



Yale Immigrant  
Justice Project

Yale Environmental  
Law Association

## **SHELTER FROM THE STORM:**

### **EXECUTIVE SUMMARY AND RECOMMENDATION**

The planet is experiencing climate change. The most recent decade has been the warmest ever recorded. Indeed, we have already surpassed the level of atmospheric carbon dioxide considered safe by the most esteemed scientists in the field. As the impacts of climate change continue to be felt around the world, experts predict that climate change will lead to massive movements of people within and across borders, including into the United States. Experts estimate that climate change could displace over 200 million people by 2050.<sup>1</sup> Extreme weather events, climate-related disasters, gradual environmental degradation, sinking coastal zones, and sea level rise will continue to amplify existing stressors and contribute to internal and cross-border movement by rendering currently inhabited parts of the world less habitable.

The Northern Triangle—the area that includes Guatemala, El Salvador, and Honduras—is among the world’s most vulnerable regions. Due to their geographic location and widespread socio-economic inequality, Northern Triangle countries are highly vulnerable to climate-related impacts. Studies identify food insecurity, recurring droughts, decline in agricultural production,

increased susceptibility to disease, and water scarcity as main drivers of climate displacement. Overall disruptions in the climate system result in significant economic losses for smallholder farmers, including those producing coffee, corn, and beans. Soil degradation, accelerated by a changing climate, will also likely contribute to displacement, as it already has in Guatemala. Meanwhile, coastal areas face an increase in sea level rise and destruction of local mangrove ecosystems, which threaten communities that depend on fishing.

Last year, Hurricanes Iota and Eta ravaged the Northern Triangle region, causing massive flooding and rain. The convergence of the hurricanes' impact, the COVID-19 pandemic, and pre-existing socioeconomic vulnerabilities are expected to worsen food insecurity due to extensive impacts on agriculture, livestock, and rural livelihoods, in addition to the threat that vector-borne diseases pose to human health in the aftermath of the storm. These impacts will contribute to the already deteriorating environmental situation that is driving people from their homes into urban centers and towards the United States. Experts project **that climate change will displace up to 3.9 million people across Mexico and Central America by 2050.**

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

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

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

The United States bears a special responsibility to the region, given its role in creating and fomenting violence there. The United States government has ignored its own research findings and opted for a law enforcement approach to curb migration flows. While the Biden Administration has taken steps in the right direction by requiring several agencies to prepare a report on climate change and its impact on migration,<sup>3</sup> much more is needed to properly tackle this complex issue.

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

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

## **GENERAL RECOMMENDATIONS**

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

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

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

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

Thus, the government should extend protections to individuals outside the United States who face climate displacement.

### *3. Create a New Climate Visa*

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

### *4. Broaden the Definition of the Public/National Interest*

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

### *5. Integrate climate change in the current asylum framework*

We call on the Biden Administration, in consultation with NGOs and the United Nations High Commissioner for Refugees, to issue guidelines for considering climate change displacement, where appropriate, in the current asylum framework. There is precedent in the

United States for issuance of such guidelines for claims of women to asylum and withholding of removal or non-refoulement<sup>4</sup> and subsequently for claims of children.<sup>5</sup> The latest UNHCR report on “Legal Considerations Regarding Claims for International Protection Made in the Context of Climate Change and Disasters” can serve as a starting place. In consultation with NGOs and the UNHCR, the Biden Administration should draft and issue Executive Office for Immigration Review (EOIR) guidance on asylum and withholding of removal claims related to climate change in addition to Refugee, Asylum and International Operations (RAIO) training modules on this subject.

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

The Biden Administration should rescind regulations from the prior administration that undermined decades of asylum jurisprudence and disregarded U.S. obligations under the Refugee Convention and Protocol and international law. These include but are not limited to the final rule on “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review,” the implementation of which was enjoined on January 8, 2021.<sup>6</sup>

7. *Increase Research on Climate Migration*

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

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## ENDNOTES

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

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

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

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

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

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

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