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Haitian Climate Migrants: Heralds of the United States' Unprepared Immigration System

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Haitian Climate Migrants: Heralds of the United States' Unprepared Immigration System

Noah Rust*

This note explores the complex relationship between climate change and Human migration, and the ensuing complications for the United States immigration scheme. Climate change can both directly and indirectly contribute to human migration, yet the United States' regulatory scheme is unprepared for this reality and its consequences. Through analyzing several separate migratory events in Haiti, the specific failures of the United States status quo immigration systems become clearer. Further, the note will identify frameworks that could offer relief to climate-related migrants.

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I. INTRODUCTION

In 1990, the Intergovernmental Panel on Climate Change (“IPCC”) announced that “[t]he gravest effects of climate change may be those on human migration.”¹ Since then, an international consensus has developed on the issue: the negative impacts of climate change are increasing the risk of environmental vulnerability.² Human migration is perhaps the oldest coping strategy for environmental disaster, but the broad effects of climate change are expected to dramatically increase the number and rate of migrants leaving their homes because of environmental factors. With or without

¹ Intergovernmental Panel on Climate Change [IPCC], *Climate Change: The 1990 and 1992 IPCC Assessments*, at 103, (June 1992), https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report.pdf [hereinafter IPCC Report].

² See Mostafa Mahmud Naser, *Climate Change, Environmental Degradation, and Migration: A Complex Nexus*, 36 WM. & MARY ENV’T. L. & POL’Y REV. 713, 718 (2012).

government action on climate change, hundreds of thousands, if not millions, will flee their countries and attempt to migrate to the United States by 2050 as climate change and its effects worsen.³

Climate-related migration occurs when changes in climate conditions, or its impacts, induce human migration.⁴ Specifically, climate change is characterized by changes in temperature, precipitation patterns, frequency and severity of weather events, and other features of the climate system.⁵ Climate change can cause slow-onset disasters, such as rising sea levels, and sudden-onset disasters, such as hurricanes and floods, both of which can force people to flee their homes at growing rates.⁶ Further, when these disasters combine and compound with physical, social, economic, and environmental vulnerabilities, climate change can affect resource supplies and economic security.⁷

The complexity of climate-related migration comes from its “multicausal, multilateral, and multidisciplinary nature”.⁸ For example, climate change can be a principal cause of environmental degradation, famine, and other environmental disasters, which can lead to migration. However, because these contributors of migration are rarely singularly caused by climate change, those affected by climate change struggle to establish causation when they seek relief through the various immigration systems around the world. In 1992, the United Nations High Commissioner for Refugees noted that:

“more and more people are being forced to flee for a complex combination of reasons, linked as much to population growth, poverty, famine and environmental degradation as to mass violations of human rights,

³ See Abrahm Lustgarten, *The Great Climate Migration*, N.Y. TIMES MAG., <https://www.nytimes.com/interactive/2020/07/23/magazine/climate-migration.html> (last visited Sept. 2, 2023).

⁴ U.N. Framework Convention on Climate Change, *Climate Change is a Key Driver of Migration and Food Insecurity* (Oct. 16, 2017), <https://unfccc.int/news/climate-change-is-a-key-driver-of-migration-and-food-insecurity>.

⁵ U.S. ENV'T PROT. AGENCY, *CLIMATE CHANGE INDICATORS: WEATHER AND CLIMATE* (last updated July 26, 2023), <https://www.epa.gov/climate-indicators/weather-climate>.

⁶ See Naser, *supra* note 2, at 734-35.

⁷ See generally IPCC Report, *supra* note 1, at 24.

⁸ Eliza Pan, *Reimagining the Climate Migration Paradigm: Bridging Conceptual Barriers to Climate Migration Responses*, 50 ENV'T L. 1173, 1175 (2020).

social and ethnic tensions and armed conflict . . . This relationship between refugees and the environment has long been overlooked.”⁹

While the exact cause of migration can rarely be precisely determined, certain migration triggers can be observed on a case-by-case basis.¹⁰ Climate change has added new environmental triggers into the analysis, exacerbating migration. Thus, ignoring environmental causes of migration and the role that climate change plays can and will have disastrous consequences.¹¹

The current immigration system in the United States is designed to handle specific problems and types of migrants, yet none of these programs recognize climate change alone as a sufficient basis for admission. This reality makes the United States ill-prepared for current and future climate-related migrants.¹²

Over the past thirty-five years, the United States has been the primary destination for Haitian migrants, with nearly 650,000 immigrating to the United States since 1986.¹³ These migrants have sought to enter the United States for many reasons, but there are two notable migratory events in this timeframe. The first was the 1990s Haitian Refugee Crisis, during which thousands of migrants attempted to enter the United States because of political upheaval.¹⁴ The United States’ response was framed by its refugee and asylum programs. Later, in 2010, the island nation suffered a devastating

⁹ U.N. High Commissioner for Refugees [UNHCR], Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the United Nations Conference on Environment and Development, Rio de Janeiro, 10 June 1992 (1992).

¹⁰ *See id.*

¹¹ Amanda A. Doran, *Where Should Haitians Go - Why Environmental Refugees are up the Creek Without a Paddle*, 22 VILL. ENV’T L. J. 117, 129 (2011).

¹² *See* Ryan Plano, *Haitian Migrant Treatment Just the Latest Sign US Is Woefully Unprepared for Climate Migration*, CLIMATE REFUGEES (Sept. 29, 2021), <https://www.climate-refugees.org/spotlight/haiti>.

¹³ *See* Kira Olsen-Medina & Jeanne Batalova, *Haitian Immigrants in the United States*, MIGRATION POL’Y INST. (Aug. 12, 2020), <https://www.migrationpolicy.org/article/haitian-immigrants-united-states>.

¹⁴ *See generally* Carlos Ortiz Miranda, *Haiti and the United States During the 1980s and 1990s: Refugees, Immigration, and Foreign Policy*, 32 SAN DIEGO L. REV. 673, 730–34 (1995).

earthquake that killed 220,000 people,¹⁵ and the United States responded to the natural disaster in part with its Temporary Protected Status program.¹⁶ In response to these events, the United States employed programs designed to handle migrants who generally sought refuge.

At present, none of the United States' immigration systems can properly address climate migrants. While each system may in some cases be able to provide relief for climate-related migrants, none of the current patchwork schemes are meant to handle these kinds of migrants. Considering the projections of the number and growth of climate-related migrants in the near future, it is imperative for the United States to develop a new approach to climate migration.

Because of their proximity, Haitian climate-related migrants are the most pressing group of such migrants for the United States. When analyzing the past migratory events involving Haiti and the United States, the specific flaws of the United States' immigration programs are clear. However, these limitations also give insight into ideas and approaches that the United States could take to adequately address climate-related migrants. When considering a new approach to help climate-related migrants, the United States should develop adaptive and regional based solutions based on an understanding of the role and legacy of refugee law and its place in the current immigration framework.

Haiti has a unique set of environmental, political, and socioeconomic dilemmas, forming a nexus of migratory factors. Climate change cannot be discounted within this nexus, as the added pressures flowing from slow-onset events such as soil erosion, environmental degradation, and a rising sea level amplify Haiti's already overwhelming challenges.¹⁷ These pressures will lead to more migrants moving to a United States, where climate change is rarely

¹⁵ *Haiti in Ruins: A Look Back at the 2010 Earthquake*, NPR (Jan. 12, 2020, 8:48 AM), <https://www.npr.org/sections/pictureshow/2020/01/12/794939899/haiti-in-ruins-a-look-back-at-the-2010-earthquake/>.

¹⁶ DEP'T OF HOMELAND SEC., STATEMENT FROM HOMELAND SECURITY SECRETARY JANET NAPOLITANO ON TEMPORARY PROTECTED STATUS (TPS) FOR HAITIAN NATIONALS (2020).

¹⁷ Cf. World Bank Group [WBG] Climate Change Knowledge Portal, *Risk - Historical Hazards*, <https://climateknowledgeportal.worldbank.org/country/haiti/vulnerability/> (last visited Nov. 7, 2023).

accepted as a valid reason to immigrate.¹⁸ Analyzing both the Haitian Refugee Crisis and the fallout of the 2010 earthquake in Haiti highlights the strengths and weaknesses of each United States immigration system which could be used to address climate-related migrants. Comparing those migrants to the current and future climate-related Haitian migrants reveals the acute and irreparable issues with the status quo system.

Part II of this comment will introduce climate change as a driver of human migration and classification schemes. The comment will then discuss Haitian migration to the United States, and the U.S.'s current legal mechanisms regarding immigration. Part III will demonstrate how the U.S.'s current immigration systems fail climate-related migrants through comparison of past groups of Haitian migrants to their modern climate-related counterparts. Part III will also discuss principles and approaches that may help the United States reform its immigration systems to accommodate, prepare, and manage future climate-related migrants, and how these principles and approaches could affect the current Haitian climate-related migrants.

II. BACKGROUND

A. *Climate Change as a Driver of Human Migration*

According to the United Nations High Commissioner for Refugees (“UNHCR”) (the United Nations’ refugee agency), since 2008, “an annual average of 21.5 million people have been forcibly displaced by weather-related [events] such as floods, storms, wildfires, and extreme temperature[s.]”¹⁹ This figure is expected to grow in the near future with models from the Institute for Economics and Peace “predicting that 1.2 billion people could be displaced globally by 2050 due to climate change and natural disasters.”²⁰ The

¹⁸ See *Climate Change Refugees and Haiti*, QUIXOTE CTR. (Apr. 19, 2018, 7:58 PM), <https://quixote.org/climate-change-refugees-and-haiti>.

¹⁹ See UNHCR, *Frequently Asked Questions on Climate Change and Disaster Displacement* (Nov. 6, 2016), <https://www.unhcr.org/news/stories/frequently-asked-questions-climate-change-and-disaster-displacement>.

²⁰ See Sean McAllister, *There Could be 1.2 Billion Climate Refugees by 2050. Here’s What You Need to Know*, ZURICH INS. GRP. (June 3, 2023),

relationship between climate change and human migration is often overlooked because there is rarely a direct relationship between the two.²¹ Still, while climate change does not directly cause migration, its effects can and do.²² These effects can exacerbate the damage of existing causes of human migration or, compounded with other factors, lead to new migration-causing events.

When people migrate, their movements may be voluntary and a result of “pull factors,” which draw individuals to areas not experiencing climate-related events.²³ Conversely, movement may also be involuntary and a result of “push factors,” where a clear threat to life or wellbeing pushes individuals from their homes.²⁴ These dynamics also make it difficult to categorize environmental migrants because such individuals may migrate as a result of purely environmental reasons, but also because of more attenuated and refugee-creating forces that are merely “attributable to climate change.”²⁵

Effects of climate change can both cause slow-onset disasters, such as drought, sea level rise, or environmental degradation; and sudden-onset disasters, such as hurricanes, floods, landslides, or earthquakes.²⁶ The meteorological impact of climate change can be further categorized as either climate processes, such a sea level rise or water scarcity, or climate events, such storms or flooding.²⁷ Climate change has the ability to make sudden-onset disasters more

<https://www.zurich.com/en/media/magazine/2022/there-could-be-1-2-billion-climate-refugees-by-2050-here-s-what-you-need-to-know>.

²¹ INT’L REFUGEE ASSISTANCE PROJECT, U.S. OPPORTUNITIES TO ADDRESS CLIMATE DISPLACEMENT 11 (2021).

²² For an explanation of different views regarding the precise impact of climate change on migration, see Walter Kälin & Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, in 24 LEGAL AND PROT. POL’Y RSCH. SERIES 1, 11 (UNHCR Feb. 2012), <http://www.refworld.org/pdfid/4f38a9422.pdf>.

²³ See generally Kimberly A. Erickson, *Filling the Protection Gaps for Climate Change and Disaster-Induced Migrants*, 25 HUM. RTS. BRIEF 131, 131–32 (2022) (noting while migration “may be voluntary, [] it is often considered a forced movement in order to survive[]”).

²⁴ See *id.* at 131–33.

²⁵ See Brittan J. Bush, *Redefining Environmental Refugees*, 27 GEO. IMMIGR. L. J. 553, 557 (2013).

²⁶ See Naser, *supra* note 2, at 732–33; see also Erickson, *supra* note 23, at 131, 133.

²⁷ See generally Naser, *supra* note 2, at 764–65.

pronounced in several ways.²⁸ “[M]ajor storms are increasing” in scale and number, and as reported by the Institute for the Study of Diplomacy, “[c]yclones and hurricanes—both of which are occurring more frequently, and with greater severity—destroy infrastructure and cropland, and lead to the loss of jobs.”²⁹ The effects of more and more sudden-onset disasters may be further amplified by some of slow-onset effects of climate change.³⁰ For example, the slow-onset effects of climate change such as sea level rise and soil degradation can lead storms to cause greater destruction than they otherwise could.³¹ This reality underscores the far-reaching and synergistic effects of climate change.

Slow-onset climate effects can also help cause to political upheaval in instances when competition over resources strains political systems and exerts pressures contributing to conflict and migration.³² For example, in Syria, the prolonged drought exacerbated political tensions and contributed to the 2011 demonstrations against the Assad regime, leading to conflict and displacing millions.³³ Ironically, political situations like those in Syria have resulted in refugee groups that ultimately fit the conventional standards of refugees (a difficult hurdle for most climate-related migrants to clear). In these instances, the climate-related disasters needed to contribute to a political breakdown before relief could be sought. But overall, migrants choosing to move based on slow-onset effects of climate

²⁸ See *id.* at 735-36.

²⁹ Calvin Bryne, *Climate Change and Human Migration*, 8 U.C. IRVINE L. REV. 761, 772 (2018).

³⁰ See *id.*; see also WORKING GRP., INST. FOR THE STUDY OF DIPLOMACY, NEW CHALLENGES TO HUMAN SECURITY: ENVIRONMENTAL CHANGE AND HUMAN MOBILITY 12 (2017) [hereinafter ENVIRONMENTAL CHANGE AND HUMAN MOBILITY].

³¹ See ENVIRONMENTAL CHANGE AND HUMAN MOBILITY, *supra* note 30, at 5, 12.

³² See NAT'L INTEL. COUNCIL, GLOBAL WATER SECURITY: INTELLIGENCE COMMUNITY ASSESSMENT iii (2012). For an example of this concept in action, see Mark Fischetti, *Climate Change Hastened Syria's Civil War*, SCI. AM. (Mar. 2, 2015), <https://www.scientificamerican.com/article/climate-change-hastened-the-syrian-war/>.

³³ See generally Fischetti, *supra* note 32; Patrick Wintour, *Millions of Syrian Refugees Face Fight to Reclaim Homes, Says Human Rights Group*, THE GUARDIAN (May 25, 2023), <https://www.theguardian.com/world/2023/may/25/millions-of-syrian-refugees-face-fight-to-reclaim-homes-says-human-rights-group>.

change do so with little protection.³⁴ Current international refugee law is not equipped to protect climate migrants, and there are no binding agreements requiring countries to support or recognize these migrants as refugees.³⁵

The migration patterns resulting from just the slow-onset disasters caused by climate change are certain to have profound socio-political and socio-economic impact over time. With slow-onset migration likely to become commonplace in the coming years, the challenges of relief go well beyond the concept of aid or short-term disaster measures.³⁶ As such, the United States military, intelligence community, and “global studies like the Nansen Initiative” recognize climate-related migration as a security issue of the 21st century.³⁷ Because climate change continues to displace more and more people, the international community must seek a solution, and it will most likely be forced to either redefine its understanding of “refugees” to include climate migrants, or create a new legal framework altogether to protect climate-related migrants.

B. *Haitian Migrants*

Haiti is one of the world’s poorest nations,³⁸ and the United States is the primary destination for its migrants.³⁹ While a long history of foreign coercion and interference have led to Haiti’s status

³⁴ See Mia Prange, *Climate Change is Fueling Migration. Do Climate Migrants Have Legal Protections?*, COUNCIL ON FOREIGN RELS. (Dec. 19, 2022), <https://www.cfr.org/in-brief/climate-change-fueling-migration-do-climate-migrants-have-legal-protections#:~:text=This%20more%20limited%20classification%20of,how%20to%20legally%20define%20them>.

³⁵ Erickson, *supra* note 23, at 133; see also Erol Yayboke et al., *A New Framework for U.S. Leadership on Climate Migration*, CTR. FOR STRATEGIC & INT’L STUD. (Oct. 23, 2020), <https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>.

³⁶ See Erickson, *supra* note 23, at 131.

³⁷ See Bryne, *supra* note 29, at 766 (quoting Barbara K. Bodine, *Foreword to INST. FOR THE STUDY OF DIPLOMACY, NEW CHALLENGES TO HUMAN SECURITY: ENVIRONMENTAL CHANGE AND HUMAN MOBILITY* (2017)).

³⁸ WBG, *The World Bank in Haiti: Overview*, <https://www.worldbank.org/en/country/haiti/overview> (Oct. 26 2023), [under “Context”].

³⁹ Kira Olsen-Medina & Jeanne Batalova, *Haitian Immigrants in the United States*, MIGRATION INFO. SOURCE (Aug. 12, 2020), <https://www.migrationpolicy.org/article/haitian-immigrants-united-states>.

as the poorest nation in the Western Hemisphere,⁴⁰ a major contributor to Haiti's recent migratory situation is the United States. During its occupation of Haiti from 1915 to 1934, the United States transformed Haiti's rural economy into an exporter, meaning Haiti was literally and figuratively feeding the United States.⁴¹ "By the mid-20th century[,] deforestation, soil erosion," land insecurity, "and population growth [were] driving an exodus from" the degrading rural areas.⁴² Because of this, hundreds of thousands were displaced within the nation and forced into urban centers that could not handle the sudden influx.⁴³ This displacement created scenarios like that of Port-au-Prince, where less than half of the population was born in that city,⁴⁴ and Cite Soleil, where the population of 400,000 has led to an "overcrowded and under-resourced city."⁴⁵ This rapid growth of insecure building and overcrowding" was a factor that made the 2010 earthquake so deadly,⁴⁶ and may amplify other disasters in the future.

When Haitians migrate to major cities in the country, such as "Port-au-Prince, Gonaives, and Cap-Haitien," they are migrating to coastal areas. There, the "rising seas, more intense storms, and areas of extreme drought combine to create . . . recurring disasters[]"⁴⁷ and worsen the future effects of climate change. Every storm brings the risk of failing crops, flooding, soil erosion, landslides, and storm surges. The overcrowding in these coastal cities also increases the risk of diseases, as seen in the immediate aftermath of the 2010 earthquake when United Nations peace keepers introduced cholera to Haiti's population and the disease killed thousands of

⁴⁰ Greg Rosalsky, *'The Greatest Heist In History': How Haiti Was Forced to Pay Reparations for Freedom*, NPR (Oct. 5, 2021 10:25 AM), <https://www.npr.org/sections/money/2021/10/05/1042518732/-the-greatest-heist-in-history-how-haiti-was-forced-to-pay-reparations-for-freed>; see generally Catherine Porter et al., *The Ransom: A Look Under the Hood*, N.Y. TIMES (May 22, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-bibliography.html>.

⁴¹ *Climate Change Refugees and Haiti*, *supra* note 18.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Climate Change Refugees and Haiti*, *supra* note 18.

individuals.⁴⁸ Haiti is also a food-insecure nation,⁴⁹ and while this was the case before the devastating 2010 earthquake, the loss of infrastructure resulting from the disaster made it even harder for Haitians to consistently access food.⁵⁰ Haiti has unfortunately, but predictably, become over-reliant on international trade policies, “over-emphasiz[ing] food aid and cheap imports from the United States and elsewhere.”⁵¹

Haiti’s physical position on the planet places it in the “path of Atlantic hurricanes,” and the “topography of its western region . . . makes the country particularly vulnerable to hydrometeorological disasters,” such as floods and droughts.⁵² Also, “landslides are common along all river valleys where years of deforestation have left” slices of “western basins bare.”⁵³ But perhaps the greatest looming threat for Haiti is the worsening environmental disasters and degradation. Climate change disproportionately affects tropical and low-income countries, and “Haiti is considered the most climate-vulnerable nation in Latin America and the Caribbean.”⁵⁴ Moreover, Haiti is rated third among the countries most affected by severe weather events, according to the 2021 Climate Risk Index.⁵⁵ Furthering Haiti’s vulnerability are its land-use practices, low per capita

⁴⁸ See *Cholera in Haiti*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/cholera/haiti/index.html> (Jan. 25, 2023); Camila Domonske, *U.N. Admits Role In Haiti Cholera Outbreak That Has Killed Thousands*, NPR (Aug. 18, 2016), <https://www.npr.org/sections/thetwo-way/2016/08/18/490468640/u-n-admits-role-in-haiti-cholera-outbreak-that-has-killed-thousands>.

⁴⁹ World Food Programme, *Haiti*, <https://www.wfp.org/countries/haiti> (last visited Oct. 26, 2023).

⁵⁰ *Id.*; see also *Rebuilding Haiti: The Post-Earthquake Path to Recovery*, UN NEWS (Feb. 12, 2022), <https://news.un.org/en/story/2022/02/1111382>.

⁵¹ Jamie Lutz & Erol Yayboke, *Haitian Migration: Food Insecurity, Fragility, and a Better Way Forward*, CTR. FOR STRATEGIC INT’L STUD. (Nov. 22, 2021), <https://www.csis.org/analysis/haitian-migration-food-insecurity-fragility-and-better-way-forward>.

⁵² *Risk - Historical Hazards*, *supra* note 17.

⁵³ *Id.*

⁵⁴ Plano, *supra* note 12.

⁵⁵ DAVID ECKSTEIN ET AL., GLOBAL CLIMATE RISK INDEX 2021 12–13 (2012), <https://bvearmb.do/bitstream/Handle/123456789/1306/Global%20Climate%20Risk%20Index%202021.pdf?sequence=1&isAllowed=y>.

income, high coastal population density, limited infrastructure and services, and widespread deforestation.⁵⁶

In the past decade, many Haitians traveled to South America and settled in Brazil and Chile,⁵⁷ and by the mid-2020, it was “estimated that over 230,000 Haitians were living in Chile.”⁵⁸ After an “initially positive reception,” however, Haitians in Chile were increasingly subjected to discrimination, as a result which—paired with the COVID-19 pandemic—many Haitians sought to enter the United States through the southern border and seek asylum status.⁵⁹ Furthermore, nearly one million Haitians live in the Dominican Republic, where they primarily seek work on sugar plantations and other agricultural entities.⁶⁰ However, tensions have surfaced in recent years, leading to mass expulsions of Haitians from the Dominican Republic, whose government denied citizenship to people of Haitian descent.⁶¹ The United States reacted to the ensuing influx in part by using Title 42, a public health provision, to reject many of these claims during the COVID-19 pandemic.⁶²

Further, Haiti’s political situation is dire. The country is in the throes of an economic crisis, an increase in gang violence,⁶³ and a political quagmire since the assassination of President Jovenel Moïse in 2021.⁶⁴ The resulting tensions⁶⁵ have the potential to increase Haitian migration to the United States.

Haiti’s unique set of environmental, economic, and political challenges can and will be amplified by climate change. These

⁵⁶ *Risk - Historical Hazards*, *supra* note 17.

⁵⁷ *See* Lutz, *supra* note 51.

⁵⁸ *Id.*

⁵⁹ *See id.*

⁶⁰ *See* Minority Rts. Grp. Int’l, *World Directory of Minorities and Indigenous Peoples - Dominican Republic: Haitians*, UNHCR (May 2018), <https://www.refworld.org/docid/49749d2e21.html>.

⁶¹ *See id.*

⁶² *See id.*; *see also* Julia Neusner, *A Year After Del Rio, Haitian Asylum Seekers Expelled Under Title 42 Are Still Suffering*, HUM. RTS. FIRST (Sept. 22, 2022), <https://humanrightsfirst.org/library/a-year-after-del-rio-haitian-asylum-seekers-expelled-under-title-42-are-still-suffering/>.

⁶³ *See* Felbab-Brown, *Haiti in 2023: Political Abyss and Vicious Gangs*, BROOKINGS (Feb. 3, 2023) <https://www.brookings.edu/articles/haiti-in-2023-political-abyss-and-vicious-gangs/>.

⁶⁴ *Id.*

⁶⁵ *See id.*

migratory push factors in Haiti will directly impact the United States in the coming years. The reality of these incoming Haitian migrants further illuminates just how ill-equipped the United States is for the growing reality of climate migration.

C. Relevant United States Immigration Law and Legal Mechanisms

To understand how and why climate-related migrants need a new protection regime in the United States, it is important to comprehend the current immigration framework facing migrants. Importantly, not one immigration program is designed to address climate-related migrants, though each serves an independent and necessary function in an overall immigration framework.

i. Temporary Protected Status

Temporary Protected Status (“TPS”)⁶⁶ is a flexible program that allows for the quick processing of certain migrants under certain circumstances (*e.g.*, natural disasters and armed conflict).⁶⁷ Congress created the authority for TPS in 1990, seeking to provide protection to those who could not safely return to their countries but were not otherwise provided for by the existing refugee and asylum frameworks.⁶⁸ The TPS program offers immigration relief to individuals once the Department of Homeland Security (“DHS”) designates a country as eligible for TPS and offers temporary work permits for six, twelve, or eighteen months.⁶⁹ TPS was created when Congress passed the Immigration Act of 1990 and was designed to protect people from countries experiencing disasters or events, often those that are temporary in nature.⁷⁰

DHS may only make a designation when: (1) there is an “ongoing armed conflict within the state and, due to such conflict, requiring the return of [noncitizens] who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their

⁶⁶ 8 USC § 1254a.

⁶⁷ See 8 U.S.C. § 1254a(a)(1); *id.* at § 1254a(b)(1).

⁶⁸ Elizabeth Keyes, *Unconventional Refugees*, 67 AM. U. L. REV. 89, 107 (2017).

⁶⁹ See *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL (June 29, 2022), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>.

⁷⁰ See *id.*

personal safety”; (2) “there has been an earthquake, flood, drought, epidemic, or another environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected”; or (3) “there exist extraordinary and temporary conditions in the foreign state that prevent [noncitizens] who are nationals of the state from returning to it safely, unless the [government] finds that permitting the [noncitizens] to remain temporarily in the United States is contrary to the national interest of the United States.”⁷¹

TPS has several limitations. For one, TPS is, by definition, temporary, and it is initially designated to last between six and eighteen months.⁷² Moreover, TPS may be revoked at any time because the program itself does not create a path toward lawful permanent residence (“LPR”), making deportation a constant threat.⁷³ Congress may extend LPS status to TPS recipients, but but requires supermajority in the Senate,⁷⁴ meaning that while Congress does have power, the default duration for TPS status is the six-to-eighteen-month timeframe. Because of its temporary nature, a TPS designation is not available for the permanent consequences of a natural disaster, and thus a TPS designation may be lifted should the consequences of a natural disaster become permanent.⁷⁵ For example, in 1997 “[w]hen a volcano erupted in Montserrat . . . TPS was granted to its citizens and was extended six times.”⁷⁶ But, in 2005, this TPS designation was terminated because the government determined “‘it is likely that the eruptions will continue for decades, [and] the situation that led to Montserrat’s designation can no longer be considered ‘temporary’ as required by Congress when it enacted the TPS statute.’”⁷⁷ This example also illustrates the limited timeframe and narrow application of the statute.

Further, “TPS only applies to” those within the United States at the time of the country’s designation and is therefore not a tool that

⁷¹ 8 U.S.C. § 1254a(b)(1)(A); *id.* at § 1254a(b)(1)(B)(ii); *id.* § 1254a(b)(1)(C).

⁷² 8 U.S.C.S. § 1254a.

⁷³ See Carey DeGenaro, *Looking Inward: Domestic Policy for Climate Change Refugees in the United States and Beyond*, 86 U. COLO. L. REV. 991, 1018 (2015).

⁷⁴ See *id.*

⁷⁵ See Susan F. Martin, *Environmental Change and Human Mobility: Trends, Law and Policy*, 42 COMPAR. POPULATION STUD. 187, 199 (2017).

⁷⁶ *Id.*

⁷⁷ *Id.*

can be used to “respond to an unfolding crisis” where migrants are seeking “admission from outside the [United States].”⁷⁸ Another limitation is the discretionary nature of the TPS designation, which is typically first made by the executive branch via the Secretary of Homeland Security.⁷⁹ This discretion can lead to a lack of predictability and consistency of TPS designations. For example, TPS was not triggered for Haiti when four hurricanes struck large parts of the country during the 2008 hurricane season,⁸⁰ but TPS was used following the catastrophic 2010 earthquake and has since been extended several times, as discussed below.⁸¹ These limitations are intentional: the statute was passed with the intention of offering temporary relief for temporary disasters and not climate change.

ii. Executive Mechanisms

In the context of immigration law, the following executive mechanisms are tools, programs, and procedures used by executive offices to aid individuals seeking lawful migratory status in the United States. Thus, these mechanisms could potentially apply to climate migrants.

Prosecutorial discretion is a decision by the executive branch or law enforcement not to target certain individuals for removal if a substantial interest will not be served by their removal.⁸² Prosecutorial discretion in some cases is referred to as “deferred action,” and may be applied at either the “categorical or individual level.”⁸³ The purpose of prosecutorial discretion is to allow DHS to decide which cases to focus its finite resources on and how to proceed in

⁷⁸ *Id.*

⁷⁹ See AM. IMMIGR. COUNCIL, *supra* note 69.

⁸⁰ Designation of Haiti for Temporary Protected Status, 75 FR 3476, 3477 (Jan. 21, 2010) [hereinafter Designation of Haiti]; see also *Temporary Protected Status Designated Country: Haiti*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti> (Sept. 19, 2023).

⁸¹ See Designation of Haiti, *supra* note 80.

⁸² Cf. *Doyle Memorandum: Frequently Asked Questions and Additional Instructions*, U.S. IMMIGR. AND CUSTOMS ENF'T, <https://www.ice.gov/about-ice/opla/prosecutorial-discretion> (last visited Mar. 4, 2023) [hereinafter *Doyle Memorandum*].

⁸³ Shoba S. Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 CONN. PUB. L. J. 243, 264 (2010).

individual cases in light of the facts and applicable law.⁸⁴ Essentially, “an explicit grant of prosecutorial discretion” is a promise from the executive branch “not to deport an individual.”⁸⁵

Like TPS, prosecutorial discretion is temporary and limited by discretion. It is also subject to direct judicial and political challenges, at times leaving the fate of migrants to the whims and wishes of politics. For example, in 2012, former President Obama announced the Deferred Action for Childhood Arrivals (“DACA”) executive action,⁸⁶ a program offering relief from deportation to undocumented immigrants who were brought into the country at a young age (among other requirements); these individuals are known as “dreamers.”⁸⁷ But in 2017, former President Trump rescinded the program, a decision which was later reviewed and overturned by the Supreme Court.⁸⁸

In addition to TPS and prosecutorial discretion, the topic of parole is often included in the discussion of executive mechanisms. However, in the immigration context, “parole is a legal fiction” where migrants “present in the United States unlawfully are allowed to remain, and are treated as if they” made a lawful border crossing.⁸⁹ “The Immigration and Nationality Act [] authorizes the Secretary of Homeland Security to exercise discretion to temporarily allow certain noncitizens to physically enter or remain in the United

⁸⁴ *Doyle Memorandum*, *supra* note 82.

⁸⁵ DeGenaro, *supra* note 73, at 1019.

⁸⁶ See Memorandum from Janet Napolitano, Sec’y of Homeland Sec. on Exercising Prosecutorial Discretion with Respect to Individuals who came to the United States and Children to David V. Aguilar, Acting Comm’r, U.S. Customs and Border Prot., Alejandro Mayorkas, Dir., U.S. Citizenship and Immigr. Servs., and John Morton, Dir., U.S. Immigr. and Customs Enf’t (June 15, 2012).

⁸⁷ Nina Totenberg, *Supreme Court Rules for DREAMers, Against Trump*, NPR (June 18, 2020, 10:12 AM), <https://www.npr.org/2020/06/18/829858289/supreme-court-upholds-daca-in-blow-to-trump-administration> (“Under the Obama program, qualified individuals brought to the U.S. as children were given temporary legal status if they graduated from high school or were honorably discharged from the military, and if they passed a background check.”).

⁸⁸ *See id.*

⁸⁹ DeGenaro, *supra* note 73, at 1020.

States if they are applying for admission but do not [otherwise] have a basis for being admitted.”⁹⁰

“DHS may only grant parole if the agency determines that there [is an] urgent humanitarian⁹¹ or significant public benefit reason[] for a person to be in the United States and [that the migrant] merits a favorable exercise of discretion.”⁹² Notably, discretion is bolstered by the lack of a statutory or regulatory definition for an “urgent humanitarian reason.”⁹³ “While individuals who receive a grant of parole are allowed to enter the United States, they are not provided with an immigration status nor are they formally ‘admitted’ into the country[.]”⁹⁴ After migrants enter the United States through the parole system, they can attempt to apply for work authorization and for asylum. Further, because of their lawful entrance they generally enjoy an easier path to permanent legal residency than those who enter the country illegally.⁹⁵ For example, in January 2023, the Biden Administration announced that it will use parole, thus creating a pathway for legal crossings at the southern border.⁹⁶ Once in the country, migrants can apply for work authorization.⁹⁷ However, as of March 2023, several states have sued the Biden Administration for its use of parole decision, claiming that it would create a separate immigration system.⁹⁸

⁹⁰ *The Use of Parole Under Immigration Law*, AM. IMMIGR. COUNCIL (July 18, 2022), <https://www.americanimmigrationcouncil.org/research/use-parole-under-immigration-law>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *See generally id.*

⁹⁶ *See* AM. IMMIGR. COUNCIL, *THE BIDEN ADMINISTRATION’S HUMANITARIAN PAROLE PROGRAM FOR CUBANS, HAITIANS, NICARAGUANS, AND VENEZUELAN: AN OVERVIEW* (Oct. 31, 2023), <https://www.americanimmigrationcouncil.org/research/biden-administration’s-humanitarian-parole-program-cubans-haitians-nicaraguans-and>; *see also* Tim Padgett, *Biden’s Migrant Parole Program is Popular in Haiti. But It Seems a Harder Sell Among Haitians Here*, WUSF PUB. MEDIA (Jan. 29, 2023, 8:00 AM), <https://wusfnews.wusf.usf.edu/us-world/2023-01-29/bidens-migrant-parole-program-is-popular-in-haiti-but-it-seems-a-harder-sell-among-haitians-here>.

⁹⁷ *See generally The Use of Parole Under Immigration Law*, *supra* note 90.

⁹⁸ *See, e.g.*, Rafael Bernal, *Texas Sues to Stop Biden Immigration Parole Program*, THE HILL (Jan. 24, 2023, 5:42 PM), <https://thehill.com/latino/3829011-texas-sues-to-stop-biden-immigration-parole-program/>.

At its core, parole is “a form of prosecutorial discretion” and thus has the same temporal and discretionary limitations.⁹⁹ However, the president’s parole powers are limited by Congress’ ability to withhold an “adjustment of status to lawful permanent residents.”¹⁰⁰ Withholding of removal is a separate but similar program that allows individuals who have been barred from asylum status to still acquire the asylum protections.¹⁰¹ Withholding of removal is related to the principle of non-refoulement, a concept in international human rights law that states a nation must not return an individual to another country if they are likely to suffer persecution or some other “irreparable harm.”¹⁰² According to the United Nations Office of the High Commissioner this principle applies to all migrants at all times, irrespective of migration status.¹⁰³ If granted withholding, the individual may work lawfully and may not be forcibly returned to the country where he or she faces persecution unless circumstances in the country change. However, withholding status does not grant all the protections of asylum, such as travel [where? outside the US?], applications for reunification with family, or access to “public benefits available to asylum-seekers.”¹⁰⁴

In practice, individuals applying for asylum may also apply for withholding of removal regardless of their country of origin or current immigration status¹⁰⁵ if it is “more likely than not” that they will suffer persecution upon return to their home country.¹⁰⁶

⁹⁹ See DeGenaro, *supra* note 73, at 1021; see also *The Use of Parole Under Immigration Law*, *supra* note 90.

¹⁰⁰ DeGenaro, *supra* note 73, at 1020.

¹⁰¹ See AM. IMMIGR. COUNCIL, THE DIFFERENCE BETWEEN ASYLUM AND WITHHOLDING OF REMOVAL 1–2 (Oct. 2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf.

¹⁰² See U.N. OFF. OF THE HIGH COMM’R, The Principle of Non-Refoulement Under International Human Rights Law, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNonRefoulementUnderInternationalHumanRightsLaw.pdf> (last visited Nov. 28, 2023).

¹⁰³ See *id.*

¹⁰⁴ See Keyes, *supra* note 68, at 142.

¹⁰⁵ See THE DIFFERENCE BETWEEN ASYLUM AND WITHHOLDING OF REMOVAL, *supra* note 101, at 1–2.

¹⁰⁶ See *id.*

Accordingly, withholding of removal is a higher standard than asylum, and thus involves overcoming the challenges of seeking refugee status.

While each of these executive mechanisms has the potential to aid climate migrants, they are limited either by their temporary or discretionary nature. These tools offer only a patchwork of limited protections. Even if these tools were applied consistently and could be relied on by climate migrants, they are not broad enough to match the scale of the predicted climate migrants in the coming decades.

iii. A Deeper Dive into Refugee Status and Asylum

The 1951 United Nations Convention Relating to the Status of Refugees (“Convention”) and the Convention’s 1967 Protocol (“Protocol”) underpin refugee and asylum law in the United States,¹⁰⁷ while the Immigration and Nationality Act¹⁰⁸ (“INA”) and the Refugee Act of 1980¹⁰⁹ (“Refugee Act”) control. The United Nations’ initial construction of a refugee was a response to the displacement crisis in Europe following the World War II.¹¹⁰ A causal connection between the fear of persecution and one of the codified grounds within the United States’ refugee statutes is central to the definition of a refugee under the United Nations framework.¹¹¹ This means that an individual seeking refugee protection must demonstrate that they have a “well-founded fear” of persecution for a recognized reason.¹¹² The individual must also be outside of their country of origin or unable to return because of that fear or danger of persecution.¹¹³

¹⁰⁷ See Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter Refugee Protocol].

¹⁰⁸ Codified at 8 U.S.C. § 1101.

¹⁰⁹ Refugee Act of 1980, Pub. L. No. 212, 94 Stat. 102.

¹¹⁰ See Heather Alexander & Jonathan Simon, “Unable to Return” in the 1951 Refugee Convention: Stateless Refugees and Climate Change, 26, FLA. J. INT’L L. 531, 546 (2015).

¹¹¹ See *id.* at 535.

¹¹² See *id.* at 532.

¹¹³ See *id.*

The Refugee Act of 1980 amended the INA and became the principal refugee authority in the United States.¹¹⁴ Passing the law fulfilled the United States' commitment as a signatory of the Protocol. The express purpose of the Refugee Act of 1980 was to respond to the needs of those subject to persecution in their country of origin.¹¹⁵ Under the statute, the operative definition of a "refugee" is:

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[.]¹¹⁶

Thus, for an individual to show that she is a refugee, she must establish (1) a well-founded fear of persecution (2) on account of one of the protected grounds listed in the definition, and (3) that she was unable or unwilling to enlist protection from her country of origin.¹¹⁷

Asylum is protection for migrants arriving or already in the United States who meet the definition of a refugee.¹¹⁸ Asylum is granted on a case-by-case basis and requires that the individual be in, or at the border of, the United States.¹¹⁹ This key element can be challenging for migrants because the Department of Homeland Security "has the right to refuse entry at the border to any" migrant not specifically claiming persecution or requesting asylum.¹²⁰ In addition, under the Protocol, there is no duty to grant asylum to refugees who have arrived at the boarder but not requested asylum.¹²¹ Importantly, a refugee is expected to have documentary evidence to prove, on an individual basis, their well-founded fear of

¹¹⁴ See Miranda, *supra* note 14, at 680-81.

¹¹⁵ Cf. 8 U.S.C. § 1101(a)(42)(A).

¹¹⁶ *Id.*

¹¹⁷ See *id.*

¹¹⁸ See *The Difference Between Asylum and Withholding of Removal*, *supra* note 101, at 1.

¹¹⁹ See *id.*, 8 U.S.C. § 1158(a)(1).

¹²⁰ DeGenaro, *supra* note 73, at 1015.

¹²¹ See Refugee Protocol, *supra* note 107.

persecution.¹²² These restraints define asylum as a narrow but generous program. While the road to obtaining asylum is narrow and complex, the resulting protections are substantial, going so far as to create a path to citizenship within five years of being granted status.¹²³

iv. Environmental Refugees

When applying the United States' definition of refugees to the broader idea of traditional environmental migrants, such migrants are likely not protected by that definition. While environmental refugees may be unable or unwilling to return home, it is difficult for those refugees to prove that their migration was a result of a well-founded fear of persecution.¹²⁴ This is in part because the well-founded fear of persecution must flow from "action or inaction" of the country of origin, and further the persecution likely requires "a certain level of intent" on the part of the country.¹²⁵ The well-founded fear of persecution prong is an even greater hurdle when considering climate-related migrants because, as discussed, these migrants are driven to migrate not due to a single environmental force but due to several compounding forces affected by climate change.

Some scholars have argued that environmentally induced migrants may be regarded as refugees "when the state uses [the] environment as an instrument of political oppression."¹²⁶ For example, scholars have posited that the Iraqi government perpetrated genocide of the Ma'dan peoples who had been living in marshes of southern Iraq for thousands of years—when the government drained the marshes by constructing canals designed to expel the inhabitants.¹²⁷

Nonetheless, scholars have long considered methods of extending refugee protections to environmental migrants. The term "environmental refugee" originated in the late 1970s to describe migrants

¹²² See generally *id.*

¹²³ See Keyes, *supra* note 68, at 139.

¹²⁴ See Bush, *supra* note 25, at 564.

¹²⁵ *Id.*

¹²⁶ Elizabeth Keyes, *Environmental Refugees? Rethinking What's in a Name*, 44 N.C. J. INT'L L. 461, 468 (2019).

¹²⁷ See generally HUMAN RIGHTS WATCH, THE IRAQI GOVERNMENT ASSAULT ON THE MARSH ARABS 5–8 (Jan. 2003), <https://www.hrw.org/legacy/backgrounder/mena/marsharabs1.pdf>.

forced to move because of inhospitable environmental conditions.¹²⁸ Essam el-Hinnawi defined the term in 1985 in his work with the United Nations Environment Programme.¹²⁹ Under el-Hinnawi's definition, "environmental refugees" are people who have been "forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption . . ."¹³⁰ This definition identifies three major types of environmental refugees: (1) those temporarily dislocated due to disasters, natural or man-made; (2) those permanently displaced due to drastic environmental changes, such as the construction of dams; and (3) those who migrate due to the environmental degradation.¹³¹

"But the extent of the definition still causes some confusion[.]"¹³² partly because of the disconnect between the conventional United Nations construction of refugee protection and the overall purpose behind environmental refugees being those affected by "marked environmental disruption"¹³³ The concept of 'environmental refugees' generally seeks to protect people who are forced to leave because of either environmental disasters or degradation, as opposed to the fear of persecution required by the United Nations framework. While a sudden-onset disaster such as an earthquake or hurricane can stir a fear of harm like a fear of persecution, slow-onset climate-related disasters do not.

This disconnect is one of the reasons that many countries refuse to grant asylum on an environmental refugee basis. For instance, when two category four "hurricanes hit Honduras, Guatemala[,] and El Salvador in November 2020," many migrants fled to Mexico and toward the United States as heavy rains and landslides took their homes and access to clean water.¹³⁴ The cause and effect are clear—the migrants' untenable conditions led them to cross borders as

¹²⁸ See Doran, *supra* note 11, at 119; ETHAN GOFFMAN, ENVIRONMENTAL REFUGEES: HOW MANY, HOW BAD? 5 (CSA June 2006).

¹²⁹ CAMILLO BORANO ET AL., ENVIRONMENTALLY DISPLACED PEOPLE: UNDERSTANDING THE LINKAGES BETWEEN ENVIRONMENTAL CHANGE, LIVELIHOODS AND FORCED MIGRATION 7 (Refugee Stud.Ctr. 2008).

¹³⁰ *Id.*

¹³¹ *See id.*

¹³² McAllister, *supra* note 20.

¹³³ *Cf. id.*

¹³⁴ *Id.*

clear-cut environmental refugees.¹³⁵ It is also clear that the United Nations definition of a refugee does not protect these migrants, though it was not designed to do so in the first place.

Beyond the reality that the purpose of the United Nations definition does not reach those affected by environmental disasters and effects, there are other practical issues with the concept of environmental refugees. “Scarce statistical data” on the number of migrants (and the specific cause of their migration on an individual level), the imprecise definition of “environmental refugee,” and the general “reluctance to change the traditional refugee definition” are all hurdles in establishing a workable definition and system for environmental refugees.¹³⁶

These factors have made the “international community hesitant to recognize environmental refugees.”¹³⁷ This hesitation is also somewhat rooted in the idea that an environmental refugee classification undermines the goals of refugee asylum itself.¹³⁸ Simply put, the purpose of protecting refugees, like the climate affected Central Americans that arrived at the Mexico-United States border in 2020, is not the same as protecting refugees who are clearly defined by the United Nations.

III. ANALYSIS

The current immigration frameworks in the United States are unprepared for the inevitable influx of climate migrants. These systems and approaches are tailored to reach specific goals and aid certain types of migrants. In evaluating and understanding the failures of the current immigration systems in the United States regarding climate migrants, the following analysis will consider the United States’ immigration systems’ treatment of Haitian migrants. The acute issues and potential solutions for the United States’ immigration systems become clearer when comparing the situations, experiences, and treatment of more conventional migrants under the status quo immigration mechanisms to Haitian climate migrants.

¹³⁵ *See id.*

¹³⁶ *See* Doran, *supra* note 11, at 121.

¹³⁷ *Id.*

¹³⁸ *See id.* at 120-21.

A. *The Failure of Temporary Protected Status as Applied to Haitian Climate-Related Migrants*

While the United States' rapid and prolonged TPS response¹³⁹ was relatively effective despite the inherently temporary nature of the program, applying TPS to climate-related migrants may not even be possible. While the limitations of TPS are discussed above, the flaws of this immigration system as it relates to supporting Haitian climate migrants become clear when considered in light of its effectiveness after the 2010 earthquake.

i. The 2010 Earthquake in Haiti

On January 12, 2010, a 7.0-magnitude earthquake rocked Haiti, with the earthquake's epicenter only roughly sixteen miles from Haiti's capital.¹⁴⁰ The earthquake killed more than 300,000 people, and it left approximately one-million homeless.¹⁴¹ While a natural disaster of that scale would be difficult for any country to recover from, it was particularly difficult for Haiti, where nearly a third of the population was affected by the earthquake.¹⁴² In addition to the economic effects, Haiti faced governance issues in part because of its lack of security and stability, leading to a foreign aid-based recovery effort.¹⁴³ Over a decade later, the country struggles with inadequate housing, waterborne disease, food scarcity, and deforestation.¹⁴⁴

Following the devastation of the 2010 earthquake in Haiti, DHS Secretary Janet Napolitano granted Temporary Protected Status to

¹³⁹ See U.S. CITIZENSHIP AND IMMIGR. SERV., 18-MONTH EXTENSION AND RE-DESIGNATION OF HAITI FOR TEMPORARY PROTECTED STATUS UPDATE (May 2011), <https://www.uscis.gov/archive/18-month-extension-and-re-designation-of-haiti-for-temporary-protected-status-update> [hereinafter 18-MONTH EXTENSION].

¹⁴⁰ See Richard Pallardy, *2010 Haiti Earthquake*, ENCYC. BRITANNICA (Aug. 9, 2023), <https://www.britannica.com/event/2010-Haiti-earthquake>; REGINALD DESROCHES ET AL., OVERVIEW OF THE 2010 HAITI EARTHQUAKE S1 (U.S.G.S. Oct. 2011), <https://escweb.wr.usgs.gov/share/mooney/142.pdf>.

¹⁴¹ See Pallardy, *supra* note 140.

¹⁴² *Cf. id.*

¹⁴³ *See id.*

¹⁴⁴ Dumas Maçon, *In Haiti, Disaster risks linger as another earthquake anniversary passes*, THE NEW HUMANITARIAN (Jan. 12, 2022), <https://www.thenewhumanitarian.org/analysis/2022/1/12/have-the-lessons-of-Haiti-2010-earthquake-been-learned>.

Haitians in the United States at the time of the earthquake,¹⁴⁵ extending protections to Haitians living in the United States both legally and illegally. Then on May 17, 2011, Secretary Napolitano redesignated TPS for Haitians through January 22, 2013.¹⁴⁶ This extension enables eligible individuals who arrived up to a year after the earthquake in Haiti to receive TPS.¹⁴⁷ Since then, the United States has extended TPS designation to Haiti for the 2010 earthquake and other natural disasters, and as of November 2023, Haiti is designated for TPS through August 3, 2024.¹⁴⁸

The 2010 earthquake illustrates the ultimate question in the aftermath of an environmental disaster: “in addition to meeting the basic health and survival needs of the victims and addressing the requirements of rebuilding a devastated country, how can the international community find places for the newly displaced victims to live during a decades-long rebuilding process?”¹⁴⁹ There is no clear answer, despite the effectiveness of TPS in providing prolonged relief efforts for the direct effects of the earthquake. However, the United States’ continued commitment to the relief effort through TPS certainly illustrates the program’s effectiveness in response to natural disasters.

ii. Applying TPS to Haitian Climate-Related Migrants

TPS could apply, in a limited capacity, to climate-related migrants because it may be extended after both sudden-onset and slow-onset disasters, while specifically accounting for natural disasters.¹⁵⁰ “Under TPS, the Secretary of DHS may grant temporary legal status” to immigrants and “may extend this period so long as the

¹⁴⁵ See 18-MONTH EXTENSION, *supra* note 139; Julia Preston, *Haitians Illegally in U.S. Given Protected Status*, N.Y. TIMES (Jan. 15, 2010), <http://www.nytimes.com/2010/01/16/world/americas/16immig.html>; *Temporary Protected Status Designated Country: Haiti*, *supra* note 80.

¹⁴⁶ See 18-MONTH EXTENSION, *supra* note 139.

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ 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, 267 (2014).

¹⁵⁰ For more information on sudden-onset and slow-onset disasters, see U.S. OPPORTUNITIES TO ADDRESS CLIMATE DISPLACEMENT, *supra* note 21.

conditions that initially led to the designation persist.”¹⁵¹ But the statutory language of TPS does not facially apply to climate-related migrants because their affliction is not temporary. While some of the climate-related effects may lead to TPS designations, such as a famine or drought, the cited reason for designation would not be the underlying climate change cause. Importantly, while TPS can aid the victims of natural disasters, it only applies to individuals already present in the United States at the time of designation. Further, its “[t]he Secretary may affirmatively grant TPS” to a class affected by climate-related hardships, but the Secretary is “not required to do so.”¹⁵² With this discretion also comes the authority to revoke TPS designation status to a country.¹⁵³

As mentioned, the United States has not only extended TPS designation to Haitian migrants as a result of the 2010 earthquake but has also designated Haiti as a country receiving TPS on other bases, such as humanitarian reasons, for which Haiti received designation on December 5, 2022.¹⁵⁴ In December 2022, Alejandro Mayorkas, the DHS Secretary, announced that much-needed humanitarian relief for Haitians was compelled by current conditions in Haiti such as socioeconomic challenges, political instability, and gang violence and crime—aggravated by environmental disaster.¹⁵⁵ None of these subsequent designations were on the basis of climate change, however, and as of November 2023, the United States has not designated a single country on the basis of climate change alone.¹⁵⁶ Thus, the statutory limitations of TPS limit it to a patchwork mechanism for Haitian climate-related migrants.

However, TPS was never designed for the prolonged and permanent effects of climate change and thus it is understandable why this statute struggles to adapt to help those migrants. In the case of Haiti, the already prolonged rebuilding efforts following the 2010 earthquake have been further elongated because of climate change. further, many migrants are leaving Haiti today because of the

¹⁵¹ See DeGenaro, *supra* note 73, at 1016–17.

¹⁵² *Id.* See also Martin, *supra* note 75, at 199.

¹⁵³ See 8 U.S.C. § 1254a(b)(3)(B).

¹⁵⁴ *Temporary Protected Status Designated Country: Haiti*, *supra* note 80.

¹⁵⁵ See generally Extension and Redesignation of Haiti for Temporary Protected Status, 88 Fed. Reg. 5022 (Jan. 26, 2023).

¹⁵⁶ *Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/humanitarian/temporary-protected-status> (Oct. 10, 2023).

indirect and cumulative effects of climate change.¹⁵⁷ Despite this, at no point has climate change been cited as a reason for the Haiti TPS designation or extensions.¹⁵⁸ In sum, TPS, in its current configuration, may help those affected by climate change, but it was never intended to aid climate-related migrants and fails to adapt to this purpose.

B. The Failure of Refugee and Asylum Law as Applied to Haitian Climate-Related Migrants

Current refugee and asylum law in the United States does not effectively protect climate-related migrants. The framework's specific flaws come into view when comparing Haitian refugees during the 1990s Haitian Refugee Crisis¹⁵⁹ to modern Haitian climate-related migrants. Additionally, the flaws in incorporating and expanding the current refugee and asylum frameworks to include climate-related migrants are exposed when considering the Haitian climate-related migrants of today.

i. The 1990s Haitian Refugee Crisis

The Haitian Refugee Crisis, taking place from 1991 to 1994, resulted from “political tensions that had been building in Haiti” around the dictatorship of Papa Doc Duvalier, his son (Baby Doc Duvalier), and a string of military governments.¹⁶⁰ Following the overthrow of Haitian President Aristide in September 1991, migration to the United States increased as the military government grew and persecution worsened, leading to assassinations and beatings.¹⁶¹ After a hiatus, the United States resumed its interdiction-at-sea program, which allowed United States officials to board vessels flying the Haitian flag outside U.S. waters and question passengers and sailors regarding the immigration status of those onboard.¹⁶² This

¹⁵⁷ See Plano, *supra* note 12.

¹⁵⁸ See generally *Temporary Protected Status*, *supra* note 156.

¹⁵⁹ See generally IRWIN P. STOTZKY, *SEND THEM BACK* (2018) (providing context and analysis of the Haitian Refugee Crisis).

¹⁶⁰ Patrick Gavigan, *Migration Emergencies and Human Rights in Haiti*, ORG. OF AM. STATES (1997), <https://www.oas.org/juridico/english/gavigane.html>. See also NORMAN L. ZUCKER & NAOMI FLINT ZUCKER, *DESPERATE CROSSINGS: SEEKING REFUGE IN AMERICA* 35 (Routledge 1996).

¹⁶¹ See Gavigan, *supra* note 160.

¹⁶² *Id.*

program initially allowed the United States to screen asylum applicants individually to determine if a credible fear of persecution could be proven.¹⁶³ But the program ultimately allowed the United States to repatriate Haitian migrants to the island nation.¹⁶⁴

President Clinton also took actions attempting to pressure the new Haitian government, including returning Haitian refugees who fled political conflict in Haiti by raft in pursuit of asylum.¹⁶⁵ The international community criticized Clinton's plan because the Haitian military killed many refugees who his Administration turned away.¹⁶⁶ After pressure from within his party and from human rights activists, President Clinton ordered the end of the interdiction program in May of 1994.¹⁶⁷ The United States invaded Haiti in order to restore the democratically elected Aristide to the presidency (in Operation Uphold Democracy) in September of 1994.¹⁶⁸ Later, in 1998, Congress passed the Haitian Refugee Immigration Fairness Act, allowing certain Haitian nationals residing in the United States to apply for a green card within a limited timeframe.¹⁶⁹

Of course, the United States responded to these Haitian refugees through a traditional refugee law lens, and the 1990s Haitian Refugee Crisis illustrates several points about the United States refugee and asylum law in practice. To some degree, the programs can function in the sense that the infrastructure itself exists and the programs can grapple with political upheaval. The Haitian military regime created real fear of persecution among the populace, leading to mass migration,¹⁷⁰ and the United States was able to evaluate asylum claims and grant relief, even though it often chose not to.¹⁷¹ The United States took full advantage of the limited nature of the asylum

¹⁶³ *Cf. id.*

¹⁶⁴ *See id.*

¹⁶⁵ *See id.*

¹⁶⁶ *See Miranda, supra* note 14, at 725–27; Gavigan, *supra* note 160.

¹⁶⁷ *See Miranda, supra* note 14, at 692–93, 725–27.

¹⁶⁸ Rachael Bunyan, *25 Years After 'Operation Uphold Democracy,' Experts Say the Oft-Forgotten U.S. Military Intervention Still Shapes Life in Haiti*, TIME MAG. (Sept. 24, 2019), <https://time.com/5682135/haiti-military-anniversary>.

¹⁶⁹ *Green Card for a Haitian Refugee*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-haitian-refugee> (Nov. 27, 2017).

¹⁷⁰ *See Miranda, supra* note 14, at 727–28.

¹⁷¹ *See id.* at 713.

programs, including the programs' requirement that migrants be present within the borders of the United States to participate in the program. Thus, Haitians fleeing the repressive government and economic crisis were intercepted at sea and taken to a detention center at the United States Guantanamo Bay Naval Base in Cuba.¹⁷² Ultimately, the United States' response and application of the traditional refugee and asylum programs illustrates the non-uniform approach the United States is prepared to take.

ii. Applying Refugee and Asylum Law to Haitian Climate-Related Migrants

Current Haitian climate-related migrants do not meet the requirements of conventional refugee law under the United States refugee law structure. These climate-related migrants are leaving Haiti because of intense socio-economic pressures directly and indirectly caused by climate change, worsening environmental degradation, and natural disasters.¹⁷³

These refugees' greatest challenge in meeting the conventional persecution requirement is proving that climate change, which caused migration, equates to a well-founded fear of persecution. It is unclear if soil degradation, sea level rise, or other indirect climate change effects could ever meet this requirement. The current Refugee Convention's understanding of refugees facially bars climate-related migrants, but an expansionist approach could allow climate-related migrants to find relief through U.S. refugee and asylum programs by expanding the term "refugee" to include environmental migrants.¹⁷⁴

iii. Issues in Defining Environmental Refugees to Include Climate-Related Migrants

This first hurdle in expanding the conventional refugee definition to include those affected by climate change and, specifically, Haitian climate-related migrants, is the lack of a precise, universal definition of "environmental refugee."¹⁷⁵ The issue here is that the environment affects individuals in many ways, thus the term

¹⁷² *See id.* at 695.

¹⁷³ Lutz, *supra* note 51.

¹⁷⁴ *See Doran, supra* note 11, at 120–21, 124.

¹⁷⁵ *See id.* at 133; Goffman, *supra* note 128, at 5.

“environmental refugee” is not sufficiently specific.¹⁷⁶ Though numerous attempts to define the term have been made, the fact that human migration does not have an exclusive relationship with climate change creates an inherent obstacle in defining environmental refugees in the first place.¹⁷⁷ How can one definition of environmental refugee be broad enough to encompass those who migrate because of the slow-onset effects of climate change when climate change itself remains unaddressed in the broader conversations surrounding human migration?

Attempts have been made to incorporate these issues in a definition of environmental refugees, though these definitions are not commonly used or accepted. For example, the International Organization for Migration (“IOM”), a leading inter-governmental organization working to address challenges associated with migration, defines environmental migrants as:

[P]ersons or groups of persons who, for compelling reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.¹⁷⁸

However, scholars argue that by “expanding the definition of refugee” environmental migrants would overwhelm the pool of asylum applicants,¹⁷⁹ thus siphoning off resources designed to aid a different class of migrants altogether. Further complicating this issue is the lack of available quantifiable data, caused by the difficulty of categorizing the individual choices and factors leading to a migrant’s decision to leave.¹⁸⁰

¹⁷⁶ See Doran, *supra* note 11, at 133; Richard Black, *Environmental Refugees: Myth or Reality?* 1–2 (Univ. of Sussex, Working Paper No. 34, 2001), <http://www.unhcr.org/research/RESEARCH/3ae6a0d00.pdf>.

¹⁷⁷ See OFFICE OF THE UNITED NATIONS HIGH COMM’R FOR REFUGEES, *Forced Displacement in the Context of Climate Change: Challenges for States Under International Law*, Submission to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention (AWG-LCA 6) 2 (May 20, 2009), <http://www.unhcr.org/4a1e4d8c2.html>.

¹⁷⁸ Int’l Org. for Migration [IOM], *Discussion Note: Migration and the Environment*, at 1–2, IOM Doc. MC/INF/288 (July 4, 2023), https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/wedav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf.

¹⁷⁹ See Doran, *supra* note 11, at 127.

¹⁸⁰ See *id.* at 133; see also Black, *supra* note 176, at 13–14.

C. *Paths Forward for the United States*

The current immigration protection schemes for displaced persons do not adequately protect climate-related migrants, but they do offer some elements that could inform a functioning system for climate-related migrants. In crafting a new protection regime, it is important to define the goals and purpose so that the system may be consistently applied.

Not all climate-related migrants should be able to seek permanent relocation to the United States. As seen in the aftermath of the 2010 Haiti earthquake, individuals need a place to go after a natural disaster, and slow-onset events can and do lead to permanent effects on a country, but it is not in the best interest of every nation for massive numbers of people to leave and never return. Abandonment on such a scale could devastate a rebuilding region and lead to lost recovery.¹⁸¹ The goal for a United States climate-related migrant program should be a multidimensional short-term visa-type program requiring “individuals to return to their countries of origin to assist in the rebuilding” and recovery process,¹⁸² but also incorporating measures to accommodate the permanent effects of climate change.

In developing its new protection scheme, the United States should: (1) consider an expansion approach to formulate a workable definition of “environmental refugees”; (2) incorporate an adaptation approach by fostering international and regional co-operation in light of emerging climate risks; and (3) incorporate the broader research and principles of groups and organizations working at the forefront of climate migration.

i. An Expansion Approach: Developing a Workable Definition for Environmental Refugees

An expansion approach bridges the gap between the conventional understanding and protections of refugees, and the necessary components of a climate-related migrant protection framework, by developing a narrowed and explicit definition of “environmental refugee.” If the international community can agree on a definition of environmental refugee that protects climate-related migrants, the

¹⁸¹ See Naser-Hall, *supra* note 149, at 299.

¹⁸² *Id.*

United Nations and participating countries may be more willing to include environmental migrants in asylum programs.¹⁸³

“An interdisciplinary committee from the U.N. University Institute for Environment and Human Security advocates classifying environmental migrants in three subcategories: (1) environmentally-motivated migrants. (2) environmentally-forced migrants, and (3) environmental refugees.”¹⁸⁴ The adoption of such a plan could lead to greater and more widespread acceptance among individual nations in adopting similar programs using the same transferable term akin to how the Refugee Convention’s definition of “refugee” has become ubiquitous. A key difference between these three categories is the immediacy of the migration. Within this protection scheme, an environmentally motivated migrant refers to an individual choosing to migrate because of the slow-onset effects of climate change.¹⁸⁵ Thus, within this framework, the environmentally forced migrant and environmental refugee categories protect those affected by sudden-onset disasters.

Applied to Haitian climate-related migrants, the environmentally motivated migrant category could cover those most often left out of the current refugee framework. Ideally, such a subset could allow for the migrants who either left or were forced to leave their homes because of rising sea levels or environmental degradation. These migrants may also be thought of as second-wave migrants—those who leave because of the collateral effects amplified by climate change and not the actual disaster itself.

Of course, in defining and differentiating between these categories, a key challenge is in distinguishing “between forced and voluntary migration.”¹⁸⁶ The traditional frameworks tend to draw a line between those exercising agency in their decision to migrate, and those who migrate because of forces outside of their control. The international community seems to afford greater protections to those who have migrated out of sheer necessity.

¹⁸³ See Doran, *supra* note 11, at 133.

¹⁸⁴ *Id.*

¹⁸⁵ See *Id.*

¹⁸⁶ Fabrice Renaud et al., *Control, Adapt or Flee: How to Face Environmental Migration?*, INTERSECTIONS (U.N.U. Inst. for Env’t and Hum. Sec.) May 2007, at 5. See also Doran, *supra* note 11, at 133.

As discussed above, the environment may be the central cause of human movement in many cases. However, there are often other contributing factors. Thus, it is difficult to distinguish environmental migrants from migrants more generally. According to the IPCC, the “multiple drivers of migration (economic, social, political, demographic, and environmental) and the complex interactions that mediate migratory decision making by individuals or households, establishment of a relationship between climate change and intrarural and rural-to-urban migration, observed or projected, remains a major challenge” to the development of normative frameworks.¹⁸⁷ This is an especially difficult challenge for Haiti, because of the nation’s complex environmental and migratory nexus.

Further, a population’s response to environmental degradation and climate change is dependent on that population’s vulnerability.¹⁸⁸ In this context, “vulnerability” refers to “*the characteristics of a person or group and their situation that influence their capacity to anticipate, cope with, resist and recover from the impact of a natural hazard* (an extreme natural event or process).”¹⁸⁹ To these persons or groups, “the differentiated effect is a reflection of . . . class, occupation, ethnicity, caste, gender, disability, health status, age, and immigration status and social network.”¹⁹⁰

Vulnerability also measures a population’s ability to recover from a disaster, and a population’s difficulty in recovery makes the group more vulnerable to future disasters.¹⁹¹ The level of vulnerability of a population is largely influenced by social conditions,¹⁹² including the economy and the strength of the country’s institutions y.¹⁹³ This further suggests the highly varied responses and effects of climate change. As discussed above, Haiti is an extremely

¹⁸⁷ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability Part A: Global and Sectoral Aspects*, at 617, (Christopher B. Field et al. eds., 2014) [hereinafter IPCC Adaptation 2014]. See also *Environmental Change and Human Mobility*, *supra* note 30, at 10, 12.

¹⁸⁸ See Gaim Kibreab, *Climate Change and Human Migration: A Tenuous Relationship Symposium*, 20 *FORDHAM ENV’T. L. REV.* 357, 375 (2017).

¹⁸⁹ See *id.* (italics in original). Cf. BEN WISNER ET AL., *AT RISK: NATURAL HAZARDS, PEOPLE’S VULNERABILITY AND DISASTERS* 128 (2003).

¹⁹⁰ Kibreab, *supra* note 188, at 375.

¹⁹¹ See *id.*

¹⁹² See *id.* at 377.

¹⁹³ See *id.*

vulnerable country, which illustrates the need for the subcategories in the expanded environmental refugee definition of the United Nations University Institute for Environment and Human Security.

At its heart, the expansion approach seeks to address climate-related migrants through the current refugee and asylum frameworks. However, as exemplified by the 1990s Haitian Refugee Crisis and inherent issues in developing a viable definition, this framework may already be inadequate to address an issue at the scale of climate-related migrants generally, and Haitian climate-related migrants specifically. An expansion approach also has several hurdles to clear when attempting to reconcile the multi-causal nature of migration, which is further amplified by the relationship between sudden- and slow-onset disasters, especially those in Haiti. Thus, instead of attempting to squeeze climate-induced migrants into a framework that could never have predicted them, a better solution could be to engineer a new system altogether.

ii. The Adaptive Approach

The adaptive approach to climate-related migrants is related to mobility and involves two major categories: (1) “governments view adaptation to climate change as a way to reduce emigration pressures and allow people to remain where they are by modifying agriculture practices, management of pastoral lands, infrastructure such as dykes and coastal barriers, fishing patterns and other strategies to reduce pressures on fragile ecosystems[]”; or (2) “movement of people to other locations may instead be seen as an adaptation strategy itself by climate change-affected countries.”¹⁹⁴ Some countries view migration as a strategy to ease pressures on vulnerable populations, and other countries comprehend that resettlement is inevitable for some populations and “should be accomplished with proper planning.”¹⁹⁵

The adaptation approach offers governments and international bodies the ability to distinguish between the traditional refugees and climate-related migrants. By clearly distinguishing these groups, governments and international bodies can accurately collect information and make informed decisions. It also allows the home

¹⁹⁴ Martin, *supra* note 75, at 193.

¹⁹⁵ *See id.* at 202-03.

country to be viewed as a cooperative partner and not as a persecutor. Some countries threatened by climate change already understand the importance of adaptation, and efforts can be manageable for both the home and receiving countries under the adaptive approach.

However, this approach necessarily requires flexibility and supervision to ensure proper execution. Population movements can take one of three forms: (1) migration; (2) displacement; and (3) planned relocation.¹⁹⁶ Thus, when these elements are considered through the adaptation approach, these movements can be a means to adaptation and permanent solutions rather than mere stopgap coping mechanisms.¹⁹⁷ By allowing for flexibility, the adaptation approach is out of reach of the technical and definition issues of the other potential solutions to climate-related migrants.

A chief concern with this approach is the administrative aspect.¹⁹⁸ This is clearest when considering Haiti, especially in recent years. Because this system relies on communication and cooperation between the home and destination countries,¹⁹⁹ political upheaval would seem to threaten the approach's viability among some potential "home" countries such as Haiti. Nonetheless, in analyzing and implementing new immigration programs for the United States, the potential upsides for some "home" countries are significant, and this approach would likely have an important place in a forward-thinking immigration scheme.

iii. The Nansen Initiative Principles

The Nansen Initiative was a three-year commission "launched in 2011 at a Ministerial Conference commemorating the 60th anniversary of UNHCR's founding and adoption of the 1951 Refugee Convention."²⁰⁰ The Nansen Initiative was a state-led process seeking to build a consensus and develop methods to protect both environmental migrants and potential environmental refugees.²⁰¹ The initiative aimed to develop a consensus around and policies for

¹⁹⁶ *See id.*

¹⁹⁷ *See id.* at 204.

¹⁹⁸ *See id.* at 207.

¹⁹⁹ *See generally id.* at 207-08.

²⁰⁰ *See Martin, supra* note 75, at 204.

²⁰¹ *See generally id.* at 204-06.

improving the protection of people displaced by natural disasters “and the slow onset effects of climate change.”²⁰² With the understanding that climate change will have far-reaching societal effects and span the globe, leading to an increase in migration, the initiative identified the lack of international and political willingness to respond to the coming challenges in the manner those challenges demand.²⁰³

The Nansen Initiative focused on several areas of action seeking to “improve the collection of data and to enhance knowledge on cross-border disaster-induced displacement.”²⁰⁴ This area of focus calls for “methodologies to identify those at risk of being displaced in disaster contexts, including across international borders²⁰⁵ and new research to “determine to what extent men and women already rely on migration as a strategy to cope with the effects of natural hazards and the effects of climate change, and what lessons can be learned for improving the benefits of migration and addressing related protection risks.”²⁰⁶

The initiative also focuses on “humanitarian protection measures for cross-border disaster-displaced persons, including mechanisms for lasting solutions.”²⁰⁷ Here, the agenda argues the need for new legal mechanisms and policies that would allow “temporary entry and stay for cross-border disaster-displaced persons, such as through the issuance of humanitarian visas or other exceptional migration measures.”²⁰⁸ Lastly, the agenda noted “that legal migration can prevent displacement” in the first place because it allows individuals to move in a safety and orderly manner.²⁰⁹

The initiative sought core approaches and frameworks for addressing internal and transboundary displacement.²¹⁰ These

²⁰² *Id.* at 204.

²⁰³ See generally The Nansen Conference, *Climate Change and Displacement in the 21st Century*, (2011), <http://www.unhcr.org/4ea969729.pdf> [hereinafter *Nansen*]; Walter Kälin, *From the Nansen Principles to the Nansen Initiative*, 41 FORCED MIGRATION REV. 48, 48 (2012).

²⁰⁴ See Martin, *supra* note 75, at 206.

²⁰⁵ *Id.*

²⁰⁶ See *id.*

²⁰⁷ *Nansen*, *supra* note 203, at 10.

²⁰⁸ See *id.*

²⁰⁹ See *id.* at 208.

²¹⁰ See *id.* at 205.

principles seek action on transboundary migration, urging for “[a] more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters. States, working in conjunction with UNHCR and other relevant stakeholders, could develop a guiding framework or instrument in this regard.”²¹¹

Ultimately, the long-term goal is to create global analysis systems to track and report “cross-border disaster-displacement.”²¹² In the near future, the goal is to “ensure the inclusion of displacement in post-disaster” relief and recovery analysis while fixing information gaps and improving displacement understanding.²¹³ Nansen used a “bottom-up consultative approach,” seeking to “build consensus among States on key principles to protect people displaced across borders in the context of disasters caused by natural hazards, including those linked to climate change.”²¹⁴

The Nansen Initiative was directly succeeded by the Platform on Disaster Displacement (“PDD”) (launched in May 2016 at the World Humanitarian Summit, which is also a state-led group working to offer better protection for people displaced by disasters and climate change.²¹⁵ The PDD continues to advance the objectives of the Nansen Initiative, with the understanding that while climate change impacts are international in scope and transboundary in nature, the immediate impacts will be at the regional level.²¹⁶

United Nations Secretary-General Antonio Guterres has acknowledged the multidimensional nature of climate-induced displacement and the need to address both the sudden-onset and slow-onset climate events.²¹⁷ However, due to its multi-layered

²¹¹ *Nansen*, *supra* note 203, at 5.

²¹² *See* Martin, *supra* note 75, at 208.

²¹³ *See id.* at 208–09.

²¹⁴ IOM, *The Nansen Initiative*, <https://environmentalmigration.iom.int/nansen-initiative> (last visited Nov. 11, 2023).

²¹⁵ *See* PLATFORM ON DISASTER DISPLACEMENT, *Our Response*, <https://disasterdisplacement.org/> (last visited Mar. 4, 2023).

²¹⁶ *See id.*; Jane McAdam, *Creating New Norms? The Nansen Initiative on Disaster-Induced Cross-Border Displacement*, BROOKINGS (Apr. 1, 2013), <https://www.brookings.edu/articles/creating-new-norms-the-nansen-initiative-on-disaster-induced-cross-border-displacement/>.

²¹⁷ *See* Press Release, Security Council, Climate Change ‘Biggest Threat Modern Humans Have Ever Faced,’ World-Renowned Naturalist Tells Security Council,

consequences, “climate change remains controversial given its cross-cutting reach from environmental and social impacts, through to economic and political policy[.]”²¹⁸ Ultimately, these two programs demonstrate the power of regional programs, to tailor and address the individual needs and effects of climate change.

In sum, the Nansen Initiative provides important principles for any new immigration scheme in the United States and if applied to Haiti, the Nansen Initiative would provide a starting point and goal-oriented regional program which could adequately address Haitian climate-related migrants. Notably, the Nansen Initiative principles also pair well with the adaptive approach as described above. While these programs may be difficult to implement in the short-term, they could create a protective scheme that actually addresses the unique concerns of the island nation immigrants.

Calls for Greater Global Cooperation, U.N. Press Release SC/14445 (Feb. 23, 2021).

²¹⁸ Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 L. & POL’Y 502, 517 (2008).