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## IMMIGRATION'S FUTURE: CLOSING THE DOOR ON THE AMERICAN DREAM?

Ritcy Canelon\*

### I. INTRODUCTION

History repeats itself, sometimes with new characters, new scenarios, or new twists. Throughout its history, the world has continuously seen people flee in masses from tyranny, wars, and other devastations. In the United States, the first settlers were fleeing from the religious oppression from their native homes.<sup>1</sup> We study history to feign we've learned from our past while ignoring all the signs of its reoccurrence. If we never learn from history, we are bound to repeat it, and the progress for our future may be halted by not fixing the problems from our past. The history of human immigration is not one that should be ignored.

As the clock approaches evermore slightly to midnight, we have more consistently seen the mass migration of humans fleeing their homes due to extreme weather.<sup>2</sup> In September 2017, due to Hurricane Irma, in just the southern part of Florida alone, it was estimated that 6.5 million people were ordered to evacuate<sup>3</sup> with a minimum of 70,000 people taking refuge in shelters across the state.<sup>4</sup> Thousands of people were stuck in their cars as they tried to leave Florida through its clogged highways,<sup>5</sup> in what became one of the biggest evacuations Florida had seen since 1999, when three million evacuated the state due to Hurricane Floyd.<sup>6</sup>

Hurricane Maria hit Puerto Rico not long after Irma hit Florida, causing many people to evacuate. In Florida alone, over 70,000 people from the island were registered to have entered only a month after Maria devastated the island.<sup>7</sup> Three months after the hurricane hit, Florida saw an increase from 70,000 to 215,000 people from

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<sup>1</sup> *Colonial America (1492-1763)*, THE LIBR. OF CONGRESS: AMERICA'S STORY FROM AMERICA'S LIBR., [http://www.americaslibrary.gov/jb/colonial/jb\\_colonial\\_subj.html](http://www.americaslibrary.gov/jb/colonial/jb_colonial_subj.html) (last visited Oct. 31, 2017), *archived at* <https://perma.cc/V9N7-Z2E6>.

<sup>2</sup> *U.S. Local Authorities Expecting Influx of Puerto Ricans After Hurricane Maria*, NAT'L PUB. RADIO (Oct. 1, 2017), <http://www.npr.org/2017/10/01/554933047/u-s-local-authorities-expecting-influx-of-puerto-ricans-after-hurricane-maria>, *archived at* <https://perma.cc/2ALZ-DELM>.

<sup>3</sup> *As Irma Shifts West, Powerful Winds Batter Florida Keys*, NAT'L PUB. RADIO (Sept. 9, 2017), <http://www.npr.org/sections/thetwo-way/2017/09/09/549704585/-the-storm-is-here-floridians-window-to-evacuate-shrinks-as-irma-bears-down>, *archived at* <https://perma.cc/LA8K-J6Q5>.

<sup>4</sup> *Id.*

<sup>5</sup> Ralph Ellis & Eric Levenson, *Floridians Jam Highways to Flee Wrath of Hurricane Irma*, CNN (Sept. 8, 2017), <http://www.cnn.com/2017/09/07/us/hurricane-irma-evacuation-florida/index.html>, *archived at* <https://perma.cc/2RZN-NW53>.

<sup>6</sup> *Id.*

<sup>7</sup> Joe Light, *Puerto Ricans Displaced by Hurricane Maria Could be Relocated to U.S. Mainland*, BLOOMBERG (Oct. 29, 2017), <https://www.bloomberg.com/news/articles/2017-10-29/hud-explores-temporarily-housing-puerto-ricans-on-u-s-mainland>, *archived at* <https://perma.cc/ZD6B-Z73L>.

the island residing in the state—some temporarily, others permanently.<sup>8</sup> After the Haiti earthquake, 1.5 million people were initially displaced, and around 37,000 remained displaced as of September 2017.<sup>9</sup> In 2005, “500,000 Bangladeshis became homeless when half of Bangladesh’s Bhola Island permanently flooded.”<sup>10</sup> The list goes on.<sup>11</sup>

It is estimated that about 200 million people will be displaced globally by 2050 due to climate change.<sup>12</sup> These displaced people, though they do not yet have an “official” name, nor do they fall under an established category, are often called “climate refugees”<sup>13</sup> or “climate change migrants.”<sup>14</sup> These climate change migrants will need a safe place to stay, whether it be for a short period of time—through Temporary Protected Status (TPS)<sup>15</sup>—or an extended period of time—through permanent residency and perhaps a path to citizenship as a result<sup>16</sup>—until the conditions in their home country become livable, allowing those who wish to return to their homeland that possibility. While there are measures in place to help foreigners inside the United States when destruction hits those foreigners’ home countries,<sup>17</sup> the United States currently does not have any proactive measures that allow a fast reaction to aid and provide safe harbor to those in need when climatic destruction happens.

The United States needs immigration reform in anticipation of the mass migration of people as a result of the destruction of climate migrants’ home countries due to climate change impacts. This reform needs to include policies that will allow the United States to take action in bringing people to safety faster while protecting the interests and security of the American people. With increasing climate change<sup>18</sup> and the prediction that global weather conditions will only get worse,<sup>19</sup> the United States Government needs to think about the foreseeable future and have safety nets and policies ready to be implemented for when the time comes to respond.

8. 215,000 Puerto Ricans Have Arrived in Florida Since Hurricane Maria, CBS MIAMI (Dec 5, 2017), <http://miami.cbslocal.com/2017/12/05/puerto-rico-immigration-hurricane-maria/>, archived at <https://perma.cc/9D9W-LGQ6>.

9. Jesselyn Cook, 7 Years After Haiti’s Earthquake, Millions Still Need Aid, HUFFINGTON POST, [https://www.huffingtonpost.com/entry/haiti-earthquake-anniversary\\_us\\_5875108de4b02b5f858b3f9c](https://www.huffingtonpost.com/entry/haiti-earthquake-anniversary_us_5875108de4b02b5f858b3f9c) (last updated Jan. 13, 2017), archived at <https://perma.cc/Q8UR-ZUT4>; Haiti Earthquake Fast Facts, CNN, <http://www.cnn.com/2013/12/12/world/haiti-earthquake-fast-facts/index.html> (last updated Dec. 28, 2016), archived at <https://perma.cc/G5LW-XWJ7>.

10. Breanne Compton, *The Rising Tide of Environmental Migrants: Our National Responsibilities*, 25 COLO. NAT. RESOURCES ENERGY & ENVTL. L. REV. 357, 363 (2014).

11. *Id.* at 378.

12. *Id.* at 379.

13. Phillip Dane Warren, *Forced Migration After Paris Cop21: Evaluating the “Climate Change Displacement Coordination Facility,”* 116 COLUM. L. REV. 2103, 2112 (2016).

14. *Id.*

15. See generally 8 U.S.C. § 1254a (2012); *What is TPS?*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Jul. 19, 2018), archived at <https://perma.cc/SM3K-DWEV>.

16. See generally 8 U.S.C.S. § 1255 (LEXIS through Pub. L. No. 115-253); *Green Card*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/greencard> (last updated Feb. 22, 2018), archived at <https://perma.cc/3YCB-SYQ6>.

17. *What is TPS?*, supra note 15.

18. *The Consequences of Climate Change*, NAT’L AERONAUTICS AND SPACE ADMIN, <https://climate.nasa.gov/effects/> (last visited Oct. 31, 2017), archived at <https://perma.cc/C8Y9-WENA>; see also Sireesha V. Chirala, *Acclimating To Climate Change: Filling the International Policy Void For Environmentally Displaced People*, 35 HOUS. J. INT’L L. 359, 3636 (2013).

19. *Id.*

Steve Turner once wrote, “[h]istory repeats itself. Has to. No-one listens.”<sup>20</sup> Ignorance and willful blindness of the past should no longer be an option. This article proposes that the government of the United States, and we as a people, learn, not just from the history of our country’s immigration, but also from our recent immigration debacle, to better accommodate for future immigration patterns of mass migrations of people due to persistent and extreme changes in weather. Part A reviews the history of immigration law in the United States. Part B discusses the development of that history and discusses how the United States, based on its tightening immigration laws and biases, rejected Jewish immigrants while they were trying to escape the Holocaust. Congress should engage in a proactive approach so, come hell or high water, our country will be ready to face and solve the problems that will come with the flood of climate change immigration.

### A. UNITED STATES’ EARLY IMMIGRATION HISTORY: THE OPEN DOOR

As the Nation grew and developed, an easy way to expand the population was to encourage a relatively free and open immigration door.<sup>21</sup> It was not until the late 1700s and early 1800s that Congress started to adopt uniform rules for immigration.<sup>22</sup> Such rules included how long someone needed to be a resident before becoming a citizen—which in the span of two years changed from two to ten to five years—and the status of the person applying for citizenship—typically the person had to be a free white male, and the law also provided for the deportation of dangerous immigrants.<sup>23</sup>

The 1880s and 1890s modified lax immigration policies to impose stricter rules that saw the prohibition of certain types of people into the United States, such as convicts, polygamists, and people with what at the time were considered “loathsome” diseases,<sup>24</sup> and the expulsion of others from the country.<sup>25</sup> Additionally, the Immigration Act of 1882 placed a head tax on all immigrants entering the country.<sup>26</sup> The Immigration Act of 1891 and the Immigration Act of 1903 considerably expanded the list of people to be considered inadmissible for entry.<sup>27</sup> Slowly, the immigration door kept shutting with the new acts implemented.

20. STEVE TURNER, *NICE AND NASTY* 49 (1980).

21. U.S. CITIZENSHIP & IMMIGR. SERVS., *OVERVIEW OF INS HISTORY*, 3 (2012), <https://www.uscis.gov/sites/default/files/USCIS/History%20and%20Genealogy/Our%20History/INS%20History/INSHistory.pdf>, archived at <https://perma.cc/8NHF-5DYQ>.

22. Sarah Rooker, *U.S. Policy on Immigration and Naturalization*, THE FLOW OF HIST., <http://www.flowof-history.org/a-brief-timeline-of-u-s-policy-on-immigration-and-naturalization/>, archived at <https://perma.cc/79N6-WJDW>.

23. *Id.*

24. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 21, at 4.

25. Rooker, *supra* note 22.

26. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 21, at 3.

27. *Id.* at 4. See generally *Public Law 57-162 / Chapter 1012, 57 Congress, Session 2, An Act: To regulate the immigration of aliens into the United States.*, 32 Stat. 1213, 1222 (1903) [hereinafter *Public Law 57-162*].

## B. WORLD WAR II AND OUR REACTION

As the Nation continued to establish and implement policies for the welfare of the United States, the immigration door continued to progressively close, the list of excluded people barred from entering the country continued to grow,<sup>28</sup> and quotas were set to limit a percentage of foreign peoples permitted to enter.<sup>29</sup>

Change to this restrictive system came on a minor basis near the end of the Second World War in 1944, when around 1,000 refugees were brought into the United States, and in 1948 and 1953, when Congress passed two separate acts granting about 400,000 European refugees admission to slowly enter into the country.<sup>30</sup> But this was only after the war had ended and the threats that these communities were escaping from were mostly over.<sup>31</sup> However, during the time when people were most desperately trying to flee Europe from not just deplorable conditions, but the inhuman and disastrous consequences of war, our immigration policies and quotas stayed the same.<sup>32</sup> While the United States Government acted somewhat efficiently after the crisis, it was ineffective during the time of need. Congress was slow—some would say even reluctant<sup>33</sup>—to act when it should have acted faster.

While history is rich in lessons, the lessons that the United States can learn from, the slow reaction from our Government in particular, are supremely important for this article. Instead of waiting for the next big disaster to happen, the United States should anticipate the foreseeable—and widely discussed<sup>34</sup>—future and have measures waiting to be implemented in order to effectively, timely, and safely meet the needs of the people in distress, while securing the safety of the American people.

While the United States has eventually come to render the necessary aid and shelter to those who have suffered through disaster, historically, our Congress has reacted slowly in amending the United States' immigration policies.<sup>35</sup> Even today, these policies, reforms, and other related immigration changes are still not as fast and efficient as they should be. With the mistakes of the past in mind, the United States needs to start to develop a reform with policies that can take place promptly. Our Government, through Congress and with the help and approval of the executive branch, needs to be able to act quickly to provide the most help when it is needed so that, as the number of people displaced steadily rises,<sup>36</sup> the United States will be

28. *Public Law 57-162 at 1214.*

29. U. S. CITIZENSHIP & IMMIGR. SERVS. *supra* note 21, at 7.

30. *United States Immigration and Refugee Law, 1921-1980*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007094> (last visited Oct. 31, 2017), *archived at* <https://perma.cc/BYY7-PNCX>.

31. *Id.*; U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 21.

32. *United States Immigration and Refugee Law, 1921-1980*, *supra* note 30; Steven Mintz, *Immigration Policy in World War II*, THE GILDER LEHRMAN INST. OF AM. HIST., <https://www.gilderlehrman.org/content/immigration-policy-world-war-ii> (last visited Jan. 21, 2018), *archived at* <https://perma.cc/BD7K-A9KL> (What this source does, is help illustrate my reasoning in not wanting a repeat of past immigration mistakes, to apply to future mass migration problems that the United States may face, regardless if the migration was caused by war or the environment).

33. Mintz, *supra* note 32.

34. *See generally The Consequences of Climate Change*, *supra* note 18.

35. *See e.g.* U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 21, at 9.

36. Compton, *supra* note 10, at 373-74, 379.

ready because we learned from the mistakes of our past.<sup>37</sup> As mentioned previously, when over six million Floridians were ordered to evacuate,<sup>38</sup> many of them migrated upwards to northern parts of Florida, or other states such as Georgia, Alabama, and Louisiana.<sup>39</sup> Tens of thousands of Puerto Ricans are currently migrating to Florida and other parts of the country because of the after-effects of Hurricane Maria.<sup>40</sup> These are just small examples of expected climate change migration, and, as conditions worsen for our globe, internal immigration, as seen above, will be simple compared to the bigger problems of transboundary migration at the international level.

Part II of this note focuses on the Syrian refugee crisis the globe was exposed to and demonstrates how we still have not learned the lesson that history has been trying to teach us. Part III looks to the future and how climate change will affect migration patterns, particularly the number of people migrating due to extreme climatic conditions. Part IV looks at possible solutions and answers that can be implemented in preparation of the massive influx of climate migrants.

## II. LOOKING IN OUR REAR-VIEW MIRROR: THE LESSONS WE STILL HAVEN'T LEARNED

Proof that we have not actually learned our lesson from the past and still await the implementation of this much-needed fast-action preemptive immigration planning is in how the United States handled the Syrian Refugee Crisis.<sup>41</sup> There are two lessons to draw from this recent humanitarian crisis that we have yet to learn from our past experiences with mass human migration. The first of these is the importance of anticipating and being prepared for mass migration while having policies in place to safeguard American values and provide refuge to those in need. The second is the significance of combating our society's fears, misconceptions, and rejection of the immigrant population.

37. See generally *United States Immigration and Refugee Law*, *supra* note 30; see also U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 21 (It is my opinion that the actions regarding how the United States reacted to mass migration in the past for failing to act swiftly and efficiently).

38. *As Irma Shifts West, Powerful Winds Batter Florida Keys*, *supra* note 3.

39. *Id.*; *Hurricane Michael, Like Irma Last Year, Fills Alabama Hotels with Florida Evacuees*, ALABAMA MEDIA GROUP, [https://www.al.com/news/index.ssf/2018/10/hurricane\\_michael\\_like\\_irma\\_la.html](https://www.al.com/news/index.ssf/2018/10/hurricane_michael_like_irma_la.html) (last updated Oct. 10, 2018), archived at <https://perma.cc/GJ7L-ZKZR>; see also Nicolas Nehamas, *Built for Bottleneck: Is Florida Growing too Fast to Evacuate Before Monster Storms?*, MIAMI HERALD, <https://www.miamiherald.com/news/weather/hurricane/article173494726.html>.

40. *215,000 Puerto Ricans Have Arrived in Florida Since Hurricane Maria*, *supra* note 8; see Isabel Dorbin, *'Get Us Out Of Here': Amid Broken Infrastructure, Puerto Ricans Flee to Florida*, NAT'L. PUB. RADIO (Oct. 13, 2017), <http://www.npr.org/2017/10/13/557108484/-get-us-out-of-here-amid-broken-infrastructure-puerto-ricans-flee-to-florida>, archived at <https://perma.cc/8U3R-BR2B>.

41. Jie Zong & Jeanne Batalova, *Syrian Refugees in the United States*, MIGRATION POL'Y INST. (Jan. 12, 2017), <https://www.migrationpolicy.org/article/syrian-refugees-united-states>, archived at <https://perma.cc/A4SS-D79D>.

## A. WHY BEING PREPARED MATTERS

In 2015, we saw the exodus of Syrian refugees fleeing from their home country and entering into Europe through Turkey and Albania.<sup>42</sup> Many of them awaited the mercy of other countries that would allow them to resettle and make a new life, free from the civil war which commenced in 2011<sup>43</sup> and ravaged their country.<sup>44</sup> It was estimated that in 2016 there were 13.5 million Syrians that requested some type of humanitarian help.<sup>45</sup> In 2015, around 4.2 million displaced Syrians fled internationally from their home country.<sup>46</sup> Today that number is at about 5.2 million internationally displaced Syrians.<sup>47</sup> Some have gone far enough to categorize this mass displacement as “[t]he biggest refugee crisis since” the Second World War.<sup>48</sup>

The United States Federal Government does have statutes and regulations in place to address refugees; one of them is 8 U.S.C. § 1157, which deals with the “[a]nnual admission of refugees and admission of emergency situation refugees.”<sup>49</sup> Section 1157(a)(2) states that “the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.”<sup>50</sup> Subsection (b) states:

Determinations by President respecting number of admissions for humanitarian concerns. If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a), the President may fix a number of refugees to be admitted to the United States during the succeeding period (not to exceed twelve months) in response to the emergency refugee situation and such admissions shall be allocated among refugees of special hu-

42. *Migrant crisis: Migration to Europe Explained in Seven Charts*, BBC (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911>, archived at <https://perma.cc/93W2-PETQ>.

43. Zong & Batalova, *supra* note 41.

44. *Id.*

45. U.N. Off. for the Coordination of Humanitarian Aff., 2016 Humanitarian Response Plan (Dec. 2015), at 1, 2, 4, 7, [http://www.unocha.org/sites/dms/Syria/2016\\_hrp\\_syrian\\_arab\\_republic.pdf](http://www.unocha.org/sites/dms/Syria/2016_hrp_syrian_arab_republic.pdf), archived at <https://perma.cc/L5F3-2A3B>.

46. *Id.* at 7.

47. *Syrian Regional Refugee Response*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFF., <http://data.unhcr.org/syrianrefugees/regional.php> (last updated Jan. 2, 2018), archived at <https://perma.cc/N9MY-MS64>.

48. Dimitria Groutsis, *The Biggest Refugee Crisis Since World War II Needs a Similar Response*, SYDNEY MORNING HERALD (Dec. 30, 2015), <http://www.smh.com.au/comment/the-biggest-refugee-crisis-since-world-war-2-needs-a-similar-response-20151229-glw655.html>, archived at <https://perma.cc/Y359-AKPS>.

49. 8 U.S.C. § 1157 (2012).

50. *Id.* § 1157(a)(2).

manitarian concern to the United States in accordance with a determination made by the President after the appropriate consultation provided under this subsection.<sup>51</sup>

However, since the emergence of the Syrian Refugee Crisis in 2011, a total of 18,007 Syrian refugees have been admitted into the United States of the 4.9 million internationally displaced refugees as of December 31, 2016.<sup>52</sup> Of the 18,007 Syrian refugees, 12,587 were admitted in the 2016 fiscal year into the United States,<sup>53</sup> compared to the 33,266 admitted into Canada for the 2016 fiscal year.<sup>54</sup> This behavior resembles that of the American people during the Second World War, where no accommodations were made to exceed the established immigration quota.<sup>55</sup> Congress was undeterred by the knowledge of the slaughters being committed against the Jewish community in the concentration camps.<sup>56</sup> Between 1933 and 1945, the United States took in between 11,000<sup>57</sup> Jewish refugees a year, only giving the displaced Jews priority after the worse was over,<sup>58</sup> Six million Jewish people died as a result of the Nazi persecution during World War II.<sup>59</sup> The German Government is considering the forceful removal of many of the Syrian refugees.<sup>60</sup> While many refugees still have their one-year renewable asylum status, some German politicians are considering cutting that time short by six months and having many refugees out of the country before their status expires.<sup>61</sup>

The number of Syrians allowed to enter into the United States is small in comparison to the over half million refugees Germany has accepted in the last two years.<sup>62</sup> However, to accept too many refugees can be as destructive to the accepting country as it is harmful to turn our backs to those in need. Germany has faced many problems in the past two years because of the rush of Syrian refugees that entered the country.<sup>63</sup> Most recently, because of the clashes of both the anti-immigrant, right-

51. *Id.* § 1157(b).

52. Zong & Batalova, *supra* note 41.

53. *Id.*

54. Sonja Puzic, *Record Number of Refugees Admitted to Canada in 2016, Highest Since 1980*, CTV NEWS, <https://www.ctvnews.ca/canada/record-number-of-refugees-admitted-to-canada-in-2016-highest-since-1980-1.3382444> (last updated Apr. 24, 2017), archived at <https://perma.cc/4ARR-KTRD>.

55. Mintz, *supra* note 32.

56. See *The United States and the Holocaust*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/the-united-states-and-the-holocaust> archived at <https://perma.cc/9DWM-Y2YF>; *United States Immigration and Refugee Law, 1921-1980*, *supra* note 30; U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 21.

57. Mintz, *supra* note 32.

58. *United States Immigration and Refugee Law, 1921-1980*, *supra* note 30. See *The United States and the Holocaust*, *supra* note 56.

59. Mintz, *supra* note 32.

60. James Traub, *Germany is Preparing to Send Refugees Back to Syria*, FOREIGN POL'Y (Dec. 6, 2017), <http://foreignpolicy.com/2017/12/06/germany-is-preparing-to-send-refugees-back-to-syria/>, archived at <https://perma.cc/ZR34-AS2R>.

61. *Id.*

62. Aryn Baker, *Promised Land*, TIME, <http://time.com/4960627/promised-land/> (last updated Oct. 6, 2017), archived at <https://perma.cc/QE56-UT6T>.

63. See generally *id.*

wing neo-Nazis of the country and the refugees who entered the country, many refugees no longer feel safe in Germany due to verbal, physical, and arsonous attacks on the refugees by those who oppose them.<sup>64</sup>

In learning from our past, we must also consider the safety and security of our own citizens as well as those of our temporary or permanent guests. To best handle a migratory situation like this, proactive policies should be drafted and ready to be implemented, rather than assuming a reactive posture with damaging consequences, or doing nothing at all. Germany is now facing other problems in their policy-making due to their receptivity to the Syrian refugees.<sup>65</sup> Rushing into a decision when the next natural disaster causes a mass exodus can be just as damaging to us as it would be to ignore the cry for help of those in need. Therefore, there is grave importance in planning for a mass migration of climate change migrants. This approach is the best method for dealing with the aftermath of catastrophic natural disasters for the United States as a nation, the safety of the people inside the United States, and the impact those decisions will have on the people directly affected by the extreme weather.

## B. FEAR OF IMMIGRATION AND THE UNKNOWN

Both now and during the Second World War, fear of immigration has been a strong contributing factor in developing the policies accommodating refugees into the country.<sup>66</sup> It is a fear that causes disgust, hate, and rejection of allowing unknown and scary foreigners into our great country.<sup>67</sup> During the World War II era, anti-Semitism led to the rejection of a greater influx of Jewish refugees fleeing from the atrocities being committed in Europe.<sup>68</sup> A poll in 1939 found that “53 percent of those interviewed agreed with the statement ‘Jews are different and should be restricted.’”<sup>69</sup> It is this fear of “what is different” that causes distrust and rejection of what we perceive as someone who is an outsider as “separate” from ourselves. It was disgust that, in 1939, prompted the refusal of admitting 20,000 Jewish children refugees over the established immigration quota because “20,000 children would all too soon grow up to be 20,000 ugly adults.”<sup>70</sup>

Today, society is not much different. A poll conducted in 2016 found that “only 36 percent of Americans support admitting Syrian refugees.”<sup>71</sup> Another factor affecting the entry of Syrians into America is the fear of these refugees being terrorists.<sup>72</sup>

64. Nadine Schmidt & Atika Shubert, ‘I No Longer Feel Secure’ in Germany, Syrian Refugee Says, CNN, <http://www.cnn.com/2017/07/04/europe/germany-far-right-attacks/index.html> (last updated July 4, 2017), archived at <https://perma.cc/GBU4-ZMHR>.

65. Traub, *supra* note 60.

66. See Kevin J. Fandl, *States’ Rights and Refugee Resettlement*, 52 TEX. INT’L L.J. 71, 72–73 (2017).

67. Mintz, *supra* note 32.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Poll: Most Americans Oppose Admitting Syrian Refugees, Favor Limited Military Involvement to Combat ISIS in Syria*, THE CHI. COUNCIL ON GLOBAL AFF. (Aug. 15, 2016), <https://www.thechicagocouncil.org/press-release/poll-most-americans-oppose-admitting-syrian-refugees-favor-limited-military> [hereinafter *Poll*], archived at <https://perma.cc/E8CR-VYB7>.

72. Fandl, *supra* note 66, at 82.

After the events of September 11, 2001, and all the terror attacks in Europe by members of the Taliban and ISIS, there is a reason as to why people may be hesitant in welcoming these strangers from abroad. This fear is comparable to the anti-Semitic sentiment felt by many Americans after the Great Depression which led to the rejection of an additional number of Jewish refugees into the United States during the Second World War.<sup>73</sup> However, this fear of terrorism has led to many American state officials and governors openly rejecting Syrian refugees and stating that no Syrian refugee would be allowed to enter their state.<sup>74</sup> Strong biases make decision-making even more difficult and greatly limit our ability as Americans to come together to implement bills and resolutions that allow us to solve our immigration problems.<sup>75</sup>

While it is necessary to take precautions to secure the safety and interests of the American people, it is also important to consider the circumstantial deprivation that the people in need of refuge experience. Today it's the Syrians,<sup>76</sup> but tomorrow it will be the next population that gets hit with a catastrophic natural disaster.

### III. LOOKING TO THE FUTURE: ENVIRONMENTALLY DISPLACED MIGRANTS

This section focuses on the future immigration problems our country will face due to the mass displacement of climate change migrants. Estimates range between 50–200 million people being displaced by 2050<sup>77</sup> to 200–250 million people being displaced by the mid-century as a result of climate change.<sup>78</sup> These predicted numbers are unlike anything we have seen before,<sup>79</sup> and the United States, as a nation, must prepare for this inevitable result of climate change. Ignoring or turning our back to groups of people seeking refuge in the United States as the government has repeatedly done so in the past<sup>80</sup> will no longer be a viable, nor a possible, option for the United States.

73. See generally Mintz, *supra* note 32.

74. Suman Momin, *A Human Rights Based Approach to Refugees: A Look at The Syrian Refugee Crisis and the Responses from Germany and the United States*, 9 DUKE F. FOR L. & SOC. CHANGE 55, 73 (2017); Fandl, *supra* note 66; see also Ashley Fantz & Ben Brumfield, *More than Half the Nation's Governors Say Syrian Refugees Not Welcome*, CNN, <http://www.cnn.com/2015/11/16/world/paris-attacks-syrian-refugees-backlash/index.html> (last updated Nov. 19, 2015, 3:20 PM), archived at <https://perma.cc/PZ4G-Q5PW>.

75. See generally Jennifer Steinhauer, *Senate Blocks Bill on Tougher Refugee Screening*, N.Y. TIMES (Jan. 20, 2016), <https://www.nytimes.com/2016/01/21/us/politics/senate-refugee-screening-bill-syria-iraq.html>, archived at <https://perma.cc/JM3A-T9HF>; Syrian Refugee Verification and Safety Act, H.R. 4048, 114 Cong. (2015). *But see* American Security Against Foreign Enemies Act of 2015, H.R. 4038, 114 Cong. (2015).

76. See, e.g., Emma Graham-Harrison, *Aleppo's Children's Hospital Bombed as it Treats Chlorine Gas Victims*, THE GUARDIAN (Nov. 18, 2016), <https://www.theguardian.com/world/2016/nov/18/aleppos-childrens-hospital-bombed-as-it-treats-chlorine-gas-victims>, archived at <https://perma.cc/2KX6-WWS7>; *Syria Conflict: All Parties Committed War Crimes in Aleppo – UN*, BBC (Mar. 1, 2017), <http://www.bbc.com/news/world-middle-east-39126653>, archived at <https://perma.cc/EL6Q-TT9A>.

77. Warren, *supra* note 13, at 2113.

78. *Id.*; Compton, *supra* note 10, at 379.

79. Alex Randall, *Climate Refugee Statistics: How Many, Where and When?*, CLIMATE AND MIGRATION COALITION, <http://climatemigration.org.uk/climate-refugee-statistics/> (last visited Nov. 30, 2018), archived at <https://perma.cc/8K6G-VWVK> (We have never seen this type of mass migration and thus there is no information available to prove an absence of information).

80. See generally Mintz, *supra* note 32; Poll, *supra* note 71.

In 2011, the intensification of the monsoon flooding continued through the end of July, worsening by combining with the landfall of Tropical Storm Nock-ten.<sup>81</sup> This combination spread “through the northern and central provinces of Thailand where in the month of October floodwaters reached and inundated parts of the capital city of Bangkok.”<sup>82</sup> This not only affected 13.6 million people, but also left 12,427 miles of farmland damaged.<sup>83</sup> Additionally, this intensification of the monsoon season, generated by climate change, forced over half a million people to be evacuated from Manila alone.<sup>84</sup> More of these superstorms and other climatic disasters will continue to happen—and worsen—as climate change increases.<sup>85</sup>

We are already seeing the disastrous effects of climate change, the dramatic increase and severity of extreme weather conditions, and, on a smaller scale, a substantial number of environmentally displaced people due to the conditions and circumstances of extreme weather caused by climate change.<sup>86</sup> During the month of September 2017, two powerful and deadly superstorms occurred, affecting the land and the people residing in the places these storms crossed over.<sup>87</sup> One of these hurricanes, Irma, destroyed 90% of St. Martin structures<sup>88</sup> and destroyed 95% of the structures on the island of Barbuda, forcing its 1,600 inhabitants to leave the island.<sup>89</sup> The other superstorm, Maria, caused 215,000 people to migrate to Florida alone as of December 2017, while many others spread to other areas of the country.<sup>90</sup> Some estimate that within the next two years, more than 470,000 Puerto Ricans will have left the island as a result of the hurricane.<sup>91</sup>

The island nation of Tuvalu has lost one of its three islands to rising ocean levels.<sup>92</sup> Similarly, small island developing states are also subject to the permanent loss of their island homes if sea levels continue to rise, causing those island inhabitants to become homeless and forcing them to find new homes.<sup>93</sup> Climate change will only

81. Yen Yi Loo et al, *Effect of Climate Change on Seasonal Monsoon in Asia and Its Impact on the Variability of Monsoon Rainfall in Southeast Asia*, 6 GEOSCIENCE FRONTIERS 817, 822 (2014).

82. *Id.*

83. *Id.*

84. *Id.* at 821.

85. See generally *Hurricanes and Climate Change*, UNION OF CONCERNED SCIENTISTS, [https://www.ucsusa.org/global-warming/science-and-impacts/impacts/hurricanes-and-climate-change.html#\\_Wk66J1Q-fEM](https://www.ucsusa.org/global-warming/science-and-impacts/impacts/hurricanes-and-climate-change.html#_Wk66J1Q-fEM) (last updated Dec. 1, 2017), archived at <https://perma.cc/5L59-BMS3>; see also Justine Calma, *Climate Changed*, GRIST (Dec. 13, 2017), <http://grist.org/briefly/2-independent-studies-say-climate-change-worsened-hurricane-harveys-rains/>, archived at <https://perma.cc/XM62-AY7J>.

86. See Julia Belluz, *It's Not Just Puerto Rico: 6 Other Caribbean Island Nations are in Crisis After the Hurricanes*, VOX, <https://www.vox.com/science-and-health/2017/9/26/16367410/hurricane-maria-2017-puerto-rico-caribbean-barbuda-dominica-virgin-islands-cuba-st-martin> (last updated Oct 3, 2017, 11:19 AM), archived at <https://perma.cc/M5ZS-P2WQ>.

87. *Id.*; See Dan DeLuca, *Hurricane Irma Shares Infamous Florida Date with Hurricane Donna*, NEWS-PRESS (Sept. 10, 2017), <http://www.news-press.com/story/weather/hurricane/2017/09/10/hurricane-irma-shares-infamous-florida-date-hurricane-donna/650842001/>, archived at <https://perma.cc/TSB9-X7FU>; see also Robinson Meyer, *What's Happening with the Relief Efforts in Puerto Rico?*, THE ATLANTIC (Oct. 4, 2017), <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956/>, archived at <https://perma.cc/QW4V-JCPG>.

88. Belluz, *supra* note 86.

89. *Id.*

90. *215,000 Puerto Ricans Have Arrived in Florida Since Hurricane Maria*, *supra* note 8.

91. *Id.*

92. Compton, *supra* note 10, at 361.

93. Ryan Jarvis, *Sinking Nations and Climate Change Adaptation Strategies*, 9 SEATTLE J. SOC. JUST. 447, 448–49 (2010).

continue to worsen, causing environmental conditions like this, and many more, to increase and magnify the effects the weather has on this planet.<sup>94</sup> While in the past the United States has been easily able to shut its doors to the immigrants in need, it will be nearly impossible to close its doors to that vast number of migrants, thus prompting an even bigger concern of illegal immigration than the U.S. is currently experiencing.<sup>95</sup>

There are two major types of climatic circumstances that will provoke climate migration.<sup>96</sup> One of these is slow-onset climate change—also called “long-term climate variability and change”<sup>97</sup>—such as rising ocean levels, which among other things, salinates ground water and makes the water unusable for drinking and agriculture.<sup>98</sup> Rising ocean levels also reduce land space, pushing coastal populations inland.<sup>99</sup> In some cases, this rise forces entire populations off their native islands.<sup>100</sup>

The other type is sudden extreme climatic disasters,<sup>101</sup> such as floods, hurricanes, tsunamis, etc.<sup>102</sup> These sudden impacts of climatic conditions are what need to be addressed more urgently due to the high risk of additional harm and danger people face after the extreme weather events occur. Additionally, these types of climate change impacts call for more immediate responses due to the sudden, intense, and chaotic nature these extreme meteorological events have on the affected populations and the countries in which those people reside. However, with the urgency that sudden impact climate victims need to be handled with, we must also consider the permanence of slow-onset climate change. Thus, both climatic conditions need to be addressed and considered when proposing solutions on long-term and short-term spectrums.

Because there are many names for these climate change victims—which are referred to in this article as “climate migrants” or “climate change migrants”—one should understand the ongoing debate on what to call this class of migrants. There is no official name for this classification of migrants. While United Nations Researcher Essam El-Hinnawi uses the term “environmental refugee,”<sup>103</sup> this term has not been universally used or accepted.<sup>104</sup> The reason for the rejection of this term is precisely due to the “refugee” part of the name—these climate victims do not fall under the international nor United States definition for what a “refugee” is.<sup>105</sup>

The 1951 Convention Relating to the Status of Refugees (the “1951 Convention”) and the 1967 Protocol set the international definition for “refugee.”<sup>106</sup> The

94. Warren, *supra* note 13, at 2109.

95. Carey DeGenaro, *Looking Inward: Domestic Policy for Climate Change Refugees in the United States and Beyond*, 86 U. COLO. L. REV. 991, 1022–26 (2015).

96. Warren, *supra* note 13, at 2108–09.

97. *Id.*

98. *See id.* at 2114, n.74.

99. *See id.* at 2114, n.75.

100. *See* Compton, *supra* note 10, at 361.

101. Warren, *supra* note 13, at 2108.

102. *See* Compton, *supra* note 10, at 361–63.

103. *Id.* at 364.

104. Benoit Mayer, *The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework*, 22 COLO. J. INT'L ENVTL. L. & POL'Y 357, 368 (2011).

105. *Id.* at 369.

106. *See* Compton, *supra* note 10, at 369–73.

United States uses these as foundation for the codification and definition of “refugee”<sup>107</sup>—stating that:

refugee status extends only to (1) persons outside their country of origin (2) who are unwilling or unable to receive protection from their country of origin or to return to their country of origin (3) due to a “well-founded fear of being persecuted” in their country of origin, and (4) that persecution is based on “reasons of race, religion, nationality, membership of a particular social group[,] or political opinion.”<sup>108</sup>

Accordingly, an “environmentally displaced person”<sup>109</sup>—another term used to describe this type of migrant—cannot meet the necessary requirements to achieve refugee status according to the definition. An “environmental refugee” has no well-founded fear of being persecuted in their country of origin as we cannot claim that nature and environmental disasters occur purposefully and follow particular people. Nor do environmentally displaced people meet refugee status as they are not being persecuted by nature due to one of the five categories stated in item (4) above.<sup>110</sup> Similar to the four factors above, in the United States, a refugee is someone who:

is located outside of the United States, is of special humanitarian concern to the United States, demonstrates that they were persecuted or fear persecution due to race, religion, nationality, political opinion, or membership in a particular social group, is not firmly resettled in another country, is admissible to the United States.<sup>111</sup>

Thus, in neither the international law realm nor under American law does the “refugee” aspect of “environmental refugee” fit under the standard requirement to consider someone a refugee. As a result, this type of migrant should not be called “environmental refugee.” The implications go beyond what this type of migrant is called because it affects their classification. If they do not fall under the “refugee” category and cannot be considered refugees, they cannot be afforded the protections that people under the refugee category are given.<sup>112</sup> Thus, by incorrectly calling this group a name under which they are not given the same protections as the people that actually belong in that group, these environmentally displaced people are caught in a limbo of technicalities, ultimately providing them with no real legal protections. Additionally, calling them “refugees” would cause a disruption and would require an overhaul of both the definition of the term and all the legal and practical rights afforded to refugees, as well as an overhaul of the systematic application and the

107. *Id.* at 372.

108. Kara K. Moberg, *Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection*, 94 IOWA L. REV. 1107, 1113–14 (2009).

109. *Id.* at 1112.

110. *Id.*

111. *Refugees*, U.S. CITIZENSHIP AND IMMGR. SERVS., <https://www.uscis.gov/humanitarian/refugees- asylum/refugees> (last updated Oct. 24, 2017), archived at <https://perma.cc/9DS6-H48J>.

112. Warren, *supra* note 13, at 2112–13.

legal significance of the additional factors or elements to the definition of the word “refugee” with respect to both international and American law.

The terms “climate migrants”<sup>113</sup> or “climate change migrants”<sup>114</sup> adequately encompass what these environmentally displaced persons are: migrants due to the effects of climate change. Using these names for environmentally displaced persons will allow, on an international and a country-by-country basis, an establishment of more specific rights for these types of migrants and a better definition of the extent, limitations, and conditions afforded by the law to climate change migrants. While there are many terms for these types of migrants,<sup>115</sup> currently there is no officially recognized title or protection on an international level, nor under the United States legal system, for climate change migrants, leaving these people in need with no solutions or rights due to their circumstances.<sup>116</sup> The name that these migrants will be assigned is just as important as the rights they are entitled to under immigration. Misnaming them could have many potential negative results for climate change migrants, with respect to the rights they may get, and the treatment they will receive.

#### A. LEGAL VS. ILLEGAL IMMIGRATION

Using the lessons that history has provided over and over again, and considering the inevitable influx of climate change migrants, the United States should have in preparation immigration policies for when disaster hits. We will safely—for the protection of the American people as well as those affected by the extreme climatic conditions—allow these migrants in need a chance to temporarily, or permanently, escape from the aftermath of the natural disasters. Allowing climate change migrants to legally enter and reside in the country not only allows the government a better and easier way to track the people inside the country, but it also allows for the migrants to better integrate into the communities they reside in, thus helping the citizens of our country and the climate change migrants socially.<sup>117</sup> Legal immigration can also help our country’s economy through taxes and integration of the climate change migrants to the American lifestyle.<sup>118</sup>

Additionally, having proactive policies in place and allowing legal immigration should result in less illegal immigration.<sup>119</sup> Illegal immigration is an extremely important aspect of migration because of the consequences, rights, perceptions, freedoms, impacts, and lifestyles for both the American people and the climate change migrants entering the country.<sup>120</sup> Illegal immigration unfortunately spouts anti-immigration sentiment, which leads to marginalization of immigrants.<sup>121</sup> As Carey DeGenaro noted:

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113. DeGenaro, *supra* note 95, at 994.  
 114. Warren, *supra* note 13, at 2112–13.  
 115. *See generally* Compton, *supra* note 10.  
 116. *Id.* at 370–72.  
 117. *See* DeGenaro, *supra* note 95, at 1023–25.  
 118. *See id.*  
 119. *See* Compton, *supra* note 10, at 379; Warren, *supra* note 13, at 2113 (massive influx of migrants will inevitably happen because as previously stated, estimates range that there will be between 50 million to 250 million climate change migrants by 2050).  
 120. *See generally* DeGenaro, *supra* note 95; Mayer, *supra* note 104.  
 121. DeGenaro, *supra* note 95, at 1023.

[t]he presence of a large, undocumented labor force in this country tends to degrade wages and conditions for unskilled jobs. This hurts both United States citizens and immigrant populations. . . . Failing to economically and socially integrate undocumented immigrants is also likely to impose both economic and social costs by fracturing communities and creating a “shadow population” of unlawful aliens. Society as a whole suffers the consequences of the existence of this population.<sup>122</sup>

For climate change migrants who have immigrated as a result of losing their homes due to the effects of extreme weather, illegal immigration would add to the list of the devastating effects of climate change. Immigration laws seem to be continuing in the route that we have seen since the 1700s and 1800s and getting more restrictive as time goes by with travel bans, anti-immigration sentiment, and the prohibition and expulsion of immigrants from the country.<sup>123</sup> However, this “closing-the-door-on-immigration” behavior from Congress and our governmental officials will not result positively for the American people because of the reasons mentioned above.

Doing nothing or turning our backs on mass migration will not be an option when there are millions and millions of people knocking on our door. Thus, learning from our mistakes, we should anticipate and prepare for this mass migration of climate change victims, and have measures waiting to be implemented that will allow us to deal with the massive influx of climate change migrants aspiring to come in.

#### IV. PROPOSED SOLUTIONS

The focus of this section is to examine proposed solutions on how to best handle this impending immigration crisis. In looking at solutions and answers to this problem, we have to consider both sudden impact weather and slow onset conditions, as they will require different solutions due to the nature and permanence of each type of climate change weather impact. In order to get there, we must come up with solutions that will work for both the American people at large and the climate change migrants seeking safety and shelter inside the United States.

##### A. TEMPORARY PROTECTED STATUS (TPS)

Temporary Protected Status (TPS) is a temporary immigration status afforded to eligible people of certain countries whom the United States Secretary of Homeland Security designates as “eligible for TPS with a finding that conditions in that country pose a danger to personal safety due to ongoing armed conflict or an environmental

122. *Id.* at 1023–24.

123. *See, e.g.*, Laura Meckler, *House Committee Unites to Clamp Down on Indian Firms’ Use of H-1B Visas*, WALL ST. J. (Dec. 27, 2017), <https://www.wsj.com/articles/house-lawmakers-unite-on-outsourcing-bill-in-rare-show-of-bipartisanship-1514379600>, archived at <https://perma.cc/VNF4-JRPG>; Adam Liptak, *Supreme Court Allows Trump Travel Ban to Take Effect*, N.Y. TIMES (Dec. 4, 2017), <https://www.nytimes.com/2017/12/04/us/politics/trump-travel-ban-supreme-court.html>, archived at <https://perma.cc/CUE4-2U4F>.

disaster.”<sup>124</sup> People are initially granted TPS for a period ranging from six to eighteen months, which may be extended at the discretion of the Secretary of Homeland Security.<sup>125</sup> Once granted TPS, those individuals are not removable from the United States during the allotted TPS period, can legally obtain employment, may be granted travel authorization, and cannot be detained by the Department of Homeland Security on the basis of that person’s immigration status in the United States.<sup>126</sup>

As the name of it explains, TPS is a temporary benefit, and is not equivalent to permanent residency; though this protected status does not prevent the person granted TPS from applying for a nonimmigrant status which they may be eligible for, thereby changing the “temporary” aspect of their stay in the United States.<sup>127</sup> In order for someone to gain TPS, however, they must already be in the United States when the armed conflict or environmental disaster occurs and when their country is assigned as a TPS nation.<sup>128</sup> This means that people fleeing a country after a major environmental disaster strikes are not eligible to qualify for this protected status.<sup>129</sup> While TPS provides great benefits, it is ineffective in the bigger picture for environmentally displaced persons because most climate change migrants will be fleeing from their country after the disaster, not before it.<sup>130</sup> This leaves a great number of people in need deserted, and our government repeating the mistakes from history it has continuously done.

TPS has recently been subject to scrutiny for how temporary this protected status actually is.<sup>131</sup> The acting Secretaries of Homeland Security announced in November and January the decision to terminate TPS for Haiti and El Salvador, granted in 2010 and 2001 respectively.<sup>132</sup> Each country was granted TPS when each was hit with catastrophic earthquakes devastating the nations.<sup>133</sup> There are 200,000 Salvadorans that have been in the United States for almost 20 years, establishing their homes, livelihoods, and families here, many with American-born children.<sup>134</sup> Once their TPS

124. *Temporary Protected Status*, U.S. CITIZENSHIP & IMMGR. SERVS., [www.uscis.gov/tools/glossary/temporary-protected-status-tps](http://www.uscis.gov/tools/glossary/temporary-protected-status-tps) (last visited Dec. 1, 2018), *archived at* <https://perma.cc/1B7S-Z7VE>. See 8 U.S.C. § 1254a(b)(1)(A) (2012).

125. 8 U.S.C. § 1254a (b)(2)(B).

126. *Id.* § 1254a (a)(1), (d)(4), (f)(3).

127. See *Id.* § 1254a (a)(5); *What is TPS?*, *supra* note 15.

128. Compton, *supra* note 10, at 375.

129. *Id.* See 8 U.S.C. § 1254a(a)(1), (b)(1), (c)(5); *What is TPS?*, *supra* note 15.

130. Compton, *supra* note 10 at 375-76.

131. See, e.g., Nick Miroff, *What is TPS, and What Will Happen to the 200,000 Salvadorans Whose Status is Revoked?*, WASH. POST (Jan. 9, 2018), [https://www.washingtonpost.com/news/worldviews/wp/2018/01/09/what-is-tps-and-what-will-happen-to-the-200000-salvadorans-whose-status-is-revoked/?utm\\_term=.d9078e48d88b](https://www.washingtonpost.com/news/worldviews/wp/2018/01/09/what-is-tps-and-what-will-happen-to-the-200000-salvadorans-whose-status-is-revoked/?utm_term=.d9078e48d88b), *archived at* [perma.cc/4D9V-5M7M](https://perma.cc/4D9V-5M7M).

132. Press Release, Office of the Press Sec’y, Sec’y of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for El Salvador, (Jan. 8, 2018), <https://www.dhs.gov/news/2018/01/08/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>, *archived at* [perma.cc/RQJ4-7T3T](https://perma.cc/RQJ4-7T3T) [hereinafter Off. of the Press Sec’y, El Salvador]; Press Release, Office of the Press Sec’y, Acting Sec’y Elaine Duke Announcement on Temporary Protected Status for Haiti (Nov. 20, 2017), <https://www.dhs.gov/news/2017/11/20/acting-secretary-elaine-duke-announcement-temporary-protected-status-haiti>, *archived at* [perma.cc/83XG-77L9](https://perma.cc/83XG-77L9) [hereinafter Off. of the Press Sec’y, Haiti].

133. Off. of the Press Sec’y, El Salvador, *supra* note 132; Off. of the Press Sec’y, Haiti, *supra* note 132.

134. Miroff, *supra* note 131; see also Maria Sacchetti, ‘We Will Lose Practically Everything’: Salvadorans Devastated by TPS Decision, WASH. POST (Jan. 8, 2018), [https://www.washingtonpost.com/local/immigration/i-consider-this-my-country-salvadorans-in-us-brace-for-tps-decision/2018/01/07/77914402-f19e-11e7-b3bf-ab90a706e175\\_story.html?utm\\_term=.e6124e65ce08](https://www.washingtonpost.com/local/immigration/i-consider-this-my-country-salvadorans-in-us-brace-for-tps-decision/2018/01/07/77914402-f19e-11e7-b3bf-ab90a706e175_story.html?utm_term=.e6124e65ce08), *archived at* [perma.cc/56VH-XF3W](https://perma.cc/56VH-XF3W); Miroff, *supra* note 131.

is lost, these individuals return to having the status they had before they were granted TPS.<sup>135</sup> This is significant because it will result in the deportation of many people<sup>136</sup> and the separation of many families with American-born children of immigrant parents.<sup>137</sup>

This is extremely concerning because, while TPS seems like a great option for climate change migrants, there are many complications and technicalities associated with it. Most of them stem from the uncertainty of the time allowed to stay,<sup>138</sup> and how the climate change migrants might establish roots in the United States that may make leaving the country, when the temporary protection ends, a bit harsh. Additionally, this benefit may apply and be beneficial to sudden-impact climatic conditions, but is ineffective to grant to slow-onset climate change migrants because: (1) they will never have a home to go back to; and (2) the slow gradation of rising sea level, for example, has not historically “triggered” TPS, thus leaving climate change migrants, due to slow-onset climate change, without any aid or solution.<sup>139</sup> Consequently, TPS is not currently a solution for how to handle the mass migration of people expected as a result of climate change.

## B. EXPANDING THE DEFINITION FOR REFUGEE

As previously mentioned, calling climate change migrants “environmental refugees” would not be enough to render environmentally displaced persons the rights and protections afforded by the law.<sup>140</sup> Currently, internationally and in the United States, the definition for refugee does not include persons who have lost their homes due to climatic conditions;<sup>141</sup> therefore, an environmentally displaced person cannot meet the standard of what a refugee is as the definition currently stands.

Propositions have been made to expand the definition of refugee to be inclusive of environmental refugees<sup>142</sup> by altering or removing “(3) due to a ‘well-founded fear of being persecuted’ in their country of origin, and (4) that persecution is based on ‘reasons of race, religion, nationality, membership of a particular social group or political opinion.’”<sup>143</sup> While there are some African countries which have expanded their definition to include “events seriously disturbing public order in either part or the whole of his country of origin or nationality,”<sup>144</sup> this would not work on a grand scale. A requirement of refugee status is the “well-founded fear of being persecuted in their country of origin,”<sup>145</sup> which is impossible to claim for environmentally displaced persons, as the environment is not persecuting anyone. Leaving this section

135. Miroff, *supra* note 131.

136. *See id.*

137. Sacchetti, *supra* note 134.

138. *See Temporary Protected Status, supra* note 124; *What is TPS?, supra* note 15.

139. *See generally* Compton, *supra* note 10.

140. Warren, *supra* note 13, at 2112–13.

141. Moberg, *supra* note 108, at 1113–14.

142. Compton, *supra* note 10, at 381.

143. Moberg, *supra* note 108, at 1113–14 (for elements of refugee); *see* Compton, *supra* note 10, at 381 (for proposition to alter definition).

144. Compton, *supra* note 10, at 381.

145. Moberg, *supra* note 108, at 1113–14.

of the definition of refugee would make “refugee” status impossible to reach for environmentally displaced persons, and taking it out would greatly deprive the millions and millions of people we already call refugees of this categorical protection, significantly altering their legal, practical, and social protections. The definition currently in place was implemented after the Second World War, and though it has been slightly modified by countries and international bodies, this is a system that has been in place since 1951, and adjusted in 1967,<sup>146</sup> and that has worked fairly well in assisting refugees escape the threats they face from the countries they come from.<sup>147</sup>

Changing this definition would also create an unwanted ripple effect throughout the globe.<sup>148</sup> In addition, the United States Senate has explicitly decided to not expand the definition of refugee to include environmentally displaced persons as it would overload our already overwhelmed refugee/asylum applicant system.<sup>149</sup> Thus, expanding the definition of refugee to include environmentally displaced persons is not a viable solution for climate change migrants to find shelter in the United States.

### C. EXECUTIVE PROSECUTORIAL DISCRETION

Executive prosecutorial discretion is a choice from the executive branch “*not* to target certain unlawful aliens for removal if a substantial interest will not be served by pursuing the case.”<sup>150</sup> Once prosecutorial discretion is granted, what this essentially does is that it deters immigration officers from deporting a class or group of immigrants who are here illegally or who have overstayed their legally permitted time in the country.<sup>151</sup> This was mostly used in 2012, when the President at the time granted prosecutorial discretion through the Deferred Action for Childhood Arrivals (DACA).<sup>152</sup> This option, however, not only has flaws that would not work for climate change migrants, but jumps too many steps in assuming that the migrants are already in the country in the first place. One of the issues with this is that it is not a law, and thus immigration officials and the Department of Homeland Security are not actually stopped or prohibited from deporting individuals from these classes.<sup>153</sup> This means that if there was a climate migrant in the custody of the Department of Homeland Security, the officer may deport the climate change migrant back to his or her environmentally devastated country, thus offering no real security for environmentally displaced persons.<sup>154</sup> Additionally, the impermanent nature of prosecutorial discretion is vulnerable to the polarization of the executive branch at any given time—it rests on who sits in the Oval Office making the calls to implement prosecutorial discretion.<sup>155</sup> This could create a serious dilemma depending on who is running the executive branch, how they choose to run the branch, and what immigration policies and considerations they choose to strip or implement.

146. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

147. See Moberg, *supra* note 108, at 1128–31.

148. *Id.*

149. See *id.* at 1126–31.

150. DeGenaro, *supra* note 95, at 1018.

151. See *id.* at 1018–19.

152. *Id.*

153. See *id.* at 1019–20.

154. See *id.*

155. See *id.* at 1019.

Another issue that comes with this option is that it does not offer any sort of practical or legal protections—other than restrictions on deportation—thus still inducing the concept of a “shadow population.”<sup>156</sup> This further restricts the integration into the community of the climate change migrants and denies both the American people and the climate change migrants any social or economic benefits that ought to be given to climate change migrants’ legal, or illegal, status within the United States. Lastly, this option assumes that the climate change migrant is already in the country, which excludes the population of survivors seeking shelter who are outside of the country—which will be presumably a larger section of the population.

#### D. CREATING A NEW CATEGORY FOR CLIMATE CHANGE MIGRANTS

One of the main goals regarding climate change migrants is to accommodate these environmentally displaced persons safely inside the United States, away from the dangers and aftermath of climate change impacts in their home countries, until conditions to sustainable living are restored—if there is any country left to get back to.<sup>157</sup> Ideally, this new category will allow the government to act swiftly when it comes to accepting climate change migrants instead of having people linger around in destruction and despair. As discussed, the current immigration “solutions” are and will continue to be inadequate not only for climate change migrants, but also for the large scale these migrants are projected to come in.

Therefore, a new category for climate change migrants should be implemented, or be ready to be implemented, when the time requires. New Zealand has added a special category to their immigration system for climate change migrants that allows them to take in “four hundred able-bodied adults, between the ages of eighteen and forty-five, who have no criminal records and who are from the [small island developing states] of Fiji, Kiribati, Tonga, or Tuvalu. . . each year.”<sup>158</sup> While this is a step in the right direction, families with children under eighteen or with parents over forty-five will be separated or excluded from entering New Zealand.<sup>159</sup>

Additionally, this new category can be a mix of refugee status and TPS, giving climate change migrants entering the country a full range of legal and practical rights, allowing them to integrate into the society they are placed in during a certain time span that may be extended depending on the conditions of the restoration in the climate change migrants’ home country. For slow-onset climate change migrants who have permanently lost their homes to climate change, permanent residency and a path to citizenship should be considered given that they can never go back to their home country.

The United States Government should implement a modified version of New Zealand’s special immigration category, where families could stay together regardless of the individual family member’s age. The goal in this new category is to try to keep climate change migrants’ core families together as much as possible. This new category should allow climate change migrants to enter the United States after an

156. See DeGenaro, *supra* note 95, at 1024.

157. See Compton, *supra* note 10, at 360–61 (in reference to entire island in the Pacific being lost due to rising sea levels caused by climate change).

158. Jarvis, *supra* note 93, at 462–63.

159. See *id.* at 463.

environmental disaster and grant them the protections and advantages that TPS permits, until conditions in their home country get better, or permanent residency for those migrants whose homes are permanently lost.

Critics may indicate that letting every person into the United States would cause more havoc than good, and that on paper the idea may sound better than the application in reality. However, allowing climate change migrants to enter the United States legally would give climate change migrants an opportunity to integrate into the community, and giving them a legal status the United States would avoid all the economic and social stigma of migration and would result in a better symbiosis of both the American people and the climate change migrants.

### V.CONCLUSION

We should take the lessons that history has taught us and learn from them. We need to be ready for the consequences of the next environmental disasters and be prepared to aid climate change migrants seeking shelter. The best way of being prepared for this mass migration is to anticipate it and have laws ready to be implemented before disaster strikes, instead of scrambling after a catastrophe and bickering amongst ourselves, so that during the time of most need, we can be compassionate, efficient, and unwavering, unlike in the past how we have acted and rejected migrants from the Second World War and Syria. Granting climate change migrants TPS or extending the definition of refugee will not be enough. Our government should create a new immigration category for climate change migrants that will provide safety and benefit for both the American people and the climate change migrants. Sitting idly like we have done so many times before will no longer be an option; we need to be ready to act. The governmental postures and policies that have been so prevalent through history are no longer an option in the face of climate change and the resulting displacement of millions of people around the world. History repeats itself, but we do not have to.