald Spring & Coleen H. Vogel, *Human Security in: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap12_FINAL.pdf at 767.

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³⁵ *Id.*

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⁴¹ Rigaud et al., *supra* note 26, at 2.

⁴² Adger et al., *supra* note 29, at 3.

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⁴⁴ Adger et al., *supra* note 29, at 770.

⁴⁵ *Id.* at 768.

⁴⁶ Camillo Boano, Roger Zetter, & Tim Morris, *Environmentally Displaced People: Understanding the Linkages Between Environmental Change, Livelihoods and Forced Migration*, REFUGEE STUDIES CENTRE (2008), <https://www.rsc.ox.ac.uk/files/files-1/pb1-environmentally-displaced-people-2008.pdf>; CLIMATE CHANGE, MIGRATION, AND HUMAN RIGHTS: LAW AND POLICY PERSPECTIVES (Dimitra Manou, Andrew Baldwin, Dug Bubie, Anja Mihr & Teresa Thorp, eds., 2017).

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⁴⁸ Lauren Nishimura, *Climate Change Migrants': Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, 27 INT. J. OF REFUG. L. 107 (2015); David James Cantor, *The New Wave: Forced Displacement Caused by Organized Crime in Central America and Mexico*, 33 REF. SURVEY Q. 34 (2014); Sindy Hernández Bonilla, *Triggers of Internal Displacement in Guatemala*, 56 FORCED MIGR. REV. 38 (2017).

⁴⁹ Adger et al., *supra* note 29.

⁵⁰ Rafael Reuveny, *Climate Change-Induced Migration and Violent Conflict*, 26 POLITICAL GEOGRAPHY 656 (2007).

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⁵² ENVIRONMENTAL CONFLICTS, MIGRATION AND GOVERNANCE, (Tim Krieger, Diana Panke, and Michael Pregernig, eds., 2020).

⁵³ While this paper does not seek to position itself in this broader academic debate discussing the extent to which climate drives migration, it certainly acknowledges the complexity and multi-causality driving human movement.

⁵⁴ Neil Adger & Jon Barnett, *Compensation for Climate Change Must Meet Needs*, 436 NATURE 328 (2005).

⁵⁵ Fonna Forman, Gina Solomon, Rachel Morello-Forsch & Keith Pezzoli, *Bending the Curve and Closing the Gap: Climate Justice and Public Health*, 2 COLLABRA 1 (2016), <http://dx.doi.org/10.1525/collabra.67>; Siobhán McInerney-Lankford, *Climate Change, Human Rights and Migration: A Legal Analysis of Challenges and Opportunities*, in RESEARCH HANDBOOK ON CLIMATE CHANGE, MIGRATION AND THE LAW 134-136 (Benoît Mayer & François Crépeau eds., 2020) (“[C]limate migrants will be susceptible to far greater harm once they migrate: women, minorities, children, older people and persons with disabilities will be at risk of further human rights violations as they move and when they settle in new place.”).

⁵⁶ *Report of the OHCHR on the Relationship Between Climate Change and Human Rights*, OHCHR, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), <http://undocs.org/A/HRC/10/61>.

⁵⁷ See Caitlin Werrell & Francesco Femia, *DHS to Congress: Climate Change a Threat Multiplier to Global Security*, CLIMATE AND SEC. (July 9, 2015), <https://climateandsecurity.org/2015/07/09/dhs-to-congress-climate-change-a-threat-multiplier-to-global-security/>.

⁵⁸ Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 J. INT'L DEV. 233, 238 (2010); Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 LOYOLA L. REV. 1, 3 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3727725; Miles Culpepper, *The Debt We Owe Central America*, JACOBIN (Nov. 1, 2018), <https://jacobinmag.com/2018/11/central-america-migrant-caravan-trump>; Andrew Baldwin, *Racialisation and the Figure of the Climate-Change Migrant*, 45 ENV. & PLANNING 1474 (2013).

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⁶⁰ *Id.*; Nishimura, *supra* note 48; see also Carmen G. Gonzalez, *Climate Justice and Climate Displacement. Evaluating the Emerging Legal and Policy Responses*, 36 WISCONSIN INT'L L. J. 366 (2019).

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⁶² UNHCR is itself historically underfunded given that its funding comes almost exclusively from voluntary national contributions. See generally Raimo Vayrynen, *Funding Dilemmas in Refugee Assistance: Political Interests and Institutional Reforms in UNHCR*, 35 INTL. MIGR. R. 143 (2001).

⁶³ Katrina Miriam Wyman, *Response to Climate Migration*, 37 HARVARD ENV'T L. REV. 167 (2013).

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⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Overall, individuals face high levels of physical, psychological, and sexual violence while in transit to the United States. For instance, many individuals face extortion, theft, and even kidnapping along their journey at the hands of criminal organizations. René Leyva-Flores, Cesar Infante, Juan Pablo Gutiérrez, Frida Quintino-Perez, María José Gómez-Saldivar, & Cristian Torres-Robles, *Migrants in Transit Through Mexico to the US: Experiences with Violence and Related Factors, 2009-2015*, 14 PLOS ONE 1 (2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0220775>. For some, traveling on main transportation routes exposes them to assaults and extortion, placing acute stress on women in particular, especially on mothers traveling with children as well as unaccompanied children. Susanne Willers, *Migration and Reproductive Strategies of Central American Women in Transit Through Mexico*, 24 J. OF FAMILY STUDIES 59, 65-66 (2018),

<https://www.tandfonline.com/doi/full/10.1080/13229400.2017.1398102>. Many individuals also travel using freight trains, which are highly dangerous. Wayne Cornelius, *Mexico: From Country*

of *Mass Emigration to Transit State*, INTER-AMERICAN DEVELOPMENT BANK, (Nov. 2018), <https://publications.iadb.org/publications/english/document/Mexico-From-Country-of-Mass-Emigration-to-Transit-State.pdf> at 12.

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⁷² *Id.*

⁷³ *Id.* at 19 (“The U.S. government’s mass incarceration of young Central American immigrants in the 1980s during the so-called “war on drugs” created the training ground for the militarized, hierarchical gangs that currently threaten the region. When these gang members were deported in large numbers in the 1990s, they began to terrorize the local population, initially in El Salvador and later in Honduras and Guatemala.”) (footnotes omitted); *see also* LAURA PEDRAZA FARIÑA, JAMES CAVALLARO AND SPRING MILLER, NO PLACE TO HIDE: GANG, STATE, AND CLANDESTINE VIOLENCE IN EL SALVADOR, 53 (2010) (“At the very least, the deportation of gang members from the United States in the late 1990s helped trigger the rapid development of organized gang activity in El Salvador.”).

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⁸⁶ *Id.*

⁸⁷ IPCC, *Impacts of 1.5°C*, *supra* note 74.

⁸⁸ *Id.* at 179-180.

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¹⁴⁴ Sigelman, *supra* note 68, at 6.

¹⁴⁵ *COVID-19 Crisis Through a Migration Lens*, WORLD BANK, Migration and Development Brief no. 32 (2020), <https://openknowledge.worldbank.org/handle/10986/33634>; *Effects of COVID-19 on Migrants*, IOM (June 2020),

https://reliefweb.int/sites/reliefweb.int/files/resources/surveyeffects_of_covid-19_june_2020_final.pdf; *The Impact of COVID-19: An Opportunity to Reaffirm the Central Role of Migrants' Human Rights in Sustainable Development*, ECLAC (Nov. 2020), https://repositorio.cepal.org/bitstream/handle/11362/46354/4/S2000617_en.pdf; *Early Recovery Responses to COVID-19 for Migrants and Hosts Communities in Latin America and the Caribbean*, UNDP (May 2020), <https://www.acnur.org/5eb5d7a74.pdf>.

¹⁴⁶ *COVID-19: Millions at Risk of Severe Food Insecurity in Latin America and Caribbean*, WORLD FOOD PROGRAMME (May 27, 2020), <https://www.wfp.org/news/covid-19-millions-risk-severe-food-insecurity-latin-america-and-caribbean>.

¹⁴⁷ *Addressing COVID-19 in Fragile Cities in the Northern Triangle of Central America*, WORLD VISION (Nov. 2020), https://reliefweb.int/sites/reliefweb.int/files/resources/EN_UrbanFragility%20Policy%20Brief_final.pdf.

¹⁴⁸ *Id.*

¹⁴⁹ Sofia Menchu & Lizbeth Diaz, *COVID-19 Tests: Central America's Latest Tool to Stop Migrant Caravans*, REUTERS, Jan. 14, 2021, <https://www.reuters.com/article/us-usa-immigration-caravan-honduras-idUSKBN29J23Y>.

¹⁵⁰ *Impact of COVID-19 on Refugees and Migrants in Guatemala and Mexico*, MIXED MIGRATION CENTRE (Sept. 2020), http://www.mixedmigration.org/wp-content/uploads/2020/09/134_snapshot_lac_impact_covid.pdf.

¹⁵¹ David J. Wrathall, Jeffrey Bury, Mark Carey, Bryan Mark, Jeff McKenzie, Kenneth Young, Michel Baraer, Adam French, & Costanza Rampini, *Migration Amidst Climate Rigidity Traps: Resource Politics and Social—Ecological Possibilism in Honduras and Peru*, 104 ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 292, 293 (2014), <https://www.tandfonline.com/doi/abs/10.1080/00045608.2013.873326>.

¹⁵² *Id.* at 294.

¹⁵³ Rigaud et al., *supra* note 26, at 4.

¹⁵⁴ Milan & Ruano, *supra* note 137 (“In many cases, however, the poorest and most vulnerable cannot move, even if they would like to, because of their lack of financial means.”).

¹⁵⁵ Fany Delavelle, *Climate Induced Migration and Displacement in Mesoamerica*, THE NANSSEN INITIATIVE (2013), https://disasterdisplacement.org/wp-content/uploads/2015/07/270715_FINAL_DISCUSSION_PAPER_MESOAMERICA_screen.pdf.

¹⁵⁶ Rigaud et al., *supra* note 26, at 5.

¹⁵⁷ Rigaud et al., *supra* note 26, at 6.

¹⁵⁸ Javier Baez, German Caruso, Valerie Mueller, & Chiyu Niu, *Heat Exposure and Youth Migration in Central America and the Caribbean*, 107 AM. ECON. R. 446 (2017), <https://www.aeaweb.org/articles?id=10.1257/aer.p20171053>.

¹⁵⁹ Roberto Ariel Abeldaño Zuñiga & Javiera Fanta Garrido, *Internal Displacement Due to Disasters in Latin America and the Caribbean*, in CLIMATE CHANGE, HAZARDS AND ADAPTATION OPTIONS 406 (Walter Leal Filho et al. eds., 2020).

¹⁶⁰ Rigaud et al., *supra* note 26, at 6.

¹⁶¹ Javier Baez et al., *supra* note 158, at 450.

¹⁶² Milan & Ruano, *supra* note 137.

¹⁶³ *Id.*

¹⁶⁴ Wrathall et al., *supra* note 151, at 294-95.

¹⁶⁵ *Id.*

¹⁶⁶ See MARIA CRISTINA GARCIA, SEEKING REFUGE: CENTRAL AMERICAN MIGRATION TO MEXICO, THE UNITED STATES, AND CANADA (2006).

¹⁶⁷ As a result, many asylum seekers are persecuted for being politically active and opposing the government. See generally José Miguel Cruz, *Criminal Violence and Democratization in Central America: The Survival of the Violent State*, 53 LATIN AMERICAN POLITICS AND SOCIETY 1 (2011) (“[P]ublic security reforms carried out during the political transitions shaped the ability of the new regimes to control the violence produced by their own institutions and collaborators . . . The survival of violent entrepreneurs in the new security apparatus and their relationship with new governing elites foster the conditions for the escalation of violence in northern Central America.”).

¹⁶⁸ Guatemala, IDMC (2019), <https://www.internal-displacement.org/countries/guatemala>.

¹⁶⁹ Sergio Ruano & Andrea Milan, *Climate Change, Rainfall Patterns, Livelihoods and Migration in Cabricán, Guatemala*, INSTITUTE FOR ENVIRONMENT AND HUMAN SECURITY (UNU-EHS) (Feb. 2014), <https://collections.unu.edu/eserv/UNU:1852/pdf11648.pdf>.

¹⁷⁰ Jorge Rodriguez Vignoli, *Cities and Migration in Latin America and the Caribbean: Updated Estimates of Key Socio-Demographic Effects*, UNITED NATIONS EXPERT GROUP MEETING ON SUSTAINABLE CITIES, HUMAN MOBILITY, AND INTERNATIONAL MIGRATION (Sept. 5, 2017), <https://www.un.org/en/development/desa/population/events/pdf/expert/27/papers/III/paper-Rodriguez-final.pdf>.

¹⁷¹ Sigelman, *supra* note 68, at 1.

¹⁷² According to research cited by the Inter-American Commission on Human Rights (IACHR), “The main factors leading to forced displacement in [Guatemala] include extortion and threats, the presence of organized crime and drug trafficking activity, expansion of megaprojects and large scale business activities (such as monoculture of sugarcane and oil palm, extensive cattle ranching and expansion of grazing pastures, logging of fine wood, metal and non-metal mining, hydroelectric plants, archeological extraction, tourism), extreme poverty, social exclusion, different forms of violence such as intrafamily and gender violence, as well as factors linked to climate change and natural disasters.” *Situation of Human Rights in Guatemala*, IACHR (Dec. 31, 2017), <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf> at 110 (internal citations omitted).

¹⁷³ Jacob Soboroff & Julia Ainsley, *Trump Admin Ignores Its Own Evidence of Climate Change’s Impact on Migration from Central America*, NBC NEWS, Sept. 20, 2019, <https://www.nbcnews.com/politics/immigration/trump-admin-ignored-its-own-evidence-climate-change-s-impact-n1056381>.

¹⁷⁴ Peter J. Meyer & Maureen Taft-Morales, *Central American Migration: Root Causes and U.S. Policy*, U.S. CONGRESSIONAL RESEARCH SERVICE IF11151 (June 13, 2019), <https://fas.org/sgp/crs/row/IF11151.pdf>.

¹⁷⁵ Kristen Bialik, *Border Apprehensions Increased in 2018 – Especially for Migrant Families*, PEW RESEARCH CENTER (Jan. 16, 2019), <https://www.pewresearch.org/fact-tank/2019/01/16/border-apprehensions-of-migrant-families-have-risen-substantially-so-far-in-2018/>.

¹⁷⁶ Sigelman, *supra* note 68, at 1.

¹⁷⁷ Customs and Border Protection, *U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019* (June 2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions-07/23/2019>.

¹⁷⁸ Sigelman, *supra* note 68, at 2; *Migration Trends in Central America North America and the Caribbean*, IOM and UN Migration, Nov. 2019, https://rosanjose.iom.int/site/sites/default/files/Reportes/sitrep_p2_compr_eng.pdf, at 3.

¹⁷⁹ See JANE MCADAM, CLIMATE CHANGE AND DISPLACEMENT. MULTIDISCIPLINARY PERSPECTIVES (2012).

¹⁸⁰ UN High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*, (Oct. 1, 2020), <https://www.refworld.org/docid/5f75f2734.html>.

¹⁸¹ *Id.*

¹⁸² United Nations Convention relating to the Status of Refugees (Refugee Convention), *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

¹⁸³ United Nations Protocol relating to the Status of Refugees (Protocol), *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. The Protocol incorporated most of the provisions of the CSR while removing certain temporal and geographic restrictions.

¹⁸⁴ Article 1 of the Convention defines a refugee as any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” Refugee Convention, *supra* note 182.

¹⁸⁵ *See* JAMES C. HATHAWAY AND MICHELLE FOSTER, *THE LAW OF REFUGEE STATUS* 1 (2d ed. 2014).1; *see generally*, JAMES C. HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* (2005); “The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations.” OHCHR, *The Principle of Non-Refoulement Under International Human Rights Law*, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

¹⁸⁶ Since the passage of the Refugee Act in 1980, the United States has admitted more than 3.1 million refugees. *See* Department of State, *Refugee Admissions*, <https://www.state.gov/refugee-admissions/>.

¹⁸⁷ Protocol, *supra* note 183, at Art. I.

¹⁸⁸ *See, e.g.*, Hathaway and Foster, *supra* note 185, at 51; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 709 (Can.) (“International refugee law was formulated to serve as a back-up to the protection one expects from the state of which an individual is a national.”).

¹⁸⁹ *See* Hathaway and Foster, *supra* note 185, 1-17. U.S. courts have noted that each protected ground is based on a characteristic that marks the refugee for persecution and “provokes oppression.” *Kotasz v. I.N.S.*, 31 F.3d 847, 853 n.9 (9th Cir. 1994). *See generally* DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES* § 5:16 (2020 ed.).

¹⁹⁰ Refugee Act of 1980, Pub. L. No. 96-212, § 101(b), 94 Stat. 102, 102 (1980); U.S. DEP’T OF JUSTICE, OFFICE OF LEGAL COUNSEL, *LEGAL OBLIGATIONS OF THE UNITED STATES UNDER ARTICLE 33 OF THE REFUGEE CONVENTION*, 15 OP. O.L.C. 86, 86–87 (1991) (quoting Article 33 of the Refugee Convention); The 1980 Act was the culmination of a decade of legislative proposals for reform in refugee law. *See generally* Deborah E. Anker & Michael E. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 SAN DIEGO L. REV. 9, 20–64 (1981).

¹⁹¹ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987) (“If one thing is clear from the legislative history of the new definition of “refugee,” and indeed the entire 1980 Refugee Act, it is that one of Congress’ primary purposes was to bring United States’ refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, to which the United States is a party.”).

¹⁹² See International Covenant on Civil and Political Rights, Dec. 16 1966, United Nations, Treaty Series, vol. 999, p. 171, at Art. 6 (recognizing the inherent right to life, and that such right will be protected by law).

¹⁹³ INA § 101(a)(42).

¹⁹⁴ See INA § 101(a)(42)(A) (codified at 8 U.S.C. § 1158(a)(42)(A)); 8 C.F.R. § 208.13(b)(1). Under U.S. law, an individual who has established past persecution is “presumed to have a well-founded fear of persecution on the basis of the original [past persecution] claim. This presumption may be rebutted if it is shown, by a preponderance of the evidence, that there has been a fundamental change in circumstances in her home country or that she could avoid future persecution by relocating to another part of her country. 8 C.F.R. §§ 208.13(b)(1)(i)(A)-(B). This same presumption applies in the withholding of removal context. 241(b)(3)(B) (codified at 8 C.F.R. §§ 208.16 241(b)(3)(B)).

¹⁹⁵ 8 C.F.R. § 1208.13(b)(1)(iii)(B); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012).

¹⁹⁶ *Matter of L-S-*, *supra* at 714.

¹⁹⁷ See UNHCR, *Protecting Refugees 3* (Dec. 2017), https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/05/UNHCR_Brochure_EN.pdf.

¹⁹⁸ See generally Anker, *supra* note 189, at §§ 4:1, 4:3-4:4, 4:8-4:11. Establishing this failure of state protection requires evidence that the State’s failure to protect will give rise to a well-founded fear of persecution. See Hathaway and Foster, *supra* note 185, at § 4.2.4. In practice, state protection would be required to reduce the risk of harm to below the ten-percent threshold announced in *Cardoza-Fonseca*.

¹⁹⁹ *Id.* See also GUY GOODWIN-GILL AND JANE MCADAM. THE REFUGEE IN INTERNATIONAL LAW (2007); JASON M. POBJOY, THE CHILD IN INTERNATIONAL REFUGEE LAW (2017). While U.S. courts have held that persecution is a flexible concept that can take different forms, U.S. administrative authorities and courts have held that, in general, mere harassment or isolated incidents of intimidation will not suffice. See, e.g., *Martin Martin v. Barr*, 916 F.3d 1141, 1144 (8th Cir. 2019) (“Persecution is an extreme concept that involves the infliction or threat of death, torture, or injury to one’s person or freedom, on account of a protected characteristic.” (citations and internal quotation marks omitted)); *Orellana-Arias v. Sessions*, 865 F.3d 476, 487 (7th Cir. 2017) (“Persecution must rise above mere harassment, and can include detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings or torture, behavior that threatens the same, and non-life-threatening behavior such as torture and economic deprivation if the resulting conditions are sufficiently severe.” (citations and internal quotation marks omitted)).

²⁰⁰ Scholars have pointed out how climate displacement is more often than not driven by greenhouse gas emissions of Global North countries. While Global South countries face the

climate impacts that derive from emissions, the source of the harms lies elsewhere. *See* Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, Legal and Protection Policy Research Series, UNHCR (Feb. 2012), <http://www.unhcr.org/4f33f1729.pdf> at 8.

²⁰¹ *See, e.g., Tarraf v. Gonzales*, 495 F.3d 525, 534-35 (7th Cir. 2007) (“Physical abuse causing serious injuries is not the sine qua non of persecution. Persecution can include confiscation of property, surveillance and behavior that threatens future harm. Conduct can rise to the level of persecution without being life-threatening, including even such acts as severe economic deprivation.” (citations omitted)); *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1313 (9th Cir. 2012) (“We have recognized that . . . persecution can come[] in many forms, including physical, economic and emotional harm.”).

²⁰² *Matter of T-Z-*, 24 I.&N. Dec. 163, 173 (B.I.A. 2007); *see also Orellana-Arias v. Sessions*, *supra* note 199 (“Persecution must rise above mere harassment, and can include detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings or torture, or behavior that threatens the same, and non-life-threatening such as torture and economic deprivation if the resulting conditions are sufficiently severe.” (citations and internal quotation marks omitted)).

²⁰³ *Matter of T-Z*, *supra* at 174.

²⁰⁴ *See* Anker, *supra* note 189, §§ 4:18-4:21.

²⁰⁵ *See* Anker, *supra* note 189, §§ 4:8-4:11; UNHCR Handbook, *supra* note 191, at ¶ 65 (emphasizing that “[w]here serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or *prove unable*, to offer effective protection” (emphasis added)).

²⁰⁶ Refugee Convention, *supra* note 182, Art. 1(A)(2). In defining a refugee, the Refugee Convention uses the language “for reasons of,” whereas the U.S. definition uses the language “on account of.” *Compare id. with* INA § 101(a)(42)(A). The five protected grounds are race, religion, nationality, membership in a particular social group, and political opinion.

²⁰⁷ INA § 208(b)(1)(B)(i) (codified at 8 U.S.C. § 1158(b)(1)(B)(i)). This requirement is met when either the serious harm or the state failure is on account of a nexus ground.

²⁰⁸ *See Diaz de Gomez v. Wilkinson*, ___ F.3d ___ (4th Cir. 2021) (holding that the BIA applied an “excessively narrow reading” of the nexus requirement, reviewed the “one central reason” standard, and referenced an earlier decision finding error where the BIA had focused too narrowly on the “immediate trigger” for the threats without considering the “relationships that prompted the asserted persecution”). As is the case in other areas, the Board has not been consistent, for example often playing lip service to the mixed reasons test while applying a singular causation test.

²⁰⁹ *See, e.g.,* UNHCR, Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the Regional Refugee Definitions ¶ 32 (HCR/GIP/16/12) (Dec. 2, 2016), *available at* <https://www.unhcr.org/en-us/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee->

status-related.html (“[T]he intent or motive of the persecutor is not necessary or decisive, not least because it is often difficult to establish, in particular in situations of armed conflict and violence.”); POBJOY, *supra*, note 199 (“Although still embryonic, the gradual shift from a focus on the intention of the persecutor to a focus on the status and predicament of the child applicant is to be *welcomed*.” (emphasis added)); Hathaway and Foster, *supra* note 185, 376-82; MATTHEW SCOTT, CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION 41 (2020) (describing in detail the ways in which the State may be implicated in causation, including in the creation of conditions that precede environmental degradation and in its response to a climate change-induced migration).

²¹⁰ MATTHEW SCOTT, CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION 41 (2020).

²¹¹ See also UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees* ¶ 48 (HCR/GIP/13/10/Corr. 1) (Nov. 12, 2014), <https://www.refworld.org/pdfid/529ee33b4.pdf> (“There is no need for the persecutor to have a punitive intent to establish the causal link; the focus rather is on the reasons for the applicant’s predicament and how he or she is likely to experience the harm. Even treatment of the individual in the same way as a majority of the population does not preclude a finding of persecution or reasons of a Convention ground. Similarly, the persecutor’s attribution or imputation of a Convention ground to the applicant is sufficient to satisfy the causal link. Where the persecutor is a non-State armed actor, the causal link is established either where the persecutor harms the applicant for a Convention-related reason, *or* the State does not protect him or her for a Convention-related reason.”). The Board of Immigration Appeals has recognized that a “subjective ‘punitive’ or ‘malignant’ intent is not required for harm to constitute persecution. *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996).

²¹² See, e.g., *Matter of A-B- II*, *supra* at 211 (purporting to adopt the Fourth Circuit’s “but for” test for nexus but then not applying it); also reintroduces the requirement of “animus,” *Matter of L-E-A-*, 27 I&N Dec. 40, 44 (BIA 2017) (requiring an animus towards the particular social group in question in order to establish nexus).

²¹³ Anker, *supra* note 189, § 5:14.

²¹⁴ For example, U.S. Citizenship and Immigration Services (USCIS) Asylum Officer training materials explain that the relevant inquiry is “whether the persecutor—again the state or a non-state actor—has committed an intentional action, or intends to commit an intentional action” *for reasons of* a protected ground. *Id.* This has been described as a “but for” or contributory cause test, adopted in the jurisprudence of some federal courts of appeal. For further discussion, see Michelle Foster, *Causation in Context: Interpreting the Nexus Clause in the Refugee Convention*, 23 MICH. J. INT’L L. 265 (2002).

²¹⁵ See UNHCR Legal Considerations, *supra*, at 5-6 (“Seriously adverse climate impacts are the consequence of a government policy with a discriminate impact on a specific group of persons.”).

²¹⁶ The applicable regulations provide a list of factors to consider in determining whether internal relocation (known in international law as “internal flight alternative” (IFA)), would be reasonable. 8 C.F.R. § 1208.13(b)(2)(ii).

²¹⁷ The Ninth Circuit recently clarified that relocation does not include “the unstable situation of one who must always be ready to flee,” nor does living in hiding establish the ability to avoid future persecution. *Akosung v. Barr*, 970 F.3d 1075 (9th Cir. 2020); *see also* Jeffrey S. Chase, *9th Cir. to BIA: Hiding in Fear is Not Reasonable Relocation*, JEFFREY S. CHASE BLOG (Aug. 16, 2020) <https://www.jeffreyschase.com/blog/2020/8/16/9th-cir-to-bia-hiding-in-fear-is-not-reasonable-relocation>.

²¹⁸ UNHCR Legal Considerations, *supra* ¶ 12.

²¹⁹ MATTHEW SCOTT, CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION (Cambridge Univ. Press 2020). It should be noted that Scott based his work on international refugee law, rather than U.S. refugee law.

²²⁰ UNHCR Legal Considerations, *supra*, ¶ 10. *See also* J. McAdam, Climate Change, Forced Migration and International Law, OUP 2012, p. 48.

²²¹ UNHCR Legal Considerations, *supra*, ¶ 10.

²²² *Id.*

²²³ *Id.*

²²⁴ UNHCR Legal Considerations, *supra* §§ 15-17.

²²⁵ *Id.*

²²⁶ 8 U.S.C. 1157(a), (d). Annual admission of refugees and admission of emergency situation refugees.

²²⁷ USCIS. In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM), <https://www.uscis.gov/CAM>.

²²⁸ U.S. Department of State, *Report to Congress on the Proposed Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021*, (Feb. 12, 2021), <https://www.state.gov/proposed-emergency-presidential-determination-on-refugee-admissions-for-fy21/#:~:text=P%2D2%20designations%20reflect%20that,as%20refugees%20under%20U.S.%20law>.

²²⁹ *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System*, THE WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.

²³⁰ Madeline Messick & Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent*, (July 2, 2012), <https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>.

²³¹ *Id.*

²³² *See* 8 U.S.C. 1254(a).

²³³ *Temporary Protected Status: Overview and Current Issues*, U.S. Congressional Research Service, RS20844 (Oct. 26, 2020), <https://fas.org/sgp/crs/homesec/RS20844.pdf>.

²³⁴ Other countries have had designations based on environmental disasters terminated. Montserrat had TPS terminated in 2005 not because conditions improved, but because they were so constant that could no longer be considered “temporary.” *See* Termination of the Designation of Montserrat Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation. 69 Fed. Reg. 40642 (July 6, 2004), <https://www.federalregister.gov/documents/2004/07/06/04-15243/termination-of-the-designation-of-montserrat-under-the-temporary-protected-status-program-extension>; Nina Bernstein, *U.S. Is Ending Haven for Those Fleeing a Volcano*, N.Y. TIMES (Aug. 9, 2004), <https://www.nytimes.com/2004/08/09/nyregion/us-is-ending-haven-for-those-fleeing-a-volcano.html?>.

²³⁵ U.S. Citizenship Act of 2021, HR 1177, 117th Cong. (2021-2022), <https://lindasanchez.house.gov/sites/lindasanchez.house.gov/files/2021.02.18%20US%20Citizenship%20Act%20Bill%20Text%20-%20SIGNED.pdf>.

²³⁶ INA §244(a)(1)(A), (a)(1)(B).

²³⁷ INA §244(f)(3) (with the consent of the DHS Secretary).

²³⁸ Liberians covered by DED, as well as some Liberians not covered by DED, may be eligible for permanent resident status (a Green Card) under recently enacted legislation known as Liberian Refugee Immigration Fairness (LRIF). *See* U.S. Citizenship and Immigration Services, *Liberian Refugee Immigration Fairness*, <https://www.uscis.gov/green-card/green-card-eligibility/liberian-refugee-immigration-fairness>. The Biden Administration reinstated DED for Liberians on January 20, 2021 until June 30, 2022. *See* Reinstating Deferred Enforced Departure for Liberians, THE WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/>; *See* U.S. Citizenship and Immigration Services, *DED Granted Country – Venezuela*, <https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-venezuela>.

²³⁹ *Temporary Protected Status: An Overview*, AMERICAN IMMIGRATION COUNCIL (Feb. 8, 2021), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>.

²⁴⁰ After the Trump Administration announced the termination of DED for Liberia, advocates filed a lawsuit challenging the constitutionality of the termination. *African Communities Together v. Trump*, 4:19-cv-10432 (D. Mass., 2019). For other challenges related to TPS *see* *Challenges to TPS and DED Terminations and Other TPS-Related Litigation*, CLINIC (Jan. 5, 2021), <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/challenges>.

²⁴¹ The program is temporary and discretionary in nature. Eligibility guidelines may also require continuous presence in the United States since a specific date, preventing people outside the United States from qualifying for relief under DED.

²⁴² *The Use of Parole Under Immigration Law*, AMERICAN IMMIGRATION COUNCIL (Jan. 24, 2018), <https://www.americanimmigrationcouncil.org/research/use-parole-under-immigration-law>.

²⁴³ U.S. Citizenship and Immigration Services, *Central American Minors (CAM): Information for Parole Applicants*, <https://www.uscis.gov/humanitarian/humanitarian-parole/central-american-minors-cam-information-for-parole-applicants> (“The program allow[ed] certain parents lawfully present in the United States to request a refugee resettlement interview for unmarried children under 21 in Guatemala, El Salvador, or Honduras, as well as certain family members of that child. The parent in the United States [needed] lawful presence in order to request that his or her child be provided access to the program and considered for refugee resettlement or parole under the program.”).

²⁴⁴ The parole program under CAM was terminated in August 2017. However, a settlement agreement in a lawsuit challenging the termination, *S.A. v. Trump*, 18-cv-03539 (N.D. Cal. May 17, 2019) required USCIS to reopen and continue processing 2,714 CAM applicants who had received a conditional parole approval notice that USCIS then rescinded in 2017 following the CAM Parole program’s termination.

²⁴⁵ Parole can only be justified on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit.” 8 C.F.R. §§ 212.5(b); 235.3(c).

²⁴⁶ Humanitarian Parole grants entry but not admission.

²⁴⁷ *Fact Sheet: Deferred Enforced Departure*, NAT’L IMM. FORUM (Feb. 12, 2021), <https://immigrationforum.org/article/fact-sheet-deferred-enforced-departure-ded/>.

²⁴⁸ *Executive Grants of Temporary Immigrant Relief, 1956-Present*, AMERICAN IMM. COUNCIL, (Oct. 2014), https://www.americanimmigrationcouncil.org/sites/default/files/research/executive_grants_of_temporary_immigration_relief_1956-present_final_0.pdf.

²⁴⁹ “Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans,” (Jan. 18, 2010), DHS, <https://www.dhs.gov/news/2010/01/18/secretary-announces-humanitarian-parole-policy-certain-haitian-orphans>.

²⁵⁰ Neil King, *Biden’s climate policy: What does John Kerry’s appointment mean for the environment?*, DW (Nov. 25, 2020), <https://www.dw.com/en/bidens-climate-policy-what-does-john-kerrys-appointment-mean-for-the-environment/a-55721147>.

²⁵¹ When TPS was first enacted in 1990, the designation of countries for TPS fell under the authority of the Attorney General. With the creation of the Department of Homeland Security in 2002, most of the Attorney General’s immigration-related authority transferred to the Secretary of DHS.

²⁵² Emily Nasser-Hall, *Square Pegs in Round Holes: The Case of Environmentally displaced persons and the need for a specific Protection Regime in the United States*, 22 TUL. J. INT’L & COMP. L. 263 (2014). In 2010, for example, both Guatemala and Pakistan officially requested TPS status in the wake of environmental disasters, but were not so designated. Chelsea Krombel, *The Prospective Role of Temporary Protected Status: How Discretionary Designation Has*

Hindered the United States' Ability to Protect Those Displaced By Environmental Disaster, 28 CONN. J. INT'L L. 153 (2012).

²⁵³ In 1999, the Attorney General designated Honduras and Nicaragua for TPS due to “severe flooding and associated damage” and “substantial disruption of living conditions” resulting from Hurricane Mitch. U.S. Department of Justice, Immigration and Naturalization Service, *The Designation of Honduras Under Temporary Protected Status*, 64 Fed. Reg. 524-526 (Jan. 5, 1999); U.S. Department of Justice, Immigration and Naturalization Service, *The Designation of Nicaragua Under Temporary Protected Status*, 64 Fed. Reg. 526-528 (Jan. 5, 1999).

²⁵⁴ Chelsea Krombel, *The Prospective Role Of Temporary Protected Status: How Discretionary Designation Has Hindered The United States' Ability To Protect Those Displaced By Environmental Disaster*, 28 CONN. J. INT'L L. 153 (2012).

²⁵⁵ *Temporary Protected Status: An Overview*, AMERICAN IMM. COUNCIL (Feb. 8, 2021), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>.

²⁵⁶ Whitney A. Reitz, *Reflections on the Special Humanitarian Parole Program for Haitian Orphans*, 55 N.Y.L. SCH. L. REV. 791 (2010).

²⁵⁷ This could also be a way of acknowledging the effects of U.S. intervention and policies in Central America, which was at least a consideration in the post-Vietnam refugee resettlement programs. *See, e.g.*, Admissions of Refugees into the United States Part II: Hearings before the Subcomm. on Immigr., Refugees, and Int'l Law of the Comm. of the Judiciary H. Rep., 95th Cong., 2d Sess. 178 (1978) (“It is apparent that the basic reason, apart from traditional concern for refugees and human rights, for our responsibility for refugees in that area, stems from our prolonged presence in Vietnam, and our utilization of the resources of Laos and Cambodia during the Indochina conflict.”) (Statement of Rep. Eilberg).

²⁵⁸ Chelsea Krombel, *The Prospective Role Of Temporary Protected Status: How Discretionary Designation Has Hindered The United States' Ability To Protect Those Displaced By Environmental Disaster*, 28 CONN. J. INT'L L. 153 (2012).

²⁵⁹ Katherine C. McKenzie, Eleanor Emery, Kathryn Hampton, & Sural Shah, *Eliminating Asylum: The Effects of Trump Administration Policies*, HEALTH AND HUMAN RIGHTS J. (Aug. 24, 2020), <https://www.hhrjournal.org/2020/08/eliminating-asylum-the-effects-of-trump-administration-policies/>.

²⁶⁰ *Pangea Legal Services v. DHS*, No. 20-CV-09253-JD, (N.D. Cal. Jan. 8, 2021); *Immigration Equality v. DHS*, No. 20-cv-9258-JD, (N.D. Cal. Jan. 8, 2021).

²⁶¹ For recommendations on how to rebuild the U.S. Refugee Admissions Program, see *A Roadmap to Rebuilding the U.S. Refugee Admissions Program*, THE NATIONAL CONFERENCE ON CITIZENSHIP AND PENN BIDEN CENTER FOR DIPLOMACY AND GLOBAL ENGAGEMENT (October 2020), <https://global.upenn.edu/sites/default/files/penn-biden-center/Final%20Report%20-%20A%20Roadmap%20to%20Rebuilding%20USRAP.pdf>.

²⁶² Silva Mathema and Sofia Carratala, *Rebuilding the U.S. Refugee Program for the 21st Century*, CTR. FOR AMERICAN PROGRESS (Oct. 26, 2020), <https://www.americanprogress.org/issues/immigration/reports/2020/10/26/492342/rebuilding-u-s-refugee-program-21st-century/>; For recommendations on how the Biden administration should

respond to global migration, see *Restoring U.S. Leadership on Refugee Protection*, THE NATIONAL CONFERENCE ON CITIZENSHIP AND PENN BIDEN CENTER FOR DIPLOMACY AND GLOBAL ENGAGEMENT (Oct. 2020), <https://global.upenn.edu/sites/default/files/penn-biden-center/Restoring%20U.S.%20Global%20Leadership%20on%20Refugee%20Protection.pdf> at 23.

²⁶³ For recommendations on how to make the refugee resettlement process more efficient, see *Fulfilling U.S. Commitment to Refugee Resettlement: Protecting Refugees, Preserving National Security & Building the U.S. Economy through Refugee Admissions*, HARVARD IMM AND REF. CLINICAL PROGRAM (2017), <http://harvardimmigrationclinic.org/hirc/files/2017/06/syria-final-draft-v9.pdf>. Some of these recommendation for the Department of State include (1) continue to implement new technologies to enhance and harmonize effective security checks for refugees, building on the technological advances put in place in 2016, which allow for more efficient screening while still safeguarding national security; and (2) facilitate more efficient family reunification for refugees to ensure the stability refugees need to contribute fully and effectively to U.S. society and boost the economy.

²⁶⁴ *Protection for persons moving across borders in the context of disasters*, THE NANSEN INITIATIVE (2016), <https://environmentalmigration.iom.int/sites/default/files/policy/PDD/PROTECTION-FOR-PERSONS-MOVING-IN-THE-CONTEXT-OF-DISASTERS.pdf>. The Nansen Initiative is a State-led process that creates a knowledge base and organization inter-governmental regional consultations in order to build consensus on how to protect those displaced because of climate-related disasters. The Nansen Initiative's draft text points to some ways that countries like the United States can support climate displaced persons. These include: (1) use of regular migration categories to "provide foreigners affected by a disaster with a more stable status than exceptional migration categories," while maintaining their regular migration policies; (2) creation of exceptional migration categories to provide "a temporary response to disaster-affected foreigners, particularly in situations when such persons may not meet the legal requirements for travel, admission or stay in the country under regular migration categories;" and (3) "use of refugee categories and protection categories under international human rights law."

²⁶⁵ For more information on the Platform for Disaster Displacement, see Ober, *supra* note 2 ("The PDD has a "Group of Friends" that consists of states that are most interested in supporting PDD's work. The United States was a "Friend" of the Nansen Initiative, and when the process ended in 2015, the United States did not become a "Friend" of the PDD. Refugees International recommends that the Biden-Harris administration re-engage in this marquee process and become an official "Friend" of the PDD in order to signal interest in leading on these issues and demonstrate the value it finds in these sorts of global processes.").

²⁶⁶ *Regional Conference on Migration*, <https://www.rcmvs.org/en/countries>. RCM is a voluntary and non-binding conference of Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the United States.

²⁶⁷ Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated

with Climate Change Impacts, UNFCCC (Nov. 15, 2019), https://unfccc.int/sites/default/files/resource/sb2019_05_add1.pdf at 14.

²⁶⁸ For more information on the Sendai Framework, *see* Ober, *supra* note 2.

²⁶⁹ *Global compact for migration*, UN, <https://refugeesmigrants.un.org/migration-compact>.

²⁷⁰ Rhoda Margesson, *The Global Compact on Migration (GCM) and U.S. Policy*, U.S. Congressional Research Service No. F11003 (Mar. 27, 2020), <http://fas.org/sgp/crs/row/IF11003.pdf>.

²⁷¹ *Global Climate Mobilization*, <https://www.jayinslee.com/issues/global-climate>.

²⁷² Ama Francis, *Free Movement Agreements & Climate-Induced Migration: A Caribbean Case Study*, SABIN CENTER FOR CLIMATE CHANGE LAW (Sept. 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3464594

²⁷³ Preparing the United States for the Impacts of Climate Change, 78 Fed. Reg. 66817 (Nov. 6, 2013), <https://www.federalregister.gov/documents/2013/11/06/2013-26785/preparing-the-united-states-for-the-impacts-of-climate-change>.

²⁷⁴ Promoting Energy Independence and Economic Growth, 82 Fed. Reg. 16093 (Mar. 31, 2017), <https://www.federalregister.gov/documents/2017/03/31/2017-06576/promoting-energy-independence-and-economic-growth>. This EO also revoked several other executive actions and rescinded Obama-era reports on climate change.

²⁷⁵ For recommendations on how to make the refugee resettlement process more efficient, *see Fulfilling U.S. Commitment to Refugee Resettlement supra* note at 263.

²⁷⁶ Environmental Protection Agency, *EPA Awards 2019 Environmental Justice Small Grants for Projects in Rhode Island* (Nov. 5, 2019), <https://www.epa.gov/newsreleases/epa-awards-2019-environmental-justice-small-grants-projects-rhode-island>.

²⁷⁷ *Pacific Migrant Trends and Settlement Outcomes Report*, NEW ZEALAND IMMIGRATION (Dec. 2018), <https://www.mbie.govt.nz/assets/902b9b1dcc/inz-pacific-migrant-trends-and-settlement-outcomes-november-2018.pdf>.

²⁷⁸ Rick Noack, *A Proposal in New Zealand Could Trigger the Era of 'Climate Change Refugees'*, THE WASH. POST, (Oct. 31, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/10/31/a-proposal-in-new-zealand-could-trigger-the-era-of-climate-change-refugees/?utm_term=.88676dc37c1e.

²⁷⁹ U.S. Citizenship Act of 2021, HR 1177, 117th Cong. (2021-2022), <https://lindasanchez.house.gov/sites/lindasanchez.house.gov/files/2021.02.18%20US%20Citizenship%20Act%20Bill%20Text%20-%20SIGNED.pdf>

²⁸⁰ Global Climate Change Resilience Strategy Act, S.2565, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/senate-bill/2565/>.

²⁸¹ Women and Climate Change Act of 2019, S. 868, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/senate-bill/868>.

²⁸² FEMA Climate Change Preparedness Act, H.R. 4823, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/4823>.

²⁸³ Special Envoy for Refugees Act, H.R. 5791, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/5791>.