

Climate Change and Cross-Border Displacement: What the Courts, the Administration, and Congress Can Do to Improve Options for the United States¹

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The devastating impact of climate change and disasters can force people to flee their homes. While most find refuge within their own country, others must cross borders in search of protection and assistance. When it comes to people fleeing in the context of climate change and disasters, the United States should adopt a more pragmatic and humanitarian approach to both international protection and the U.S. national interest.

There are at least seven existing and potential legal and policy options for improving the United States' response to cross-border climate displacement.

Maximize the Potential of U.S. Asylum Law: A refugee under both U.S. and international law is a person with a well-founded fear of persecution on account of their race, religion, nationality, social group, or political opinion. While this definition was not crafted with climate displacement in mind, there is increasing agreement that the adverse effects of climate change can contribute to violations of human rights and/or reduce a state's willingness or ability to provide protection. In short, some people fleeing climate change and disasters do fit within the refugee definition. The administration should ensure that asylum officers and immigration judges take climate factors into account when adjudicating claims, while courts of appeals should analyze such claims thoughtfully. Attorneys seeking assistance may [contact CGRS](#) for our practice advisory on analyzing asylum claims for individuals fleeing climate change or environmental disasters.

Expand Climate Change Considerations in the U.S. Refugee Admissions Program: The U.S. Refugee Admissions Program (USRAP) allows refugees to resettle in the United States from abroad. The Biden administration recently announced it will use USRAP as one means of strengthening and expanding protection of refugees in situations of vulnerability affected by climate change. In addition to this welcome commitment, the United States must ensure that climate factors are taken into account in assessing refugee claims.

Reimagine Temporary Protected Status: Temporary Protected Status (TPS) is unique among categories of immigration relief in that it includes specific language on protection from environmental disasters for people already in the United States. However, it has limitations, including its short-term nature and designation decisions that are left to the

¹ Kate Jastram, [Climate Change and Cross-Border Displacement: What the Courts, the Administration, and Congress Can Do to Improve Options for the United States](#), forthcoming 56 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW (2024).

discretion of the Department of Homeland Security. The administration should consider TPS reform such as removing the government request requirement for TPS designation in cases of environmental disaster, establishing a legal pathway for TPS beneficiaries to apply for permanent status without adding to the asylum backlog, and updating the criteria for designation or re-designation.

Make Greater Use of Nationality-Specific Humanitarian Parole Programs: The administration has established humanitarian parole programs for nationals of specific countries, providing temporary entry for urgent humanitarian reasons or significant public benefit. While recent programs for Cuba, Haiti, Nicaragua, and Venezuela have focused on reducing pressures at the southwest border, the use of humanitarian parole programs should be expanded to respond to humanitarian crises including climate displacement.

Leverage Safe Mobility Offices to Lead Regional Solutions: Safe Mobility Offices are a new U.S. initiative under the framework of the Los Angeles Declaration on Migration and Protection. They aim to provide information on immigration options to migrants in the region, and to identify and refer refugees from the Western Hemisphere for potential resettlement in the United States, and in some cases, Canada or Spain. While these offices do not create new legal categories, and should not be used as a replacement for access to asylum at the U.S. border, the administration should leverage them to expand protection for refugees affected by climate change by analyzing protection gaps and considering additional pathways while involving civil society organizations in the process.

Expand Complementary Protection: Certain human rights treaties also protect people from return to serious harm. As a party to the Convention Against Torture, the United States abides by its prohibition against returning people to a substantial risk of torture. Congress should enact legislation consistent with our corresponding obligations under the International Covenant on Civil and Political Rights, which would enhance our ability to protect climate-displaced individuals. Similar language was included in the Refugee Protection Act of 2022, while specific language on climate-displaced persons was included in bills in the last two Congresses.

Adopt the Cartagena Declaration Definition: The Cartagena Declaration defines refugees as people whose lives, safety or freedom have been threatened by, among other things, massive violations of human rights or other circumstances which have seriously disturbed public order. This language can be applied to climate displacement. Many countries in the Americas have adopted this definition into their national law, and Congress should do likewise. A broader and more flexible refugee definition allows for quicker, group-based decisions and aligns the United States with other refugee-hosting countries in the region.