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Climate-Related Displacement and U.S. Refugee Protection

Julia Neusner, David Cremins, Ana Cutts Dougherty, Kelsey Freeman, Rosie Lebel, Milena Díaz, and Nicole Chávez

ABSTRACT

In an era defined by climate crises and mounting barriers to cross-border movement, this Article examines the intricate relationships between climate change, displacement, and refugee protection in the United States. Through a comprehensive analysis, incorporating insights from interviews with asylum seekers from Mexico and Central America at the U.S.-Mexico border, we present case examples that highlight the convergence of climate change impacts with other drivers of displacement. Our assessment reveals how some individuals affected by climate-related displacement may qualify for refugee protection when climate change impacts intersect with and exacerbate persecution based on protected grounds under U.S. law. Nevertheless, the significant protection gaps for climate-displaced people underscore the urgent need for the development of additional protection pathways as climate change impacts increasingly drive movement across borders.

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I.	INTRODUCTION	

In an era marked by both increasing climate catastrophes and barriers to cross-border movement, the phenomenon of climate-related displacement emerges as a complex and pressing issue at the intersection of law, policy, and human rights.¹ Climate-related displacement is on the rise—in 2022 over 250,000 people applied for U.S. asylum, an all-time high;² and, according to one estimate, anywhere from 680,000 to over 1,000,000 migrants from Central America and Mexico, motivated primarily by climate impacts, are likely to head toward the U.S. border over the course of the next 30 years.³ This multifaceted problem demands nuanced understanding of its root causes, regional dynamics, and interactions with the pressures faced by individuals and communities under environmental stress in their decision making, such as poverty, targeted violence, and conflict.⁴ As the globe grapples with climate-related displacement, the populations least responsible for climate change are the most vulnerable to its devastating consequences;⁵ yet existing legal frameworks limit the free and safe movement of peoples, leaving displaced individuals in precarious positions.⁶

1. This article uses terms such as “climate-related displacement” and “persons displaced in the context of climate change” in an attempt to capture a broad range of experiences and avoid ascribing causation to any single factor among the often complex, multifaceted reasons underlying human mobility.

2. *United States Asylum Applications*, TRADING ECONOMICS (Dec. 2023), <https://tradingeconomics.com/united-states/asylum-applications> [<https://perma.cc/BJ59-7FVS>] (summarizing statistics from the U.S. Department of Justice).

3. Abraham Lustgarten, *Where Will Everyone Go?*, PROPUBLICA (July 23, 2020), <https://features.propublica.org/climate-migration/model-how-climate-refugees-move-across-continent> [<https://perma.cc/MC88-BAX3>].

4. This includes understanding phenomena not explored in this article, including why people—especially women and the most economically marginalized—stay put even after climate disasters. See Helen Adams, *Why Populations Persist: Mobility, Place Attachment and Climate Change*, 37 POPULATION & ENV'T 429, 430 (2016); Caroline Zickgraf, *Theorizing (Im) mobility in the Face of Environmental Change*, REG'L ENV'T CHANGE, Dec. 2, 2021, at 1, 3.

5. See Carmen G. Gonzalez, *Racial Capitalism, Climate Justice, and Climate Displacement*, 11 OÑATI SOCIO-LEGAL SERIES 108, 130–32 (2021).

6. See E. Tendayi Achiume, *The Fatal Flaw in International Law for Migration*, 56 COLUM. J. TRANSNAT'L L. 257, 257–62 (2018).

This Article seeks to navigate this landscape by examining the interplay of migration patterns and climate justice, as well as the opportunities and limitations of U.S. humanitarian protection pathways to accommodate people displaced by climate change and climate-related disasters. Specifically, this Article assesses the impact of climate change and climate-related disasters on Mexican and Central American asylum seekers' decisions to flee their homes and analyzes the application of U.S. refugee protection law in cases where climate impacts intersect with other drivers of displacement. We argue that certain climate-impacted individuals may be eligible for protection under existing U.S. law.

It is well accepted that various manifestations of the climate crisis, such as storms, flooding, sea level rise, and drought, are driving displacement around the world.⁷ Most of this movement happens within nations, but it increasingly crosses international borders.⁸ Global, regional, and domestic governments, advocates, and policy makers must therefore confront questions surrounding the protection of people displaced by climate change, not just internally, but increasingly across international borders.⁹ In the United States, there are no specific protection pathways—laws or policies that provide legal status—designed for climate-displaced individuals, despite some legislative proposals aimed at addressing this issue.¹⁰ This situation has sparked debate over whether climate-related displacement qualifies as a basis for humanitarian protection under existing law.¹¹ This debate exists in the shadow of the United States' historical roles both as a leader in refugee protection¹² and as the world leader in

7. See Caitlin Sturridge & Kerrie Holloway, *Climate Change, Conflict and Displacement: Five Key Misconceptions*, HUMANITARIAN POL'Y GRP. (Sept. 2022), https://cdn.odi.org/media/documents/USAID_climate_briefing_LdMTgFy.pdf [<https://perma.cc/5Y6F-MMZT>].

8. See *id.* at 10 (noting that “overwhelmingly, people displaced by conflict and climate change undertake predominantly short-distance movements, often from rural to urban settings within national borders”).

9. This Article does not thoroughly discuss parallel debates in other regions, but for an overview see Jane McAdam, *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, 114 AM. J. INT'L L. 708 (2020).

10. See, e.g., Senator Markey, *Rep. Velázquez Reinroduce Legislation to Aid People Displaced by Climate Change and Support Global Resilience*, ED MARKEY: U.S. SEN. FOR MASS. (May 19, 2021), <https://www.markey.senate.gov/news/press-releases/senator-markey-rep-velzquez-reintroduce-legislation-to-aid-people-displaced-by-climate-change-and-support-global-resilience> [<https://perma.cc/U9UG-DHH6>].

11. See Camila Bustos & Ama Francis, *Advocacy Memo on Climate Displacement*, INT'L REFUGEE ASSISTANCE PROJECT (Nov. 9, 2022), <https://refugeerights.org/wp-content/uploads/2022/11/Climate-Displacement-Advocacy-Memo-Nov-2022.pdf> [<https://perma.cc/4LKW-H5RH>].

12. See Megan Alpert, *By the Numbers: The United States of Refugees*, SMITHSONIAN MAG., <https://www.smithsonianmag.com/history/by-numbers-united-states-refugees-180962487/> [<https://perma.cc/2LTV-GMXH>]; see also *Refugee Admissions*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/refugee-admissions> [<https://perma.cc/9QVL-TKSA>] (noting that the

total carbon emissions.¹³ Even as the United States slowly takes steps to decarbonize, however, its asylum system remains backlogged and subject to political currents.¹⁴ Can the strained U.S. refugee protection system accommodate increasing volumes of people displaced due to climate-related factors?

In part, the answer to this question depends on who is considered a “refugee.” The 1951 Refugee Convention, adopted by the United Nations in the wake of the horrors of World War II, defines a refugee as someone unable or unwilling to return to their home 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.”¹⁵ This definition was adopted into U.S. domestic law with the Refugee Act of 1980, which first codified refugee resettlement and asylum systems.¹⁶ Refugee resettlement is available to individuals who apply from third countries, while asylum protection is available to individuals who are physically present within the United States or at a port of entry. This Article uses the term “refugee protection” to refer to both refugee resettlement and asylum protection, as both rest on the same statutory requirement that an applicant suffer persecution tied to one of the five protected grounds.

As has been comprehensively examined elsewhere, refugee protection law does not categorically address climate-related claims.¹⁷ Importantly, under 8 U.S.C. § 1101(a)(42), applicants for refugee protection must demonstrate “persecution or a well-founded fear of persecution” because of a protected ground which was carried out by a government agent or by an entity the government is unable or unwilling to control.¹⁸ A person displaced by, for instance, a

United States has admitted more than 3 million refugees since 1980).

13. Michael Gerrard, *America is the worst polluter in the history of the world. We should let climate change refugees resettle here*, WASHINGTON POST (June 25, 2015), https://www.washingtonpost.com/opinions/america-is-the-worst-polluter-in-the-history-of-the-world-we-should-let-climate-change-refugees-resettle-here/2015/06/25/28a55238-1a9c-11e5-ab92-c75ae6ab94b5_story.html [<https://perma.cc/M7CA-RSCF>].

14. Muzaffar Chishti & Julia Gelatt, *Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes*, MIGRATION POLICY INSTITUTE (Feb. 23, 2022), <https://www.migrationpolicy.org/article/us-immigration-backlogs-mounting-undermine-biden> [<https://perma.cc/7MAW-872N>].

15. U.N. Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

16. Refugee Act of 1980, PL 96–212, 94 Stat. 102 (1980).

17. See, e.g., Emily Naser-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). (“The protections offered to refugees under the 1951 Refugee Convention and the 1967 Refugee Protocol are very specific, and current international human rights and environmental law do not offer any similar protections to [environmentally displaced persons].”).

18. U.S. CITIZENSHIP & IMMIGR. SERVICES, RAIIO FOUNDATIONS TRAINING PROGRAM: DEFINITION OF PERSECUTION AND ELIGIBILITY BASED ON PAST PERSECUTION 10 (2019) [hereinafter RAIIO DEFINITION], https://www.uscis.gov/sites/default/files/document/foia/Persecution_LP_RAIIO.pdf [<https://perma.cc/5LZA-NVSC>].

hurricane or other natural disaster—which are becoming increasingly common and severe due to climate change—does not qualify for U.S. refugee protection unless other factors, such as targeted violence or other persecution based on protected grounds, are at play. This gap suggests that “[c]urrent domestic immigration laws are insufficient to provide climate refugees any kind of relief in the United States.”¹⁹

At the international level, too, scholars, policymakers, and advocates continue to debate whether asylum and refugee law could—or should—be expanded to account for climate change.²⁰ The naysayers have tended to dominate this debate.²¹ One camp suggests that there can never be a clear and internationally accepted definition of a “climate refugee” which could be incorporated into asylum criteria.²² They note that state obligations under international law generally suffer from a lack of enforcement mechanisms,²³ and that states tend to be interested only in shrinking, not expanding, their existing obligations. As a result, there is a risk that reevaluating the criteria in the Refugee Convention or other instruments may only result in diminishing State obligations.²⁴ This concern rests on the explicit positions of some States. For example, one recent review acknowledges that “many Western countries have stated that they will not ratify [new global compacts on migration] as they feel that it will ‘erode national sovereignty’ and prevent the implementation of border controls.”²⁵ Asking those same countries to instead expand their asylum definitions by adopting a climate-migration-informed amended Refugee Convention may be politically futile.

A related line of skepticism suggests that, even if it were possible to overcome the above, the categorization “climate refugee” is both too arbitrary and ambiguous to gain traction or be scalable,²⁶ especially if it remains impossible

19. Barbara McIsaac, *Domestic Evolution: Amending The United States Refugee Definition of the INA to Include Environmentally Displaced Refugees*, 9 U. MIAMI RACE & SOC. JUST. L. REV. 45, 48 (2019).

20. See, e.g., Dina Ionesco, *Let's Talk About Climate Migrants, Not Climate Refugees*, U.N. SUSTAINABLE DEV. GOALS (June 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees> [<https://perma.cc/9K5J-3YVF>].

21. See, e.g., Jane McAdam, *Seven reasons the UN Refugee Convention should not include 'climate refugees.'*, THE SYDNEY MORNING HERALD (June 6, 2017), <https://www.smh.com.au/opinion/seven-reasons-the-un-refugee-convention-should-not-include-climate-refugees-20170606-gwl8b4.html> [<https://perma.cc/2XCJ-FWN2>].

22. See, e.g., Samuel Huckstep & Michael Clemens, *Why We Won't Reach a “Climate Migrant Protection Category – And What We Can Do Instead*, CENTER FOR GLOBAL DEV. (June 8, 2023), <https://www.cgdev.org/blog/why-we-wont-reach-climate-migrant-protection-category-and-what-we-can-do-instead> [<https://perma.cc/329S-GEXY>].

23. See Achiume, *supra* 6 at 258.

24. See McAdam, *supra* note 21.

25. See Tabitha Watson et al., *The climate change, conflict and migration nexus: A holistic view*, 2 CLIMATE RESILIENCE AND SUSTAINABILITY 250, 253 (2023).

26. See Benoit Mayer, “*Environmental Migration*” as Advocacy: *Is It Going to Work?*,

to conclusively establish that a certain harm is attributable to climate change, given the limits of both attribution science and causation analysis.²⁷ A given climate event, for example, may become more frequent because of climate change, but attributing a *particular* incident to climate is harder to do with any level of certainty.

Further, some scholars view endeavors to expand asylum and refugee law as “eco-colonial” efforts to cast the Global North as the savior while obscuring its responsibility for causing climate change and climate-related displacement,²⁸ or as playing into reactionary narratives about the “threat” that climate migrants from the Global South present.²⁹ Researchers from the British think-tank ODI, for instance, argue that “[r]ather than focusing on people affected by climate change, the alarmist framing and the narrative of environmental refugees center the concerns of wealthy countries that worry about large scale immigration across their borders without acknowledging their own role and responsibility in exacerbating climate change.”³⁰

It is important to note that, despite the aforementioned concerns, some countries have already adopted more expansive refugee definitions. The Cartagena Declaration, which many Latin American countries have adopted, includes in its refugee definition “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”³¹ This more expansive definition of “refugee” definition holds greater potential to protect people impacted in the context of climate change,³² and has already been

29 REFUGEE: CANADA’S J. ON REFUGEES 27, 29 (2014).

27. See Mariah Stephens, *The Great Climate Migration: A Critique of Global Legal Standards of Climate Change Caused Harm*, 23 SUSTAINABLE DEV. L. & POLICY 16 (2023). The question of categorization is, of course, a pervasive issue in refugee law. When is someone’s persecution the sufficient “but-for” cause of their displacement? Walter Kälin, in early theorization on climate-related migration, summarizes the issue thusly: “Voluntary and forced movements often cannot be clearly distinguished in real life, but rather constitute two poles of a continuum, with a particularly grey area in the middle where elements of choice and coercion mingle.” Walter Kälin, *Conceptualising Climate-Induced Displacement*, CLIMATE CHANGE AND DISPLACEMENT 81, 95 (Jane McAdam ed. 2010).

28. Gonzalez, *supra* note 5 at 124.

29. See Juliana Vélez-Echeverri et al., *Cambio Climático y Movilidad Humana*, HISPANICS IN PHILANTHROPY (Sept. 2022), <https://hipfunds.org/wp-content/uploads/2023/08/Movilidad-humana-2.pdf> [<https://perma.cc/JSR6-5Q2Q>].

30. Sturridge & Holloway, *supra* note 7 at 11.

31. Cartagena Declaration on Refugees, Nov. 22, 1984.

32. See Valentina Canepa & Daniela Gutierrez Escobedo, *Can Regional Refugee Definitions Help Protect People Displaced by Climate Change in Latin America?*, REFUGEES INT’L (Feb. 16, 2021), <https://www.refugeesinternational.org/can-regional-refugee-definitions-help-protect-people-displaced-by-climate-change-in-latin-america> [<https://perma.cc/89ZZ-QBVA>].

applied to people fleeing environmental disasters, including Haitians displaced by the 2010 earthquake who sought protection in Mexico.³³

The 1951 Refugee Convention also establishes the principle of non-refoulement, which forbids nations from sending refugees back to a place where their life or freedom is threatened.³⁴ Whether the non-refoulement obligation extends to harm arising from the impacts of climate change remains a critical and open question. A key shift followed the decision of the United Nations Human Rights Committee in *Teitiota v. New Zealand*, (CCPR/C/127/D/2728/2016, 2020), wherein the Committee indicated that returning people to places where they could face life-threatening risks because of climate change threatens their right to life under Article 6 of the International Covenant on Civil and Political Rights. The Committee stated, “without robust national and international efforts, the effects of climate change in receiving states may expose individuals to violations of their rights . . . thereby triggering the *non-refoulement* obligations of sending states.”³⁵ This decision inspired many scholars and activists to adapt the precepts of that decision to their local context.³⁶

In 2020, the United Nations High Commissioner for Refugees (UNHCR) stepped into this fray with a report summarizing how existing refugee law under the 1951 Convention may enable climate-related claims.³⁷ UNHCR describes several types of refugee protection claims that may present a climate-persecution nexus, including interactions between climate and violence (such as disasters and resource scarcity driving, and interfering with the state’s ability to protect people from persecution); persecution of environmental activists; and the failure of states to protect or deliver disaster aid to certain groups.³⁸ UNHCR was, of course, not the first to attempt this sort of typology of climate-related refugee claims,³⁹ but its analysis has proven consequential. In

33. Tamara Wood & Cleo Hansen-Lohre, *Disasters, climate change and public order: A principled application of regional refugee definitions*, REFUGEE L. INITIATIVE (May 24, 2021), <https://rli.blogs.sas.ac.uk/2021/05/24/disasters-climate-change-and-public-order> [https://perma.cc/R4V5-9SLF].

34. See U.N. High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (Jan. 26, 2007), <https://www.unhcr.org/4d9486929.pdf> [https://perma.cc/FR9W-NQ22].

35. *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, U.N. HUMAN RIGHTS COMMITTEE, ¶ 9.11 (Jan. 7, 2020), <https://www.refworld.org/cases,HRC,5e26f7134.html> [https://perma.cc/6D8Q-5U25].

36. See, e.g., Mari Galloway, *Teitiota v New Zealand, Climate Migration and Non-refoulement: A Case Study of Canada’s Obligations under the Charter and the Case Study of Canada’s Obligations under the Charter and the ICCPR*, 45 DAL L.J. 385 (2022).

37. U.N. HIGH COMMISSIONER FOR REFUGEES, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, U.N. HIGH COMMISSIONER FOR REFUGEES (Oct. 1, 2020), <https://www.refworld.org/docid/5f75f2734.html> [https://perma.cc/866K-EHGF] [hereinafter *Legal Considerations*].

38. See *ibid.*

39. See, e.g., MATTHEW SCOTT, CLIMATE CHANGE, DISASTERS AND THE REFUGEE

the wake of UNHCR's messaging, there has been significant discussion about the potential viability of existing humanitarian protection pathways to absorb climate shocks to migration patterns. In 2021, the White House acknowledged that, while “[e]xisting legal instruments to protect displaced individuals are limited in scope and do not readily lend themselves to protect those individuals displaced by the impacts of climate change, . . . [t]here is an interplay between climate change and various aspects of eligibility for refugee status.”⁴⁰ Legal scholars, policymakers, and humanitarian organizations have diverse perspectives as to the implications of such “interplay” between climate and refugee protection.⁴¹

These legal issues matter enormously. Individuals displaced in the context of climate change and their advocates need guidance on the applicability of existing law to climate-related claims for refugee protection. At the same time, it is critical for policymakers to understand the significant protection gaps for climate displaced people with few pathways to protection in the United States outside of the refugee protection system.

This Article attempts to help fill this analytical gap by providing documentation of the on-the-ground conditions as qualitative evidence for how climate change is already exacerbating drivers of displacement that constitute persecution under U.S. refugee protection law. This gap in the literature

CONVENTION (2020).

40. THE WHITE HOUSE, REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION 17 (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf> [<https://perma.cc/SUM2-QCP6>].

41. See, e.g., INT’L REFUGEE ASSISTANCE PROJECT, ADVOCACY MEMO ON CLIMATE DISPLACEMENT KEY LEGAL LEVERS (2022) at 7, <https://refugeerights.org/news-resources/advocacy-memo-on-climate-displacement/> [<https://perma.cc/ZVJ7-RX4S>] (“ . . . climate-related claims do not require an expansion of existing law, but rather consideration of how existing law applies in cases where climate impacts intersect with and compound persecutory government action or inaction based on established grounds.”) with U.S. COMM. FOR REFUGEES AND IMMIGRANTS, *Climate-Related Displacement: Potential Protections in U.S. Policy*, POLICY & ADVOCACY REPORT (July 11, 2023), <https://sway.office.com/4rUfJ0t16hJkaqBp?ref=Link> [<https://perma.cc/2ADD-BA55>] (“ . . . those displaced by climate change ‘do not have formal status under current international refugee law’ on account of their climate-related displacement alone—meaning there is ‘no international legal framework’ for international relocation in the context of the changing climate.”). See also Diante Ionesco, *Let’s Talk About Climate Migrants, Not Climate Refugees*, U.N. (June 2019) <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees> (“the current focus of the debate on establishing a climate refugee status can lead to a narrow and biased debate and would provide only partial solutions to address the complexity of human mobility and climate change.”); John Podesta, *The Climate Crisis, Migration, and Refugees*, BROOKINGS, 25 July 2019, <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/> (“ As severe climate change displaces more people, the international community may be forced to either redefine “refugees” to include climate migrants or create a new legal category and accompanying institutional framework to protect climate migrants. However, opening that debate in the current political context would be fraught with difficulty.”)

exists because most previous reports of climate impacts on migration flows to the United States have studied population-level dynamics to draw conclusions about general trends. While such efforts are valuable in understanding, for instance, how food insecurity⁴² or rural poverty⁴³ impact human mobility throughout Central America and Mexico, they do not provide the factual specificity that lawyers require to build cases. While our reports from interviews in this Article do not cover the full range of climate stories along the U.S.-Mexico border, they do represent a step forward in bridging legal and sociological analyses, thereby helping future researchers and legal workers ground their empirical or advocacy work in the reported experiences of migrants.

Second, we offer practical analysis applying U.S. refugee protection law to real-life examples of climate-related claims. Our analysis is based on data drawn from publicly reported academic, legal, and media reports, as well as interviews we conducted in January 2023 with asylum seekers in Tijuana, Mexico, in January 2023 on the impact that climate change and climate-related disasters had on their decisions to flee their homes. This Article integrates our research into the ongoing debate on the applicability of U.S. asylum and refugee protection laws to protect people displaced in the context of climate change.⁴⁴ By presenting case examples of climate-impacted asylum seekers from Central America and Mexico, this Article explores ways in which climate change intersects with other drivers of displacement. We focus on this region both because it is where most U.S. asylum seekers come from—in large part due to “ongoing violence stemming from . . . U.S. intervention”—and because Mexico and Central America are particularly vulnerable to climate change, which may displace as many as 3.9 million people in the region by 2050.⁴⁵ While this Article primarily examines regional dynamics and U.S. refugee law, its conclusions may be pertinent to other regions and jurisdictions grappling with similar legal and policy questions regarding the interpretation and adjudication of asylum claims.

42. See Diego Pons, *Climate Extremes, Food Insecurity, and Migration in Central America: A Complicated Nexus*, MIGRATION POLICY INSTITUTE (Feb. 18, 2021), <https://www.migrationpolicy.org/article/climate-food-insecurity-migration-central-america-guatemala> [<https://perma.cc/FYS9-JNJW>].

43. See Sarah Bermeo et al., *Commentary: Rural poverty, climate change, and family migration from Guatemala*, BROOKINGS INSTITUTE (Apr. 4, 2022), <https://www.brookings.edu/articles/rural-poverty-climate-change-and-family-migration-from-guatemala> [<https://perma.cc/Z8WM-MZWU>].

44. See, e.g., Jona Huber et al., *Climate-related migration and the climate-security-migration nexus in the Central American Dry Corridor*, CLIMATIC CHANGE, June 16, 2023, at 79.

45. CAMILA BUSTOS ET AL., *SHELTER FROM THE STORM: POLICY OPTIONS TO ADDRESS CLIMATE INDUCED MIGRATION FROM THE NORTHERN TRIANGLE 5* (Sabrineh Ardalan et al. eds., 2021), https://static1.squarespace.com/static/5b3538249d5abb21360e858f/t/6092e7854c5e4362887c0197/1620240265281/Shelter_Final_5May21.pdf [<https://perma.cc/8VJ7-7MB7>].

This Article proceeds as follows. Section II describes our methodology, which includes interviews with asylum seekers at the U.S.-Mexico border and a review of publicly reported information. Section III discusses our findings on the intersection of climate change and other drivers of displacement. Section IV provides legal analysis as to the applicability of U.S. refugee and asylum laws to claims for refugee protection involving climate change impacts and discusses other relevant legal considerations. We conclude with a call for researchers to document the scope of climate-driven migration more methodically, for lawyers to screen clients for climate-based claims, and for policymakers to create new climate-responsive protection pathways.

II. METHODOLOGY

In January 2023, our team of eight researchers from Stanford Law School and Human Security Initiative interviewed 38 Central American and Mexican individuals in two shelters in Tijuana, Mexico. All interviews were conducted in Spanish. Each of the individuals reported that they intended to seek asylum in the U.S. and that they were awaiting the opportunity to obtain parole to be able to enter the United States.⁴⁶ This research was initially conducted for a report titled *Climate of Coercion*, published jointly by the migrant advocacy organizations Human Security Initiative, U.S. Committee for Refugees and Immigrants, and International Refugee Assistance Project to support policy recommendations to the U.S. government.⁴⁷ This Article incorporates information from our interviews that has not yet been reported and, for the first time, situates our research within the broader context of U.S. asylum jurisprudence.

Researchers conducted interviews with individual asylum seekers in teams of two. Before each interview, researchers explained that they were not service providers, could not provide legal or other assistance, and that the interviewee would not be compensated for participating in the interview. Researchers explained the purpose of the interviews and clarified that the information that interviewees shared would be publicly reported, (and that their anonymity would be maintained). Researchers proceeded only after the interviewee expressed verbal consent to these terms. To protect the security

46. At the time the research team conducted the interviews, the pandemic-era Title 42 policy blocked asylum access at ports of entry, and required asylum seekers to wait weeks or months to apply for an exception through a limited process established by the Department of Homeland Security; see JULIA NEUSNER ET AL., HUMAN RIGHTS FIRST, HUMAN RIGHTS STAIN, PUBLIC HEALTH FARCE, (Rebecca Gendelman et al. eds., 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/12/HumanRightsStainPublicHealthFarce-1.pdf> [<https://perma.cc/JM2H-SGZ7>].

47. JULIA NEUSNER ET AL., CLIMATE OF COERCION: ENVIRONMENTAL AND OTHER DRIVERS OF CROSS-BORDER DISPLACEMENT IN CENTRAL AMERICA AND MEXICO (Seam Guerin et al. eds., 2022), <https://refugees.org/wp-content/uploads/2023/03/Climate-of-Coercion-Report.pdf> [<https://perma.cc/AF2V-L7XL>].

of the asylum seekers, this Article does not use their names and do not include any information that could be used to identify them.

III. FINDINGS: DOCUMENTING CLIMATE HARMS ON THE GROUND

Climate change and climate-related disasters have significant impacts on asylum seekers from Mexico and Central America at the U.S. border. Specifically, they (1) cause severe economic harm by destroying homes, community infrastructure, and livelihoods; (2) expose impacted individuals to increased violence, especially from organized criminal groups; and (3) lead to illegal land and resource dispossession.

A. *Climate change exacerbates economic harms to affected communities*

The various ways in which climate change exacerbates poverty are well documented, including by the United Nations' Intergovernmental Panel on Climate Change.⁴⁸ According to the World Bank, climate change will lead to a 300 percent increase in extreme poverty in Latin America by 2030.⁴⁹ Climate-related disasters bring about economic devastation by destroying homes, assets and livelihoods, and by rendering entire communities unlivable, either temporarily or permanently.⁵⁰ More than half of the individuals we interviewed reported that increasingly frequent climate-related disasters interfered with their ability to make a living by destroying crops and/or forcing businesses to close. People experiencing poverty and food insecurity often do not have the financial resources to rebuild or sustain gaps without income. Relocation may thus be necessary to adapt to and recover from climate-related destruction in the absence of adequate government assistance. As climate change exacerbates poverty, displacement will increase as well, especially when governments fail to provide adequate assistance.⁵¹

In Mexico and Central America, the agricultural sector is particularly prone to the effects of climate change, where extreme weather such as heavy rains and drought already shock food supplies, leading to both wage volatility and rising food prices.⁵² In Latin America and the Caribbean, seven out of ten of adults living in extreme poverty work in agriculture, and thus are particularly prone to wage disruption in this sector.⁵³ At the same time, people

48. Joern Birkmann et al., *Poverty, livelihoods and sustainable development, in CLIMATE CHANGE 2022: IMPACTS, ADAPTION, AND VULNERABILITY: CONTRIBUTION OF WORKING GROUP II TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 1171, 1174–75* (H.-O. Pörtner et al. eds., 2022).

49. Anna Wellenstein et al., *Climate Change and Poverty: The Perfect Storm*, WORLD BANK BLOGS (Feb. 02, 2022), <https://blogs.worldbank.org/latinamerica/climate-change-and-poverty-perfect-storm> [<https://perma.cc/LUB9-36HG>].

50. *Id.*

51. See Birkman et al., *supra* note 48 at 1200–01.

52. See Wellenstein et al., *supra* note 49.

53. *Id.*

experiencing poverty spend large percentages of their income on food, making them particularly susceptible to rising food costs.⁵⁴

Climate change can also cause economic devastation in cases where sudden onset disasters destroy assets and disrupt earning potential. Low-income households often lack the capacity to rebound.⁵⁵ On the individual level, these households already live in precarious financial positions, often relying on intermittent labor and living paycheck to paycheck. Their assets tend to be physical (and may include, for example, homes, businesses, or livestock), and thus more prone to destruction in climate-related events. Low-income households are also less likely to have insurance to guard against losses.⁵⁶ Thus, when climate-related disasters destroy property, disrupt earnings, raise the cost of living, and close businesses, impacted individuals may be left with no choice but to move.⁵⁷

Lastly, climate-related disasters disrupt the day-to-day operations of entire communities by destroying physical infrastructure, including homes, businesses, and public services, disproportionately affecting poorer households.⁵⁸ For instance, a Guatemalan woman we interviewed reported that fungi engulfed her family's house after a hurricane, rendering it uninhabitable. Another Guatemalan woman reported that floods from heavy rains since 2021 destroyed her home and heavily damaged the family's chicken farm, leaving them without an income. A Mexican woman reported that her riverside community was flooded by heavy rains in 2022, forcing her to close her travel agency business.

Even when certain households find their assets untouched by a disaster, they may experience economic devastation due to the disruption of public services—including power outages, disruptions to water supplies, and the closure of schools, health centers, and other critical facilities.⁵⁹ Several individuals we interviewed said their communities struggled to recover from the destruction of infrastructure after climate-related disasters. A woman from Guerrero recalled that storms in summer 2022 destroyed crops, leaving the family “without food for many weeks.” Floods destroyed part of the family's house and high winds tore the roof off the school that the woman's children attended, leaving the children out of school for weeks. In addition, a Honduran asylum seeker reported that after hurricanes Iota and Eta destroyed her house

54. *See id.*

55. *See* Eduardo Cavallo & Bridget Hoffman, *Confronting the Economic Effects of Climate Change in Latin America and the Caribbean*, INTER-AM. DEV. BANK: IDEAS MATTER (Aug. 30, 2023), <https://blogs.iadb.org/ideas-matter/en/confronting-the-economic-effects-of-climate-change-in-latin-america-and-the-caribbean> [<https://perma.cc/YXD6-8EL6>].

56. Wellenstein et al., *supra* note 49.

57. *See* Alex de Sherbinin, *Climate Impacts as Drivers of Migration*, MIGRATION POL'Y INST. (Oct. 23, 2020), <https://www.migrationpolicy.org/article/climate-impacts-drivers-migration> [<https://perma.cc/5KAC-KM3C>].

58. *See* Wellenstein et al., *supra* note 49.

59. *See ibid.*

and her father's dairy business, the family was driven into poverty and forced to sleep in a shelter for months while they struggled to rebuild. "The hurricanes destroyed everything. People in our town died, including children," she said.

Slow onset events such as rising temperatures also lead to economic harm by rendering impacted individuals temporarily or permanently unable to work. As temperatures rise, labor productivity decreases, resulting in declining wages for workers. Extreme heat jeopardizes the health and safety of those who rely on outdoor work and can prevent workers from earning a living.⁶⁰ Several asylum seekers we interviewed reported suffering heat-related illness or injury since 2021 while working outside. For example, a farmer from Guerrero reported that he and other farmers became sick from working in "intense" heat; a Honduran construction worker reported that she was unable to work during unprecedentedly hot summers and developed a skin condition requiring medical treatment after working during a heat wave; and a Mexican woman suffered from intense headaches while working on her family's farm during a period of extreme heat in August 2022.

Despite the widespread economic impact of both slow-onset and sudden climate events, asylum seekers we interviewed indicated that domestic government assistance was either nonexistent or woefully insufficient. For example, after unusually heavy rains in Mexico in September and October 2022, the federal government distributed some regional aid to assist those who had lost income. However, a mother who worked as a strawberry picker reported that "The government didn't help when we ran out of food [The aid money] was only used to feed the family of the mayor." In another case, a Honduran man whose home was severely damaged by hurricanes Eta and Iota received only \$500 Honduran Lempira (about \$20 USD) in aid. "What can we do with this small amount of money? We lost everything," he said. Lastly, a Mexican man whose house and wood cutting business were destroyed by hurricanes was denied government funds to rebuild his home, even as gang members continued to demand extortion money. "They left me with practically nothing," he said. For these individuals, the economic devastation brought about by climate-related disasters compounded other challenges that drove them to seek protection at the U.S.-Mexico border.

B. *Climate change impacts exacerbate vulnerability to violence*

A growing number of state actors and international organizations have identified climate change as a national security threat, recognizing how warmer temperatures and increasingly severe environmental disasters exacerbate conflict,⁶¹ including by limiting the availability of resources in impacted regions

60. TORD KJELLSTRÖM ET AL., WORKING ON A WARMER PLANET: THE IMPACT OF HEAT STRESS ON LABOUR PRODUCTIVITY AND DECENT WORK 13–15 (INT'L LABOUR ORGANIZATION ed., 2019), https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_711919.pdf [<https://perma.cc/TK2U-P2EA>].

61. See NAT'L INTEL. COUNCIL, NATIONAL INTELLIGENCE ESTIMATE: CLIMATE CHANGE

and increasing the vulnerability of impacted individuals.⁶² While a direct link between climate change and a rise in conflict is not always easily identifiable, researchers have long observed that the impacts of climate change contribute to armed conflict, particularly when they interact with existing vulnerabilities such as socio-economic inequities, state fragility and weak governance.⁶³ As Foreign Policy Analytics researcher Becca Andrasko writes, “[s]tate fragility intersects with environmental vulnerability, as climate change and environmental degradation serve as ‘threat multipliers’ to conflict, which compound domestic and transnational security risks.”⁶⁴

In addition to heightening the risk of conflict, climate change may also increase individual’s vulnerability to violence by exacerbating economic insecurities. In many parts of Central America and Mexico, gangs and cartels use violence and extortion tactics to exercise significant control over communities, often with the support of local police and other state officials.⁶⁵ Indeed, 30 thirty out of 38 thirty-eight asylum seekers we interviewed reported that violence or threats of violence by organized criminal groups motivated their decision to flee their homes. Many are fleeing vulnerable and under-resourced regions where inadequate state governance creates “pockets of fragility” and opportunities for organized criminal groups to exercise control.⁶⁶ For states already dealing with high levels of violence and conflict, climate change impacts may compound these challenges.

Indeed, the research team’s interviews confirm that organized criminal groups in Central America and Mexico take advantage of the vulnerability of climate-impacted communities to increase their size and influence. As detailed above, climate disasters and rising temperatures destroy livelihoods and reduce the availability of land, food, and resources. This results in severe economic devastation, which in turn provides opportunities for violent criminal

AND INTERNATIONAL RESPONSES INCREASING CHALLENGES TO US NATIONAL SECURITY THROUGH 2040 (2021), https://www.dni.gov/files/ODNI/documents/assessments/NIE_Climate_Change_and_National_Security.pdf [<https://perma.cc/E7X8-XUDB>].

62. See Clionadh Raleigh & Henrik Urdal, *Climate change, environmental degradation and armed conflict*, 26 POLITICAL GEOGRAPHY 674 (2007).

63. Katharina Nett & Lukas Rüttinger, *Insurgency, Terrorism and Organised Crime in a Warming Climate – Report and Summary*, CLIMATE DIPLOMACY (Apr. 20, 2017), <https://climate-diplomacy.org/magazine/conflict/insurgency-terrorism-and-organised-crime-warming-climate-summary> [<https://perma.cc/3CLY-GP6W>].

64. Becca Andrasko, *Environment, Fragility and Conflict*, FOREIGN POLICY MAG. (Jan. 12, 2022), <https://foreignpolicy.com/2022/01/12/environment-fragility-and-conflict> [<https://perma.cc/6VQK-DFL6>].

65. Christopher Blattman et al., *Gang rule: Understanding and countering criminal governance* (Nat’l Bureau of Econ. Rsch., Working Paper No. 729, 2023), <https://www.nber.org/papers/w28458> [<https://perma.cc/D248-NXNN>].

66. See LUKAS RÜTTINGER ET AL., *A NEW CLIMATE FOR PEACE: TAKING ACTION ON CLIMATE AND FRAGILITY RISKS* (Meaghan Parker ed., 2015), https://mahb.stanford.edu/wp-content/uploads/2015/07/NewClimateForPeace_FullReport_small_0.pdf [<https://perma.cc/C2FY-9Z8L>].

organizations to exploit impacted communities.⁶⁷ Several asylum seekers reported that hurricanes have ravaged their homes or businesses, plunged them into poverty, and made it impossible to meet the extortion demands made by violent organized criminal groups. In addition, farmers who lost their crops due to hurricanes, droughts, or floods, along with others who were unable to work during climate-related disasters, reported that cartels continued to demand extortion payments, without consideration for the economic hardships they endured.

We interviewed several individuals from Mexico who experienced heightened vulnerability to persecution by organized criminal groups because of environmental and climate-related impacts. For example, a Mexican woman's family was driven into poverty after droughts and floods ruined their tomato crops, contributing to their inability to make extortion payments demanded by gang members, who killed the woman's brother and uncle, and kidnapped her husband. Another Mexican family fled their home in Michoacán after extreme heat forced the closure of their grocery store for more than two weeks, while gang members continued to demand extortion fees the family could not afford. The family fled after gang members appeared at their home, took what little they had left, and threatened them.

Central American families we interviewed reported similar threats. A Guatemalan woman and her children fled their home due to threats and extortion by gang members who controlled their region. Intensifying hurricanes had forced businesses in their town to close—including the bakery and gas station where they worked—leaving them unable to earn a living or pay the gangs' extortion fees. The family fled after gang members appeared at the family members' workplaces demanding extortion payments and tried to kidnap the woman's son. A Honduran woman told us her family was unable to pay extortion fees that gang members demanded after hurricanes destroyed their dairy farm. The father was forced into hiding as gang members' threats mounted, and the rest of the family fled to the U.S. border after a gang member tried to take the woman's 8-year-old daughter. "They said if I didn't give them my daughter they would kill her in front of me," the woman reported.

Economic devastation from climate impacts has also driven members of affected communities to join organized criminal groups for survival when they are no longer able to support themselves. For instance, a family from a lemon-harvesting community in southern Mexico told us that droughts and other climate-related disasters have destroyed lemon crops, forcing many community members to join the gang controlling the region. In turn, violence carried out by gang members who seek to extort and recruit community members has soared, the father reported. The family fled after armed men sprayed bullets into their lemon orchards, broke into their house while the family was eating dinner, and demanded extortion payments. Another Mexican

67. See Nett & Rüttinger, *supra* note 63.

family from coastal Guerrero reported that, after extreme heat and hurricanes destroyed crops and ravaged their town's farm-based local economy, the gang controlling the region took advantage of the conditions to aggressively recruit young people to their ranks.

In addition to exacerbating individual vulnerability for those not gang-affiliated, climate-related disasters can simultaneously heighten the power of organized crime, leading to increases in criminality and violence. In certain regions in Mexico and Central America, climate-related disasters have led to the destruction of crops and the weakening of local economies. Organized criminal groups have capitalized on this scarcity by monopolizing access to essential resources. For instance, in the drought-ravaged state of Chihuahua, Mexico, where rising temperatures have depleted rivers, devastated crops, and plunged tens of thousands of farmers into dire poverty,⁶⁸ the Sinaloa cartel has seized control of water distribution. The cartel diverts fresh water from lakes and natural water sources, using it to irrigate their cannabis and poppy fields, while also profiting by selling water to local communities.⁶⁹

Several individuals told the research team that organized criminal groups exploited environmental challenges to profit and increase their influence. They include a Mexican woman from Guerrero who fled with her husband due to threats from gang members who gouged prices of essential supplies for farming maize, which historically formed the basis of the region's economy. The gang controlling the region exploited devastating drought conditions by driving up the price of seeds, fertilizer, and produce, while closely monitoring and demanding extortion payments for supplies purchased outside their territory. Community members became unable to afford the supplies needed to plant maize, which, the woman reported, drove young people who were no longer able to make a living in the maize fields to join the gangs for survival. She told us that as rising temperatures threaten local livelihoods, the power of the gang to control essential supplies has driven boys as young as 14 to join the group, illustrating the direct connection between environmental crises and the empowerment of criminal organizations.

C. *Climate change contributes to illegal land and resource dispossession*

Land and natural resource dispossession linked to climate change is also driving displacement. Climate change causes environmental degradation, leading to the diminishment of land and natural resources.⁷⁰ The resulting scarcity

68. Luis Murillo, *Reportan pérdidas de casi un 100 % en cultivos de la región sur*, EL SOL DE PARRAL (May 24, 2021), <https://www.elsoldeparral.com.mx/local/reportan-perdidas-de-casi-un-100-en-cultivos-de-la-region-sur-sequia-lluvias-productores-cosecha-autoconsumo-noticias-parral-chihuahua-6752316.html> [<https://perma.cc/CS7Z-C5XK>].

69. Luis Chaparro, *The Sinaloa Cartel Is Controlling Water in Drought-Stricken Mexico*, VICE (Sept. 20, 2022, 4:00 AM), <https://www.vice.com/en/article/4ax479/mexico-sinaloa-cartel-water>. [<https://perma.cc/C82H-NGMG>].

70. See Nett & Rüttinger, *supra* note 63.

incentivizes powerful entities such as government officials, private developers, and organized criminal groups to exploit the land and natural resources of Indigenous peoples and other marginalized communities.⁷¹ Often communities and individuals who resist these illegal encroachments face violent repression and persecution. Of the 1,733 land and environmental protectors that had been killed from 2012 to 2021, over two-thirds were in Latin America⁷² and thirty-nine percent were Indigenous.⁷³ Mexico, Honduras, and Guatemala were ranked among the top 10 ten deadliest countries for environmental activists from 2012 to 2021.⁷⁴

In Central America and Mexico, climate-related pressure on land availability has led to further incentivized organized criminal groups in Mexico to force people from their homes and farmland to and establish profit-making enterprises. For instance, numerous cartels have seized private land and resources to profit from Mexico's lucrative avocado trade. A University of Maryland study found that "cartels are heading out into the forests of Michoacán with axes, chainsaws, and machine guns to establish their own growing fields . . . for avocados."⁷⁵ Seizing land and cultivating their own groves of avocados enables cartels to better manipulate and exploit Mexico's avocado market.⁷⁶

The appropriation of land, natural resources, and homes by organized criminal groups in the region is common. Climate-related pressures on land availability have incentivized organized criminal groups to seize private homes, as cartels forcibly displace families to establish profit-making enterprises and exploit local resources. We interviewed two Mexican families whom cartel members forced from their homes and land so their cartel could appropriate them (for reasons unknown), including a Mexican woman who fled Guerrero with her daughters after gang members killed her husband in order to appropriate the family's farmland. With drought, floods, and erratic rainfall diminishing productive farmland, such trends are no longer uncommon.

71. Meetings Coverage, Security Council, Massive Displacement, Greater Competition for Scarce Resources Cited as Major Risks in Security Council Debate on Climate-Related Threats, U.N. Press Release SC/13677 (Jan. 25, 2019), <https://press.un.org/en/2019/sc13677.doc.htm> [<https://perma.cc/R99M-CBMA>].

72. Ali Hines, *Decade of Defiance*, GLOB. WITNESS (May 10, 2023), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance> [<https://perma.cc/3DJM-DFCW>].

73. Peter Appleby, *Latin America's Massacres of Environmental Defenders Continue With Impunity: Study*, INSIGHT CRIME (Oct. 7, 2022), <https://insightcrime.org/news/latin-american-nations-dominate-most-deadly-countriesenvironmental-protectors> [<https://perma.cc/5QKA-7HS6>].

74. *Ibid.*

75. Samuel Henkin, *Tracking Cartels Infographic Series: The Pits: Violence in Michoacán Over Control of Avocado Trade*, CENTERS OF EXCELLENCE, <https://www.start.umd.edu/tracking-cartels-infographic-series-pits-violence-michoac-n-over-control-avocado-trade> [<https://perma.cc/FV3S-FMA5>].

76. *Ibid.*

Facing scarce resources as climate change reduces land availability, governments and private corporations also have a long-standing history of exploiting the land and natural resources of Indigenous peoples and other vulnerable communities for development initiatives, including energy infrastructure and monoculture plantations.⁷⁷ As climate change reduces land availability and creates a scarcity of resources, the situation has only gotten worse. These initiatives destroy natural environments and expose already vulnerable peoples' homes to the negative effects of climate change.⁷⁸ With limited resources—financially and politically—impacted individuals are often dispossessed of their personal or community resources, leading to displacement.⁷⁹ Major development projects have resulted in the forced migration of well more than 250 million people around the globe in nearly 30 thirty years.⁸⁰ Reduced availability of productive lands due to climate change may heighten such trends.

As climate change constrains the availability of land and natural resources, environmental activists often face threats of violence by organized criminal groups, government agents, or private actors. Violence against environmental defenders in Mexico increased annually from 2018 to 2021, making it the most dangerous country for environmental activists in 2021.⁸¹ The research team interviewed a Mexican environmental activist who was forced to flee her home with her young children after cartel members killed her parents, husband, and four siblings for their public advocacy against the cartel's deforestation efforts. Such cases are already likely pinpointed as relevant for refugee protection, and thus less the focus of our analysis.

IV. LEGAL ANALYSIS: LINKING CLIMATE HARMS TO ASYLUM CLAIMS

As the previous section details, we found that climate impacts on asylum seekers fleeing Central American countries and Mexico broadly fall broadly

77. See, e.g., Ryan Dube & Gabriele Steinhauser, *China's Global Mega-Projects Are Falling Apart*, WALL ST. J. (Jan. 20, 2023, 9:45 AM), <https://www.wsj.com/articles/china-global-mega-projects-infrastructure-falling-apart-11674166180>; Martin Mowforth, *Indigenous People and the Crisis Over Land and Resources*, GUARDIAN (Sept. 23, 2014, 6:08 AM), <https://www.theguardian.com/global-development/2014/sep/23/indigenous-people-crisis-land-resources> [<https://perma.cc/JGN2-8UA2>].

78. See, e.g., Rebecca C. Rooney, Derek T. Robinson, & Rich Petrone, *Megaproject reclamation and climate change*, 5 NATURE: CLIMATE CHANGE 963 (2015); Nichole Vargas, *The Effects of the Wind Farms on the Indigenous Zapotec Community of the Isthmus of Tehuantepec, Mexico*, 10 OCCAM'S RAZOR 3 (2020).

79. Sandra Cuffe, *The Hidden Story of a Notorious Guatemalan Nickel Mine*, INTERCEPT (Mar. 27, 2022, 8:00 AM), <https://theintercept.com/2022/03/27/solway-guatemala-nickel-mine> [<https://perma.cc/U93D-7XCG>].

80. *The Nicaragua Canal: Resistance to Dispossession*, INTERAMERICAN ASS'N FOR ENV'T. DEF. (May 25, 2015), <https://aida-americas.org/en/blog/nicaragua-canal-resistance-dispossession> [<https://perma.cc/E8CU-LXH8>].

81. See Hines, *supra* note 72.

into three, interrelated categories: 1) economic devastation; 2) exacerbation of and vulnerability to violent crime; and 3) land and resource dispossession. This section analyzes how U.S. refugee law applies to these types of claims. Again, U.S. refugee protection requires a showing of “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁸² Further, the persecutor must be “an agent of the government or an entity that the government is unable or unwilling to control.”⁸³ In other words, climate-impacted applicants for refugee protection and their advocates must establish that the harm they experience (or fear) (is 1) has a nexus with a protected ground, and (2) is attributable to government action or inaction. We conclude that climate-impacted individuals may qualify for U.S. refugee protection in some circumstances.

A. *Economic harm linked to climate change impacts may constitute persecution*

Though economic hardship in the context of climate change does not in and of itself qualify an applicant for refugee protection, it may exacerbate persecution tied to protected grounds. As previously noted, many of those affected by climate-related events receive either woefully inadequate or no government support. When a government fails to protect individuals or withholds assistance on account of an individual’s race, religion, nationality, membership in a particular social group, or political opinion, that individual may then qualify for asylum. It is thus important for those evaluating refugee protection claims, including attorneys, to delve deeper into the relationships between lack of assistance and protected grounds.

The validity of claims related to economic harm are already well established. In *Matter of T-Z-*, the Board of Immigration Appeals (BIA) recognized that “[n]onphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution.”⁸⁴ Such economic disadvantage need not entail “a total deprivation of livelihood or a total withdrawal of all economic opportunity” in order to rise to the level of persecution.⁸⁵ Court of Appeals precedent⁸⁶ and Asylum Officer training guidance confirm these claims.⁸⁷ Economic harms can thus constitute persecution when there is economic disadvantage or deprivation deliberately imposed by a government on account of a protected ground. There is also growing recognition of the validity of such claims in the context of climate change. In its October 2021 Report, the White House recognized: “[I]f a government withholds or denies

82. 8 U.S.C. § 1101(a).

83. RAI0 DEFINITION, *supra* note 18 at 11.

84. *Matter of T-Z-*, 24 I. & N. Dec. 163 (U.S. Dep’t of Just. May 9, 2007).

85. *Id.* at 173.

86. *Baballah v. Ashcroft*, 367 F.3d 1067, 1075 (9th Cir. 2004).

87. See RAI0 DEFINITION, *supra* note 18 at 11.

relief from the impacts of climate change to specific individuals who share a protected characteristic in a manner and to a degree amounting to persecution, such individuals may be eligible for refugee status.”⁸⁸

In order for such claims to qualify, previous cases have needed to emphasize the deliberate nature of economic harm by the government.⁸⁹ In line with the strategy above, practitioners have eschewed arguments that the government is responsible for the climate events themselves, and instead contended that failure to assist an individual or marginalized population based on a protected characteristic amounts to economic persecution.⁹⁰ Such failure to assist individuals can be preemptive, such as a failure to warn, evacuate, or provide adequate infrastructure to protect a community; or retroactive, such as denying aid, refusing to assist in rebuilding, or failing to relocate individuals when an area is no longer able to sustain life.⁹¹

B. *Legal protection gaps exist for climate-impacted victims of violent conflict*

Claims involving the intersection of climate change and violent conflict in Mexico and Central America likely involve harm or threats of harm from gangs, cartels, or other organized criminal groups. As such, many climate-impacted applicants will face the same challenges that any applicant seeking relief for a gang-related claim face.

Again, in order for harm to be considered persecution, it must be linked to government action or omission,⁹² but the persecutor need not be a government agent; it could be an individual or group against whom the government is unable or unwilling to provide adequate protection.⁹³ Though state officers often collude with and support criminal organizations, the latter are nonetheless considered non-state entities in situations where the persecutors are not government employees. While the applicant must demonstrate a connection between the harm and a protected ground, they are not obligated to prove that the government’s failure to control the perpetrators is based on the applicant’s protected characteristic.⁹⁴ Thus, cases where private organized criminal groups carry out persecution may qualify for relief if the applicant can establish that the government supported or even tolerated the organization’s harmful conduct.

88. THE WHITE HOUSE, *supra* note 40 at 17.

89. *Practice Advisory: Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters*, CTR. FOR GENDER & REFUGEE STUD. (Feb. 2023) at 18.

90. *Ibid.*

91. *Ibid.*

92. RAI0 DEFINITION, *supra* note 18 at 11.

93. *Ibid.*

94. U.S. CITIZENSHIP AND IMMIGR. SERVICES. OFFICER TRAINING / RAI0 COMBINED TRAINING PROGRAM: NEXUS AND THE PROTECTED GROUNDS 13 (Dec. 20, 2019) https://www.uscis.gov/sites/default/files/document/lesson-plans/Nexus_minus_PSG_RAIO_Lesson_Plan.pdf [https://perma.cc/Q4BS-KSJ4] [hereinafter RAI0 NEXUS].

Harm or threats from organized criminal groups can constitute persecution when the government fails to investigate their crimes or intervene to control the group. For example, a woman from southern Mexico told us that cartel members terrorized her family in the wake of multiple storms that ravaged her community's economy and physical infrastructure. Cartel members extorted the family and aggressively attempted to recruit the woman's 14-year-old son. After armed men broke into the family's home looking for the boy, destroyed the family's property, and threatened violence, the family reported the incident to local police, but the police did nothing. "We don't trust the police. They work together with the cartel. We just had to leave. We abandoned everything," she said. The fact that the family unsuccessfully sought government protection provides evidence that the government is "unable or unwilling" to protect them from the cartel's persecution.

Establishing a nexus to a protected ground in gang-related cases is more complicated. A common nexus advocates invoke for claims involving gangs and other organized criminal groups is particular social group (PSG). However, over the course of the past two decades, the U.S. government has significantly limited the application of the PSG definition to claims for protection based on persecution by organized criminal groups.⁹⁵ In 2008, the BIA established a more restrictive test for establishing a PSG nexus in gang-based asylum cases. The BIA held that a viable PSG must be (1) based on an immutable characteristic, (2) socially visible, and (3) particularly defined.⁹⁶ These restrictions make it more difficult for applicants to obtain relief for gang-related claims.⁹⁷ Thus, interviewees impacted by gang violence—including gang violence exacerbated by climate change—would not likely qualify for refugee protection unless they could demonstrate membership in a PSG that meets these narrow criteria.

Further, refugee protection standards for a particular social group in the context of gang-related violence are constantly changing. In a practice advisory on such claims, the National Immigrant Justice Center notes, "The definition of the particular social group ground for asylum eligibility is in flux and is likely to remain that way for the foreseeable future."⁹⁸ In 2022, UNHCR weighed in, writing, "UNHCR has long recognized the protection needs of individuals fleeing threats or harm by gangs and other organized criminal groups in various parts of the world, including Central America and Mexico, and it has recognized that, depending on the circumstances, survivors of such violence may

95. *Particular Social Group Practice Advisory: Applying for Asylum Based on Membership in a Particular Social Group*, NAT'L IMMIGR. JUST. CTR. (June 2021), <https://immigrantjustice.org/for-attorneys/legal-resources/file/practice-advisory-applying-asylum-based-membership-particular> [<https://perma.cc/C65Z-9SSA>] [hereinafter *PSG Practice Advisory*].

96. *Matter of S-E-G-*, 24 I. & N. Dec. 579 (U.S. Dep't of Just. July 30, 2008); *Matter of E-A-G-*, 24 I. & N. Dec. 591 (U.S. Dep't of Just. July 30, 2008).

97. See generally, *PSG Practice Advisory*, *supra* note 95.

98. *Ibid.*

be considered in need of international protection.” UNHCR further noted and noting that, “U.S. courts have an obligation to construe U.S. statutes in a manner consistent with U.S. international obligations whenever possible.”⁹⁹

As this area of asylum law is constantly fluctuating and subject to significant judicial discretion,¹⁰⁰ the fate of the many asylum seekers we interviewed who had experienced persecution by organized criminal groups exacerbated by climate conditions remains uncertain. With gang-related protection claims, it is already hard to prove that an individual was targeted based on their membership in a particular social group, or any other protected ground. As climate change potentially leads to more people targeted by gang violence, these existing gaps in legal protection may become more pronounced, especially if the interpretation of particular social group remains narrow. Given the state of case law on gang-related claims, it is unclear whether these individuals would be eligible for asylum relief, even though they would face very real and present danger to their lives if they were to return home. In short, victims of gang violence already fall into a gray zone of legal protection, and climate change is likely to increase the number of victims moving forward. Thus, this protection gap points to the need for additional protection pathways for climate-impacted people.

C. *Climate-related land and resource dispossession may constitute persecution*

While they represented the smallest portion of the cases in our substantive interviews, claims involving illegal land dispossession or encroachments may be strong cases for refugee protection. When applicants have faced violence or threats of violence for their efforts to resist dispossession, they may claim that harm arising from government encroachments on their land (and encroachments by private enterprises with the support of the government) has been carried out “on account of” the applicants’ protected characteristics. Again, asylum applicants under these circumstances would need to establish that government agents carried out or failed to protect them from persecution.¹⁰¹

With regard to the examples related to development projects elaborated in the previous section, displaced people and activists may establish a nexus to a protected ground if they experienced, for instance, persecution linked to their political activity, membership in a particular social group (such as an environmental or labor rights group), or status as a member of a distinct minority

99. *UNHCR’s Views on Asylum Claims From Individuals Fleeing Violence by Gangs and Other Organized Criminal Groups in Central America and Mexico*, U.N. HIGH COMM’R FOR REFUGEES (Sep. 2022), <https://www.unhcr.org/us/media/unhcrs-views-asylum-claims-individuals-fleeing-violence-gangs-and-other-organized-criminal> [https://perma.cc/3WKG-C5RG] (citing *Murray v. The Charming Betsy*, 6 U.S. 64, 80 (1804); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987)).

100. See *PSG Practice Advisory*, *supra* note 95.

101. *RAIO DEFINITION*, *supra* note 18 at 11.

group. For example, in 2015, the United States granted asylum to two displaced members of the Honduran Garifuna community, a historically persecuted ethnic minority.¹⁰² The asylees were brothers and members of the afro-descendant Garifuna community, which has historically faced persecution, including government appropriation of their ancestral and communal lands.¹⁰³ The brothers were “granted asylum based on their identity as members of an ethnic and racial minority group . . . given the Honduran government’s complicity in discrimination against the Garifuna, including through illegal appropriation of climate-vulnerable ancestral lands.”¹⁰⁴ In this example, the government itself carried out persecution against the applicants.

The Mexican woman the research team interviewed whose family members had been killed for their efforts to protect their land from deforestation may have a viable claim for protection based on her political opinion. The fact that the organized criminal group carrying out deforestation and making threats against her family already murdered her other family members suggests that the Mexican government is unable or unwilling to protect the woman and her family.

For the two individuals and their families whose homes and land were illegally appropriated by Mexican organized criminal groups, the nexus is less straightforward. In these cases, Mexican cartel members seem to have targeted the landowners for no other reason than to expand the cartel’s own assets and influence, and did so without regard for the identities of the people they displaced. However, the BIA has held that land ownership alone may indicate membership in a PSG.¹⁰⁵ Again, asylum applicants who were displaced after private entities stole their property would need to show that the government was “unable or unwilling” to protect them from the persecution they experienced,¹⁰⁶ which may prove difficult in situations where the applicant did not seek assistance from government law enforcement.

D. *Climate considerations are relevant to internal relocation and discretionary relief assessments*

This Section details additional applications of climate considerations in the context of refugee and asylum law. Climate change impacts may be

102. INT’L REFUGEE ASSISTANCE PROJECT, U.S. OPPORTUNITIES TO ADDRESS CLIMATE DISPLACEMENT 10 (2021), <https://refugeerights.org/wp-content/uploads/2021/08/U.S.-Opportunities-to-Address-Climate-Displacement.pdf> [<https://perma.cc/GTB9-Z3WW>].

103. Massay Crisanto, *5 Garifuna Leaders Are Still Missing in Honduras*, THE NATION (Sept. 3, 2020), <https://www.thenation.com/article/world/honduras-garifuna-kidnapping> [<https://perma.cc/N539-TU72>].

104. INT’L REFUGEE ASSISTANCE PROJECT, *supra* note 102.

105. See RAO NEXUS, *supra* note 94 at 37–39; see also *Cordoba v. Holder*, 726 F.3d 1106, 1116 (9th Cir. 2013); see also *In re C-A-*, 23 I. & N. Dec. 951, 960 (BIA 2006) (noting that BIA decisions have indicated that “land ownership” may be an “easily recognizable trait[.]” constituting membership in a particular social group).

106. RAO DEFINITION, *supra* note 18 at 11.

relevant to determinations of eligibility for discretionary relief in some cases. Once an asylum seeker has established past persecution, there is a rebuttable presumption of a well-founded fear of future persecution. One way an asylum officer can rebut this presumption is by establishing that the asylum seeker could internally relocate within their country of origin in order to avoid future persecution.¹⁰⁷

To establish the possibility of internal relocation, the U.S. government “must demonstrate that there is a specific area of the country where the risk of persecution to the [applicant] falls below the well-founded fear level.”¹⁰⁸ If the government demonstrates this and establishes the “ability” of the applicant to relocate, the Immigration Judge next determines whether it would be reasonable to expect the applicant to relocate, under all the circumstances.¹⁰⁹ This assessment should consider the effects of climate change and environmental disasters, which may render parts of the country in question uninhabitable. Indeed, the U.S. government has recognized that “adverse impacts of climate change may affect whether an individual has a viable relocation alternative within their country or territory.”¹¹⁰ Internal relocation may be unreasonable where disasters exacerbated by climate change have made an area uninhabitable, such as, for example, in cases where hurricanes, droughts, or other climate-related disasters have destroyed infrastructure and/or farmland upon which communities rely.

If the presumption of a well-founded future fear of persecution is rebutted, there remain two distinct grounds for an asylum officer to grant an applicant discretionary relief. First, if the severity of the past persecution is such that the applicant is unable or unwilling to return to their country of origin, they may be granted asylum.¹¹¹ This inability or unwillingness must stem from “compelling reasons” arising from the severity of the past persecution.¹¹² As illustrated by the examples discussed above, cases of persecution linked to environmental or climate impacts may rise to the level of severity that the BIA has found to warrant a grant of discretionary relief. That is, some climate-affected asylum seekers may have suffered “an atrocious form of persecution that results in continuing physical pain and discomfort.”¹¹³ For instance, an environmental activist who was tortured in relation to their efforts to defend land and natural resources, and who experiences continuing pain due to the torture, may be eligible for discretionary relief in the absence of a well-founded fear of future persecution.

107. RAI0 DEFINITION, *supra* note 18 at 10.

108. *Matter of M-Z-M-R*, 26 I. & N. Dec. 28, 33–34 (BIA 2012).

109. *Id.*

110. THE WHITE HOUSE, *supra* note 40 at 17.

111. RAI0 DEFINITION, *supra* note 18.

112. *Matter of L-S-*, 25 I. & N. Dec. 705, 711 (BIA 2012).

113. *Id.*

Second, discretionary relief is available if there is a “reasonable possibility” that an applicant will suffer “other serious harm” upon return to their country of origin.¹¹⁴ While the first ground requires looking to the past, the second ground depends on the future. The “other serious harm” does not need to be at all related to the past harm, nor does it need to be inflicted on account of a protected ground (i.e., race, religion, nationality, membership in a particular social group, or political opinion).¹¹⁵ Relevant guidance from U.S. Customs and Immigration Services clarifies that the possible future harm facing an asylum applicant need not be intentionally inflicted by a persecutor but can arise from “non-volitional situations and events such as, for example, natural disasters.”¹¹⁶ However, the future harm must be “so serious that it equals the severity of persecution.”¹¹⁷

The BIA has noted that this second ground requires adjudicators to consider the conditions in an applicant’s country of origin; this ground could be met when an applicant would face “conditions . . . involving civil strife, extreme economic deprivation beyond economic disadvantage, or situations where the claimant could experience severe mental or emotional harm or physical injury” upon return to their country of origin.¹¹⁸ An applicant may be at risk of facing such conditions due to climate change and environmental disasters, which can contribute to civil, economic, and political strife. The White House recognized such possible impacts of climate change:

[W]hen combined with physical, social, economic, and/or environmental vulnerabilities, climate change can undermine food, water, and economic security. Secondary effects of climate change can include displacement, loss of livelihoods, weakened governments, and in some cases political instability and conflict.¹¹⁹

Climate change and environmental disasters also pose threats to mental health and can cause new physical harm, such as heat-related illnesses, increased vulnerability to violence due to worsened economic circumstances, and more.¹²⁰ As discussed in the Findings section, the research team interviewed numerous asylum seekers who experienced heat-related illness, food insecurity, or other severe physical harms arising from climate change and climate-related disasters. Threats of harm due to the impacts of climate-related disasters may meet the standard of “other serious harm” and thus serve as a basis for discretionary

114. U.S. CITIZENSHIP & IMMIGR. SERVICES, RAO COMBINED TRAINING PROGRAM: DISCRETION 20 (2019), https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf [<https://perma.cc/B6PM-9LAY>].

115. *Matter of L-S-*, 25 I. & N. Dec. at 711.

116. RAO DEFINITION, *supra* note 18 at 60–61.

117. *Matter of L-S-*, 25 I. & N. Dec. at 714.

118. *Id.*

119. THE WHITE HOUSE, *supra* note 40 at 4.

120. See Carlos Corvalan et al., *Mental Health and Climate Change: Policy Brief*, WORLD HEALTH ORGANIZATION [WHO] (2022), <https://iris.who.int/bitstream/handle/10665/354104/9789240045125-eng.pdf?sequence=1> [<https://perma.cc/86BV-EM6C>].

grants of humanitarian asylum in cases where the presumption of a well-founded fear of persecution has been rebutted. For instance, DHS asylum and refugee officer training materials list “extreme drought, flooding, famine, earthquakes, and volcanic eruptions” among examples of “ongoing impacts of climate change” that may constitute other serious harm that would make it “unreasonable for the applicant to relocate.”¹²¹

E. *Climate-displaced people may qualify for other forms of humanitarian relief*

This Article primarily assesses the applicability of refugee protection law to climate-related claims. However, it is important to note that individuals affected by climate-related circumstances who may not be eligible for asylum may qualify for alternative humanitarian protection pathways including statutory withholding of removal, commonly known as § 241(b)(3) withholding of removal,¹²² as well as withholding of removal under the United Nations Convention Against Torture (CAT).¹²³

Withholding of removal, like refugee protection, requires a showing of past persecution based on race, religion, nationality, membership in a particular social group, or political opinion. § 241(b)(3) of the Immigration and Nationality Act (INA) prohibits the removal of a non-citizen to a country where it is more likely than not that their life or freedom would be threatened because of a protected ground, a higher standard than those applying for asylum, where applicants only need to show a “well-founded” fear of persecution.¹²⁴ Courts and the BIA have generally equated “threat to life or freedom” with persecution as defined in asylum law.¹²⁵ Thus, the analysis as to whether climate-impacted individuals who have also experienced persecution may qualify for withholding of removal mirrors that under U.S. asylum and refugee protection law.

Unlike asylum and refugee protection, which adjudicating officers grant at their discretion, a grant of withholding of removal is mandatory to any

121. Refugee, Asylum, and International Operations Directorate, *RAIO Combined Training Program: Well-Founded Fear*, U.S. Citizenship and Immigration Services (July 24, 2024) at 28, https://www.uscis.gov/sites/default/files/document/lesson-plans/Well_Founded_Fear_LP_RAIO.pdf.

122. See 8 U.S.C. § 1231(b)(3).

123. G.A. Res. 39/46, U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Dec. 10, 1984).

124. See *I.N.S. v. Stevic*, 467 U.S. 407, 424 (1984) (“the question under [the clear-probability] standard is whether it is more likely than not that the alien would be subject to persecution;” see also *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987))” to show a “well founded fear of persecution,” an alien need not prove that it is more likely than not that he or she will be persecuted in his or her home country”).

125. See, e.g., *Wiratama v. Mukasey*, 538 F.3d 1, 3 (1st Cir. 2008) (“The ‘threat to life or freedom’ under withholding of removal is identical to ‘persecution’ under asylum”); *Tsegmed v. Sessions*, 859 F.3d 480, 484 (7th Cir. 2017) (“A threat to life or freedom is synonymous with persecution”).

qualified applicant. Furthermore, withholding of removal and CAT protection are not restricted by the one-year filing deadline and do not involve a subjective fear assessment.¹²⁶ However, withholding of removal offers a less stable form of protection compared to asylum, leaving recipients in a state of uncertainty without the ability to leave the U.S., petition for family members, or gain a path to citizenship, and can result in family separation if protection is granted to a parent but not their children.¹²⁷ It does not provide permanent protection or a path to permanent residence, as the government can revoke it if conditions improve in the recipient's home country. Those convicted of particularly serious crimes are ineligible and must seek the more difficult and limited relief under the Convention Against Torture.¹²⁸

In the United States, CAT forbids the removal of a non-citizen to a country where it is more likely than not they would be tortured.¹²⁹ The torture need not be related to a protected ground, and an applicant seeking CAT withholding of removal bears the burden to establish that the torturer is a public official or a person acting in an official capacity, and specifically intends to cause severe pain or suffering, whether physical or mental.¹³⁰ A climate-impacted individual may be eligible for withholding of removal under CAT in limited situations, such as environmental activists or land defenders facing persecution by state officials who have tortured them or threatened them with torture.

V. ADDITIONAL PROTECTION PATHWAYS ARE NEEDED TO PROTECT CLIMATE-DISPLACED PEOPLE

In the United States, refugee protection law provides a limited pathway to safety for climate-impacted people who have experienced intersecting harms. Strategic lawyering can help climate-displaced people establish connections to protected grounds and frame climate-linked harm in the context of government action or inaction. However, many people displaced due to climate impacts cannot easily link the harm they experience to their race, religion, nationality, membership in a particular social group, or political opinion; and/

126. INA § 241(b)(3)(B).

127. *The Difference Between Asylum and Withholding of Removal*, NAT'L IMMIGR. JUST. CTR., AMERICAN IMMIGRATION COUNCIL (October 2020) https://www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf.

128. *Ibid.*

129. See 8 C.F.R. § 208.18 (2024) (defining torture as “[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity”).

130. *Id.*

or cannot attribute the harm they experience to the conduct of their governments. These individuals fall into a legal protection gap—failing to meet the legal qualifications for existing humanitarian protections, yet unable to safely return to unlivable conditions in their country of origin.

Additional policy interventions are needed to ensure access to safety for climate-displaced people seeking U.S. protection. First, the U.S. government should establish a climate-specific protection and resettlement pathway, as advocates have long recommended. A coalition of leading nonprofit refugee advocacy organizations recommend “a form of complementary protection in the United States for forced migrants who do not meet the refugee definition under the Immigration and Nationality Act (INA), but who are unable to return safely to their countries of origin due to a variety of dire threats, including those due to disaster resulting from the effects of climate change.”¹³¹ In addition, Human Rights Watch has recommended a complementary protection standard for the United States that applies to “people who would face . . . serious threats to life or physical integrity if returned to their countries because of a real risk of violence or exceptional situations.”¹³² This pathways should complement existing humanitarian protection programs and provide access to resettlement assistance and a path to citizenship.

Leveraging the U.S. Refugee Admissions Program (USRAP) designations can also facilitate the entry of climate-affected refugees. USRAP Priority 2 (P-2) and Priority 4 (P-4) designations could be utilized to admit groups of special humanitarian concern, including those impacted by climate change. Additionally, the Welcome Corps program, which enables private sponsorship of refugees, could be expanded to include climate-displaced individuals, enhancing community involvement in resettlement efforts.¹³³

Lastly, the U.S. must end pushback policies at the border and restore asylum access in line with domestic and international laws. Terminating restrictive policies is crucial for upholding the legal right to seek asylum.¹³⁴ Furthermore, U.S. Citizenship and Immigration Services (USCIS) should integrate climate considerations into asylum procedures, training officers to recognize valid climate-related asylum claims. These measures would ensure that climate-displaced individuals receive the protection they need,

131. REFUGEES INT’L, *Task Force Report to the President on the Climate Crisis and Global Migration: A Pathway to Protection for People on the Move* (July 14, 2021), <https://www.refugeesinternational.org/reports-briefs/task-force-report-to-the-president-on-the-climate-crisis-and-global-migration-a-pathway-to-protection-for-people-on-the-move> [https://perma.cc/6WQR-LJQF].

132. Bill Frelick, *How to Make the US Asylum System Efficient and Fair*, HUMAN RIGHTS WATCH (May 21, 2021), <https://www.hrw.org/news/2021/05/21/how-make-us-asylum-system-efficient-and-fair> [https://perma.cc/9DJG-KQGF].

133. See Anthony Blinken, *Launch of Welcome Corps- Private Sponsorship of Refugees – Press Statement*, U.S. Dept. of State (January 19, 2023), <https://www.state.gov/launch-of-the-welcome-corps-private-sponsorship-of-refugees>.

134. See Neusner et. al., *supra* note 4 at 12.

acknowledging the complex interplay between climate change and other forms of persecution.¹³⁵

VI. CONCLUSION

As our analysis demonstrates, displacement is multicausal, and the effects of climate change take varied and sometimes compounding forms. The interviews we conducted in advance of this article provide a substantial contribution to the documentation of on-the-ground conditions and qualitative descriptions of challenges faced by people displaced in the context of climate change. The collected stories highlight how climate change magnifies vulnerabilities and compounds threats that compel people to flee their homes. Droughts destabilize communities, storms destroy economic livelihoods, rising temperatures make fertile lands fallow, and limited resources drive violence and extortion—the list goes on. Even so, the long chain of causality paired with the abstractness of climate change as a persecutor poses particular legal challenges in securing refugee protection for climate displaced people.

Given that the research reported here represents a small sample focused on a limited geographic region, there remains a need for more robust data on the impact of climate factors on asylum seekers, as well as additional analysis on legal protection gaps. As warming temperatures bring about more frequent and severe disasters, relocation across borders can be an effective form of adaptation for individuals who are no longer able to survive or thrive due to changing environmental conditions.¹³⁶ More documentation, advocacy, and strategic planning is needed to ensure that domestic and international laws adapt in turn to welcome people displaced in the context of climate change with safety and dignity.

135. *Ibid.* at 13.

136. See Jaya Ramji-Nogales, *Slow-Onset Climate Justice and Human Mobility*, 93 TEMP. L. REV. 671 (2021).

