

CLIMATE DISASTER & PROTECTION PATHWAYS FOR MIGRATION

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Lutheran Immigration
and Refugee Service

I. EXECUTIVE SUMMARY

Across the globe, the effects of climate change are exacerbating humanitarian crises and driving individuals to leave their communities and ways of life. The overwhelming majority of climate disaster displacement occurs internally within countries, but for the millions of climate displaced persons who will cross borders for safety or livelihood, there is presently no country or international body that affords any meaningful legal protections for them. Recognizing the lack of protections provided for these climate displaced persons under current and traditional legal constructs, Lutheran Immigration and Refugee Service (LIRS) proposes a framework for how the U.S. might create legal migration pathways for people displaced across borders by sudden- or slow-onset climate disasters. Enhanced cooperation between countries, (sub-)regional organizations and the international community will be necessary in response to the causes and effects of climate-related displacement.

For persons displaced by sudden-onset disasters, such as flooding and fires, existing legal pathways under the purview of the legislative and administrative branches of the U.S. government include Temporary Protected Status (TPS), Deferred Enforced Departure (DED), and Humanitarian Parole. Among other insufficiencies, these pathways provide short-term protections that would not allow for a climate displaced person to transition to lawful permanent residency or apply for a green card. While acknowledging that these pathways are incomplete solutions, they can serve as a short-term tool to respond to emerging and urgent needs. As such, these protection pathways ought to be expanded and utilized more broadly to protect a greater number of displaced persons and to aid in the stabilization of countries affected by sudden-onset disasters.

Although there is not presently a legal pathway by which persons displaced by slow-onset natural hazards and the long-term impacts of climate change (who do not also meet tradition refugee convention categories) to migrate to the U.S., a new resettlement or asylum program could be created for those permanently displaced by climate change. Existing U.S. immigration law could potentially be interpreted to allow climate displaced persons to qualify for refugee protections. For climate displaced persons who wish to return to their country of origin when and if conditions improve, the U.S. could expand current seasonal worker programs that assure worker protections and create new pathways for additional “guest workers” that do not preclude longer-term protection. The presidential administration could also work to develop bilateral or (sub-)regional agreements to facilitate temporary, circular, and even permanent migration that would ameliorate gaps in the domestic labor market while benefiting climate displaced persons.

As resilience is integral to determining whether and how people and countries can withstand the effects of climate change, the U.S. must become a climate resiliency leader by adopting sustainable practices that will help bend the global emissions curve to limit global temperature increases. By virtue of international cooperation and national ingenuity, the U.S. could work to decrease the number of internally displaced persons (IDPs) forced to move across borders due to climate disasters by investing in and creating durable solutions. Climate change adaptation measures that decrease carbon emissions and increase the resilience of individuals, communities, and countries are essential investments that may mitigate ongoing disaster displacement and reduce the number of climate displaced persons in the future.

LIRS believes that the time for action to protect climate displaced persons is now and that the U.S. has the capability and moral responsibility to strengthen its protection pathways for these individuals and to be a global leader in climate resiliency.

II. OVERVIEW

Climate change is adversely impacting communities and livelihoods across the globe – compelling people to move at increasing rates. The United Nations High Commissioner for Refugees (UNHCR) reports that an average of 22.5 million people were displaced by climate or weather-related events between the years 2008 and 2018.¹ The International Organization for Migration (IOM) estimates that by 2050, there will be 200 million climate displaced persons.² These groups estimate that both sudden onset weather events (flooding, forest fires, and storms) and slow-onset events (desertification, sea-level rise, ocean acidification, air pollution, rain pattern shifts, and loss of biodiversity) are predicted to exacerbate humanitarian crises and lead to further forced migration.

As a faith-based organization serving migrants and refugees in the U.S., Lutheran Immigration and Refugee Service (LIRS) is concerned about the rising number of people who require protection but are unable to access it through current or traditional legal constructs. As a witness to God’s love for all people, we stand with and advocate for migrants and refugees. Managed properly, migration has the potential to be an adequate measure to cope with the effects of climate change, other environmental degradation, and natural hazards. However, migration also carries specific risks, particularly for women and children. Migrants might be economically exploited, exposed to dangerous conditions at their

¹ “Environment, Disaster, and Climate Change.” UNHCR USA. United Nations High Commissioner for Refugees, 2021. <https://www.unhcr.org/en-us/environment-disasters-and-climate-change.html>.

² Brown, Oli. Rep. Migration and Climate Change. International Organization for Migration, 2008. <https://environmentalmigration.iom.int/mrs-n%C2%B031-migration-and-climate-change>.

places of work or homes, face discrimination and violence, or become victims of trafficking. For this reason, migration as a resilience strategy for those displaced must be met with a U.S. legal system that bolsters protections for women, families, and communities to ensure that resilience can be sustained.

This report seeks to build out a framework for how the U.S. might create legal pathways for migration in the wake of climate disaster, whether sudden-onset or slow-onset. Given the wealth of expertise and reports on the impact of climate change on regional ecosystems and vulnerable communities, this report does not attempt to address these extant issues. Nor does it speak to managed retreat models or communal displacement, where an entire community or tribe may desire to be relocated together. As LIRS' expertise largely lies with those who seek safety in the U.S. as families and individuals, this report will speak to pathways that are most relevant to them.

III. TERMINOLOGY

As many have noted before, the debate over what terms to use when referring to those displaced in whole or in part by climate disasters is as hotly contested as ever. Some researchers have chosen to use the term “climate migrants” for these individuals, while others have described this term as obfuscating the causes and nature of displacement.^{3, 4} Still others have balked at the use of “climate refugee,” a term that in the general public confers vulnerability and perhaps the moral imperative to protect, but among migration and legal experts far exceeds the availability and eligibility of those displaced by climate disasters to the binding protections conferred for “refugees” under the 1951 Refugee Convention and subsequent protocols.

A 2009 report from the International Organization for Migration (IOM) even contributed the lack of action concerning displacement from climate change to the limited consensus among researchers “about whether or not environmental migration is a distinct form of migration worthy of special study.”⁵ Recognizing that existing and future frameworks must be built from contemporaneously insufficient terminology and that the scope of this report’s examination is the U.S. context, we have chosen to use the term “climate displaced persons.” This language was chosen for the

3 Yayboke, Erol, and Janina Staguhn. *Rep. A New Framework for U.S. Leadership on Climate Migration*. Center for Strategic and International Studies, October 23, 2020.

<https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>.

4 “Climate Refugees.” Othering & Belonging Institute. University of California, Berkeley, December 10, 2019.

<https://belonging.berkeley.edu/climate-refugees/present-protection-regime>.

5 Frank Laczko and Christine Aghazarm, “Migration, Environment and Climate Change: Assessing the Evidence” (Geneva, Switzerland: International Organization for Migration, n.d.),

http://publications.iom.int/system/files/pdf/migration_and_environment.pdf.

aforementioned reasons and is informed by recent findings from colleagues at Oxfam America and the Sierra Club that found that among 1200 Americans surveyed in their poll, U.S. participants could most easily recognize – and therefore, support compassionate policy responses to – the term “climate-related displacement.” For the benefit of this report, and acknowledging its inadequacies, we will refer to those individuals displaced in whole or in part by adverse effects of climate change as “climate displaced persons” or “climate disaster displaced persons.”

Below are a few more terms that may be helpful when reviewing this report:

- Social scientists use “**migration**” as a generic term encompassing both voluntary and forced movements. International law does not use the term “migrant” in the context of forced movements, but refers to “displaced persons” and “refugees.”⁶
- A **refugee** is defined as a person that is unable or unwilling to return to their country of origin owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion; is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence, is unable or, owing to such fear, is unwilling to return to it.⁷
- **Persons displaced by sudden-onset disasters** are those displaced from their place of habitual residence, often by violent, sudden disasters such as wildfires, floods, etc., regardless of whether climate change can be directly attributed to the disaster.
- **Persons displaced by slow-onset natural hazards, environmental degradation, and the long-term impacts of climate change** are those displaced by slow-moving environmental change in their place of habitual residence. These individuals may choose movements that are largely voluntary insofar as even vulnerable people may possess the ability to choose between different realistic options.⁸ In the context of

6 Kälin, Walter, and Nina Schrepfer. Rep. *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*. United Nations High Commissioner for Refugees Division of Internal Protection, February 2012. <https://www.unhcr.org/4f33f1729.pdf>. (144)

7 Convention relating to the Status of Refugees, July 28, 1951, 189 UNTS 137 [hereinafter Refugee Convention]. <https://www.unhcr.org/en-us/3b66c2aa10>

8 Rep. *Human Mobility in the Context of Climate Change: Recommendations from the Advisory Group on Climate Change and Human Mobility COP 20 Lima, Peru*. United Nations High Commissioner for Refugees, October 2015. <https://www.unhcr.org/54942dde9.pdf>.

slow-onset natural hazards, environmental degradation, and the long-term impacts of climate change, migration is often used to cope with, “avoid or adjust to” deteriorating environmental conditions that could otherwise result in a humanitarian crisis and displacement in the future.

- **Protection**, as we use it here, is adopted from the Nansen Initiative: “‘protection’ refers to any positive action, whether or not based on legal obligations, undertaken by States on behalf of disaster displaced persons or persons at risk of being displaced that aim at obtaining full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law. While highlighting the humanitarian nature of such protection, the agenda does not aim to expand States’ legal obligations under international refugee and human rights law for cross-border disaster-displaced persons and persons at risk of being displaced.”⁹

⁹ “Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change.” The Nansen Initiative, February 2015.
<https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>.

LEGAL PATHWAYS – LEGISLATIVE AND ADMINISTRATIVE

Since sudden-onset disasters may occur at any time and slow-onset disasters are likely to arise in many parts of the world, internal as well as cross-border disaster-displacement is a global challenge. Every nation could be confronted with such displacement, either as a country of destination, transit, or origin.¹⁰



Today's current and emerging realities call for increased preparedness, solidarity, and cooperation by countries, (sub-) regional organizations, and the international community to prevent, avoid, and respond to disaster displacement and its causes.

A. PROTECTIONS FOR PERSONS DISPLACED BY SUDDEN-ONSET DISASTERS

Current U.S. immigration law provides some temporary protections for persons seeking safety outside of their country following a sudden-onset disaster. Existing temporary humanitarian protections include Temporary Protected Status, Deferred Enforced Departure, and Humanitarian Parole. These protections are intended to be short-term in nature and are currently not structured to allow a person to transition to lawful permanent residency status, or "green card." While each of these humanitarian protections is insufficient to address the diverse needs of people internationally displaced by sudden-onset climate change events, they should be expanded and utilized more broadly to protect lives and help stabilize countries experiencing an immediate disaster. With respect to existing protections that allow permanent relocation, current asylum law may offer a path for protection for certain people who have experienced a sudden onset event - in limited circumstances.

Temporary Protected Status – Temporary Protected Status (TPS) is a temporary benefit authorized by the Secretary of the Department of Homeland Security (DHS). The TPS statute¹¹ expressly provides the designation for a country where "there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected."¹² Once a country is designated, TPS provides

¹⁰ "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change."

¹¹ "Temporary Protected Status." U.S. Citizenship and Immigration Services, May 24, 2021.

<https://www.uscis.gov/humanitarian/temporary-protected-status>. See Title 8 Aliens and Nationality, 8 U.S.C. § 1254a(b)(1)(B)(i) (1996)

¹² Under this section of the law, the foreign state or country must request designation. If the foreign state does not request designation, TPS may still be designated under the provision that permits designation due to the existence of "extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety."

certain people who are already physically present in the United States at the time of designation an opportunity to apply for protection from deportation and work authorization. TPS's protections are limited to those who are already present in the United States - not those who are in the midst of climate-induced displacement or crisis. However, a subsequent redesignation of TPS for the country could provide protection for people who arrived between the initial date of designation and redesignation. In addition to the benefit that TPS conveys to the individuals who receive protection, TPS has long been seen as an important tool among a host of foreign aid and policy options for countries that are suffering a catastrophic event. People who receive work authorization through TPS would have access to better-paying jobs and would be in a better financial position to send remittances to family in-country, providing critical economic support to those who may be adapting in place or internally displaced.

RECOMMENDATIONS:

- The administration should expedite the process for reviewing TPS designations for all countries as recommended by the TPS-DED Administrative Advocacy Coalition,¹³ particularly for each country that qualifies for a TPS designation under 8 U.S.C. § 1254a(b)(1)(B)(i).
- The administration should work with Congress to aggressively pursue legislative opportunities to provide people who have held TPS a pathway to permanent residency and citizenship.

While TPS protections are important for the reasons set forth, they are temporary in nature and limited. TPS is an important component in the current protection framework that should be utilized, while acknowledging that it will not offer a complete solution for all who need protections.

Deferred Enforced Departure – Similar to TPS, Deferred Enforced Departure (DED)¹⁴ offers eligible nationals of a country protection from deportation and the opportunity to seek work authorization. DED authorities are rooted in executive authority and are designated by the President, as opposed to TPS statutory authority, which provides the President with a high level of flexibility in its use. Unlike DED, the TPS statute expressly provides the designation

¹³ Letter by TPS-DED Administrative Advocacy Coalition to President Joseph Biden and U.S. Dept. of Homeland Security Secretary Alejandro Mayorkas, March 5, 2021, available at:

<https://clinicalegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/314>.

¹⁴ "Deferred Enforced Departure." U.S. Citizenship and Immigration Service, March 12, 2021.

<https://www.uscis.gov/humanitarian/deferred-enforced-departure>.

of TPS for a country that has experienced a natural disaster or other extraordinary condition. Thus, it is the most used mechanism of “blanket” protection for nationals that are unable to safely return to their country due to a sudden onset event.

RECOMMENDATIONS:

- The President should consider the use of DED to provide immediate protection for nationals of a country experiencing sudden onset disaster when the government of that country refuses or is slow to request protection.
- Alternatively, rather than DED, protection could be provided via TPS under the provision that permits designation due to the existence of “extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety.”
- The administration should work with Congress to aggressively pursue legislative opportunities to provide DED holders with a pathway to permanent residency and citizenship.

Humanitarian Parole – The Immigration and Nationality Act provides the Department of Homeland Security with the authority to grant parole,¹⁵ or permission to enter and remain in the U.S., to persons seeking entry “for urgent humanitarian reasons or significant public benefit” on a case-by-case basis. Humanitarian parole or parole programs have been used by various administrations to offer protection to groups of people including Cubans and Haitians.¹⁶

Like TPS, humanitarian parole is temporary in nature and does not provide a pathway to lawful permanent residence or citizenship. Thus, its use may be considered a short-term tool to respond to an emerging and urgent need and may help to provide protection for people who are in the midst of displacement.

¹⁵ 8 U.S.C. § 1182(d)(5)

¹⁶ Bruno, Andorra. Rep. Immigration Parole. U.S. Citizenship and Immigration Service, October 15, 2020. <https://crsreports.congress.gov/product/pdf/R/R46570/2>.

RECOMMENDATIONS:

- Humanitarian parole should be used generously to provide protection to individuals seeking safety following a climate disaster.
- Acknowledging that humanitarian parole must be granted on a case-by-case basis, the administration should explore ways to provide broader parole protections through parole programs.
- Broadened use of humanitarian parole should be accompanied by clear and specific direction from the DHS Secretary and appropriate training for Customs and Border Protection and other officials who are responsible for implementing such an order.
- The administration should seek new legal pathways that would allow people to transition from humanitarian parole to lawful permanent residency and citizenship.

Asylum – Foreign nationals arriving or already in the U.S. may apply for asylum, a protection and immigrant benefit rooted in the Refugee Convention and authorized domestically by the Department of Homeland Security and Department of Justice. Traditional asylum protections are currently applicable for people who are persecuted because of their participation in climate justice activities because such activities are widely recognized as a demonstration of political opinion. Asylum protections may also be available for those who have sought the assistance of their government in connection with a climate event or disaster but were refused support or services on a Refugee Convention-related basis, such as their race, religion, membership of a particular social group, or political affiliation. However, no asylum relief exists for those who do not meet baseline thresholds for inclusion and protection within the traditional Refugee Convention definition. (For more on asylum protections solely on the basis of displacement by sudden- or slow-onset climate disaster, see Climate Disaster Resettlement Framework below.)

Nonetheless, the throttling and dismantlement of the asylum system under the previous Trump administration has implications on relief for those persons displaced by climate disaster. Those displaced by climate disaster may also share overlapping Refugee Convention-related persecution because of membership in particular groups (social, religious, racial, etc). Furthermore, offering relief for asylees who meet traditional Refugee Convention parameters provides resource relief to communities experiencing climate disasters and often allows for remittances to family members experiencing the negative impacts of climate disaster who have remained in their country of origin (often women and children).

RECOMMENDATIONS:

- Because restoring and rebuilding the asylum system through policy change alone is insufficient, the administration should urgently begin the process of regulatory and other structural changes.
- When considering opportunities to immediately broaden protection via existing law, we encourage a generous interpretation of what is considered “other serious harm.”¹⁷

B. PROTECTIONS FOR PERSONS DISPLACED BY SLOW-ONSET NATURAL HAZARDS, ENVIRONMENTAL DEGRADATION AND THE LONG-TERM IMPACTS OF CLIMATE CHANGE

Climate disasters’ impact on displaced persons can include deadly physical and psychological harm, as well as existential threats to livelihoods. When displaced persons migrate across borders, it can be because their government is unable to or will not provide more durable solutions for their livelihood and safety locally. When deciding whether a person displaced by climate disaster can be returned back to their country of origin, it is imperative to consider whether returning them would impose undue risk or harm to the individual. The government of the displaced person’s country of origin need not be complicit in the harm to that individual, merely negligent in protecting a person from harm. Therefore, U.S. law may be used to provide asylum for climate displaced persons. However, there is not yet a prevailing use of traditional refugee convention-related protection for climate displaced persons, and some advocates have reasonably suggested that an overwhelming standard of proof for data attributing a disaster to climate change and government knowledge of its impact would be an impediment.

Current Refugee Law and the Status of the U.S. Refugee Admissions Program (USRAP)

– The Department of State oversees the refugee resettlement program, which originates from the 1951 Refugee Convention (and 1967 associated protocol) and has a statutory basis through the Refugee Act of 1980. As previously noted, under current U.S. immigration law, people displaced by natural disasters and environmental degradation—including those displaced by the impacts of climate change—have traditionally not been considered eligible for protection as refugees. Under the Immigration and Nationality Act, a refugee is defined as a person who is unable or unwilling to return home due to a well-founded fear of persecution on account of their race, religion,

¹⁷ 25 I&N Dec. 705 (BIA 2012)

nationality, membership in a particular social group, or political opinion.¹⁸ Those displaced by the adverse effects of climate change could potentially be considered members of a “particular social group,” but would also need to make a compelling case that the government in their home country cannot protect them if they return. In 2020, the UN Human Rights Committee’s Kiribati decision went further to identify a rising framework for climate displacement and highlighted the emergence of nations’ nonrefoulement obligations to those persons seeking asylum from extreme risk of climate disaster.¹⁹

In 2018, the international community took an important step in recognizing persons displaced by climate disaster through the adoption of both the Global Compact on Refugees and the Global Compact for Migration. The compacts identify

climate change as a driver of migration

and suggests countries work together to start planning for people who move due to natural disasters and climate change. While both agreements were overwhelmingly adopted by the international community, the U.S. did not sign onto either compacts.



RECOMMENDATIONS:

- The administration should revisit the Global Compact on Refugees, with consideration to becoming a signatory to the compact.
- The administration should work in collaboration with Senator Ed Markey of Massachusetts, who has presented pioneering U.S. legislation acknowledging the need for relief for persons displaced by climate change as well as government-wide guidelines pertaining to climate change and displacement.
- Recognizing that families – including children separated from family in the aftermath of disaster or fleeing violence – should have access to protections regardless of how they arrive, the administration should commit to meaningful expansion of CAM while also affording protection for those who may arrive at our border.
- All policies should consider the interests and protection of women and families first so that migration pathways support families rather than render women and children more vulnerable in climate change-impacted regions.

¹⁸ 8 U.S.C. § 1101(a)(42)

¹⁹ Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims,” United Nations Human Rights Office of the High Commissioner, January 21, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25482>.

PROTECTION PATHWAYS

	DED	TPS	HUMANITARIAN PAROLE	ASYLUM	RESETTLEMENT	CLIMATE DISASTER RESETTLEMENT	WORK VISAS/ BILATERAL MIGRATION AGREEMENTS
Type of Relief	Protection from deportation	Temporary Immigration Benefit	Protection from deportation	Immigration benefit	Immigration Benefit	TBD	Eligible only for temporary lawful residency
Permanency	Not permanent, designated for specific time frame	Not permanent, designated for specific time frame	Not permanent, designated for specific time frame	Pathway to citizenship	Pathway to citizenship	TBD	TBD
Authorizing Power	By U.S. President	By DHS Secretary	By DHS (USCIS, CBP, ICE)	By DHS or DOJ (EOIR)	DOS	TBD	DOS and DOL
Origin	Congress created DED as part of the Immigration Act of 1990	Congress created TPS in the Immigration Act of 1990	1997 Amendment to INA (Code of Federal Regulations Title 8 Aliens and Nationality)	1951 Refugee Convention, 1967 Protocol, and U.S. Refugee Act of 1980	1951 Refugee Convention, 1967 Protocol, and U.S. Refugee Act of 1980	TBD	Immigration and Nationality Act of 1952
Means for Citizenship Pathway Reform	Legislative	Legislative	Legislative	Extant	Extant	Legislative	Legislative
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	TBD	Country or region-specific
Expiration	Country or region-specific with option for extension	Country or region-specific with option for extension	Case-by-case basis usually with option for extension	None	Annual presidential determination	TBD	TBD

Table from National Immigration Forum's Factsheet on DED – updated and expanded upon.

* DHS, through U.S. Citizenship and Immigration Services (USCIS), provides immigration benefits to people who are entitled to stay in the U.S. on a temporary or permanent basis. These benefits include granting of U.S. citizenship to those who are eligible to naturalize, authorizing individuals to reside in the U.S. on a permanent basis, and providing foreign nationals in the U.S. with the eligibility to work in the United States. See more at <https://www.dhs.gov/providing-immigration-benefits-information>

Climate Disaster Resettlement Framework – Some scholars have suggested that a new resettlement program could be created for those permanently displaced by slow-onset disasters such as rising sea levels, desertification, and/or agricultural tipping points.²⁰ These experts note that such a program could operate similarly to the current refugee and asylum processes in the United States for those forcibly displaced due to fear of persecution but would require distinction and differentiation from those people already identified as refugees and asylum seekers (barring new international laws on climate displacement). Under this program, persons displaced by climate disaster could apply after arriving in the United States or at USCIS offices abroad and would need to demonstrate that they had been impacted by a permanent climate displacement event. However, the burden of proof (including complex climate data and interpretation) to attribute displacement to climate change is extreme and evasive (i.e. the difficulty of assigning attribution to a climate change or to a specific polluter or state) and offers additional, nearly insurmountable hurdles in case law. In a report by the Center for Strategic International Studies (CSIS), the authors suggest the creation of an independent, nonpartisan (or cross-partisan) panel of climate experts that could advise on global hotspots experiencing severe adverse climate change impacts on human life.²¹ Finding a means for collective acceptance and trust for such a panel is formidable in the current political climate. However, such a resettlement framework would allow participants to be eligible to apply for lawful permanent resident status and ultimately for U.S. citizenship and could be tied to a regional compact on permanent climate displacement.²²

Other international legal scholars have noted that regional definitions for refugees already include language that could apply for those displaced by sudden and slow-onset climate change.²³ The Organisation of African Union's (OAU) Convention delineates that "the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."²⁴ Scholars have paid specific attention to how "disturbing public order" could well represent severe climate change displacement.

20 Frelick, Bill. "Climate Change and the Impact on U.S. Immigration and Asylum Law." American Bar Association, May 26, 2021. https://www.americanbar.org/groups/public_interest/immigration/events-and-cle/climate-change-and-immigration/

21 Yayboke, Erol, and Janina Staguhn. Rep. *A New Framework for U.S. Leadership on Climate Migration*. Center for Strategic and International Studies, October 23, 2020.

<https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>.

22 *Ibid.*

23 Rankin, Micah Bond. "Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years on" United Nations High Commissioner for Refugees, April 2005.

<https://www.refworld.org/pdfid/4ff168782.pdf>.

24 Rankin, Micah Bond. "Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years on" United Nations High Commissioner for Refugees, April 2005.

<https://www.refworld.org/pdfid/4ff168782.pdf>.

RECOMMENDATIONS:

- The United States should revisit the Global Compact for Safe, Orderly and Regular Migration (known as the Compact for Migration) and consider joining the 164 nations who were original signatories to the agreement.
- Regional definitions provide a visionary guidepost for incorporating climate displacement refuge and rights and should be explored.
- Current divisiveness and extreme partisan gridlock foretell significant challenges for creating for a unique convention on climate displacement – challenges that, at present, seem insurmountable.

Seasonal Work Visas / Bilateral Agreements on Migration – Asylum is a protection mechanism that should be open and accessible to all who seek protection, including those who are displaced by slow-onset disasters. However, persons who are temporarily displaced and intend to return to their country of origin require different options for protection. For instance, people who are already in the United States but cannot safely return home due to a sudden onset event may be better served by forms of relief other than asylum, TPS, DED, or humanitarian parole. The same may be true for people who cannot sustain themselves in their home country due to the impacts of climate change and wish to temporarily work in the United States until conditions improve.

While current U.S. immigration law provides some protections for certain people who have been displaced due to sudden-onset climate disasters, the gaps in protection identified above must be addressed for people who seek safety and stability temporarily until conditions in their home country improve, for those who need to find work outside of their country/region to sustain themselves and their families, and for those who need to resettle permanently. Allowing “guest workers” who cannot find employment opportunity at home to enter the U.S. to fill labor shortages would have multiple benefits for U.S. employers and the economy in addition to the person seeking the opportunity to sustain themselves and their family abroad. The remittances they would be able to send home would assist families and communities trying to rebuild after devastation and loss.

RECOMMENDATIONS:

- The administration should consider options to provide new legal pathways to protect people who wish to permanently remain in their home country but have been temporarily displaced outside of their home country because there is no way to sustain themselves following disaster. Such pathways may include expansion of current seasonal worker programs²⁵ on the precondition that those programs are significantly reformed to address widespread reports of abusive practices by employers.²⁶
- New legal pathways should be explored to allow additional guest workers that do not fall under the constructs of the H-2A and H-2B programs.
- As conditions can change quickly, any temporary or short-term protections should foresee a potential need for longer-term protection and should not preclude transition to longer-term protection.

*Climate disaster is contributing to the displacement of people around the globe, as it threatens lives and livelihoods. According to the International Organization for Migration, the number of climate-displaced people is projected to rise to **200 million by 2050**; yet, at present, no country or international body explicitly affords any lasting legal protections for persons displaced by climate disaster.*

P-2 Designations for Climate Displaced Persons Through Presidential Discretion

– Following consultation with Congress, the president has the discretion to designate groups of special humanitarian concern as eligible for Priority-2 status for resettlement.

While the U.S. must work to reduce climate change effects and support adaptive and resilience efforts of affected communities, it must also create durable solutions for the resettlement of the relatively small population of persons who seek safety and stability within our borders. Further, the administration should generously use tools that already exist to provide protection and help stabilize countries experiencing climate-related disasters.

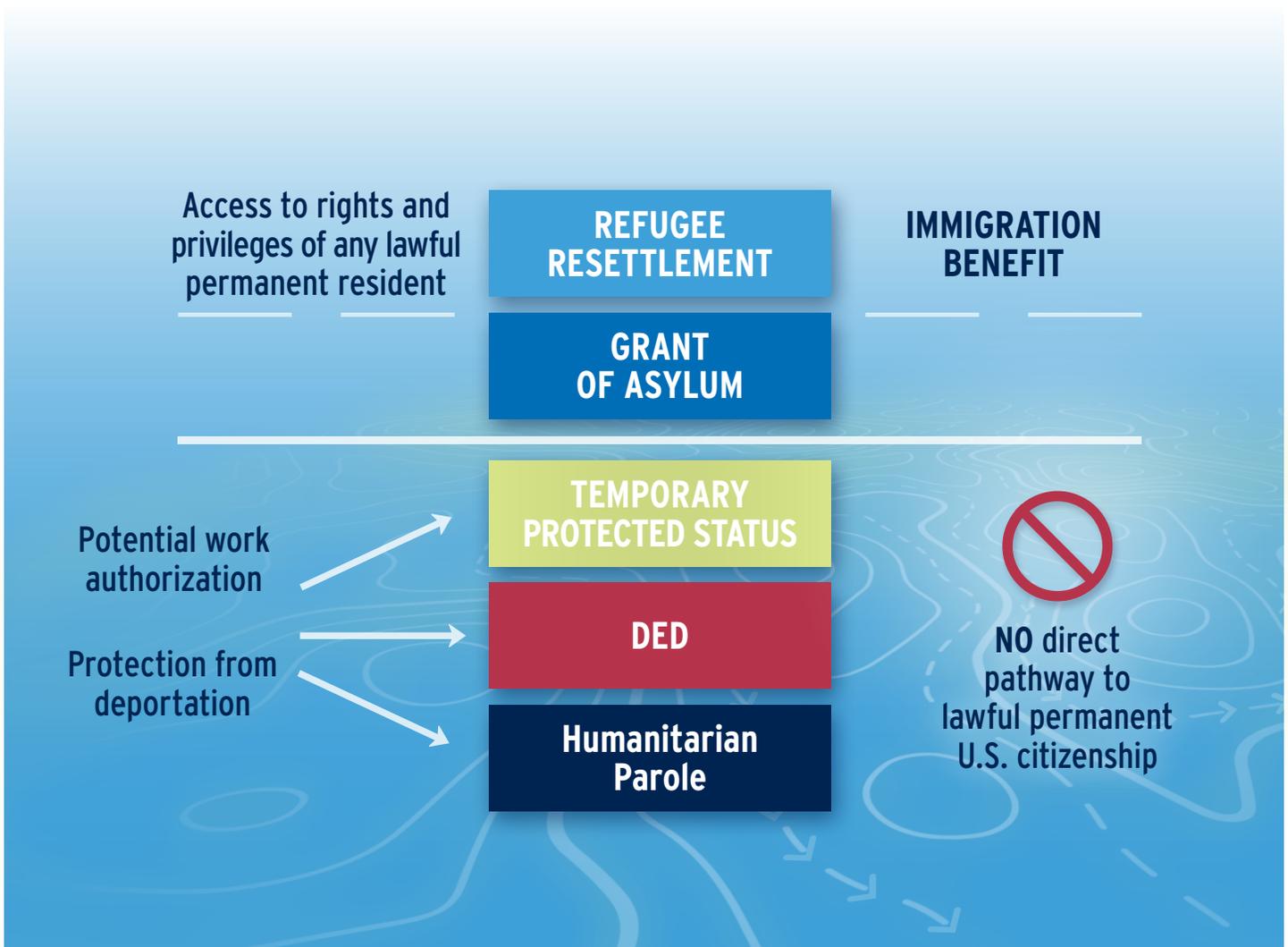
²⁵ Bruno, Rep. H-2A And H-2B Temporary Worker Visas: Policy and Related Issues

²⁶ Costa, "New Survey and Report Reveals Mistreatment of H-2A Farmworkers Is Common; The Coronavirus Puts Them Further at Risk."

RECOMMENDATIONS:

- The administration should review and develop bilateral or (sub-)regional agreements to facilitate temporary, circular or, where appropriate, permanent migration as means to cope with the effects of slow and sudden-onset disasters.
- The administration should articulate a vision of migration as a positive coping strategy for the U.S. government – and not just those experiencing displacement – to build domestic capacity to compete amid labor gaps in the markets (including healthcare, specialty agriculture, etc.).

CLIMATE PROTECTION MIGRATION PATHWAYS



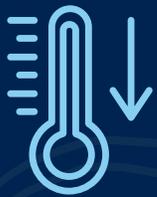
IV. INVESTING IN RESILIENCE - MIGRATION AS A LAST RESORT

Resilience is a key factor in determining whether and how individuals, families, communities, and countries can withstand the impacts of sudden-onset and slow-onset natural hazards and impacts of climate change. As the Nansen Initiative delineates, disaster risk reduction activities, infrastructure improvements, coastal restoration, urban planning, climate change adaptation measures, land reform, compacts related to migration, and other development

measures to strengthen the resiliency of vulnerable persons or groups of persons are all “potential actions to help people remain safely in their homes when faced with natural hazards, and thus substantially reduce the number of disaster displaced persons.”²⁷ The Initiative highlights that “such activities may also help to strengthen host communities’ capacity to receive displaced persons, and facilitate the [discovery] of lasting solutions to end displacement by reducing exposure and building resilience to future hazards.”²⁸ Furthermore, while more data should be produced to better understand the relevant impacts of individual and communal behavior, if internally displaced persons (IDPs) received adequate protection and assistance from governmental, NGOs, and intergovernmental organizations following disasters, cross-border disaster-displacement could potentially be avoided or reduced. “A lack of durable solutions is one reason why internally displaced persons may subsequently move abroad.”²⁹

As part of buttressing individuals’ rights not to migrate and to stay safely in their home communities, local, state, country, and multilateral efforts must be made to provide local and regional environmental resilience from climate disaster. One of the leading priorities for resilience (both local and global) is to bend the global emissions curve from a high emissions scenario to one that limits global temperature increases. The United States should address this priority, as well as climate disaster

displacement, by adopting policies at both the federal and state levels that rapidly reduce carbon dioxide and other greenhouse gas emissions and to work with other major economies through bilateral and multilateral



*A leading priority for resilience is to bend the global emissions curve from a high emissions scenario to one that **limits global temperature increases**. This would likely prevent up to 150 million people from permanently losing their homes to sea level rise by the end of the century.*

²⁷ “Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change.”

²⁸ Ibid.

²⁹ Ibid.

engagement to do the same.³⁰ Other proactive efforts could include significantly expanding the development of carbon capture programs such as regenerative terrestrial farming or regenerative coastal water farming that are capable of absorbing millions of tons of carbon from the atmosphere. Ongoing efforts such as enforcing industrial carbon pollution limits, investing in wind and solar infrastructure, or re-greening and fortifying coastal lands to be resilient against sudden-onset climate disasters such as hurricanes offer promise for immediate adaptation strategies, but more must be done. By virtue of international cooperation and national ingenuity, the U.S. could work to decrease the number of internally displaced persons (IDPs) forced to move across borders due to climate disasters by investing in and creating durable solutions. Climate change adaptation measures that decrease carbon emissions and increase the resilience of individuals, communities, and countries are worthwhile investments that may reduce the number of climate displaced persons in the future.

V. RECOMMENDATIONS

LIRS suggests that the Biden administration take concrete steps to create legal protection pathways for climate displaced persons. Crucially, existing protection pathways should be amended to include long-term protections, including the potential to transition to lawful permanent residency and citizenship. By expediting the process for reviewing TPS designations for countries that are likely to experience climate disasters and that meet other qualifications, considering the use of DED to provide immediate protection for nationals of a country coping with a sudden onset disaster, and working with Congress to pursue legislative solutions that would provide a pathway to permanent residency and citizenship for TPS and DED recipients, the administration could utilize existing protection pathways to aid climate displaced persons.

Furthermore, humanitarian parole should be used liberally to provide protection to individuals displaced by a sudden-onset climate event, and the administration should explore broadening parole programs beyond a case-by-case basis. The DHS Secretary must provide specific direction for how this new order should be implemented and officials, including those with Customs and Border Protection, must be appropriately trained. Additionally, regulatory and structural changes must be made to the U.S. asylum system, while existing law could be interpreted to include climate disasters as “other serious harm” qualifying individuals for asylum.

In pursuit of enhanced protection pathways for climate displaced persons, the administration can take inspiration from and join international agreements such as the Global Compact on Refugees and the Global Compact for Migration. The U.S. can be guided by regional definitions that provide guidance for incorporating

30 Scott A. Kulp and Benjamin H. Strauss. “New Elevation Data Triple Estimates of Global Vulnerability to Sea-Level Rise and Coastal Flooding.” *Nature Communications* 10, no. 1 (October 29, 2019). <https://doi.org/10.1038/s41467-019-12808-z>.

climate displacement into refugee protections. Due to their additional vulnerabilities to climate disaster, policies that prioritize the protection and interests of women and children, such as the Central American Minors (CAM) program, should be expanded and new ones should be established. The administration should use the opportunity to work in collaboration with Senator Ed Markey of Massachusetts, who has presented pioneering U.S. legislation acknowledging the need for relief for persons displaced by climate change, as well as government-wide guidelines pertaining to climate change and displacement. The administration should also consider expanding current seasonal worker programs and creating new legal pathways for guest workers beyond the H-2A and H-2B programs while anticipating that short-term protections may need to be extended due to the uncertainty of climate disasters. By reviewing and developing bilateral and (sub-)regional agreements that facilitate migration as a means of coping with the effects of slow- and sudden-onset disasters, the administration could articulate a vision of migration as a positive coping strategy for both the U.S. and displaced individuals.

To mitigate the impact of ongoing and cyclical climate disaster displacement, the U.S. must invest in climate adaptation and resilience efforts, from both the local to the global level. These efforts should be buttressed by ambitious policies and plans to curb future climate disaster displacement by bending the global emissions curve from a high emissions scenario to one that limits global temperature increases.

VI. CONCLUSION

Both statutory and political challenges exist along the path to creating holistic protections and U.S. legal relief for those displaced across borders by climate disaster. This is particularly true for those displaced by slow-onset climate disaster (ex. coastal erosion or human heat thresholds) and unable to find durable solutions in their home country. The development of bilateral or regional agreements that would allow for the movement of individuals and families seeking migration (as a means to cope in the aftermath of climate displacement) offers significant promise, insofar as protections can be assured to prevent worker exploitation or employer abuse. However, as research on displaced persons and humanitarian disaster consistently confirms, migration in the aftermath of climate disaster is a tactic of last resort. The majority of climate disaster displacement occurs internally within a country, and by the time someone has considered crossing borders to seek safety, they have likely already exhausted all means of coping internally within their country. To mitigate both climate disaster and displacement, the U.S. government must work with international leaders to confirm an ambitious global climate action plan that seeks to urgently curb emissions and limits global temperature increases, while also realistically planning for the protections of individuals who have not been spared from the consequence of ongoing climate change-related disaster.